



RESOLUTION 2023-R-10

Resolution of the Borough of Hummelstown authorizing Theresa Eberly, Borough Manager to approve expenses and preconstruction activities as set forth in Section 4 of the Dauphin County Transportation Infrastructure Safety Improvement Program (TISIP) Intermunicipal Cost Sharing Agreement between the Borough of Hummelstown and the County of Dauphin in for Graystone Road Emergency Access Road Project (hereinafter the "Project").

WHEREAS the Borough of Hummelstown (the "Participant") was awarded a Transportation Infrastructure Safety Improvement Program grant in the amount of \$320,000 to support the Project, an amount equal to 75 percent of total project costs;

WHEREAS Participant is responsible to pay a local share of project costs equal to 25% up to \$80,000;

WHEREAS total project costs are estimated to be \$320,000;

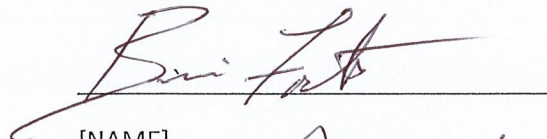
WHEREAS the Participant recognizes the turnkey nature of the TISIP program and agrees to allow Dauphin County and its engineer to manage the entirety of the project to achieve economies of scale and ensure project delivery consistent with programs rules, including managing all pre-construction and construction phases of the project;

WHEREAS Participant intends to enter into an Intermunicipal Cost Sharing Agreement with the County of Dauphin outlining the terms and conditions for participation in the TISIP Program.

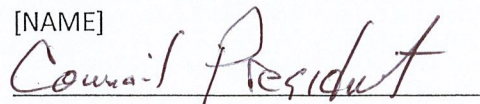
NOW THEREFORE BE IT RESOLVED, that the Borough of Hummelstown hereby authorizes Theresa Eberly, Borough Manager, to approve expenses and preconstruction activities and execute all document related thereto, as set forth in Section 4 of the Dauphin County Transportation Infrastructure Safety Improvement Program (TISIP) Intermunicipal Cost Sharing Agreement between the Borough of Hummelstown and the County of Dauphin in for Graystone Road Emergency Access Road Project (hereinafter the "Project").

IN WITNESS THEREOF, I affix my hand and attach the seal of the Borough of Hummelstown, this 14th day of December , 2023 .

By:

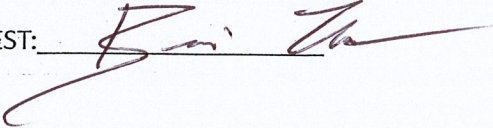


[NAME]



[TITLE]

Attest: I, Brian Foster, duly qualified Theresa Eberly of the Borough of Hummelstown, Dauphin County, Pennsylvania, hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by a majority vote of the Borough of Hummelstown at a meeting held on December 14, 2023 and Resolution has been recorded in the Minutes of the Borough of Hummelstown and remains in effect as of this date.

ATTEST: 

**DAUPHIN COUNTY TRANSPORTATION INFRASTRUCTURE SAFETY IMPROVEMENT PROGRAM (TISIP)
INTERMUNICIPAL COST SHARING AGREEMENT**

This Cost Sharing Agreement (“Agreement”), dated November 16 , 2023, is by and between, HUMMELSTOWN BOROUGH (“Municipality”), with a principal office at 261 Quarry Road, Hummelstown, Pennsylvania 17036, and the COUNTY OF DAUPHIN (“County”), a third class county of Pennsylvania, with a principal office at Dauphin County, 2 South 2nd Street, Harrisburg, Pennsylvania 17101 (together, the “Parties”).

WITNESSETH:

WHEREAS, County is undertaking a comprehensive program focused on transportation safety improvement projects of municipally-owned transportation infrastructure with identified deficiencies to encourage economic development and to ensure a safe and reliable system of transportation in the County; and

WHEREAS, County desires to complete safety improvement projects using a match of County and Municipality funds through the “Transportation Infrastructure Safety Improvement Program” (hereinafter, “TISIP”); and

WHEREAS, County and Municipality have determined that Graystone Road Emergency Access Road Project is in need of repair or replacement; and

WHEREAS, County and Municipality agree that Graystone Road Emergency Access Road Project should be one of the PROJECTs included in the TISIP; and

WHEREAS, the County has designated the Dauphin County Department of Community and Economic Development to administer the TISIP.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties, intending to be legally bound, agree as follows:

1. Scope and Cost of Project: County and Municipality agree that Duke Street requires the construction of a 12-foot wide gated emergency access road from Sweet Arrow Drive to Duke Street through an existing Borough-owned property, providing a secondary means of egress from the Graystone Farms neighborhood of approximately 250 homes in the event of a train derailment, hazardous incident or other emergency (the “Project”) and agree to share in the actual costs associated with the Project as outlined in the table below. County will be responsible for (75%) of the actual costs incurred in the Project. Municipality will be responsible for (25%) of the actual cost incurred in the Project (the “Municipal Share”). The costs to be shared between the Parties include all phases of the Project, including, without limitation, design, utilities, right-of-way, and construction. The Parties acknowledge that the County’s engineer, Herbert, Rowland & Grubic, Inc., has prepared a cost *estimate*, but that the Parties will only be required to share in the *actual* costs incurred in the Project, whether the actual costs exceed or are lower than the cost estimate.

Project Phase	County Share (75%)	Municipality Share (25%)	Total
Pre-construction	\$34,285.00	\$11,430.00	\$45,715.00
Construction	\$205,715.00	\$68,570.00	\$274,285.00
Total Project	\$240,000.00	\$80,000.00	\$320,000.00

2. Project Bundling: County may bid out several similar projects in groups of contracts (“Bundle”) with the anticipation of achieving financial saving based on economies of scale. Municipality acknowledges that the Project may be one of several projects prepared and bid concurrently as a Bundle.

3. County's Responsibilities: County shall be responsible for completing all preconstruction activities for the Project, including but not limited to design, right of way acquisition, and utility relocation. County will further be responsible for bidding and administering the Bundle that includes the Project.

County will provide Municipality with the following pre-construction deliverables for Municipality's review, input, and approval, which approval will not be unreasonably denied, conditioned or delayed:

- a. Preliminary Plans and Cost Estimate;
- b. Permits;
- c. Utility Agreements (if required);
- d. Right-of-Way Plan (if required);
- e. Final Plan, Specifications, and Estimate

4. Municipality's Responsibilities:

- a. Funding Sources: By executing this Agreement, Municipality commits local funding for its share of the cost of the Project as outlined in Section 1 of this Agreement and represents that Municipality has or will have funds budgeted for its share of the Project costs, proof thereof to be provided at the time of executing this Agreement as described in Section 4.f. of this Agreement and set forth on Exhibit A attached hereto and made part of hereof. Municipality will provide its share of the Project costs to County in accordance with the process outlined in Section 5 of this Agreement.
- b. Approval of Expenses: Municipality will be provided with actual proposals, appraisals, bids, change orders (if necessary), and other documents reflecting the actual costs to be incurred for the Project. Municipality hereby approves, without further notice or consent, all expenses up to 10% over the planning level cost estimates as outlined in Section 1 of this Agreement.

Municipality is required to provide written approval within 30 days of any expense that increases the cost of the project greater than 10% of the planning level costs estimates outlined in Section 1 of this Agreement. Any such expenses not approved in writing by Municipality within 30 days of receipt, shall be deemed approved by Municipality. Cost sharing for such increases will follow the procedures of Section 6 of this Agreement.

- c. Approval of Preconstruction Deliverables: Municipality shall provide written approval of all preconstruction deliverables outlined in Section 3 of this Agreement. Deliverables not approved in writing within 30 days of receipt, shall be deemed approved.
- d. Bidding: Municipality acknowledges that County is responsible for bidding the Project or a Bundle which includes the Project, and Municipality hereby authorizes County to award the contract to the responsible and responsive low bidder. Municipality also hereby authorizes County to be the contracting entity with the bidder that is selected. County will follow applicable federal, state, county, and municipal requirements in its execution of bidding responsibilities.
- e. Liability for Re-Bidding Costs: In the event that the Project must be rebid, as a result of Municipality's refusal to approve the bidder selected by County or because Municipality withdraws from the TISIP for any other reason after having given written approval of the preconstruction deliverables, Municipality acknowledges that the Project may have to be rebid, resulting in added cost and expense to County and/or other TISIP participants that may have projects in a Bundle.

If any rebidding is required because of Municipality's conduct described above, Municipality agrees to pay County (1) the cost of re-bidding the Project and/or Bundle with the Project excluded, which cost includes, but is not limited to advertising costs and County staff time and (2) the net cost different between the original bid and the subsequent bid if it is rebid and the Project is retained as part of the TISIP. Municipality also agrees to pay the cost of re-bidding the Project, if the Parties later decide to rebid the Project.

- f. Escrow Account: No later than one (1) month from the date hereof, the Municipality shall establish in its name an Escrow Account with a bank or bank and trust company authorized to do business in the Commonwealth of Pennsylvania (the "Escrow Account") and shall deposit into such Escrow Account sufficient funds to pay for the Municipal Share, and any other amounts that may become due pursuant to this Agreement, as set forth in Section 1 of this Agreement. Proof of the Escrow Account shall be sent to George Connor, Executive Director, Dauphin County Department of Community and Economic Development at gconnor@dauphincounty.gov.

The Municipality certifies that the information provided in Exhibit A relating to the Escrow Account accurately describes (i) the source(s) of funds that have been committed to funding the Municipal Share and (ii) the anticipated date in which funds from those sources will be deposited into the Escrow Account. As long as this Agreement is in effect, the County may reasonably request the Municipality to provide proof of the Escrow Account and the funds deposited therein. Until this Agreement is terminated, the Municipality agrees that any funds in the Escrow Account shall be used solely for the benefit of financing the Municipal Share and for paying any other amounts that may become due pursuant to this Agreement. Failure to open the Escrow Account within one (1) month of the date hereof shall be considered a Default under Section 14 herein. The requirements contained in this subparagraph (f) may be waived by the TISIP Advisory Committee. To request such a waiver, email George Connor, Executive Director, Dauphin County Department of Community and Economic Development at gconnor@dauphincounty.gov no later than [two weeks after the Agreement Date] requesting the waiver and providing supporting documentation. Such requests will be considered on a case-by-case basis by the TISIP Advisory Committee.

5. Project Cash Flow Model: County will cash flow the Project as follows. County will pay monthly contractor invoices in full upon receipt. County will then invoice Municipality its proportionate share of each contractor invoice according to the applicable project phase as shown in Section 1.

Municipality will pay each invoice from County within 45 days of receipt (the "Due Date"). Timely payment of invoices is a condition of this Agreement. Failure to pay any invoice in full by the Due Date will be considered substantial noncompliance with the terms of this Agreement and a Default under Section 14. If invoice is not paid in full on or prior to the Due Date, then the Municipality shall pay to the County a late charge equal to the greater of five percent (5.00%) of the amount of such invoice or \$25.00 (the "Late Charge"). If at any time an invoice remains unpaid for a period in excess of 30 days past the Due Date, interest of the rate of 1.5% per month will be charged on past-due accounts, such amount to not exceed the maximum amount permitted by law (the "Default Rate").

Both the Late Charge and the Default Rate are imposed as liquidated damages for the purposes of defraying the County's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the County's exercise of any rights and remedies hereunder, or under applicable law, and any fees and expenses of any agents or attorneys which the County may employ. The Municipality agrees that the Late Charge and the Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the County, and that actual harm incurred by the County cannot be estimated with certainty and without difficulty.

6. Liability for Project Cost Increases:

- a. Project cost increases due to change orders or other unforeseen circumstances will be split according to the cost shares outlined in Section 1.
- b. Project cost increases due to a Project work stoppage, which Project work stoppage is the direct result of any action or inaction taken by the Municipality, or the Municipality's failure to otherwise comply with the requirements provided herein, including the requirements to make timely payments as set forth in Section 5, will be paid entirely by the Municipality.

7. Use of Eminent Domain: County and Municipality commit to the use of eminent domain, if necessary, which shall be implemented only as a last resort to secure the requisite right-of-way and/or easements. Municipality agrees to own and maintain any new right-of-way required by the Project and agrees to pay the costs of condemnation with the costs being allocated according to the preconstruction phase cost sharing outlined in Section 1.
8. Noncompliance with the Agreement: In the event of a Default or if the Municipality is otherwise in substantial noncompliance with any term of this Agreement, the County reserves the right to:
 - a. Terminate the Agreement and require the Municipality to immediately reimburse the County for any and all funds paid by or due to the County pursuant to this Agreement, including the County's share of the costs as set forth in Section 1 and any interest that may have accrued pursuant to Section 5 of the Agreement;
 - b. Debar the Municipality from other County grant and loan programs; and
 - c. Pursue all corrective remedies at law or in equity, including but not limited to Project work stoppage.

The Municipality will be responsible for all costs incurred by the County in enforcing the terms of this Agreement and pursuing any corrective remedy, including any reasonable attorney fees. The remedies set forth in this Section are cumulative and enforceable alternatively, successively or concurrently and such remedies are not exclusive of any rights or remedies which the County may otherwise have. The failure of the County at any time or times to enforce its right under this Section, in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

9. Term: Except as otherwise set forth herein, this Agreement shall be effective as of the date of the full execution of this Agreement and shall continue to be in force until the completion of the Project unless revoked or otherwise terminated in accordance with this Agreement.
10. Risk Allocation / Force Majeure: Neither party to this Agreement assumes a risk of any event, foreseeable or unforeseeable and beyond the reasonable control of either party, that has a material effect upon the performance of the subject matter of this Agreement, including but not limited to fire, flood, natural disaster, strike of its personnel, war, insurrection, riot, the declaration of a state or national emergency, acts of civil or military authorities, acts of God or the public enemy, acts of terrorism, epidemic, pandemic, or any other event, like or unlike these events, that renders performance impracticable. Upon such an event County may, in its sole discretion, suspend, cancel or terminate this Agreement in whole or in part at any time, without payment to Municipality. This provision supersedes any provision herein to the contrary. Additionally, the Parties agree that upon such an event each will continue to be responsible for its respective share of any Project costs incurred up until that time and any cost incurred as a result of such an event, including but not limited to clean up and repair.
11. Indemnification: Municipality will indemnify and hold the County, the members of the Board of Commissioners, the County's officers, employees, representatives and agents, (the "County Indemnified Parties") harmless from and against any loss, cost, damage or expense of any kind whatsoever arising from, out of, or in connection with the Project, the performance of services upon the Project or otherwise related to this Agreement, including, but not limited to, expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise, and shall defend, at the County's election, any and all actions brought against the County Indemnified Parties upon such claims or demands.
12. Insurance: It is understood and agreed that Municipality's standard liability insurance policies shall protect, or shall be endorsed to protect, the County without restriction, from claims of bodily injury and/or property

damage arising out of any activities performed by the Municipality or its employees or agents under this Agreement, including claims by business and non-business invitees, and involving their property and all other property sustaining damage as a direct or indirect result of the undertaking of the Project, when validly present on Municipality's premises, whether or not actually engaged in the Project, at the time the claim inures. Such policies shall not include any provision limiting the then existing sovereign immunity of the County or of its agents or employees. Municipality shall furnish to the County a copy of the liability policy endorsing the County as an Additional Insured without restriction at execution of this Agreement.

13. Representations and Warranties: Intending to be legally bound hereby, Municipality represents and warrants to the County that:

- a. Municipality is a public body, duly organized and existing under the laws of the Commonwealth and is authorized and empowered to undertake and complete the Project.
- b. Municipality is authorized and empowered to enter into this Agreement and to carry out its obligations hereunder.
- c. By resolution or other proper action of its governing body, Municipality has duly authorized the Municipal Manager to approve expenses and preconstruction activities as set forth under Section 4 above. The Municipality's resolution is attached hereto as Exhibit B.
- d. The undertaking and completion of the Project and the execution and delivery of this Agreement and compliance with the provisions hereof will not conflict with or constitute on the part of the Municipality a violation of, breach of or default under any law, indenture, mortgage, deed of trust, note or other agreement or instrument to which Municipality is bound or, to the knowledge of the Municipality, any order, rule or regulation of any court or governmental agency or body having jurisdiction over Municipality or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the Project have been obtained or will be obtained in due course; and Municipality will comply with all applicable laws, regulations and procedures in undertaking all aspects of the Project.
- e. There is no action, suit, proceeding or investigation at law or in equity pending against the Municipality by or before any court or public agency or, to the knowledge of the Municipality, any basis therefor, wherein any unfavorable decision, ruling or finding would adversely affect the validity or efficacy of this Agreement, or any agreement or instrument to which the Municipality is a party and which is used or contemplated for use in connection herewith or with the Project.
- f. No legislation has been enacted which in any way adversely affects the execution and delivery of this Agreement by the Municipality, or the creation, organization or existence of the Municipality or the titles to office of any officers thereof, or the power of the Municipality to undertake and complete the Project and otherwise to carry out its obligations under this Agreement.
- g. Municipality is not a party to any indenture, loan or credit agreement or any other agreement, resolution, contract, instrument, pension plan, pension trust, employee benefit or welfare plan, or subject to any restriction which may reasonably be expected to have an adverse effect on its ability to carry out its obligations under this Agreement.

14. Default: Any breach of performance of any term, provision or condition of this Agreement, or any material misrepresentation made by the Municipality herein or in connection with TISIP, shall constitute a default under this Agreement ("Default").

15. Independent Entities: Each party to this Agreement shall be responsible for its individual contribution and no party shall be responsible for the contribution of any other party hereto. Notwithstanding anything contained herein, each of the parties hereto are and shall remain independent contractors and this Agreement shall not create any employment, agency, partnership, or joint venture relationship, and, no party hereto may incur debts or financial obligations in the name of any other party hereto.
16. Performed According to Law: All activities performed by and party hereunder shall be performed in accordance with all applicable statutes and ordinances and in conformity with law. By execution hereof, the undersigned indicate that they have followed all necessary procedures, laws, and rules for binding the entity with which they are identified in this Agreement.
17. Governing Law: This Agreement shall be construed and governed pursuant to the laws of the Commonwealth of Pennsylvania pursuant to the execution of this Agreement in said jurisdiction. Any choice of laws issues shall be deemed to utilize the choice of laws rules of the Commonwealth of Pennsylvania. Any dispute arising from this Agreement shall be heard in the Court of Common Pleas of Dauphin County.
18. Severability: All Agreements, provisions and covenants contained in this Agreement are severable, and in the event any of them are held to be invalid by any competent court, this Agreement will be interpreted as if the invalid agreements, provisions or covenants were not contained in this Agreement.
19. Integration: This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and cancels, supersedes and terminates all prior agreements, contracts, understandings, negotiations, and other arrangements between the parties whether written or oral or partly written and partly oral.
20. Amendment/Waiver: Any alterations, variations, modifications, amendments, waivers or additional provisions to this Agreement will be valid only when reduced to writing, duly signed by all parties, and attached hereto. No oral amendment or waiver shall be effective, and this provision may not be orally amended or waived. The parties hereto further agree that any particular course of performance may not be used by any trier-of-fact to imply or infer a modification of this Agreement.
21. Strict Enforcement: The delay or failure of the County to strictly enforce any provision of this Agreement will not bar the Counties from any subsequent enforcement of any right, remedy or legal cause of action.

IN WITNESS WHEREOF, and intending to be bound hereby, the parties hereto have caused this Agreement to be duly executed on their behalf by their authorized officers and applicably attested, all as of the day and year first above written.

ATTEST:

COUNTY OF DAUPHIN
BOARD OF COMMISSIONERS

By: _____
J. Scott Burford
Chief Clerk/Chief of Staff

By: _____
Mike Pries, Chairman

(SEAL)

By: _____
Chad Saylor, Vice Chairman

By: _____
George P. Hartwick III, Secretary

EXHIBIT B

ATTEST:

By: Theresa Oberly
Name:
Title: Borough Manager

(SEAL)

[MUNICIPALITY]

By: Ryan Williamson

By: [Signature]

By: _____