

## **MAINTENANCE AGREEMENT** **RUTHERFORD ROAD PEDESTRIAN TUNNEL**

This *Agreement* is made by and between the **City of Powell, A Municipal Corporation**, hereinafter referred to as "**The City**" and **Liberty Township, Delaware County, Ohio**, hereinafter referred to as "**The Township**" regarding maintenance of the **Rutherford Road Pedestrian Tunnel** together with attendant infrastructure as described herein "**The Property**".

**WHEREAS**, MI Homes is building the Rutherford Road Pedestrian Tunnel in accordance with plans and specifications requiring approval by the City, Liberty Township, and the Delaware County Engineer and,

**WHEREAS**, upon completion of construction, and review and approval of such construction by the City and Township (the County Engineer rendering approval On behalf of the Township) and,

**WHEREAS**, the City and Township desire to enter into an agreement regarding the repair, maintenance and replacement of the Rutherford Road Pedestrian Tunnel and its attendant infrastructure, the follow agreement is made:

1. **Property**: The premises the subject of this agreement is the Rutherford Road Pedestrian Tunnel and attendant infrastructure as described in the attachment hereto as **Exhibit A**.

2. **The City's Obligations**: Commencing with the effective date of this agreement, the City of Powell agrees to maintain the tunnel culvert, the side slopes, the asphalt pedestrian pathways associated with the tunnel and those pathways leading to and from the tunnel on the north and south sides of Rutherford Road as shown on the attachment hereto as **Exhibit A**. The City shall accomplish such repair and maintenance in accordance with sound engineering practices and may accomplish such repairs and maintenance independent of approval of the Township.

3. **Obligation of the Township**: The Township will maintain the roadway base, surface and shoulders of the roadway, gradient, pavement markings, signs, and all storm sewers and side ditch drainage associated with the roadway within the Township area of responsibility as reflected on the attachment hereto as **Exhibit A**. The Township may accomplish such repair and maintenance independent of approval by the City.

4. **Project Coordination**: The City and Township agree to notify the other party with at least thirty (30) days advance notice of any anticipated repair or replacement within that party's area of responsibility under the terms of this agreement. The purpose of the *Notice* is to advise the other party regarding traffic coordination or traffic interruption problems. To the extent possible in the case of un-bid contracts, the City and Township shall attempt to coordinate repair and replacement through a common contractor to assist in cost control. The obligation, however to utilize a common contractor is not binding on either party.

5. **Traffic Interruption:** In the event it is necessary to coordinate, interrupt, interdict, or otherwise control traffic in the work site area for purposes of repair and maintenance, the City shall assume responsibility at its costs for traffic control while the City is accomplishing its repairs and maintenance. The Township will reimburse the City for any law enforcement or traffic control assistance required by the Township in accomplishing repairs and maintenance obligations of the Township pursuant to the terms of this agreement. The City will not incur any law enforcement costs or expenses for traffic control necessitated by work done solely by the Township under this agreement.

6. **Effective Date and Continuance:** This agreement shall become effective upon completion of construction by M/I Homes and acceptance of the project by the City and Township or the County Engineer On behalf of the Township. This agreement shall remain in force for so long as the Rutherford Road Pedestrian Tunnel exists or until the City and Township by mutual agreement terminate this agreement.

7. **Additional or Joint Obligations:** The parties intend to identify their obligations for repair, maintenance and replacement of the Rutherford Road Pedestrian Tunnel and associated infrastructure. In the event any portion of the Rutherford Road Pedestrian Tunnel not specifically identified as the obligation of either party under the terms of this agreement requires repair, replacement, or maintenance, each party shall be responsible for one half (1/2) of the cost of such repair, replacement or maintenance.

The procedure for repair, replacement or maintenance of any of these additional areas shall be as follows:

a. The party determining that repair, replacement or maintenance is necessary must prepare a Notice and transmit it to the other party with a complete description of the repair, replacement or maintenance required and anticipated cost based upon the engineer's estimate.

b. The *Notice* referred to above shall be sent to the other party at the address identified in the agreement with proof of delivery required. Proof of delivery may be established by any manner of service permitted under the *Ohio Rules of Civil Procedure*.

c. Upon receipt of such *Notice*, the other party shall have thirty (30) days to review, evaluate and respond to the *Notice*. If the response is positive, the parties shall jointly contract and make arrangements for completion of the work with each party paying one half (1/2) of the cost.

d. Should the parties disagree in any respect regarding any of the items contained in the *Notice*, the parties shall proceed to arbitration as otherwise described herein.

8. **Arbitration:** All disputes under this agreement shall be arbitrated. Either party may notify the other party in writing that arbitration is necessary. Within fourteen (14) days of such *Notice* each party shall identify an arbiter who shall be approved as an arbiter or mediator by any of the local courts in Delaware County, Ohio. The two (2) arbiters shall then pick a third arbiter

within fourteen (14) days. The three arbiters shall then contact the parties regarding an Arbitration Hearing. The cost of arbitration shall be divided equally between the parties. The decision of the arbitrators shall be final except that either party may appeal the arbitrator's decision in accordance with the provisions of the Ohio Revised Code. The arbitrators shall take care to preserve and maintain a record for purposes of appeal.

9. **Severability:** It is intended that this agreement shall be executed in the State of Ohio and governed by its laws. In the event any portion of this agreement is found to be contrary to law or unenforceable, the remainder of the agreement shall remain in full force and effect.

10. **Modification:** This agreement shall not be modified except in writing approved by the parties after adoption of appropriate legislation.

11. **Notices:** Any *Notices* required to be sent to the City of Powell or Liberty Township shall be submitted to the addressees at the following addresses:

City of Powell  
City Manager  
47 Hall Street  
Powell, Ohio 43065

Liberty Township  
Township Administrator  
7761 Liberty Road  
Powell, Ohio 43065

This agreement is intended to be binding upon the parties hereto, their successors in interest and inure to the benefit of the other party, and its successors in interest.

This agreement shall become effective immediately upon legislative ratification and signature of this agreement by both governmental entities.

**City of Powell**

10-5-07  
Date

By: Steve Lutz  
Steve Lutz, City Manager

Adopted Pursuant To Ordinance 0006-65  
On December 19, 2006

**Board of Trustees of Liberty Township  
Delaware County, Ohio**

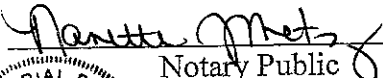
10-9-07  
Date


By: John Bernanji  
Deputy Administrator

Adopted By Resolution No. 06-237  
On 9/5/06

State of Ohio  
County of Delaware, ss:

On this 5<sup>th</sup> day of October, 2007 before me a notary public in and for said County and State personally appeared **Stephen A. Lutz, City Manager, City of Powell**, who acknowledged authority in the premises and that execution of the same is his voluntary act and deed.

  
\_\_\_\_\_  
Notary Public



**NANETTE J. METZ**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUGUST 13, 2010

State of Ohio  
County of Delaware, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006 before me a notary public in and for said County and State personally appeared \_\_\_\_\_, **Liberty Township Administrator**, who acknowledged authority in the premises and that execution of the same is his voluntary act and deed.

\_\_\_\_\_  
Notary Public