

RESOLUTION NO. 31 , 2020

A RESOLUTION AUTHORIZING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE HAMILTON COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

WHEREAS, the Hamilton County Transportation Improvement District (“HCTID”) is a Transportation Improvement District created by R.C. § 5540; and

WHEREAS, HCTID is authorized by R.C. Chapter 5540 to finance and to construct improvements to public roadways; and

WHEREAS, the City previously did apply to the HCTID to assist in funding construction work for the Montgomery Road/Ronald Reagan Interchange Improvements Project; and

WHEREAS, the City previously was awarded Project assistance funds, which funding was memorialized in an Intergovernmental Agreement dated August 31, 2019 previously approved by Council under Resolution Number 33, 2019 for fiscal year 2020; and

WHEREAS, the HCTID has awarded additional Project assistance to the City for the Project for fiscal year 2021 in the amount of \$250,000, and the HCTID has asked the City to execute the attached First Amendment to Intergovernmental Agreement to amend the prior Intergovernmental Agreement governing the terms and conditions for this Project assistance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is hereby authorized to execute the attached

First Amendment to Intergovernmental Agreement by and between the City and the Hamilton County Transportation Improvement District to co-administer and co-manage the Montgomery Road/Ronald Reagan Interchange Improvements Project, and to accept an additional grant of \$250,000 for fiscal year 2021 to offset a portion of the Project Costs as defined within the Intergovernmental Agreement.

SECTION 2. The City Manager is authorized to execute such additional documentation as may be necessary to implement this Amendment, and if appropriate to execute any subsequent Amendments to the Intergovernmental Agreement which provide additional fiscal year funding to the City to complete the Project Costs for the Interchange Improvements Project.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: September 2, 2020

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozsi
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

By and Between

CITY OF MONTGOMERY, OHIO

and

**THE HAMILTON COUNTY TRANSPORTATION IMPROVEMENT
DISTRICT**

Dated as of August ____, 2020

[Montgomery Road/Ronald Reagan Interchange Improvements Project]

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

THIS FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT (this "*Amendment*") is dated as of August __, 2020, and amends certain provisions of the Intergovernmental Agreement by and between the City of Montgomery, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio, and its Charter (the "CITY"), acting through its Council (the "Council"), and The Hamilton County Transportation Improvement District, a transportation improvement district and a body both corporate and politic created pursuant to ORC Chapter 5540 (the "*HCTID*").

Recitals:

A. The CITY and the HCTID have heretofore entered into an Intergovernmental Agreement, dated as of August 31, 2019 (the "*IGA*").

B. The CITY entered into the IGA to cooperate with the HCTID in endeavors to facilitate the development and implementation of the "*Gateway Redevelopment Public Roadways Project Construction Work Phase*" (hereinafter referred to and defined as the "Project" and as defined in the IGA).

C. In furtherance of this joint effort between the CITY and the HCTID to continue to advance the Project, the HCTID identified and secured, through ODOT Division of Jobs and Commerce, State fiscal year 2021 Project grant funding, in an amount not to exceed \$250,000.00, to be utilized and applied to partially fund, on a reimbursement basis, construction of the Project (the "*HB 26 Funding*").

D. The HCTD has requested that certain amendments be made to the IGA to notate and facilitate the contribution of the additional HB 26 Funding for the Project, announced by ODOT on July 31, 2020, through State fiscal year 2021 ("FY21") as has been authorized by ODOT, per Exhibit A attached hereto and made part hereof.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements in this Amendment, the CITY and the HCTID agree as follows:

ARTICLE 1. DEFINITION; CONSTRUCTION

Section 1.1. Unless otherwise defined herein, all words and phrases given a defined meaning in the IGA will have the same meaning in this Amendment.

ARTICLE 2. AMENDMENTS

Section 2.1. Amendment of Section 1.01. Section 1.01 of the IGA is hereby amended by adding the following modifications, as italicized below, and additional definitions, in bolded font below, to those definitions included in such section:

“CITY Pledged Amount” means the CITY’s funding commitment to advance the required and appropriate costs required and incurred for eligible Construction Work costs, *as follows: 1.) in an amount of \$200,000.00, to be paid from its available revenue sources, for advancing and completing the Construction Work, with eligible Construction Work costs and expenses to be reimbursed, as determined/approved by ODOT, from the HCTID HB 62 FY20 Funding; and, 2.) in a total amount of \$250,000.00, to be paid from its available revenue sources, for advancing and completing the Construction Work, with eligible Construction Work costs and expenses to be reimbursed, as determined/approved by ODOT, from the HCTID HB 62 FY21 Funding.* The CITY also acknowledges and agrees that it is solely responsible for procuring any additional funding required for the Project Costs including the Construction Work.

“Construction Work” means the work required, and direct costs incurred, to construct the Project, including the actual construction of the Project roadway improvements, provided through a construction services contract as bid and awarded to a construction services firm by the CITY, in coordination with the HCTID, which is in compliance with Section 7. Federal Requirements of the HB 62 FY20 Funding Agreement *and the HB 62 FY21 Funding Agreement* attached hereto as Exhibit B. for federally funded projects and that is being administered jointly with the HCTID as further set forth herein.

“HCTID HB 62 FY21 Funding” means grant funding specifically allocated to the HCTID by ODOT, in the amount of \$250,000.00 for eligible Project Costs, to wit: the Construction Work, and for use, on a reimbursement basis, in State Fiscal Year 2021 per the related HB 62 FY21 Funding Agreement, on file with the HCTID and ODOT.

“HB 62 FY21 Funding Agreement” means the agreement between ODOT and the HCTID, specifically in relation to the HCTID HB 62 FY21 Funding award procured by the HCTID and administered through the ODOT Office of Jobs and Commerce, on file with the HCTID and ODOT.

“Project Costs” means for purposes of this Agreement the costs required to complete the Project Work, including, but not limited to, for the Construction Work, as agreed upon here by the Parties, and further the cost of the Construction Work is payable, in part, from *both the HCTID HB 62 FY20 Funding allocation in an amount not to exceed \$200,000.00 and the HCTID HB 62 FY21 Funding allocation in an amount not to exceed \$250,000.00*, subject to approval by ODOT, and as further discussed herein.

“Project Cost Item” or “Project Cost Items” means the eligible activities, services and/or work items performed to complete the Construction Work and for which costs are incurred and approved by the CITY and the HCTID, to be paid for by the CITY Pledged

Amount and HB 62 FY20 Funding *and HCTID HB 62 FY21 Funding* facilitated by the HCTID, as further set forth herein.

“*Project Funding*” means sources of funding for paying the Project Costs to complete the Project, including, but not limited to, the CITY Pledged Amount, any other funding pledged, acquired or debt incurred by the CITY to fund the Project Work, including the HCTID HB 62 FY20 Funding *and HCTID HB 62 FY21 Funding* for the Construction Work.

Section 2.2. Amendment of Section 1.02. Section 1.02 of the IGA is hereby amended by adding the following language , in bolded font below, and a related updated Exhibit A, attached hereto and made part hereof, included in such section:

- (a) The following Exhibits are attached to and made a part of this Agreement:

Exhibit A “Project Costs Funding Summary (updated 2020)”

Exhibit B “Section 7. Federal Requirements”

Section 2.3. Amendment of Section 2.01. Section 2.01 of the IGA is hereby amended by adding the following clarification, as italicized below, to those provisions included in such section:

Section 2.01. *General Agreement Regarding Funding.* The Parties acknowledge and agree as follows:

- (a) The CITY and the HCTID explicitly acknowledge and agree:
- i) to act as co-administrators and managers of the Project, including overseeing the performance of the Construction Work, in accordance with applicable law and related requirements, and to perform all related responsibilities as thereby required or appropriate, in coordination and collaboration with the HCTID, HCEO and, as appropriate, ODOT and as provided for herein.
 - ii) to take such action and provide the necessary funding, including the CITY Pledged Amount and HCTID HB 62 FY20 Funding *and HCTID HB 62 FY21 Funding*, and as otherwise agreed upon by the Parties, to facilitate, fulfill and deliver the Construction Work, as committed herein.
 - iii) to arrange, in coordination and cooperation with the HCEO, for a schedule of Project Work sessions to, to be held on a bi-weekly basis or as the Parties otherwise determine is appropriate and necessary, so as to coordinate and review the progress of the Construction Work and related Project issues by and among the HCTID and the CITY, and any other parties the CITY and the HCTID deem appropriate. The HCTID, with assistance of the HCEO, shall provide input and advice regarding the Construction Work. The CITY and the HCTID shall, at such appropriate times, conduct concurrent reviews through its designated Project representatives of any related eligible consultant or

contractor invoices to be submitted for reimbursement from the HCTID HB 62 FY20 Funding *and HCTID HB 62 FY21* as determined and approved by ODOT. The Parties acknowledge and agree that any change orders that they may request or believe appropriate to the Construction Work, requiring additional funding and work by an appropriate contractor, and thus related changes to an related contractor agreement with the CITY, shall be approved and authorized, in writing, by the CITY and the HCTID prior to any such changes or additional work or cost under such agreement and authorization for an appropriate consultant or contractor to proceed. The CITY explicitly acknowledges and agrees that its construction services contract with an appropriate contractor complies with or will be modified to comply with the "Section 7. Federal Requirements" set forth in Exhibit B attached hereto or thereby represent and warrant to the HCTID that the same, equivalent provisions containing these "Federal Requirements" are currently contained or will be contained in its construction services contract with the appropriate contractor.

- (b) The CITY explicitly agrees to provide to the HCTID, in a timely fashion, but not more than 30 days from date of payment following review under 2.02 (a), paid invoices for Construction Work costs including eligible consultant or contractor services provided to the CITY for Construction Work and proof of payment by the CITY of such invoices. In the event the HCTID does not receive sufficient information from the CITY to seek HCTID HB 62 FY20 Funding *and HCTID HB 62 FY21* reimbursements from ODOT, the HCTID will notify the CITY in writing, by both facsimile transmission and via electronic mail, that it has not received the requisite information and the CITY will provide such information as reasonably required within 7 business days, so as to facilitate and not unduly delay the reimbursement payment process.
- (c) The HCTID explicitly agrees to provide the CITY with the HCTID HB 62 FY20 Funding specifically allocated to and as received by the HCTID from ODOT for reimbursement of approved and eligible costs incurred in performance of the Construction Work pursuant to and in accordance with the HB 62 FY20 Funding Agreement, *in a total amount not to exceed \$200,000.00, and HCTID HB 62 FY21 Funding Agreement, in a total amount not to exceed \$250,000.00*, and subject to approval by ODOT and the actual receipt by the HCTID of the payments from ODOT. The HCTID shall direct said reimbursement payments to such account as instructed, in writing, by the CITY. The CITY shall provide the HCTID with such instructions within 15 business days of the execution of this Agreement.

Section 2.4. Amendment of Section 4.01. Section 4.01 of the IGA is hereby amended by adding the following change in dates, as italicized below, included in such section:

This Agreement shall become effective on the Effective Date. Unless sooner terminated pursuant to the other provisions of this Agreement, the term of this

Agreement shall be for the period from and after August 31, 2019 to and including July 30, 2021 (the "Term").

**ARTICLE 3.
MISCELLANEOUS**

Section 3.1. Effect of Amendment. This Amendment (including the recitals hereto, which are by this reference incorporated herein and made a part hereof) sets forth the entire understanding of the parties hereto with respect to the transactions described herein. Other than the changes made to the IGA pursuant to this Amendment, the IGA remains unchanged and in full force and effect. This Amendment shall be and become effective as of the date first written.

Section 3.2. Binding Effect. This Amendment and the terms, covenants and conditions hereof shall be binding upon and benefit to the parties hereof and, subject to the prohibitions on assignment set forth in the IGA, as amended, to their respective administrators, successors and assigns.

Section 3.3. Signatures/Counterparts. The terms of this Amendment are hereby agreed to by both Parties, as shown by the signatures of representatives of each. Each Party represents that the signatories hereto have been duly authorized to execute this Amendment on behalf of the Party. The delivery of a signed copy of this Amendment by Facsimile Transmission (fax) or by e-mail transmission in Portable Digital Format (pdf) shall constitute effective execution and delivery of this Amendment as to the Parties; and will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such fax or pdf signature page were an original. Signatures of the Parties to this Amendment transmitted by facsimile or PDF will be deemed to be their original signatures for all purposes. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It shall not be necessary in proving this Amendment to produce or account for more than one of those counterparts.

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered in the name of and on behalf of the HCTID and the CITY, by their duly authorized officers, and by all as of the date first written.

HCTID:

**THE HAMILTON COUNTY
TRANSPORTATION IMPROVEMENT
DISTRICT**

By: _____
Secretary-Treasurer

CITY:

**THE CITY OF MONTGOMERY,
HAMILTON COUNTY, OHIO**

By: _____
Title: _____

*Approved as to form:
William M. Donnell
Director of Law*