

RESOLUTION NO. 23 , 2018

**A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR
FISCAL YEAR 2019 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. Chapter 5540; and

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

WHEREAS, the City has applied to the HCTID to assist in funding work for the Montgomery Road/Ronald Reagan Interchange Improvement Project; and

WHEREAS, the City has been approved for a grant for right-of-way acquisition and project construction support by the HCTID for fiscal year 2019 in the amount of \$250,000; and

WHEREAS, state law requires that there be an Intergovernmental Agreement between the City and HCTID as a condition for funding, which Intergovernmental Agreement acknowledges that the City and HCTID will cooperate to co-administer and co-manage the Project; and

WHEREAS, HCTID has asked that the Council authorize this Agreement to be executed by the City Manager to enable HCTID to provide the appropriate HB 26 funding for fiscal year 2019.

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 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. It is understood and agreed that by executing this Intergovernmental Agreement, the City will be eligible for HCTID HB 26 funding up to the amount of \$250,000 as reimbursement for right-of-way and project construction work for the Project during fiscal year 2019.

SECTION 2. This Resolution shall be in full force and effect from and after its passage.

PASSED: October 3 2018

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

**INTERGOVERNMENTAL
AGREEMENT
2018-02**

By and Between

CITY OF MONTGOMERY, OHIO

And

THE HAMILTON COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT

[Project ROW-Construction Work Phase]

Dated as of August 31, 2018

INTERGOVERNMENTAL AGREEMENT 2018-02

This Intergovernmental Agreement 2018-02 (this "Agreement") is made and entered into effective as of August 31, 2018 (the "Effective Date"), 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 created pursuant to ORC Chapter 5540 (the "HCTID").

Recitals:

A. The HCTID is authorized by ORC Chapter 5540 (1) to finance, construct, maintain, repair, and operate street, highway, and other transportation projects (including, but not limited to, air and rail projects) and (2) to construct, reconstruct, improve, alter, and repair roads, highways, public places, buildings, and other infrastructure.

B. These projects, as contemplated by ORC Chapter 5540, include major transportation and infrastructure improvement projects that involve a coordinated, cooperative, multi-jurisdictional approach towards project integration, development, design and construction, land use planning, environmental stewardship, financial strategy implementation, economic development and public-private partnership opportunities to advance the projects in an innovative, efficient and cost effective manner.

C. These projects undertaken by the HCTID, pursuant to ORC Chapter 5540, are essential governmental functions and will contribute to the improvement of the prosperity, health, safety, and welfare of the people of Hamilton County, Ohio (the "County"), and various political subdivisions therein, including, but not limited to, the CITY, and of the State of Ohio (the "State") and are essential governmental functions;

D. The exercise by the HCTID of the authority granted by ORC Chapter 5540 is necessary for the prosperity, health, safety, and welfare of the County, the CITY and the State and their people and is consistent with and will promote industry, commerce, distribution, and research activity in the County, and certain political subdivisions therein, including, but not limited to, the CITY, and the State.

E. The HCTID is continually striving to further develop, revisit and refine its efforts, goals and functions, as it continues to serve as an active force to support, facilitate and effectuate transportation improvements, initiatives and policy, coordinated and integrated with economic development efforts, through a collaborative effort on behalf of the County and other local jurisdictions within the County, including, but not limited to, the CITY, and, as appropriate, in coordination and collaboration with the Ohio Kentucky Indiana Council of Governments or "OKI" (hereinafter defined), the State of Ohio/Ohio Department Of Transportation or "ODOT" (hereinafter defined), the Ohio Public Works Commission or "OPWC" (as hereinafter defined), federal agencies and the congressional delegation.

F. In this regard, the HCTID and the CITY intend to coordinate and collaborate, as appropriate, relating to certain transportation and infrastructure project development,

implementation and funding, involving a joint project between the HCTID and the CITY respectively referred to or known as: the *Montgomery Road/Ronald Reagan Interchange Improvements Project*, designed to improve and reconstruct certain portions of Montgomery Road located within the CITY, including, but not limited to, improvements to the existing interchange between the Ronald Reagan Highway (SR 126) and Montgomery Road (US 22/SR 3), as further set forth and described, and as further designed, on project plans and documents on file with the CITY, the HCTID, and ODOT Office of Jobs & Commerce, OKI (referred to hereafter as the "Project" and as hereinafter defined), and which Project furthers transportation improvements and community and economic development objectives supported by the HCTID and the CITY.

G. The CITY, as the Local Public Agency or "LPA" (hereinafter defined), and the HCTID, in collaboration with ODOT, are advancing the Project in phases, as required, appropriate and feasible, as funding sources and uses for Project Costs are further developed, determined and secured. The total Project Costs are currently estimated to be in an amount of \$10,074,700.00, with secured and targeted funding for Project Costs as set forth and described in Exhibit A "*Project Costs Funding Summary*," attached hereto and made part hereof.

H. The CITY and HCTID, in coordination and collaboration with the Hamilton County Engineer's Office or "HCEO," (hereinafter defined), have jointly administered the Project Design Work, including geotechnical, surveying, environmental and other engineering work and sharing joint project management responsibilities as well as the related oversight and review relating to this work, pursuant to Intergovernmental Agreement 2017-01 dated July 31, 2017, which was partially funded through the HCTID's HB26 State Fiscal Year 2018 funding in the amount of \$250,000.00.

I. Now the Parties are proceeding with the next phase of the Project that includes certain right of way acquisition ("ROW") and Project construction work (referred to as the "ROW-Construction Work," as hereinafter defined). The HCTID successfully submitted a funding application to ODOT, in coordination with the CITY, securing partial funding of a portion of the ROW-Construction Work through an ODOT Jobs & Commerce HB 26 TID State Fiscal Year 2019 grant. Per the terms of this Agreement and the related HCTID HB26 FY19 Funding Agreement between the HCTID and ODOT, the HCTID intends to make available the HCTID HB 26 FY 19 Funding, as part of this joint project, to assist in advancing and funding a portion of the ROW-Construction Work and, more specifically, to provide funding to the CITY, in a total amount not to exceed \$250,000.00, for reimbursement of eligible costs as determined by ODOT that the CITY advances for the ROW-Construction Work performed. As for securing the total Project Costs, including any local cost share match, ultimately required for the Project Work, that will be the primary and sole responsibility of the CITY but the HCTID will provide this allocation of HCTID HB26 Funding, through and in coordination with ODOT Office of Jobs & Commerce, on a reimbursement basis and as further provided for herein.

J. The CITY and HCTID, in coordination and collaboration with the Hamilton County Engineer's Office or "HCEO," (hereinafter defined) will jointly administer the ROW-Construction Work, and share joint project management responsibilities as well as the related oversight and review relating to the Project Work.

K. The HCTID is specifically authorized by ORC § 5540.03(A)(10) to receive and accept loans and grants for or in aid of the construction, maintenance, or repair of any Project from the federal or any state or local government; and the CITY is specifically authorized by ORC § 5540.02(F) to make appropriations from moneys available to the CITY and not otherwise appropriated to pay costs incurred by the HCTID in the exercise of its functions under ORC Chapter 5540.;

NOW, THEREFORE, in consideration of the promises and the mutual representations and agreements in this Agreement, the CITY and the HCTID acknowledge and agree, with the foregoing Recitals incorporated herein by reference and expressly made a binding and integral part of this Agreement, as follows:

Article I Definitions; Construction

Section 1.01. Definitions. As used in this Agreement, the following terms shall have the following meanings, unless the context or use clearly indicates another meaning or intent:

“*Agreement*” means this Intergovernmental Agreement, as the same may be amended from time to time.

“*Business Day*” means any day other than a Saturday, Sunday, or legal holiday.

“*CITY*” means the City of Montgomery, an Ohio municipal corporation, located in the County.

“*CITY Pledged Amount*” means the CITY’s funding commitment to advance the required and appropriate costs required and incurred for eligible ROW-Construction Work costs, in a total amount of \$250,000.00, to be paid from its available revenue sources, for advancing and completing the ROW-Construction Work as a phase of the overall Project Work, with eligible ROW-Construction Work costs and expenses to be reimbursed, as determined/approved by ODOT, from the HCTID HB 26 FY 19 Funding. The CITY acknowledges and agrees that it will be responsible for procuring any additional funding for the Project Costs, such as for Project local cost share match to access the STP funding or otherwise, as required to advance the Project Work up to and through construction, subject to appropriate or required actions by Council and in its role as the LPA for the Project.

“*Council*” means the City Council of the CITY.

“*County*” means the County of Hamilton, a county and political subdivision of the State.

“*Day*” means a calendar day, unless specifically designated as a Business Day.

“*Effective Date*” has the meaning given to such term in the introductory paragraph of this Agreement.

“*HCTID HB 26 FY 19 Funding*” means grant funding specifically allocated, as of July

2018, to the HCTID by ODOT, in the amount of \$250,000.00 for eligible Project Costs, to wit: the ROW-Construction Work, and for use, on a reimbursement basis, in State Fiscal Year 2019 per the funding agreement between the HCTID and ODOT, on file with the HCTID and ODOT.

"HB 26 FY 19 Funding Agreement" means the agreement between ODOT and the HCTID, specifically in relation to the HCTID HB 26 FY 19 Funding award procured by the HCTID and administered through the ODOT Office of Jobs and Commerce, and attached hereto as *Exhibit B* and made part hereof.

"HCEO" means the Hamilton County Engineer's Office.

"HCTID" means The Hamilton County Transportation Improvement District.

"LPA" means "Local Public Agency," as that term is defined and applied with respect to the ODOT LPA Program for Federal Local-let projects, and the CITY is to act as the designated LPA for the Project, pursuant to the ODOT LPA program and per an LPA agreement and related LPA documents to be authorized by legislative act of the CITY and entered into by the CITY with ODOT.

"ODOT" means the Ohio Department of Transportation, an agency of the State and including its Office of Jobs and Commerce, specifically in relation to the HCTID HB 26 FY 19 Funding.

"OKI" means the Ohio Kentucky Indiana Regional Council of Governments, the designated Metropolitan Planning Organization (MPO) responsible for transportation planning in the eight-county (Butler, Clermont, Hamilton, Warren, Boone, Campbell, Kenton, and Dearborn) three-state (Ohio, Kentucky, Indiana) region.

"OPWC" means the Ohio Public Works Commission an instrumentality of the State of Ohio that provides financing for local public infrastructure projects, such as the Project, through both the State Capital Improvement Program (SCIP) and the Local transportation Improvement Program (LTIP).

"ORC" means the Ohio Revised Code, as the same may be amended from time to time.

"Party" means, individually, either the CITY or the HCTID; and *"Parties"* means, collectively, the CITY and the HCTID.

"Project" or *"Projects"* means any street, highway, or other transportation projects and any project for the construction, reconstruction, improvement, alteration, or repair of any roads, highways, public places, buildings, or other infrastructure constructed or improved under this chapter, and includes all bridges, tunnels, overpasses, underpasses, interchanges, approaches, those portions of connecting streets or highways that serve interchanges and are determined by the HCTID to be necessary for the safe merging of traffic between the project and those streets or highways, service facilities, and administration, storage, and other buildings, property, and facilities, that the HCTID considers necessary for the operation of the project, together with all property and rights

that must be acquired by the HCTID for the construction, maintenance, or operation of the projects as from time to time are undertaken by the HCTID pursuant to the authority granted by ORC Chapter 5540 and duly designated by a resolution of its Trustees, and includes herein the "*Montgomery Road/Ronald Reagan Interchange Improvements Project*," which has the meaning given to such term in Recital F. and as further described and set forth in project documents on file with the CITY, the HCTID, and ODOT Office of Jobs & Commerce and the authorized Project Work herein and as set forth and described in Exhibit A "*Project Costs Funding Summary*."

"*Project Costs*" means for purposes of this Agreement the costs required to complete the Project Work, including, but not limited to, for the ROW-Construction Work, as agreed upon here by the Parties, and further the cost of the ROW-Construction Work is payable in part from the HCTID HB 26 FY 19 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 ROW-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 26 FY 19 Funding facilitated by the HCTID, as further set forth herein, or other eligible costs for Project Work as agreed to by the Parties and ODOT.

"*Project Funding*" means sources of funding for paying the required costs to complete the Project, including but not limited to the CITY Pledged Amount, and any other funding pledged, acquired or debt incurred by the CITY and/or the HCTID, including, but not limited to, the surface transportation program (or "STP") funding awarded to the CITY through OKI; OPWC grant funding to be applied for by the CITY; or, the HCTID HB 26 FY 19 Funding or other funding that may become available through the HCTID, to finance the Project Work, including the ROW-Construction Work, as may otherwise be agreed upon and authorized by the Parties, and the related Project Cost.

"*Project Work*" means the Project activities, services, acquisition and/or work items for completing the Project, through construction, including, but not limited to, the ROW-Construction Work.

"*ROW-Construction Work*" means the Project work required to: 1.) acquire the roadway rights of way and interests, in accordance with ODOT LPA requirements and regulations related thereto and for federally funded projects; and 2.) the required steps and direct costs incurred to construct the Project, including the actual construction of the Project roadway improvements, provided for through a construction services contract as bid and awarded to a construction services firm by the CITY, in coordination with ODOT, which is subject to and in compliance with all applicable contract terms and conditions and regulations as required by ODOT within the LPA program for federally funded projects and that is being administered jointly with the HCTID as further set forth herein.

"*State*" means the State of Ohio.

"*STP Funding*" means the federal Surface Transportation Program (STP) funding,

applied for by the CITY through OKI, in the amount of \$6,000,000.00, to be applied for a portion of the Project Costs, specifically as required for construction, and subject to local match cost share requirements to be provided for by the CITY.

“*Term*” has the meaning given to such term in Section 4.01.

“*Trustees*” means the Board of Trustees of the HCTID.

Section 1.02. Exhibits.

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

Exhibit A “Project Costs Funding Summary”

Exhibit B “Section 7. Federal Requirements”

Exhibit A (including the amounts of the sources and uses of secured and target funding for Project Costs, as set forth therein) or Exhibit B (including ODOT’s FY19, *Section 7. Federal Requirements* that it requires in relation to the HB 26 FY 19 Funding) may be amended from time to time by mutual agreement, evidenced by all Parties signing appropriate new Exhibits and substituting the same for the prior versions of those Exhibits. Such changes shall be effective as of the date designated in the replacement Exhibit; and all other terms and provisions of this Agreement shall remain in full force and effect.

Section 1.03. References to Parties. Any reference in this Agreement to the CITY or Council, the Trustees or the HCTID, or to any officers of the CITY or the HCTID, includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Section 1.04. Statutory References. Any reference in this Agreement to a section or provision of the Constitution of the State, or to a section, provision, or chapter of the ORC shall include such section, provision, or chapter as modified, revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this Section if it constitutes in any way an impairment of the rights or obligations of the CITY or the HCTID under this Agreement.

Section 1.05. Adverbs; Other References. Unless the context indicates otherwise, the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms used in this Agreement refer to this Agreement; and, unless otherwise indicated, references in this Agreement to articles, sections, subsections, clauses, exhibits, or appendices are references to articles, sections, subsections, clauses, exhibits, or appendices of this Agreement.

Section 1.06. Number and Gender. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine, or neuter) as the context or sense of this Agreement or any article, section, subsection, or clause herein may require, the same as if such words had been fully and properly written in the

appropriate number and gender.

Section 1.07. Captions. The captions or headings at the beginning of each article and section of this Agreement are merely guides or labels for the convenience of the Parties to assist in identifying those articles and sections, are not intended to be a part of the context of this Agreement, and shall not be deemed to modify, to explain, to enlarge, or to restrict any of the provisions hereof

Section 1.08. Ambiguity. The Parties have participated jointly in the negotiation and drafting of this Agreement. Should any ambiguity or question of intent or interpretation arise with respect to any provision of this Agreement, including any exhibit hereto, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

Section 1.09. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law; but, if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Article II Scope of Agreement

Section 2.01. Cooperation and Consent. The HCTID and the CITY have acknowledged and agreed that it is essential to the welfare of the people of the County and the CITY, that the Parties cooperate to the greatest extent practical in the funding and advancement of the development of the Project which will contribute to the improvement of the prosperity, health, safety, and welfare of all of the people of the County and the CITY.

Section 2.02. 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 ROW-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 26 FY 19 Funding, and as otherwise agreed upon by the Parties, to facilitate, fulfill and deliver the Project 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 Project 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 ROW-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 26 FY 19 Funding as determined and approved by ODOT. The Parties acknowledge and agree that any modifications that they may request or believe appropriate to the ROW-Construction Work, requiring additional funding and work by an appropriate consultant or contractor, and thus related changes to an related consultant or contractor agreement with the CITY, shall be approved and authorized, in writing, by the CITY, ODOT, as appropriate, 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 professional services agreements with an appropriate consultant or 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 professional services agreement with the appropriate consultant or contractor, or as required by ODOT per the CITY's role as the LPA.

- (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 ROW-Construction Work costs including eligible consultant or contractor services provided to the CITY for ROW-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 26 FY 19 Funding reimbursement 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 26 FY 19 Funding specifically allocated to and as received by the HCTID from ODOT for reimbursement of approved and eligible costs incurred in performance of the ROW-Construction Work, in a total amount not to exceed \$250,000.00, pursuant to and in accordance with the HB 26 FY 19 Funding Agreement 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.

- (d) The CITY and the Council explicitly acknowledge and agree:
 - i) to act as co-administrators and managers of the Project with the HCTID, including overseeing the performance of the ROW-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 or as otherwise agreed upon by the Parties, to facilitate, fulfill and deliver the Project Work, as committed herein.
- (e) The provisions of this Agreement may not be altered or amended without the express written consent of all of the parties hereto.

Section 2.03. Additional Agreements of the HCTID. As long as this Agreement remains in effect, the HCTID may contribute, as approved and authorized, the following:

- (a) such additional funds as the Parties may mutually agree, at any time and from time to time, shall be necessary and appropriate to the planning, coordination, implementation and construction of the Project; and
- (b) such services of or obtained through the HCTID as the Parties may mutually agree, at any time and from time to time, shall be necessary for the planning, development, coordination, implementation and/or construction of the Project.

Section 2.04. Additional Agreements of the CITY. As long as this Agreement remains in effect, the CITY may contribute, as approved and authorized, to the HCTID the following:

- (a) such loans, contributions and grants as the Parties may mutually agree, at any time and from time to time, shall be necessary for or in aid of the planning, development, design, construction, maintenance, and/or repair of the Project; and
- (b) such other aid or contributions of money, property, labor, or other things of value as the Parties may mutually agree, at any time and from time to time; *provided, however,* that any such loans, grants, and contributions from the CITY shall be held, used, and applied by the HCTID only for the purposes for which such loans, grants, and contributions are made.

Section 2.05. Relationship of the Parties.

- (a) Neither this Agreement nor the relationship among the Parties established pursuant to this Agreement shall constitute or be deemed to be that of a partnership, joint venture, employment, master and servant, or principal and agent. Neither Party shall have any authority to make, and neither Party shall

make, any representations, warranties, or statements on behalf of the other Party, and neither Party shall bind, or be liable for the debts or obligations of, the other Party. In the performance of its services hereunder, the CITY or the HCTID is and shall at all times be an independent Consultant, free and clear of any dominion or control by the other Party, except as specifically provided herein. Each Party shall pay, and shall be solely responsible for, its operating expenses, including, but not limited to, the wages of its employees and any and all taxes, licenses, and fees levied or assessed on such Party in connection with or incident to the performance of this Agreement by any governmental agency for unemployment compensation insurance, old age benefits, social security or any other taxes on the wages of such Party, its agents, its employees, and its representatives.

- (b) Nothing in this Agreement shall (1) modify, alter, or impair in any way any pre-existing contractual arrangement or agreement between or among either the CITY or the HCTID or (2) preclude either Party from entering into other agreements with respect to matters not specifically addressed in this Agreement.

Section 2.06. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, trustee, officer, agent, or employee of any Party in other than his or her official capacity; and neither the CITY or any member of the Council or the HCTID or any member of the HCTID Board of Trustees, nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement or by reason of the covenants, obligations, or agreements of the Parties contained in this Agreement.

Section 2.07. Liability of the Parties. Neither Party shall have any liability to the other Party for any mistakes or errors in judgment or for any act or omission believed in good faith to be in the scope of authority conferred upon such Party by this Agreement. The fact that a Party has acted or not acted pursuant to the instructions of the other Party or has obtained the advice of legal counsel that such act or omission is within the scope of the authority conferred by this Agreement shall be conclusive evidence that such Party believed in good faith such act or omission to be within the scope of the authority conferred by this Agreement.

Section 2.08. No Third Party Beneficiary. Only the Parties shall have any rights under this Agreement. No other persons or entities, shall have any rights under this Agreement or be deemed to be third-party beneficiaries of this Agreement.

Article III Representations and Further Agreements

Section 3.01. Representations of the HCTID. To induce the CITY to enter into this Agreement, the HCTID represents to the CITY as follows:

- (a) it is duly constituted and has full power and authority to execute and deliver this

Agreement and to perform its obligations hereunder;

- (b) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action on the part of the HCTID and the Trustees; and this Agreement, when executed and delivered by the HCTID, will constitute a legal, valid, and binding obligation of the HCTID; and
- (c) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the HCTID or (2) result in a default under any agreement or instrument to which the HCTID is a party or by which it is bound.

Section 3.02. Representations of the CITY. To induce the HCTID to enter into this Agreement, the Council represents to the HCTID as follows:

- (a) it is the duly constituted and duly elected governing body of the CITY under the laws of the State;
- (b) it has full power and authority to execute and to deliver this Agreement and to perform its obligations hereunder;
- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action on the part of the CITY; and this Agreement, when executed and delivered by the Council, will constitute a legal, valid, and binding obligation of the CITY;
- (d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the CITY or (2) result in a default under any agreement or instrument to which either the Council or the CITY is a party or by which either the Council or the CITY is bound; and

Section 3.03. Challenge to Agreement.

- (a) Each Party waives any and all rights it may have to commence or to maintain any civil action or other proceeding to contest, to invalidate, or otherwise to challenge this Agreement or any of the actions required or contemplated by this Agreement, or to take any actions, either directly or indirectly, to oppose in any other way, or to initiate, promote, or support the opposition of, this Agreement or any of the actions required or contemplated by this Agreement.
- (b) In the event of a court action by a third party challenging the validity or enforceability of this Agreement or any of its provisions, all Parties shall fully cooperate to vigorously defend the Agreement.

Section 3.04. Good Faith and Fair Dealing. The Parties hereby acknowledge that this Agreement imposes upon each of them a duty of good faith and fair dealing in its

implementation.

Section 3.05. Notice of Disagreement. The Parties acknowledge and agree that the performance of certain of the agreements contained herein is to be undertaken in a mutual and cooperative fashion, and, to ensure such cooperative effort, each Party agrees promptly to notify the other of disagreements arising hereunder and to act in good faith to promptly resolve such disagreements.

Section 3.06. Assignment. No Party may assign this Agreement, in whole or in part, voluntarily or involuntarily, by operation of law, or otherwise, without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

Section 3.07. Amendment; Waiver. This Agreement may not be modified, altered, amended, or discharged, or any rights hereunder waived, except by an instrument in writing executed by all Parties. No waiver of any term, provision, or condition of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, or condition or as a waiver of any other term, provision, or condition of this Agreement.

Article IV Term; Remedies

Section 4.01. Term. 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, 2018 to and including June 30, 2019 (the "Term").

Section 4.02. Termination. So long as any amount of the ROW-Construction Work is outstanding and unpaid, this Agreement shall not be terminated. If no ROW-Construction Work is outstanding or the HB26 FY19 Funding has been expended towards supplemental payment of eligible Project Costs and related requirements have been met, this Agreement may terminate, prior to the expiration of the Term, upon the mutual agreement of the Parties to terminate this Agreement.

Section 4.03. Waiver of Breach. No waiver by any Party will be effective unless it is in writing and then only to the extent specifically stated and agreed to by all Parties. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy by any Party preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. Failure of any Party to demand strict performance of the provisions of this Agreement by any other Party, or any forbearance by any Party in exercising any right or remedy hereunder or otherwise afforded by law, shall not constitute a waiver by such Party of any provision of this Agreement.

Article V Miscellaneous

Section 5.01. Time is of the Essence. Time is of the essence in the compliance with the terms and conditions of this Agreement. Whenever, under the terms of this Agreement, the time

for performance falls on a Day other than a Business Day, such time for performance shall be on the next Business Day.

Section 5.02. Notices.

- (a) Except as otherwise provided herein, any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given as follows:
- (1) upon receipt, when delivered personally to a Party at its address as hereinafter set forth; or
 - (2) one Business Day after being delivered to a reputable overnight courier service, prepaid, marked for next-day delivery to a Party at its address as hereinafter set forth; or
 - (3) on the third Business Day after being mailed by United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a Party at its address as hereinafter set forth; or
 - (4) upon confirmation of receipt by telephone at the number specified for confirmation, if sent by facsimile transmission to a Party at its facsimile number as hereinafter set forth.
- (b) All notices to be given to the HCTID pursuant to this Agreement shall be sent to the HCTID at the following address:

The Hamilton County Transportation Improvement District
Attn: Theodore Hubbard, P.E. /P.S., Secretary/Treasurer
10480 Burlington Road
Cincinnati, Ohio 4523
Phone: (513) 946-8903
Facsimile: (513) 946-8903
Electronic Mail: ted.hubbard@hamilton-co.org

- (c) All notices to be given to the CITY pursuant to this Agreement shall be sent to the CITY at the following address:

City of Montgomery
Attn: Brian Riblet
City Manager
10101 Montgomery Road
Montgomery, OH 45242
Phone: (513) 792-8319
Facsimile: (513) 469-1525
Electronic Mail: briblet@ci.montgomery.oh.us

- (d) Any Party may at any time change its address and/or facsimile number for such notices, requests, demands, or statements by giving the other Parties written notice thereof in accordance Section 5.02(a) hereof.

Section 5.03. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Ohio in all respects, including matters of construction, validity, and performance.

Section 5.04. Entire Agreement. This Agreement (including the recitals and exhibits hereto, which are by this reference incorporated herein and made a part hereof) sets forth all understandings between the Parties respecting the subject matter of this transaction, and all prior agreements, understandings, and representations, whether oral or written, representing this subject matter are merged into and superseded by this written Agreement. No course of prior dealings among the Parties and no usage of trade shall be relevant or admissible to supplement, to explain, or to vary any of the terms of this Agreement.

Section 5.05. Binding Effect. This Agreement, and the terms, covenants, and conditions hereof, shall be binding upon and inure to the benefit of the Parties and, subject to the prohibitions of assignment set forth herein, their respective administrators, successors, and assigns.

Section 5.06. Counterparts; Facsimile Signatures. This Agreement 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 Agreement to produce or account for more than one of those counterparts. The Parties further agree that facsimile signatures by the Parties shall be binding to the same extent as original signatures.

IN WITNESS WHEREOF, this Intergovernmental Agreement has been duly executed and delivered for, in the name of, and on behalf of the Parties by their duly authorized officers, all as of the Effective Date.

CITY:

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

By: _____

Title: _____

HCTID:

**THE HAMILTON COUNTY
TRANSPORTATION
IMPROVEMENT DISTRICT**

By: _____

Secretary-Treasurer

FISCAL OFFICER'S CERTIFICATE

The undersigned, the Fiscal Officer of City of Montgomery, Hamilton County, Ohio, hereby certifies that the moneys required (if any) to meet the obligations of the City of Montgomery for the year 2018 under the foregoing Intergovernmental Agreement have been lawfully appropriated and are in the treasury of City of Montgomery or are in the process of collection to the credit of an appropriate fund free from any previous encumbrances. Pursuant to ORC § 5705.44, the Fiscal Officer of the City of Montgomery covenants that any requirement herein of an expenditure of the City of Montgomery money in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. This Certificate is given in compliance with ORC § 5705.41 and § 5705.44.

Dated: _____, 2018

_____, Fiscal Officer
CITY OF MONTGOMERY, OHIO

EXHIBIT A

“Project Costs Funding Summary”

2019 Transportation Improvement District Budget Form

Date of Submission	06/05/18
TID Name	Hamilton County TID

Project Overview	Estimated Cost	Estimated Completion Date
Design	\$ 1,340,632	7/1/2019
Right-of-Way Acquisition (RW)	\$ 100,000	9/1/2019
Construction (CO)	\$ 8,634,068	6/1/2021
Total	\$ 10,074,700	

Secured Funding - List all funding sources that you have secured for this project. Project must demonstrate funding need/gap. Evidence of secured funding must be provided.

Funding Partner	Design	ROW	Construction	Total
City of Montgomery	\$ 1,090,632		\$ 215,393	\$ 1,306,025
OKI/STP			\$ 6,000,000	\$ 6,000,000
ODOT TID Fund	\$ 250,000			\$ 250,000
<Insert Funding Partner>				\$ -
Total				\$ 7,556,025

Targeted Funding - List all funding sources that you plan to request to fill the project gap.

Funding Partner	Design	ROW	Construction	Total	Date Available
ODOT TID Fund		\$ 100,000	\$ 150,000	\$ 250,000	7/1/2018
OPWC			\$ 2,018,675	\$ 2,018,675	7/1/2019
Hamilton County MRF			\$ 250,000	\$ 250,000	7/1/2019
<Insert Funding Partner>				\$ -	
Total				\$ 2,518,675	

*Secured plus targeted funding should equal total project cost.

EXHIBIT B

“Section 7. Federal Requirements”

ODOT *“Section 7.”* language, to be made part of any Consultant or Construction services contract, reads as follows:

7. FEDERAL REQUIREMENTS

If applicable, during the performance of this Agreement, the consultant/contractor, for itself, its assignees, and successors in interest agrees as follows:

7.1 The consultant/contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

7.2 The consultant/contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Consultant/contractor will, in all solicitations or advertisements for employees placed by or on behalf of TID, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).

7.3 Compliance with Regulations: The consultant/contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

7.4 Nondiscrimination: The consultant/contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant/contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

7.5 Solicitations for the consultant/contractor, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the consultant/contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the consultant/contractor of the

consultant/contractor's obligations under this Agreement and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency.

7.6 Information and Reports: The consultant/contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a consultant/contractor is in the exclusive possession of another who fails or refuses to furnish this information, the consultant/contractor will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

7.7 Sanctions for Noncompliance: In the event of the consultant/contractor's noncompliance with the nondiscrimination provisions of this contract, ODOT will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- a) Withholding of payments to the consultant/contractor under the Agreement until the consultant/contractor complies,
- and/or
- b) Cancellation, termination or suspension of the Agreement, in whole or in part.

7.8 Incorporation of Provisions: The consultant/contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The consultant/contractor will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the consultant/contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the consultant/contractor may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the consultant/contractor may request the United States to enter into the litigation to protect the interests of the United States.

If applicable, then during the performance of this Agreement, the consultant/contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended

- (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and consultant/contractors, whether such programs or activities are Federally funded or not)
 - Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
 - The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
 - Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
 - Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
 - Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
 - Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)