

RESOLUTION NO. 09-03
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Krass ON THE
17th DAY OF March, 2003.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT, BETWEEN THE CITY OF CENTERVILLE, CITY OF MIAMISBURG, MIAMI TOWNSHIP, CITY OF SPRINGBORO, WASHINGTON TOWNSHIP AND THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT FOR THE AUSTIN ROAD INTERCHANGE LAND USE AND DEVELOPMENT PLAN, AND REPEALING RESOLUTION NUMBER 04-03 IN ITS ENTIRETY.

WHEREAS, The Montgomery County Transportation Improvement District initiated an agreement intended to be the initial framework for a comprehensive land use, infrastructure and financial plan to help make the Austin Road Interchange a reality.

WHEREAS, Said Agreement is needed so that the City of Centerville, City of Miamisburg, Miami Township, City of Springboro, Washington Township and the Montgomery County Transportation Improvement District can formally proceed with hiring a consultant for the planning process.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an Intergovernmental Agreement between the City of Centerville, City of Miamisburg, Miami Township, City of Springboro, Washington Township and the Montgomery County Transportation Improvement District for the Austin Road Interchange Land Use and Development Plan, a copy of which is attached hereto, incorporated herein, and marked as Exhibit "A".

Section 2. That Resolution Number 04-03, passed by the Council of the City of Centerville, on the 27th day of January 2003, be and is hereby repealed in its entirety.

Section 3. That this Resolution shall become effective immediately upon passage.

PASSED this 17th day of March, 2003.

Sally D. Beals
Mayor of the City of Centerville, Ohio

ATTEST:

Ward J. McLaughlin
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 09-03, passed by the Council of the City of Centerville, Ohio, on the 17th day of March, 2003.

Clerk of Council

Approved as to form, consistency with existing Ordinances, the Charter and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

**INTERGOVERNMENTAL AGREEMENT
AUSTIN INTERCHANGE LAND USE AND DEVELOPMENT PLAN**

This Intergovernmental Agreement (the "Agreement") is made as of January 1, 2003, between the CITY OF MIAMISBURG, an Ohio municipal corporation (the "City of Miamisburg"), MIAMI TOWNSHIP, an Ohio township located in Montgomery County ("Miami Township"), the CITY OF SPRINGBORO, an Ohio municipal corporation (the "City of Springboro"), WASHINGTON TOWNSHIP, an Ohio urban township located in Montgomery County ("Washington Township"), the CITY OF CENTERVILLE, an Ohio municipal corporation (the "City of Centerville") and the MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, an Ohio body politic and corporate organized under Section 5540 of the Ohio Revised Code (the "TID") (collectively the "Parties").

INTENT

A. **Intent.** A study recently approved by the Miami Valley Regional Planning Commission has established that the only viable location for a new local interchange on Interstate 75 that can improve traffic flow, reduce congestion, increase safety and enhance current and future economic development in southern Montgomery County and northern Warren County is at the intersection of I-75, Austin Pike and Miamisburg-Springboro Pike. This Agreement is intended to establish the interests and responsibilities of the Parties relating to the development and implementation of: (i) a single multi-jurisdictional land use and development plan to complement and support the proposed construction of a local interchange and connecting arterial roadways (the "Proposed Interchange and Improvements") on U.S. Interstate 75 at Austin Pike and Miamisburg-Springboro Pike (the "Land Use Component"); (ii) a single multi-jurisdictional plan for utilities and other physical infrastructure to complement and support the

Proposed Interchange and Improvements (the “Infrastructure Component”); and (iii) a plan for financing the local share of the Proposed Interchange and Improvements (the “Financing Component”). The Land Use Component, Infrastructure Component and Financing Component shall be individually referred to in this Agreement as a “Component” and collectively referred to in this Agreement as the “Plan.”

NOW, THEREFORE, in consideration of the mutual benefits and obligations contained in this Agreement, the Parties agree as follows:

1. **Development of Plan.** Each of the Parties agrees to cooperate with each other to develop the Plan as follows:

A. Each Party shall appoint one representative to the Oversight Committee, as defined below, and shall devote such other resources to the development of the Plan as the Oversight Committee may reasonably request and to which such Party agrees.

B. The Parties currently intend that the Land Use Component, Infrastructure Component and Financing Component shall be the only Components to the Plan; however, the Oversight Committee, may, with the agreement of the Parties, add additional components as Components to the Plan as the need arises.

2. **Oversight Committee.**

A. The Parties hereby establish a committee to oversee the direction and development of the Plan and assist the Parties with the implementation of

the Plan (the "Oversight Committee"). Each Party to this Agreement shall appoint one member to the Oversight Committee.

- B. The Montgomery County Planning Commission, the Montgomery County Engineer, the South Dayton Regional Metro Chamber of Commerce, the Dayton Area Chamber of Commerce, the Miami Valley Regional Planning Commission, the Dayton-Montgomery County Port Authority, and the Dayton Wright Brothers Airport shall each be entitled to appoint one member to the Oversight Committee.
- C. The Executive Director of the TID or his designee shall chair the Oversight Committee and act as Project Manager (see Paragraph 3, below).
- D. The Oversight Committee shall meet at least once per month, unless the Chair determines that there is not adequate business to justify a meeting. The Project Manager shall establish such other meetings at such times as he determines necessary to carry out the intents and purposes of this Agreement.
- E. Any Party may, after consultation with the Project Manager, replace its representative to the Oversight Committee at any time.
- F. As part of its duties, the Oversight Committee, with the assistance of the Project Team (as defined below), will identify the specific land area to be incorporated into the Plan.

3. **Project Manager.** The Executive Director of the TID will act as project manager for the development of the Plan (the "Project Manager") and shall also be the TID's representative on the Oversight Committee. The Project Manager or his designee shall attend each meeting of the Oversight Committee. The Project Manager's responsibilities shall include the day-to-day management of the development of the Plan, including the hiring of legal counsel, planning, engineering, real estate and other consultants as the TID Board of Trustees and the Oversight Committee deem necessary to assist in the development of the Plan (the "Project Team"). The scope of the Project Team's activities shall include, but are not limited to, those items attached to this Agreement as Exhibit A. The Project Manager shall present and/or deliver all results and work product of the Project Team to the Oversight Committee.

4. **Goals.** The goal of the Land Use Component is to produce a single area-wide plan upon which the Parties agree for land use and development of property in the vicinity of the Proposed Interchange and Improvements. The goal of the Infrastructure Component is to produce a single area-wide infrastructure and utility plan upon which the Parties and other relevant regulating authorities agree in the vicinity of the Proposed Interchange and Improvements. The goal of the Financing Component is to produce a plan upon which the Parties agree that is capable of providing local financial support for the construction of the Proposed Interchange and Improvements. It is expressly understood and agreed that, approval of this Agreement and participation in the development of the Plan, obligates no Party to implement the Plan or any Component of the Plan, including providing financial support for the construction of the Proposed Interchange and Improvements and for supporting infrastructure and utilities, and only the adoption of a Component and/or the Plan as provided in Section 5 of

this Agreement shall require any action on the adopting Party's part to implement such Component and/or the Plan in accordance with Section 6 of this Agreement.

5. **Adoption of Plan.** The Parties may develop the Components of the Plan concurrently or sequentially. After the Oversight Committee approves a Component, each of the Parties to this Agreement shall submit such Component to its governing body for adoption. At such time as all the Parties' governing bodies have adopted the Component (an "Adopted Component"), the Adopted Component will be attached hereto and made a part hereof as Exhibit B.

6. **Implementation of Plan.** Each Party to this Agreement acknowledges that the intent of this Agreement is for the Parties to implement the Plan through their respective powers authorized to them under the Ohio Revised Code and the home rule powers under the Ohio Constitution, as applicable, in their respective jurisdictions. Each of the Parties agrees that upon an Adopted Component being attached as Exhibit B hereto, that such Party will use its best efforts to implement such Component; provided a Party shall not be deemed to have failed to use its best efforts to implement a portion of a Component if, limits of available funds, subsequent legal action or other material change in circumstance makes it impossible or impracticable to do so.

7. **Montgomery County ED/GE Grant.** The City of Miamisburg will receive Montgomery County ED/GE funds in the amount of \$200,000 from Montgomery County to hire the Project Team and for the TID's fee for acting as Project Manager. Under the terms of the Montgomery County ED/GE grant and the ED/GE budget attached to this Agreement as Exhibit C, the City of Miamisburg will tender to the TID such funds to assist with its costs as Project

Manager and to hire the Project Team. The City of Miamisburg agrees to tender such funds to the TID upon receipt of such funds by the City of Miamisburg from Montgomery County.

8. **Relationship of Parties.** The Parties agree that each of them is acting as an independent contractor in connection with its respective responsibilities under this Agreement. Nothing contained in this Agreement shall be construed to indicate that the Parties are entering into any kind of joint venture or partnership.

9. **Term.** The Agreement shall be effective upon the later of: March 1, 2003 and the date the last Party adopts this Agreement and shall terminate upon December 31, 2003 (the "Initial Term"). This Agreement will automatically renew for successive one year renewal periods (each, a "Renewal Term"), unless any Party to this Agreement delivers to all other Parties notice of non-renewal at least thirty (30) days prior to the end of the then current Initial Term or Renewal Term. The provisions of Section 7 shall survive any termination or non-renewal of this Agreement.

10. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. **Entire Agreement.** This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or

agreements, either written or oral, between the Parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the Parties to this Agreement and approved by proper action of the Parties, if necessary.

12. **Governing Law.** This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of the State of Ohio.

13. **Authority.** Each Party represents to the all other Parties that it has authority to enter into this Agreement, and that the same has been duly authorized, and that all provisions of this Agreement are legal and binding upon such Party.

IN WITNESS WHEREOF, the Parties have hereunto set their hands this _____ day of _____, 2002.

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

By: _____
Kathleen K. Hoyng, Chairperson

Date: _____

Witness: _____

Witness: _____

CITY OF MIAMISBURG, OHIO

By: _____

Date: _____

Its: _____

Witness: _____

Witness: _____

MIAMI TOWNSHIP, MONTGOMERY COUNTY, OHIO

By: _____

Date: _____

Its: _____

Witness: _____

Witness: _____

CITY OF SPRINGBORO, OHIO

By: _____

Date: _____

Its: _____

Witness: _____

Witness: _____

WASHINGTON TOWNSHIP, MONTGOMERY COUNTY, OHIO

By: _____

Date: _____

Its: _____

Witness: _____

Witness: _____

CITY OF CENTERVILLE, OHIO

By: _____

Date: _____

Its: _____

Witness: _____

Witness: _____

PARTIAL SCOPE OF PROJECT TEAM ACTIVITIES

1. **Identify Specific Area.** The Oversight Committee will identify the specific area to be incorporated in the Austin Interchange Land Use and Development Plan with the assistance of the Project Team.
2. **Analyze and Categorize Existing Zoning, Development, Infrastructure and Utilities.** The Project Team will review the existing land use plans and zoning codes of the five local jurisdictions involved in the project and create a suitable method to categorize various land use designations and existing development within a single schema. The Project Team will prepare maps and written descriptions for use by the Oversight Committee that illustrate existing zoning and development within that schema for the area identified by the Oversight Committee to be incorporated in the Austin Interchange Land Use and Development Plan. The Project Team will also prepare similar maps that identify existing infrastructure and utilities serving the area to be incorporated in the Austin Interchange Land Use and Development Plan.
3. **Prepare Preliminary Future Land Use and Development Plan.** The Project Team will develop a preliminary future land use and development plan for the specific area identified by the Oversight Committee to be incorporated in the Austin Interchange Land Use and Development Plan, using the schema adopted for existing zoning and land use. The Project Team will prepare maps and written descriptions for use by the Oversight Committee that illustrate proposed future land use and development within that schema.
4. **Prepare Preliminary Future Infrastructure and Utility Plan.** The Project Team will develop a preliminary future infrastructure and utility plan for the specific area identified by the Oversight Committee to be incorporated in the Austin Interchange Land Use and Development Plan. The Project Team will prepare maps and written descriptions for use by the Oversight Committee that illustrate proposed future infrastructure and utilities for the area incorporated in the Austin Interchange Land Use and Development Plan.
5. **Prepare Final Future Land Use and Development Plan and Infrastructure and Utility Plan.** Following comments from the Oversight Committee, the Project Team will develop a final future land use and development plan and a final infrastructure and utility plan to be presented to the Oversight Committee and the participating local governments. The Project Team will update prepared maps and written descriptions.
6. **Assist Preparation of Preliminary and Final Financing Plans.** The Project Team will, in consultation with the appropriate staff and/or officials of the Parties, prepare a preliminary plan for financing local support for the construction of the Proposed Interchange and Improvements. The Project Team will prepare maps for use by the Oversight Committee that illustrate various alternatives developed. Following comments

from the Oversight Committee, the Project Team will prepare a final financing plan to be presented to the Oversight Committee and the participating local governments.

7. **Subsequent Assistance to Local Governments.** Within budgeted constraints, the Project Team will assist the TID and participating local governments in the process of local consideration and adoption of the Austin Interchange Land Use and Development Plan, including incorporating it's final land use and zoning recommendations into local zoning ordinances and resolutions.
8. **General Consultation and Project Management.** The Project Team will be available for continuing consultation with the TID Executive Director concerning various elements of the management of the project.

**ADOPTED COMPONENTS
(RESERVED)**

PROJECT BUDGET

LINE ITEM	ED/GE	OTHER	TOTAL	NOTES
Planning & Zoning Consultant (To be selected)	\$125,000		\$125,000	See attached RFP
Real Estate Consultant (Gem Public Sector Services)	\$25,000	\$5,000	\$30,000	Already engaged by TID
Attorney Fees (Sebaly, Shillito & Dyer and Squire Sanders & Dempsey)	\$25,000	\$25,000	\$50,000	Already engaged by TID, 50/50 split between project and TID
Transportation Engineering Consultant (DLZ Engineers)		\$150,000	\$150,000	County Engineer's Contract for Interchange Justification Study & NEPA
TID Project Management	\$25,000	\$25,000	\$50,000	50/50 split between project and TID
TOTALS	\$200,000	\$205,000	\$405,000	

Upon execution of this Agreement by both parties, the City of Miamisburg agrees to tender to the TID the sum of Thirty Three Thousand Dollars (\$33,000.00) which is approximately equal to the amount required by the TID for the first sixty (60) days of the ED/GE project. Thereafter, payment by the City to the TID will be made on a reimbursement basis as more fully explained herein. The TID agrees to supply all Parties with monthly statements, or invoices, indicating therein the amount of monies expended by the TID in the furtherance of the ED/GE Scope of Work described in Exhibit A. This statement, or invoice, shall contain therein the date of individual expenditures, the name of the person or business enterprise paid, and the goods or services provided warranting the payment. The City will, within thirty (30) calendar days of the receipt by the City of such a statement, or invoice, reimburse the TID the amount stated in the TID's statement or invoice. Should the City determine that any amount of monies identified in the TID's invoice were expended for purposes other than the ED/GE Scope of Work described in Exhibit A, the City may, after consulting with the other Parties (other than the TID), reduce such payment by the amount of the alleged misapplication, or if already paid out seek reimbursement. The parties also agree that the Director of the Montgomery County Office of Economic Development and/or representatives of the City have the authority to meet with the TID

Executive Director and/or other representatives of the TID, and review the TID's documentation as the City deems necessary to determine that the TID's funds are being expended for the purposes set forth in the ED/GE Scope of Work described in Exhibit A.