

RESOLUTION NO. 94-20
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Mark Engert ON THE 21st
DAY OF December, 2020.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
ENTER INTO THE I-675/WILMINGTON PIKE INTERCHANGE
PROJECTS MANAGEMENT AND FINANCING AGREEMENT
WITH THE MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT, THE BOARD OF COUNTY
COMMISSIONERS OF GREENE COUNTY, OHIO, AND
SUGARCREEK TOWNSHIP, OHIO.**

WHEREAS, the City of Centerville acknowledges the importance of the I-675/Wilmington Pike Interchange and related surface roadways (the "Interchange") to the City and has identified it as a priority project for the City; and

WHEREAS, it has been determined that the Interchange is unlikely in the future to adequately service the City without a coordinated effort to support transportation and other infrastructure improvements; and

WHEREAS, the Montgomery County Transportation Improvement District ("TID") is uniquely experienced in the coordination, planning, financing and implementation of multi-jurisdictional transportation projects of regional importance like the Interchange Project; and

WHEREAS, the City of Centerville, the TID, the Board of County Commissioners of Greene County, Ohio, and Sugarcreek Township are jointly intending to enter into an agreement under the Project in order to set forth Phase I of the overall Interchange Projects; and

WHEREAS, the Project involves a traffic study of the Wilmington Pike/I-675 Interchange as part of Phase I; and

WHEREAS, the parties are willing to enter into a joint Management and Financing Agreement with the TID taking the lead to complete the Phase I of the Project, including seeking grant funds, with the City of Centerville's obligation to support the TID in signing grant applications or permits to complete Phase I.


NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

SECTION 1: That the City Manager be and is hereby authorized to enter into a the I-675/Wilmington Pike Interchange Projects Management and Financing Agreement between the City of Centerville, the TID, the Greene County Board of

Commissioners and Sugarcreek Township in order to complete the Projects as needed. A copy of said Agreement is attached hereto and marked as Exhibit "A".

SECTION 2: This Resolution becomes effective at the earliest date allowed by law.

PASSED THIS 21st day of December, 2020.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 94-20, passed by the Council of the City of Centerville, Ohio on the 21st day of December, 2020.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

**I-675/WILMINGTON PIKE INTERCHANGE PROJECTS
MANAGEMENT AND FINANCING AGREEMENT**

THIS **I-675/WILMINGTON PIKE INTERCHANGE PROJECTS MANAGEMENT AND FINANCING AGREEMENT** (this "**Agreement**") is made and entered into as of this ___ day of _____, 20___, (the "**Effective Date**"), by and between the **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT** (the "**TID**"), the **BOARD OF COUNTY COMMISSIONERS OF GREENE COUNTY, OHIO** ("**Greene County**"), the **CITY OF CENTERVILLE, OHIO** (the "**City**"), and **SUGARCREEK TOWNSHIP (GREENE COUNTY), OHIO** (the "**Township**") (the TID, Greene County, the City, and the Township may each be referred to herein as a "**Party**" or collectively as the "**Parties**"), under the following circumstances:

- A. The Parties acknowledge that the I-675/Wilmington Pike Interchange and its related surface roadways (the "**Interchange**"), are material assets to Greene County, Montgomery County, Ohio ("**Montgomery County**"), the City, the Township, and the region as a whole, and the Interchange serves substantial business, retail, residential and recreational users located in both counties (the "**Users**");
- B. The Parties have determined that the Interchange is unlikely in the future to adequately service the Users without a coordinated effort to support transportation and other infrastructure improvements to more effectively service the Users (the "**Interchange Projects**");
- C. The TID is uniquely experienced in the coordination, planning, financing, and implementation of multi-jurisdictional transportation projects of regional importance like the Interchange Projects;
- D. Pursuant to Sections 5540.03 and 5540.18 of the Ohio Revised Code, the TID is authorized to assist with the Interchange Projects, even though they are partially located within Greene County, provided that Greene County and Montgomery County both enter into an agreement with the TID with respect to the Interchange Projects (the "**Statutory Requirement**");
- E. In order to satisfy the Statutory Requirement, the TID, Greene County, and Montgomery County entered into that certain I-675/Wilmington Pike Interchange Projects and District Services Agreement dated on or about November 3, 2020 (the "**Project Initiation Agreement**");
- F. The Project Initiation Agreement provides the ability for Greene County and the TID to enter into one or more future agreements, including future agreements that may provide for additional parties (each a "**Supplemental Agreement**"), that will: (i) define the scope of one or more Interchange Projects, (ii) provide for the TID to support and provide services for such Interchange Project(s), and (iii) provide for such other obligations as Greene County and the TID agree upon from time to time;
- G. The Parties now desire to enter into this Agreement as a Supplemental Agreement under the Project Initiation Agreement in order to set forth Phase I of the overall Interchange Projects ("**Phase I**"); and

H. The Parties desire to support the Interchange Projects by entering into this Agreement to set forth in more detail each of their respective obligations with respect to Phase I, and, therefore, Greene County, acting pursuant to Resolution _____ adopted by the Board of the Greene County Commission on _____, the City, acting pursuant to Resolution _____ adopted by the City Council of the City on _____, the Township, acting pursuant to Resolution _____ adopted by the Township Board of Trustees on _____, and the TID, acting pursuant to Resolution No. 2020-97 adopted by its Board of Trustees on November 9, 2020, have each authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the above, and based upon the mutual promises contained below, the Parties hereby agree as follows:

1. **The Interchange Projects Generally.** The Parties hereby agree to cooperate to develop and implement the Interchange Projects as set forth in this Agreement.

2. **Project Phases.** The Interchange Projects may comprise multiple projects/phases. Phase I will consist of the activities described in the Phase I Scope and includes the Phase I Tasks (as defined in Section 7.B. below). Subsequent phases, if any (each, a “**Subsequent Phase**”), may include the design, financing and/or construction of one or more aspects of an Interchange Project arising from Phase I. The Parties will only proceed to a Subsequent Phase upon the negotiation and execution of a subsequent addendum to this Agreement to set forth the applicable parties’ (the “**Subsequent Phase Addendum Parties**”) respective rights and obligations with respect to such Subsequent Phase (a “**Subsequent Phase Addendum**”). The Subsequent Phase Addendum Parties may include fewer than all of the Parties to this Agreement, and may include other governmental entities not originally party to this Agreement.

3. **Phase I Scope.** The scope of Phase I is set forth in Exhibit A attached hereto (the “**Phase I Scope**”). The Parties acknowledge that they may further develop or modify the Phase I Scope or add additional tasks thereto during the course of the development of Phase I by amending the Phase I Scope in a writing executed by the Parties.

4. **Phase I Schedule.** The Parties agree to use their reasonable commercial efforts to complete Phase I by the end of February 2021.

5. **Phase I Budget.** The budget for Phase I is set forth in Exhibit B attached hereto (the “**Phase I Budget**”). Within thirty (30) days following the Effective Date, each of Greene County, the City, and the Township (each, a “**Local Jurisdiction**”) will make a payment to the TID equal to such Local Jurisdiction’s allocated share as set forth in the Phase I Budget. Except for the TID Phase I Management Fee (as defined in Section 6.A. below), the TID will use the Phase I Budget funds solely in connection with out-of-pocket costs incurred by the TID in connection with Phase I. If any funds remain in the Phase I Budget upon completion or termination of Phase I, such funds will be applied to activities under Subsequent Phase Addenda or returned to the Local Jurisdictions.

6. **TID Management Fees.**

A. The Local Jurisdictions acknowledge that the Phase I Budget includes a fee payable to the TID as compensation for the TID’s performance of the Phase I Tasks and

the related TID Management Services (as defined in Section 7.C. below) (the “**TID Phase I Management Fee**”).

B. In addition to the TID Phase I Management Fee, the Local Jurisdictions acknowledge that the TID will be entitled to similar fees for the TID’s involvement in Subsequent Phases, if any, and to the extent the TID is engaged to manage construction in connection with a Subsequent Phase, such fees will include a fee equal to five percent (5%) of the total project costs associated with the construction of such Subsequent Phase (the “**TID Subsequent Phase Management Fee**”). The amount, timing, and source of the TID Subsequent Phase Management Fee will be specified in each Subsequent Phase Addendum, to the extent applicable.

7. Specific Phase I Provisions.

A. *Effective Date and Termination.* Phase I will begin on the Effective Date and will terminate upon the earlier of: (i) the date all Parties have completed their respective obligations under Phase I; provided, however, any obligations not completed by a Party may be waived (in writing) by the other Parties; and (ii) the date all Parties agree, in writing, to terminate Phase I.

B. *Phase I Tasks.* During Phase I, the Parties will cooperate to perform the following tasks (the “**Phase I Tasks**”):

- (i) Complete the activities described in the Phase I Scope; and
- (ii) Develop a preliminary strategy to finance one or more Subsequent Phases, including without limitation by identifying or seeking available third party grant funding (the “**Subsequent Phase Financing Plan**”).

C. *TID Management Services.* During Phase I the TID will provide project planning, project coordination, strategy development, and project supervision services for the Phase I Tasks (the “**TID Management Services**”).

8. Specific Subsequent Phase Funding Provisions. As a general matter, one or more of the Subsequent Phase Addendum Parties other than the TID will be obligated to fund the entire cost of each Subsequent Phase, if any, whether via a borrowing or an alternative source of funds. The Subsequent Phase Addendum Parties will also be responsible to cover the TID’s out-of-pocket transaction costs associated with the Subsequent Phase, including without limitation any related borrowing.

9. TID Payment Obligations. Notwithstanding any provision of this Agreement, it is understood and agreed that no obligation of the TID hereunder will constitute a pledge of the general credit of the TID.

10. Local Jurisdiction Obligations. Each Local Jurisdiction will throughout the performance of this Agreement perform the activities provided for in this Agreement, cooperate and coordinate with and assist the TID, join with the TID in signing and granting any applications or permits or other documents necessary to complete Phase I. Each Local Jurisdiction will perform its responsibilities, obligations, and services, including its reviews and approvals of the TID’s

submissions and recommendations, in a timely manner so as not to delay or interfere with the TID's performance of its obligations under this Agreement or to have a negative impact on the schedule.

11. **Progress Meetings.** During the course of Phase I, the Parties agree to meet periodically to discuss the progress of Phase I (the "**Progress Meetings**"). The Progress Meetings will take place via telephone or videoconference unless otherwise mutually agreed. In addition to the foregoing, the TID may periodically submit information updates to the Local Jurisdictions detailing progress achieved. The Parties are fully committed to working with each other throughout Phase I and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements.

12. **Disclaimer of Warranties/Limitation of Liability.** **THE LOCAL JURISDICTIONS AGREE THAT THE TID DOES NOT GUARANTEE OR WARRANT THE SERVICES PROVIDED BY THE TID HEREUNDER OR THE COMPLETION OF THE INTERCHANGE PROJECTS. ALL TID SERVICES ARE PROVIDED ON AN "AS IS" BASIS. THE TID DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN NO EVENT WILL THE TID BE LIABLE OR RESPONSIBLE TO ANY LOCAL JURISDICTION FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT WILL THE TID'S TOTAL LIABILITY HEREUNDER EXCEED THE FEES (NOT INCLUDING ANY FEES PAID TO THE TID TO REIMBURSE THE TID FOR EXPENSES INCURRED BY THE TID, INCLUDING WITHOUT LIMITATION UNDER ANY CONTRACT) ACTUALLY COLLECTED BY THE TID FROM THE LOCAL JURISDICTIONS HEREUNDER.**

13. **Additional Parties to the Agreement.** The Parties acknowledge and agree that additional governmental agencies may be added to this Agreement by the unanimous consent of the Parties by having such governmental agencies enter into an acknowledgement to this Agreement. Each such acknowledgement shall include, if required, a fiscal officer's certificate pursuant to Sections 5705.41 and 5705.44 of the Ohio Revised Code. Each such additional party shall be deemed to be a Party under this Agreement.

14. **Assignment and Binding Nature.** This Agreement may not be assigned without the prior written consent of all non-assigning Parties. The provisions of this Agreement shall be binding upon the successors and assigns of the Parties.

15. **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained

herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

16. **Construction and Interpretation.** No Party shall be deemed to be the draftsman of this Agreement, and it shall not be interpreted or construed in favor of or against any Party. Words in the singular shall include the plural, and vice versa, and words in the masculine shall include the feminine and/or neuter, and vice versa, where the context so requires for a reasonable interpretation of this Agreement. The Exhibits referred to in and attached to this Agreement are incorporated by reference.

17. **Miscellaneous.** This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties affected by such amendment. 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, official, officer, agent or employee of any of the Parties other than in their official capacity, and no member of the Greene County Commission, the City's Council, the Township Trustees, or the Board of Trustees of the TID, and no Greene County, City, Township, or TID official executing this Agreement, shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein. The waiver, by any Party hereof of any breach of any provision of this Agreement shall not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

By: 

Print Name: Steven B. Stanley

Title: Executive Director

APPROVED AS TO FORM

By: _____

Print Name: _____

Title: _____

**BOARD OF COUNTY COMMISSIONERS OF
GREENE COUNTY, OHIO**

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Print Name: _____

Title: _____

CITY OF CENTERVILLE, OHIO

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Print Name: _____

Title: _____

**SUGARCREEK TOWNSHIP (GREENE
COUNTY), OHIO**

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Print Name: _____

Title: _____

Exhibit A

Phase I Scope

- Select and engage an engineering consultant in consultation with the Local Jurisdictions to perform engineering services related to initial traffic studies and such engineering or other consulting services as directed by the TID, in order to develop potential scope(s) for Subsequent Phase(s).
- Confirm purpose and need
- Collaborative engagement with Interchange Project stakeholders
- Identify potential funding opportunities

Exhibit B

Phase I Budget

| Budget Item | Amount |
|---|---------------|
| Third Party Engineering Costs and Expenses | \$50,000 |
| Third Party Legal and other Professional Costs and Expenses | \$15,000 |
| TID Phase I Management Fee | \$25,000 |
| Total | \$90,000 |

| Local Jurisdiction | Allocated Share |
|---------------------------|------------------------|
| Greene County | \$30,000 |
| Centerville | \$30,000 |
| Sugarcreek Township | \$30,000 |

Green County Fiscal Officer Certificate

The undersigned fiscal officer of Greene County, Ohio (the “**County**”) hereby certifies that the monies required to meet the County’s obligations during the year 2020 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the fiscal officer of the County covenants that any requirement herein of an expenditure of the County’s money in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. These certifications are in compliance with Section 5705.41 and 5704.44 of the Ohio Revised Code.

**GREENE COUNTY, OHIO
FISCAL OFFICER**

Date: _____

By: _____

Name: _____

Title: _____

Centerville Fiscal Officer Certificate

The undersigned fiscal officer of the City of Centerville, Ohio (the “**City**”) hereby certifies that the monies required to meet the City’s obligations during the year 2020 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the fiscal officer of the City covenants that any requirement herein of an expenditure of the City’s money in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. These certifications are in compliance with Section 5705.41 and 5704.44 of the Ohio Revised Code.

**CITY OF CENTERVILLE, OHIO
FISCAL OFFICER**

Date: _____

By: _____

Name: _____

Title: _____

Sugarcreek Township Fiscal Officer Certificate

The undersigned fiscal officer of Sugarcreek Township (Greene County), Ohio (the "**Township**") hereby certifies that the monies required to meet the Township's obligations during the year 2020 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the fiscal officer of the Township covenants that any requirement herein of an expenditure of the Township's money in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. These certifications are in compliance with Section 5705.41 and 5704.44 of the Ohio Revised Code.

**SUGARCREEK TOWNSHIP
(GREENE COUNTY), OHIO
FISCAL OFFICER**

Date: _____

By: _____
Name: _____
Title: _____

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