

RESOLUTION NO. 43-22
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON THE 6th
DAY OF June, 2022.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE REVISED PRIMARY INTERCHANGE PROJECT PHASE II ADDENDUM TO 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 THE GREENE COUNTY ENGINEER'S OFFICE.

WHEREAS, on or about November 9, 2020, the City of Centerville entered into a I-675/Wilmington Pike Interchange Projects Management and Financing Agreement, which agreement was amended by the First Amendment to 675/Wilmington Pike Interchange Projects Management and Financing Agreement (collectively the "Agreement"); and

WHEREAS, the Parties entered into the Agreement in order to develop a cooperative framework for accomplishing the planning, design, financing, and construction of the infrastructure improvements to more effectively service users of the I-675/Wilmington Pike Interchange and its related surface roadways; and

WHEREAS, the parties to the Agreement desired to expand the Phase I Scope to provide for certain preliminary engineering services and a feasibility study to address safety and traffic congestion in the area of the the I-675/Wilmington Pike Interchange and related surface roadways (the "Interchange Projects"); and

WHEREAS, one of the individual projects included within the broader set of Interchange Projects is the design, engineering, financing, and/or construction of certain improvements to the Interchange itself; and

WHEREAS, the Parties entered into an Addendum to the Agreement on or about March 21, 2022 through Resolution No. 22-22; and

WHEREAS, the Parties now desire to enter into this revised Addendum to replace the March 21, 2022 Addendum as a Subsequent Phase Addendum under the Agreement in order to proceed to a "Phase II" of the Primary Interchange Project, which will include procuring the design and engineering services necessary to construct the Primary Interchange Project; and

WHEREAS, the only change in this revised Addendum is to specify the source of the Greene County revenue that would be utilized for the repayment of Greene County's financial commitment; and

WHEREAS, the City of Centerville acknowledges the importance of the Interchange Projects 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 parties are willing to enter into the revised Addendum of the joint Management and Financing Agreement with the TID taking the lead to proceed with the Phase II of the Project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1: That the City Manager be and is hereby authorized to enter into a revised Primary Interchange Project Phase II Addendum to 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 the Greene County Engineer's Office in order to complete the Projects as needed. A copy of said Addendum is attached hereto and marked as Exhibit "A".

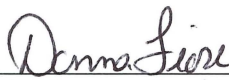
SECTION 2: This Resolution becomes effective at the earliest date allowed by law.

PASSED THIS 6th day of June, 2022.



Mayor of the City of Centerville, Ohio

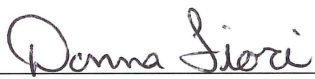
ATTEST:



Clerk of Council (Acting)
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. 43-22, passed by the Council of the City of Centerville, Ohio on the 6th day of June, 2022.



Clerk of the Council (Acting)

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**

- PRIMARY INTERCHANGE PROJECT PHASE II ADDENDUM -

THIS PHASE II ADDENDUM (PRIMARY INTERCHANGE PROJECT) TO I-675/WILMINGTON PIKE INTERCHANGE PROJECTS MANAGEMENT AND FINANCING AGREEMENT (this "**Addendum**") is made and entered into as of the ___ day of _____, 2022, (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 the Greene County Engineer's Office (the "**Engineer**") (the TID, Greene County, the City, and the Engineer may each be referred to herein as a "**Party**" or collectively as the "**Parties**"), under the following circumstances:

- A. On or about November 9, 2020, the Parties and Sugarcreek Township (Greene County), Ohio (the "**PMFA Parties**") entered into that certain I-675/Wilmington Pike Interchange Projects Management and Financing Agreement (the "**Original PMFA**"), which was subsequently amended by that certain First Amendment to I-675/Wilmington Pike Interchange Projects Management and Financing Agreement dated on or about March 8, 2021 (the "**First Amendment**", and together with the Original PMFA, the "**PMFA**");
- B. The PMFA Parties entered into the PMFA in order to develop a cooperative framework for accomplishing the planning, design, financing, and construction of infrastructure improvements to more effectively service users of the I-675/Wilmington Pike Interchange (the "**Interchange**") and its related surface roadways (the "**Interchange Projects**");
- C. The PMFA provided for a "Phase I" generally applicable to the Interchange Projects, which consisted of the engagement of the TID by the other PMFA Parties to engage a third party professional consultant to perform certain preliminary engineering services and conduct a feasibility study for the Interchange Projects;
- D. The Original PMFA also provided that the Interchange Projects may comprise multiple phases, and that phases subsequent to Phase I, 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, and to the extent two or more of the PMFA Parties desire to proceed to a Subsequent Phase, such Parties will negotiate and enter into an addendum to the PMFA to set forth their respective rights and obligations with respect to such Subsequent Phase (a "**Subsequent Phase Addendum**");
- E. One of the individual projects included within the broader set of Interchange Projects is the design, engineering, financing, and/or construction of certain improvements to the Interchange itself (the "**Primary Interchange Project**");
- F. The Parties now desire to enter into this Addendum as a Subsequent Phase Addendum under the PMFA in order to proceed to a "**Phase II**" of the Primary Interchange Project, which will include procuring the design and engineering services necessary to construct the Primary Interchange Project; and

- G. 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 _____, and the TID, acting pursuant to Resolution No. _____ adopted by its Board of Trustees on _____, have each authorized the execution of this Addendum.

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

1. **TID Management Services; Additional Phases.** The TID will provide project planning, project coordination, strategy development, and project supervision services in connection with the Initial Phase II Scope (as defined in Section 2 below) (the "**TID Management Services**"). To the extent two or more of the Parties desire to proceed to one or more additional phases related to the Primary Interchange Project (which may include without limitation the financing and/or construction of the Primary Interchange Project), such Parties will enter into one or more additional Subsequent Phase Addenda, provided, however, that the Parties acknowledge that by executing this Addendum, no Party is committing to enter into any additional Subsequent Phase Addenda.

2. **Initial Phase II Scope.** Phase II of the Primary Interchange Project will include procuring the design and engineering services necessary to construct the Primary Interchange Project (the "**Phase II Scope**"); provided, however that unless and until the TID and one or more of the other PMFA Parties agree to proceed further pursuant to an amendment to this Addendum that will set forth such PMFA Parties' respective rights and obligations with regard thereto, including without limitation funding obligations (an "**Expanded Phase II Scope Amendment**"), the Phase II Scope will be limited to the engagement by the TID of LJB Inc. to produce Stage I Plans pursuant to the proposal attached hereto as Exhibit A, as such proposal may be modified by the TID (which modification may not result in any increase to the Initial Phase II Budget (as defined in Section 4 below)) in connection with final negotiations with LJB Inc. (the "**Initial Phase II Scope**"). The Parties acknowledge that by executing this Addendum, no Party is committing to enter into any Expanded Phase II Scope Amendment.

3. **Initial Phase II Schedule.** The Parties agree to use their reasonable commercial efforts to complete the Initial Phase II Scope by March 31, 2023.

4. **Initial Phase II Budget.** The budget for the Initial Phase II Scope is set forth in Exhibit B attached hereto (the "**Initial Phase II Budget**"). Within thirty (30) days following the Effective Date, each of Greene County and the City (each, a "**Local Jurisdiction**") will make a payment equal to fifty percent (50%) of the total Initial TID Phase II Management Fee (as defined in Section 5.A. below). Thereafter, from time to time the TID will invoice the Local Jurisdictions for the other amounts set forth in the Initial Phase II Budget, and each Local Jurisdiction will pay the invoiced amount within ten (10) business days following receipt of the invoice. Except for the Initial TID Phase II Management Fee, the TID will use the Initial Phase II Budget funds solely in connection with out-of-pocket costs incurred by the TID in connection with the Initial Phase II Scope. To the extent the TID and one or more of the other PMFA Parties enter into an Expanded Phase II Scope Amendment, such amendment will include a budget related to the activities to be conducted pursuant to such Expanded Phase II Scope Amendment.

5. **TID Management Fees.**

A. The Local Jurisdictions acknowledge that the Initial Phase II Budget includes a fee payable to the TID as compensation for the performance of the TID Management Services (the "**Initial TID Phase II Management Fee**").

B. In addition to the Initial TID Phase II Management Fee, the Local Jurisdictions acknowledge that the TID will be entitled to similar fees for the TID's activities related to an Expanded Phase II Scope Amendment, if any, and/or additional Subsequent Phase Addenda, if any, and to the extent the TID is engaged to manage construction of the Primary Interchange Project 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.

6. **Specific Funding Provisions.**

A. As a general matter, the Local Jurisdictions will be obligated to fund the entire cost of Phase II, whether via a borrowing or an alternative source of funds. The Local Jurisdictions will also be responsible to cover the TID's out-of-pocket costs as set forth in the applicable budget.

B. As of the Effective Date, the TID has obtained a Tier II allocation to support the Initial Phase II Scope from the Ohio Department of Transportation (ODOT) Transportation Review Advisory Council (TRAC) in the amount of \$3,000,000 (the "**TRAC Funding Allocation**"). The TRAC Funding Allocation requires a local match in the aggregate amount of \$750,000 (the "**Local Match**"). The Local Match will be provided by the Local Jurisdictions as set forth in the Initial Phase II Budget.

C. Greene County's portion of the Local Match will be paid from Greene County's share of fuel taxes and motor vehicle registration fees.

D. Notwithstanding anything in this Addendum to the contrary, the TID will not be obligated to provide for any products or services related to the Primary Interchange Project in excess of the funds actually received by the TID from the Local Jurisdictions or third party funding sources, less any agreed fees payable to the TID.

7. **Miscellaneous.** Except as otherwise expressly provided in this Addendum, the PMFA is hereby ratified in its entirety and remains in full force and effect. Any capitalized word in this Addendum not defined in this Addendum will have the meaning given in the PMFA. This Addendum will be construed under the laws of the State of Ohio. This Addendum may be executed in any number of counterparts, each of which will be deemed an original and together will constitute a single instrument. Delivery of an executed counterpart of a signature page to this Addendum by facsimile, email or other electronic means is effective as delivery of a manually executed counterpart of this Addendum.

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

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

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

APPROVED AS TO FORM

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

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

APPROVED AS TO FORM

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

CITY OF CENTERVILLE, OHIO

APPROVED AS TO FORM

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Solely for purposes of Section 6.C.:

GREENE COUNTY ENGINEER

By: _____

Print Name: _____

Title: _____

Exhibit "A"

Exhibit A

Initial Phase II Scope

(begins on next page)

Exhibit "A"

Exhibit B

Initial Phase II Budget

(begins on next page)

Greene 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 2022 under the foregoing Addendum 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 2022 under the foregoing Addendum 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: _____