

# RECORD OF RESOLUTIONS

Resolution No. 2018-20R

Passed September 4 2018

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE FAIRFIELD COUNTY TRANSPORTATION IMPROVEMENT DISTRICT IN RELATION TO THE REFUGEE ROAD PROJECT**

**WHEREAS**, the Fairfield County Transportation Improvement District (“FCTID”) 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; and

**WHEREAS**, 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; and

**WHEREAS**, these projects undertaken by the FCTID, 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 Fairfield County, Ohio (the “County”), and various political subdivisions therein, including, but not limited to, the City of Pickerington (“CITY”), and of the State of Ohio (the “State”) and are essential governmental functions; and

**WHEREAS**, the exercise by the FCTID 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; and

**WHEREAS**, the FCTID 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 Mid-Ohio Regional Planning Commission or “MORPC”, the State of Ohio/Ohio Department Of Transportation or “ODOT”, the Ohio Public Works Commission or “OPWC”, federal agencies and the congressional delegation; and

**WHEREAS**, in this regard, the FCTID and the CITY intend to coordinate and collaborate, as appropriate and necessary, relating to certain transportation and infrastructure project implementation, administration and funding involving a joint project referred to or known as: the *Refugee Road Project (FAI-CR7-1.57 PID No. 81766)*, designed to improve and reconstruct certain portions of Refugee Road located within the CITY, which project involves road widening, turn lane improvements, intersection improvements, and traffic light reconstruction along Refugee Road between a western terminus at the Columbus — Pickerington Corporation Line and an eastern terminus at the Pickerington — Violet Township Corporation Line, in cooperation with ODOT and MORPC, and as further described and set forth in plans and documents on file with the FCTID, the CITY, ODOT and MORPC (referred to hereafter as the “Project”), and which Project furthers transportation improvements



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and community and economic development objectives supported by the FCTID and the CITY; and

**WHEREAS**, the CITY, acting as the designated ODOT Local Public Agency for the Project or "LPA" as authorized per Resolution No. 2018-13R, and the FCTID, acting per its Resolutions 2018-01 and 2018-02, are now proceeding in collaboration and coordination with ODOT to advance the Project into the actual construction phase (referred to herein as the "Construction Work"). The total Project Costs are currently estimated to be in an amount of \$14,082,765.00, with funding secured, in part, through a combination of sources including: Federal Surface Transportation Block Grant Program funding ("STPG") applied for by the CITY through MORPC (the "STPG Funds"); ODOT Safety Funds applied for by the CITY (the "Safety Funds"); OPWC Funds applied for by the CITY (the "OPWC Funds"), with a related local matching cost share amount required from the CITY, as the LPA (the "Local Match Share Cost") as further set forth and described in Exhibit A "2019 Transportation Improvement District Budget Form" attached hereto and made part hereof. The FCTID procured an allocation of State Fiscal Year 2019 HB 26 TID funding administered through the ODOT Office of Jobs and Commerce, for use, on a reimbursement basis, towards costs incurred for the Construction Work subject to final approval by ODOT of any submitted invoice(s) for said costs (the "TID Supplemental Funding"); and

**WHEREAS**, the securing of the Local Share Match Cost, as required for funding costs of the Project, and so as to access and utilize the STPG Funds, the OPWC Funds and the Safety Funds, is the primary responsibility of the CITY, and the Local Share Match Cost amount has now been applied or appropriated by the CITY, including the specific required amount for the Construction Work, as determined by ODOT, has been deposited with ODOT by the CITY, as of July 17, 2018, in the amount of \$1,199,872.90. The Construction Work is now reported as ready to proceed as an ODOT-let project. Per the terms of this Agreement and the related TID Supplemental Funding Agreement between the FCTID and ODOT, in the form on file with the FCTID, the FCTID intends to provide the TID Supplemental Funding to assist in funding a portion of the costs of the Construction Work through reimbursement of eligible costs expended for the Construction Work, in a total amount not to exceed \$250,000.00, contingent upon and subject to the requisite approval by ODOT; and

**WHEREAS**, furthermore, the CITY and FCTID will jointly coordinate and collaborate with ODOT on the administration of the Construction Work, and, as appropriate and applicable, share joint project management responsibilities, oversight and review relating to the Project Work; and

**WHEREAS**, the FCTID 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 FCTID in the exercise of its functions under ORC Chapter 5540.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PICKERINGTON, FAIRFIELD-FRANKLIN COUNTIES, OHIO, A MAJORITY OF ITS MEMBERS CONCURRING:**

**Section 1:** The Pickerington City Council hereby authorizes the City Manager and to execute the attached Intergovernmental Agreement with FCTID in the form hereto attached as Exhibit "A".

**Section 2:** This Resolution shall take effect and be in force from the earliest date permitted by law.

# RECORD OF RESOLUTIONS

Resolution No. 2018-20R

Passed September 4 2018

APPROVED BY:

  
Lee A. Gray, Mayor

DATE OF APPROVAL:

September 4, 2018

EFFECTIVE DATE:



September 4, 2018

ATTEST:

  
Heather Moore, City Clerk

SPONSOR: **FINANCE COMMITTEE**

APPROVED AS TO FORM AND  
LEGALITY OF PURPOSE:

  
Philip K. Hartmann, Law Director  
  
Yazan Ashrawi, Assistant LD



**INTERGOVERNMENTAL  
AGREEMENT  
2018-01**

By and Between

CITY OF PICKERINGTON, OHIO

And

THE FAIRFIELD COUNTY TRANSPORTATION  
IMPROVEMENT DISTRICT

***[Refugee Road Project (FAI-CR7-1.57 PID No. 81766)]***

Dated as of August 22, 2018

## **INTERGOVERNMENTAL AGREEMENT 2018-01**

This Intergovernmental Agreement 2018-01 (this "Agreement") is made and entered into effective as of August 22, 2018 (the "Effective Date"), by and between the CITY OF PICKERINGTON, 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 FAIRFIELD COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation improvement district created pursuant to ORC Chapter 5540 (the "FCTID").

### **Recitals:**

A. The FCTID 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 FCTID, 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 Fairfield 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 FCTID 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 FCTID 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 Mid-Ohio Regional Planning Commission or "MORPC", the State of Ohio/Ohio Department Of Transportation or "ODOT", the Ohio Public Works Commission or "OPWC", federal agencies and the congressional delegation.

F. In this regard, the FCTID and the CITY intend to coordinate and collaborate, as appropriate and necessary, relating to certain transportation and infrastructure project implementation, administration and funding involving a joint project referred to or known as: the



*Refugee Road Project (FAI-CR7-1.57 PID No. 81766)*, designed to improve and reconstruct certain portions of Refugee Road located within the CITY, which project involves road widening, turn lane improvements, intersection improvements, and traffic light reconstruction along Refugee Road between a western terminus at the Columbus – Pickerington Corporation Line and an eastern terminus at the Pickerington – Violet Township Corporation Line, in cooperation with ODOT and MORPC, and as further described and set forth in plans and documents on file with the FCTID, the CITY, ODOT and MORPC (referred to hereafter as the “Project”), and which Project furthers transportation improvements and community and economic development objectives supported by the FCTID and the CITY.

G. The CITY, acting as the designated ODOT Local Public Agency for the Project or “LPA” as authorized per Resolution No. 2018-13R, and the FCTID, acting per its Resolutions 2018-01 and 2018- 02, are now proceeding in collaboration and coordination with ODOT to advance the Project into the actual construction phase (referred to herein as the “Construction Work”). The total Project Costs are currently estimated to be in an amount of \$14,082,765.00, with funding secured, in part, through a combination of sources including: Federal Surface Transportation Block Grant Program funding (“STPG”) applied for by the CITY through MORPC (the “STPG Funds”); ODOT Safety Funds applied for by the CITY (the “Safety Funds”); OPWC Funds applied for by the CITY (the “OPWC Funds”), with a related local matching cost share amount required from the CITY, as the LPA (the “Local Match Share Cost”) as further set forth and described in Exhibit A “*2019 Transportation Improvement District Budget Form*” attached hereto and made part hereof. The FCTID procured an allocation of State Fiscal Year 2019 HB 26 TID funding administered through the ODOT Office of Jobs and Commerce, for use, on a reimbursement basis, towards costs incurred for the Construction Work subject to final approval by ODOT of any submitted invoice(s) for said costs (the “TID Supplemental Funding”).

H The securing of the Local Share Match Cost, as required for funding costs of the Project, and so as to access and utilize the STPG Funds, the OPWC Funds and the Safety Funds, is the primary responsibility of the CITY, and the Local Share Match Cost amount has now been applied or appropriated by the CITY, including the specific required amount for the Construction Work, as determined by ODOT, has been deposited with ODOT by the CITY, as of July 17, 2018, in the amount of \$1,199,872.90. The Construction Work is now reported as ready to proceed as an ODOT-let project. Per the terms of this Agreement and the related TID Supplemental Funding Agreement between the FCTID and ODOT, in the form on file with the FCTID, the FCTID intends to provide the TID Supplemental Funding to assist in funding a portion of the costs of the Construction Work through reimbursement of eligible costs expended for the Construction Work, in a total amount not to exceed \$250,000.00, contingent upon and subject to the requisite approval by ODOT.

I. Furthermore, the CITY and FCTID will jointly coordinate and collaborate with ODOT on the administration of the Construction Work, and, as appropriate and applicable, share joint project management responsibilities, oversight and review relating to the Project Work.

J. The FCTID 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 FCTID 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 FCTID 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 Construction***

***Section 1.01. References to Parties.*** Any reference in this Agreement to the CITY or its Council, or the FCTID or its Trustees, or to any officers of the CITY or the FCTID, 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 1.02. 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 FCTID under this Agreement.

***Section 1.03. 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 1.04. 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 1.05. 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 1.06. 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, 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 1.07. 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 FCTID 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 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 FCTID explicitly acknowledge and agree:
  - i) to coordinate and collaborate with ODOT relative to the administration of the Construction Work, in accordance with applicable law and related requirements, and to perform all related responsibilities as thereby required or appropriate with ODOT and as provided for herein.
  - ii) to take such action and provide the necessary funding, including the CITY Local Match Share Cost and FCTID TID Supplemental Funding, contingent upon and subject to requisite approval by ODOT, to facilitate construction of the Project, as committed to herein and otherwise by and between the CITY and ODOT.
  - iii) to arrange in coordination and cooperation with ODOT for a schedule of Project work sessions, to be held on a monthly basis or as the Parties otherwise determine is appropriate and necessary, so as to coordinate and review the progress of the Construction Work and any related Project issues by and among the FCTID, the CITY and ODOT, and any other parties the CITY and the FCTID deem appropriate.
- (b) The CITY further agrees to provide to the FCTID proof of payment to ODOT of the Local Match Share Cost for the Construction Work or other eligible costs that may have been incurred for the Construction Work, on or before March 31, 2019. In turn, the FCTID shall submit this proof of payment with the required ODOT application form to seek reimbursement from the allocated TID Supplemental Funding in the amount of \$250,000.00 (the "Reimbursement Request").
- (c) Contingent upon and subject to the requisite approval by ODOT of the



Reimbursement Request and receipt by the FCTID from ODOT of the TID Supplemental Funding, in a total amount not to exceed \$250,000.00, the FCTID agrees to provide the CITY with the said amount of TID Supplemental Funding received. The FCTID shall direct said payments to such account as instructed, in writing, by the CITY. The CITY shall provide the FCTID with such instructions within 15 business days of the execution of this Agreement.

- (d) 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. 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 FCTID 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 FCTID or (2) preclude either Party from entering into other agreements with respect to matters not specifically addressed in this Agreement.

***Section 2.04. 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 FCTID or any member of the FCTID 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 2.05. 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 2.06. 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 FCTID.** To induce the CITY to enter into this Agreement, the FCTID 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 FCTID and the Trustees; and this Agreement, when executed and delivered by the FCTID, will constitute a legal, valid, and binding obligation of the FCTID; and
- (c) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the FCTID or (2) result in a default under any agreement or instrument to which the FCTID is a party or by which it is bound.

**Section 3.02. Representations of the CITY.** To induce the FCTID to enter into this Agreement, the Council represents to the FCTID 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 22, 2018 to and including December 31, 2019 (the "Term").

***Section 4.02. Termination.*** So long as any amount of the Construction Work is outstanding and unpaid, this Agreement shall not be terminated. If no Construction Work is outstanding, 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 FCTID pursuant to this Agreement shall be sent to the FCTID at the following address:

The Fairfield County Transportation Improvement District  
Attn: Holly Mattei, Chairperson  
12970 Rustic Drive NW  
Pickerington OH 43157  
Phone: (614) 575-5556  
Facsimile: (614) \_\_\_\_ - \_\_\_\_  
Electronic Mail: Holly.Mattei@violet.oh.us



- (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 Pickerington  
Attn: Chris Schornack  
Director of Finance  
City of Pickerington  
Phone: (614) 837-3974 ext. 2405  
Facsimile: (614) \_\_\_\_\_ - \_\_\_\_\_  
Electronic Mail: CSchornack@pickerington.net

- (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.

[Remainder of page intentionally left blank.]



**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 PICKERINGTON,  
FAIRFIELD COUNTY, OHIO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Frank V. Wilson*  
\_\_\_\_\_  
*CITY MANAGER*  
\_\_\_\_\_

**FCTID:**

**THE FAIRFIELD COUNTY  
TRANSPORTATION  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_

Holly Mattei, Chairperson




**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 PICKERINGTON,  
FAIRFIELD COUNTY, OHIO**

By: 

Title: CITY MANAGER

**FCTID:**

**THE FAIRFIELD COUNTY  
TRANSPORTATION  
IMPROVEMENT DISTRICT**

By:   
Holly Mattei, Chairperson



**Exhibit A**

*2019 Transportation Improvement District Budget Form*

**2019 Transportation Improvement District Budget Form**

Date of Submission	
TID Name	

Project Overview	Estimated Cost	Estimated Completion Date
Design	\$ 1,080,835	
Right-of-Way Acquisition (RW)	\$ 4,464,594	
Construction (CO)	\$ 8,537,336	
<b>Total</b>	<b>\$ 14,082,765</b>	

**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 (local funds)	\$ 1,080,835	\$ 757,309	\$ 902,730	\$ 2,740,874
ODOT	\$ -	\$ 1,220,488	\$ 2,262,033	\$ 3,482,521
MORPC	\$ -	\$ 2,486,797	\$ 4,819,173	\$ 7,305,970
OPWC	\$ -	\$ -	\$ 303,400	\$ 303,400
<b>Total</b>				<b>\$ 13,832,765</b>

Required ODOT Match		\$135,610	\$251,337	\$386,947
Required MORPC Match		\$621,699	\$1,204,793	\$1,826,493
<b>Total Required Match</b>	<b>\$0</b>	<b>\$757,309</b>	<b>\$1,456,130</b>	<b>\$2,213,439</b>
Match Needed - City		\$0	\$250,000	\$250,000

**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	\$ -	\$ -	\$ 250,000	\$ 250,000	7/1/2018
<Insert Funding Partner>				\$ -	
<Insert Funding Partner>				\$ -	
<Insert Funding Partner>				\$ -	
<b>Total</b>				<b>\$ 250,000</b>	

**\*Secured plus targeted funding should equal total project cost.**