

BRUNSWICK CITY

SERVICES, UTILITIES, TECHNOLOGY & CABLE COMMITTEE

Agenda

SEPTEMBER 9, 2019
6:30 PM
In Caucus Room

1. Discussion Items

- (a) Update on the City's Trash Service.
- (b) **RES. NO. 58-19** - An emergency resolution ratifying the actions of the City Manager in executing an economic development agreement with the Ohio Department of Transportation allowing the City of Brunswick to receive grant funds in an amount up to \$200,000.00 for the reconstruction and repair of South Industrial Parkway and Westway Drive. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)
- (c) **RES. NO. 59-19** - An emergency resolution ratifying the actions of the City Manager in executing an agreement with the Medina County Transportation Improvement District allowing the City of Brunswick to receive grant funds in an amount up to \$200,000.00 for the reconstruction and repair of South Industrial Parkway and Westway Drive. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)

2. General Discussion

3. Adjournment

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION



DATE: 9/9/2019

TO: Vice Mayor Michael Abella Jr. and Members of City Council

FROM: Carl S. DeForest, City Manager
Paul Barnett

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 58-19** - An emergency resolution ratifying the actions of the City Manager in executing an economic development agreement with the Ohio Department of Transportation allowing the City of Brunswick to receive grant funds in an amount up to \$200,000.00 for the reconstruction and repair of South Industrial Parkway and Westway Drive. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)

BACKGROUND: The City has applied for a grant with ODOT Office of Jobs & Commerce for the reconstruction and repair of South Industrial Parkway and Westway Drive. The City received notification of the grant and the agreement that needed to be signed as soon as possible. The grant agreement was signed on August 29, 2019 in order for the project to be authorized to advance as required by ODOT. The agreement does not obligate any City funds. The agreement will obligate ODOT to pay the City of Brunswick up to 25% of the project not to exceed \$200,000.

PURPOSE AND EXPLANATION: The action of the City Manager in signing the agreement will allow the City to receive \$200,000 from ODOT for the reconstruction and repair of South Industrial Parkway and Westway Drive.

IMPLEMENTATION SCHEDULE:

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: Max \$200,000 revenue from this State grant. Grant expires on December 31, 2020.

Total cost of the project (including construction, engineering, and inspections + contingencies) is estimated by the engineer (dated May 22, 2019) at a total cost of \$1,053,239. Eligible costs will be reimbursed by this grant at 25% not to exceed \$200,000 in reimbursement for this grant. The City will also receive an additional \$200,000 grant that will also reimburse eligible costs at a 25% rate not to exceed \$200,000. Any costs not covered by these two different State grants will be paid for through City funds from the Road Improvement Fund #333.

RECOMMENDED ACTION:

One Reading	No
Two Readings	Yes
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?

**ADDITIONAL
INFORMATION:**

**JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND
CITY OF BRUNSWICK**

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 W. Broad Street, Columbus, Ohio 43223 and, the City of Brunswick, 4095 Center Road, Brunswick, OH 44212 (hereinafter referred to as the CITY).

1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts and agreements with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 The CITY will reconstruct South Industrial Parkway from Center Road approximately 1,100'. Continuing south about 3,000' to W. 130th Street the City will replace sagging concrete slabs, joint and catch basin repairs and replacement of designated curb inlets and drive aprons as needed. (hereinafter referred to as the PROJECT).
- 1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development Program ("JCED") funding (SAC 4)C7) that is being made available for the PROJECT by ODOT.
- 1.5 The CITY shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2. FUNDING AND PAYMENT

- 2.1 The total cost for the PROJECT is estimated to be **\$808,740** as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual construction of the PROJECT improvements and construction engineering/inspection activities.

ODOT JCED Funds – SAC 4)C7	\$200,000
Locals	\$608,740
TOTAL	\$808,740

- 2.2 Funds provided by ODOT shall not exceed \$200,000 or 25 percent of the total project cost, whichever is the lesser amount. The CITY shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and CITY claims.
- 2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The CITY shall review and approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.
- 2.4 The CITY shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The CITY must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. The CITY may submit a maximum of two requests for reimbursement. The deadline for the final reimbursement request is December 31, 2020. The CITY may ask for an extension of this agreement before November 1, 2020 if adequate funds have been appropriated.
- 2.5 Reimbursement to the CITY shall be submitted to:

City of Brunswick
Todd Fischer, Director of Finance
4095 Center Road
Brunswick, OH 44212
330-558-6810

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The CITY is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.
- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the CITY, arising out of or related to any contract entered into by the CITY for the work to be performed by the CITY on this PROJECT is the responsibility of the CITY. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

- 4.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the CITY shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 5.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.
- 5.2 The CITY hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the CITY's obligations made or agreed to herein.

6. NOTICE

- 6.1 Notice under this Agreement shall be directed as follows:

If to the CITY:

Carl DeForest
City Manager
4095 Center Road
Brunswick, OH 44212
330-558-6826
cdeforest@brunswick.oh.us

If to ODOT:

Jeffrey V. Loehrke
Office of Jobs & Commerce
Ohio Department of Transportation
1980 W. Broad Street
Columbus, OH 43223
614-915-2631
jeffrey.loehrke@dot.ohio.gov

7. FEDERAL REQUIREMENTS

During the performance of this Agreement, the CITY, for itself, its assignees, and successors in interest agrees as follows:

- 7.1 The CITY will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- 7.2 The CITY agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CITY will, in all solicitations or advertisements for employees placed by or on behalf of the CITY, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).
- 7.3 Compliance with Regulations: The CITY (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- 7.4 **Nondiscrimination:** The CITY, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency in the selection and retention of the CITY, including procurements of materials and leases of equipment. The CITY will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 7.5 **Solicitations for the CITY, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the CITY of the CITY's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency.
- 7.6 **Information and Reports:** The CITY will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CITY will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 7.7 **Sanctions for Noncompliance:** In the event of the CITY's noncompliance with the nondiscrimination provisions of this Agreement, ODOT will impose such sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a) Withholding of payments to the CITY under the Agreement until the CITY complies, and/or
 - b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- 7.8 **Incorporation of Provisions:** The CITY will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The CITY will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CITY becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the CITY may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the CITY may request the United States to enter into the litigation to protect the interests of the United States.
- 7.9 **During the performance of this Agreement, the CITY, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:**

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)

- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and CITY (or other)s, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)

8. GENERAL PROVISIONS

- 8.1 *Record Retention:* The CITY when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the CITY's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute.
- 8.2 *Ohio Ethics Laws:* The CITY agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 8.3 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be

deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the CITY hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Medina County, Ohio.

- 8.4 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 8.5 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 8.6 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 8.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. The CITY acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the CITY and monitoring by Grantor of the results of the award of Grant Funds.
- 8.8 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

CITY OF BRUNSWICK
OR AUTHORIZED REPRESENTATIVE

By:



Title: Carl S. DeForest, City Manager

Date:

8/29/19

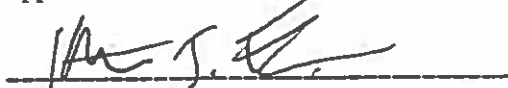
STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION

By:

Jack Marchbanks, Ph.D.
Director

Date:

Approved as to form:


Kenneth J. Fisher, Law Director

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 58-19

BY: Mrs. Rodriguez, Mr. Capretta and Mr. Hanek

AN EMERGENCY RESOLUTION RATIFYING THE ACTIONS OF THE CITY MANAGER IN EXECUTING AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION ALLOWING THE CITY OF BRUNSWICK TO RECEIVE GRANT FUNDS IN AN AMOUNT UP TO \$200,000.00 FOR THE RECONSTRUCTION AND REPAIR OF SOUTH INDUSTRIAL PARKWAY AND WESTWAY DRIVE.

WHEREAS: The City applied for a grant (the "Grant") with the Ohio Department of Transportation, Office of Jobs & Commerce, for the reconstruction and repair of South Industrial Parkway and Westway Drive (the "Project").

WHEREAS: The City received notification of award of the Grant and was advised that the Economic Development Agreement was required to be accepted as soon as possible; and

WHEREAS: The Economic Development Agreement was executed by the City Manager on August 29, 2019, upon review and approval by the Law Department, in order for the Project and award of the Grant to be authorized as required by ODOT.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the actions of the City Manager in executing the Economic Development Agreement, as reviewed and approved by the Law Department, are hereby ratified.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to ratify the actions of the City Manager. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

2nd Reading _____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Fijabi Julien-Gallam, CMC

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION



DATE: 9/9/2019

TO: Vice Mayor Michael Abella Jr. and Members of City Council

FROM: Carl S. DeForest, City Manager
Paul Barnett

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 59-19** - An emergency resolution ratifying the actions of the City Manager in executing an agreement with the Medina County Transportation Improvement District allowing the City of Brunswick to receive grant funds in an amount up to \$200,000.00 for the reconstruction and repair of South Industrial Parkway and Westway Drive. - **1st Reading** (To be brought from Services, Utilities, Technology & Cable Committee, *Administration/Matt Jones*)

BACKGROUND: The City has applied for a grant with the TID for the reconstruction and repair of South Industrial Parkway and Westway Drive. The TID received notice that the Ohio Department of Transportation will award up to \$200,000 to the TID for this project. The City received notification of the grant and the agreement with TID that needed to be signed as soon as possible. The TID is in the process of entering into agreement with ODOT to receive the funds that will be passed through to the City of Brunswick. The grant agreement with the TID was signed on August 29, 2019 in order for the project to be authorized to advance as required by the TID. The agreement does not obligate any City funds. The agreement will obligate the TID to pass the funds they receive from ODOT to the City of Brunswick up to 25% of the project not to exceed \$200,000.

PURPOSE AND EXPLANATION: The action of the City Manager in signing the agreement will allow the City to receive \$200,000 from the TID for the reconstruction and repair of South Industrial Parkway and Westway Drive.

IMPLEMENTATION SCHEDULE:

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: Max \$200,000 revenue from this State grant. Grant expires on December 31, 2020.

Total cost of the project (including construction, engineering, and inspections + contingencies) is estimated by the engineer (dated May 22, 2019) at a total cost of \$1,053,239. Eligible costs will be reimbursed by this grant at 25% not to exceed \$200,000 in reimbursement for this grant. The City will also receive an additional \$200,000 grant that will also reimburse eligible costs at a 25% rate not to exceed \$200,000. Any costs not covered by these two different State grants will be paid for through City funds from the Road Improvement Fund #333.

**RECOMMENDED
ACTION:**

One Reading	No
Two Readings	Yes
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?

**ADDITIONAL
INFORMATION:**

**TRANSPORTATION IMPROVEMENT DISTRICT AGREEMENT
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND
MEDINA COUNTY TRANSPORTATION IMPROVEMENT DISTRICT**

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (hereinafter referred to as ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the Medina County Transportation Improvement District 791 W. Smith Rd, Medina, OH 44256 (hereinafter referred to as the TID).

1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC Section 5501.11(A)(4) states the ODOT with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 ORC Section 5540.03(A)(8) provides that the TID may enter into contracts and agreements necessary for the performance of its functions and the execution of its powers under Chapter 5540.
- 1.4 ORC Section 5540.03(A) (10) states that the TID may accept grants from a state agency for or in aid of the construction of any project.
- 1.5 Pursuant to the authority provided in ORC Section 5540.03(A)(4), the TID will construct the Industrial Pkwy South Phase 1 project as described in the TID's SFY20 ODOT Funding Application (herein referred to as the PROJECT).
- 1.6 ORC Section 5735.05 provides that the State Motor Fuel Tax revenues are to be used for maintaining the state highway system.
- 1.7 ORC Section 5531.08(B) provides that the Director of Transportation may decide to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay in order to enable the counties of the state to plan, maintain, and repair their roads or to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets.
- 1.8 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Transportation Improvement District ("JCTID") program funding (SAC 4TM7) that is being made available for the PROJECT by ODOT.

1.9 The TID shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in-regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2. FUNDING AND PAYMENT

2.1 The total cost for the PROJECT is estimated to be **\$1,053,239** Sub. H.B. No. 62, Section 203.40 states that funds may be used for preliminary engineering, detailed design, right of way acquisition, and construction of the specific project. Funds provided through ODOT shall be applied only to the eligible costs awarded, which is the **construction** of the PROJECT, as required for the actual construction of the PROJECT.

2.2 Funds provided by ODOT under this Agreement shall not exceed **\$200,000**. The TID, in conjunction with its funding partners, and to the extent permitted under Sub. H.B. No. 62, Section 203.40, shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and TID claims.

2.3 Sub. H.B. No. 62, Section 203.40 (C) states that any ODOT funding provided to a TID shall not be used for the purposes of administrative cost or administrative staffing and must be used to fund a specific project or projects as defined in Section 1.5.

2.4 Sub. H.B. No. 62, Section 203.40(C) states that the total amount of a specific project's cost shall not be fully funded by the amount of funds provided by ODOT and that the total amount of funding provided by ODOT for each project is limited to 25% of total project costs not to exceed \$250,000 per fiscal year. The funding provided by ODOT pursuant to this agreement as described in Section 2.1 is in full compliance with this limitation on expenditures associated with a specific project.

2.5 All funding from ODOT under this Agreement operates on a reimbursement basis. The TID shall review and approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

2.6 The TID shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The TID must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. The TID may submit a maximum of two requests for reimbursement. The deadline for the final reimbursement request is December 31, 2020.

2.7 Reimbursement to the TID shall be submitted to:

Medina County TID
Andy Conrad P.E. P.S.
791 W. Smith Rd
Medina, OH 44256
330-723-9559

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The TID is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.
- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the TID, arising out of or related to any contract entered into by the TID for the work to be performed by the TID on this PROJECT is the responsibility of the TID. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

- 4.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the TID shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 5.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.
- 5.2 The TID hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the TID's obligations made or agreed to herein.

6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the TID:

Andy Conrad County Engineer
Medina County TID
791 W. Smith Rd
Medina, OH 44256
330-723-9559
aconrad@medinaco.org

If to ODOT:

Edward King
Division of Jobs & Commerce - ODOT
1980 W. Broad St. (CO – Mail Stop 3290)
Columbus, OH 43223
614-387-5208
Edward.king@dot.ohio.gov

7. FEDERAL REQUIREMENTS

If applicable, then during the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “TID”) agrees as follows:

- 7.1 The TID will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- 7.2 The TID agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The TID will, in all solicitations or advertisements for employees placed by or on behalf of TID, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).
- 7.3 Compliance with Regulations: The TID (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 7.4 Nondiscrimination: The TID, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The TID will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- 7.5 Solicitations for the TID, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the TID for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the TID of the TID's obligations under this Agreement and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency.
- 7.6 Information and Reports: The TID will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a TID is in the exclusive possession of another who fails or refuses to furnish this information, the TID will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 7.7 Sanctions for Noncompliance: In the event of the TID's noncompliance with the nondiscrimination provisions of this contract, ODOT will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a) Withholding of payments to the TID under the Agreement until the TID complies, and/or
 - b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- 7.8 Incorporation of Provisions: The TID will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The TID will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the TID becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the TID may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the TID may request the United States to enter into the litigation to protect the interests of the United States.

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)

- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and TIDs, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women))
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)

8. GENERAL PROVISIONS

- 8.1 *Record Retention:* The TID when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the TID obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute.
- 8.2 *Ohio Ethics Laws:* The TID agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 8.3 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the TID hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 8.4 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 8.5 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 8.6 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 8.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the PROJECT completion date. The TID acknowledges that the Term extends beyond the Agreement completion date for purposes of reporting by the TID and monitoring by Grantor of the results of the award of Grant Funds.
- 8.8 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

8.9 *Electronic or Scanned Signatures:* Any party to this Agreement may deliver a copy of its counterpart signature page to this agreement via fax, email or other electronic delivery method. Each party shall be entitled to rely upon such signature as if the signature was an original.

This agreement shall be considered duly executed as of the day and year last written below.

**MEDINA COUNTY TID
OR AUTHORIZED REPRESENTATIVE**

By: _____

Title: _____

Date: _____

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By: _____

Jack Marchbanks, PhD
Director

Date: _____

AGREEMENT BETWEEN
THE MEDINA COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
AND THE CITY OF BRUNSWICK
MEDINA COUNTY, OHIO

Background:

The City of Brunswick made application through the Medina County Transportation Improvement District (hereinafter "TID") for a grant from the Ohio Department of Transportation, Jobs and Commerce Division. This grant application is for the Industrial Parkway South Phase 1 reconstruction project. The application was successful and the project was awarded \$200,000.00.

ODOT requires the TID to sign an agreement with them that outlines the requirements of the grant.

Purpose:

An agreement between City of Brunswick and the TID is required to ensure the fulfillment of the requirements as set forth in the Agreement between the TID and ODOT.

TID Duties and Responsibilities:

- 1) The TID will submit the proper paperwork to ODOT to finalize the grant acceptance.
- 2) The TID shall accept the grant from ODOT on behalf of the City of Brunswick.
- 3) The TID shall work with the County Engineer to ensure the accuracy of invoices that are to be reimbursed and submit the required paperwork to ODOT.
- 4) The TID will reimburse the City of Brunswick the allowable grant amount upon receipt of monies from ODOT.

City of Brunswick Duties and Responsibilities:

- 1) The City of Brunswick acknowledges that they have been provided a copy of the agreement between the TID and ODOT.
- 2) The City of Brunswick acknowledges that the role of the TID is to facilitate the procurement and disbursement of the ODOT grant money to the City of Brunswick and that the TID's responsibilities are limited to the list above.
- 3) The City of Brunswick acknowledges that as the contracting authority for the project, they are responsible for complying with and fulfilling the terms of the TID/ODOT agreement.
- 4) The City of Brunswick is administering this project and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, utility reimbursement, and construction contract administration.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties to this Agreement have signed this Agreement as of the dates indicated.

City of Brunswick



Carl DeForest, City Manager/Safety Director

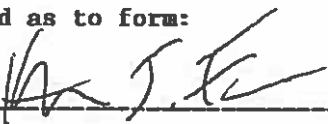
Date: 8/29/19

Medina Transportation Improvement District

Date: _____

Title: _____

Approved as to form:



Kenneth J. Fisher, Law Director

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 59-19

BY: Mrs. Rodriguez, Mr. Capretta and Mr. Hanek

AN EMERGENCY RESOLUTION RATIFYING THE ACTIONS OF THE CITY MANAGER IN EXECUTING AN AGREEMENT WITH THE MEDINA COUNTY TRANSPORTATION IMPROVEMENT DISTRICT ALLOWING THE CITY OF BRUNSWICK TO RECEIVE GRANT FUNDS IN AN AMOUNT UP TO \$200,000.00 FOR THE RECONSTRUCTION AND REPAIR OF SOUTH INDUSTRIAL PARKWAY AND WESTWAY DRIVE.

WHEREAS: The City applied for a grant (the “Grant”) with the Medina County Transportation Improvement District (the “TID”) for the reconstruction and repair of South Industrial Parkway and Westway Drive (the “Project”).

WHEREAS: The City received notification of award of the Grant and was advised that the Agreement was required to be accepted as soon as possible; and

WHEREAS: The Agreement was executed by the City Manager on August 29, 2019, upon review and approval by the Law Department, in order for the Project and award of the Grant to be authorized as required by the TID.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That the actions of the City Manager in executing the Agreement, as reviewed and approved by the Law Department, are hereby ratified.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to ratify the actions of the City Manager. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading_____

2nd Reading_____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Fijabi Julien-Gallam, CMC