EMERGENCY RESOLUTION NO. 34-2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE BUTLER COUNTY TRANSPORTATION IMPROVEMENT DISTRICT FOR THE SALZMAN ROAD EXTENSION PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, Council desires to proceed with the extension of Salzman Road, from its current northern terminus, to tie into the existing western intersection of Yankee Road and Todhunter Road.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an Intergovernmental Agreement by and between the City of Monroe and the Butler County Transportation Improvement District for the Salzman Road Extension Project substantially similar to the terms and conditions set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to proceed with this project at the earliest possible date to improve the prosperity, health, safety, and welfare of the people of Butler County and the City of Monroe and the City of Middletown. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: August 9, 2016

ATTEST:

Clerk of Council

APPROVED:

Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

Clerk of Council
City of Monroe, Ohio

Exhibit "1" E Res No. 34-2016

KBH&R 07/20/16 DRAFT

INTERGOVERNMENTAL AGREEMENT 2016-01

By and Between

CITY OF MONROE

And

THE BUTLER COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

[BUT-Salzman Road Extension PID No. 98852]

Dated as of August__, 2016

INTERGOVERNMENTAL AGREEMENT 2016-01

This Intergovernmental Agreement 2016-01 (this "Agreement") is made and entered into as of August __, 2016 (the "Effective Date"), by and between the CITY OF MONROE, a municipal corporation and political subdivision located in Butler County, Ohio, and pursuant to Ohio Revised Code ("ORC") Chapter 715 and its charter ("Monroe"), and THE BUTLER COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation improvement district and a body both corporate and politic created pursuant to ORC Chapter 5540 (the "TID").

Recitals:

A. The Board of County Commissioners of Butler County, Ohio (the "County") created the TID, which 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 TID, 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 the County, and certain political subdivisions therein, and of the State and are essential governmental functions;

D. The exercise by the TID of the authority granted by ORC Chapter 5540 is necessary for the prosperity, health, safety, and welfare of the County 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 Cities of Middletown, Ohio and Monroe and the State.

E. As part of the TID program of projects, established and designated by TID Resolution 2014-18, Monroe Resolution No. 09-2014, the Middletown, Ohio City Council's action of March 18, 2014 and pursuant to ORC Section 5540.03(A)(4) and related ORC sections, the TID has been requested by Monroe and Middletown to facilitate, administer and manage, in coordination and collaboration with Monroe, Middletown, the BCEO (as hereinafter defined), ODOT (as hereinafter defined), the *BUT-Salzman Road Extension PID No. 98852 project* (f/k/a the "*Yankee Road Relocation Project*" and referred to herein as the "*Salzman Road Extension Project*" or the "Project" (as further defined), which project includes certain roadwork improvements including the extension of Salzman Road, from its current northern terminus, to tie into the existing western intersection of Yankee Road and Todhunter Road and as further described and delineated in plans/documents on file with the TID, ODOT, OKI, Monroe and Middletown.

F. The TID made successful application to ODOT Office of Jobs & Commerce for "*HB 51 Funding*" to provide funding for the initial phase of engineering and detail design for the Salzman Road Extension Project, which was approved and allocated in July, 2014, in the amount of $237,500.00 ("TID Grant 1") and then subsequently made two additional applications for "*HB 53 Funding*" and acquired additional TID grant funding thru the ODOT Office of Jobs & Commerce, in the amount of $500,000.00, for Project construction funding ("TID Grants 2&3"), as further set forth in Exhibit A the *"Salzman Road Extension Project Funding Summary"* attached hereto and made part hereof.

G. Furthermore the Project engineering and detail design work is ongoing and being managed and overseen by the TID, in coordination with Monroe and Middletown, utilizing the TID Grant 1 funding and with additional pledges of funding by Monroe and Middletown, in the respective amounts of $15,124.00 each, estimated at a total cost of $267,748.00 as further set forth in Exhibit A attached hereto and made part hereof.

H. In further collaboration with Middletown and Monroe, the TID made successful application to OKI (as hereinafter defined) for Federal Surface Transportation Program or "STP" funding, in an amount of $1,682,252.00 (the "STP Funding") Local Match Funding (as hereinafter defined) in the amount of $927,098.00 is required to access this STP Funding, with this Local Match Funding to be provided for by Monroe; Middletown; the TID (TID Grants 2); and, the BCEO (in-kind construction inspection) and in such specific share contribution amounts as further set forth on Exhibit A attached hereto and made part hereof.

I. Furthermore, with Monroe's and Middletown's express agreement and consent as set forth herein and otherwise, and with the approval and authorization by the TID Board of Trustees by Resolution 2015-06, and in coordination and cooperation with ODOT and OKI, the TID has agreed to act and serve as the ODOT Local Public Agency or "LPA," subject to the LPA Federal Local-Let Project Agreement, No. 27074, PID No. 98552 with ODOT, in the form on file with the ODOT and the TID (hereinafter referred to as the "LPA Agreement"). As agreed to by the Parties and ODOT, in relation to the ongoing and further management, administration, financing, development, other engineering/design, all acquisition activities required to obtain the real property interests necessary for the Salzman Road Extension Project right-of-way, and to let and construct this project, the TID will continue to act as LPA on the Project. In the event additional funding is required for Project right-of-way and/or construction Middletown and Monroe are to take the appropriate steps, in coordination with each other and the TID, to arrange for and provide the Overage Funding (as hereinafter defined) that may be required and as approved by Middletown and Monroe Councils. The TID further intends to provide any appropriate supplemental funding it may be able to identify and secure for the Project Costs, such as ODOT Jobs & Commerce TID funding, as may be available or feasible to attempt to obtain.

J. The Parties further acknowledge and agree that the TID, hereunder and/or as LPA, will continue to incur costs and expenses in the course of administering and relating to its service and duties as LPA, as required to advance the Salzman Road Extension Project, including, but not limited to, consultant services, utilities/right-of-way acquisition and construction, including management, administrative, consultant and legal costs and expenses to facilitate said Project Work, and further agree that the TID shall be entitled to a TID

Management Fee (further defined) in an amount equal to Three (3%) Percent of the total Salzman Road Extension Project cost, but not to exceed, in any event, the amount of $90,000.00, which is payable by Monroe and Middletown to the TID in such respective share amounts and by such dates as further specified herein and per Exhibit A attached hereto and made part hereof.

K. The TID 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 Council is specifically authorized by ORC § 5540.02(F) to make appropriations from moneys available to Middletown and Monroe and not otherwise appropriated to pay costs incurred by the TID in the exercise of its functions under Chapter 5540 of the ORC.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements in this Agreement, Monroe and the TID agree, with the foregoing Recitals incorporated herein by reference and expressly made a binding and integral part of this Agreement, as follows:

Article I Definitions; Construction

Section 1.01. Definitions. As used in this Agreement, the following terms shall have the following meanings, unless the context or use clearly indicates another meaning or intent:

"Agreement" means this Intergovernmental Agreement, as the same may be amended from time to time.

"BCEO" means the Butler County Engineer's Office, an elected office located in the County.

"Business Day" means any day other than a Saturday, Sunday, or legal holiday.

"City of Middletown" means the City of Middletown, Ohio, a municipal corporation and political subdivision of the State.

"City of Monroe" means the City of Monroe, Ohio, a municipal corporation and political subdivision of the State.

"County" means the County of Butler, a county and political subdivision of the State.

"Day" means a calendar day, unless specifically designated as a Business Day.

"Effective Date" has the meaning given to such term in the introductory paragraph of this Agreement.

"HB 51 Funding" or "TID Grant 1" means the Ohio House Bill 51 TID funding, applied for and secured by the TID in July, 2014 from ODOT, in the amount of $237,500, and which is subject to certain oversight, management and reimbursement participation requirements by the TID, as set forth in the "*ODOT HB 51 Funding Agreement*" on file with the TID, and which amounts are available on a reimbursement basis which requires

the TID to subsidize the related payments of eligible Project engineering costs, by first making payment from TID funds of the invoices submitted by the engineering firm selected and retained to perform the Project Work, and then seek reimbursement from ODOT of such incurred costs from the allocated HB 51 Funding.

"HB 53 Funding" or "TID Grants 2&3" means the Ohio House Bill 53 TID funding, applied for and secured by the TID in July, 2015 and 2016 from ODOT, with the "*Transportation Improvement District SFY16 Application For Funding* "and "*Transportation Improvement District SFY17 Application For Funding"* in the total amount of $500,000, and which is subject to certain oversight, management and reimbursement participation requirements by the TID, and which amounts are available on a reimbursement basis which requires the TID to subsidize the related payments of eligible Project construction costs, by first making payment from TID funds of the invoices submitted by the construction services firm ultimately awarded the Project construction work, and then seek reimbursement from ODOT of such incurred costs from the allocated HB 53 Funding.

"Local Match Funding" means that funding, in the amount of $927,098.00, which is required to access the STP Funding awarded for the Project, in the amount of $1,682,252.00, as further set forth in the LPA Agreement and in documents on file with OKI, ODOT and the TID, and the Local Match Funding is to be provided by and through the TID, Monroe, Middletown and the BCEO in such share amounts as further set forth in Exhibit A attached hereto and made part hereof and referred to herein as the "*Local Share Amounts*".

"LPA" means "Local Public Agency," as that term is defined and applied with respect to the ODOT LPA Program for Local-let projects, and the TID, as the LPA for the Salzman Road Extension Project, acting pursuant to the ODOT LPA program, per legislation authorized and adopted by the TID by resolution of the its Board of Trustees and subject to the LPA Federal Local-Let Project Agreement, No. 27074, PID No. 98552 with ODOT, in the form on file with the ODOT and the TID, referred to as the "LPA Agreement".

"Monroe Council" means the City Council of the City of Monroe, Ohio.

"Monroe Pledged Amount" means Monroe's funding commitment and explicit agreement to provide for the following: i) $15,124.00 as its share of Detailed Design engineering cost funding, which has been paid by Monroe as of the date of this Agreement; ii) $225,000.00 as and for the cost to acquire Project right-of-way interests and related acquisition costs required to construct the Project; iii) $188,782.00 as its requisite local share match cost portion so as to access the Federal STP funding for construction for the Project; and iv) $60,000.00 as its share of the TID Management Fee, all as further set forth and by such dates as set forth in Exhibit A attached hereto and made part hereof, all of which are to be paid to the TID from available revenue sources, which includes, but is not limited to, Monroe's General Fund Revenues, and in no event shall the TID bid and award any construction services contract for the construction of the

Project until the Local Share Amounts are deposited with the TID or as otherwise required.

"ODOT" means the Ohio Department of Transportation, an agency of the State.

"OKI" means the Ohio Kentucky Indiana Regional Council of Governments, the designated Metropolitan Planning Organization (MPO) responsible for transportation planning in Butler County.

"ORC" means the Ohio Revised Code, as the same may be amended from time to time.

"Overage Funding" means additional funding required for Project Costs in excess of the Local Share Amounts and sources and amounts of Project Funding, as described herein and specifically set forth on Exhibit A attached hereto and made part hereof, and if its determined to be required by the Parties for the completion of the Project Work, such funding shall be committed and provided for by Monroe and Middletown, in equal shares, or such other amounts, as determined necessary by the Parties to complete the Project and subject to any appropriate or required action by Middletown and Monroe Councils.

"Party" means, individually, either Monroe or the TID; and *"Parties"* means, collectively, Monroe and the TID.

"Project Costs" means the costs currently estimated to be in the amount of $3,192,098, required to complete the Salzman Road Extension Project, including, but not limited to, detail design and related engineering work, utility relocation/right-of-way acquisition and construction and construction engineering and inspection and the TID Management Fee, which costs may be subject to change due to right-of-way or construction costs thus requiring Overage Funding.

"Project Funding" means the funding as set forth herein required to complete the Salzman Road Extension Project and further specified on Exhibit A attached hereto and made part hereof, and, in the event required and to the extent applicable, any required Overage Funding.

"Project Work" means detail design and related engineering work, utility relocation/right-of-way acquisition and construction and construction engineering and inspection for the Salzman Road Extension Project.

"Salzman Road Extension Project" or the "Project" means certain roadwork improvements including the extension of Salzman Road, from its current northern terminus, to tie into the existing western intersection of Yankee Road and Todhunter Road and as further described and delineated in plans/documents on file with the TID, ODOT, OKI, Monroe and Middletown.

"State" means the State of Ohio.

"Term" has the meaning given to such term in Section 4.01.

"TID" means The Butler County Transportation Improvement District, a transportation improvement district and a body both corporate and politic created by the Board of County Commissioners pursuant to ORC § 5540.02.

"TID Management Fee" means the fee agreed upon by the Parties herein, in an amount equal to Three (3%) Percent of the total Salzman Road Extension Project cost, incurred from the effective date of this Agreement to completion, currently estimated in an amount of $3,102,098.00, which the TID shall be entitled to only in the event the project moves beyond the Project Work and right-of-way and construction funding is obtained for the Salzman Road Extension Project.

"Trustees" means the Board of Trustees of the TID.

Section 1.02. Exhibits.

(a) The following Exhibit is attached to and made a part of this Agreement: *Exhibit "A" Salzman Road Extension Project Funding Summary*

Section 1.03. References to Parties. Any reference in this Agreement to Middletown, Monroe or their Councils, the Trustees or the TID, or to any officers of Middletown, Monroe or the TID, 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 1.04. 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 Middletown, Monroe, or the TID under this Agreement.

Section 1.05. 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 1.06. 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 1.07. 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 1.08. 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, including any exhibit hereto, 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 1.09. 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 TID and Monroe have acknowledged and agreed herein, and Middletown as well by separate action and agreement, that it is essential to the welfare of the people of the County, and Middletown and Monroe, that the Parties cooperate to the greatest extent practical in the development, funding and construction of the Salzman Road Extension Project which will contribute to the improvement of the prosperity, health, safety, and welfare of all of the people of the County, including Monroe and Middletown, and Monroe consents and approves of the TID's administration and management of the Salzman Road Extension Project Work.

Section 2.02. General Agreement Regarding Funding. The Parties acknowledge and agree as follows:

(a) Monroe specifically agrees to make payment of the Monroe Pledged Amount to the TID in the amounts and by the dates set forth on the Salzman Road Extension Project Funding Summary, attached hereto as Exhibit A and made part hereof.

(b) The TID explicitly agrees to:

i) administer and manage the Project Work, in coordination and collaboration with Middletown and Monroe, and perform as LPA all related responsibilities as thereby required or appropriate, including, but not limited to, the management, administration and performance of all activities required to complete the Project Work; and

ii) were Overage Funding actually to be required, only utilize any Overage Funding pledged hereby and in (a) above for the Project Costs and will allocate those funds so designated for the Project Work further in accordance with Section 2.05 below.

(c) In the event the TID does not receive the payment due pursuant to (a) above, the TID will immediately notify Monroe in writing, by both facsimile transmission and via electronic mail, that a required payment has not been made and that the payment is due immediately.

(d) Monroe further agrees that, notwithstanding any other provision of the Agreement, including Section 4.02, Monroe's commitments to make payment of any portion of the Monroe Pledged Amount to the TID, as set forth herein, will continue and shall survive any termination of the Agreement until full payment of any portion that may be outstanding and due of the Monroe Pledged Amount committed for the Project Funding is accordingly made.

(e) 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. Additional Agreements of the TID. As long as this Agreement remains in effect, the TID may contribute the following:

(a) such additional funds as the Parties may mutually agree, at any time and from time to time, shall be necessary to the planning, coordination, implementation and construction of the Salzman Road Extension Project; and

(b) such services of or obtained through the TID as the Parties may mutually agree, at any time and from time to time, shall be necessary for the planning, development, coordination, implementation and construction of the Salzman Road Extension Project.

Section 2.04. Additional Agreements of Monroe. As long as this Agreement remains in effect, Middletown and Monroe may contribute to the TID the following:

(a) such loans, contributions and grants as the Parties may mutually agree, at any time and from time to time, shall be necessary for or in aid of the planning, development, design, construction, maintenance, or repair of the Salzman Road Extension Project; and

(b) such other aid or contributions of money, property, labor, or other things of value as the Parties may mutually agree, at any time and from time to time; *provided, however*, that any such loans, grants, and contributions to the TID shall be held, used, and applied by the TID only for the purposes for which such loans, grants, and contributions are made.

Section 2.05. Application of Monroe Pledged Amount.

(a) The TID will apply the Monroe Pledged Amount for the sole purpose of paying costs and expenses related to the Project Work as set forth herein.

(b) The Project Funding shall be deposited and maintained by the TID in such accounts and accounted for as mutually agreed upon and authorized by the Parties and in accordance with all applicable laws, regulations, agreements, covenants, and accepted accounting standards.

(c) The Parties acknowledge and agree (1) that the Monroe Pledged Amount constitute a commitment of Project Funding by Monroe; and, (2) that the TID is relying upon the Project Funding commitment to facilitate and complete the Project Work, and will utilize the Project Funding solely to pay for the Project Work and the Parties respective and collective obligations and responsibilities in connection with the Salzman Road Extension Project Work and costs directly related thereto, and in accordance with ORC Chapter 5540 and other applicable law and agreements.

Section 2.06. 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 TID is and shall at all times be an independent contractor, free and clear of any dominion or control by the other Party, except as specifically provided herein. The number of employees, consultants and contractors used by the TID in the performance of its obligations hereunder, their selection, and the hours of labor and the compensation for services performed shall be reasonably determined by the TID in good faith and in the best interests of the successful completion of the Project Work. 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 Monroe or the TID or (2) preclude either Party from entering into other agreements with respect to matters not specifically addressed in this Agreement.

Section 2.07. 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 Monroe Council or any member of its Council or the TID Board or any member of the TID

Board, 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 2.08. Liability of the Parties. Neither Party shall have any liability to another 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.

Section 2.09. 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 TID. To induce Monroe to enter into this Agreement, the TID represents to Monroe as follows:

(a) it is a transportation improvement district and a body both corporate and politic duly organized and validly existing under the laws of the State;

(b) it has full power and authority to execute and 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 TID and the Trustees; and this Agreement, when executed and delivered by the TID, will constitute a legal, valid, and binding obligation of the TID; and

(d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the TID or (2) result in a default under any agreement or instrument to which the TID is a party or by which it is bound.

Section 3.02. Representations of Monroe. To induce the TID to enter into this Agreement, Monroe Council represents to the TID as follows:

(a) it is the duly constituted and duly elected governing body of Monroe 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 Monroe; and this Agreement, when executed and delivered by Monroe Council, will constitute a legal, valid, and binding obligation of Monroe;

(d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to Monroe or (2) result in a default under any agreement or instrument to which either the Monroe Council or the Monroe is a party or by which either the Monroe Council or Monroe is bound; and

(e) the pledge of the Monroe Pledged Amount by Monroe is a pledge of the full faith and credit of Monroe and shall be included in the calculation of debt limitations as they relate to Monroe.

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; provided, that if any amendment, alteration modification or discharge affects the rights and interests of the Insurer, such amendment, alteration, modification or discharge shall be subject to the prior written consent of the Insurer. 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 _____ __, 2016 to and including _____ ___, 2018 (the "Term").

Section 4.02. Termination. So long as any amount of the Project Funding is outstanding and unpaid, this Agreement shall not be terminated. If no Project Funding is outstanding, this Agreement will terminate, prior to the expiration of the Term, upon the occurrence of any of the following events:

(a) the mutual agreement of the Parties to terminate this Agreement with respect to the funding of the Project Work; or

(b) the completion of the Project Work and upon full payment of the Project Funding.

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. Any condition, term, or covenant in this Agreement that is not complied with will be considered a breach.

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 TID pursuant to this Agreement shall be sent to the TID at the following address:

The Butler County Transportation Improvement District
Attention: David L. Spinney, Director
1921 Fairgrove Avenue
Hamilton, OH 45011
Facsimile: (513) 785-3452
Electronic Mail: dspinney@bctid.org

(c) All notices to be given to Monroe pursuant to this Agreement shall be sent to Monroe at the following address:

City of Monroe
Attention: William J. Brock, P.E./CM City Manager
233 South Main Street
Monroe, OH 45050
Telephone: (513) 539-7374, option 7
Electronic Mail: brockb@monroeohio.org

(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.

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.

THE CITY OF MONROE, BUTLER COUNTY, OHIO

By:_____
City Manager

By:_____
Finance Director

THE BUTLER COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

By:_____
Secretary-Treasurer

FISCAL OFFICER'S CERTIFICATE

The undersigned, the Fiscal Officer of City of Monroe, Butler County, Ohio, hereby certifies that the moneys required *(if any)* to meet the obligations of the City of Monroe for the year 2014 under the foregoing Intergovernmental Agreement have been lawfully appropriated and are in the treasury of City of Monroe or are in the process of collection to the credit of an appropriate fund free from any previous encumbrances. Pursuant to ORC § 5705.44, the Fiscal Officer of City of Monroe, Butler County, Ohio covenants that any requirement herein of an expenditure of the City of Monroe, Ohio money in any future fiscal year will be subject to approval by City Council in the annual appropriation for that future fiscal year. This Certificate is given in compliance with ORC § 5705.41 and § 5705.44.

Dated: _____, 2016

_____

_____, Fiscal Officer
City of Monroe, Ohio

EXHIBIT A

"Salzman Road Extension Project Funding Summary"

Source	Detailed Design	ROW	Construction	TID Fee	TOTAL
City of Monroe	$15,124	$225,000	$188,782	$60,000	$488,906
City of Middletown	$15,124		$195,316	$30,000	$240,440
TID Grants 1 and 2	$237,500		$500,000		$737,500
OKI STP			$1,682,252		$1,682,252
BCEO			$43,000		$43,000
TOTAL	**$267,748**	**$225,000**	**$2,609,350**	**$90,000**	**$3,192,098**

1) Detailed design contract remains open through construction. The $267,748 is the projected cap.
2) Right of Way remains an estimate until there is settlement.
3) Construction funds are based upon 2016 estimate.
4) TID fee is 3% of project cost, capped at $90,000.

City of Monroe Funding Draw:

$ 15,124 upon execution (design)
$225,000 September 1, 2016 (right of way)
$188,782 March 1, 2017 (construction)
$ 30,000 July 1, 2017
$ 30,000 upon project completion