

ORDINANCE NO. 2018-079

AN ORDINANCE AUTHORIZING THE SAFETY DIRECTOR OF THE CITY OF FINDLAY, OHIO, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE MAUMEE WATERSHED CONSERVANCY DISTRICT FOR A FLOOD MITIGATION BENCHING PROJECT, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Findlay, State of Ohio, two-thirds (2/3) of all members elected thereto concurring:

SECTION 1: That the Safety Director of the City of Findlay, Ohio be and he is hereby authorized to enter into a Memorandum of Understanding with the Maumee Watershed Conservancy District for maintenance of flood reduction area and replacement of a section of sanitary sewer with the Maumee Watershed Conservancy District providing all labor necessary to construct same improvement.

SECTION 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the City of Findlay, Ohio, and for the further reason it is immediately necessary to enter into said MOU so that said flood reduction efforts may proceed.

WHEREFORE, this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


PRESIDENT OF COUNCIL


MAYOR

PASSED September 4, 2018

ATTEST Denise DeVore
CLERK OF COUNCIL

APPROVED September 4, 2018

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN THE HANCOCK COUNTY COMMISSIONERS,
THE CITY OF FINDLAY, OHIO AND THE MAUMEE
WATERSHED CONSERVANCY DISTRICT**

I. BACKGROUND:

The Maumee Watershed Conservancy District (MWCD), a watershed district formed pursuant to Chapter 6101 of the Ohio Revised Code, has received detailed plans for flood mitigation improvements in the City of Findlay (the City).

The detailed plans call for the following improvements: 1) Removal of four (4) low head dams in the River between Broad Avenue and Lye Creek and replacing said dams with riffle structures; and, 2) Widening of the flood plain bench on the north side of the River downstream of the Norfolk & Southern Railroad bridge to Broad Avenue.

In November, 2009, the voters of Hancock County (the County) passed a ¼% Sales Tax whose proceeds are dedicated to flood mitigation in Hancock County. This Memorandum of Agreement shall serve as notice by the Hancock County Commissioners to provide said ¼% Sales Tax to the MWCD to cover the costs of completing the tasks described in the preceding paragraph.

II. MWCD DUTIES AND REQUIREMENTS:

A. Use of Funds. MWCD shall use the funds under this Agreement for the purpose of contracting with Helms & Sons Excavating of Findlay, Ohio in the amount of \$ 6,087,501.50 for the construction of the recommended improvements and for administrative expenses incurred by the MWCD to support the project.

B. Disbursements. In lieu of levying assessments as prescribed in ORC 6101.48, the MWCD shall submit disbursement requests to the County, which shall determine whether the submitted costs are allowable under this Agreement. Upon approval of the disbursement, the County will transmit funds to MWCD.

C. Inspection of Constructed Facilities. The MWCD shall periodically inspect the constructed Hydraulic Improvements to ensure they match the constructed dimensions and conditions. Should the MWCD determine the City has not met the maintenance requirements described in Section IV(C) of this agreement, the MWCD shall bring the constructed facilities into compliance and shall assess the City for the cost of said compliance.

D. Catastrophic Damages. In the event a catastrophic flood causes damage to the Hydraulic Improvements constructed under this agreement, the cost of which exceeds \$100,000 to return the Hydraulic Improvements to their original constructed condition, the MWCD agrees to examine the cause, address any needed design changes, contract for

the necessary repairs and assess the cost of said repairs to the City. The City shall be responsible for contracting and paying for any damages that are less than \$100,000.

Repair costs contracted by MWCD under this provision shall be limited to those improvements required for maintaining hydraulic capacity. Public improvements placed in the area by the City for aesthetic or recreational purposes shall be repaired/replaced by the City as deemed necessary by the City.

E. Future Projects. In the event other flood mitigation projects are constructed within Hancock County under the auspices of MWCD that require long term maintenance of constructed facilities, the MWCD shall consider accepting maintenance responsibility of the Hydraulic Improvements constructed under this agreement. This requirement shall be void in the event a sub-district or equivalent is established for said management and maintenance of the Hydraulic Improvements.

F. Representations, Warranties and Covenants. MWCD is a subdivision of the State of Ohio with all the requisite power and authority to construct, or provide for the construction of, and operate the Project under the laws of the State and to carry on their activities as now conducted. MWCD has the power to enter into and perform its obligations under this Agreement and have been duly authorized to execute and deliver this Agreement. MWCD is not the subject of nor has it initiated any claim or cause of action that would give rise to any liability which would in any way inhibit the ability of MWCD and to carry out the performance of the terms of this Agreement.

III. HANCOCK COUNTY DUTIES AND REQUIREMENTS:

A. Funding. In compliance with Section II(B), the County shall provide funding to the MWCD through the ¼% Sales Tax adopted for the purpose of flood mitigation improvements in Hancock County. The County's financial obligation under this agreement shall be **\$ 5,543,381.00** which is the as-bid price for the County's share of the project. Should there be change orders necessary to complete the construction, the County shall amend this amount by Resolution as an addenda to this agreement.

B. Property Access. The County agrees to permit the MWCD and its agents or assigns access across any properties owned by the County that may be impacted by the recommended improvements.

IV. CITY OF FINDLAY DUTIES AND REQUIREMENTS

A. Property Access. The City to permit the MWCD and its agents and assigns access across any properties owned by the City that may be impacted by the recommended improvements. Any costs associated with repair or damage to City property resulting from said access shall be the responsibility of the MWCD.

B. Property Use. The City agrees to provide permanent easements to the MWCD for any improvements that may be constructed on property owned by the City and further agrees to abide by any restrictions or covenants included in those easements.

C. Maintenance of Constructed Facilities. The City agrees to perform the permanent maintenance of the facilities described in Section I of this agreement to comply with the as constructed dimensions and conditions. Should the City fail to meet this obligation, the MWCD shall notify the City in writing within 30 days of any inspection that detects a maintenance issue. The City shall then rectify or provide an appropriate course of action to bring the facilities into compliance with the constructed dimensions and conditions. Should the City fail to meet the maintenance schedule, the MWCD shall have said maintenance performed and shall assess the City for the cost associated with the required maintenance. Routine maintenance shall include: 1) periodic mowing of the grassed area in the bench widening; 2) maintenance and/or replacement of trees planted as the riparian buffer along the north side of the River for the length of the bench widening; and 3) periodic replacement of rip-rap at the constructed riffle structures. The contractor for the Hydraulic Improvements will be required to warrant the work for one (1) year after completion of the improvements. The City's only maintenance concern during the warranty period will be periodic mowing.

D. Funding for Sanitary Sewer Improvements. The City agrees to provide funding in the amount of \$ 634,120.50 which is the as-bid price for the cost of replacement of existing sanitary sewers identified in the construction plans and contract documents. The City shall deposit the as-bid price with the County in order to cover the full contractual obligation to the Contractor. Should there be change orders necessary to complete the construction, the City shall amend this amount by Ordinance as an addenda to this agreement.

E. Construction Inspection of Sanitary Sewer Improvements. The City agrees to provide, at its own expense, construction inspection services for the replacement of existing sanitary sewers identified in the construction plans and contract documents.

F. Relocated Bike Path. The City and the Hancock Park District (HPD) have an existing agreement whereby the HPD maintains the existing bike path that traverses the project site from North Cory Street to Fox Street. A portion of the existing path will be relocated as part of the proposed improvements. The City and HPD shall abide by the terms of their existing agreement to ensure the relocated bike path continues to receive proper maintenance.

V. GENERAL TERMS

A. Liability. Each party to this Agreement shall be responsible for its own acts and omissions and those of its officers, employees and agents. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

B. Effective Date. This Agreement shall become effective by the date of last signature.

C. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State. In the event any disputes related to this Agreement are to be resolved in a Court of Law, said Court shall be located in the courts of Franklin County, State of Ohio.

D. Entire Agreement. This Agreement and its Appendices and Attachments contain the entire understanding between the parties and supersede any prior understandings, agreements, proposals, and all other communications between the parties relating to the subject matter of this Agreement, whether such shall be oral or written.

E. Assignment. Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by any party hereto without the prior written consent of the other parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date shown below.

SIGNATORIES:

Brian J. Robertson, Chairman
Board of Hancock County Commissioners

Date

Timothy K. Bechtol, Member
Board of Hancock County Commissioners

Date

Mark D. Gazarek, Member
Board of Hancock County Commissioners

Date

Approved as to form:

Lucinda M. Land
Assistant County Prosecutor

Date

Richard Ricker, Chairman
Maumee Watershed Conservancy District


Date

George Ropp, Board Member
Maumee Watershed Conservancy District

Date

Mark Moats, Board Member
Maumee Watershed Conservancy District

Date


Lydia Mihalik, Mayor
City of Findlay, Ohio

9/4/2018
Date

Approved as to form:


Donald J. Rasmussen
City of Findlay Law Director

9/4/2018
Date