

**ORDINANCE NO. 2019-064**

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, OHIO TO ENTER INTO AN AGREEMENT WITH THE MAUMEE WATERSHED CONSERVANCY DISTRICT AND THE OHIO DEPARTMENT OF NATURAL RESOURCES FOR THE CONTINUATION OF FLOOD MITIGATION EFFORTS, AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Findlay is desirous to enter into an agreement with the Maumee Watershed Conservancy District (MWCD) and the Ohio Department of Natural Resources (hereinafter referred to as ODNR) in an effort to obtain fifteen million dollars (\$15,000,000) in capital funding from the State of Ohio to be utilized on continued flood mitigation efforts, and;

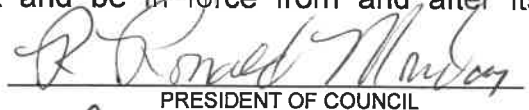
WHEREAS, ODNR has agreed to allow the City to use the money spent on the local benching project as a match against said appropriation so long as the City agrees to a fifteen (15) year commitment of owning and maintaining said property.

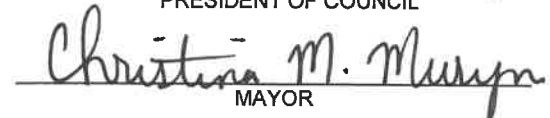
BE IT ORDAINED by the Council of the City of Findlay, State of Ohio, two-thirds (2/3) of all members elected thereto concurring:

SECTION 1: That the Mayor of the City of Findlay, Ohio be and she is hereby authorized to enter into an agreement with the Maumee Watershed Conservancy District and Ohio Department of Natural Resources for the continuation of flood mitigation efforts.

SECTION 2: 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 agreement with the Maumee Watershed Conservancy District and the Ohio Department of Natural Resources in order to obtain capital funding from the State of Ohio to be utilized for flood mitigation efforts.

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

  
PRESIDENT OF COUNCIL

  
MAYOR

PASSED August 20, 2019

ATTEST   
CLERK OF COUNCIL

APPROVED August 20, 2019

**AGREEMENT BY AND BETWEEN  
THE MAUMEE WATERSHED CONSERVANCY DISTRICT,  
THE CITY OF FINDLAY, OHIO  
and  
STATE OF OHIO  
DEPARTMENT OF NATURAL RESOURCES**

This Agreement is made between the **Maumee Watershed Conservancy District (MWCD)** (the "Grantee"), of 1464 Pinehurst Drive, Defiance, Ohio 43512, the **City of Findlay, Ohio (City)** (the "Intermediary") of 308 Dorney Plaza, Findlay, Ohio 45840, and the **State of Ohio, Ohio Department of Natural Resources ("ODNR")**, of 2045 Morse Road, Columbus, Ohio 43229. This Agreement is further made as an ancillary accommodation to payment and performance of the grant agreement, relating to the Project, to be entered into by and between ODNR and the Grantee, a true copy of which shall be provided by Grantee to Intermediary.

1. The Project.

This Agreement and the Grant Agreement each relate to a project (the "Project") for the construction, improvement and operation of the **Eagle Creek Dry Storage Basin** located at or near 11500 Township Road 49, Findlay, Ohio (the "Facility").

2. Termination.

This Agreement shall terminate contemporaneously with the Grant Agreement. ODNR may, at any time after execution of this Agreement, upon 30 days written notification, terminate all or any portion of the Project.

3. Easement Provisions.

The Intermediary agrees to a 15 year commitment of maintaining property (shown on Exhibit A) owned by the Intermediary in compliance with a Memorandum of Agreement (shown as Exhibit B) through which the Grantee is constructing the Hydraulic Improvements, Phase 1. The construction cost of the Hydraulic Improvements, Phase 1 shall serve as the 20% match for the \$ 15 million grant provided by the State of Ohio for the Project.

4. Invoice Requirements.

A proper invoice must include the following information and/or attached documentation:

- (1) Name and address of Grantee: Maumee Watershed Conservancy District, 1464 Pinehurst Dr, Defiance, OH 43512
- (2) Federal Tax Identification Number of Grantee: 34-6401821
- (3) Invoice remittance address of Grantee: 1464 Pinehurst Dr, Defiance, OH 43512
- (4) The purchase order number authorizing the delivery of materials, supplies or services.
- (5) Description including time period, and when applicable, unit price, quantity and total price of materials, supplies or services actually delivered or rendered as specified in the purchase order.

If an invoice contains a defect or impropriety and/or it is not a proper invoice as defined in this section, a written notification and the improper invoice shall be sent to the invoicing business

concern at the address designated within fifteen calendar days after receipt of the invoice. The notice shall contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety.

5. Property Ownership.

Intermediary will own the property on which the Hydraulic Improvements, Phase 1 is undertaken and on which the Hydraulic Improvements, Phase 1 is constructed (the "Property") during the construction of the Hydraulic Improvements, Phase 1 and after its completion. ODNR shall have the right to occupy and use the Property in accordance with Section 9 of the Grant Agreement.

6. Non-Discrimination provision

Pursuant to RC 125.111, Grantee and Intermediary agree that neither Grantee, Intermediary nor any person acting on behalf of Grantee or Intermediary will discriminate, by reason of race, color, religion, sex, age, disability, military status as defined in Section 4112.01 of the Ohio Revised Code, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Grantee and Intermediary further agree that neither Grantee, Intermediary nor any person acting on behalf of Grantee or Intermediary, shall discriminate in any manner against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability, military status as defined in Section 4112.01 of the Ohio Revised Code, national origin, or ancestry. Grantee and Intermediary agree to comply with all pertinent provisions of Section 125.111 of the Ohio Revised Code.

7. OBM Certification

In accordance with Section 126.07 of the Ohio Revised Code, obligations of the ODNR under this Agreement shall not be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. If the Ohio General Assembly fails to continue funding for expenditures hereunder, this Agreement will terminate as of the date that the funding expires, and the state will have no further obligation to make any payments.

8. Independent Contractor and Ohio Retirement System Retirant.

Unless Grantee and/or Intermediary are "business entities" as that term is defined in R.C. § 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Grantee and Intermediary shall have any individual performing services under this Agreement complete and submit the Independent Contractor Acknowledgment attached hereto as Exhibit A to ODNR. Grantee and/or Intermediary's failure to complete and submit attachment at the time Grantee and Intermediary execute this Agreement shall serve as Grantee and/or Intermediary's certification that they are a "business entity" as that term is defined in R.C. § 145.037.

9. Drug Free Workplace

Grantee and Intermediary each agree to comply with all applicable state and federal laws

regarding drug-free workplace. Grantee and Intermediary shall make a good faith effort to ensure that all their employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

10. Ohio Elections Law

Grantee and Intermediary each affirm that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

11. Compliance with Laws

Grantee and Intermediary each agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. Grantee, Intermediary and their respective employees are not employees of ODNR with regard to the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, and state revenue and tax laws. Grantee and Intermediary accept full responsibility for payment of any and all taxes, insurance premiums, or payroll deductions required for all employees engaged by Grantee and Intermediary in the performance of the work authorized by this Agreement, including without limitation, unemployment compensation, workers' compensation, and all health care, income tax, social security, and Medicare deductions. ODNR is exempt from federal, state, and local taxes and shall not be liable for any taxes under this Agreement.

This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect, including, without limitation, Revised Code Section 149.43. To the extent that ODNR 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.

12. Self-insurance

The State of Ohio is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollars per occurrence in accordance with section 9.87 of the Ohio Revised Code.

13. Liability

The parties agree that Grantee and Intermediary shall be solely responsible for any and all claims, demands, or causes of action arising from their respective obligations under this Agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement. It is specifically understood and agreed that ODNR does not indemnify Grantee or Intermediary. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.

14. Findings for Recovery  
Grantee and Intermediary each affirmatively represent and warrant to ODNR that they are not subject to a finding for recovery under R.C. 9.24, or that they have taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. Grantee and Intermediary each agree that if this representation or warranty is deemed to be false, this Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by ODNR hereunder immediately shall be repaid to ODNR, or an action for recovery immediately may be commenced by ODNR for recovery of said funds.
15. Ethics  
Grantee and Intermediary, by signature on this document, each certify that they: (i) have reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Grantee and Intermediary each understand that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
16. Executive Order Requirements  
Grantee and Intermediary each affirm to have read and understands Executive Order 2019-12D issued by Ohio Governor Michael DeWine and signed and completed the Standard Affirmation and Disclosure Form (Exhibit B) and shall abide by those requirements in the performance of this Agreement and perform no services required under this Agreement outside of the United States. Executive Order 2019-12D is available @ (<https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>)
- Grantee and Intermediary also each affirm, understand, and agree to immediately notify the ODNR of any change or shift in the location(s) of services performed by the Grantee, Intermediary or their respective subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside of the United States.
17. Assignment/Delegation  
Neither Grantee nor Intermediary will assign any of its rights nor delegate any of their respective duties and responsibilities under this Agreement without prior written consent of ODNR. Any assignment or delegation not consented to may be deemed void by the ODNR.
18. Severability  
In case any one or more of the provisions previously contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Counterparts  
This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and taken together shall be deemed to be one and the same instrument. This

Agreement may be executed and delivered by facsimile or electronically in Microsoft Word or PDF format.

20. Resolution of Authorization

This Agreement has been authorized through an ordinance or resolution passed by the governing bodies of Grantee and Intermediary. A hand signed certified copy of the ordinance or resolution is attached to this Agreement.

IN TESTIMONY WHEREOF, the parties hereto have set their hands as of the date indicated below. This Agreement shall be effective as of the date on which the second of the two parties executes it.

GRANTEE:

ODNR:

OHIO DEPARTMENT OF NATURAL  
RESOURCES  
Office of Real Estate & Land Management

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

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

Chief, as Designee for:  
Mary Mertz, Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_

INTERMEDIARY:

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

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

Date: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_