

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2021- **4**

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF  
UNDERSTANDING WITH THE CUYAHOGA SOIL AND WATER  
CONSERVATION DISTRICT (SWCD) TO CARRY OUT MANDATED  
RESPONSIBILITIES RELATED TO THE NPDES STORM WATER PERMIT  
AND DECLARING AN EMERGENCY**

WHEREAS, by Ordinance 2020-16 the City of Middleburg Heights entered into a Memorandum of Understanding with the Cuyahoga Soil and Water Conservation District (SWCD) for providing technical assistance in implementing soil and water conservation measures; and

WHEREAS, the SWCD will continue the implementation of a conservation program that promotes best practices for pollution prevention and corresponds with the City's Municipal Separate Storm Sewer System permit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into a Memorandum of Understanding with the Cuyahoga Soil and Water Conservation District for services related to storm water pollution prevention and stormwater quality management at a cost not to exceed \$23,000, a copy of which is attached hereto and marked "Exhibit A".

Section 2: That there is hereby appropriated from the Service Department Miscellaneous Contracts Fund up to \$23,000 to implement this Ordinance.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 4: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City. Wherefore, provided this Ordinance receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 1-26-2021

David Bortolotto  
President of Council

Attest: Mary Ann Meade  
Clerk of Council

Approved On: 1-27-2021

Presented to Mayor: 1-27-21

Matthew J. Castella  
Mayor

	Yea	Nay
Bortolotto	<u>X</u>	_____
Ali	<u>X</u>	_____
Sage	<u>X</u>	_____
Meany	<u>X</u>	_____
McGregor	<u>X</u>	_____
Ference	<u>X</u>	_____
Grech	<u>X</u>	_____

I, Mary Ann Meade Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2021-4 adopted by the Council of the City of Middleburg Hts., on 1/26/21 was posted for a period of fifteen days, beginning 1/29/21 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meade  
Clerk

**CERTIFICATE**

I, Mary Ann Meade Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2021-4 passed on the 26<sup>th</sup> day of January 2021 by said Council.

Mary Ann Meade  
Clerk of Council

**MEMORANDUM OF UNDERSTANDING**  
**Between the Cuyahoga Soil and Water Conservation District**  
**and the**  
**City of Middleburg Heights**

This Memorandum of Understanding ("MOU") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), between the Cuyahoga Soil and Water Conservation District (SWCD) and City of Middleburg Heights ("City"), for assistance with technical assistance in implementing soil and water conservation measures.

**Purpose** – Implementation of a conservation program that promotes best practices for pollution prevention and corresponds with the City's Municipal Separate Storm Sewer System permit.

Recognizing the need for effective collaboration in protecting soil and water resources and in carrying out its mandated responsibilities, especially related to the National Pollutant Discharge Elimination System (NPDES) Storm Water Permit, the City and the Cuyahoga SWCD accept this agreement as the document which describes the process for exchange. Cooperation between these two units of government facilitates solutions to problems encountered by the City as it plans for the development/redevelopment and conservation of its environment and water quality improvements. The Ohio Revised Code, Chapter 940, describes the Cuyahoga SWCD's authority for engaging in this Mutual Agreement.

NOW, THEREFORE, the parties' understanding is as follows:

**Project Tasks**

The Cuyahoga SWCD and the City have mutually agreed to the scope of technical assistance related to pollution prevention on disturbed sites, including construction sites disturbing one or more acres of total land, including the entire area disturbed in the larger common plan of development or sale ( $\geq 1$  acre) as required under the NPDES rules. Construction activities disturbing less than one acre and not part of a larger common plan of development or sale of total land ( $< 1$  acre), and not covered under the NPDES rules, will be reviewed by the Cuyahoga SWCD as requested by the City.

The Cuyahoga SWCD will: (i) perform storm water pollution prevention plan (SWP3) reviews for proposed development, redevelopment and infrastructure renovation projects; (ii) perform abbreviated construction plan reviews, as requested by the City; (iii) perform field reviews of active construction projects; (iv) perform long-term maintenance field reviews of post-construction water quality facilities; and (vii) provide written technical advisory reports detailing plan review recommendations, site conditions, and recommendations for compliance and/or maintenance activities needed.

**NPDES, Minimum Control Measure 4 – Stormwater Pollution Prevention/Erosion & Sediment Control**

1. The Cuyahoga SWCD will provide technical assistance, related to storm water pollution prevention and stormwater quality management, as requested, including:
  - Preliminary site planning meetings or conference calls*
  - a. Review of development, redevelopment, and infrastructure renovation plans for compliance with NPDES rules (Ohio Revised Code 3745 39-04 (B) (1) through (6)) and the current edition of Ohio's Rainwater and Land Development standard guidance manual
  - b. Provide rapid field assessment of soils and soil quality; and
  - c. Provide an annual report of all activities undertaken (including copies of any other data collected).
  
2. The annual conservation program will include technical assistance related to NPDES covered construction activities of an estimated of:
  - a. 9-12 active construction sites ( $\geq 1$  acre)

- b. Initial SWP3 reviews, as received ( $\geq 1$  acre)
  - c. Subsequent SWP3 review, *as needed* ( $\geq 1$  acre)
  - d. Technical advisory inspections (field reviews) and reporting (12 per year per site) once construction begins
  - e. Plan reviews for abbreviated construction plans will be performed by request of the City.
3. Construction site activities \$16,500.00

### **NPDES, Minimum Control Measure 5 – Post Construction Stormwater Management**

- 1. As required under the MS4 Permit, the Cuyahoga SWCD will also provide annual inspections of all post construction stormwater control measures (water quality and water quantity basins):
  - a. Transition meetings will be held with SWCD staff, city personnel and site personnel to review long-term operations and maintenance needs, and reporting requirements
  - b. 30-35 water quality and 20-25 water quantity stormwater control measures, annual long-term maintenance field reviews, including rapid field assessment, of post- construction water quality facilities
  - c. Technical advisory inspection and reporting to the City and landowners with SCMs on their properties
  - d. Project file management
  - e. Mapping of facility locations
  - f. Maintenance program fact sheets, individual site assessments and training, when needed
- 2. Post-Construction Program-\$6,500

### **The Cuyahoga SWCD will also provide technical advice on planning issues, including:**

- a. Technical assistance on local legislation if the City pursues universal application of accepted best management practices at construction sites
- b. Sound *storm water* management
- c. Protection of sensitive natural areas
- d. General evaluation of sensitive areas such as creeks, floodplains, soils, slopes, wetlands, watersheds, woodlands, or other unique areas that are planned for development
- e. Recommendations for stream bank and wetlands restoration, slope erosion control; and
- f. Small drainage systems and wildlife habitat enhancements.

### **City's Role Related to Storm Water Pollution Prevention Activities**

- 1. The City will designate someone to serve as the City's liaison for the storm water pollution prevention program.
- 2. The City will recognize the environmental and economic functions of naturally vegetated open spaces, such as wetlands, stream corridors, ravines, woodlands, and fields as worthy of the City's protection as open space.
- 3. The City will utilize the Cuyahoga SWCD's technical assistance including plan reviews, project inventories, evaluations, and inspections of planned construction sites, water quality and water quantity basins or sensitive natural areas of concern.
- 4. The City will direct builders, developers, and consultants to the Cuyahoga SWCD for assistance on planning and conservation early in the concept planning stage of the construction planning cycle.

5. The City will adopt, apply, and enforce Cuyahoga SWCD recommendations by not authorizing commencement and/or issuing work stoppage and other remedies.
6. The City will provide the Cuyahoga SWCD with field surveys, proposed layouts, designs or meeting notices needed for adequate technical assistance in a timely manner.
7. The City recognizes that the Cuyahoga SWCD has no regulatory authority to enforce NPDES rules.

### **Agreed Procedures**

- The City agrees to grant an annual conservation appropriation to the SWCD for Storm Water Pollution Prevention programs implementation, not to exceed **\$23,000** per twelve-month period following the Effective Date and the Cuyahoga SWCD agrees to use the grant funds to provide a comprehensive conservation program for the City.
- The City and the SWCD will determine the most effective manner to appropriate the funds.
- The City will provide a resolution to the SWCD that acknowledges this working agreement and provides documentation to facilitate dispersal of funds to the SWCD on an annual basis.
- That the Cuyahoga SWCD is not granted regulatory authority in the Ohio Revised Code.
- That the Cuyahoga SWCD and the City will meet at least once a year to coordinate a work plan and exchange information.
- The Cuyahoga SWCD will provide the City with a written annual summary, relevant to its role, as outlined in this MOU.
- The *NPDES rules*, current edition of Ohio's Rainwater and Land Development standard guidance manual, and standards of the USDA, Natural Resources Conservation Service will be used in planning and application of conservation measures.
- That both parties will review quality of assistance and address concerns as they arise.
- There shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identify, genetic information, political affiliation, or military status when fulfilling the purpose of this engagement.
- The City recognizes the Cuyahoga SWCD's obligation to make its reports and other written materials available to the public on request in accordance with the Ohio Public Records Act.

### **Term, Renewal, Termination**

The term of this MOU shall commence on the date (the "Initial Effective Date") SWCD receives written notice from the City, in a form approved by SWCD and in accordance with Sections 5705.41 and 5705.44 of the Ohio Revised Code, as applicable, indicating that the City has agreed to provide funds, in an amount agreed to by the parties, to support SWCD's general operations for the following 12-month period (the "Initial City Notice"). The parties acknowledge, understand, and agree that any such funding shall be for the purposes of the District's general operations for a period of *12 calendar* months following the Initial Effective Date (the "Initial MOU Term") and that this MOU shall terminate on the 12-month anniversary of the Initial Effective Date in the event the City does not renew this MOU as set forth herein.

This MOU may be renewed by City for any 12-month period following the Initial MOU Term (a "Subsequent MOU Term") provided that the SWCD receives written notice, as described above (a "Subsequent City Notice"), not less than 30 days prior to expiration of the Initial MOU Term (the date the District receives a Subsequent City Notice, a "Subsequent Effective Date"), and shall continue to renew for any 12-month period provided that the SWCD receives a Subsequent City Notice not less than 30 days prior to expiration of any Subsequent MOU Term then in effect.

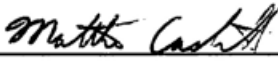
This MOU may be amended or terminated at any time by mutual consent of both parties or the agreement may be terminated by either party giving thirty (30) day's advance written notice to the other.

In witness thereof, the Memorandum executed and agreed to on the latest day, month and year written below:

Cuyahoga Soil & Water  
Conservation District

City of Middleburg Heights

\_\_\_\_\_

 \_\_\_\_\_

By: Sherri Lippus  
Chair

By: Hon. Matthew Castell  
Mayor

Date:

Date: