

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2022- **39**

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A PROJECT AGREEMENT  
WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT FOR THE  
PURPOSE OF MANAGING STORMWATER RUNOFF AND STREAM FLOW  
IMPROVEMENT WITHIN ABRAM CREEK  
AND DECLARING AN EMERGENCY**

WHEREAS, seven parcels along Smith Road have been identified for acquisition as a suitable location to construct a detention basin to control flooding; and

WHEREAS, the NEORS D has determined that the Regional Stormwater System would benefit from this detention basin and has agreed to provide funding toward the acquisition of the Parcels and various related costs for the purpose of advancing the goals of the District's Regional Stormwater Management Program; and

WHEREAS, the City and the NEORS D desire to enter into an agreement to memorialize the understanding of the parties with respect to the usage of District Funds.

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 an agreement, a copy of which is attached hereto and marked "Exhibit A", for Regional Stormwater Management Program funding to the City for stormwater runoff and stream flow improvement within Abram Creek.

Section 2: 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 3: 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. Such necessity exists by reason of the fact that it is immediately necessary to acquire property to construct a detention basin to control flooding and address the proper handling of stormwater runoff and stream flow improvement within Abram Creek. 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: 4/26/22

Attest: M. Meola  
Clerk of Council

Presented to Mayor: 4/27/22

David Bortolotto  
President of Council

Approved On: 4-27-22

Mathew Casutt  
Mayor

|            | Yea                                 | Nay                      |
|------------|-------------------------------------|--------------------------|
| Bortolotto | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Ali        | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sage       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Meany      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| McGregor   | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Ference    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Grech      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-39 adopted by the Council of the City of Middleburg Hts., on 4/26/22 was posted for a period of fifteen days, beginning 4/28/22 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola  
Clerk

**CERTIFICATE**

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2022-39 passed on the 26<sup>th</sup> day of April 2022 by said Council.

Mary Ann Meola  
Clerk of Council

**Project Agreement**

**between**

**Northeast Ohio Regional Sewer District**

**and**

**City of Middleburg Heights**

**for**

**The Acquisition of PPNs: 372-06-002, 372-06-003, 372-06-004, 372-06-026, 372-06-027, 372-06-028, and 372-06-029 Middleburg Heights**

**THIS AGREEMENT** is made this \_\_\_ day of \_\_\_\_\_, 2022, between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Board of Trustees Resolution No. 139-22, adopted April 21, 2022 (Exhibit “A”), and the City of Middleburg Heights (the “City”).

**RECITALS:**

WHEREAS, Permanent Parcel Numbers 372-06-002, 372-06-003, 372-06-004, 372-06-026, 372-06-027, 372-06-028, and 372-06-029 (the “Parcels”) have been identified for acquisition by the Advanced Stormwater Planning I project as a suitable location to construct a stormwater detention basin to control flooding in problem area ACPA-06

WHEREAS, the parties have agreed that the City will purchase, own, and maintain the Parcels, and the District will provide funding toward the acquisition of the Parcels and various related costs for the purpose of advancing the goals of the District’s Regional

Stormwater Management Program of addressing the proper handling of stormwater runoff and stream flow improvement within Abram Creek (the "Project"); and

WHEREAS, the District is authorized under Ohio Revised Code Section 6119.41 to enter into contracts or other arrangements with a drainage, conservation, conservancy, or other improvement districts for co-operation or assistance in planning, constructing, maintaining, using, and operating the works of the District; is authorized under Ohio Revised Code Section 6119.06 (P) to enter into contracts with any person or any political subdivision to render services to such contracting party for any service the District is authorized to provide; is authorized under Ohio Revised Code Section 6119.06 (F) to make grants to any person or political subdivisions for the acquisition or construction of water resource projects by such person or political subdivisions; and is authorized under Ohio Revised Code Section 6119.06 (O) to make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6119 of the Revised Code; and

WHEREAS, the District has determined that the Project would benefit the Regional Stormwater System and values the project management services provided by the City, therefore, the District has agreed to provide Regional Stormwater Management Program funding to the City for the Project; and

WHEREAS, the District's provision of Regional Stormwater Management Program funding to the City is contingent upon geo-technical and environmental studies supporting the District's construction of a stormwater detention basin on the Parcels.

WHEREAS, the Parcels and riparian areas will be managed by the City in accordance with the City open lands stewardship practices to protect and preserve the function of Abram Creek.

WHEREAS, the City will grant to the District a permanent stormwater easement over the entirety of the Parcels; and

WHEREAS, the parties desire to enter into this Agreement to memorialize the understanding of the parties with respect to the usage of the District Funds;

Now, therefore, in consideration of the foregoing, the District and the City agree to enter into this Agreement for the continued benefit of the Regional Stormwater System, as set forth below.

**ARTICLE 1.**            **OBLIGATIONS OF THE CITY**

1.1    Performance of the Project. The City shall be responsible for performance of the Project, which shall consist of the acquisition of the Parcels according to all Federal, State, and local laws. The City shall not be responsible for the design or construction of the stormwater detention basin. The City shall have the right to use the property for passive recreational purposes that do not interfere with the function or maintenance of the stormwater control measures constructed by the District.

1.1.1    Project Coordination. The City shall coordinate with the District's representatives during all critical stages and milestones of the Project. Upon completion of the Project, the City shall provide copies of the restricted deed language for the Parcels from the Project to the District, which shall include all recorded deed restriction documentation for the Parcels

1.1.2 Project Presentations. The City shall acknowledge the District in presentations or publications related to the Project.

1.1.3 Utilization of District Contribution. The City shall use 100% of the District Funds for activities and/or expenses related to performing the Project, as approved by the District. The City shall request payment from the District using the Payment Request Application and Verification (“PRAV”) document attached hereto as Exhibit “D.” The City shall keep all records and documents relevant to the Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and will be submitted upon request together with any other compliance information which may be reasonably required.

1.1.4 The City shall bear the risk and remain solely responsible for any payments made by The City to third parties for work not approved by the District.

1.1.4.1 After the PRAV form is submitted to the District it will be reviewed for completeness by the District contact listed in Exhibit “B.”

1.1.4.2 Upon successful review of the submission the District's Director of Watershed Programs will have the final review of the request for payment to occur.

1.1.4.3 Upon the final approval by the Director of Watershed Programs the PRAV will be processed for payment.

**ARTICLE 2. OBLIGATIONS OF THE NORTHEAST OHIO REGIONAL SEWER DISTRICT**

2.1 Disbursement of District Funds. The District agrees to disburse District Funds directly to the City, in a total amount not-to-exceed Two Hundred Sixty Thousand Dollars (\$260,000.00) for performing approved Project elements.

2.2 Timing of Payments. The District shall use best efforts to pay the City for any uncontested billings within forty-five (45) days of the District's receipt of each PRAV.

**ARTICLE 3. TERM**

3.1 Expiration of the Agreement

This Agreement shall expire upon successful completion of the obligations contained herein.

**ARTICLE 4. MISCELLANEOUS**

4.1 Execution in Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart, when so executed, shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

4.2 Severability

If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.

4.3 Headings

The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.

4.4 Relationship of Agreement to Exhibits

The Exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various Exhibits attached to this Agreement.

**ARTICLE 5.**        **EXHIBITS**

The following exhibits are attached hereto and incorporated herein:

1. Exhibit "A" – District's Board of Trustees Resolution
2. Exhibit "B" – Payment Request Accuracy Verification and Approval to Pay (PRAV)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



The parties listed below have entered into this Agreement as of the date first above written.

**NORTHEAST OHIO REGIONAL  
SEWER DISTRICT**

By: \_\_\_\_\_  
Kyle Dreyfuss-Wells  
Chief Executive Officer

AND: \_\_\_\_\_  
Darnell Brown  
President, Board of Trustees

**CITY OF MIDDLEBURG HEIGHTS**

By: Matthew Castelli; *Matthew Castelli*  
Title: Mayor

**This instrument prepared by:**

\_\_\_\_\_  
Katarina K. Waag  
Assistant General Counsel  
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

# AGREEMENT NO.

NORTHEAST OHIO REGIONAL SEWER  
DISTRICT

WITH

CITY OF MIDDLEBURG HEIGHTS

FOR

PROJECT AGREEMENT FOR PROPERTY  
ACQUISITION:  
(PPN 372-06-002, PPN 372-06-003, PPN 372-  
06-004, PPN 372-06-026, PPN 372-06-027, PPN  
372-06-028, PPN 372-06-029)

---

Total Approximate Cost:           \$260,000.00

---

The legal form and correctness of the within  
instrument are hereby approved.

---

ERIC J. LUCKAGE  
CHIEF LEGAL OFFICER

---

Date

## CERTIFICATION

It is hereby certified that the amount required to  
meet the contract, agreement, obligation,  
payment or expenditure, for the above, has been  
lawfully appropriated or authorized or directed  
for such purpose and is in the Treasury or in  
process of collection to the credit of the fund  
free from any obligation or certification now  
outstanding.

---

KENNETH J. DUPLAY  
CHIEF FINANCIAL OFFICER

---

Date

BUDGET CENTER 8100