

Resolution No. 2022-79

Introduced By: Mayor Matthew J. Castelli

**A RESOLUTION
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH
THE STATE OF OHIO, DEPARTMENT OF NATURAL RESOURCES FOR A
CAPITAL IMPROVEMENT PROJECT AWARD**

WHEREAS, the State of Ohio by the 134TH Ohio General Assembly through House Bill 687 has appropriated funds in the amount of \$104,000 for a capital improvement project grant for the "Middleburg Heights Memorial Hall Courtyard"; and

WHEREAS, the City of Middleburg Heights will use the capital improvement project grant in the amount of \$104,000 for the construction of a new, fully public outdoor courtyard area which will be located on the Middleburg Heights City Hall campus outside of the new Middleburg Heights Police Station. The new courtyard area will be used by various community, civic and school groups for civic meetings, public gatherings, memorial services, and other outdoor purposes.

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

Section 1: That the Mayor and his designees are hereby authorized to accept the capital improvement project grant and enter into an agreement with the State of Ohio, a copy of which is attached hereto and marked "Exhibit A", to use the grant funds in the amount of \$104,000 for the "Middleburg Heights Memorial Hall Courtyard", a project to construct a new, fully public outdoor courtyard area which will be located on the Middleburg Heights City Hall campus outside of the new Middleburg Heights Police Station.

STADINER

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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.

Passed: 9-27-22


President of Council

Attest: m meala
Clerk of Council

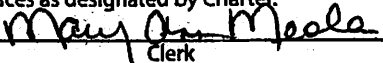
Approved On: 9-28-22

Presented to Mayor: 9-28-22


Mayor

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

I, Mary Ann Meala Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2022-79 adopted by the Council of the City of Middleburg Hts., on 9/27/22 was posted for a period of fifteen days; beginning 9/28/22 and remained so posted for fifteen days at the two posting places as designated by Charter.


Clerk

CERTIFICATE

I, Mary Ann Meala Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2022-79 passed on the 27th day of September 2022 by said Council.


Clerk of Council

**Capital Improvement Community Park, Recreation/Conservation Project
Pass-Through Grant Agreement
Ohio Department of Natural Resources**

This Community Recreation/Conservation Project Pass-Through Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the State of Ohio, Department of Natural Resources, (hereinafter referred to as "State" or "ODNR"), acting by and through its Director, pursuant to Sections 154.17, 154.22 and 1501.01 of the Ohio Revised Code ("R.C.") and House Bill No. 687, 134th General Assembly of the State of Ohio and the City of Middleburg Heights, an Ohio political subdivision (hereinafter referred to as "Grantee") acting by and through its authorized representative.

Notices: All notices, demands, requests, consents, approvals, and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand-delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email, and shall be respectively addressed as follows:

ODNR Contact: Teresa Goodridge Program Manager Ohio Department of Natural Resources Office of Real Estate & Land Management 2045 Morse Road, Building E-2 Columbus, Ohio 43229 Teresa.Goodridge@dnr.ohio.gov	Grantee Contact: Charles Bichara Director of Economic Development City of Middleburg Heights 15700 Bagley Road Middleburg Heights, OH 44130 cbichara@middleburgheights.com
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Notices shall be deemed given upon receipt thereof and shall be sent to the addresses appearing above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgment of receipt by the receiving party. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

WHEREAS, pursuant to House Bill No. 687, the 134th General Assembly of the State of Ohio has appropriated funds in the amount of One Hundred Four Thousand Dollars (\$104,000.00) to make a grant to the Grantee for the costs associated with the construction of a park and recreation or conservation facility in appropriation item C725E2, more fully described as 'Middleburg Heights Memorial Hall Courtyard', (hereinafter referred to as the "Project"). Furthermore, \$2,080.00 of the total Project appropriations will be used by ODNR for the administration of the Project. The Project reference number is **CUYA-081C**; and

WHEREAS, the General Assembly has identified the Parks and Recreation Improvement Fund (Fund 7035), created and existing under R.C. § 154.22(F), as the fund from which these monies will be disbursed; and

WHEREAS, pursuant to R.C. Chap. 154 and Article VIII, Section 2i of the Ohio Constitution, capital facilities lease-appropriation bonds (the "Bonds") have been or will be issued by the Ohio Treasurer of State (the "Treasurer") for the purpose of paying the "costs of capital facilities" including acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping, and furnishing capital facilities for parks and recreation, all as defined and described in R.C. § 154.01(K). A portion of those Bonds proceeds will be used by ODNR to provide funding to the Grantee for the Project under this Agreement. Because ODNR is funding the Project with proceeds of those Bonds, ODNR requires that the Grantee make certain representations, warranties, and covenants (both affirmative and negative) concerning the Project and use of the grant funds, as more fully described or provided in this Agreement, in order to comply with federal and state laws, regulations, and rules relating to those Bonds and the projects funded with proceeds of those Bonds.

NOW THEREFORE, for the purposes of providing the funds to Grantee pursuant to House Bill No. 687 of the 134th General Assembly, the parties hereto covenant and agree as follows:

- 1. Funding Amount.** ODNR agrees to provide the Grantee One Hundred One Thousand Nine Hundred Twenty Dollars (\$101,920.00), via qualifying advance and reimbursement, to be used toward the total cost of the Project. Two Thousand Eighty Dollars (\$2,080.00) of the amount appropriated for the Project will be retained by ODNR to cover administrative costs. In no event shall ODNR's payment to Grantee exceed One Hundred One Thousand Nine Hundred Twenty Dollars (\$101,920.00). Funds for this Project have been released by the Controlling Board as of _____ and encumbered by Contract Encumbrance Record Number _____ and are so certified by the Director of Budget and Management on _____. Obligations of the State are subject to the provisions of R.C. § 126.07. Any funds provided under this Agreement that are not spent shall be returned in full to the State.
- 2. Project Description.** The Grantee shall use the grant funds for 'Middleburg Heights Memorial Hall Courtyard', a project to construct an outdoor courtyard area at the Middleburg Heights Police Station in Middleburg Height, OH, all as more fully described in Exhibit A attached hereto.
- 3. Effective and Termination Dates.** This Agreement shall commence on the date that it is signed by ODNR (the "Effective Date") and will, unless otherwise earlier terminated as provided herein, expire on the later of: (i) 15 years from the date of the payment of the final Project reimbursement (or Project acquisition if the Project is solely for the acquisition of real property) ("Project Closeout"); or (ii) the date upon which the latest Bond issuance funding or refinancing of the Project is paid in full (the "Term"). Grantee shall complete the Project on or before June 30th, 2024.
- 4. No Restrictions of Record.** Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record or otherwise with respect to the Project, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the property as described in the Boundary Map attached hereto as Exhibit B, on which the Project will be located and developed as a public parks and recreation or conservation facility (the "Property") except for those restrictions permitted below. Grantee represents that it is the fee simple owner, or has a lease, exclusive easement, or cooperative use agreement with a term longer than the Term hereof, on the Property and that the only restrictions of record, or otherwise, with respect to the Property are: (a) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property, (b) dedicated public rights-of-way identified on Exhibit B, Boundary Map, and (c) the

encumbrances, items, and other matters identified in Exhibit C, Title Encumbrances. Grantee hereby represents and warrants that there are not now, and shall not cause there to be, any restrictions with respect to the Project or Property, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the Property as a public park, recreation facility, or conservation facility.

5. **Construction Services.** Grantee represents that it will contract for all construction services for the Project and will provide for construction administration. Grantee shall have the full authority to contract with third parties for the design and construction of the Project. Grantee shall secure all necessary permits and licenses for the Project. Grantee warrants that it will cause the Project to be constructed or acquired, as applicable, with all reasonable speed and reasonably adhere to any submitted development timeline. Grantee shall comply with all applicable federal and state requirements relating to the competitive selection of contractors and comply with its own competitive selection policies and procedures. If competitive selection for the Project is not required by law, to the extent reasonably possible as determined by Grantee, Grantee shall employ an open and competitive process in the selection of its contractors. Bid documents designed to be so restrictive to exclude open competitive bidding and bid documents that do not allow for "or equal" provisions may not be acceptable.
6. **Operation, Maintenance, and Upkeep.** Grantee shall be solely responsible for the operation, maintenance, and upkeep of the Project, and shall take all actions reasonably necessary to ensure that the Project is available to the public for the intended parks and recreation or conservation purpose during the Term. Failure to comply with this provision or any other provision of this Agreement may result in demand for repayment of all or a portion of the grant funds paid by ODNR to Grantee under this Agreement. The amount to be repaid will be calculated based on the ratio of (x), the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Bonds, over (y), the total number of months that the Bonds are scheduled to be outstanding. Grantee shall not make any grant repayment unless first consulting with ODNR, and ODNR shall not accept any repayment without first obtaining the approval of the Ohio Public Facilities Commission ("OPFC").
7. **Remittances.** If for any reason funds acquired through this Agreement are required to be paid, repaid, or remitted to the State, they shall be remitted in full by the Grantee within forty-five (45) days of demand to:

Ohio Treasurer of State
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Any such remittance shall include a copy of this Agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to ODNR.

8. **Conveyance of Interest in Project to ODNR.** As security for the performance of Grantee's obligations under this Agreement, Grantee hereby conveys to ODNR an interest in the Property, consisting of the right to use and occupy the Property and the facilities funded in whole or in part with grant funds under this Agreement upon default of this Agreement by Grantee. This interest shall remain in effect during the Term of this Agreement. Grantee hereby acknowledges and agrees that ODNR may assign

or convey such right to use and occupy such facilities to the OPFC or such other State agency selected by ODNR, and Grantee does hereby consent to such assignment or conveyance. In addition, ODNR has entered into a lease with OPFC relating to the Bonds and the Project; provided that, so long as Grantee shall not default under this Agreement, such lease shall not affect the Project or the use of the Property. ODNR acknowledges that, absent a default by Grantee, ODNR has no right to use or occupy the Property or Project. ODNR shall have the right during the Term hereof to enter upon the Property during normal business hours for purposes of inspection of the Project for compliance with this Agreement.

9. **Prohibition Against Disposition.** Grantee shall not dispose of all or any part of the Project or Property funded by ODNR through the Term of this Agreement without the prior written consent of ODNR and OPFC. All notices, demands, requests, consents, approvals, and other communications to OPFC shall be addressed as follows:

Ohio Public Facilities Commission
30 East Broad Street, 34th Floor
Columbus, Ohio 43215
Attn: Assistant Secretary

10. **Joint or Cooperative Use Agreement.** If the Property is owned by a separate nonprofit organization and made available to a state agency for its use or benefit, the nonprofit organization must either own, or have a long-term lease (for at least so long as the latest Bond issuance funding or refinancing of the Project have not been paid in full) of, the Property or other capital facility to be improved, renovated, constructed, or acquired and enter into a joint or cooperative use agreement, with and approved by the state agency that meets the requirements of H.B. 687, 134th General Assembly.
11. **Liability; Waiver of Liability.** Grantee shall be solely liable for any and all claims, demands, or causes of action arising from its 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 or the Project. It is specifically understood and agreed that ODNR does not indemnify Grantee. 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. Nothing in this Agreement shall be construed to be a waiver of any immunity of Grantee granted by statute 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. On and after the date of this Agreement, Grantee agrees not to seek any determination of liability against ODNR, OPFC, the Treasurer, or any department, agency, or official of the State in the case of claim or suit arising from the Project including the acquisition of the Property or any future condition, construction, operation, maintenance, or use of the Property or facilities which may be developed in relation to the Project. Grantee forever releases and waives any and all claims, demands, and causes of action it may ever possess or assert against ODNR and its employees, agents, officials, and attorneys arising from, or relating to, the Project.
12. **Insurance.**
- a. **Adequate Insurance.** Unless otherwise agreed to by ODNR in writing, Grantee shall maintain, or cause to be maintained, at no cost to ODNR, commercial general liability insurance and other

insurance, including casualty insurance, and if applicable, professional liability insurance, and builder's risk insurance, to insure ODNR, OPFC, the Treasurer, and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and for bodily injury, property damage, personal injury, advertising injury, and employer's liability exposures of Grantee. Unless otherwise agreed to by ODNR in writing, such insurance shall remain in force at all times from the Effective Date hereof through the Term of this Agreement.

- b. **Self-Insurance.** Instead of providing the general liability and casualty insurance above, Grantee may name ODNR, OPFC, the Treasurer, and the State as additional insureds and/or loss payees, as the coverage requires, under a self-insurance program or joint self-insurance pool created under R.C. §§ 2744.08 or 2744.081, respectively, and operated by or on behalf of Grantee, in order to meet the insurance requirements set forth herein.
13. **Bonded and Insured Employees and Agents.** Prior to any advance (but not reimbursement) payments by ODNR, Grantee will provide ODNR with a document that demonstrates that all employees or agents of Grantee who are responsible for maintaining or disbursing advanced funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds acquired by Grantee through this Agreement shall be spent to obtain that bonding or insurance.
14. **Public Funds Compliance.** Grantee will assure compliance with all applicable federal, state, and local laws and regulations pertaining to handling, management, and accountability in relation to public funds. All funds received by Grantee under this Agreement shall be deposited in one or more financial institutions that fully insure, secure, or otherwise protect the funds from loss through federal deposit insurance and/or other deposit and/or collateralization strategies that protect the funds against loss. If Grantee is a political subdivision of the State, grant funds shall be held in compliance with R.C. Chap. 135.
15. **Reports and Records.** Grantee will keep and make all reports and records associated with the Project funded under this Agreement available to the State Auditor, or the Auditor's designee, ODNR, and OPFC for a period of not less than eighteen (18) years after the date of Project Closeout. These reports and records shall include a description of the Project, a detailed overview of the scope of work, disbursement details (including amount, date, nature/object of expenditure), and vendor information. Grantee acknowledges that the Auditor of State and other departments, agencies, and officials of the State may audit the Project at any time, including before, during, and after completion. Grantee agrees that any costs of audit by the Auditor of State or any other department, agency, or official of the State will be borne exclusively by, and paid solely by, Grantee, and that the funds provided under this Agreement will not be used by Grantee for payment of any audit expenses for any reason at any time.
16. **Restrictions on Expenditures.** Grantee affirmatively states that Grantee is fully aware of the restrictions and guidelines for expending funds granted under this Agreement and intends to comply fully with the same. Grantee will implement appropriate monitoring controls to ensure that funds acquired through this Agreement are expended in accordance with all applicable laws, rules, and requirements.

17. **Determination of Ineligibility.** If it is determined by any audit by the Auditor of State or any department, agency, or official of the State or other agency or entity with legal audit authority that any Project expense is ineligible, or not properly documented, Grantee will repay that amount in full to the State.
18. **Equal Opportunity Compliance.** If Grantee is a political subdivision, Grantee shall comply with the requirements of R.C. § 125.111 for all contracts for purchases under the Project.
19. **Real Property Acquisition.** All appropriations of real property for the Project by Grantee shall be made pursuant to R.C. §§ 163.01 to 163.22, except as otherwise provided in R.C. Chap. 163.
20. **Prevailing Wage.** Except as provided in R.C. § 4115.04, monies appropriated or reappropriated for the Project shall not be used for the construction of public improvements, as defined in R.C. § 4115.03, unless the mechanics, laborers, or workers engaged therein are paid the prevailing rate of wages prescribed in R.C. § 4115.04. Nothing in this section affects the wages and salaries established for state employees under R.C. Chap. 124, or collective bargaining agreements entered into by the State under R.C. Chap. 4117, while engaged on force account work, nor does this section interfere with the use of inmate and patient labor by the State.
21. **Project Nondiscrimination.** Grantee agrees that any facilities that may be developed now or in the future on the lands comprising the Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, military status, handicap, or disability on the same terms and conditions.
22. **Employment Nondiscrimination.** Pursuant to R.C. Chap. 4112, Grantee agrees that Grantee and any person acting on behalf of Grantee or a contractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status as defined in R.C. § 4112.01, national origin, or ancestry against any citizen of this State in the employment of any person qualified and available to perform services relating to the Project. Grantee further agrees that Grantee and any person acting on behalf of Grantee or a contractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of services relating to the Project on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry. If required by R.C. § 125.111(B) and O.A.C § 123: 2-3-02, Grantee shall have a valid Certificate of Compliance (COC) from the Ohio Department of Administrative Services, Equal Opportunity Division demonstrating compliance with affirmative action program requirements.
23. **ODNR Right to Terminate.**
 - a. **Breach; Notice.** ODNR reserves the right to terminate this Agreement upon written notice to Grantee and to recover any funds distributed by Grantee to contractors or other payees in violation of the terms of this Agreement if Grantee is determined by ODNR to be unable to proceed with the Project, or if Grantee violates any of the terms herein.
 - b. **Opportunity to Cure.** ODNR, in its sole discretion, may permit Grantee to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. Notwithstanding ODNR permitting a period of time to cure the breach or Grantee's cure of the breach, ODNR does not

waive any of its rights and remedies provided to ODNR in this Agreement or as may be permitted by law.

24. Legal, Federal Tax, and Other Compliance.

- a. Reports of Expenditures. Grantee will assure that monies expended under this Agreement are spent in conformity with the intent and purpose of the appropriation, the limitations on use set forth in the legislation containing the appropriation, and R.C. Chap. 154 and all other laws that apply to the expenditure of monies by Grantee. If Grantee is required to submit an annual financial report to the Auditor of State, in accordance with Auditor of State Bulletin 2015-07, then Grantee shall report the funds it acquires through this Agreement as a separate column identified in a manner consistent with the Project description in appropriation item C725E2. If Grantee is not required to submit the aforementioned report, Grantee shall file an annual detailed expenditure report of all expenditures associated with the Project with the Auditor of State by March 1st every year until all funds provided in this Agreement have been spent. The above reports shall be filed in accordance with Auditor of State Bulletin 2015-07.
- b. Compliance with Employment Laws. Grantee agrees to comply with all applicable federal, state, and local laws and regulations, in the conduct of the Project and acknowledges that its employees are not employees of ODNR with regard to the application of the Ohio Public Employees Retirement law, Fair Labor Standards Act minimum wage and overtime provisions, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Ohio revenue and tax laws, Ohio Workers' Compensation Act, and Ohio unemployment compensation law.
- c. Compliance with Law; Preservation of Tax-Exempt Status of Bonds. Grantee agrees to use funds provided under this Agreement in accordance with the Ohio Constitution and any state or federal laws and regulations that may apply. Grantee shall repay ODNR any funds improperly expended. Additionally, Grantee agrees to comply with all requirements within its control necessary to preserve the tax status of all tax-exempt or tax-advantaged bonds, the proceeds of which are used to provide the funding to Grantee set forth in this Agreement. Unless otherwise determined by the OPFC, such requirements include, but are not limited to, ensuring that the funds provided under this Agreement finance capital expenditures (as opposed to operating expenses) and are not used to refund or otherwise refinance existing debt of Grantee. Grantee shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax status of tax-exempt or tax-advantaged bonds, and any other costs, resulting in whole or in part from actions taken by Grantee, including the failure of Grantee to comply with federal income tax laws applicable to such bonds. Grantee agrees to consult with OPFC if the Grantee is uncertain as to what expenditures are eligible to be financed with funds provided under this Agreement.

25. Relationship of Parties.

- a. Expenses. Grantee shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Grantee will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation

- coverage, if any, unless payment for any such item is specifically provided for herein or in the purchase order.
- b. **No Control Over Means and Methods.** While Grantee shall be required to perform its obligations described hereunder during the term of this Agreement, nothing herein shall be construed to imply, by reason of Grantee's obligations hereunder, that ODNR shall have or may exercise any right of control over Grantee with regard to the means or method of Grantee's performance of its obligations hereunder.
 - c. **Right to Bind.** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
 - d. **No Agency.** Neither Grantee nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the State of Ohio.
26. **No Finding for Recovery.** Grantee represents and warrants to the ODNR that it is not subject to a finding for recovery under R.C. § 9.24, or that it has taken appropriate remedial steps required under R.C. § 9.24 or otherwise qualifies under that section. Grantee agrees that if this representation or warranty is determined by ODNR to be false, this Agreement shall be void ab initio as between the parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid in full to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.
27. **Qualification to Receive Grant.** Grantee affirms that it is a duly authorized federal government agency, municipal corporation, county, or other governmental agency or nonprofit organization, qualified to receive grants under R.C. § 154.22(F). Grantee further affirms that if at any time during the Term of this Agreement, Grantee for any reason becomes disqualified from receiving grants under R.C. § 154.22(F), Grantee will immediately notify ODNR in writing and will immediately cease performance of the Project. Failure to provide such notice in a timely manner shall void this Agreement and may be sufficient cause for the State of Ohio to debar the Grantee from future state grant opportunities as may be permitted by law.
28. **Campaign Contributions.** Grantee hereby certifies that neither it, nor any person described in R.C. § 3517.13 (I) or (J), nor the spouse of any such person, has made, as an individual, within the two previous calendar years, one or more contributions to the governor or the governor's campaign committees totaling in excess of the limitations specified in R.C. § 3517.13.
29. **Ethics Certification.** Grantee, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in R.C. Chap. 102 and in R.C. §§ 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Grantee understands 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.
30. **Certification of Funds / Non-Appropriation.** It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. § 126.07, have been met, and until such time as all necessary funds are available or encumbered and,

when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that ODNR gives Contractor written notice that such funds have been made available to ODNR by ODNR's funding source.

31. **Time Is of The Essence.** Time is of the essence in this Agreement.

32. **Miscellaneous.**

- a. **Controlling Law.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the state of Ohio. Grantee consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- b. **Waiver.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- c. **Successors and Assigns.** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of ODNR.
- d. **Conflict with Exhibits.** In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- e. **Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- f. **Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially-enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- g. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- h. **Execution.** This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.
- i. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- j. **Electronic Signatures.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chap. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN TESTIMONY WHEREOF, Grantee and ODNR have caused this Agreement to be executed by their respective duly authorized officers.

GRANTEE

OHIO DEPARTMENT OF NATURAL RESOURCES

CITY OF MIDDLEBURG HEIGHTS

OFFICE OF REAL ESTATE & LAND MANAGEMENT

By: Matthew Castelli

By: _____

Printed Name: Matthew Castelli

Printed Name: _____

Title: Mayor

Title: _____

Date: 9-28-22

Date: _____

ATTORNEY CERTIFICATION

Community Park, Recreation, or Conservation Project Number: CUYA-081C

I, Santo T. Incorvaia, Law Director, acting as attorney for the
Name and Title of Attorney
City of Middleburg Heights ("Grantee"), and for the reliance of the
Name of Grantee

Ohio Department of Natural Resources, do certify that from my examination of the Capital Improvement Community Park Recreation or Conservation Project, Pass-Through Grant Agreement (the "Agreement") and my knowledge of Grantee's organization, that acceptance of the Agreement by Grantee and the execution thereof by the signing officer has been duly authorized and is proper and in accordance with the laws of the State of Ohio. Grantee is a legally constituted public entity with full authority and legal capacity to perform all obligations and terms of the Agreement. Upon signature by the signing officer, the Agreement, in my opinion, is a legal obligation of Grantee in accordance with the terms thereof, and Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement. Grantee's acceptance of the Agreement and the signing officer's execution thereof, has has not* been authorized by the governing body of Grantee or has otherwise been authorized by Grantee's charter. (Resolution or Ordinance No. 2022-79, dated Sept. 27, 2022).

*If "has not" is checked above, please indicate the reason: _____

Attorney for Grantee:

Santo T. Incorvaia Law Director
Attorney Signature

Santo T. Incorvaia
Attorney Printed Name

0039813
Attorney Registration No.

Sept. 28, 2022
Date Signed

Attorney Address: _____

**EXHIBIT C
 TITLE ENCUMBRANCES**

Encumbrances DO NOT Exist:

I hereby certify, as an authorized representative of City of Middleburg Heights ("Grantee"), that there are currently **NO** encumbrances, liens, easements, or restrictions against the Property defined in this Agreement.

 Signature of Authorized Representative

 Title

 Printed Name

 Date

Encumbrances DO Exist:

I hereby certify, as an authorized representative of City of Middleburg Heights ("Grantee"), that the following encumbrances, liens, easements, or restrictions are the only encumbrances, liens, easements, or restrictions that currently exist against the Property defined in this Agreement (attach an additional page, if needed):

Example: Easement by and between [Name of Grantee] and _____ dated _____ and recorded at Official Record # _____ (Vol. # _____ of Page # _____) of [Name of County] County, Ohio.

1	See Attached
2	
3	
4	
5	

Santo T. Incorvaia, Law Dir.
 Signature of Authorized Representative

Law Director
 Title

Santo T. Incorvaia
 Printed Name

Sept. 28, 2022
 Date

EXHIBIT A

PROJECT INFORMATION PACKAGE

Forms and requested materials (maps, etc.) on pages 2-13 comprise the 'Project Information Package. Please complete all forms on pages 2-13 and send with all other requested materials on pages 2-13 (only) to the address below. This is the first step in the Project coordination process.

Teresa Goodridge
ODNR
Office of Real Estate
2045 Morse Road, E2
Columbus, Ohio 43229-6693
614-265-6396

BASIC INFORMATION

Awarded Project Sponsor: City of Middleburg Heights

Project Sponsor's Address: 15700 Bagley Road

Street Address 1

Street Address 2

Middleburg Heights, Ohio 44130

City, State ZIP

Tax Identification Number: 34-6001879

Contact Person: Charles Bichara

Director of Economic Development

Name

Title

Email Address: cbichara@middleburgheights.com

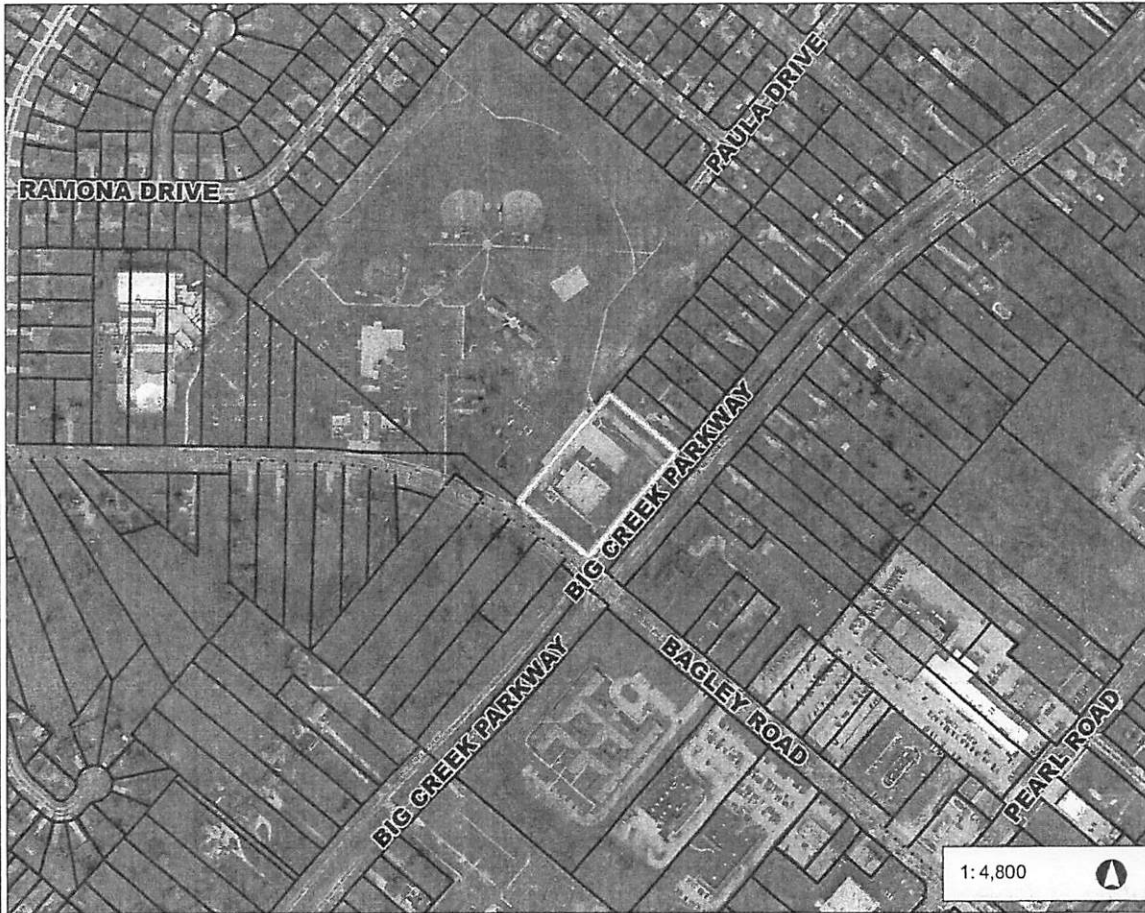
Phone Number: 440-234-8811 ext. 1247

Brief Description of Project:

The City of Middleburg Heights Memorial Hall Public Courtyard project would be a new, fully public outdoor courtyard area which will be located on the Middleburg Heights City Hall campus outside of the new Middleburg Heights Police Station. It is anticipated that the new courtyard area will be used by various community, civic and school groups for civic meetings, public gatherings, memorial services and other outdoor purposes. State capital funds would be used to construct the fully public outdoor courtyard.

EXHIBIT B

City of Middleburg Heights - Memorial Hall Courtyard Project - Boundary Map



City of Middleburg Heights
Memorial Hall Courtyard Project

15612 Bagley Road
Middleburg Heights, Ohio 44130

PPN 372-27-002

I hereby certify that this Boundary
Map is accurate.

Matthew J. Castelli
Mayor
City of Middleburg Heights, Ohio

August 25, 2022

Map Image - Fall 2021



— Cuyahoga County —
Enterprise GIS
PUTTING CUYAHOGA COUNTY ON THE MAP

800 0 400 800 Feet

Projection:
WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a static output from an internet
mapping site and is for reference only.

1022-424

BOOKER- 100

ORDER NO 22-10287 YOUR ORDER NO AS OF DATE 9/19/2022

ADDRESS 15612 BAGLEY ROAD MIDDLEBURG HEIGHTS OHIO

PPN 372-27-002

TITLE IN CITY OF MIDDLEBURG HEIGHTS OHIO

LEGAL Slip A

SUBJECT TO

① Part Restrict., 3831 449

② Excavate 4025-286 See Photo

③ Excavate 14216 873

④ Texas Fuel up 2021 Paved

Exhibit "A"

Situated in the City of Middleburg Heights, County of Cuyahoga, and State of Ohio:

And known as being part of Original Middleburg Township Lots Nos. 16 and 17,
Turnpike Tract and bounded and described as follows:

Beginning on the centerline of Bagley Road, at the most Westerly corner of Parcel No. 1 of land conveyed to Board of Park Commissioners of the Cleveland Metropolitan Park District by Deed dated July 11, 1928 and recorded in Volume 3831, Page 449, of Cuyahoga County Records; thence Northeasterly along the Northwesterly line of land so conveyed, being also along the Northwesterly line of Brookside Parkway, 435.66 feet to the most Southerly corner of Sub Lot No. 8 in the Augustine Subdivision, as shown by the recorded plat in Volume 152 of Maps, Page 34, of Cuyahoga County Records; thence Northwesterly along the Southwesterly line of said Sub Lot No. 8, 256.37 feet to the Southeasterly line of land conveyed to The Village of Middleburg Heights by Deed dated May 8, 1931 and recorded in Volume 4148, Page 634, of Cuyahoga County Records; thence Southwesterly along the Southeasterly line of land so conveyed, 436.87 feet to the centerline of Bagley Road; thence Southeasterly along said centerline, about 257.09 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Excepting therefrom that parcel of land conveyed to the Board of County Commissioners of Cuyahoga County Ohio by deed dated October 24th, 1957, and recorded October 31, 1957, in Volume 9025, Page 286, of Cuyahoga County Records

PPN: 372-27-002

15612 Bagley Road
Middleburg Heights, Ohio 44130

630-20/100 feet to the Northeastly corner of land set off to Elisabeth Schrimshaw in Partition Proceedings recorded in Volume 707, Page 460 of Cuyahoga County Court of Common Pleas Court Records;- thence Westerly along the northerly line of land so set off to Elisabeth Schrimshaw, 1414-77/100 feet to said center line of Bellaire Road;- Thence northeasterly along said center line of Bellaire Road, 634 feet to the place of beginning, contained 14-132/1000 acres, according to survey of Charles W. Root, October 19, 1917, be the same more or less, but subject to all legal highways.

Being the premises partitioned to George Kadel, Walter Kadel, William Kadel, Lena Barnhart, Marie K. Kadel, Erney E. Kadel and Lottie M. Kadel, by the Common Pleas Court of Cuyahoga County, as appears by Volume 707, Page 460, in Cuyahoga County Records, and by deed from George Mulhern, Sheriff, to George Kadel et al., recorded in Volume 1051, Page 228, of Cuyahoga County Records.

The above described premises are conveyed subject to restrictions of record, and zoning restrictions, if any.

To have and to hold the above granted and bargained premises with the appurtenances thereunto belonging, unto the said grantee, her heirs and assigns forever.

And The Cleveland Trust Company, said grantor, for itself, its successors and assigns, does covenant with the said Sara K. Burnett, her heirs or assigns, that at and until the unsealing of these presents, said premises have not been encumbered by it, and that this grantor will WARRANT and DEFEED said premises with the appurtenances thereunto belonging to said grantee, her heirs and assigns forever, against all lawful claims and demands whatsoever, of all persons claiming by, through or under it except taxes and assessments, both general and special for the last half of the year 1927, and thereafter, which the grantee herein assumes and agrees to pay.

In Witness Whereof, the said The Cleveland Trust Company, has hereunto caused its corporate name and seal to be signed and affixed by A.A.McCaslin, its Vice President, and S.A.Pritchard, its Asst. Trust Officer on this 6th day of July, A.D. nineteen hundred and twenty-eight.

Signed, sealed and acknowledged) The Cleveland Trust Company, (The Cleveland Trust Company)
in presence of us:) By A.A.McCaslin, VicePresident, (SEAL)
Elmer L. Bahn W. E. Kurts) And S.A.Pritchard, Asst.Trust Officer.

The State of Ohio,) Before me, the subscriber, a Notary Public, in and for said county, personally appeared Cuyahoga County, as) the above named A.A.McCaslin, and S.A.Pritchard, known to me to be the Vice President, and Asst. Trust Officer respectively, of said The Cleveland Trust Company, and acknowledged that they did as such officers hereunto affix the corporate name and seal of said Company, and that the same is their free act and deed, and the free act and deed of said Company.

In testimony whereof, I hereunto set my hand and official seal, at Cleveland, Ohio, this 6th day of July, A.D. 1928.

Trans. July 14, 1928.) Elmer L. Bahn (Notarial Seal)
Rec'd July 14, 1928, at 8:51 A.M.) Notary Public (Ohio)
Recorded July 16, 1928.) (Cuyahoga County)
Fee for Record \$1.00) Lyman O. Howell, Recorder.

2128616. Anna E. Carrig et al To Board of Park Comm. of the Clev.Met.Park Dist.

Know all Men by these presents, that I, Anna E. Carrig, married, the grantor, for and in consideration of ten Dollars (\$10.00) and other valuable considerations, received to my full satisfaction of the Board of Park Commissioners of the Cleveland Metropolitan Park District, a body politic and corporate, organized and existing under the laws of the State of Ohio, the grantee, on behalf of myself, my heirs, executors, administrators and assigns, do give, grant, bargain, sell and convey unto the said Grantee, its successors and assigns, the following described premises, to-wit:

Parcel No. 1.

Situated in the Village of Middleburgh Heights, County of Cuyahoga and State of Ohio, and known

as being a part of Original Lot #16 and a part of Original Lot #17, Turnpike Tract, in former Middleburgh Township, now in said Village, and bounded and described as follows:

Beginning in the center line of Bagley Road, and at the southwesterly corner of land conveyed to Adelaide Gairing, by deed recorded in Volume 3388, Page 440, Cuyahoga County Deed Records.

Thence N. 46° 31' 31" W. along the center line of Bagley Road, 68 feet.

Thence S. 45° 45' 06" E. 860.28 feet to a point of curvature.

Thence along the arc of a circle deflecting to the right, 175.47 feet to the southwesterly line of land conveyed to John Majcher, by deed recorded in Volume 910, Page 388, Cuyahoga County Deed Records, said arc having a radius of 3055 feet and a chord of which bears N. 45° 21' 28" E. 175.45 feet.

Thence S. 46° 28' 02" E. along said southwesterly line, 62.98 feet to the northwesterly corner of land conveyed to Adelaide Gairing, as aforesaid.

Thence S. 45° 45' 06" W. along the northwesterly line of land conveyed to Adelaide Gairing, as aforesaid, 1035.68 feet to the center line of Bagley Road, and the place of beginning, and containing 1.6098 acres of land, be the same more or less, but subject to all legal highways, together with the hereditaments and appurtenances thereunto belonging.

Bearings given herein are from an assumed meridian and are intended to describe angles only.

(X) The foregoing described premises shall be used and maintained for the conservation of the natural resources of the Cleveland Metropolitan Park District, through the creation of parks, parkways, and other reservations of land.

To have and to hold, the above granted and bargained premises, with the appurtenances thereunto belonging unto the said Grantee, its successors and assigns, forever.

It is hereby mutually covenanted and agreed, that the grantor herein, her heirs, executors, administrators and assigns, shall have the right to open and extend streets or roads into the proposed parkway drives to be constructed upon said Parcel No. 1. Provided, however, that the location, grade, and manner of connection of said proposed streets or roads shall be subject to the approval of the Board of Park Commissioners of the Cleveland Metropolitan Park District.

It is further mutually covenanted and agreed, that the said grantor herein, her heirs, executors, administrators and assigns, shall have the right to use said parkway drives, when constructed, as a purpose of way, subject, however, to such reasonable rules, regulations and by-laws as may, from time to time, be made by said Board of Park Commissioners, its successors and assigns.

It is further mutually covenanted and agreed, that the grantor, herein, her heirs, executors, administrators and assigns, shall have the right of access to said parkway drives to be constructed on Parcel No. 1, above described from her remaining lands adjacent to the premises first above described as Parcel No. 1, by not more than one path or drive in each seventy-five (75) feet of parkway frontage, provided, however, that said paths or drives are constructed in such location on the premises adjacent to the premises first above described as Parcel No. 1, and in such manner as to have the approval of the Grantee herein, its successors or assigns, or such other officials having charge and management thereof.

And whereas, said Anna E. Carrig is the owner of certain other premises hereinafter described as Parcel No. 2, immediately adjacent to the premises above described as Parcel No. 1, and to the system of parks, parkways and other reservations of land proposed to be established by the Grantee herein, its successors and assigns.

Now, therefore, said Anna E. Carrig, in consideration of the purchase of said Parcel No. 1 and of the payment of the further sum of One Dollar (\$1.00) the receipt of which is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the Board of Park Commissioners of the Cleveland Metropolitan Park District, its successors and assigns, the following easements, rights, powers and restrictions in, upon, over and pertaining to the premises hereinafter described as Parcel No. 2:-

Parcel No. 2.

Situated in the Village of Middleburgh Heights, County of Cuyahoga and State of Ohio, and known as being a part of original Lot #16 and a part of Original Lot #17, Turnpike Tract, in former Middleburgh Township, now in said Village, and bounded and described as follows:-

Beginning in the center line of Bagley Road, and at the southwesterly corner of Parcel No. 1, above described.

Thence S. 46° 31' 31" W. along the center line of Bagley Road, 257.09 feet to the Southwesterly corner of land conveyed to Anna E. Carrig, by deed recorded in Volume 3355, Page 164, Cuyahoga County Deed Records.

Thence N. 45° 45' 39" E. along the northwesterly line of said land, 1035.91 feet to the northwesterly corner of land conveyed to Anna E. Carrig, as aforesaid;

Thence S. 46° 28' 02" E. along the northeasterly line of said land, 261.53 feet to the northwesterly corner of Parcel No. 1, above described.

Thence along the arc of a circle deflecting to the left, 175.47 feet to a point of tangency, said arc having a radius of 3069 feet and a chord which bears S. 45° 21' 25" W. 175.45 feet.

Thence S. 45° 45' 06" W. 860.28 feet to the center line of Bagley Road, and the place of beginning, be the same more or less, but subject to all legal highways.

Said Easements, Rights, Powers and Restrictions being as follows, to-wit:-

First. No building, structure, fence or wall of any kind shall be erected or be permitted to remain, or hedge be planted or allowed to grow to a height greater than three (3) feet upon Parcel No. 2, within sixty (60) feet of the boundary line of said Parcel No. 1.

Second. The right and privilege, at all times, to enter upon so much of Parcel No. 2, as lies adjacent to and within twenty (20) feet of the boundary line of Parcel No. 1, for the purpose of planting the same, and the right, at the option and expense of said Cleveland Metropolitan Park Board, its successors and assigns, to care for, regulate, control and maintain the present vegetation thereon or that which may be hereafter planted thereon.

Third. The right to lay, replace, repair, keep and maintain water pipes, mains, drains, conduits and gas pipes upon so much of Parcel No. 2, as lies adjacent to and within fifteen (15) feet of the boundary line of Parcel No. 1.

Fourth. The right to enter upon and grade off or fill so much of Parcel No. 2, as may be necessary to provide a slope at an inclination not greater than one foot vertical or two feet horizontal, from the grade of the park or parkway, as the same may be established by said Park Board upon Parcel No. 1, and all damage occasioned thereby shall be, and is hereby, released and waived.

Fifth. No portion of Parcel No. 2 abutting upon said Parcel No. 1, and lying within three hundred (300) feet therefrom, shall be used for any other than residence purposes, and no portion of said Parcel No. 2, shall be subdivided or sold off into lots or parcels having a frontage of less than seventy-five (75) feet upon said Parcel No. 1, or upon any street or drive adjacent and contiguous to the boundary line of said Parcel No. 1, and not more than one residence shall be erected upon any such lot or upon any seventy-five (75) feet of such frontage.

Sixth. No building or structure used for any business, mercantile, mechanical or manufacturing purposes, or for a stable or garage (except a stable or garage for private use), shall be erected or maintained upon so much of Parcel No. 2, as lies adjacent to and within three hundred (300) feet of the boundary line of said Parcel No. 1.

Seventh. No building or structure used as a flat, apartment house, terrace, or double or duplex house, or as the abode of more than one family living in separate apartments and maintaining separate domestic establishments thereon, shall be erected or maintained upon so much of Parcel No. 2, as lies adjacent to and within three hundred (300) feet of the boundary line of said Parcel No. 1.

Eighth. No bill board, sign board or other advertising device (other than a sign board or other advertic-

CAP
+
ml

(ing device offering for sale or lease all or a part of the premises upon which it is erected) shall be erected or maintained upon so much of the Grantor's remaining lands, as lies adjacent to Parcel No. 1, in such manner or location as to be seen from any portion of the park or parkway to be constructed upon said Parcel No. 1, first above described.

Ninth. No telegraph, telephone, or electric wire poles (not intending hereby to prohibit the erection of poles for supporting electric lights) shall be erected or maintained upon so much of Parcel No. 2 herein described, as lies adjacent to and within one hundred (100) feet of the boundary line of Parcel No. 1, or within one hundred (100) feet of any street or drive which may form the boundary line of said Parcel No. 1.

To have and to hold, said easements, rights, powers and restrictions unto the said Grantee, its successors and assigns, forever.

And I, Anna E. Carrig, on behalf of myself, my heirs, executors, administrators and assigns, hereby covenant with the said grantee, its successors and assigns, that said easements, rights, powers and restrictions shall run in perpetuity with the land and be forever appurtenant to the premises first above described as Parcel No. 1, and to the said system of parks, parkways, and other reservations of land and for the use and benefit of the grantee, its successors and assigns, as the owner thereof. (A)

And I, Anna E. Carrig, the grantor, do for myself, my heirs, executors, administrators and assigns, covenant with the said Grantee, its successors and assigns, that at and until the unsealing of these presents, I am well seized of the premises above described as a good and indefeasible estate in FEE SIMPLE and have good right to bargain and sell the premises first above described as Parcel No. 1 in manner and form as above written, and to bargain, sell and convey the above easements, rights, powers and restrictions, in manner and form as above written, and that the premises herein conveyed are free from any and all encumbrances whatsoever, except taxes and assessments for the year 1928, and thereafter, which the grantee assumes and agrees to pay, and that I will WARRANT and DEFEND the premises first above described as Parcel No. 1 with the appurtenances thereunto belonging, and said easements, rights, powers and restrictions in, upon, over and pertaining to the premises last above described as Parcel No. 2 to the grantee, its successors and assigns, against all lawful claims and demands whatsoever, except said taxes and assessments.

And I, M. P. Carrig, husband of said Anna E. Carrig, do hereby remise, release and forever quit-claim unto the said Grantee, its successors and assigns, all my right and expectancy of dower in the premises first above described as Parcel No. 1, and in the premises last above described as Parcel No. 2, so far as pertains to the easements, rights, powers and restrictions hereinbefore set forth.

In Witness Whereof, we have hereunto set our hands, this eleventh day of July, in the year of our Lord nineteen hundred and twenty-eight.

Signed and acknowledged in) Anna E. Carrig
the presence of:-) M. P. Carrig
W. C. Wright Anna Dunn)

State of Ohio, ss) Before me, a Notary Public, in and for said State and County, personally appeared the
County of Cuyahoga) above named Anna E. Carrig and M. P. Carrig, wife and husband, who acknowledged that they
did sign the foregoing instrument and that the same is their free act and deed.

In testimony whereof, I hereunto subscribe my signature and official seal, at Cleveland, Ohio, this
11th day of July, A. D. 1928.

Trans. July 14, 1928.) Harvey M. True (Notarial Seal)
Rec'd July 14, 1928, at 9:05 A.M.) Notary Public (Ohio
Recorded July 16, 1928.) (Cuyahoga County)
Fee for Record \$3.00) Lyman O. Newell, Recorder.

2126518. Nicholas Olexo, Gdn. To The Union Trust Co.

Know All Men by these presents, that Whereas, on the 15th day of August, 1927, Nicholas Olexo was duly appointed and qualified as guardian of the person and estate of Mary Olexo, also known as Maria Olexo, a lunatic,

173581

DEED

WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, by resolution duly adopted July 8, 1957 (Journal 127, Page 555) declared its intention to alter and improve Bagley Road from Beech Street to Pearl Road in the City of Berea and Village of Middleburg Heights, Cuyahoga County, Ohio, and thereafter said Board by resolution ordered notice to be given to the owners of lands abutting said improvement, to file claims for compensation for and damages to the lands of such owners resulting from said improvement of Bagley Road

and
 WHEREAS, in pursuance of notice given so to do, the Grantor herein Marion L. Augustine, married to John F. Augustine

duly filed with said Board of County Commissioners of Cuyahoga County, Ohio, a claim for compensation and damages, and with respect thereto and in accordance with the terms of an agreement between the BOARD OF COUNTY COMMISSIONERS and said GRANITOR herein, and the proceedings of said BOARD OF COUNTY COMMISSIONERS providing for the conveyance of land to the County of Cuyahoga for said improvements by Warranty Deed and/or easement, said BOARD OF COUNTY COMMISSIONERS made an award to said GRANITOR IN THE SUM OF \$ 476.30, as full compensation for lands taken and for damages to the residue of said lands and properties; and,

WHEREAS, in pursuance of said agreement, proceedings, resolution and award, Marion L. Augustine

the GRANITOR is to execute this Deed conveying lands described herein in Fee Simple for highway purposes for said improvement of Bagley Road subject only to restrictions, easements, and covenants as hereinafter stipulated; NOW, THEREFORE;-

KNOW ALL MEN BY THESE PRESENTS, that Marion L. Augustine (Married)

the GRANITOR for and in consideration of the sum of \$ 476.30 received to her full satisfaction from the County of Cuyahoga, its County seat located at the County Administration Building, 1219 Ontario Avenue, Cleveland, Ohio, does hereby give, grant, bargain, sell and convey unto said County of Cuyahoga, the Grantee, its successors and assigns the following described premises, to-wit:-

Situated in the Village of Middleburg Heights, County of Cuyahoga, State of Ohio, and known as being part of Original Section No. 7, Turpike Tract, Original Lot No. 17, Middleburg Township and being part of the land conveyed to Marion L. Augustine by deed recorded in Vol. 4963, Page 64 of Cuyahoga County Deed Records and further described as follows;

Beginning at the intersection of the northeasterly line of Bagley Road as heretofore established 60 feet wide and the southeasterly line of Parcel No. 2 of land conveyed to Marion L. Augustine by deed recorded in Vol. 4963 Page 64 of Cuyahoga County Deed Records;

Thence N 39°-19'-07" E along said southeasterly line of land so conveyed to Marion L. Augustine 10 feet to the proposed northeasterly line of Bagley Road, 80 feet wide;

Thence N 50°-55'-30" W along said proposed northeasterly line of Bagley Road 6.84 feet to a point of curve;

Thence northwesterly along said proposed northeasterly line of Bagley Road on a curved line deflecting to the left 162.17 feet to the northeasterly line of Bagley Road 60 feet wide said curved line having a radius of 1313.24 feet and a chord which bears N. 54°-27'-46" W. 162.06 feet;

Thence S. 50°-55'-30" E along said northeasterly line of Bagley Road 168.55 feet to the place of beginning, containing 1147 square feet of land.

Bearings used herein are to an assumed meridian and indicate angles only.

The Grantor for the above consideration further gives, grants and conveys a perpetual easement to construct, reconstruct, maintain, and operate a slope embankment in, on, over, and upon the following described premises, to-wit:

Beginning at the intersection of the proposed northeasterly line of Bagley Road 80 feet wide with the southeasterly line of parcel No. 2 of land conveyed to Marion L. Augustine by deed recorded in Vol. 4963 Page 64 of Cuyahoga County Deed Records;

Thence northeasterly along said southeasterly line of land so conveyed to Marion L. Augustine 2 feet to a point;

Thence northwesterly along the slope line which extends northeasterly the following distances by radial measurement from the proposed northeasterly line of Bagley Road, measuring northwesterly the following distances along said proposed northeasterly line of Bagley Road beginning at its intersection with the southeasterly line of parcel No. 2, of land conveyed to Marion L. Augustine as aforesaid;

Thence northwesterly 43 feet, the slope extends 3 feet;

Thence northwesterly 36.10 feet, the slope extends 9 feet;

Thence northwesterly 36.10 feet, the slope extends 10 feet;

Thence northwesterly 36.10 feet, the slope extends 10 feet;

Thence northwesterly 36.10 feet, the slope extends 4 feet;

Thence northwesterly along the slope line 40 feet to its intersection with the northeasterly line of Bagley Road as heretofore established 60 feet wide;

Thence southeasterly along said northeasterly line of Bagley Road 53 feet to its intersection with the proposed northeasterly line of Bagley Road 80 feet wide;

Thence southeasterly along said proposed northeasterly line of Bagley Road on a curved line deflecting to the right 162.17 feet to the place of beginning, said curved line having a radius of 1313.84 feet and a chord of 162.06 feet, containing 1322 square feet of land.

TO HAVE AND TO HOLD the above granted and bargained premises with the appurtenances thereunto belonging, unto the GRANTEE, its successors and assigns, forever, for public highway purposes.

And the said GRANTOR Marion L. Augustine

do es
for herself, her heirs, executors, administrators, successors and assigns covenant with the said GRANTEE, its successors and assigns, that at and until the enfeoffing of these presents, she is well seized of the above described premises as a good and indefeasible estate in Fee Simple and has good right to bargain and sell same in manner and form as above written; that the same are free and clear from all encumbrances, whatsoever, except taxes and special assessments, if any, for the last half of the year 1956 and thereafter, and except restrictions and easements of record, zoning regulations and other regulations of public authority, and no other exceptions and that she will Warrant and Defend said premises with the appurtenances thereunto belonging, to the said GRANTEE, its successors and assigns, forever, against all lawful claims and demands, whatsoever, except as noted above.

And for valuable consideration, I, John F. Augustine, husband of Marion L. Augustine, the Grantor herein.

do hereby remise, release, and forever quit-claim unto the said Grantee, its successors and assigns, all my right and expectancy of dower in the above described premises.

And for and in consideration of the payment of the aforesaid award of \$ 476.30, receipt of which is hereby acknowledged, said Marion L. Augustine and John F. Augustine

do for ourselves.

our heirs, executors, administrators, successors and assigns, hereby release and forever discharge the County of Cuyahoga, its successors and assigns of any and all claims, debts, demands, actions at law or in equity which may accrue, be sustained, or result by reason of the appropriation and/or conveyance of the above described lands and/or damages resulting to the residus thereof, including all differences in elevations resulting from the construction of improvement.

IN WITNESS WHEREOF, WE, Marion L. Augustine and John F. Augustine

have hereunto placed our hands and seals this 24th day of OCT A.D. 1957.

Witnesses:
[Signature]
[Signature]

[Signature]
Marion L. Augustine
[Signature]
John F. Augustine

STATE OF OHIO }
CUYAHOGA COUNTY } SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named Marion L. Augustine and John F. Augustine

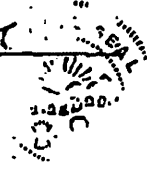
who acknowledged that they did sign the foregoing instrument and that the same is their free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto placed my hand and official seal at Cleveland, Ohio, this 24th day of OCTOBER, A.D., 1957

My Commission Expires A. M. IRVINE, Notary Public
My Commission Expires Mar. 18, 1958

[Signature]
Notary Public

This instrument was prepared for the County of Cuyahoga by Louis S. Radkowitz



176
173581
To Fefer
To Clay County

RECEIVED FOR RECORD
AT 3:41 P M
OCT 31 1957

RECORDED IN CUYAHOGA
COUNTY RECORDS
Vol 9025 Page 289
FRANK S. DAY
County Recorder

ENTERED FOR TRANSFER

OCT 31 1957

AUDITOR

THE CUYAHOGA ABSTRACT TITLE & TRUST CO.
ORDER No. 800019

WARRANTY DEED—No. 102A

The Ohio Legal Blank Co. Cleveland
Publishers and Dealers Since 1883

Know all Men by these Presents

That we, ALBERT DWORKIN and ROSALIND DWORKIN, husband and wife,
the Grantors,
who claim title by or through instrument, recorded in Volume, Page,
County Recorder's Office, for the consideration of ---Ten Dollars and other valuable
consideration-----Dollars (\$ 10.00 etc.)
received to our full satisfaction of ROSE WALLENS SCHLIF,

the Grantee,
whose TAX MAILING ADDRESS will be 4824 South Sedgewick Road,
Lyndhurst, Ohio, do

Give, Grant, Bargain, Sell and Convey unto the said Grantee, her
heirs and assigns, the following described premises, situated in the City
Lyndhurst, County of Cuyahoga and State of Ohio:

and known as being Sub Lot No. 246 in the Sedgewick Company's Subdivision No. 1
of part of Original Euclid Township Lot No. 37, Tract No. 5, as shown by the
recorded plat in Volume 148 of Maps, Page 28 of Cuyahoga County Records, and
being 60 feet front on the Southerly side of South Sedgewick Road, and extending
back 170.30 feet on the Easterly line, 170.47 feet on the Westerly line, and
having a rear line of 60 feet, as appears by said plat,



be the same more or less, but subject to all legal highways.

RESOLUTION NO. 4392 - By Mr. Howley, seconded by Mr. White. VOL 14216P 823

932205

EASEMENT

THIS INDENTURE MADE this 5th day of January

nineteen hundred and seventy-six by and between the Board of Park Commissioners of the Cleveland Metropolitan Park District, Grantor, and Columbia Gas of Ohio Incorporated, Middleburg Heights, Ohio, Grantee.

WHEREAS, the Grantor is the owner in fee simple of a certain parcel of land situated in the City of Middleburg Heights, County of Cuyahoga and State of Ohio, over, through, under and upon which the Grantee desires to acquire easement rights hereinafter described;

WHEREAS, this pipeline is to be installed for the purpose of improving the distribution of the supply of natural gas in Metropolitan Cleveland, and in the opinion of the Grantor is in the public interest;

NOW, THIS INDENTURE WITNESSETH:

That the Grantor, in consideration of the sum of Five Hundred and Two Dollars (\$502.00), to be paid by the Grantee on its acceptance of this grant, and in consideration of the conditions hereinafter stipulated, does hereby give, grant, bargain and convey to the said Grantee, easements and the right to lay a pipeline together with service connections and to maintain, operate, replace and remove same, together with valves and other necessary appurtenances thereto over, through, under and upon the premises' described as a 10' wide pipeline easement in a plat marked Exhibit A and attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above grant and bargained rights unto the said Grantee, its successors and assigns forever, subject to the following conditions, to wit:

1. Plans and specifications for the installation of said pipeline with service connections on the described property shall first be submitted to the Director of Grantor and his approval obtained prior to construction.
2. The gas line crossing the Big Creek Parkway within the easement herein granted, south of Bagley Road shall be laid no more than six feet south of the north easement line. An eighteen inch tree approximately 23 feet right of Station, 10 + 97.5, (southbound lane, Big Creek Parkway) shall be bored.

3. An eighteen inch tree approximately 22 feet left of Station, 19 + 13, (northbound lane, Big Creek Parkway) shall be bored.
4. Grantee will properly fill and tamp the trench in which said pipeline is located so as to avoid a settling or depression in the surface of the ground, and will restore the surface of the easement area to its prior condition after the installation of said pipeline or any repair or reconstruction thereof. In such restoration, not less than four (4) inches of top soil shall be placed over the trench and graded to conform with the adjacent grade and seeded with an approved lawn grass seed at a rate of not less than eight (8) pounds per 1,000 square feet. After the seeding and raking the surface shall be covered with a hay or straw mulch. Such restoration shall also include the replacement of all roadways to approved construction standards for similar roadways and replacing existing landscaping features.
5. Grantee will indemnify and save Grantor harmless from any and all liability, costs, claims or demands arising out of or connected with the construction, use, repair or maintenance of said pipeline. Grantee shall also protect and indemnify the Grantor against all damage to any property, structures or appurtenances belonging to the Grantor, caused by or in any manner resulting from the construction, use, repair or maintenance of said pipeline. During construction or major repair or replacement thereof, Grantee will require its contractor to cause Grantor to be named as an insured in a public liability insurance policy. Evidence of such insurance naming Grantor as an insured shall be furnished to Grantor prior to construction.
6. Grantor reserves the right to use the real property covered by this easement for any and all purposes not inconsistent with the pipeline use authorized herein.
7. Grantee agrees that the construction, repair or maintenance of said pipeline shall be done at no expense to Grantor, and that no part of the cost thereof shall be charged or assessed to the Grantor or upon or against any property belonging to the Grantor.
8. The terms of this easement and the conditions herein shall be binding upon the parties hereto and their respective successors and assigns.
9. Acceptance of this easement by Grantee will constitute acceptance of the conditions set forth here.

The Grantor does covenant with the Grantee that at the time of execution of this easement it is well seized of the above described premises, as a good and indefeasible estate in fee simple, and has good right to grant said easement rights in manner and form as above written.

VOL 142167 825

IN WITNESS WHEREOF, we have hereunto set our hands, the 5th day of January, 1976.

Signed and acknowledged in the presence of:

BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT

Dennis C. Politta

By [Signature]
President

A. J. Blaha

By [Signature]
Secretary

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said county and state, personally appeared the above named John F. Brown, President, and David G. Dinger, Secretary, of said Board of Park Commissioners, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said Board and the free act and deed of each of them as such officers, respectively.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 5th day of January, 1976.

[Signature]
Notary Public
JOANNE P. MASEY
Notary Public for Cuyahoga County, O.
My Commission Expires Nov. 19, 1978

This instrument was prepared by Thomas C. Brown, Office Counsel 2000 Standard Building, Cleveland, Ohio

The conditions of this easement are agreed to and are hereby accepted January 16, 1976.

Signed and acknowledged in the presence of:

COLUMBIA GAS OF OHIO, INCORPORATED

[Signature]

By [Signature]
J. D. Groom, Vice President

[Signature]

ATTEST
By [Signature]
J. L. Pullin, Assistant Secretary

STATE OF OHIO)
)
COUNTY OF FRANKLIN) SS.

BEFORE ME, A Notary Public in and for said County and State,
personally appeared J. H. Croom, Vice President, and J. L. Fullin, Assistant
Secretary, of COLUMBIA GAS OF OHIO, INC., the corporation which executed the
foregoing instrument, who acknowledged that the seal affixed to said
instrument is the corporate seal of said corporation; that they did sign and
seal said instrument as such Vice President and Assistant Secretary in behalf
of said corporation and by authority of its Board of Directors; and that said
instrument is their free act and deed individually and as such Vice President
and Assistant Secretary and the free and corporate act and deed of such
COLUMBIA GAS OF OHIO, INC.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and
affixed my official seal at this 16th day of January, 1976.

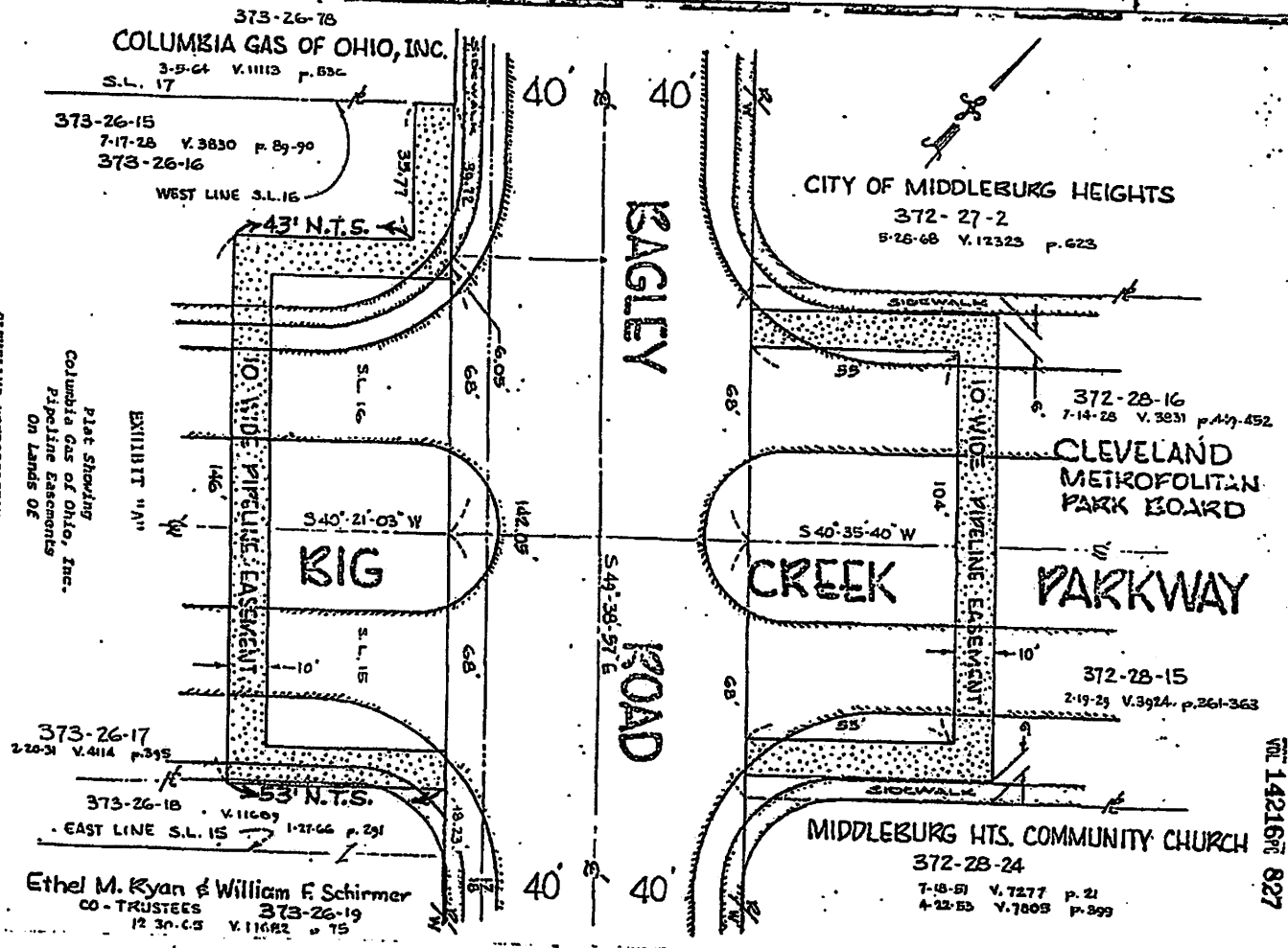
Robert A. Paulini

Notary Public

My Commission Expires _____

ROBERT A. PAULINI, Notary Public
DELAWARE, FAIRFIELD, FRANKLIN, LICKING,
MADISON, PICKAWAY & UNION COUNTIES, OHIO
MY COMMISSION EXPIRES MAY 15, 1977

THIS INSTRUMENT WAS PREPARED BY
COLUMBIA GAS OF OHIO, INC.



being part of S.L.'s 15 & 16, Pearl Acres Sub'd. (proposed),
 Turnpike Trace Lot 18 and part of Turnpike Trace Lot 17
 located in the City of Middleburg Heights, Cuyahoga Co., Ohio

P.L.S. 193-2000-261-3610
 Map No. 4390-2

Scale: 1" = 30'
 12-1-75

CLEVELAND METROPOLITAN PARK BOARD

Plat Showing
 Columbia Gas of Ohio, Inc.
 Pipeline Easements
 On Lands Of

EXHIBIT "A"

Ethel M. Ryan & William F. Schirmer
 CO-TRUSTEES
 373-26-19
 12 30-63 V. 11682 P. 75

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U.S. 153-2000-261-2240

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Columbus, Ohio 43218

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