

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2023¹03

Introduced By: Mr. Meany
Co-Sponsors: Mr. Ali, Mr. McGregor

**A RESOLUTION
AUTHORIZING THE MAYOR TO ENTER INTO A STORMWATER
OUTFALL EASEMENT WITH THE BOARD OF PARK COMMISSIONERS
OF THE CLEVELAND METROPOLITAN PARK DISTRICT
FOR THE ABRAMS CREEK BASIN 3 PROJECT**

WHEREAS, the Board of Park Commissioners of the Cleveland Metropolitan Park District is the fee simple owner of certain real property located in Cuyahoga County known as Permanent Parcel No. 372-23-003 (consolidated with PPN 372-23-001) ("Property"); and

WHEREAS, the City of Middleburg Heights desires the reasonable right to access the Property in order to construct, reconstruct, modify, supplement, maintain, operate and/or remove a storm sewer system located on the Property.

NOW, THEREFORE, BE IT RESOLVED 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 Stormwater Outfall Easement agreement with the Board of Park Commissioners of the Cleveland Metropolitan Park District, a copy of which is attached hereto and marked "Exhibit A", for the Abrams Creek Basin 3 project.

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: 12/12/23


President of Council

Attest: M. Meala
Clerk of Council

Approved On: 12-14-23

Presented to Mayor: 12/13/23

Matthew Costello
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>ABSENT</u>	

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2023-103 adopted by the Council of the City of Middleburg Hts., on 12/12/23 was posted for a period of fifteen days, beginning 12/15/23 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 Res. 2023-103 passed on the 12th day of December 20 23 by said Council.

Mary Ann Meola
Clerk of Council

STORMWATER OUTFALL EASEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of the ____ day of _____, 20__, between the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT, a political subdivision of the State of Ohio organized and operating pursuant to Chapter 1545 of the Ohio Revised Code ("Grantor"), and the CITY OF MIDDLEBURG HEIGHTS, a municipal corporation ("Grantee"),

W I T N E S S E T H T H A T :

WHEREAS, Grantor herein is the fee simple owner of certain real property located in Cuyahoga County, Ohio known as Permanent Parcel No. (PPN) 372-23-003 (consolidated with PPN 372-23-001) ("Property"); and

WHEREAS, Grantee desires the reasonable right to access the Property in order to construct, reconstruct, modify, supplement, maintain, operate and/or remove a storm sewer system located on the Property, including, but not limited to, two 36-inch diameter pipes and other related or useful equipment, fixtures, appurtenances, and above-ground and below-ground facilities (collectively, the "Improvements") and the right to ingress and egress across the Easement Area (as hereinafter described) for the purpose of access to and use of the Easement (as hereinafter described); and

WHEREAS, Grantee has requested of Grantor a permanent, non-exclusive easement in, on, over, across, under, and through a certain portion of the above-described property as shown on Exhibit A and further described on Exhibit B attached hereto and made a part hereof for the purpose of constructing, operating, maintaining, repairing, replacing, and removing the Improvements, and Grantor has agreed to grant such a permanent, non-exclusive easement, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1. Grant of Easement. Upon the terms and conditions hereinafter set forth, Grantor hereby grants to Grantee a permanent, non-exclusive easement (the "Easement"), in, on, over, across, under, and through certain property more particularly described in Exhibit B attached hereto and made a part hereof (the "Easement Area") for the purpose, at Grantee's sole cost and expense, of constructing, operating, maintaining, repairing, replacing, and removing the Improvements in accordance with applicable laws, ordinances, rules, and regulations which are now in effect or may be adopted hereafter; provided, however, that Grantor reserves the right to use the Easement Area for any and all purposes that would not unreasonably and materially interfere with Grantee's use of the Easement Area for the purpose specified herein.

2. Ownership and Maintenance.

(a) The Improvements shall be and shall remain the property of Grantee, and Grantee shall be and shall remain solely responsible for the Improvements; provided, however, that it is expressly agreed that within the grant of the Easement is a grant of an easement only and that fee simple title to the Easement Area shall and does remain with Grantor. However, in cases of emergency or imminent danger, Grantee may commence work on the Improvements without Grantor's prior written approval; but Grantee shall give Grantor notice of such work as soon as practicable after the emergency or imminent danger.

(b) Grantee shall construct and at all times keep and maintain the Improvements in a safe and sound condition and in compliance with all applicable laws, ordinances, rules, and regulations, and Grantee has the sole and exclusive responsibility for informing itself thereof.

3. Conditions of Work.

(a) Prior to commencing any work on the Improvements in any instance, Grantee shall submit to Grantor plans and specifications therefor. No work shall begin on the Improvements unless and until Grantor has given to Grantee its written approval of the plans and specifications, which approval shall not be unreasonably withheld. Grantee shall construct the Improvements in accordance with the plans and specifications approved by Grantor unless a modification thereof is approved in writing by Grantor; provided, however, that Grantor in no event shall assume responsibility for any aspect of such plans and specifications.

(b) Prior to commencing any work on the Improvements, Grantee shall have obtained any and all necessary permits, authorizations, and other consents from any and all governmental authorities with jurisdiction.

4. Intentionally omitted.

5. Use of Easement Area.

(a) After initial construction is completed, Grantee shall not store any materials or equipment on the Easement Area without the prior written approval of Grantor.

(b) At Grantee's sole cost and expense, Grantee shall restore the Easement Area not encumbered by the Improvements to good condition including replacement of trees, shrubs, lawn grass, other landscaping features, sidewalks, all-purpose trails, driveways, pavement, and fences. Without limiting the generality of the foregoing, the Grantee (i) shall seed all disturbed lawn grass with a mixture of twenty percent (20%) Kentucky 31 Fescue, twenty-five percent (25%) Common Kentucky Bluegrass, twenty percent (20%) Manhattan Rye Grass, and thirty-five percent (35%) Creeping Red Fescue at the rate of eight (8) pounds per one thousand (1,000) square feet and (ii) shall add lime or fertilizer to the lawn grass at the required rate, if Grantor so directs.

(c) Grantee will not impede the growth or development of any naturally occurring vegetative cover of the Easement Area unless it has obtained the prior written approval of the Grantor.

6. Intentionally omitted.

7. Insurance. Grantee shall maintain and pay for, or cause to be maintained and paid for, (i) commercial general liability insurance, including without limitation contractual liability coverage, products and completed operations coverage, and coverage for collapse, underground exposure, and explosion

hazards; and (ii) commercial automobile liability insurance for owned, hired, and non-owned automobiles. Such insurance (A) shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single limit of not less than \$1,000,000 per occurrence, (B) shall be primary to any insurance maintained by Grantor, and (C) shall name the Board of Park Commissioners of the Cleveland Metropolitan Park District as an additional insured. Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Grantor prior to commencement of the work. Grantor reserves the right to request a full and complete copy of all insurance policies. Grantee's coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Grantor. The aforementioned insurance coverage(s) shall be placed with an insurance company listed in the latest edition of "Best's Insurance Guide and Key Ratings" with a policy rating of at least A-, X.

8. Reversion to Grantor. If at any time the Easement ceases to be used by Grantee for the purpose specified herein, the rights hereby granted automatically shall terminate and the Easement shall revert to Grantor, provided that Grantor shall be entitled to retain all rights and remedies that previously may have accrued against Grantee with respect to the Easement.

9. Termination. Grantor may terminate this Agreement and the Easement if Grantee is in violation of any term of this Agreement and such violation remains uncured for thirty (30) days after written notice of the violation.

10. Notices. Whenever a Party is required or permitted to give notice to the other pursuant to this Easement, such notice shall be deemed given when delivered by hand or via regular U.S. mail and addressed as follows:

If to Grantor:	Cleveland Metroparks Attn: Chief Executive Officer 4101 Fulton Parkway Cleveland, Ohio 44144
With a copy to:	Cleveland Metroparks Attn: Chief Legal and Ethics Officer 4101 Fulton Parkway Cleveland, Ohio 44144
If to Grantee:	City of Middleburg Heights Attn: Law Director 15700 Bagley Road Middleburg Heights, OH 44130

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which such new recipient or address will become effective.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

12. Modification. No modification of this Agreement shall be binding upon Grantor or Grantee unless set forth in writing and executed by Grantor and Grantee.

13. Severability. If any provision of this Agreement shall be or become invalid or unenforceable, then this Agreement shall be divisible as to such provision, and the remainder of this Agreement shall be and remain valid and binding as though such provision were not included herein.

14. Third-Party Rights. Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as herein set forth, any rights or remedies under, or by reason of, this Agreement.

15. Successors and Assigns. The rights and obligations of the parties set forth herein shall be binding upon, and inure to the benefit of, each of them, and their respective successors and assigns.

16. Choice of Law/Jurisdiction. This Agreement shall be governed by the laws of the State of Ohio regardless of any choice of law principles. All actions arising from or relating to this Agreement or the Improvements may be instituted and prosecuted only in a federal or state court located in Cuyahoga County, Ohio, and the Parties consent to the exercise of personal jurisdiction by and exclusive venue in such courts.

17. Signature. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. By entering into this Agreement, the Parties agree on behalf of themselves, their officers, employees, subcontractors, subgrantees, agents or assigns, that this transaction may be conducted by electronic means by agreeing that all documents requiring signatures by the Parties may be executed by electronic means, and that the electronic signatures affixed by the Parties to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The Parties also agree to be bound by the provisions of Chapter 1306 of the Ohio Revised Code as it pertains to electronic transactions.

18. Publicity. Grantee shall not discuss this Agreement or its contents with the media, use Grantor's name or logos or issue any press release or other public statement related hereto, unless authorized in writing by Grantor, which authorization may be withdrawn by Grantor at any time. Publicity prohibited hereunder shall include, but not be limited to, press releases, press interviews, magazine articles, trade show displays, customer lists, web sites, social media sites, Grantee success stories, testimonials, and present or prospective client references. Nothing in this Agreement shall be construed to grant Grantee or any other individual or entity any rights in and/or to the name, any trademark, any logo, and/or any other property of Grantor.

19. Public Records. Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Improvements may be public records under Ohio Revised Code Section 149.43 and may be open to public inspection unless a legal exemption applies.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

GRANTEE:

CITY OF MIDDLEBURG HEIGHTS

By: Matthew J. Castelli
Matthew J. Castelli
Mayor

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by Matthew J. Castelli, Mayor of the City of Middleburg Heights, a municipal corporation in Ohio, on behalf of said municipal corporation.

Notarial Seal

Notary Public
My commission expires: _____

EXHIBIT A

Easement Area

EXHIBIT B

Legal Description