

CITY OF MIDDLEBURG HEIGHTS, OHIO

Council Agenda

January 9, 2024

7:00 P.M. REGULAR MEETING

- CALL TO ORDER
- ROLL CALL
- PLEDGE OF ALLEGIANCE

Minutes of the Regular Meeting of December 12, 2023

Minutes of Executive Session of December 12, 2023

Minutes of the Public Hearing of December 12, 2023

Swearing-In Minutes of December 12, 2023

Minutes of the Regular Meeting of December 26, 2023

COMMUNICATIONS

Memorandum from Planning Commission advising members granted final approval of the Benedict Drive Subdivision as submitted by Ruggiero Construction.

AUDIENCE PARTICIPATION

APPOINTMENTS AND CONFIRMATIONS

ORDINANCES, RESOLUTIONS AND MOTIONS

1. City Parks, Recreation & Services Committee – Mr. Ali, Chairman
2. Finance, Taxation & Assessments Committee – Mr. Bortolotto, Chairman
3. Legislation & Rules Committee – Mr. Ference, Chairman
4. Public Health, Safety & Relief Committee – Mr. McGregor, Chairman
5. Public Improvements Committee – Mr. Sage, Chairman
6. Streets, Utilities & Railroad Committee – Mr. Meany, Chairman
7. Zoning & Building Code Committee – Mr. Grech, Chairman

MAYOR'S REPORT

1. Law Director
2. Finance Director
3. Recreation Director
4. Economic Development Director
5. Service Director
6. Executive Assistant

ADJOURNMENT

CITY OF MIDDLEBURG HEIGHTS, OHIO

Council Agenda

JANUARY 9, 2024

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2024 PENDING LEGISLATION

UN-NUMBERED LEGISLATION

INTRODUCED BY COUNCIL PRESIDENT BORTOLOTTI

A Resolution authorizing the mayor to enter into an agreement with Valeria L. Ritter, Regina B. Ritter, and Magdalene S. Ritter for the purchase of a temporary easement as part of the Sheldon Road Resurfacing Project.

INTRODUCED BY COUNCILMAN MEANY

An Ordinance authorizing the mayor to enter into a Memorandum of Understanding with the Cuyahoga Soil and Water Conservation District (SWCD) to carry out mandated responsibilities related to the NPDES Storm Water Permit.

INTRODUCED BY MAYOR CASTELLI

An Ordinance authorizing the mayor and finance director to enter into a purchase agreement for the purchase of certain real estate in the City of Middleburg Heights to be used for the Abram Creek Detention Basins Project and declaring an emergency.

BOARDS AND COMMISSIONS



Matthew J. Castelli, Mayor

Norman Herwerden, Building Commissioner

Kim Earley, Secretary

MEMORANDUM

TO: MARY ANN MEOLA, CLERK OF COUNCIL

FROM: KIM EARLEY, BOARDS AND COMMISSIONS SECRETARY

DATE: DECEMBER 14, 2023

SUBJECT: RUGGIERO CONSTRUCTION, BENEDICT DRIVE SUBDIVISION, FINAL

=====

At the regularly scheduled Planning Commission meeting December 13, 2023, members granted final approval of the Benedict Drive Subdivision as submitted by Ruggiero Construction.

In accordance with Section 1111.03: Record Map of the Codified Ordinances, final plans are referred to City Council for approval. The plans approved by the Planning Commission are attached. Please return four stamped copies of the plans after City Council takes action.

PLANNING COMMISSION



BOARD OF ZONING
AND BUILDING APPEALS

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2024-

Introduced By: Mr. Bortolotto
Co-Sponsors: Mr. Meany, Mr. Grech

A RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH VALERIA L. RITTER, REGINA B. RITTER, AND MAGDALENE S. RITTER FOR THE PURCHASE OF A TEMPORARY EASEMENT AS PART OF THE SHELDON ROAD RESURFACING PROJECT

WHEREAS, in advance of and as part of the Sheldon Road Resurfacing Project it is necessary for the City to acquire a temporary easement on private residential property; and

WHEREAS, the temporary easement is being acquired for a public purpose, namely the establishment, construction, reconstruction, widening, repair, or maintenance of a public road.

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 an agreement with Valeria L. Ritter, Regina B. Ritter, and Magdalene S. Ritter for the purchase of a temporary easement described in Exhibit A attached, on the following described real estate:

Parcel(s): 1-T
PID 113312 CUY-Sheldon Road
PPN 371-17-002

Section 2: That there is hereby appropriated \$_____ from the Streets/Infrastructure Improvements Fund to implement this Resolution.

Section 3: 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: _____

President of Council

Attest: _____
Clerk of Council

Approved On: _____

Presented to Mayor: _____

Mayor

	Yea	Nay
Bortolotto	_____	_____
Ali	_____	_____
Sage	_____	_____
Meany	_____	_____
McGregor	_____	_____
Ference	_____	_____
Grech	_____	_____

TEMPORARY EASEMENT

Valeria L. Ritter, Regina B. Ritter, and Magdalene S. Ritter, the Grantor(s), in consideration of the sum of \$500.00, to be paid by The City of Middleburg Heights, the Grantee, do grant to Grantee the temporary easement(s) to exclusively occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 1-T

PID 113312 CUY-SHELDON RD

SEE EXHIBIT A ATTACHED

Cuyahoga County Current Tax Parcel No. 37117-002

Prior Instrument Reference: Instrument NO. 200211010859 and Instrument NO. 200206211012,
Cuyahoga County Recorder's Office.

To have and to hold the temporary easement(s), for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement(s) granted to the Grantee is 6 months immediately following the date on which the work described above is first commenced by the Grantee, or its duly authorized employees, agents, and contractors.

The temporary easement(s) interest granted is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road.

IN WITNESS WHEREOF Magdalene S. Ritter have hereunto set her hand on the.

16th day of October, 2023.


MAGDALENE S. RITTER

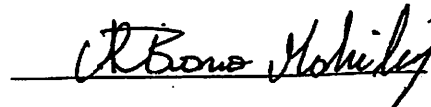
STATE OF OHIO, COUNTY OF CUYAHOGA SS:

BE IT REMEMBERED that on the 16 day of Oct., 2023, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Magdalene S. Ritter who acknowledged the foregoing instrument to be her voluntary act and deed. No oath or affirmation was administered to Magdalene S. Ritter with regard to the notarial act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



ALBANO MAHILAJ
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES



NOTARY PUBLIC
My Commission expires: 11-13-24

This document was prepared by: The City of Middleburg Heights

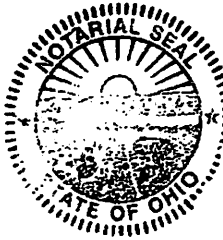
IN WITNESS WHEREOF Regina B. Ritter have hereunto set her hand on the 16
day of OCTOBER, 2023.

Regina B. Ritter
REGINA B. RITTER

STATE OF OHIO, COUNTY OF CUYAHOGA SS:

BE IT REMEMBERED that on the 16 day of OCTOBER, 2023, before me
the subscriber, a Notary Public in and for said state and county, personally came the above
named Regina B. Ritter who acknowledged the foregoing instrument to be her voluntary act and
deed. No oath or affirmation was administered to Regina B. Ritter with regard to the notarial act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official
seal on the day and year last aforesaid.



ALBANO MAHILAJ
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES

Albano Mahilaj
NOTARY PUBLIC
My Commission expires: 11-13-24

This document was prepared by: The City of Middleburg Heights

IN WITNESS WHEREOF Valeria L. Ritter have hereunto set her hand on the 04 16 2023
day of _____, _____.

Valeria Ritter
VALERIA L. RITTER

STATE OF OHIO, COUNTY OF CUYAHOGA SS:

BE IT REMEMBERED that on the 16 day of Oct, 2023, before me
the subscriber, a Notary Public in and for said state and county, personally came the above
named Valeria L. Ritter who acknowledged the foregoing instrument to be her voluntary act and
deed. No oath or affirmation was administered to Valeria L. Ritter with regard to the notarial
act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official
seal on the day and year last aforesaid.



ALBANO MAHILAJ
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES

Albano Mahilaj
NOTARY PUBLIC
My Commission expires: 11-13-24

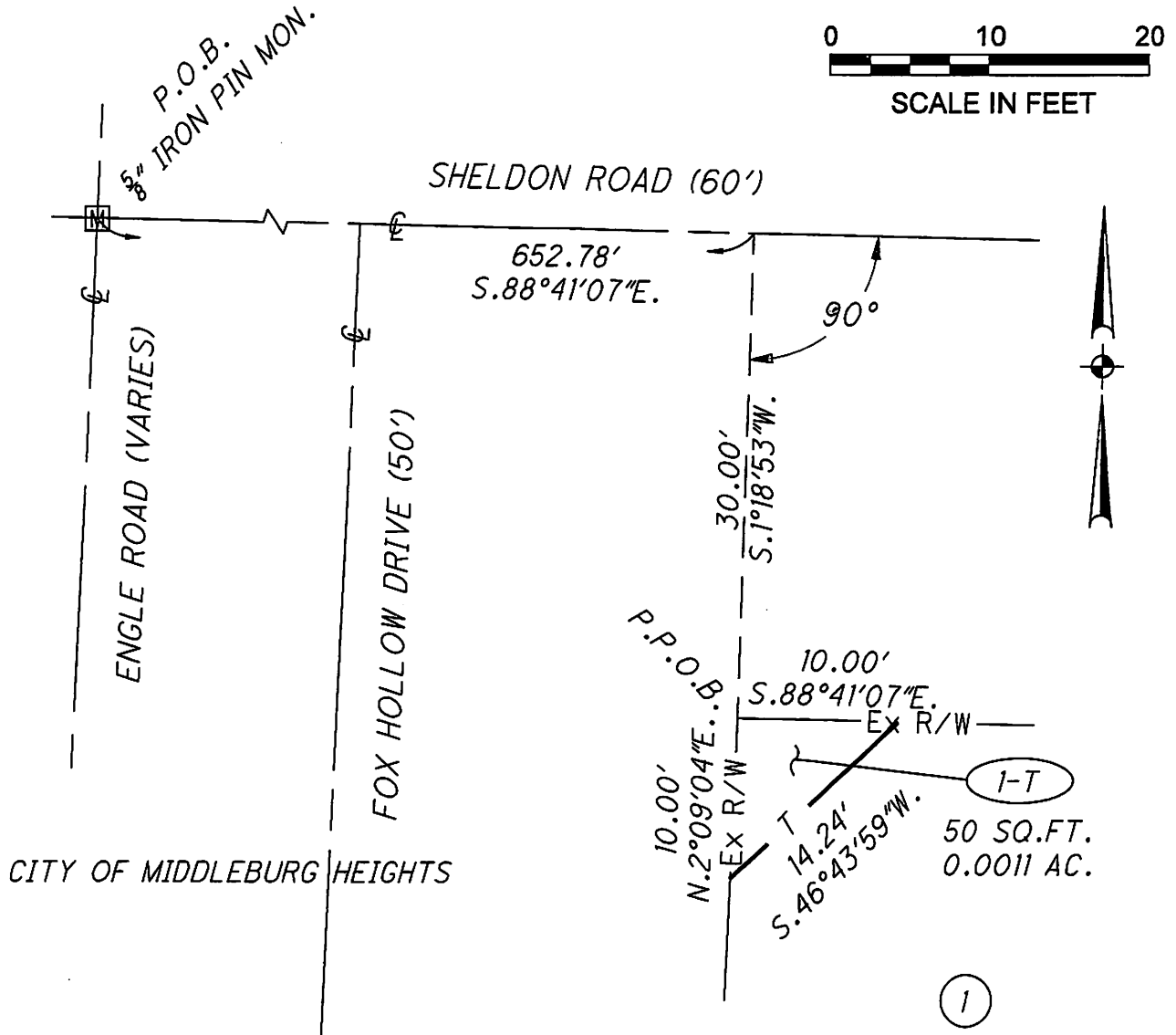
This document was prepared by: The City of Middleburg Heights

PARCEL 1-T EXHIBIT "A"

SITUATED IN THE CITY OF MIDDLEBURG HEIGHTS,
COUNTY OF CUYAHOGA, STATE OF OHIO AND
BEING KNOWN AS PART OF O.L. 6, SECTION 8 IN
ORIGINAL MIDDLEBURG TOWNSHIP

SHELDON ROAD CW-5
TEMPORARY EASEMENT FOR HIGHWAY PURPOSES

CITY OF BROOK PARK



EUTHENICS

8235 Mohawk Dr. | Cleveland, OH 44136

P.P.N. 371-17-002
RAYMOND P. RITTER
AFN 200211010859

EXHIBIT A

**PARCEL 1-T
(SHELDON ROAD CW-5)
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
MAKE ROADWAY IMPROVEMENTS
FOR APPROXIMATELY 12 MONTHS FROM THE DATE OF ENTRY BY THE
COUNTY OF CUYAHOGA, OHIO**

(Surveyor's description of the premises follows)

Situated in the City of Middleburg Heights, County of Cuyahoga, State of Ohio and being known as part of Original Middleburg Township Lot 6, Section 8 and being part of a parcel of land conveyed to Raymond P. Ritter recorded in AFN 200211010859 Official Records Cuyahoga County, and bounded and described as follows:

Beginning at a 5/8 inch iron pin monument box found at the intersection of the centerline of Engle Road, Width Varies, and the centerline of Sheldon Road, 60.00 feet wide;

Thence S. 88°41'07" E., 652.78 feet along the centerline of said Sheldon Road to a point therein;

Thence S. 01°18'53" W., 30.00 feet to its intersection with the southerly line of said Sheldon Road and the easterly line of Fox Hollow Drive, 50.00 feet wide, and being the **Principal Place of Beginning** of the parcel herein described:

Thence with the following three (3) courses:

- 1) S. 88°41'07" E., 10.00 feet along the southerly line of said Sheldon Road, to a point therein;
- 2) S. 46°43'59" W., 14.24 feet, to its intersection with the easterly line of said Fox Hollow Drive;
- 3) N. 02°09'04" E., 10.00 feet, along the easterly line of said Fox Hollow Drive to the **Principal Place of Beginning** and containing 50 square feet or 0.0011 acres of land more or less but subject to all legal highways.

EXHIBIT A

RX 286 T

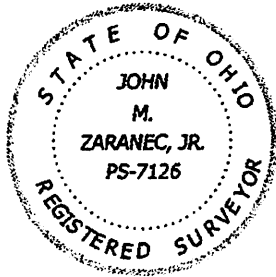
Page 2 of 2
Rev. 12/16

VER. DATE 12/22/2022

The bearings used in this description are based upon the Ohio State Plane Coordinates System, North Zone, NAD83 (Conus)(Mol).

The above-described parcel being part of Auditor's Permanent Parcel No. 371-17-002.

This description was prepared by John M. Zaranec, Jr. P.S. 7126 and was based on a survey performed by Euthenics, Inc. in December, 2022.



A handwritten signature in black ink, appearing to read "John M. Zaranec, Jr.", positioned to the right of the professional seal.

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2024-

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

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

WHEREAS, the Cuyahoga Soil and Water Conservation District (SWCD) and the City of Middleburg Heights recognize the need for effective collaboration in protecting soil and water resources and in carrying out its mandated responsibilities, especially related to the National Pollutant Discharge Elimination System (NPDES) Storm Water Permit; and

WHEREAS, the Cuyahoga SWCD will provide technical assistance in implementing soil and water conservation measures that promote best practices for pollution prevention and corresponds with the City's Municipal Separate Storm Sewer System permit.

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

Section 1: That the Mayor is hereby authorized to enter into a Memorandum of Understanding with the Cuyahoga Soil and Water Conservation District for services related to storm water pollution prevention and stormwater quality management at a cost not to exceed \$ 28,150.00, a copy of which is attached hereto and marked "Exhibit A".

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.

Passed: _____

President of Council

Attest: _____

Clerk of Council

Approved On: _____

Presented to Mayor: _____

	Yea	Nay
Bortolotto	_____	_____
Ali	_____	_____
Sage	_____	_____
Meany	_____	_____
McGregor	_____	_____
Ference	_____	_____
Grech	_____	_____

Mayor

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

This Memorandum of Understanding ("MOU") is made this ____ day of _____, 2024 ("Effective Date"), between Cuyahoga Soil and Water Conservation District (SWCD) and City of Middleburg Heights ("City"), for assistance with technical assistance in implementing soil and water conservation measures.

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

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

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

Project Tasks

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

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

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

1. Cuyahoga SWCD will provide technical assistance, related to stormwater pollution prevention and stormwater quality management, as requested, including:
 - a. Preliminary site planning meetings or conference calls; and
 - b. Review of erosion and sediment control plans (ESCs) for development, redevelopment, and infrastructure renovation plans for compliance with NPDES rules (Ohio Revised Code 3745 39-04 (B) (1) through (6)) and the current edition of Ohio's Rainwater and Land Development standard guidance manual.
2. The annual conservation program will include technical assistance related to NPDES covered construction activities of an estimated of:

- a. Technical advisory inspections (field reviews) and reporting (12 per year per site) of 6-10 active construction sites (≥ 1 acre)
- b. 6-10 initial ESC plan reviews, as received (≥ 1 acre)
- c. Subsequent SWP3 review, *as needed* (≥ 1 acre)
- d. Plan reviews for abbreviated construction plans will be performed at the request of the City.

3. Active construction program **\$18,150.00**

NPDES, Minimum Control Measure 5 – Post Construction Stormwater Management

- 1. Cuyahoga SWCD will provide technical assistance, related to stormwater pollution prevention and stormwater quality management, as requested, including: preliminary discussion, review, and technical assistance for SCM selection, including long term maintenance requirements for property owners; and
 - a. Design review of post-construction stormwater quality control measures (SCMs) for development, redevelopment, and infrastructure renovation plans for compliance with NPDES rules (Ohio Revised Code 3745 39-04 (B) (1) through (6)) and the current edition of Ohio's Rainwater and Land Development standard guidance manual.
 - b. 6-10 initial SCM plan reviews (≥ 1 acre)
 - c. Initial SWP3 reviews, as received (≥ 1 acre)
 - d. Subsequent SWP3 review, *as needed* (≥ 1 acre)
 - e. Installation inspection of select SCMs, including trees and other items as requested.
- 2. As required under the MS4 Permit, Cuyahoga SWCD will also provide annual inspections of post construction stormwater control measures (water quality and water quantity basins):
 - a. Transition meetings will be held with SWCD staff, city personnel and site personnel to review long-term operations and maintenance needs, and reporting requirements
 - b. 51-100 water quality and 10-25 water quantity stormwater control measures annual long-term maintenance field reviews of post-construction water quality/quantity facilities
 - c. Technical advisory inspection and reporting to the City and landowners with SCMs on their properties
 - d. Maintenance program fact sheets, individual site assessments and training, as needed or requested

3. Post-construction program **\$10,000.00**

Additional services Cuyahoga SWCD will provide:

- 1. Planning assistance, technical advice, and landowner follow up, including:
 - a. Technical assistance on local legislation if the City pursues universal application of accepted best management practices at construction sites;
 - b. Sound stormwater management;
 - c. Protection of sensitive natural areas;
 - d. General evaluation of sensitive areas such as creeks, floodplains, soils, slopes, wetlands, watersheds, woodlands, or other unique areas that are planned for development
 - e. Recommendations for stream bank and wetlands restoration, slope erosion control;
 - f. Enhancement of small drainage systems and wildlife habitat enhancements; and
 - g. Resident and landowner assistance, as requested, to advise on SCM maintenance strategies.
- 2. Cuyahoga SWCD will provide administrative support, including:
 - a. Provide an annual report of all activities undertaken (including copies of any other data collected);

- b. Project file management;
- c. Mapping of facility locations;
- d. Documenting LTOM plans and recorded LTMA agreements; and
- e. Data and assistance with MS4 reporting, as requested.

3. Additional services cost **\$2,850.00**.

Cuyahoga SWCD's Role and Responsibilities Related to Stormwater Pollution Prevention Activities

- 1. Annual review of MOU services and portfolio of active and post-construction inspection sites
- 2. Coordinate a yearly stormwater program kickoff meeting.
- 3. Maintain contact lists.
- 4. Provide technical assistance as needed.

City's Role and Responsibilities Related to Stormwater Pollution Prevention Activities

- 1. The City will provide an annual appropriation, not to exceed **\$31,000** for technical assistance related to NPDES covered construction activities. Should additional services be requested outside the scope of this MOU written amendments will be made and additional costs agreed upon by both parties. This memorandum of understanding will be reviewed each year to ensure agreed upon assumptions are still valid.
- 2. The City will designate one individual to serve as the City's liaison for the stormwater pollution prevention program.
- 3. The City will recognize the environmental and economic functions of naturally vegetated open spaces, such as wetlands, stream corridors, ravines, woodlands, and fields as worthy of the City's protection as open space.
- 4. The City will utilize Cuyahoga SWCD's technical assistance including plan reviews, project inventories, evaluations, and inspections of planned construction sites, water quality and water quantity basins or sensitive natural areas of concern.
- 5. The City will direct builders, developers, and consultants to Cuyahoga SWCD for assistance on planning and conservation early in the concept planning stage of the construction planning cycle.
- 6. The City will adopt, apply, and enforce Cuyahoga SWCD recommendations by not authorizing commencement and/or issuing work stoppage and other remedies. See city roles and responsibilities below for more information.
- 7. The City will provide Cuyahoga SWCD with field surveys, proposed layouts, designs or meeting notices needed for adequate technical assistance in a timely manner.
- 8. The City recognizes that Cuyahoga SWCD has no regulatory authority to enforce NPDES rules.

Agreed Procedures

- The City recognizes that Cuyahoga SWCD has expertise in compliance with the requirements of the OEPA's NPDES regulations and is relying on such expertise.

- Cuyahoga SWCD recognizes that the City is the regulating authority.
- Consequently, Cuyahoga SWCD shall not send correspondence without the City first reading and approving such correspondence. The City shall notify SWCD of any questions, comments, and/or requested changes in a timely fashion.
- Cuyahoga SWCD shall respond to such questions, comments and make such changes in a timely fashion.
- Cuyahoga SWCD is not granted regulatory authority in the Ohio Revised Code.
- Cuyahoga SWCD and the City will meet at least once a year to coordinate a work plan and exchange information.
- Cuyahoga SWCD will provide the City with a written annual summary, relevant to its role, as outlined in this MOU.
- The NPDES rules, current edition of Ohio's Rainwater and Land Development standard guidance manual, and standards of the USDA, Natural Resources Conservation Service will be used in planning and application of conservation measures.
- That both parties will review the quality of assistance and address concerns as they arise.
- There shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identify, genetic information, political affiliation, or military status when fulfilling the purpose of this engagement.
- The City recognizes Cuyahoga SWCD's obligation to make its reports and other written materials available to the public on request in accordance with the Ohio Public Records Act.
- The City agrees to grant an annual conservation appropriation to Cuyahoga SWCD, not to exceed \$31,000 per twelve-month period following the Effective Date and Cuyahoga SWCD agrees to use the grant funds to provide a comprehensive conservation program for the City.
- The City and Cuyahoga SWCD will determine the most effective manner to appropriate the funds.
- The City will provide a resolution to Cuyahoga SWCD that acknowledges this working agreement and provides documentation to facilitate dispersal of funds to Cuyahoga SWCD on an annual basis.

Term, Renewal, Termination

The term of this CONTRACT shall begin on the Effective Date first stated above and when SWCD receives written notice from the City, in a form approved by SWCD and in accordance with Sections 5705.41 and 5705.44 of the Ohio Revised Code; and shall end on the same date twelve (12) months thereafter, unless this CONTRACT is terminated sooner, or unless the CONTRACT is extended by the CITY, for one additional one-year term of twelve (12) months, at the sole discretion of the CITY. If the CITY exercises its option to renew the CONTRACT for one additional twelve-month period, the CONTRACT shall continue in effect for said periods, unless the CONTRACT is terminated sooner, or unless it is further extended by mutual agreement, in writing, of the parties hereto.

The exercise by the CITY of its option to extend the CONTRACT for one additional twelve (12) month period is subject to appropriation by City Council. Any such extension shall be under the same terms and conditions as set forth in this CONTRACT. The CITY shall provide notice in writing to SWCD before the end of the initial twelve (12) month term if the CITY has determined to extend the CONTRACT for an additional one-year period.

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

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

Cuyahoga Soil & Water
Conservation District

City of Middleburg Heights

By: _____
Board Chair

By: Hon. Matthew Castelli
Mayor

Date:

Date:

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2024-

Introduced By: Mayor Matthew Castelli

AN ORDINANCE AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A PURCHASE AGREEMENT FOR THE PURCHASE OF CERTAIN REAL ESTATE IN THE CITY OF MIDDLEBURG HEIGHTS TO BE USED FOR THE ABRAM CREEK DETENTION BASINS PROJECT AND DECLARING AN EMERGENCY

WHEREAS, flooding of public and private property has been a concern throughout the City of Middleburg Heights for many years; and

WHEREAS, it is the desire of the Mayor and Council to work towards the elimination of all flooding concerns within the City and to improve stormwater management within the City; and

WHEREAS, the acquisition of this parcel of land will allow the City to proceed with necessary improvements to increase stormwater detention capacity to reduce flooding within the City.

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

Section 1: That the Mayor and Finance Director are hereby authorized to enter into a purchase agreement, a copy of which is attached hereto and marked "Exhibit A", for the purchase of certain real estate and improvements in the City of Middleburg Heights.

Section 2: That there is hereby appropriated from the Streets/Infrastructure Improvements Fund \$_____ for the purchase of a certain parcel of real estate, closing costs and related fees, expenses, and demolition and removal improvements on said parcel.

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

Section 4: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and welfare of said City. Such necessity exists by reason of the fact that it is immediately necessary to acquire property to construct detention basins 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: _____

President of Council

Attest: _____

Clerk of Council

Approved On: _____

Presented to Mayor: _____

Mayor

	Yea	Nay
Bortolotto	_____	_____
Ali	_____	_____
Sage	_____	_____
Meany	_____	_____
McGregor	_____	_____
Ference	_____	_____
Grech	_____	_____

REAL ESTATE PURCHASE AGREEMENT - Dated: December 17, 2023

THIS AGREEMENT is made as of the dates shown below by and between **Athena Callas Trust** whose address for notices purposes shall be 7153 Darrow Road Hudson, OH 44236 (hereinafter "Sellers"), and , City of Middleburg Heights, an Ohio Municipal Corporation , whose address for notice purposes shall be 15700 Bagley Road Middleburg Heights, OH 44130 (herein after "Buyers").

WITNESSETH

WHEREAS, Sellers are the owners of certain real property located at 7056 Pearl Road, Middleburg Heights, Cuyahoga County, OH Permanent Parcel NO 372-23-026, which property is further described in the legal description which is attached hereto and made a part hereof as **Exhibit A**, together with any and all buildings, fixtures, improvements, easements, rights-of-way, and any other rights appurtenant thereto (all of the above being hereinafter referred to as the "Premises");

WHEREAS, Buyers desire to purchase the Premises from Sellers and Sellers desire to sell the Premises to Buyers on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

1. **PURCHASE PRICE** The purchase price for the Premises shall be ONE HUNDRED EIGHTY Thousand Dollars and no/100 Cents (\$180,000.00) (hereinafter the "Purchase Price"), to be paid as follows:

A. Upon Sellers' execution hereof, Buyers shall deposit with **American Title Associates Agency, Inc. 4505 Stephen Circle NW Suite 200, Canton, OH 44718 (the "Title Company")**, ONE Thousand dollars (\$1,000.00) (the "Deposit"). The Deposit shall be held by the Title Company in a non-interest bearing account until closing, as herein defined, at which time the Deposit will be applied toward the Purchase Price or expenses of Buyers hereunder, or otherwise in accordance with the terms hereof.

B. At closing, Buyers shall deliver to the Title Company for delivery to Sellers in accordance herewith, by wire transfer or bank check, the remaining balance due on the Purchase Price, plus or minus the adjustments to be made thereto.

2. INSTRUMENTS OF CONVEYANCE

Sellers shall deliver copies of the following documents to Buyers and the originals of the following documents to the Title Company prior to closing:

A. A good and sufficient general deed (the "Deed") conveying to Buyers good and sufficient marketable and insurable fee simple title to the Premises, free and clear of all liens, clouds, encumbrances and encroachments whatsoever, except the following: (i) real estate taxes which are a lien against the Premises, but are not yet due and payable as of the closing date, which shall be pro-rated to the closing date; and (ii) easements, covenants, conditions, reservations and restrictions of record;

B. An affidavit of no liens satisfactory to the Title Company so that the mechanics lien exception can be removed from the title policy provided for hereinafter; and

3. EVIDENCE OF TITLE. Within fifteen (15) days after the execution of this Agreement by Sellers and Buyers, Sellers shall cause the Title Company to issue a current owners title insurance commitment covering the Premises in the amount of the Purchase Price. The commitment must show title to the Premises to be in Sellers, and shall name Buyers or its nominee as the proposed insured. Buyers shall have ten (10) days after receipt of such commitment and at Buyers' election after receipt of a location survey, to review the same and to advise Sellers of any objections thereto.

Upon receipt of notice from Buyers that there is a cloud upon title or other encumbrance, encroachment or interest not permitted under Section 2A above, Sellers shall have thirty (30) days in order to remove any such exception which is not acceptable to Buyers or otherwise to cure any cloud, encumbrance or matter affecting title. If Sellers do not cure or otherwise discharge such encumbrance or encroachment or if the same cannot be removed at the time of closing by the payment of proceeds out of Purchase Price, then Buyers may elect to (i) terminate this Agreement, in which case all obligations of Buyers hereunder shall be extinguished and the Deposit shall be immediately returned to Buyers by the Title Company, without the need for any consent or instruction from Sellers or any other third party; (ii) extend the permitted time in which such exceptions may be removed or cured in which case the date of closing shall be adjusted accordingly; or (iii) take title as then held by Sellers and proceed to closing hereunder.

Following the closing, Sellers shall cause the Title Company to issue a final Owners Title Insurance policy, insuring Buyers' free and clear marketable title in the Premises. Sellers and Buyers agree that marketability of title shall be determined in accordance with the standards of title examination adopted by the Ohio State Bar Association. Buyers and seller will split the cost of the above-required title insurance coverage.

4. SURVEY. Buyers may, at Buyers' sole cost and election, obtain a location survey or an ALTA survey covering the Premises.

5. CLOSING DATE. Unless the parties otherwise agree in writing, this transaction shall close on or before February 1, 2024 (the "Closing Date"). The closing will take place at the Title Company or at such other location agreed upon by Sellers and Buyers. The Closing Date will be subject to the terms and conditions of Section 10, 11 and 12 hereof. On the Closing Date, the Title Company shall cause the Deed and other documents to be recorded, to insure in Buyers good record title to the Premises, and shall disburse the Purchase Price as set forth herein, including such disbursements as may be necessary for the satisfaction of any and all mortgages, or other liens affecting the Premises.

6. POSSESSION. Full possession of the Premises shall be delivered from Sellers to Buyers upon transfer of the title.

7. PRO-RATIONS AND CHARGES.

A. The Title Company shall pro-rate and apportion, as of the Closing Date, real estate taxes and general assessments, and/or betterment assessments. Proration of taxes and assessments shall be based upon the last available tax duplicate and/or assessment.

B. At closing, Sellers shall pay: (i) 50% of the cost of the title insurance referenced above, (ii) 50% of the cost of the deed preparation, (iii) 50% of the cost of recording the Deed, (iv) 50% of Title Company's closing fee, including Title Examination and binder, and (v) 50% of the conveyance Fee (vi) All legal fees, if any, incurred by Sellers in this transaction. (vii) Sellers pay real estate taxes and general assessments, and/or betterment assessments. Proration of taxes and assessments shall be based upon the last available tax duplicate and/or assessment.

C. At closing, Buyers shall pay: (i) 50% of the cost of the title insurance referenced above, (ii) 50% of the cost of the deed preparation, (iii) 50% of the cost of recording the Deed, (iv) 50% of Title Company's closing fee, including Title Examination and binder, and (v) 50% of the conveyance Fee (vi) All legal fees, if any, incurred by Buyers in this transaction.

INSPECTION AND RIGHT OF ACCESS.

For ten (10) days from and after the execution of this agreement by both parties hereto, Buyers, and Buyers' representatives, agents, employees, consultants and/or contractors shall have the right to enter upon and inspect the Premises at reasonable times. At Buyers' sole cost and expense, Buyers shall have the right to make such inspections, studies, and examinations as are, in Buyers' reasonable judgment, necessary or desirable in order to determine the suitability of the Premises for Buyers' intended use thereof. Buyers shall, within such ten (10) day period, advise Sellers that the Property is unacceptable and provide Sellers with a copy of the inspection report showing necessary repairs in excess of five percent (5%) of purchase price, in which case, Buyers may void this Agreement and all monies paid by Buyers, including the Deposit, shall be immediately refunded to Buyers. Should Buyers fail to timely deliver such notice and report to Sellers, this

contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement.

9. **AS-IS PROVISION.** Buyers agree and acknowledge that the Premises is being conveyed **AS-IS, WHERE-IS, WITH ALL FAULTS,** and that, Sellers have not made any representations or warranties, either express or implied, regarding the Premises or the condition thereof, including but not limited to, the condition of the roof, structure, basement (structural or water seepage), furnace, air conditioning, sewer system, electrical, plumbing, and appliances. Buyers have read and understand this Section 9. Buyers' initials

10. **CONDEMNATION.** If between the dates of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which might result in the taking of any part or all of the Premises, Buyers may either (i) terminate this Agreement, in which event Buyers' Deposit shall be returned to Buyers without the need for any instruction or consent of Sellers, and all rights and obligations of the parties hereunder shall cease; or (ii) elect to consummate this transaction, in which event Sellers shall assign to Buyers all of Sellers' right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding. Sellers shall immediately notify Buyers in writing of the occurrence of any condemnation or eminent domain proceedings, and thereafter Buyers shall have three (3) days to notify Sellers of Buyers' election. Should Buyers fail to timely make such election, this contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement. The Closing may be delayed until Buyers make such election. If Buyers elect to consummate the transaction, the date of Closing shall be adjusted accordingly.

11. **INSURANCE; DESTRUCTION OF PREMISES.**

Sellers shall assume the risk of loss to the Premises from fire or other casualty until Closing, and shall insure the same for the fair market value of the buildings and improvements located thereon, if any. If all or any part of the Premises is damaged or destroyed by fire or other casualty prior to the Closing of this transaction, Buyers may either (i) elect to proceed with this transaction in which event Buyers shall be entitled to all insurance monies, if any, payable to Sellers under any and all policies of insurance covering the Premises and/or any building thereon so damaged or destroyed; or (ii) elect to rescind this Agreement, in which event Buyers' Deposit shall be returned to Buyers without the need for any instruction or consent of Sellers, and all rights and obligations of the parties hereunder shall cease. Buyers shall make an election hereunder in writing within three (3) days after Sellers provide Buyers with notice specifying the damage and the total amount of all insurance proceeds available to Sellers as a result thereof. Should Buyers fail to timely make such election, this contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement. If necessary, the Closing Date may be delayed by the time period in which Buyers has to make an election.

12. REMEDIES.

A. If Sellers should fail to perform in accordance herewith, or otherwise breach any of the terms, covenants, agreements, representations or warranties contained herein, then Buyers may terminate this Agreement and obtain an immediate return of Buyers' Deposit without the need for any instruction or consent from Sellers. Buyers may seek such other damages or remedies which may be available to Sellers at law or in equity.

B. If Buyers should fail to perform any of their obligations hereunder, or otherwise be in default hereunder, Sellers may declare this Agreement to be terminated, in which event, Buyers' Deposit shall be forfeited to Sellers and Sellers may seek such other damages or remedies which may be available to Sellers at law or in equity.

13. BROKER.

Sellers and Buyers hereby represent that neither party has retained the services of or communicated with any broker, realtor or agent in connection with the sale of the Premises. Buyers and Sellers agree that each party shall be solely responsible for fully satisfying any commission, compensation or other fees to be paid to a real estate broker in connection with or arising out of any communications which such party may have had with a broker concerning the transaction contemplated herein.

14. NOTICES

All notices to be given pursuant to this instrument shall be sufficient if given by personal service, guaranteed overnight delivery service, or if mailed postage prepaid, certified or registered mail, return receipt requested, to the parties hereto at the addresses as set forth above, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, or two (2) days after mailing certified or registered mail.

15. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. CAPTIONS. The captions in this Agreement are inserted for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

17. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

18. TIME. Time is of the essence of this Agreement and of each and every provision hereof. In the computation of any period of time provided for in this Agreement or by

law, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.

12. ENTIRE AGREEMENT. Buyer and Seller acknowledge that there are no covenants, representations, warranties, agreements or conditions, either expressed or implied which in any way effect, form a part or relate to this Agreement except for those expressly set forth herein or except for those which are set forth by separate agreement. This Agreement constitutes the entire agreement between the parties.

20. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or otherwise invalidated.

GOVERNING LAW. Buyers and Sellers agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
IN WITNESS WHEREOF, this Agreement has been duly executed by Sellers and Buyers on the dates set forth below.

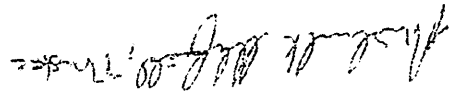
City Of Middleburg Heights (Buyer):

Matthew J. Castelli, Mayor

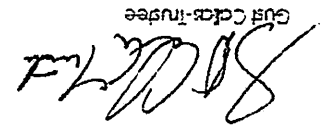
Dated:

SELLERS

Athens Callas Trust


Richard Wiedel, Trustee

Richard Wiedel, Trustee


Gust Callas, Trustee

Gust Callas, Trustee

12/18/2023

Dated:

12/18/23

Dated:

Exhibit A

...and the following described premises, situated in the City of
Middleburg Heights, *County of Cuyahoga and State of Ohio:*

And known as being part of Original Middleburg Township Lot No. 14, Turnpike Tract, and bounded and described as follows: Beginning on the center line of Pearl Road, (66 feet wide), at the most Southerly corner of land conveyed to Emma D. Hutchinson, by deed dated November 25, 1924, and recorded in Volume 3018 Page 553 of Cuyahoga County Records; thence Northeasterly along the center line of Pearl Road, 138 feet to the most Southerly corner of land conveyed to Evelyn M. Morgan, by deed dated March 12, 1945 and recorded in Volume 5848, Page 483 of Cuyahoga County Records; thence Northwesterly along the Southwesterly line of land so conveyed, 600 feet to the Southeasterly line of land conveyed to Paul and Mary Laperis, by deed dated October 30, 1951 and recorded in Volume 7426, Page 238 of Cuyahoga County Records; thence Southwesterly along the Southeasterly line of land so conveyed, and along the Southwesterly prolongation thereof, 138 feet to the Southwesterly line of land conveyed to Emma D. Hutchinson, as aforesaid; thence Southeasterly along the Southwesterly line of land so conveyed, 600 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Permanent Parcel No. 372-23-26