

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Resolution No. 2026-**3**

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

**A RESOLUTION  
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 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 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 \$34,000.00 for year one and not to exceed \$36,250.00 for year two, 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 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: 1-13-26

Dave Bortolotto  
President of Council

Attest: M Meala  
Clerk of Council

Approved On: 1-14-26

Presented to Mayor: 1-14-26

Matthew Cash  
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>	_____
Zakel	<u>X</u>	_____

**CERTIFICATE**

I, M 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 2026-3 passed on the 13 day of January 2026 by said Council.

M Meala  
Clerk of Council

I, M Meala, Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2026-3 adopted by the Council of the City of Middleburg Hts., on 1-13-26 was posted for a period of fifteen days, beginning 1-16-26 and remained so posted for fifteen days at the two posting places as designated by Charter.

M Meala  
Clerk

# **MEMORANDUM OF UNDERSTANDING**

## **Between Cuyahoga Soil & Water Conservation District and the City of Middleburg Heights, OH**

This Memorandum of Understanding (MOU) is made this 1<sup>st</sup> day of January, 20265 (Effective Date), between Cuyahoga Soil & Water Conservation District (Cuyahoga SWCD) and the City of Middleburg Heights (City), referred to herein as the Parties, to support implementation of a conservation program that promotes best practices for soil and water conservation, stormwater pollution prevention, and natural resource protection, corresponding with the City's Municipal Separate Storm Sewer System (MS4) permit and municipal codified ordinances where applicable.

### **BACKGROUND AND PURPOSE**

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 supports the City in sustainable plans for development/redevelopment of land, water quality protection and improvements, and conservation of natural resources. 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 required 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 □ Construction Site Stormwater Runoff 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 with Planning, Economic Development, or other appropriate municipal departments; and
  - b. Review of erosion and sediment control plans (ESCs) for development, redevelopment, and infrastructure renovation plans for compliance with NPDES rules (Ohio Administrative 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 the following technical assistance related to NPDES-covered construction activities for a maximum of 10\* active construction sites annually:
  - a. Initial ESC plan reviews, as received. Plan reviews for abbreviated construction plans (i.e. < 1 acre\*) will be performed at the request of the City.
  - b. Subsequent SWP3 review, as needed up to five (5) revisions
  - c. Technical advisory inspections (field reviews) and reporting (12 per year per site) for sites >1 acre.\*
  - d. Catalogue Long-Term Maintenance Agreements (LTMA) submitted by applicant during the plan review process

\*Construction sites 10 acres or greater will be treated as two (2) or more sites in the municipality's annual site technical assistance provided through this MOU. Sites exceeding 25 acres, consisting of multiple phases, and/or which are deemed exceedingly complex compared with standard stormwater control practices in Ohio and Cuyahoga County will be evaluated separately for conformity with this MOU. Separate cost estimates may be required for sites 25 acres or greater.

Construction sites covered under this MOU which commence earth disturbing activity or other construction activity covered under NPDES rules (Ohio Administrative Code 3745 39-04 (B) (1) through (6)) without an approved construction permit issued by the municipality and/or before receiving a Recommendation of Approval (ROA) from Cuyahoga SWCD may be subject to additional charges outside of this MOU.

Cuyahoga SWCD will halt monthly inspections of construction sites covered under this MOU which are found to be deficient in implementing and/or maintaining stormwater control measures detailed in the site's approved SWP3 for four (4) months or more until the municipality has provided written documentation confirming compliance resolution efforts are being implemented by responsible parties in a timely manner.

As requested by the City, Cuyahoga SCWD will provide the following additional services in support of NPDES, Minimum Control Measure 4 □ Construction Site Stormwater Runoff Control:

1. Planning assistance, technical advice, and landowner follow up, including:

- a. Technical assistance on local legislation needs to support the City in implementation of its MS4 permit program;
- 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 by the City, to advise on BMP strategies and other conservation-related matters.

**Annual Cost for NPDES, Minimum Control Measure 4 || Construction Site Stormwater Runoff Control: \$20,000.00**

**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:
  - a. Preliminary discussion, review, and technical assistance for SCM selection, including long term maintenance requirements for property owners; and
  - b. 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; and
  - c. Review of Long-Term Operations & Maintenance plans and draft Long-Term Maintenance Agreements (LTOMAs)
  - d. Installation inspection of select SCMs, including trees and other items as requested.
2. As required under the MS4 Permit, Cuyahoga SWCD will also provide technical assistance related to NPDES-covered post-construction stormwater control measures (water quality and water quantity basins) for a maximum of 100\* sites annually:
  - a. Mandatory transition meetings will be held with Cuyahoga SWCD staff, city personnel, and site personnel to review long-term operations and maintenance needs, and reporting requirements. The mandatory transition meeting will constitute the initial post-construction site inspection and also serve as the official handover from active construction to post-construction. At the transition meeting, the following will be reviewed/discussed:
    - i. Verification all installed post-construction stormwater control measures are in proper working order, as specified in the approved site plans.
    - ii. Confirmation the site owner and/or property manager has received a copy of the Long-Term Operations and Maintenance (LTOM) manual and

understands their maintenance responsibilities as outlined in the Long-Term Maintenance Agreement (LTMA) for the site.

- iii. Final as-built design file submissions for all post-construction stormwater control measures on the site. Cuyahoga SWCD maintains a copy of the final as-built designs for post-construction features.
- b. Annual long-term maintenance field reviews of post- construction water quality/quantity facilities and technical advisory inspection report to the City and property owner.
- c. Maintenance program fact sheets, individual site assessments and training, as requested by the City.
- d. Guidance and review of technical advisory report with landowners, as requested by the City.

\*Post-construction sites which have five (5) or greater stormwater control measures on site will be treated as two (2) or more sites in the municipality's annual site technical assistance provided through this MOU.

Post-construction sites under this MOU which have been identified as having deficiencies for more than three (3) inspection cycles will not continue to be inspected by Cuyahoga SWCD until the municipality has provided written documentation to confirming compliance resolution efforts are being implemented by responsible parties in a timely manner.

As requested by the City, Cuyahoga SCWD will provide the following additional services in support of NPDES, Minimum Control Measure 5 □ Post-Construction Stormwater Management:

1. Planning assistance, technical advice, and landowner follow up, including:
  - a. Technical assistance on local legislation needs to support the City in implementation of its MS4 permit program;
  - 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 by the City, to advise on SCM maintenance strategies and other conservation-related matters.

***Annual Cost for NPDES, Minimum Control Measure 5 □ Post-Construction Stormwater Management: \$11,000.00***

### **Administrative Services**

Cuyahoga SWCD will provide the City with the following administrative support services:

1. Provide an annual report of all activities undertaken (including copies of any data collected, as requested).
2. Project file management for all sites reviewed by Cuyahoga SWCD.
3. Mapping of stormwater facility locations.
4. Documenting LTOM plans and recorded LTMA agreements provided at the time of site transition.
5. Data and assistance with MS4 reporting, as requested.

***Annual Cost for Administrative Services: \$3,000.00***

### **MOU PARTNER ROLES & RESPONSIBILITIES**

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 agree to be responsible for the implementation tasks outlined for each below.

### **Cuyahoga SWCD Responsibilities Related to Stormwater Pollution Prevention Activities**

Through this MOU, Cuyahoga SWCD will be responsible for providing the following:

1. Coordinate a yearly stormwater program kickoff meeting with designated City staff responsible for implementation of the City's MS4 Permit program.
2. Conduct an annual review of MOU services and portfolio of active and post-construction inspection sites.
3. Provide support to municipality for public records requests related to MS4 Permit program.
4. Provide technical assistance, natural resource impact review, recommendations for SCMs and other conservation practices, during preliminary project discussions.
5. Review of erosion and sediment control plans (ESCs) for development, redevelopment, and infrastructure renovation plans for compliance with NPDES rules (Ohio Administrative Code 3745 39-04 (B) (1) through (6)) and the current edition of Ohio's Rainwater and Land Development standard guidance manual within 21 business days upon receipt.
6. Provide a Recommendation of Approval (ROA) letter to the City documenting approval of the site SWP3 prior to commencement of construction activities.
7. Attend pre-construction meeting(s) and review site SWP3 requirements with project construction team.
8. Provide monthly technical advisory inspections (field reviews) and reporting to the City and project construction team for up to 10 active construction sites per year.
9. Notify relevant contractors and the City when deficiencies are observed on active construction sites. Construction sites subject to NPDES compliance which are deficient for four (4) months or more will not be inspected by Cuyahoga SWCD until the

municipality has provided written documentation to confirm deficiencies are being addressed in a timely manner.

10. Lead post-construction transition meetings to inspect the installation and review long-term operations and maintenance documents and reporting requirements.
11. Conduct up to 100 post-construction site stormwater control measure field reviews and technical advisory inspection reports annually to the City and property owner.
12. Maintain contact lists, as furnished by the City or other authorized party, of property owners and property maintenance contacts for sites inspected by Cuyahoga SWCD under this MOU.
13. Provide technical assistance, as requested by the City, to support implementation of the City's MS4 Permit program and/or conservation practices within the community.
14. Provide an annual report of all activities undertaken (including copies of any data collected, as requested).
15. Provide administrative support through project file management, mapping of facility locations, documenting LTOM plans and recorded LTMA agreements provided at the time of site transition, and data and assistance with MS4 reporting, as requested.
16. Submit invoices following the performance of the services described in the billing in a form mutually agreeable to the parties and accompanied by such supporting documentation as reasonably required for verification.

#### **City's Responsibilities Related to Stormwater Pollution Prevention Activities**

Through this MOU, the City will be responsible for the following:

1. The City will provide an annual appropriation, to the face value of this MOU, not to exceed \$34,000.00 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 make payments to the Cuyahoga SWCD for its performance based on verified invoices, which shall be due and payable by the within thirty (30) days from the date of receipt thereof.
3. The City will recognize the environmental functions of naturally vegetated open spaces, such as wetlands, stream corridors, ravines, woodlands, and fields in providing economic and human health benefits, making them worthy of the City's protection in municipal zoning and building codes, land management strategies, and enforcement thereof.
4. The City will direct builders, developers, and design engineers to consult with Cuyahoga SWCD for assistance on siting, planning, and natural resource conservation early in the concept planning stage of the construction planning cycle. The City will require builders, developers, and consultants to follow best management practices as outlined in the current edition of Ohio's Rainwater and Land Development standard guidance manual. Where applicable, the City will adopt policies and procedures to support the

requirements for construction and post-construction activities for compliance with the NPDES permit.

5. The City will designate one or more individual(s) to serve as the City's liaison(s) for the stormwater pollution prevention program. These designated individuals will be responsible for the following:
  - a. Participate in a yearly stormwater program kickoff meeting with designated City staff responsible for implementation of the City's MS4 Permit program.
  - b. Annually review portfolio of active and post-construction inspection sites with Cuyahoga SWCD staff.
  - c. Notifying Cuyahoga SWCD of upcoming construction projects submitted to Planning Commission or other authorizing body.
  - d. Facilitate SWP3 plan submittal to Cuyahoga SWCD for applicable projects.
  - e. Verification of Cuyahoga SWCD Recommendation of Approval (ROA) and OH EPA Notice of Intent (NOI) prior to commencement of construction activities.
  - f. Coordinate with Cuyahoga SWCD staff to attend pre-construction meeting(s) and review site SWP3 requirements with project construction team.
  - g. Review monthly technical advisory inspections (field reviews) and reports. Support Cuyahoga SWCD in obtaining accurate contact information for site contacts, where applicable.
  - h. Support and lead enforcement and escalation of non-compliant sites.
  - i. Support Cuyahoga SWCD in coordinating a mandatory transition meeting to review long-term operations and maintenance needs, and reporting requirements.
  - j. Support Cuyahoga SWCD in obtaining updated Long-Term Operations and Maintenance plans and fully executed Long-Term Maintenance Agreements for all sites with post-construction stormwater control measures subject to NPDES compliance.
6. The City will adopt, apply, and enforce Cuyahoga SWCD recommendations to support implementation of the Stormwater Pollution Prevention Program. This includes, but is not limited to, verification of Cuyahoga SWCD's Recommendation of Approval (ROA) prior to authorizing construction activities to commence, issuing stop work orders or other construction activity restrictions, and issuing fines to appropriate entities for failure to comply with NPDES permit and other local requirements.
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.

**COST SUMMARY**

SERVICE	COST YEAR ONE	COST YEAR TWO (OPTIONAL)
NPDES, Minimum Control Measure 4 □ Construction	\$20,000.00	\$21,500.00

Site Stormwater Runoff Control		
NPDES, Minimum Control Measure 5 □ Post-Construction Stormwater Management	\$11,000.00	\$11,500.00
Administrative Services	\$3,000.00	\$3,250.00
	<b>TOTAL COST YEAR ONE</b>	<b>TOTAL COST YEAR TWO</b>
	<b>\$34,000.00</b>	<b>\$36,250.00</b>

**GENERAL TERMS OF UNDERSTANDING**

1. 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.
2. Cuyahoga SWCD recognizes that the City is the regulating authority.
3. Consequently, Cuyahoga SWCD shall not send enforcement escalation correspondence without the City first reading and approving such correspondence to issue on its behalf. The City shall notify Cuyahoga SWCD of any questions, comments, and/or requested changes in a timely fashion.
4. Cuyahoga SWCD shall respond to such questions, comments and make such changes in a timely fashion.
5. Cuyahoga SWCD is not granted regulatory authority in the Ohio Revised Code.
6. Cuyahoga SWCD will provide the City with a written annual summary, relevant to its role, as outlined in this MOU.
7. The NPDES rules, current edition of Ohio's Rainwater and Land Development standard guidance manual, the ODOT Location and Design Manual Volume 2, and standards of the USDA, Natural Resources Conservation Service will be used in planning and application of conservation measures.
8. That both parties will review quality of assistance and address concerns as they arise.
9. That all assistance provided by Cuyahoga SWCD is offered on a non-discriminatory basis without regard to race, age, marital status, handicap or political persuasion.
10. 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.
11. Any notice or communication required or permitted under this MOU shall be sufficiently given in writing delivered in person or electronic mail, to the following:

CITY OF MIDDLEBURG HEIGHTS	CUYAHOGA SOIL & WATER CONSERVATION DISTRICT
MATTHEW J. CASTELLI MAYOR	KRISTIN N. HALL FITZGERALD, EXECUTIVE DIRECTOR
MCASTELLI@MIDDLEBURGHEIGHTS.COM	KHALL@CUYAHOGASWCD.ORG
MIDDLEBURG HEIGHTS, OHIO 44130	CLEVELAND, OHIO, 44114

12. In the event of any dispute or disagreement between any of the Parties with respect to the interpretation of any provision of this Project Agreement which cannot be resolved in

the normal course of business, then upon written notice of either party to the other adhering to the following:

- a. Each party agrees to meet for the purpose of endeavoring in good faith to resolve the dispute;
  - b. No formal action for such dispute may be commenced by the parties until either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter at issue does not appear likely and so notifies the other party; and
  - c. The rights and obligations of the parties under this Section shall not limit either party's right to terminate this Project Agreement as otherwise permitted hereunder.
13. This MOU shall be governed by and construed in accordance with the laws of the State of Ohio.
14. In the event that any provision of this MOU is deemed to be severable or invalid, and if any term, condition, phrase or portion of this MOU shall be determined to be unlawful or otherwise unenforceable, the remainder shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties. If a court should find that any provision of this MOU to be invalid or unenforceable, that provision will be changed and interpreted to accomplish the Parties' objectives to the greatest extent possible under applicable law and the remaining provisions of this MOU shall continue in full force and effect.
15. There are no third party beneficiaries under this Contract, and in no event shall Cuyahoga SWCD be liable to the City for incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits.
16. Neither Party to this MOU may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, from which approval shall not be unreasonably withheld.
17. This MOU constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this MOU desire or intend that any implementing contract or other agreement entered into between the parties in writing subsequent hereto shall supersede and preempt any conflicting provision of this MOU. The terms of this MOU control over any conflicting terms in any referenced document.
18. By entering into this MOU, the Parties agree on behalf of themselves and their respective officers, employees, agents or assigns, that this transaction may be conducted by electronic means by agreeing that all documents requiring signatures by Cuyahoga SWCD and the City may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga SWCD and the City to said documents shall have the same effect as if that signature was manually affixed to a paper version of the document.

## **INDEMNIFICATION**

Cuyahoga SWCD and the City do not indemnify any person or entity, and agree that no provision of this MOU or any other agreement between Cuyahoga SWCD and the City may be

interpreted to obligate either to indemnify or defend the other or any other person or entity. Each party agrees to be responsible for any and all damages for which they are legally liable resulting from the actions or omissions of its officers, officials, employees and agents while same are engaged in the performance of this MOU.

**TERM, RENEWAL, TERMINATION**

The term of this MOU shall begin on the Effective Date first stated above and when Cuyahoga SWCD receives written notice from the City, in a form approved by Cuyahoga 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 MOU is terminated sooner, or unless the MOU is extended by the City, for one additional one-year term of twelve (12) months, at the rates outlined above in the COST SUMMARY, at the sole discretion of the City. If the City exercises its option to renew the MOU for one additional twelve-month period, the City shall notify Cuyahoga SWCD, in writing, of its desire to before the end of the initial twelve (12) month term if the CITY has determined to extend the MOU for an additional one-year period. The MOU shall continue in effect for said periods, unless the MOU is terminated sooner, or unless it is further extended by mutual agreement, in writing, of the parties hereto. Any such extension shall be under the same terms and conditions as set forth in this MOU.

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) days advance written notice to the other.

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

**CUYAHOGA SOIL & WATER  
CONSERVATION DISTRICT**

**[MUNICIPALITY/ ORGANIZATION]**

\_\_\_\_\_  
(Signature)

Matthew Castelli  
(Signature)

BY: \_\_\_\_\_  
(Printed Name, Title)

BY: Matthew Castelli Mayor  
(Printed Name, Title)

DATE: \_\_\_\_\_

DATE: 1-14-26