

ORDINANCE NO. 25 - 2021

AN ORDINANCE ACCEPTING AND AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE VILLAGE OF MADISON AN "H2OHIO" GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES; AND DECLARING AN EMERGENCY.

WHEREAS, the Village owns certain former nursery land which has been the subject of planning to reestablish the hydrologic functioning of Arcola Creek across the property as well as restoration of adjacent wetlands to their pre-development natural state, which is known as the Madison Village Park Wetlands Project; and

WHEREAS, the Ohio Department of Natural Resources ("ODNR") has funding available for the Project in the sum of Four Hundred and Seventy-Eight Thousand, Six Hundred and Fifty Dollars (\$478,650.00), same being known as an "H2Ohio" grant; and

WHEREAS, ODNR has submitted to the Village for approval an agreement setting forth the terms and conditions for H2Ohio grant, inclusive of the scope of work, completion date, and reporting requirements; and

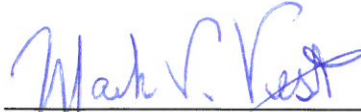
WHEREAS, the Council desires to enter into this grant agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE AND STATE OF OHIO:

SECTION 1. The Mayor is hereby authorized to execute on behalf of the Village the "H2Ohio Grant Agreement" in substantially the form attached hereto as Exhibit "1" for grant funds in the total amount of \$478,650.00.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the Village of Madison, and for the further reason that its immediate adoption is necessary to for timely grant agreement processing for the Madison Village Park Wetlands Project, a project that is time-sensitive due to construction schedules; wherefore, this Ordinance shall take effect and be in force immediately upon its passage.



Mark V. Vest,
President of Council

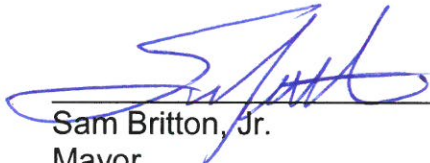
PASSED: 9-13-2021

Attested:



Kristie M. Crockett,
Fiscal Officer / Clerk of Council

Approved:



Sam Britton, Jr.
Mayor

9-13-2021
Date

**H2Ohio Grant Agreement Between
The Village of Madison
And the
Ohio Department of Natural Resources**

This Grant Agreement (the "Agreement") is made and entered into by and between the State of Ohio, Department of Natural Resources, (the "ODNR"), acting by and through its Director, pursuant to Section 1501.01 of the Ohio Revised Code and Amended Substitute House Bill No. 110, passed by the 134th General Assembly of the State of Ohio and signed by the Governor of Ohio on 1 July, 2021 (effective date June 30, 2021) and the Village of Madison, (the "Grantee").

Pursuant to Am. Sub. H.B. No. 110, the 134th General Assembly of the State of Ohio has appropriated funds of which Four Hundred and Seventy-Eight Thousand, Six Hundred and Fifty Dollars (\$478,650.00) has been redirected and awarded to the Grantee for costs associated with the Madison Village Park Wetlands Project (hereinafter referred to as the "Project").

The General Assembly has identified the H2Ohio Fund (Fund 6H20 725681), as the fund from which these monies will be disbursed.

The scope of work is set forth in Exhibit A, which is attached hereto and by reference fully incorporated into this Agreement, with the total amount funded for the Project limited to the amount stated above.

NOW, THEREFORE, for the purposes of providing the funds to the Grantee pursuant to Am. Sub. H.B. No. 110 of the 134th General Assembly, the parties hereto agree as follows:

1. ODNR agrees to provide the Grantee up to Four Hundred and Seventy-Eight Thousand, Six Hundred and Fifty Dollars (\$478,650.00) via qualifying advance or reimbursement to be used toward the total cost of the Project.
2. In no event shall ODNR's payment to Grantee exceed Four Hundred and Seventy-Eight Thousand, Six Hundred and Fifty Dollars (\$478,650.00). Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code. Any funds provided under this Agreement that are not timely spent in connection with the Project shall be returned to State of Ohio in accordance with Paragraph 7, below.
3. Grantee agrees that the Project will be completed, in accordance with Exhibit A, on or before September 30, 2022 ("Completion Date") at which time Grantee will provide a final report to ODNR. This Agreement shall terminate five (5) years after ODNR's receipt of

the final report, however, all provisions that logically ought to survive termination of this Agreement shall survive. Upon written request, and subject to appropriation and renewal of funds by the State of Ohio, this Agreement may be renewed and extended by the Parties.

4. The Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record 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 to restore and/or develop wetlands and wetland function
5. The Grantee shall be responsible for the administration of the Project. The Grantee shall have the full authority to contract with appropriate persons for the design and construction of the Project. The Grantee shall make diligent efforts to secure all necessary permits for the Project. If the issuance of one or more such permits is delayed, ODNR agrees to extend the Completion Date to allow Grantee to complete the Project once such permits are issued. The Grantee warrants and certifies that it will cause the Project to be constructed on or before the Completion Date and reasonably adhere to the submitted development timeline set forth in Exhibit A.
6. The Grantee shall be solely responsible for the operation, maintenance, and upkeep of 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. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.
7. If for any reason funds and/or interest on such funds acquired through this Agreement are required to be paid, repaid, or remitted to the State of Ohio, such shall be remitted in full within forty-five (45) days of demand to:

Payable to: Treasurer of the State of Ohio
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Mailed to: Department of Natural Resources
Office of Budget and Finance
2045 Morse Road, Bldg D-2
Columbus, OH 43229

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 the Auditor of State (88 E. Broad Street, 10th Floor, Columbus, Ohio 43215) and ODNR.

8. ODNR's only liability under this Agreement shall be for the advancement of the grant funds described herein.
9. Grantee represents that it maintains adequate insurance coverage for all employees or agents of Grantee who are or will be responsible for maintaining or disbursing funds acquired through this Agreement against loss of such funds. All funds acquired by Grantee through this Agreement shall be deposited in one or more federally-insured financial institutions until such funds are spent on the Project.
10. The Grantee will keep and make all Project-related records available to ODNR, the state Auditor or the Auditor's designee for a period of not less than five (5) years after the date of the Project completion. The Grantee acknowledges that the Auditor of State or ODNR may audit the Project at any time, including before, during and after completion.
11. The Grantee assures compliance with the following Federal, State, and local laws and regulations, for the Project:
 - a. Prevailing wage pursuant to ORC Chapter 4115
 - b. Worker's Compensation
 - c. Equal Opportunity Laws

The Grantee agrees that it will fully comply with all state and federal non-discrimination laws and promptly comply with all requests and directions from the State of Ohio in this regard.
 - d. Domestic Steel pursuant to ORC 153.011
 - e. Environmental and Historical Preservation Laws and Regulations

The Grantee assures compliance with all applicable Federal, State, and local environmental and historic preservation laws and regulations pertaining to the Project.
 - f. Drug-free Workplace

The Grantee agrees to comply with all applicable State and Federal laws regarding a drug-free workplace. The Grantee will make a good faith effort to ensure that all contract employees, while working on Grantee's property, will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way.
 - g. Laws of Professional Design

The Grantee will comply with all laws that may require approval of the Project by a registered professional engineer, surveyor, architect, or landscape architect.

12. The Grantee agrees it will comply with any other Federal, State, and local laws and regulations applicable to the Project, whether now known or later identified.
13. The Grantee affirmatively represents and warrants to the State 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.
14. ODNR reserves the right to terminate this Agreement if the Grantee is unable to proceed with the Project described in this Agreement, or if Grantee violates any of the terms of this Agreement (a "Default"). If ODNR believes a Default has occurred, ODNR shall provide written notice of its intent to terminate this Agreement reasonably identifying the Default. Grantee shall have thirty (30) days from receipt of such notice to cure such Default or dispute that a Default has occurred. During this thirty (30) day period, Grantee shall not incur any additional expenses on the Project unless and until the Default is cured.
15. The Grantee will assure that monies expended under this Agreement are spent in conformity with their intended purpose as provided by Am. Sub. H.B. No. 166, 133rd General Assembly, Section 126.60 of the Ohio Revised Code. ODNR agrees that the expenditure of monies by Grantee to complete the Project in a manner consistent with Exhibit A will conform with the intended purposes of Section 126.60 of the Ohio Revised Code.
16. The Grantee certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The 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 of Ohio.
17. No personnel of either Party who exercises any functions or responsibilities in connection with the review or approval of this Agreement shall, prior to the completion of the Project, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to this Agreement. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest shall immediately disclose his or her interest to the other Party in writing. Thereafter, he or she shall not participate in any action affecting the Project, unless the other Party determines that, in light of the

personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

18. The Grantee hereby certifies that neither it nor, to the best of its knowledge any of its officers or directors, or the spouse of any such person, has made contributions to the ODNR or the Governor in excess of the limitations specified in R.C. 3517.13.
19. If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.
20. 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.
21. 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.
22. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by the Grantee, without the prior written consent of ODNR.
23. 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.
24. This Agreement is not binding upon ODNR unless executed in full. This Agreement is effective as of the last date of signature by ODNR.
25. All notices, consents and communications required hereunder (each, a "Notice") 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. Notices shall be deemed given upon receipt thereof and shall be sent to the addresses set forth above. Notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. All Notices required or permitted to be given pursuant to the terms of this Agreement shall be respectively addressed as follows:

For ODNR:

Geoffrey Westerfield
ODNR Division of Wildlife
912 Portage Lakes Drive
Akron, Ohio 44319
Geoffrey.westerfield@dnr.ohio.gov

For Grantee

Dwayne Bailey
Village of Madison, Village Administrator
33 East Main Street
Madison, Ohio 44057
dbailey@madisonvillage.org


Any party may change its address for receipt of Notices upon notice to the other party. 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.

- 26. 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.
- 27. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 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, the Grantee and ODNR have caused this Agreement to be executed by their respective officers on the dates indicated below.

FOR THE VILLAGE OF MADISON

FOR THE ODNR



 DWAYNE BAILEY
 VILLAGE ADMINISTRATOR
 9/14/2021

 Date

 Mary Mertz
 Director

 Date