

**ORDINANCE NO. 23-041**

**AN ORDINANCE APPROVING THE CITY'S PARTICIPATION IN THE WATER RESOURCE RESTORATION SPONSOR PROGRAM (WRRSP); AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN OHIO WATER POLLUTION CONTROL LOAN FUND WATER RESOURCE RESTORATION SPONSOR PROGRAM SPONSORSHIP AGREEMENT WITH THE VILLAGE OF INDIAN HILL OF HAMILTON COUNTY, OHIO, FOR THEIR SYCAMORE CREEK RESTORATION AND HABITAT ENHANCEMENT PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the State of Ohio has created the Water Pollution Control Loan Fund (WPCLF) pursuant to O.R.C. 6111.036 to provide financial assistance for water resource protection and improvement actions; and

**WHEREAS**, the Ohio Environmental Protection Agency (OEPA) has created the Water Resource Restoration Sponsor Program (WRRSP) within the WPCLF for the effective perpetual protection and maintenance of Ohio's high quality aquatic ecosystem resources; and

**WHEREAS**, the City of Sandusky recognizes the importance of and supports the conservation and enhancement of natural resources through WRRSP projects; and

**WHEREAS**, the Village of Indian Hill has proposed the Sycamore Creek Restoration and Habitat Enhancement Project through the WRRSP for a sponsorship amount not to exceed \$1,410,000.00; and

**WHEREAS**, the project goal is to restore and stabilize 2,840 linear feet of Sycamore Creek, connect to the floodplain, establish living streambanks, substrate diversity and scour pools, restore and protect approximately 12 acres of riparian habitat and establish a permanently protected riparian area with native plantings and improve the riffle/pool habitat quality throughout the channel for fish and macroinvertebrates; and

**WHEREAS**, this City Commission authorized and directed the City Manager to file an application with the Ohio Environmental Protection Agency (OEPA) for a loan through the Water Pollution Control Loan Fund (WPCLF) Program for the design, construction and inspection of the Mills Street High Rate Treatment Project and Ultraviolet (UV) Disinfection Refurbishment Project by Resolution No. 001-23R, passed on January 23, 2023; and

**WHEREAS**, the WRRSP is a specialized sponsorship program, as opposed to a traditional grant program, whereby funding is generated by individual WPCLF loans sponsoring WRRSP protection and/or restoration projects and key stakeholders in the WRRSP program include implementers and sponsors of wastewater infrastructure projects; and

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**WHEREAS**, the City of Sandusky intends to participate in the WRRSP in association with the WPCLF to assist the Village of Indian Hill in their project up to the aforementioned sponsorship amount and in return will received a discounted rate for the City's WPCLF loan for the Mills Street High Rate Treatment Project and Ultraviolet (UV) Disinfection Refurbishment Project; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules and in accordance with Section 14 of the City Charter in order to participate in the WRRSP Program and immediately execute the Sponsorship Agreement that must be in place prior to March 15, 2023, to receive the discounted WPCLF loan by April; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission approves the City's participation in the Water Resource Restoration Sponsor Program (WRRSP) and authorizes and directs the City Manager to enter into an Ohio Water Pollution Control Loan Fund Water Resource Restoration Sponsor Program Sponsorship Agreement with the Village of Indian Hill of Hamilton County, Ohio, for their Sycamore Creek Restoration and Habitat Enhancement Project, a copy of which is marked Exhibit "A" and is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

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Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST: 

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CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: February 27, 2023

**OHIO WATER POLLUTION CONTROL LOAN FUND  
WATER RESOURCE RESTORATION SPONSOR PROGRAM  
SPONSORSHIP AGREEMENT**

**by and between  
the Village of Indian Hill and the City of Sandusky  
for the**

**Sycamore Creek Restoration and Habitat Enhancement Project **CS39-xxxx-xx****

WHEREAS, the State of Ohio has created the Water Pollution Control Loan Fund (“WPCLF”) pursuant to O.R.C. 6111.036 to provide financial assistance for water resource protection and improvement actions; and

WHEREAS, the Ohio Environmental Protection Agency (“Ohio EPA”) has created the Water Resource Restoration Sponsor Program (“WRRSP”) within the WPCLF for the effective perpetual protection and maintenance of Ohio’s high quality aquatic ecosystem resources; and

WHEREAS, an applicant applying to the WPCLF for financing of a water quality improvement project may also sponsor a qualifying WRRSP project to be undertaken by itself, or by an entity with the ability to implement the WRRSP project; and

WHEREAS, the City of Sandusky (“Sponsor”) has applied for funding from the WPCLF for project number CS39-0830-0006 and has also requested to sponsor the Sycamore Creek Restoration and Habitat Enhancement Project WRRSP project **CS39-xxxx-xx** (“Project”) as part of that WPCLF loan; and

WHEREAS, the Village of Indian Hill (“Implementer”) has agreed to undertake the implementation of the WRRSP Project which is further described in the Ohio EPA-approved final Restoration and Protection Plan (“Plan”);

WHEREAS, the Sponsor and the Implementer have the common purpose of completing the WRRSP Project in accordance with the Plan to protect and improve water resources within the State of Ohio; and

WHEREAS, the Implementer will be a party to the environmental covenant (“Covenant”) to be developed under O.R.C. Sections 5301.80 – 5301.92 to document the activity and use limitations imposed upon the property associated with the WRRSP Project as a condition of WPCLF assistance.

THEREFORE, the Sponsor and the Implementer agree to be bound by the terms and conditions of this WRRSP Sponsorship Agreement.

**SECTION I. GENERAL PROVISIONS**

A. Pursuant to the intent of the WRRSP, the Sponsor and the Implementer agree that the essence of this agreement is for the parties to carry out their respective

responsibilities in perpetuity for the planning, implementation, management, preservation, and maintenance of the WRRSP Project and its associated water resources in accordance with the Plan and the Covenant.

B. The parties acknowledge that a failure to implement the terms of this Agreement, the Plan, or the Covenant may be determined by the Ohio EPA to be an instance of default by the Sponsor on its WPCLF Loan Agreement. The Sponsor and the Implementer further acknowledge that remedies provided under the WPCLF Loan Agreement may be invoked by the Ohio EPA against the Sponsor for unresolved instances of default. The Implementer acknowledges that the Ohio EPA shall seek to resolve any failure to conform to the provisions of the Covenant or failure to implement the Plan first by seeking remedy directly from the Implementer before taking action against the Sponsor.

C. The parties acknowledge that, if the Ohio EPA determines that the Implementer has failed to conform to the provisions of the Covenant or to implement the Plan it may declare such failure an event of default and shall provide the Implementer and Sponsor with written notice of such event of default. If the Implementer fails to cure such default in a timely manner, the Sponsor shall have the right to take all steps necessary to cure the default in order to avoid the Ohio EPA's invoking remedies against the Sponsor for unresolved instances of default under the WPCLF Loan Agreement, up to the total cost of the WRRSP Project financed by the WPCLF and any interest discount applied for the remainder of the term of the Loan Agreement.

## **SECTION II. WRRSP PAYMENT REQUESTS AND DISBURSEMENTS**

All requests for disbursement of funds for eligible expenses to implement the WRRSP Project shall be submitted on the Water Pollution Control Loan Fund WRRSP Disbursement Request form provided by the Ohio EPA. The Implementer and the Sponsor agree to review all disbursement requests to ensure that they are appropriate expenses within the scope of the WRRSP Project.

Disbursement requests shall first be reviewed and approved by the Implementer, which shall then submit them to the Sponsor. The Sponsor shall review and approve the disbursement requests and submit them to the Ohio EPA, Division of Environmental and Financial Assistance, with a completed copy of the accompanying disbursement request form. The Ohio EPA will review and approve disbursement requests for eligibility and reasonableness, based on conformance with the items identified in Exhibit 1A of the WPCLF Loan Agreement between the Sponsor and the Ohio EPA, which is attached to and made part of this Agreement as Exhibit 1A. Upon Ohio EPA's approval of the disbursement requests, the Ohio Water Development Authority is authorized disburse funds directly to the Implementer or an escrow agent designated by the Sponsor.

### **SECTION III. WRRSP PROJECT SCHEDULE**

The Implementer agrees that it shall not begin implementation of the WRRSP Project prior to the completion of all necessary approvals by the Ohio EPA and the execution of the WPCLF Loan Agreement by all parties, or alternatively, prior to the receipt of approval from the Ohio EPA to do so. All actions to implement the WRRSP Project that are called for under the loan agreement or in the Plan shall be completed by the Performance Certification Date identified on Exhibit 1 of the Sponsor's WPCLF Loan Agreement.

### **SECTION IV. OBLIGATION TO PROTECT AND MAINTAIN THE WRRSP PROJECT**

The Sponsor and Implementer recognize the value of the area associated with the WRRSP Project as an aquatic ecosystem resource, as well as its value as a scenic, natural, and aesthetic resource. Upon completion, the WRRSP Project will contribute to the physical, biological, and chemical integrity of the water quality of the Sycamore Creek watershed. These and other conservation values associated with the WRRSP Project have been documented in the Plan as approved by the Ohio EPA, and included in the Covenant.

The parties agree that the Plan and the Covenant constitute the basis for subsequent actions by the Implementer under this Agreement, and are incorporated herein by reference. Without limitation, the Plan is intended to serve as an objective information baseline for monitoring perpetual conformance with the Covenant. The Sponsor and the Implementer agree that the perpetual protection and maintenance of the WRRSP Project shall be carried out in accordance with the responsibilities identified in the Plan and the Covenant.

### **SECTION V. INDEPENDENCE OF PARTIES**

The Sponsor and the Implementer are independent parties and neither of the parties shall be considered an agent for the other party.

### **SECTION VI. TERMINATION**

A. The Sponsor and the Implementer shall work together under this Agreement to complete the WRRSP Project in accordance with the Plan. However, the Sponsor and the Implementer specifically retain the right to terminate this Agreement for any reason with written notice to the other party not less than five (5) days prior to the date that the Sponsor enters into the WPCLF Loan Agreement.

B. If the Ohio EPA does not award WPCLF assistance for the WRRSP Project, either the Sponsor or the Implementer may terminate this Agreement.

## **SECTION VII. DEFAULT**

In the event of default by any party under this Agreement, the non-defaulting party will have all remedies available to it at law or in equity, including right of termination, injunctive relief and the right to specific performance. No party shall be deemed to be in default of this Agreement unless and until the other party has provided written notice to the defaulting party specifying the default and (a) in the case of a monetary default, the defaulting party fails to cure the default within fifteen (15) days of notice; or (b) in the case of any other type of default, the defaulting party fails to cure the default within thirty (30) days of notice, or fails to commence and diligently prosecute such cure to completion if such cure cannot, with reasonable diligence, be completed with such thirty-day (30) period.

## **SECTION VIII. NOTICE**

Any document or communication required by this Agreement shall be submitted to:

Sponsor

The City of Sandusky  
Director of Public Works  
240 Columbus Avenue  
Sandusky, Ohio 44870

Implementer

The Village of Indian Hill  
Village Engineer  
6525 Drake Road  
Cincinnati, Ohio 45243

Ohio EPA

Chief  
Ohio EPA DEFA  
P.O. Box 1049  
Columbus, Ohio 43216-1049

## **SECTION IX. COMPLIANCE WITH LAWS**

In performing their obligations hereunder, the parties hereto will comply with all applicable federal, state, and municipal laws.

**IT IS SO AGREED:**

**(Remainder of page intentionally blank.)**

**The City of Sandusky (Sponsor)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form

Brendan L. Heil (0091991)

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**The Village of Indian Hill (Implementer)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form

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