ORDINANCE NO. 7035

AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORATE OF AMENDMENTS TO THE CITY CHARTER AS RECOMMENDED BY THE CHARTER REVIEW COMMISSION AND THE COUNCIL OF THE CITY OF MIAMISBURG, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, the Council has reviewed the recommendations of the Charter Review Commission of the City of Miamisburg and recommended amendments to the Charter of the City as described herein; and

WHEREAS, the Council desires to submit the amendments of the Charter to the electors of the City, as recommended by the Charter Review Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, THAT:

Section 1.

The question of the amendment to Article III, Section 3.10 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 3.10 SPECIAL COUNCIL MEETINGS.

Special meetings of the Council may be called as provided by its rules, regulations or bylaws, or by resolution or ordinance of the Council. In the absence of any such provision, special meetings may be called by a vote of Council taken at any regular or special meeting thereof or may be called by the Mayor or any three members of Council. The Clerk of Council, or in his or her absence, incapacity or refusal to act, the Mayor, shall cause notice in writing of each special meeting to be served personally or to be left at the usual place of residence of each member of the Council and the Mayor not less than twelve hours preceding the time for such special meeting. A copy of such notice shall be posted in the Council Chamber and on electronic media as deemed appropriate by Council at least twelve hours prior to such special meeting, but failure to so post or to maintain posting for twelve hours shall not affect the validity of any meeting or any action taken at such meeting. In the event that a special meeting is called by a vote of Council taken at a regular or special meeting from which any member of Council or the Mayor is absent, written notice of such special meeting shall be given to each absentee in the manner hereinbefore described. Service of notice of any special meeting shall be deemed conclusively to have been waived by any member of Council or the Mayor who shall be present at such special meeting."

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 3.10 SPECIAL COUNCIL MEETINGS.

Special meetings of the Council may be called as provided by its rules, regulations or bylaws, or by resolution or ordinance of the Council. In the absence of any such provision, special

meetings may be called by a vote of Council taken at any regular or special meeting thereof or may be called by the Mayor or any three members of Council. The Clerk of Council, or in his or her absence, incapacity or refusal to act, the Mayor, shall cause notice in writing of each special meeting to be served personally, to be delivered to a verified email address, or be left at the usual place of residence of each member of the Council and the Mayor not less than twelve hours preceding the time for such special meeting. A copy of such notice shall be posted in the Council Chamber and on electronic media as deemed appropriate by Council at least twelve hours prior to such special meeting, but failure to so post or to maintain posting for twelve hours shall not affect the validity of any meeting or any action taken at such meeting. In the event that a special meeting is called by a vote of Council taken at a regular or special meeting from which any member of Council or the Mayor is absent, written notice of such special meeting shall be given to each absentee in the manner hereinbefore described. Service of notice of any special meeting shall be deemed conclusively to have been waived by any member of Council or the Mayor who shall be present at such special meeting."

and the question of the amendment to Article IV, Section 4.13 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 4.13 PUBLIC HEARING ON ZONING ORDINANCE OR RESOLUTION.

The Mayor or other presiding officer of the Council shall set a date for a public hearing on each ordinance or resolution establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations, such hearing shall be after return of the Planning Commission's recommendations as provided for in Section 4.12 within which the Planning Commission is required to return its written recommendations to the Clerk of Council. The Clerk of Council shall cause a notice of such public hearing to be published one time on electronic media as deemed appropriate by Council and in a newspaper determined by the Council to be of circulation within the Municipality at least fifteen days prior to the date of such public hearing, and when such amendment, revision, change or repeal involves ten or fewer parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by certified mail with return receipt requested, at least fifteen days before the date of the public hearing, to the owners of property within and contiguous to or directly across the street from such parcel or parcels and within a minimum radius of two hundred feet from any point on the exterior boundary of such parcel or parcels, to the addresses of such owners appearing on the county Auditor's current tax list or the Treasurer's mailing list and to such other lists as may be required by the Council. The failure of delivery of such notice shall not invalidate any such ordinance or resolution."

(Amended Nov. 2, 1993; Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 4.13 PUBLIC HEARING ON ZONING ORDINANCE OR RESOLUTION.

The Mayor or other presiding officer of the Council shall set a date for a public hearing on each ordinance or resolution establishing, amending, revising, changing or repealing zoning

classifications, districts, uses or regulations, such hearing shall be after return of the Planning Commission's recommendations as provided for in Section 4.12 within which the Planning Commission is required to return its written recommendations to the Clerk of Council. The Clerk of Council shall cause a notice of such public hearing to be published one time on electronic media as deemed appropriate by Council and *in three public places as determined by Council* at least fifteen days prior to the date of such public hearing, and when such amendment, revision, change or repeal involves ten or fewer parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by certified mail with return receipt requested, at least fifteen days before the date of the public hearing, to the owners of property within and contiguous to or directly across the street from such parcel or parcels and within a minimum radius of two hundred feet from any point on the exterior boundary of such parcel or parcels, to the addresses of such owners appearing on the county Auditor's current tax list or the Treasurer's mailing list and to such other lists as may be required by the Council. The failure of delivery of such notice shall not invalidate any such ordinance or resolution."

and the question of the amendment to Article IV, Section 4.15 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 4.15 CODIFICATION OF ORDINANCES AND RESOLUTIONS.

By a majority vote of the members elected to Council, the Council may cause the ordinances and resolutions of the Municipality to be revised, codified, recodified, rearranged or published in book form. Such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be immediately effective upon approval by a majority vote of the members elected to Council and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published one time on electronic media as deemed appropriate by Council and in a newspaper determined by the Council to be of circulation within the Municipality at least seven days prior to the final approval thereof by the Council, and no further publication shall be necessary. A current service supplementing such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council."

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 4.15 CODIFICATION OF ORDINANCES AND RESOLUTIONS.

By a majority vote of the members elected to Council, the Council may cause the ordinances and resolutions of the Municipality to be revised, codified, recodified, rearranged or published in book form. Such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be immediately effective upon approval by a majority vote of the members elected to Council and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published one time on electronic media as deemed appropriate by Council and in three public places as determined by Council at least seven days prior to the final approval thereof by the Council, and no further publication shall be necessary. A current service supplementing such revision, codification, recodification,

rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council."

and the question of the amendment to Article IV, Section 4.16 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 4.16 PUBLICATION OF ORDINANCES AND RESOLUTIONS.

Each ordinance or resolution passed by the Council shall be published:

- a) By publication in full once on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation within the Municipality; or
- b) By publication of its title once on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation within the Municipality, and such publication shall contain a statement that a copy of the full text of such ordinance or resolution is available for inspection at the office of the Clerk of Council, Miamisburg, Ohio.

The method of publication, in accordance with this section, shall be determined by Council, and the Clerk of Council shall cause such publication to be made. (Amended Nov. 4, 2008; Nov. 5, 2013)

A failure to publish or an omission, delay or error in said publication on the part of a newspaper, its officers, employees or agents, shall not cause such ordinance or resolution to be declared invalid or otherwise affect the validity of such ordinance or resolution, and in such events the Clerk of Council may authorize publication at a later date. After the publication of each ordinance or resolution as hereinabove provided, the Clerk of Council shall affix the appropriate following certification to the copy of the ordinance or resolution maintained in the official Journal or record provided for in Section 4.10 of this Charter, and such certification shall be prima-facie evidence of such publication.

(1) The following Certificate of Publication shall be used when the full text of an ordinance or resolution is published as provided by subsection (a) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify
that the full text of the foregoing (ordinance or resolution) was published on appropriate
electronic media and in the (name of newspaper in which publication took place) on the
day of, 20, and that at such date said newspaper was determined
by the Council to be of circulation within the Municipality of Miamisburg, Ohio.
Dated this day of 20
(Name)
Clerk of Council
Municipality of Miamisburg, Ohio

(2) The following Certificate of Publication shall be used when the title to an ordinance or resolution is published as provided by subsection (b) of this section:

CERTIFICATE OF PUBLICATION

The failure of the Clerk of Council to affix the appropriate "Certificate of Publication" provided hereinabove shall not affect the validity of an otherwise duly and properly enacted ordinance or resolution."

(Amended Nov. 6, 2018)

so that as amended the same shall be and read as follows:

"SECTION 4.16 PUBLICATION OF ORDINANCES AND RESOLUTIONS.

Each ordinance or resolution passed by the Council shall be published:

- (a) By publication in full once electronic media as deemed appropriate by Council and in three public places as determined by Council; or
- (b) By publication of its title once on once electronic media as deemed appropriate by Council and in three public places as determined by Council, and such publication shall contain a statement that a copy of the full text of such ordinance or resolution is available for inspection at the office of the Clerk of Council, Miamisburg, Ohio.

The method of publication, in accordance with this section, shall be determined by Council, and the Clerk of Council shall cause such publication to be made.

A failure to public or an omission, delay or error in said publication as required by this section shall not cause such ordinance or resolution to be declared invalid or otherwise affect the validity of such ordinance or resolution, and in such events the Clerk of Council may authorize publication at a later date. After the publication of each ordinance or resolution as hereinabove provided, the Clerk of Council shall affix the appropriate following certification to the copy of the ordinance or resolution maintained in the official Journal or record provided for in Section 4.10 of this Charter, and such certification shall be prima-facie evidence of such publication.

(1) The following Certificate of Publication shall be used when the full text of an ordinance or resolution is published as provided by subsection (a) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify that the full text of the foregoing (ordinance or resolution) was published on

appropriate electronic media and as prescribed by Sections 4.13, 4.13 and 4.16 of the
Miamisburg Charter on the day of, 20
Dated this day of 20
(Name)
Clerk of Council
Municipality of Miamisburg, Ohio
(2) The following Certificate of Publication shall be used when the title to an
ordinance or resolution is published as provided by subsection (b) of this section:
CERTIFICATE OF PUBLICATION
I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby
certify that the title to the foregoing (ordinance or resolution) was published or
appropriate electronic media and as prescribed by Sections 4.13, 4.15 and 4.16 of the
Miamisburg Charter on the day of, 20, and that said
publication contained, in addition to the title to the foregoing (ordinance or resolution), a
statement that a copy of the full text of such (ordinance or resolution) was available for
inspection at the office of the Clerk of Council, Municipal Building, Miamisburg, Ohio.
Dated this day of 20
(Name)
Clerk of Council
Municipality of Miamisburg, Ohio
The failure of the Clerk of Council to affix the appropriate "Certificate of Publication"
provided hereinabove shall not affect the validity of an otherwise duly and properly

and the question of the amendment to Article IX, Section 9.09 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 9.09 REFERRAL OF ORDINANCE OR RESOLUTION TO THE ELECTORS BY COUNCIL.

enacted ordinance or resolution.

By a two-third vote of the members of the Council any pending ordinance or resolution may be referred to the electors of the Municipality at a general, primary or special election. The action of referral provided for in this section shall be taken by motion and shall go into immediate effect without publication. Such motion shall be passed not less than sixty days prior to the date of the primary or general election at which such referred ordinance or resolution is to be submitted. In the event that such ordinance or resolution is to be referred for approval or rejection at a special election, the Council shall, by motion, fix a date for such special election which shall be not less than sixty days after the date of the passage of the motion to refer, and the Clerk of Council shall cause notice of the special election to be published on the same day of each week for two consecutive weeks on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation in the Municipality.

The Clerk of Council shall certify to the appropriate Board of Elections that an election is to be held referring such ordinance or resolution to a vote of the electors at the date fixed by Council as hereinbefore provided. The Clerk of Council shall also certify a copy of the ordinance or resolution to be voted upon to the appropriate Board of Elections.

At such primary, general or special election this question shall be placed upon the ballot: "Shall an (ordinance or resolution) providing: (the wording contained in the title of the proposed ordinance or resolution shall be inserted here) be adopted?", with the provision on the ballot for voting affirmatively or negatively. In the event a majority of those voting on the issue shall be in the affirmative, the ordinance or resolution shall go into immediate effect, without the need for further publication.

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 9.09 REFERRAL OF ORDINANCE OR RESOLUTION TO THE ELECTORS BY COUNCIL.

By a two-third vote of the members of the Council any pending ordinance or resolution may be referred to the electors of the Municipality at a general, primary or special election. The action of referral provided for in this section shall be taken by motion and shall go into immediate effect without publication. Such motion shall be passed not less than sixty days prior to the date of the primary or general election at which such referred ordinance or resolution is to be submitted. In the event that such ordinance or resolution is to be referred for approval or rejection at a special election, the Council shall, by motion, fix a date for such special election which shall be not less than sixty days after the date of the passage of the motion to refer, and the Clerk of Council shall cause notice of the special election to be published on the same day of each week for two consecutive weeks on electronic media as deemed appropriate by Council and in three public places as determined by Council.

The Clerk of Council shall certify to the appropriate Board of Elections that an election is to be held referring such ordinance or resolution to a vote of the electors at the date fixed by Council as hereinbefore provided. The Clerk of Council shall also certify a copy of the ordinance or resolution to be voted upon to the appropriate Board of Elections.

At such primary, general or special election this question shall be placed upon the ballot: "Shall an (ordinance or resolution) providing: (the wording contained in the title of the proposed ordinance or resolution shall be inserted here) be adopted?", with the provision on the ballot for voting affirmatively or negatively. In the event a majority of those voting on the issue shall be in the affirmative, the ordinance or resolution shall go into immediate effect, without the need for further publication."

Section 2.

The ballot for said election shall, at the top thereof, be entitled "City Charter Amendment Ballot" and the question to be submitted on said ballot shall be in the following words: "Shall the Charter of the City of Miamisburg be supplemented and amended as recommended by the Charter Review Commission and the Council of the City of Miamisburg?"

To the left of such ballot, in a box with an appropriate place for marking shall appear the words "Yes" and "No" and each voter shall indicate his or her vote in the place so provided.

Section 3.

That the Clerk of Council be, and is hereby directed to publish the full text the of proposed Charter amendments, as set forth above, once a week for not less than two (2) consecutive weeks in a newspaper published in the municipal corporation, with the first publication being at least fifteen (15) days prior to the election herein provided, all in accordance with Article XVIII. Section 9 of the Ohio Constitution, and the Ohio Revised Code Section 731.211.

That the Clerk of Council is further authorized and directed to cause a certified copy of this ordinance to be filed with the Montgomery County Board of Elections which shall be made available for public inspection and review by an elector desiring to read same prior to voting and the Clerk of Council is hereby directed to make the necessary arrangements with the Montgomery County Board of Elections for placing the question on the ballot.

Section 4.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council desires this measure to be in effect from and after the earliest date in order to ensure that the amendments to the Charter be submitted to a vote of the qualified electors of the City at the General Election to be held on November 7, 2023; therefore, this measure shall take effect and be in force from and after its passage.

Passed: August 1, 2023

Attested: Kim Combs, Clerk of Council

Section 3.

That the Clerk of Council be, and is hereby directed to publish the full text the of proposed Charter amendments, as set forth above, once a week for not less than two (2) consecutive weeks in a newspaper published in the municipal corporation, with the first publication being at least fifteen (15) days prior to the election herein provided, all in accordance with Article XVIII, Section 9 of the Ohio Constitution, and the Ohio Revised Code Section 731.211.

That the Clerk of Council is further authorized and directed to cause a certified copy of this ordinance to be filed with the Montgomery County Board of Elections which shall be made available for public inspection and review by an elector desiring to read same prior to voting and the Clerk of Council is hereby directed to make the necessary arrangements with the Montgomery County Board of Elections for placing the question on the ballot.

Section 4.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council desires this measure to be in effect from and after the earliest date in order to ensure that the amendments to the Charter be submitted to a vote of the qualified electors of the City at the General Election to be held on November 7, 2023; therefore, this measure shall take effect and be in force from and after its passage.

Attested: Kim Combs, Clerk of Council Passed: August 1, 2023

I hereby certify that the above is a true and correct copy of Ordinance No. 7035 adopted by the Council of the City of Miamisburg, Ohio, on August 1, 2023.

August 2, 2023

Kim Combs Kim Combs, Clerk of Council

ORDINANCE NO. 7036

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE TEAMSTERS LOCAL #957 AND DECLARING AN EMERGENCY.

WHEREAS, negotiations have occurred between the Teamsters Local #957 and the City of Miamisburg, and

WHEREAS, a mutually acceptable tentative agreement has been reached between the parties; and

WHEREAS, the tentative agreement has been approved by the Teamsters Local #957 bargaining unit; and

WHEREAS, the Council finds it in the best interest of the City of Miamisburg to adopt the agreement with the Teamsters Local #957.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized and directed to enter into an agreement for and on behalf of the City of Miamisburg with the Teamsters Local #957 to implement the provisions of the contract items in accordance with the negotiations between the parties, same having been reviewed by Council.

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health, and welfare and for the further reason that Council desires to implement the provisions of the agreement between the Teamsters and the City of Miamisburg at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage effective January 1, 2023.

Passed: August 1, 2023 Attested: Kim Combr

Kim Combs, Clerk of Council

Michelle L. Collins, Mayor

ORDINANCE NO. 7037

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LAND USE PERMIT WITH THE MIAMI CONSERVANCY DISTRICT FOR THE MAINTENANCE OF IMPROVEMENTS MADE IN RIVERFRONT PARK ON MIAMI CONSERVANCY DISTRICT PROPERTY AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg is making improvements within Riverfront Park,

located in downtown, Miamisburg, Ohio, and

WHEREAS the Miami Conservancy District owns and maintains property along the

river including the levee, bike trail and flood protection infrastructure and

WHEREAS the parties jointly approved plans to improve the area to be constructed in

2023-2024, and

WHEREAS to ensure clarity of responsibilities a Land Use Permit is required which

outlines the parties responsibilities within shared use space, areas where City property and improvements are made within Conservancy District

Property, as contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Land Use Agreement with the Miami Conservancy District for the purposes of maintaining property and infrastructure in Riverfront Park within Miami Conservancy District Property attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to ensure an understanding of use for land is established at the earliest possible date to allow for the continued planning and implementation of improvements within the site, this measure shall take effect and be in force from and after its passage.

Passed: August 15, 2023 Attested: _____ Kum Control

Kim Combs, Clerk of Council

Approved: //Chellello

Michelle L. Collins, Mayor

EXHIBIT A

The Miami Conservancy District

LAND USE PERMIT NO. 16-3895-1

THE MIAMI CONSERVANCY DISTRICT, a body corporate and political subdivision of the State of Ohio, hereinafter called "MCD", in consideration of compensation as specified within this Permit, and subject to the terms, conditions and restrictions hereinafter set forth, hereby grants to

CITY OF MIAMISBURG 10 N FIRST STREET MIAMISBURG, OHIO 45342

hereinafter called the "Grantee" the authority and permission to use that portion of MCD property as further described below for the following specified use and for no other use without express written consent by MCD.

The right to construct, use, maintain and remove the following for RIVERFRONT PARK as shown on the attached Exhibit "A":

- 10' ASPHALT WALK
- 14' ASPHALT WALK
- PARKING LOTS partially located on MCD property
- 2 8" BARRIER CURBS
- COVERED BENCH SWINGS
- OVERLOOK PAVERS
- LITTER/RECYCLING RECEPTACLE
- · RECREATION TRAIL relocated within the Park

The property, Part MCD Parcel No. 26, 490, 497, 498, 717, 796, 830, 853, 874, 881, 959, 1070, 1071, 1666, 1674 & 1750, is located in the City of Miamisburg, Montgomery County, Ohio, and more specifically along the left bank of the Great Miami River along North Miami Avenue between Linden Avenue and Ferry Street as shown on the attached Exhibit "B".

All real property, easements, land, structures, infrastructure, and facilities that are owned or controlled by MCD or any MCD subdistrict shall hereinafter be called "MCD property."

THIS PERMIT IS GRANTED SUBJECT TO COMPLIANCE WITH THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS AS SET FORTH BY MCD IN ACCORDANCE WITH SECTION 6101.19 OF THE OHIO REVISED CODE:

SECTION I - TERMS AND CONDITIONS:

1. <u>PROPERTY USE</u>, <u>MAINTENANCE & RESTRICTION</u>: The Grantee <u>AGREES</u> to maintain all property as authorized for use within this Permit. Maintenance shall include regular inspection and repair of all items listed above within the park, The Grantee is responsible for mowing and trimming within the park area including trash and debris removal.

Whenever the employees, agents, or contractors of said Grantee enter upon MCD property, for the purpose of maintaining, modifying, repairing or removing any structures and/or improvements as described within this Permit, the Grantee <u>AGREES</u> all operations will be confined to a reasonable area adjacent to said structures and/or improvements.

The Grantee AGREES all MCD property will be continually used and maintained in a safe and responsible manner that does not affect MCD operations and maintenance.

The Grantee must contact MCD for approval prior to performing any repairs or maintenance on MCD property that would result in any land disturbance.

Any land disturbing activity on MCD property involving the services of a contractor will require that the contractor contact MCD to acquire a MCD Construction Permit prior to doing any work on MCD property.

The Grantee, prior to initiating any land disturbing activity, <u>AGREES</u> to contact OUPS to determine if there are any utilities located within the permit area. The Grantee further <u>AGREES</u> to protect all identified utilities from damage that could result from land use as outlined within this Permit.

The Grantee <u>AGREES</u> all use of vehicles on MCD property shall be in compliance with the Ohio Revised Code and other applicable laws.

By providing public use and access, the Grantee, <u>AGREES</u> to enforce the following regulations regarding MCD land.

- Motor vehicles are permitted in the designated parking areas.
- No type of plant material can be picked, collected or disturbed.
- > Dogs are allowed on leash only. Pick up and proper disposal of waste is required.
- Alcohol is prohibited except within the Designated Outdoor Refreshment Area (DORA).
- No hunting or trapping.
- No trash may be placed on the ground. All trash generated or placed shall be removed from the site by the Grantee.
- 2. <u>DAMAGE TO MCD PROPERTY</u>: Any damages, resulting from the land use granted, caused to MCD structures and facilities including, but not limited to, levees, dams, floodwalls, bikeways, roads, gates, wells, gages, monitoring equipment, monuments and/or MCD property shall be repaired or replaced in a manner satisfactory to MCD as more specifically defined in Section III of this Permit. Revocation, termination or expiration of the Permit does not release the Grantee from its obligation to repair damages. In the event the repair or replacement is not completed in a reasonable amount of

time, MCD may, at its option, cause said repairs or replacements to be accomplished and Grantee shall reimburse MCD for any expenses incurred.

3. <u>TERM</u>: The term of this Permit shall be for a period of twenty (20) years, effective May 1, 2023 and terminating on April 30, 2043.

4. MCD's RIGHT OF REVOCATION

- a. If the property use causes damage or imminent damage to MCD property, or creates a health or safety hazard, MCD will order all use by the Grantee be stopped immediately and notify the Grantee to repair or replace MCD Property and remove the hazard. If the Grantee fails to respond in the time set by MCD, MCD will revoke the rights granted by this Permit. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.
- b. If, at any time, in the opinion of MCD, the said use interferes with the primary objectives of MCD; or should the best interests of MCD so justify; this Permit shall be revoked. MCD will provide seven (7) days written notice of revocation. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.
- 5. GRANTEE'S RIGHT OF TERMINATION: The Grantee may request termination of this Permit if the use of MCD property described in this Permit is no longer necessary or desired. The Grantee shall notify the MCD Property Administrator within forty-eight (48) hours following cessation of the permitted land use to request termination.
- 6. **RESTORATION**: Prior to termination of this Permit, the Grantee <u>AGREES</u> to remove or properly abandon all structures and/or improvements and repair or restore all MCD property as specified in Section III of this Permit. Revocation, termination or expiration of the permit does not release the Grantee from its obligation to restore the property. In the event the Grantee does not restore or remove the said structures and/or improvements within a timely manner, MCD may, at its option, cause said work to be accomplished and Grantee shall reimburse MCD for any expenses incurred.
- 7. FAILURE TO IMPLEMENT LAND USE: Should the Grantee fail to implement the requested land use within one (1) year of the effective date of this Permit, the Permit will terminate. Furthermore, MCD will retain all permit fees unless the Grantee, prior to termination, has submitted written notification concerning cancellation of the Permit.
- 8. <u>FINAL INSPECTION</u>: Within forty-eight (48) hours following cessation of the permitted use and all restoration, the Grantee AGREES to notify the MCD Property Administrator for final inspection.
- 9. OPTION OF RENEWAL: This Permit may be renewed, subject to MCD approval, provided all terms, conditions, and restrictions of the Permit have been maintained to the reasonable satisfaction of MCD. All renewals will be subject to those terms, conditions, and Permit fees in effect at time of renewal.
- 10. <u>INSURANCE</u>: The Grantee <u>AGREES</u> to purchase a commercial general liability insurance policy in an amount not less than <u>Two Million (\$2,000,000)</u> Dollars, protecting both Grantee and MCD from any liability resulting from injuries to persons or property and all direct cost and expenses associated therewith. Prior to issuance of this Permit the Grantee <u>AGREES</u> to provide to MCD with a certificate

of insurance evidencing MCD's status as an additional insured with coverage in favor of MCD applying on a primary and non-contributing basis. Insurance coverage must be in force throughout the term of the permit. If insurance coverage is cancelled the permit will terminate. The Grantee AGREES to require its general liability insurance carrier to provide MCD with a minimum of thirty (30) days written notice of cancellation or non-renewal to Grantee general liability policy. Should Grantee elect to purchase limits in excess of Two Million (\$2,000,000) Dollars, said higher limits shall also inur to MCD's benefit as an additional insured.

- 11. <u>SOIL & WATER CONTAMINATION</u>: The Grantee <u>AGREES</u> to assume all liability and responsibility for clean-up and restoration required due to soil and water contamination resulting from the land use granted within this Permit.
- 12. <u>RELEASE OF LIABILITY</u>: The Grantee herein releases MCD, to the extent permitted by law, from any and all liability resulting from injuries to persons or property and all direct cost and expenses associated therewith, resulting from or caused by floodwater, maintenance or construction operations and/or any other activities of MCD, its agents, employees or contractors provided such damages were not caused by the negligent act or omission of MCD, its agents, employees or contractors.
- 13. <u>RIGHT OF ACCESS</u>: MCD, shall at all times, have the right to enter upon any MCD property for the purpose of using, monitoring, maintaining, altering or repairing any works, or improvements owned or controlled by MCD. MCD retains the right to photograph, for private and/or public use, any use, work or event, which takes place on MCD property.

MCD shall have the right of inspection to determine compliance with this Permit. Upon notification of any violation, the Grantee <u>AGREES</u> to promptly take corrective action as directed by MCD. Should corrective action not be taken within the time specified, MCD may revoke this Permit, subject to the terms and conditions as stated within this Permit.

- 14. TRANSFER OF LAND USE RIGHTS: This Permit is NOT assignable or transferable.
- 15. <u>PRE-EXISTING LAND USE RIGHTS</u>: All rights granted within this Permit will be limited by, and subject to, any rights and claims of record that exist prior to the effective date of this Permit, regarding all property described within this Permit. Said claims of record include, but are not limited to, any existing easements, right-of-ways, and/or permits.
- 16. <u>ADDITIONAL RIGHTS</u>: MCD does not claim full warranty deed ownership to all MCD property. The Grantee must accept full responsibility for acquiring any additional rights to property not owned by MCD, when use of such property is necessary for the purposes of this Permit. Furthermore, MCD, in granting land use authorization, is to be released from any additional expense and/or all liability related to any unauthorized use of property.
- 17. <u>PUBLIC DISCLOSURE</u>: All MCD records, including deeds, leases, permits and all related correspondence, will be considered public records and shall be available for public use and disclosure.
- 18. <u>COMPLIANCE WITH LAWS</u>: The Grantee <u>AGREES</u> that MCD property is not to be used or occupied for any unlawful purpose. Additionally, all use of MCD property will comply with all laws, ordinances, rules, regulations, requirements, and orders of the United States of America, the State of Ohio, and of all governmental authorities or agencies, including, without limitation, all bureaus, boards or officials thereof respecting said premises and the use and occupation thereof.

- 19. <u>ADDITIONAL IMPROVEMENTS</u>: The Grantee <u>AGREES</u> no additional temporary or permanent structures and/or improvements will be constructed by the Grantee on MCD property without prior written MCD approval.
- 20. PERMIT FEE: The Permit fee is One Hundred Fifty (\$150.00) Dollars.

SECTION II - PROHIBITED USE:

The following activities are prohibited on MCD property:

- Violating any federal, state, county, municipal, or other applicable law, ordinance, rule, regulation or requirement.
- b. Soliciting.
- c. Abandoning any animal.
- d. Lighting fires or burning any materials.
- e. Sledding, skiing, or ice skating.
- f. Camping.
- g. Operating any vehicle on dam or levee slopes.
- Moving, by-passing, or damaging any gate, barricade or barrier so placed to temporarily or permanently close a road or area to traffic.
- i. Hunting and trapping.
- j. Depositing burning material or hot ashes on grass, plants or in refuse receptacles.
- k. Dumping, depositing or discarding, intentionally or unintentionally, any trash, garbage, building debris, rubble, metal, concrete, asphalt, organic waste, or other noxious materials.
- 1. Damaging, destroying, or disturbing any MCD land as described below:
 - 1. Removing any property, structures, facilities, or amenities, or any part thereof.
 - 2. Writing upon, painting, cutting, mutilating, defacing, or damaging in any manner any building, flood control structure, equipment, or other property, or part thereof.
 - Climbing or rappelling any flood control structure, rock escarpment or other natural features.
 - Willfully destroying, injuring or removing any bench marks, witness marks, stakes, or other reference marks (ORC 6101.81).
 - 5. Disturbing, defacing, removing, or injuring trees or other vegetation.

SECTION III - RESTORATION REQUIREMENTS:

All MCD owned or controlled property disturbed by land use and/or construction will be restored to the reasonable satisfaction of MCD within thirty (30) days of project completion and/or prior to termination of this Permit as follows:

Restoration of Levee Slopes:

- Grantee shall contact MCD's Property Administrator 48 hours in advance of restoration of any dam or levee slopes.
- 2. Seed mix and erosion control blankets specifications shall be submitted to MCD for approval.
- All fill materials for embankment construction and restoration shall be submitted to MCD for approval.
- 4. Material shall conform to the Dam and Levee Material Specifications listed below.
- Fill shall be clean earthen material free of loam, roots, organic matter, boulders, concrete, asphalt, wood, metal, building rubble, and other unsuitable material.
- 6. MCD reserves the right to reject any fill material.
- 7. MCD requires a Standard Proctor test to be performed on the proposed material prior to use to determine the optimal water content at which the soil can reach its maximum dry density. Testing for Atterberg limits, grain size distribution and soil type classification are also required. Copies of all test reports shall be provide to MCD for approval.
- 8. Grantee shall provide contact information of all sources of materials.
- 9. MCD may require environmental testing of material.
- 10. MCD may require a physical sample of the proposed material for approval.
- 11. Fill may not be placed on frozen, wet subgrade, or in standing water.
- 12. Fill for restoring levee slopes shall be placed in loose lifts not to exceed six-inch in depth and compacted to 95% Standard Proctor as determined by a certified testing company. Testing will be performed every two (2) compacted lifts of height at one-hundred (100) foot intervals beginning fifty (50) feet from the ends of the project or as directed by MCD. Copies of all compaction and laboratory test reports shall be provided to MCD.
- 13. Moisture control limits are to be within -1% to +3% of optimum.
- 14. Lifts may not contain any veins of gravel material.
- 15. Fill material shall be no larger than three (3) inches in diameter.

- 16. Fill material shall have no more than 15% gravel.
- 17. The fill shall be graded to the lines and grades of the adjoining areas.
- 18. The surface of the levee shall be stripped of organics and topsoil to a depth of six (6) inches prior to benching the levee slope.
- 19. The existing levee embankment shall be over-excavated in all directions by benching one (1) foot vertical and a minimum of one (1) foot horizontal into stiff undisturbed soil. A level bottom surface day-lighting toward the levee toe shall be provided from which the upward benching on the sides shall initiate. Benching may have to be performed by hand methods or using small-scale excavation equipment.
- 20. The levee soil on which the backfill is to be placed should not be excavated until immediately before backfilling, and shall not be allowed to become overly wet or dry while exposed.
- 21. The surface area of the benches shall be scarified as necessary to ensure a good bond between the existing soil and the backfill material.

Top Soil

- After the final lines, grades, and elevations have been established, six (6) inches of topsoil
 placed in loose lifts that construct a four (4) inch compacted depth shall be spread on all
 disturbed areas.
- The topsoil shall be tracked in with a dozer or approved equipment to compact and provide a good contact between the topsoil and the surface of the fill material.
- 3. Topsoil shall be scarified prior to seeding.

Vegetation Restoration of Levee Slopes shall consist of one of the following methods:

Hydroseeding:

- Between the Seeding Period of March 15th through October 30th all disturbed levee slopes shall be hydroseeded.
- Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
- 3. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.
- Mulch shall consist of Cellulose (Paper) Fiber Mulch, or Wood Fiber Mulch. Application Rate for mulch shall be 2000 pounds per acre.
- Tackifier shall be added to the solution and applied at an application rate of 2 gallons per acre.
 The tackifier shall not contain any priority pollutants listed under the U.S. Clean Water Act Section 307(2)(1) Priority Pollutant List (40 CFR 401.15).

- 6. Application of the slurry should proceed until a uniform cover is achieved.
- Prior to application, the topsoil on the levee slope shall be scarified by tracking it in using a steel cleated piece of equipment.
- 8. Hydraulic matrices require 24 hours to dry before rainfall occurs to be effective.
- Hydroseeded slopes should be inspected periodically for damage due to wind, water, or human disturbance.
- 10. Repair all damaged areas immediately using hydroseeding at the original specifications.
- 11. Supplemental watering may be required.

Note: Smaller projects during the Seeding Period of March 15th through October 30th may use erosion control blankets as described below with approval from MCD.

Erosion Control Blankets:

- Between the Seeding Period of October 31st through March 14th all disturbed levee slopes shall be protected with biodegradable straw erosion control blankets.
- The erosion control blankets shall consist of a rapid-breakdown polypropylene netting design, using the finest straw fibers available, be environmentally sensitive and shall be certified that they are weed seed free.
- Performance capabilities shall have a shear stress rating of 84 Pa (1.75 lb/ft²) for slopes that are 2:1 and flatter.
- Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
- 5. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.

Inspection:

- A representative of MCD MUST be on site at all times to observe all levee restoration activities.
- MCD will do a preliminary inspection after 4 weeks to ensure that grass is being established after final seeding.
- MCD will inspect all seeded areas no earlier than 6 months and no later than 12 months after
 final seeding. For any area identified without uniform density of at least 90 percent grass cover,
 the grantee will be required to seed, fertilize and mulch any areas where sufficient turf has not
 been established.
- If seeding of an area is not successful, MCD may require sodding of disturbed areas.

- All property is to be properly monitored and maintained until sufficient turf has been established.
- MCD inspection and approval must be acquired prior to obtaining all other necessary approvals.

Levee Material Specifications:

1. Levee embankment – material placed in levee embankments should be naturally occurring or contractor blended clayey material. Addition of lime, cement, or other soil amendments for any reason is not permitted. Soil that is classified in accordance with ASTM D2487 and the Unified Soil Classification System as CH and CL is suitable. Soil classified as ML shall be considered unsuitable; however, minor amounts of ML may be suitably blended with CH or CL to formulate a material that classifies as a CL as per ASTM D2487. Soil must be free from masses of organic matter, sticks, branches, roots, broken concrete, asphalt, metal, building rubble, and other debris, including hazardous and regulated solid wastes. Soil from a contractor-supplied earthen clay material source may not contain excessive amounts of wood. Not more than 1% (by volume) of objectionable material shall be contained in clay material. Pockets and/or zones of wood shall not be acceptable. Material consisting of greater than 35% sands (by dry weight) or materials with a Plasticity Index (PI) of less than 10 will not be accepted as well as material having an organic content exceeding 9% by weight. Under no circumstances shall frozen earth, snow, or ice in the material be considered acceptable.

Restoration of Property:

- 1. Grantee shall contact MCD's Property Administrator 48 hours in advance of restoration.
- 2. Seed mix specifications shall be submitted to MCD for approval.
- 3. All disturbed areas shall be graded to the lines and grades of the adjacent undisturbed areas
- All disturbed areas shall be graded away from the toe of the levees or dams and all run off shall flow towards the river.
- 5. All disturbed areas shall be graded in a way as to not create any ponding.
- 6. Any top soil lost during land use shall be replaced to a compacted depth of four inches.
- After regrading and placing top soil where necessary all disturbed areas shall be seeded, fertilized, and mulched.
- Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
- 9. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.
- 10. Mulch shall consist of straw, and be free of weed seed.
- 11. Evenly place straw mulch over all seeded areas at the following rates:

Seeding Period Rate
From March 15 to October 30 2 Tons per acre
From October 31 to March 14 3 Tons per acre

12. Hydroseeding is acceptable, approved tackifier shall be applied at 2 gallons per acre.

Inspection:

- MCD will do a preliminary inspection after 4 weeks to ensure that grass is being established after final seeding.
- MCD will inspect all seeded areas no earlier than 6 months and no later than 12 months after final seeding. For any area identified without uniform density of at least 90 percent grass cover, the grantee will be required to seed, fertilize and mulch any areas where sufficient turf has not been established.
- 3. If seeding of an area is not successful, MCD may require sodding of disturbed areas.
- All property is to be properly monitored and maintained until sufficient turf has been established.
- MCD inspection and approval must be acquired prior to obtaining all other necessary approvals.

Restoration of Pavement, Recreation trails (asphalt):

- Depending of the severity of damage to the recreation trail, MCD shall require either, pavement
 planing (milling) and a surface course of asphalt be applied or full depth replacement with
 intermediate and surface courses of asphalt per MCD's typical recreation trail section drawings.
- Full depth replacement will require sub-base to be compacted to not less than 100% of maximum dry density.
- Base shall consist of 8" of ODOT ITEM 304 aggregate base material compacted to not less than 98% of maximum dry density.
- See typical recreation trail section drawings located at the end of this Permit for asphalt concrete details.
- For asphalt roads, parking lots, and all other asphalt surfaces, MCD will determine the design on a per project basis.
- 6. Concrete roads, trails and parking lots disturbed shall be restored to their original lines and grades. Remove all damaged areas by saw-cutting to the closest construction joint to provide a clean square joint. The concrete for the pavement shall be Class QC1 per ODOT ITEM 499. All replacement concrete pavement shall be dowelled into existing pavement per ODOT ITEMS 509 and 510. The size and spacing of dowels shall be determined by MCD on a per project basis.

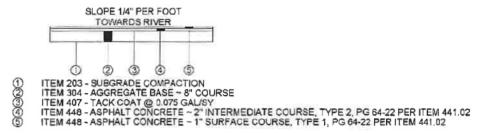
ODOT ITEMS are referenced to the most recent ODOT Construction and Material Specifications publication.

Roads, Driveways, Sidewalks, and Trails:

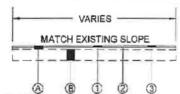
- MCD will determine whether a road, driveway, sidewalk, or trail must be removed or may remain in place.
- 2. All roads, driveways, sidewalks, and trails designated for removal shall be addressed as follows:
 - All materials including but not limited to asphalt, concrete, brick and other pavement material shall be removed from MCD property and legally disposed.
 - · Site shall be restored to match adjacent lines and grades.
 - Any damaged sections of recreational trail or revetment shall be restored using materials and construction requirements that meet the MCD Land Use Policy APPENDIX III and V.
 - · Gravel, mulch, and earthen trails shall be disked.
 - All areas shall be restored to MCD's satisfaction.
- 3. MCD or an MCD subdistrict may elect to assume ownership and maintenance of a road, driveway, sidewalk, or trail. The terms of the ownership transfer shall be agreed to in writing by both parties before the obligations of the Grantee are released.

Poles, Towers, Fences, Signs, Buildings, Bridges and other Above-Ground Structures:

 All above-ground structures, improvements, and physical installations must be completely removed from MCD property.



TYPICAL SECTION (FULL DEPTH REPLACEMENT)



- EXISTING ASPHALT CONCRETE (THICKNESS MAY VARY)
 EXISTING AGGREGATE BASE ~ 6" COURSE
 ITEM 254 1" PAVEMENT PLANING, ASPHALT CONCRETE
 ITEM 407 TACK COAT @ 0.075 GAL/SY
 ITEM 448 ASPHALT CONCRETE ~ 1" SURFACE COURSE, TYPE 1, PG 64-22 PER ITEM 441.02

TYPICAL SECTION (PLANING AND RESURFACING)

NOTE: ALL PAVEMENT SHALL MATCH EXISTING SLOPES OR IF NECESSARY SLOPE TOWARDS THE RIVER. AT NO TIME SHOULD THE TRAIL BE SLOPED AWAY FROM THE RIVER.

NOTE: ITEMS REFER TO ODOT 2013 CONSTRUCTION AND MATERIAL SPECIFICATIONS

I, THE GRANTEE OR AUTHORIZED REPRESENTATIVE FOR SAID GRANTEE, IN EXCHANGE FOR SUCH USE AS DEFINED WITHIN THIS PERMIT, DO HEREBY ACKNOWLEDGE ACCEPTANCE OF ALL TERMS AND CONDITIONS AS STATED WITHIN THIS PERMIT:

CITY OF MIAMISBURG

Date:				Ву:_		
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	* *	* *	* *	* *	k *	*
	S AND C	CONDIT	IONS OF	THIS		IEREBY GRANT APPROVAL, MIT, TO USE MCD PROPERTY
				THE	E MIA	MI CONSERVANCY DISTRICT
Date:				Ву:	Donal	d P. O'Connor, Chief Engineer
Any questions concerning PROPERTY ADMINISTI						ty shall be directed to the MCD 278, ext. 3230.
MCD CARETAKER: Sco	tt Wilson	at (937)	866-1524	(office) or (9	937) 824-0978 (cell).
After hours call Operations	& Maint	enance l	Manager	Ben Ca	asper	at (937) 414-7043.

FORM-Permit, Land Use doc (F-51-49, 3/8/2023)

GRANTEE'S CONTACT PERSON: Ryan Davis (937) 847-6476

RIVERFRONT PARK

MIAMISBURG, OHIO

PROJECT TEAM:

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PARK CONCEPTUAL RENDERING N 1 8



RIVERFRONT PARK
CITY OF MIAMISBURG,
MONTGOMERY COUNTY, OHIO

MACHINE PARTY SALE

TITLE SHEET

G100



EXHIBIT "B"

City of Miamisburg

Local Flood Protection Miamisburg



