

ORDINANCE NO. 12-18

AN ORDINANCE AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS REQUIRED TO FURTHER THE PORT CLINTON COASTAL WETLANDS PROJECT AND DECLARING AN EMERGENCY

WHEREAS, the City of Port Clinton has purchased approximately fourteen (14) acres of land in the City which lies between Perry Street and the shores of Lake Erie; and

WHEREAS, it is the City’s intention to initiate the Port Clinton Coastal Wetlands Project to restore the ecosystem on that parcel of land, including the removal of any and all invasive vegetation; and

WHEREAS, the Port Clinton Coastal Wetlands Project requires partnerships with various government entities to provide funding, expertise and labor to complete the Port Clinton Coastal Wetlands Project; and

WHEREAS, Port Clinton City Council desires to give the Mayor of the City of Port Clinton authority to execute, acknowledge and deliver the agreements necessary to facilitate the Port Clinton Coastal Wetlands Project; and

WHEREAS, Port Clinton City Council has previously adopted Ordinance 09-18 making appropriations for the fiscal year ending December 31, 2018; and

WHEREAS, it is necessary to amend Ordinance 09-18 to provide for the current operating expenses of the City to provide funding for the Port Clinton Wetlands Project..

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORT CLINTON, OTTAWA COUNTY, OHIO:

Section 1.

The Mayor is hereby authorized to execute, acknowledge and deliver, in the name of and on behalf of the City, any and all documents necessary to facilitate the Port Clinton Coastal Wetlands Project, including but not limited to, a Project Partnership Agreement between the Department of the U.S. Army and the City of Port Clinton and all documents required by the various agencies of the State of Ohio.

Section 2.

That Ordinance 09-18 is hereby amended as follows:

A.	General Fund	
	101-0416-59200 Admin - Wetlands Restoration	+\$255,000.00
	Change in Net Appropriation	+\$255,000.00
	New Net Appropriation	\$12,758,677.41

Section 3.

This Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of Council, and of its committees, which result in formal action, were taken in full compliance with the applicable legal requirements.

Section 4.

This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that the documents required for this project must be executed and returned to the various government partners prior to the period in which the three reading could occur, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2018

De Anna Kuzma
President of Council

Attest: _____
April Pipoly
Clerk of Council

Approved: _____, 2018

Mayor, Hugh Wheeler, Jr.

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

**by and between
the CITY OF PORT CLINTON (implementer)
and the
NORTHEAST OHIO REGIONAL SEWER DISTRICT (sponsor)
for the
Port Clinton Coastal Wetlands Restoration PROJECT (WR390768-0011)**

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 Northeast Ohio Regional Sewer District (“Sponsor”) has nominated for funding from the WPCLF for the Westerly Storage Tunnel and has also requested to sponsor the Port Clinton Coastal Wetlands Restoration WRRSP project WR390768-0011 (“Project”) as part of that WPCLF loan; and

WHEREAS, the City of Port Clinton 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.

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 within the Lake Erie 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

Ms. Kyle Dreyfuss-Wells
Chief Executive Officer
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115

Implementer

Name

Title

City of Port Clinton

1868 E. Perry Street

Port Clinton, Ohio 43452

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:

**Northeast Ohio Regional Sewer District
(Sponsor)**

By: _____

Name: Kyle Dreyfuss-Wells
Title: Chief Executive Officer

Date: _____

And: _____

Name: Darnell Brown
Title: President, Board of Trustees

By: _____

Name: Name
Title: Title
City of Port Clinton

Date: _____

Approved as to Form

This Instrument Reviewed By:
Katarina K. Waag
Title: Assistant General Counsel

March 6, 2018

Steve Malone
Ohio EPA
Division of Environmental and Financial Assistance
P.O. Box 1049
Columbus, Ohio 43215

Re: Intent to Enter Into WRRSP Sponsorship Agreement

Dear Mr. Malone:

We are informing you of our intent to enter into a sponsorship agreement for the purpose of implementing the following Water Resource Restoration Sponsor Program (WRRSP) project:

Port Clinton Coastal Wetlands Restoration

The project will be implemented by the City of Port Clinton.

The project will be linked with the following intended 2017 WPCLF loan:

Westerly Storage Tunnel

The Sponsor has submitted a resolution to be adopted by its governing body indicating that it will sponsor the WRRSP project for an amount up to the eligible amount as shown on the WRRSP Intended Projects List. This resolution and accompanying Sponsorship Agreement will be submitted at least 45 days prior to the WPCLF loan award.

Signed Sponsor:

Signed Implementer:

Frank P. Greenland, P.E.
Director of Watershed Programs
Northeast Ohio Regional Sewer District

XXXXXXXXXXXX
XXXXXXXXXXXX
City of Port Clinton