

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc.

Resolution No. 16-2020

Passed June 23, 20 20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE MIAMI CONSERVANCY DISTRICT (MCD) TO TRANSFER OWNERSHIP OF A SECTION OF THE BIKEWAY ALONG THE GREAT MIAMI RIVER WITHIN THE CORPORATE LIMITS OF THE CITY OF WEST CARROLLTON.

WHEREAS, MCD owns land along the Great Miami River and Hydraulic Road between North Alex Road and Weir Street for flood protection purposes; and

WHEREAS, MCD issued Land Use Permit No. 16-2042-1 dated May 1, 1989 to the CITY for an asphalt BIKEWAY within Miami Bend Park and along the former hydraulic canal near Hydraulic Road from the bike ramp upstream of the low dam to Weir Street; and

WHEREAS, the MCD Land Use Permit 16-2042-1 expired on May 1, 2014; and

WHEREAS, the CITY agrees to transfer ownership of the BIKEWAY to MCD, in lieu of renewing MCD Land Use Permit 16-2042-1.

NOW, THEREFORE, be it resolved by the Council of the City of West Carrollton, Montgomery County, Ohio, that:

SECTION 1: the City Manager is hereby authorized to sign an agreement with the Miami Conservancy District transferring ownership of the section of bike path authorized by MCD Land Use Permit 16-2042-1, attached hereto and made part of this resolution.

SECTION 2: the City Manager is further authorized to do any and all things necessary to ensure compliance with this resolution and the terms and conditions outlined within the attached agreement.

SECTION 3: this resolution shall be in full force and effect from and after its date of passage.

Passed: 6/23/2020

Attest: Tom R. [Signature]
Clerk of Council

[Signature]
Mayor

AGREEMENT

THIS AGREEMENT is entered into this 24th day of June, 2020 by and between THE MIAMI CONSERVANCY DISTRICT, a body corporate and political subdivision of the State of Ohio pursuant to §6101 of the Ohio Revised Code, located at 38 East Monument Avenue, Dayton, Ohio 45402, hereinafter referred to as "MCD" and THE CITY OF WEST CARROLLTON, a political subdivision of the State of Ohio, located at 300 East Central Avenue, West Carrollton, OH 45449, hereinafter referred to as the "CITY".

WITNESSETH:

WHEREAS, MCD and the CITY promote and support the community benefits of cycling, walking, other outdoor activities, and facilities promoting such activities; and

WHEREAS, MCD owns land along the Great Miami River and Hydraulic Road between North Alex Road and Weir Street for flood protection purposes; and

WHEREAS, MCD issued Land Use Permit No. 16-2042-1 dated May 1, 1989 to the CITY for an asphalt BIKEWAY within Miami Bend Park and along the former hydraulic canal near Hydraulic Road from the bike ramp upstream of the low dam to Weir Street (hereinafter referred to as "BIKEWAY" and shown on Exhibit A attached hereto); and

WHEREAS, MCD's River Corridor Improvement Subdistrict currently performs routine maintenance responsibilities on the BIKEWAY; and

WHEREAS, the CITY has paid an annual maintenance assessment to the River Corridor Improvement Subdistrict for a variety of purposes, including routine maintenance of the BIKEWAY; and

WHEREAS, the MCD Land Use Permit 16-2042-1 expired on May 1, 2014; and

WHEREAS, Ohio Revised Code §6101.25 enables a conservancy district to operate and maintain recreational facilities on its flood protection lands; and

WHEREAS, the CITY agrees to transfer ownership of the BIKEWAY to MCD, in lieu of renewing MCD Land Use Permit 16-2042-1.

NOW, THEREFORE, in consideration of the mutual promises hereinafter the parties agree as follows:

1. The CITY shall transfer ownership of the BIKEWAY within Miami Bend Park and along the former hydraulic canal near Hydraulic Road from the bike ramp upstream of the low dam to Weir Street.
2. The CITY and MCD shall not renew Permit 16-2042-1.
3. MCD shall continue routine maintenance on the BIKEWAY, subject to the availability of sufficient maintenance funds.

4. The CITY will continue to pay a maintenance assessment to the River Corridor Improvement Subdistrict, as provided in the Court-approved Appraisal of Benefits.
5. MCD shall coordinate and/or perform repairs or capital improvements to the BIKEWAY contingent on MCD securing sufficient funding to complete such repairs or improvements.
6. The CITY shall support MCD in seeking grants and other external funding for BIKEWAY repairs and improvements.
7. MCD shall ensure that the BIKEWAY is utilized in the same manner as it was during the CITY's ownership.

This AGREEMENT represents the entire understanding between the parties and supersedes any prior written or oral agreement. No modification or amendment shall be effective unless done so in writing and signed by authorized representatives of both parties. The terms of this Agreement shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives on the date first above written.

CITY OF WEST CARROLLTON, OHIO

THE MIAMI CONSERVANCY DISTRICT

BY: Brian J. Johnson
City Manager

BY: Janet M. Bly
General Manager

**APPROVED AS TO FORM
AND CORRECTNESS**

J. Henderson
City Attorney

**APPROVED BY THE COUNCIL
OF THE CITY OF WEST CARROLLTON, OHIO:**

June 23, 2020

Min./Bk.: _____ Page: _____
Clerk of the Council

LAND USE PERMIT

No.: 2042

Date: March 17, 1989

THE MIAMI CONSERVANCY DISTRICT, a body corporation and political subdivision of the State of Ohio, hereinafter called the "District", in consideration of the sum of NO CHARGE (---) Dollars, and other valuable consideration, and subject to the terms and conditions and restrictions hereinafter set forth, hereby grants to

CITY OF WEST CARROLLTON
300 EAST CENTRAL AVENUE
WEST CARROLLTON, OH 45449

hereinafter called the "Grantee" the authority and permission as described on Exhibit "A" attached hereto and made a part of this Permit.

THIS PERMIT IS GRANTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS AND RESTRICTIONS AND THE TERMS AND CONDITIONS SET FORTH IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF THIS PERMIT:

1. Prior to commencement of any construction work, the Grantee will submit detailed plans and specifications for the installations to the District for approval; and the Grantee will not commence any such construction work until permission therefore is granted by said District.
2. During the construction and on the completion of said installations, the District shall have the right of inspection to determine compliance with said plans and specifications; and, in the event the Grantee is notified of any failure to comply, the Grantee will promptly take the corrective action indicated. In the event the Grantee fails to take the corrective action indicated within the time specified by the District, the District may forthwith revoke this Permit, the provisions of Paragraph 5 hereof notwithstanding.
3. Whenever the employees, agents, or contractors of said Grantee enter upon the premises, for the purpose of constructing, maintaining, repairing or removing the installations described, their operations shall be confined to a reasonable area adjacent to said installations.
4. Any damages, cuts or excavations to levees, facilities or property owned or controlled by the District shall be repaired or replaced in a manner satisfactory to and according to specifications prescribed by the District. In the event the Grantee fails to repair or replace as aforesaid within the time stipulated by the District, the Grantee may, at its option, cause said repairs or replacements to be accomplished and the Grantee AGREES to reimburse the District for any expenses incurred thereby.
5. If, at any time, in the opinion of the District, the said installations interfere with or damage the works, improvements and properties owned or controlled by the District; or the use or purpose for which this Permit is issued has become obsolete or abandoned; or the best interests of the District so justify; this Permit shall be revoked and canceled: PROVIDED, HOWEVER that Sixty (60) days notice, in writing, will be given to the Grantee at its last known address shown on the records of the District before such termination becomes effective.

6. In the event of revocation, as above provided or voluntary termination of this Permit, it is AGREED that all installations will be removed or relocated without cost or expense to the District and that grounds or properties of the District will be restored by the Grantee in such manner as prescribed by the District. In the event the Grantee fails to remove or relocate said installations or restore the grounds or properties of the District within the time stipulated by the District, the District may cause said work to be done and the Grantee AGREES to reimburse the District for any expenses incurred thereby.

7. This Permit is NOT assignable or transferable.


8. The Grantee, by its acceptance hereof, AGREES to indemnify and hold harmless the District from and against any and all claims, demands, damages and causes of action and all costs and expenses associated therewith arising from or growing out of the use by the Grantee, or the negligence or alleged negligence of the Grantee, its agents, employees, or contractors in the construction, operation, use or removal of the installations authorized herein.

9. The Grantee, shall at all times, have the right to enter upon said premises for the purpose of maintaining, altering or repairing any works, or improvements owned or controlled by the District.

10. The Grantee hereby waives any and all claims against the District for damages to said installations resulting from or caused by maintenance or construction operations or any other activities of the District, its agents, employees or contractors.

11. The Grantee agrees that said premises will not be used or occupied for any unlawful purpose and further that the Grantee will conform to and obey all present and future 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, and is expressly subject to preexisting rights or claims of record.

THE MIAMI CONSERVANCY DISTRICT

By: 
James L. Rozelle
Chief Engineer

A C C E P T A N C E

THE ABOVE PERMIT IS HEREBY ACCEPTED:

CITY OF WEST CARROLLTON, OHIO

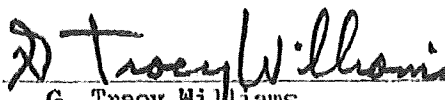
By: 
G. Tracy Williams
City Manager

EXHIBIT "A"

NO. 2042

March 17, 1989

TO:

CITY OF WEST CARROLLTON
300 EAST CENTRAL AVENUE
WEST CARROLLTON, OH 45449

The right to construct, operate, maintain, police and remove a bikeway on District land from the access ramp downstream of the low dam recently completed, southerly to Weir Street on the former Miamisburg Hydraulic right-of-way.

The Grantee will be responsible to restore the area where disturbed by construction and to maintain or improve the existing drainage.

Maintenance of the bikeway will be the responsibility of the City. This will included, but not limited to mowing (five) 5 feet on each side of the bikeway, repair or replacement of the bikeway surface and berms and all signs connected with the bikeway.

Construction drawings and location maps must be submitted in order that the District staff can determine if the construction would adversely affect the District. Should the District so determine, modification to eliminate the problem must be made and approved before any construction occurs.

This permit is for 25 years beginning when the plans are approved by the District, but may be extended if the use has been satisfactory to the District.

The above described lands are located in the State of Ohio, Montgomery County, City of West Carrollton, Range 6 MRS, Town 1, Sections 21, 22, 27 and 28 and is part of the former Miamisburg Hydraulic property acquired by the District and recorded in Deed Book 1994, Page 281 of the Montgomery County Ohio Deed Records.



WCL1

MSR1

Bikeway Transfer begins

Bikeway Transfer ends

Hydraulic Rd

Robert St

William St

E Home Ave

E Shannon Ave

Michael Ln

Rusby Ave

E Cottage Ave

N Locust St

N Elm St

E Main St

E Central Ave

E Dixie Dr

E Central Ln

N Burns Ave

N Poplar St

E Pease Ave

W Pease Ave

N Main St

N Smith St

W Circle Dr

E Circle Dr

Allen Pl

Short St

St Elmo St

Stonaker Dr

Pierce Ave

Sway Ave

Glenada Ct

Redington Ct

Windsor Ave

Gibbons Rd

Elmview Cir

Maple Hill Dr

Southard Ln

Elementary Dr

Tulip Dr

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Enking Ave

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