

FIRST READING: 9.26.16
SECOND READING: 10.10.16
THIRD READING: 10.24.16

RESOLUTION NO. 50-16

BY: CHRISTOPHER J. KLYM

AN EMERGENCY RESOLUTION AUTHORIZING THE MAYOR AND HER DESIGNEE TO ENTER AN AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES' OHIO COASTAL MANAGEMENT PROGRAM FOR A COASTAL MANAGEMENT ASSISTANCE GRANT (CMAG) IN THE AMOUNT OF \$45,000.00 FOR BRADSTREET'S LANDING REDEVELOPMENT PLAN

WHERE AS: the City of Rocky River has applied and has been awarded for a grant in the sum of \$45,000 to fund a study that will assess the pier, fishing habitat, stream stabilization and other needs that may exist at Bradstreet's Park; and

WHERE AS: the CMAG requires a local match by the City equal to 50% of the grant so that the anticipated total project cost would be \$90,000.00; and

WHEREAS: the Office of Ohio Coastal Management will reimburse the City \$45,000.00 for expenses related to this project; and

WHEREAS: the Mayor recommends City Council approve an agreement with the State of Ohio, through the Ohio Department of Natural Resources, Office of Coastal Management, through the Ohio Coastal Management Program to provide funding for Bradstreet's Landing Park, see Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. City Council approves the Mayor entering into the agreement attached as Exhibit "A" with the Ohio Department of Natural Resources for funding from the Coastal Management Assistance Grant Program (CMAG) in the amount of \$45,000.00.

SECTION 2. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health and safety, and for the further reason that timely response is necessary to meet deadlines in the grant process, and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor: otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: October 24, 2016 James W. Moran

JAMES W. MORAN
PRESIDENT OF COUNCIL

PRESENTED

TO MAYOR: October 24, 2016 APPROVED: October 24, 2016

ATTEST:

Susan G. Peasey me
SUSAN G. PEASEY
CLERK OF COUNCIL

Pamela E. Bobst
PAMELA E. BOBST
MAYOR

I, the undersigned clerk of the State of Ohio, do hereby certify that the foregoing ordinance was duly passed and recorded in the minutes thereof in the lobby of the City of Rocky River in accordance with the charter of the City of Rocky River on the 25th day of October, 2016.

Susan G. Peasey
Clerk



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

Exhibit "A"

JAMES ZEHRINGER, DIRECTOR

Office of Coastal Management
105 West Shoreline Drive
Sandusky, Ohio 44870
(419) 626-7980

September 12, 2016

Delivered via email to: safetyservice@rrcity.com

Mary Kay Costello
City of Rocky River
21012 Hilliard Blvd.
Rocky River, OH 44116

RE: Bradstreet's Landing Redevelopment Plan
\$45,000

Dear Ms. Costello:

Congratulations on your selection as a Coastal Management Assistance Grant (CMAG) recipient. We are very excited to be working with you. The contributions you and other governmental and educational institutions are making towards wise coastal resources management are invaluable. It is my job, as Local Liaison with the Office of Coastal Management, to provide assistance to you throughout the grant process. I will be the primary contact for any questions you may have regarding the grant process.

To date, you have received a grant award notification letter from James Zehringer, Director of the Ohio Department of Natural Resources (ODNR), with instructions not to proceed until you are instructed to do so by the Office of Coastal Management (OCM). The following steps must be accomplished to receive written approval for your project:

- 1) Review the enclosed documents:
 - a) CMAG Project Agreement
 - b) Exhibit A- Your CMAG Proposal
 - c) Exhibit B- CMAG Procedural Guide
 - d) Exhibit C- Executive Order 2011-12K
 - e) Exhibit D- Debarment
 - f) ODNR-OCM Debarment Certification Form
 - g) Standard Affirmation and Disclosure Form
- 2) Sign and return the following to the Office of Coastal Management either at the address listed above or electronically:
 - a) Two original CMAG Project Agreements
 - b) ODNR-OCM Debarment Certification Form
 - c) Standard Affirmation and Disclosure Form

3) Complete and submit the following to Ohio Shared Services:

- a) Supplier Information Form (OBM-5657) -- to be added to the state system as a supplier if your organization is not already in the state system, the form is available at:
<http://ohiosharedservices.ohio.gov/SupplierOperations/doc/Supplier Information Form OBM5657.pdf>
- b) W-9 Form (to be submitted with the Supplier Information Form)- the form is available at:
<http://ohiosharedservices.ohio.gov/SupplierOperations/doc/IRS W-9.pdf>
- c) Authorization Agreement for Direct Deposit of EFT Payments, if you choose, in order to receive reimbursements electronically instead of by paper check, the form is available at:
<http://ohiosharedservices.ohio.gov/SupplierOperations/doc/EFT Payment Authorization OBM4310.pdf>

Retain Exhibits A, B, C and D for your files.

Once your CMAG Project Agreement has been reviewed and signed by ODNR, you will receive written notification from the Office of Coastal Management that your agreement has been approved. You may begin your project at that time. The effective date of the agreement is September 1, 2016.

Please contact me with any questions you may have.

Sincerely,

Yetty M. Lombardo

Yetty M. Lombardo
Local Liaison

yetty.lombardo@dmr.state.oh.us

Enclosures

ecc: Scudder D. Mackey, Ph.D., Chief, Office of Coastal Management
Steve Holland, Office of Coastal Management

AGREEMENT

The State of Ohio, represented by the Ohio Department of Natural Resources Office of Coastal Management (hereinafter referred to as the DEPARTMENT) and the City of Rocky River (hereinafter referred to as the SUBRECIPIENT) agree to provide a coastal resource protection project in accordance with the Coastal Management Grant Proposal (Exhibit A) attached hereto and incorporated by reference as if fully rewritten herein.

Project Name: **Bradstreet's Landing Redevelopment Plan**
Project No.: **DNRFHCZ16A 306-08**
CFDA No.: **11.419**
Federal Grant No.: **NA16NOS4190094**

1. NATURE OF AGREEMENT

The SUBRECIPIENT will perform the activities outlined in Exhibit A, and the DEPARTMENT will pass through federal coastal zone management funds to the SUBRECIPIENT in support of the work up to the specified share of total eligible costs. Except where otherwise specified, the SUBRECIPIENT will perform the work described in Exhibit A according to the Coastal Management Grant Program Procedural Guide (Exhibit B). Where the terms of the agreement and Exhibit A differ, the terms of the agreement shall prevail.

The DEPARTMENT will provide federal funds in an amount not to exceed **Forty-five Thousand and no/100 Dollars (\$45,000.00)**, for work elements listed in Exhibit A. Reimbursement will be based on the ratio of federal funds to non-federal/non-federal originated cash, goods, and/or services identified in Exhibit A.

The SUBRECIPIENT assures and certifies that match requirement/funds in the amount of **Forty-five Thousand and no/100 Dollars (\$45,000.00)** is solely allocated for the purpose of fulfilling the match requirement for this Agreement.

Obligations of the DEPARTMENT are subject to the provisions of Ohio Revised Code Chapter 126.07, which provides that the Director of Budget and Management must first certify that there is a balance in the appropriation which may satisfy the contractual obligation and are not binding until such time that the DEPARTMENT gives the SUBRECIPIENT written notice that funds have been made available to the DEPARTMENT, by the National Oceanic and Atmospheric Administration.

This agreement is effective on **September 1, 2016**, and shall terminate **June 30, 2017**, except that the SUBRECIPIENT agrees that this agreement may be renewed unilaterally by the DEPARTMENT, subject to appropriation, by written notice to the SUBRECIPIENT within thirty (30) days of termination. All work conducted and funds expended on this project to be reimbursed or considered as match must occur during the project period.

The SUBRECIPIENT may not deviate from the scope of an approved project without the concurrence of the DEPARTMENT. Requests for a scope change after a project is approved must be made in writing to the DEPARTMENT and be submitted no later than 60 days before the Agreement expiration date according to the process described in the Coastal Management Grant Program Procedural Guide (Exhibit B).

If the DEPARTMENT determines that it is feasible and circumstances warrant, projects can be extended. A written request must be submitted to the DEPARTMENT no later than 60 days before the Agreement expiration date according to the process described in the Coastal Management Grant Program Procedural Guide (Exhibit B).

2. TERMINATION OF AGREEMENT

The DEPARTMENT may suspend or terminate this agreement upon thirty days written notice to the SUBRECIPIENT if the SUBRECIPIENT shall fail to fulfill in a timely manner its obligations under this agreement or if the SUBRECIPIENT shall violate any of the covenants, terms, or stipulations of this agreement. In the event of termination, the DEPARTMENT shall retain all unused funds.

3. RIGHTS IN DATA, PATENT, AND COPY RIGHTS

If applicable, the work products, or deliverables provided by the SUBRECIPIENT shall become the property of the DEPARTMENT. The DEPARTMENT, and any person, agency or instrumentality providing financial assistance for the work performed under the grant agreement shall have an unrestricted right to reproduce, distribute, modify, maintain and use the deliverables, and the SUBRECIPIENT shall not obtain copyright, patent or other proprietary protection for the deliverables. The SUBRECIPIENT relinquishes any and all copyrights, privileges and proprietary rights to the deliverables and shall not include in any deliverable any copyrighted matter, unless the copyright owner and any person, agency or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such copyrighted matter in the manner provided herein.

4. NONDISCRIMINATION

The SUBRECIPIENT will not discriminate against any employee or applicant for employment, because of race, color, religion, national origin, ancestry, age, sex, military status or disability. The SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, ancestry, age, sex, military status or disability. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices as may be provided by the DEPARTMENT setting forth the provisions of this non-discrimination clause.

In the event of the SUBRECIPIENT'S non-compliance with the non-discrimination clauses of this agreement, this agreement may be canceled, terminated or suspended in whole or in part.

The SUBRECIPIENT agrees to comply with all pertinent provisions of the Americans with Disabilities Act and agrees to assume full responsibility for noncompliance therewith.

5. EQUAL EMPLOYMENT OPPORTUNITY

The SUBRECIPIENT agrees that it will fully cooperate with the State Equal Employment Opportunity Coordinator, with any other official or agency of the State or Federal Government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices, and said SUBRECIPIENT shall comply promptly with all requests and directions from the state of Ohio or any of its officials and agencies in this regard, both before and during performance. All bidding and contract documents shall contain necessary requirements to implement these provisions.

6. LIABILITY

The parties agree that the SUBRECIPIENT shall be solely responsible for any and all claims, demands, or causes of action arising from the SUBRECIPIENT'S obligations under this grant agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement. It is specifically understood and agreed that the DEPARTMENT does not indemnify the SUBRECIPIENT. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall the DEPARTMENT be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.

7. DRUG FREE WORKPLACE

The SUBRECIPIENT shall comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, agents, or sub-contractors while working on this project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

8. OHIO ELECTIONS LAW

The SUBRECIPIENT affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

9. FINDINGS FOR RECOVERY

The SUBRECIPIENT affirmatively represents and warrants to the DEPARTMENT that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. SUBRECIPIENT agrees that if this representation or warranty is deemed to be false, the Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by the DEPARTMENT hereunder immediately shall be repaid to the DEPARTMENT, or an action for recovery immediately may be commenced by the DEPARTMENT for recovery of said funds.

10. INTEREST OF SUBRECIPIENT

The SUBRECIPIENT covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this agreement. The SUBRECIPIENT further covenants that in the performance of this agreement no person having any such interest shall be employed.

11. ETHICS COMPLIANCE

The SUBRECIPIENT by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The SUBRECIPIENT understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

12. EXECUTIVE ORDER 2011-12K

The SUBRECIPIENT affirms to have read and understands Executive Order 2011-12K issued by Ohio Governor John Kasich and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States. The Executive Order is provided as Exhibit C and also is available at the following website: <http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>.

The SUBRECIPIENT also affirms, understands, and agrees to immediately notify the DEPARTMENT of any change or shift in the location(s) of services performed by the SUBRECIPIENT or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside of the United States.

Termination. Sanction. Damages: If SUBRECIPIENT or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. The DEPARTMENT is not obligated to pay and shall not pay for such services. If SUBRECIPIENT or any of its subcontractors perform any such services, SUBRECIPIENT shall immediately return to the DEPARTMENT all funds paid for those services. The DEPARTMENT may also recover from the SUBRECIPIENT all costs associated with any corrective action the DEPARTMENT may undertake, including but not limited to an audit or a risk analysis, as a result of the SUBRECIPIENT performing services outside the United States.

The DEPARTMENT may, at any time after the breach, terminate the Agreement, upon written notice to the SUBRECIPIENT. The DEPARTMENT may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

If the DEPARTMENT determines that actual and direct damages are uncertain or difficult to ascertain, the DEPARTMENT in its sole discretion may recover a payment of liquidated damages in the amount of zero (0) percent of the value of the Agreement.

The DEPARTMENT, in its sole discretion, may provide written notice to SUBRECIPIENT of a breach and permit the SUBRECIPIENT to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the DEPARTMENT may buy substitute services from a third party and recover from the SUBRECIPIENT any costs associated with acquiring those substitute services.

Notwithstanding the DEPARTMENT permitting a period of time to cure the breach or the SUBRECIPIENT'S cure of the breach, the DEPARTMENT does not waive any of its rights and remedies provided the DEPARTMENT in this Agreement, including but not limited to recovery of funds paid for services the SUBRECIPIENT performed outside of the United States, costs associated with corrective action, or liquidated damages.

Assignment / Delegation: The SUBRECIPIENT will not assign any of its rights, nor delegate any of its duties and responsibilities under this Agreement, without prior written consent of the DEPARTMENT. Any assignment or delegation not consented to may be deemed void by the DEPARTMENT.

13. DEBARMENT

The SUBRECIPIENT shall comply with the provisions of 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

14. DELIVERABLE REQUIREMENTS

[Non-construction]

Final Report Requirements, in addition to those listed in the Procedural Guide (Exhibit B), will include the submission of any final reports or documents developed as a result of this project as follows:

- 1) two (2) paper copies; and
- 2) one CD with a complete set of any final reports or documents as Portable Document Format (.pdf) files and as Word (.doc) or Rich Text Format (.rtf) files.

[For Construction]

Final Report Requirements, in addition to those listed in the Procedural Guide (Exhibit B), will include the SUBRECIPIENT'S submission of a) one copy of the completed site design and one set of final engineering drawings and b) one set of 10 color pictures in high resolution digital format depicting the work completed under this grant. These photos should include "before" and "after" shots of the project site and at least one photo of the installed grant acknowledgement sign.

15. LATITUDE, LONGITUDE AND METADATA

The SUBRECIPIENT will provide the latitude and longitude for the location of the task. Any Geographic Information System (GIS) work done in relation to this project will be shared with the DEPARTMENT. In addition, the SUBRECIPIENT will follow federal metadata standards as described at <http://www.fgdc.gov/metadata/csdgm/>.

16. GRANT ACKNOWLEDGEMENT AND PRODUCT DISCLAIMER

For research projects:

Publication of the results of the research project in the appropriate professional journals is encouraged as an important method of recording and reporting scientific information. When releasing information resulting from projects supported in whole or in part by this grant, the SUBRECIPIENT shall include the following acknowledgement:

"Financial assistance was provided under award NA16NOS4190094 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce through the Ohio Coastal Management Program, administered by the Department of Natural Resources, Office of Coastal Management."

For non-research projects:

Every publication of material (including Internet sites) based on or developed with information resulting from projects supported in whole or in part by this grant must contain the following disclaimer on the cover or title page:

"This [report/video/Internet site/etc.] was prepared by [Subrecipient] under award NA16NOS4190094 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce through the Ohio Department of Natural Resources, Office of Coastal Management. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the National Oceanic and Atmospheric Administration, Department of Commerce, Ohio Department of Natural Resources, or the Office of Coastal Management."

17. COUNTERPARTS

Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

18. INSURANCE

Throughout the agreement period, the SUBRECIPIENT shall carry Workers' Compensation Insurance, as required by the Ohio Workers' Compensation Act, upon all its employees engaged in this work and shall be responsible to see that any sub-contractors carry such insurance on their employees. The SUBRECIPIENT shall also provide public liability and property damage insurance for the entire period, thus insuring the interests of all parties against any and all claims that may arise out of SUBRECIPIENT operations under the terms of this agreement. It is agreed that in the event any carrier of such insurance exercises cancellation, notice will be made immediately to the DEPARTMENT of such cancellation.

19. INDEPENDENT CAPACITY OF SUBRECIPIENT

The parties hereto agree that the SUBRECIPIENT, and any agents and employees of the SUBRECIPIENT, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the state for the purpose of Ohio Revised Code Chapter 145 and the DEPARTMENT shall not be responsible for any contributions to retirement plan for the SUBRECIPIENTS' employees under that code. Nothing in this Agreement shall be construed so as to create a partnership, joint venture, or other relationship between the parties.

20. OHIO HISTORIC PRESERVATION OFFICE

Prior to any undertaking that involves ground disturbance and seeks to implement portions of the Bradstreet's Landing Redevelopment Plan being developed with this grant or if new historic resources are discovered, further consultation with the Ohio Historic Preservation Office is required [36 CFR 800.13]. The Subrecipient will promptly prepare and submit documentation requested by the Ohio Historic Preservation Office and the Department in order to assist the Department in meeting its Section 106 responsibilities.

IN TESTIMONY WHEREOF, the said parties hereto set their hands as of the day indicated herein below.

SIGNED: CITY OF ROCKY RIVER

APPROVED BY STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES

Signature

Scudder D. Mackey, Ph.D., Chief
As Designee for:
James J. Zehringer, Director

Name Printed

Title

Date

Date

Federal Tax Identification Number