

RESOLUTION 2019-14
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY RESOLUTION
AUTHORIZING AND DIRECTING THE MAYOR
TO ENTER INTO A STATE/LOCAL PROJECT AGREEMENT WITH THE
OHIO DEPARTMENT OF NATURAL RESOURCES**

WHEREAS, the State of Ohio through the Department of Natural Resources, administers financial assistance for development of outdoor public recreation areas, through the State of Ohio NatureWorks Grant Program; and

WHEREAS, the Village of Mayfield has applied for the NatureWorks Grant through the NatureWorks Local Grant Program provided by the Ohio Department of Natural Resources; and

WHEREAS, the Village of Mayfield has been awarded \$150,000.00 through said application and program for the Parkview Inclusive Playground Project; and

WHEREAS, the Village has already declared its willingness to appropriate the necessary funds for such project; and

WHEREAS, the Village desires to use the NatureWorks Grant for assistance in constructing the Parkview Inclusive Playground Project; and

WHEREAS, Council deems it necessary and in the best interest to the health, safety and welfare of all Village residents to authorize acceptance of the NatureWorks Grant provided by the Ohio Department of Natural Resources and to enter into the State/Local Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the village of Mayfield, County of Cuyahoga and State of Ohio:

SECTION 1. That Council of the Village of Mayfield authorizes and directs the Mayor to enter into a State/Local Project Agreement with the Ohio Department of Natural Resources.

SECTION 2. That the Village Mayor, or her authorized representative, is hereby authorized and directed to enter into a State/Local Project Agreement with the Ohio Department of Natural Resources as set forth in the document attached and incorporated by reference as Exhibit "A."

SECTION 3. That the Village of Mayfield does hereby agree to obligate the funds required to satisfactorily complete the proposed project and become eligible for reimbursement under the terms of the NatureWorks Grant Program.

SECTION 4. The Council finds and determines that all formal actions of the Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 5. This resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it provides for necessary funding that is time sensitive in providing Village services and programs. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.

JOSEPH M. SAPONARO
Council President

First Reading: _____, 2019

Second Reading: _____, 2019

Third Reading: _____, 2019

PASSED: _____, 2019

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

ANTHONY J. COYNE, ESQ.,
Director of Law

ATTEST: _____
MARY E. BETSA, MMC
Clerk of Council

**NATUREWORKS LOCAL GRANT PROGRAM
STATE/LOCAL PROJECT AGREEMENT
CUYA-085**

The State of Ohio, represented by the Ohio Department of Natural Resources (hereinafter "State of Ohio" or "ODNR"), and **Mayfield Village** (hereinafter referred to as "Grantee"), having entered into this NatureWorks Local Grant Program State/Local Project Agreement (hereinafter "Project Agreement") hereby agree to the following terms:

1. **Notices.** Except to the extent expressly provided otherwise herein, all notices, consents, and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the following addresses:

Grantee:

Mayfield Village
6622 Wilson Mills Rd.
Mayfield Village, Ohio 44143

ODNR:

Ohio Department of Natural Resources
Office of Real Estate
2045 Morse Road, Bldg. E2
Columbus, OH 43229-6693

Notwithstanding the foregoing, notices sent by fax or email shall be effective unless the party sending the notice, consent or communication receives an undelivered mail notification. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

2. **Project Description.** Grantee shall: **Remove old playground & install new inclusive playground at Parkview Recreation Complex** (the "Project").
3. **Time for Completion.** Grantee shall complete all work on the Project on or before **December 31, 2020**.
4. **ODNR's Right to Terminate.** ODNR, at any time after execution of this Project Agreement, upon 30 days written notification, may terminate any portion, or all, of the work or services. In the event of such termination, Grantee shall be paid a pro rata amount for services rendered up to the time of termination.
5. **Commencement and Termination.** The Project shall commence on the earlier of the date that this Project Agreement is signed by the Director of ODNR or the date that a waiver of retroactivity is granted by ODNR (the earlier of the two dates shall be referred to as the "Effective Date"), and shall terminate on the date that the final reimbursement is issued or the Project is otherwise terminated by action of ODNR (the "Termination Date"). If Grantee fails to pursue performance of the Project within a reasonable period of time, ODNR, in the exercise of its sole discretion may terminate the Project. The period of time between the Effective Date and the Termination Date shall be referred to herein as the "Project Period."
6. **Non-Appropriation and OBM Certification.** In the event this Project Agreement extends in time beyond the current biennium, ODNR's obligation to provide funds hereunder shall continue only if such funds are appropriated and the Director of the Office of Budget and Management certifies, pursuant to Ohio Revised Code Section 126.07, that there is a balance in the appropriation not previously obligated to pay existing obligations.
7. **Performance of Project.** Grantee agrees to (1) perform in compliance with the terms, promises, conditions, construction plans, specifications, estimates, procedures, maps, and assurances set forth in the Project Proposal; and shall secure compliance with all applicable federal, state and local laws and regulations; (2) promptly submit

to the State of Ohio, such reports and documents as the State of Ohio may request; (3) report any and all income gained on the property or facilities during the Project Period; 4) establish a separate account for the funds for the acquisition and/or development of the property. The State of Ohio reserves the right to audit this separate account, either during or after completion of the Project; and 5) prominently display a NatureWorks acknowledgment sign at the site or facility acquired or developed with NatureWorks Local Grant Fund Program assistance.

- 8. No Restrictions of Record.** Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the property as described on Exhibit A (the Boundary Map) attached hereto, on which the Project will be located and developed as a public parks or recreation facility (the "Property"). The Grantee represents that it is the fee simple owner, or has a lease with a term longer than fifteen (15) years beyond the anticipated date of the closeout on the Project and that the only restrictions of record with respect to the Property are (a) any state of facts which an accurate survey might show, (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property and (c) all matters of record pertaining to the Property, including dedicated public rights-of-way and the items identified on said Exhibit A,
- 9. Funding by ODNR.** ODNR hereby agrees to: (1) provide Grantee funding assistance not to exceed **\$150,000** from Ohio's fiscal allocations made available under the provisions of Amended Substitute House Bill 790, Ohio Revised Code, Section 1557.06, the NatureWorks Local Assistance Grant Program; (2) upon receipt of tangible proof of actual eligible costs paid by the Grantee in performing this Project Agreement, reimburse the Grantee funds equal to no more than seventy-five percent of such eligible costs.
- 10. Compliance with ODNR Procedures.** ODNR and the Grantee mutually agree to perform this Project Agreement in accordance with the policies and procedures set forth by ODNR, and the guidelines set forth in the NatureWorks Local Assistance Grant Program Procedural Guide and Application (hereinafter "Procedural Guide" and "Application"). Failure to comply with or show sufficient progress in complying with the Procedural Guide and Application may result in the termination of this Project Agreement. In the event of termination, all unused funds shall be retained by ODNR.
- 11. Findings for Recovery.** Grantee affirmatively represents and warrants to ODNR that neither it nor any of its contractors are 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. Grantee agrees that if this representation and warranty is deemed to be false, this Project Agreement shall be void *ab initio* as between the parties to the Project Agreement, and any funds paid by ODNR hereunder shall be immediately repaid to ODNR, or an action for recovery may be immediately commenced by ODNR for recovery of said funds.
- 12. Ethics.** Grantee by signature on this document certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found 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. Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Project Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- 13. Self-Insurance by the State.** The State of Ohio is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollar per occurrence in accordance with section 9.87 of the Ohio Revised Code.
- 14. No Liability for Obligations.** The parties agree that Grantee shall be solely responsible for any and all claims, demands, or causes of action arising from Grantee's obligations under this Project Agreement, including any costs, attorney fees or expenses, in any litigation that may arise from the performance of this Project Agreement. It is specifically understood and agreed that the State of Ohio will not indemnify Grantee. Nothing in this Project 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 State of Ohio be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.

- 15. Use of Property.** Grantee agrees to operate, maintain and keep for public outdoor recreation purposes the property or facilities acquired or developed pursuant to this Project Agreement, as identified in Exhibit A, the "Boundary Map," attached hereto and a part hereof. The Property and/or facilities will be kept open for general public use during reasonable hours and during appropriate seasons of the year, according to the type of use occurring on the site. During the term of the bonds issued to provide funds for the NatureWorks Local Assistance Grant Program, the Property shall not be converted to another use other than public outdoor recreation use nor shall the Property be transferred through deed or easement without the approval of ODNR. Should Grantee convert the Property without the approval of ODNR, Grantee may become ineligible for further grant funding through ODNR until the condition of noncompliance is rectified to the satisfaction of ODNR.
- 16. Maintenance of the Property.** The Property shall be operated and maintained so as to be safe, attractive, and inviting to the public. Sanitation and sanitary facilities will be maintained to comply with applicable state and local health standards. Buildings, recreation and support facilities, and other improvements will be kept in reasonable repair throughout their estimated life expectancy to prevent undue deterioration.
- 17. Accommodation of Disabilities; Nondiscrimination.** Any new facility constructed on the Property shall, whenever possible, be designed to accommodate people with disabilities. Grantee shall require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), DOI Section 504 Regulations (43 CFR Park 17). Grantee will be responsible to ensure compliance with these specifications by the contractor. The facility shall be made available to all persons regardless of race, color, religion, sex, national origin, military status, disability, age or familial status. Any modifications to existing structures will also include handicap accessible design considerations. It is understood that this requirement is applicable to any construction occurring on the Property, regardless of the funding source for the improvement.
- 18. Drug-Free Workplace.** Grantee agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Grantee shall make a good faith effort to ensure that all Grantee's employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- 19. Ohio Election Law.** Contractor affirms that it is compliant with R.C. § 3517.
- 20. User Fees.** User fees charged for facilities acquired or developed with NatureWorks funds shall be reasonable for all users and shall not create unfair competition with private enterprises offering similar services. Excess revenues from user fees at the Project site shall be returned to the public in the form of expanded facilities or services at the funded site.
- 21. Placement of Utilities.** Unless situated within an easement or right of way owned by others, all new or replacement utility lines on the Property shall be placed underground.
- 22. Nondiscrimination.** Discrimination on the basis of residence, including preferential fees, reservations, membership systems, is prohibited, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence. Compliance with federal, state, and local laws pertaining to non-discrimination in employment practices, facility and area use, minimum wages, conflict of interest, solicitations for contract bids, bid awards, etc., shall be met at all times. No person shall be discriminated against or be excluded from participating in any program or activity on the grounds of race, color, religion, sex, national origin, military status, disability, age or familial status.
- 23. Commencement of Work.** Grantee shall cause work on the Project to be commenced within a reasonable time after the execution of this Project Agreement and assure that the Project will be prosecuted to completion with reasonable diligence.
- 24. Relocation Assistance.** Grantee shall comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and O.R.C. Section 163 for all real property acquisitions, and where applicable shall assure that these requirements have been complied with for property to be developed with assistance under the Project Agreement.

- 25. No PERS Contribution.** Grantee certifies that it is an Ohio county, municipality or other political subdivision for the purposes of the application of Rev. Code Chapter 145. ODNR will not make contributions to the public employees' retirement system on behalf of any of the individuals employed by Grantee, or its contractors or other agents.
- 26. Qualification to Receive Grant.** Grantee affirms that it duly organized governmental entity, qualified to receive grants under the NatureWorks Local Assistance Grant Program. Grantee further affirms that if at any time during the term of this Project Agreement, Grantee for any reason becomes disqualified from participating in the NatureWorks Local Grant Fund Program, Grantee will immediately notify ODNR in writing and will immediately cease performance of the Project. Failure to provide such notice in a timely manner shall void this Project Agreement and may be sufficient cause for the State of Ohio to debar the Grantee from future state grant opportunities as may be permitted by law. Grantee represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. Section 153.02 or R.C. Section 125.25.
- 27. Bidding; Plans.** Grantee shall follow all applicable laws in determining whether the Project must be competitively bid, and if competitive bidding for the Project is not required by law, to the extent reasonable possible as determined by Grantee, Grantee shall employ an open and competitive process in the selection of its contractors. Bid documents designed to be so restrictive to exclude open competitive bidding and bid documents that do not allow for "or equal" provisions, may not be acceptable. Plans must reflect the intent of the Project as described in the authorizing legislation. Once approved by ODNR, plans and specifications should not be substantially modified. ODNR must be notified of any planned substantial changes, and only approved changes will be eligible for reimbursement.
- 28. Prevailing Wage Compliance.** Grantee shall be responsible for following, and compliance with, all applicable laws in determining if the Project is a public project on which prevailing wages must be paid, and, if prevailing wages must be paid, Grantee shall be responsible for contractor/subcontractor compliance.
- 29. Compliance with Law and Procedures.** Grantee shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, and insurance. Grantee is legally responsible to complete the Project, follow guidelines and rules as established by ODNR, comply with the terms of this Project Agreement, the provisions of the Procedural Guide and all relevant laws, rules and regulations. ODNR may issue instructions, interpretations or additional guidelines as necessary for effective program performance. Project assistance may be terminated in whole or in part at any time within the Project Period if ODNR determines that Grantee has failed to comply with this Project Agreement. Grantee will be promptly notified in writing of such findings and given reasons for this action.

IN WITNESS WHEREOF, the parties hereto have caused this Project Agreement to be executed by their duly authorized representatives.

**STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES:**

Mayfield Village

Paul R. Baldrige, Chief
Office of Real Estate
As Designee For:
James Zehringer, Director

By _____

Title

Date