

North Canton City Council  
Finance and Property Committee

Ordinance No. 76 – 2014

An ordinance authorizing the Mayor of the City of North Canton to enter into an agreement between the City of North Canton and Stark County Park District (Stark Parks) to participate and provide the City's share in the Hazard Mitigation Grant Program (HMGP), and declaring the same to be an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That the Mayor of the City of North Canton is hereby authorized to enter into an agreement between the City of North Canton and Stark Parks to participate and provide the City's share in the HMGP. The grant dollars will be used towards the removal of approximately ten residential structures located in the floodway and/or floodplain area known as the Zimber Ditch. The City's share is \$60,000. Stark Parks is the recipient and manager of the grant.
- Section 2. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton, and because the residents affected and harmed by numerous floods are unable to utilize the program without the City's participation and approval. Provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

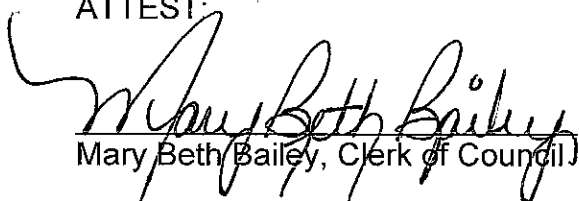
Passed in Council this 13<sup>th</sup> day of October 2014



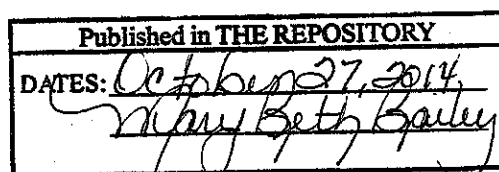
David Held, Mayor

Signed: 10/13, 2014

ATTEST:



Mary Beth Bailey, Clerk of Council



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BEING REVIEWED

## SUPPORT AGREEMENT

THIS SUPPORT AGREEMENT ("Agreement") is made and entered into as of the later date signed below, by and between **City of North Canton**, an Ohio political subdivision ("City of North Canton"), and the **Stark County Park District**, an independent political subdivision created and governed by Chapter 1545 of the Ohio Revised Code ("Stark Parks").

### RECITALS:

WHEREAS, Stark Parks is in receipt of a grant from the Ohio Emergency Management Agency (OEMA) through the Hazard Mitigation Grant Program (HMGP). The HMGP grant has been provided to fund the removal of approximately ten (10) residential structures located in the floodway and/or floodplain of the Zimber Ditch in North Canton, Ohio; and

WHEREAS, the removal of the buildings is intended to (1) provide greenspace within the community, (2) improve the natural function of the floodplain, and (3) reduce the number of repetitive losses due to flooding in North Canton, Ohio; and

WHEREAS, the total HMGP grant funding for the Zimber Ditch DR-4098 project is \$1,500,000.00, which will be distributed to Stark Parks in two phases. The grant is a 75/25 match grant with the federal share totaling \$1,125,000.00 and the state/local share totaling \$375,000.00. The State of Ohio will be funding \$187,500.00 (12.5%), leaving a remainder of \$187,500.00 (12.5%) for local shares; and

WHEREAS, to assist with the funding of the local share, City of North Canton has committed matching funds in the amount of \$60,000.00 to assist with project expenses such as appraisal services and the acquisition and demolition of residential structures. The matching funds are to be disbursed to Stark Parks within thirty (30) days of notice and in the amount set forth in the draw down instructions.

**NOW, THEREFORE**, in consideration of the premises and mutual representations and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is further agreed between the parties hereto and their successors as follows:

Section 1. Use of Defined Terms. Unless the context or use indicates another meaning or intent, words and terms used in this Agreement with initial capital letters shall have the meanings given in the above Recitals or elsewhere defined in this Agreement.

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Section 2. Representations and Warranties.

- (a) City of North Canton represents and warrants that:
- (i) It is political subdivision of the State of Ohio created and governed by Title (7) VII of the Ohio Revised Code.
  - (ii) It is authorized to enter into this Agreement and to take such actions as are necessary to further the transactions contemplated by this Agreement.
  - (iii) It will provide matching funds for Stark Parks HMPG grant for the removal of approximately ten (10) residential structures within the Zimber Ditch floodplain in the amount of \$60,000.00.
  - (iv) It will make payment of said matching funds of \$60,000.00 to Stark Parks within thirty (30) days of notice and in the amount set forth in the draw down instructions.
- (b) Stark Parks represents and warrants that:
- (i) It is a park district organized as an independent Ohio political subdivision created and governed by Chapter 1545, Ohio Revised Code.
  - (ii) It is authorized to enter into this Agreement and to take such actions as are necessary to further the transactions contemplated by this Agreement.
  - (iii) It will provide City of North Canton with written notice immediately upon notification of the approval of its HMGP grant application.
  - (iv) It will manage and complete the Zimber Ditch Hazard Mitigation Project in conformity with the HMGP grant application attached hetero as Exhibit "A".
  - (v) It will use and apply the grant funds in accordance with the Zimber Ditch Hazard Mitigation Project budget as set forth in attached Exhibit "B".
  - (vi) It will provide City of North Canton written reports of expenditure of grant funds and progress of the Zimber Ditch Hazard Mitigation Project every ninety (90) days.
  - (vii) It will recognize City of North Canton for this support of the Zimber Ditch Hazard Mitigation Project, to include Stark Parks' new releases and its print and multimedia presentations with specific logo placement as appropriate.

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Section 3. Stark Parks Covenants. Stark Parks shall continue the Project from commencement of Zimber Ditch Hazard Mitigation Project (“Commencement Date”), until its completion, which is expected to be on or before October 1, 2016 (the “Completion Date”).

Section 4. Events of Default. In the event of the default by any party of any provision, and which default continues after receipt of written notice for a period of ten (10) days (or such longer period as the parties may agree in writing), any party at any time and at its election may proceed at law or in equity or otherwise to enforce the provisions of this Agreement.

No remedy herein conferred upon or reserved to City of North Canton or Stark Parks, as applicable, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof; but any such right and power may be exercised from time to time and as often as may be deemed expedient by City of North Canton or Stark Parks, as applicable. If any provisions contained in this Agreement should be breached by any party and thereafter duly waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly signed by the parties hereto.

The terms of this Agreement may be enforced as to any one or more breaches either separately or cumulatively. Each and every default hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 5. Notices. Any process, pleadings, notices or other papers served upon City of North Canton or Stark Parks shall be sent by registered or certified mail to City of North Canton and Stark Parks at the addresses set forth below, or to such other address or addresses as may be furnished to the parties in writing:

(a) as to City of North Canton: North Canton City Hall  
145 N Main Street  
North Canton, Ohio 44720  
Attn: Mike Grimes, County Administrator

and a copy to: \_\_\_\_\_

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(b) as to Stark Parks:

Stark County Park District  
5300 Tyner Avenue NW  
Canton, Ohio 44708  
Attn: Robert A. Fonte, Director

and a copy to:

520 East Main Street -  
Suite #200  
Alliance, Ohio 44601  
Attn: William F. Morris, Esq.

Section 6. Amendment. This Agreement may be amended by a written agreement signed by the parties hereto. No amendment, change, modification, alteration or termination of instruments or documents of any party shall be made that would in any way increase the amount or alter the conditions set forth in this Agreement of the obligations under this Agreement without obtaining the prior written consent of the other parties.

Section 7. Entire Agreement. The Agreement constitutes the entire agreement, and supersedes all prior agreements, both written and oral, among the parties with respect to the subject matter hereof and may be signed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8. Severability. If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 9. Responsibility for Loss and Damage. Each party to this Agreement agrees to be responsible for those damages or losses which arise from the negligent acts or omissions of its agents or employees in the performance of this Agreement, as may be determined by a court of competent jurisdiction.

Section 11. Governing Law; Venue. This Agreement and the rights and obligations of the parties hereto (including third party beneficiaries, if any) shall be governed exclusively by and construed in accordance with the laws of the State of Ohio. The parties agree that any action with respect to an alleged breach of this Agreement will be brought in the State courts located in Stark County, Ohio and the parties hereby consent to being subject to the jurisdiction of such courts and to have any such proceeding take place in Stark County.

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IN WITNESS WHEREOF, this Agreement has been duly signed and delivered for and in the name and on behalf of City of North Canton and Stark Parks by their duly authorized officials or representatives, as of the date first above written.

**STARK COUNTY PARK DISTRICT**

By: \_\_\_\_\_  
Robert A. Fonte, Park Director

Date \_\_\_\_\_

**CITY OF NORTH CANTON**

By: \_\_\_\_\_  
David J. Held, Mayor

Date \_\_\_\_\_

Approved as to Legal Form and Sufficiency:

\_\_\_\_\_  
William F. Morris  
Counsel for Stark County Park District