

Contract no. _____

INTERGOVERNMENTAL FUNDING AGREEMENT

(Mill Creek Valley Conservancy District)

THIS INTERGOVERNMENTAL FUNDING AGREEMENT ("**Agreement**") is made as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 ("**City**") and **THE MILL CREEK VALLEY CONSERVANCY DISTRICT**, a political subdivision and public corporation of the State of Ohio formed under Ohio R.C. 6101, the address of which is c/o J. Donald Mottley, 41 South High Street, Suite, 1800, Columbus, OH 43215 ("**MVCD**" or the "**District**").

RECITALS:

- A. The City of Cincinnati sits at the confluence of the Mill Creek and the Ohio River, where stormwater from the Mill Creek watershed empties into the Ohio River. Both waterways have experienced historic flooding with significant loss of life and property, leading Cincinnati and other local communities to work with the U.S. Army Corps of Engineers (USACE) to construct two local flood protection projects ("**LFPs**" of the "**Flood Protection Projects**"), the Cincinnati LFP (also known as the "**Barrier Dam Project**") and the Mill Creek LFP (also known as the "**Mill Creek Channel Project**").
- B. USACE constructed the Barrier Dam Project in 1948 to protect areas adjacent to the Mill Creek against flooding from the Ohio River up to the 1937 flood level of 80 feet. The City and USACE are parties to an agreement for the City to be the local sponsor responsible for maintenance and operation following project completion.
- C. Following the 1959 Mill Creek flood, nine local governments, including the City of Cincinnati petitioned to form the MVCD in 1962 as an Ohio Conservancy District under R.C. 6101 to provide local flood protection, water stewardship, and recreational use along the Mill Creek across municipal and township boundaries stretching from the Hamilton and Butler County line south to the Barrier Dam.
- D. After extensive study, with nine million dollars in support from Hamilton County and five million from the State of Ohio, MVCD and USACE partnered in the design of the Mill Creek Channel Project, which was comprised of a series of channelization projects, pumping plants, and addition of two pumps at the Barrier Dam to facilitate conveyance of stormwater from the Mill Creek drainage basin to the Ohio River to prevent flooding of upstream communities. Over 96% of the value benefits of the project were projected to be north of the I-75 bridge at Ronald Reagan highway near Cincinnati's northern boundary. MVCD and USACE entered into a 1975 Cooperative Agreement for USACE to construct the project, for MVCD to be the local sponsor for the Mill Creek Channel Project and to be responsible for property acquisition during construction, and Operation, Maintenance, Repair, Rehabilitation and Replacement (OMRR&R) following completion of the Project.
- E. Under a 1979 agreement between the City of Cincinnati and MVCD, MVCD agreed to take over responsibilities for OMRR&R of the Barrier Dam Project upon completion of the Mill Creek Channel Project and the City agreed to provide over 100 acres of property for the project at no cost to MVCD.
- F. Collectively, the Barrier Dam and the Mill Creek Channel protect over a billion dollars of property and infrastructure, and residents in multiple communities along the 18-mile creek from flood damage.
- G. The USACE has indicated that it is ready to declare the Mill Creek Channel Project complete and trigger OMRR&R requirements for the MVCD for both the Barrier Dam Project and the Mill Creek Channel Project.
- H. MVCD has requested that the City provide financial assistance to complete the R.C. 6101 appraisal of benefits required to levy an annual assessment on benefited properties to enable MVCD to be a

self-funded, sustainable and reliable Conservancy District able to undertake its responsibilities for OMRR&R of the Barrier Dam and the Mill Creek Channel. The MVCD has indicated that if it fails to obtain assessment revenue, it will not have the funding to meet these critical responsibilities.

- I. The MVCD has represented to the City that it is seeking support from multiple sources, including the nine communities that formed the MVCD, to take the necessary steps to become a self-funded, sustainable and reliable Conservancy District, and has requested support from the City's Stormwater Management Utility in the approximate amount of \$1,500,000 over a maximum of six years and three phases for this purpose.
- J. The City believes that supporting MVCD to expand the Conservancy District boundaries so that properties contributing drainage to the Projects (within Hamilton County) also share in the costs, complete the appraisal of benefits and other steps for Conservancy Court approval to levy assessments, and support MVCD to develop the capacity and revenue to discharge its responsibilities for the OMRR&R of the Barrier Dam and the Mill Creek Channel LFP projects, is in the best interest of the City. Therefore, the City is agreeable to providing financial support in the form of a loan in the amount of \$1,500,000 over a maximum of six years (approximately \$500,000 per phase) from the Stormwater Management Utility budget (Fund 107) in accordance with the terms of this Agreement.
- K. Funding for this Agreement was authorized by Ordinance No. _____-2026, passed by City Council on _____, 2026.

NOW, THEREFORE, for and in consideration of the promises, covenants, and agreements herein contained, the parties mutually agree as follows:

1. PERFORMANCE. MVCD shall use best efforts to take the necessary steps to expand the Conservancy District boundaries to include the Mill Creek Watershed within Hamilton County, complete the appraisal of benefits and other steps for Conservancy Court approval to levy assessments, and become a self-funded, sustainable, and reliable Conservancy District with the goal of taking full responsibility for the Operation, Maintenance, Repairs, Rehabilitation and Replacement (OMRRR&R) of the Barrier Dam and the Mill Creek Channel Projects as measured by the performance measures as more fully described in **Exhibit A (Performance Measures)**.

2. TERM. The term of this Agreement shall commence on the Effective Date and shall expire following MVCD's full repayment to the City of the Loan Funds (the "**Term**"), unless this Agreement is sooner terminated as provided herein. Either party may terminate the Agreement for convenience upon delivery of written notice of termination to the other party in accordance with Section 5 stating the expiration date of not less than seven (7) days from date of written notice. In the event of early termination, MVCD shall be responsible for repayment of the total Loan Funds received prior to the date of termination, and the repayment provisions of this Agreement shall survive termination.

3. LOAN TERMS AND DISBURSEMENT CONDITIONS. Subject to the terms and conditions of this Agreement, the City agrees to lend to MVCD an amount not to exceed the sum of one million, five hundred thousand dollars and no cents (**\$1,500,000**) ("**Loan Funds**") to be disbursed over three Phases in the amount of no more than five hundred thousand and no cents (\$500,000) per Phase as described in **Exhibit B** over a maximum of six years.

- A. **Budgeted and Eligible Expenses.** MVCD shall use the Loan Funds only for the expenses authorized by the City as Eligible Expenses and for no other purpose, in accordance with an annual operating budget approved by the City and the Phases as set forth in **Exhibit B (Initial Budget and Eligible Expenses)**. Modifications to the budget can be approved by the City at its discretion so long as modification does not exceed the total amount of the Loan Funds.

- B. **Disbursement Conditions.** Disbursement of the Loan Funds shall be conditioned on timely performance in accordance with the Performance Measures and Phases as set forth in **Exhibit A** (*Performance Measures*) and be made in accordance with the annual operating budget as approved by the City. In no circumstances shall the City be obligated to disburse any Loan Funds, for expenses other than Eligible Expenses, outside of the approved annual budget and modifications, or in excess of the amount of those actual Eligible Expenses documented to the satisfaction of the City.
1. Initial Advance Payment. MVCD may request an initial advanced payment from the Phase 1 funding in an amount to be approved by the Deputy Director of the City Stormwater Management Utility and GCWW Chief Financial Officer but in no circumstances greater than five hundred thousand and no cents (\$500,000.00). The advanced payment request shall be made in writing to the Deputy Director of the City Stormwater Management Utility and include detailed information regarding amount and proposed uses of funds.
 2. Conditions Subsequent to Disbursement. The City's disbursement to MVCD of the Loan Funds is subject to the following requirements:
 - i. MVCD shall deposit all Funds received directly into a single commercial checking account which shall be used for the receipt and disbursement of Loan Funds received from the City or other sources for the purposes set forth in this Agreement.
 - ii. Disbursements made by MVCD shall be by numbered checks drawn on MVCD's commercial checking account or by ACH transactions *provided that* MVCD transaction records clearly indicate the person or entity to which payment was made and the transaction easily can be associated with a particular invoice, receipt, awarded grant, payroll record, contract, or similar record establishing the purpose of the payment.
 - iii. No payment shall be made for items designated as ineligible costs.
 - iv. MVCD's required reports to the City shall be accompanied by documentation satisfactory to the City indicating expenses incurred and payments made, such as grants awarded, payroll records, invoices, time sheets indicating hours worked, contracts, receipts, canceled checks, carbons of checks or check registers and corresponding bank statements or reasonable facsimiles thereof, and such other information and supporting documentation as the City may require.
 3. Reimbursement. MVCD may request disbursement of the Loan Funds during the six years following the Effective Date to be disbursed on a reimbursement basis. The City shall have the sole discretion to deny reimbursement for expenses for activities that are determined by the City, in its sole discretion, to be in conflict with the City's interests. Disbursement requests shall not be submitted more frequently than once a month and shall include invoices and any other documentation of the services, labor, materials, fees or other expenses that the City deems necessary.
- C. **Repayment.** MVCD agrees to repay the loan over 16 years at a 0% interest rate with no payments required during the first six years of the Agreement, followed by annual payments equal to 1/10 of the total disbursed balance) for remaining 10 years, or less if MVCD elects to accelerate repayments.

4. PROHIBITION AGAINST PAYING FOR ANY SERVICE RENDERED OR EXPENSE INCURRED PRIOR TO THE DATE OF THIS AGREEMENT. The Loan Proceeds provided for by this Agreement may only be disbursed for Eligible Expenses incurred after the Effective Date. No Loan Funds shall be spent for any Eligible Expense incurred prior to the Effective Date without express written approval by the City.

5. NOTICES. All notices shall be personally delivered or sent by U.S. mail addressed to the parties as follows, with an electronic copy emailed to the email address listed below, or addressed in such other way in respect to either party as that party may from time to time designate. MVCD shall promptly notify the City of any change of address. If MVCD sends a notice to the City that the City is in default under this Agreement, MVCD shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

<u>To the City:</u> Arun Hindupur, Deputy Director City of Cincinnati: Stormwater Management Utility 4747 Spring Grove Ave. Cincinnati, Ohio 45202 arun.hindupur@gcww.cincinnati-oh.gov	<u>To MVCD:</u> MVCD C/O Don Mottley 41 South High Street, Suite 1800 Columbus, Ohio 43215 mottley@taftlaw.com
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6. INDEPENDENT STATUS. MVCD shall not be considered to be an officer, agent, servant, or employee of the City. MVCD shall have exclusive control of and the exclusive right to control the details of the activities performed under this Agreement and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and MVCD. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.

7. COMPLIANCE WITH LAWS, REGULATIONS, AND PROGRAMS. MVCD shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the activities under this Agreement, including any and all applicable rules, orders, guidelines, laws, regulations, and binding directives issued by the federal government, the State of Ohio, and/or the City pertaining to the activities under this Agreement.

8. REPORTS, INFORMATION, AND AUDITS.

A. Record Retention. MVCD shall, throughout the Term of this Agreement and for a minimum of 5 years after the expiration or termination of this Agreement, keep and retain all accounting, financial, administrative, and operational statements and records pertaining to all matters covered by this Agreement.

B. Access/Right to Inspect and Audit. Upon request during the Term of this Agreement and for a period of 5 years after the expiration or termination of this Agreement, MVCD shall permit the City or any designee or auditor to have access to and to inspect and audit all such accounting, financial, administrative and operational books, records, and statements of MVCD that relate or pertain to this Agreement.

9. GOVERNING LAW. This Agreement is entered into and is to be performed in the State of Ohio. The City and MVCD agree that the laws of the State of Ohio and City of Cincinnati shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common

Pleas, and MVCD agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to all disputes arising under the Agreement.

10. WAIVER. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

11. ENTIRETY. This Agreement and the exhibits and attachments, if any, hereto constitute the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

12. SEVERABILITY. This Agreement shall be severable, and if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

13. AMENDMENT. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

14. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

15. EXHIBITS. The following Exhibits are attached hereto and hereby incorporated into and made a part of this Agreement:

- Exhibit A – *Performance Measures*
- Exhibit B - *Initial Budget and Eligible Expenses*

MILLCREEK VALLEY CONSERVANCY DISTRICT

BY: _____

PRINT NAME: _____

ITS: _____

DATE: _____, 2026

APPROVED AS TO FORM BY:

[CITY SIGNATURE PAGE FOLLOWS]

Executed by the entities below on the dates indicated below their signatures, effective as of the later of such dates (the “**Effective Date**”).

CITY OF CINCINNATI

By: _____
Sheryl M.M. Long, City Manager

Date: _____ 2026

RECOMMENDED BY:

Andrea Yang, Executive Director
Greater Cincinnati Water Works

APPROVED AS TO FORM BY:

Assistant City Solicitor

CERTIFICATION OF FUNDS:

Date: _____

Funding: _____

Amount: _____

By: _____ p
Steve Webb, Finance Director

EXHIBIT A
PERFORMANCE MEASURES

- A. **Purpose.** The Loan Funds shall be used by MVCD for the purpose of becoming a self-funded, sustainable, and reliable Conservancy District with the goal of taking full responsibility for the Operation, Maintenance, Repairs, Rehabilitation and Replacement (OMRR&R) of the Barrier Dam and the Mill Creek Channel Projects and consistent with the terms of this Agreement.
- B. **MVCD Responsibilities.**
1. **Quarterly Reports.** MVCD shall provide a written quarterly report to the City documenting its expenditures and progress on the Performance Measures, and providing any other information requested by the City.
 2. **Annual Reports.** No later than one month before the end of each year of the Term, MVCD shall provide to the City a report of its activities to date for that year, including but not limited to its cumulative progress towards achieving the above purposes, the Performance Measures, and its expenditures and fundraising for that year, as well as a more detailed plan for the upcoming year including any adjustments needed to its schedule, budget, activities and Performance Measures, and containing such other information and supporting documentation as the City may require.
 3. **Meetings.** MVCD shall meet with the City in conjunction with submission of quarterly and annuals reports to discuss progress. Failure to timely meet the Performance Measures or other obligations of this Agreement may be the basis for the City to withhold further disbursement of Loan Funds or to terminate the Agreement with seven (7) days written notice to MVCD.
 4. **Performance Measures.** During the Term, MVCD agrees to meet the Performance Measures described below.
 - a) In **Phase 1**, MVCD agrees to the following Performance Measures:
 - i. Hire a Director as employee of MVCD to manage MVCD activities, including the activities under this Agreement. The hiring process shall include an interview panel over multiple jurisdictions and the hire must ultimately be approved in writing by the City.
 - ii. Recommend the appointment by the Conservancy Court of three appraisers to constitute a Board of Appraisers in accordance with ORC 6101.27.
 - iii. Seek support and additional bridge funding from other political jurisdictions in the Conservancy District (St. Bernard, Elmwood Place, Arlington Heights, Reading, Evendale, Sharonville, Sycamore Township) and the Mill Creek watershed, as well as from Hamilton County, the State of Ohio, the Ohio Water Development Authority, and federal government agencies, and other public and private institutions and foundations.
 - iv. Evaluate assessment approaches that provide a broad and equitable allocation of the benefits of the Mill Creek Channel and Barrier Dam Projects and minimize the impact of assessments on residential property.

- v. Continue to collaborate with Non-Governmental Organizations (NGO) and other organizations for recreational uses of property under MVCD control within the district.
 - vi. Develop an operations and maintenance budget
 - vii. Seek meeting with Conservancy Judge to give Judge background information
- b) In **Phase 2**, which commences upon completion of Phase 1, MVCD agrees to the following Performance Measures:
- i. Develop an appraisal record and obtain Conservancy Court approval in accordance with ORC 6101.31-6101.34.
 - ii. Develop and submit to the Board of Appraisers a request and recommendation that, in their appraisal of benefits, they include a recommendation to the Conservancy Court to expand the district boundaries to include the Mill Creek watershed within Hamilton County, including the information and analysis necessary for the Board of Appraisers to support such a recommendation in its report to the Conservancy Court under Revised Code Sections 6101.28 – 6101.30 and 6101.42.
 - iii. Levy an assessment and obtain the confirmation of the Conservancy Court as authorized by ORC 6101 to provide sufficient funding for MVCD operations. The City understands that assessments to fully cover OMRR&R obligations for the Barrier Dam may need to be phased in over time. MVCD shall confer with the City regarding an appropriate phasing-in period.
 - iv. Engage in outreach to stakeholders and public relations to educate the public and the benefitted properties.
- c) In **Phase 3**, which commences upon completion of Phase 2, MVCD agrees to the following Performance Measures:
- i. Begin collection of an assessment in accordance with ORC 6101.
 - ii. Transition to sustainable operations and programming.
 - iii. Hire full-time staff and arrange operations and maintenance agreements.

Exhibit B

INITIAL BUDGET AND ELIGIBLE EXPENSES

Annual Budget: The MVCD has submitted the below budget and description of expenses to the City as its proposed budget and schedule for the six years during which the Loan Funds are disbursed. Modifications to the budget can be approved by the City at its discretion so long as modification does not exceed the total amount of the Loan Funds. The Phase 1 budget as described below shall be considered approved. No later than one month before the anticipated end of Phase 1 and Phase 2, MVCD shall provide an updated annual budget for the following phase for review, comment, and approval by the City, in its sole discretion.

Expense type	Phase 1	Phase 2	Phase 3
1. Miscellaneous Operating Expenses	\$40,000	\$40,000	\$40,000
2. District Management	\$100,000	\$150,000	\$150,000
3. Appraisal of Benefits	\$230,000		
4. (Consulting Services)			
5. Appraisal of Benefits	\$50,000	\$50,000	
6. (Board of Appraisers)			
7. Establishment of Assessment Record		\$100,000	\$100,000
8. Legal Services	\$60,000	\$100,000	\$100,000
9. Public Relations/ Stakeholder Outreach		\$40,000	\$40,000
10. Contingency	\$20,000	\$20,000	\$70,000
TOTAL (Not to Exceed Amount)	\$500,000	\$500,000	\$500,000

Eligible Expenses: The following shall be considered “Eligible Expenses” for the purposes of this Agreement. Reimbursement of MVCD’s expenses shall be at the sole discretion of the City.

1. District Miscellaneous Operating Expenses: The District has a number of recurring expenses including property taxes, minor maintenance and upkeep, accounting services and other miscellaneous expenses. These are the minimum requirements to maintain the District financially through the assessment establishment period.
2. District Management: The District is currently run by a three-person unpaid board with no paid staff. Coordination with the US Army Corps of Engineers (“USACE”) project and management of the consulting and legal services required for the establishment of the assessment will require dedicated personnel resources. The District shall hire a full time Director to manage and administer the MVCD. The District may also hire other staff or contract for professional services to assist with management activities including coordination with USACE.
3. Appraisal of Benefits: The appraisal of benefits will require the hiring of a board of appraisers to oversee and approve the work and the hiring of a consultant to perform a detailed benefits determination. Benefits will be calculated for both the direct flood damage beneficiaries in the valley, as well as the broader regional benefits in the Mill Creek watershed.
4. Establish an Assessment Record: Following the appraisal of benefits, an assessment record will be developed that assigns specific assessment values to individual properties in coordination with the County auditor. The full scope of services for this process is unknown at this time because the number of parcels and process for assigning the assessment value has not been determined. A budget has been provided to cover the anticipated costs.

5. Legal Services: Multiple steps through this process will require filings with the Conservancy Court and potential challenges or appeals. A budget for legal services has been estimated to cover these costs. The City's reimbursement of MVCD's legal expenses shall be at the sole discretion of the City.
6. Public Relations and Stakeholder Outreach: The process will include multiple public meetings to inform affected property owners and the community of the impacts. A budget for public relations services has been estimated to cover these costs.
7. Contingency: Finally, a contingency amount is suggested to cover potential unknowns that could arise during the process. We would propose that the contingency amount be held in reserve and would not be spent without written approval from the City.

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