



THE CITY OF
Zanesville

401 Market Street • Zanesville, Ohio 43701
Phone (740) 617-4875
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Council – Mayor
Government

PUBLIC SERVICE COMMITTEE AGENDA

The meeting will be held in Council Chambers at Zanesville City Hall,
401 Market Street, Zanesville, OH
Monday, September 11, 2023 at 5:00 p.m.

This meeting is for discussion pertaining to the upcoming Ordinances, Resolutions, and items of the Public Service Committee for review as follows. Meetings are open to the public in person, by phone, or online via WebEx. Connection information is below.

1. **Roll Call**
2. **Approval of Minutes of August 14, 2023**

Ordinances

3. **Ordinance No. 2023-91** – Introduced by Council – An Ordinance authorizing the Public Service Director to execute a purchase agreement with Water & Land Solutions, L.L.C. for the stream mitigation credits for the Muskingum Avenue Project and declaring an emergency.
4. **Ordinance No. 2023-94** – Introduced by Council – An Ordinance authorizing the expenditure of funds for the purchase of Badger water meters.

Discussion Items

5. **None**

The next regular meeting is scheduled for Tuesday, October 10, 2023.

This meeting is open to the public who may attend in person or attend by phone or Internet using the information below.

Phone **1-844-621-3956** US Toll Free or **1-415-655-0001** US Toll.

Use Access Code: **126 750 8098** #Online with WebEx- Enter **zanesvillecity.webex.com** in web browser.
Enter Meeting Information- **126 750 8098**

PUBLIC SERVICE COMMITTEE – AUGUST 14, 2023

The Public Service Committee met on August 14, 2023 at 5:00 p.m. in Council Chambers at City Hall, 401 Market Street, Zanesville, OH 43701.

Mr. Roberts: Alright, it is 5 p.m. I'm going to call this meeting of the Public Service Committee of Council to order. May I have roll call, please?

Committee Members Present: Councilperson Andrew Roberts, Chairperson; Councilperson Cody Pettit and Councilperson Mark Ballmer were present in person. Councilperson Joey Osborn was absent.

Others present in person:

Jan Bradshaw, 2nd Ward Councilperson
Scott Brown, Director of Public Service
Billie Corns, Clerk of Council
Lisa Hittle, IT

Don Mason, Mayor
Chip Saunders, City Engineer
Daniel Vincent, President of Council

Mr. Roberts: Let the record show that Joey is at the fair. I'll entertain the motion to approve minutes from July 10, 2023.

Mr. Pettit moved to approve the minutes dated July 10, 2023 as presented. Mr. Ballmer seconded the motion.

Mr. Roberts: A motion and a second. Any discussion? All those in favor, aye. Opposed same sign.

A voice vote was taken with all being in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

ORDINANCES:

Ordinance No. 2023-77 – Introduced by Council – An Ordinance authorizing the proper city official to execute a contract change order for the Maple Avenue Waterline Replacement Project and declaring an emergency.

Mr. Roberts: Are all these yours, Chip?

Chip Saunders: Everything but -81 is mine.

Mr. Roberts: Okay, so you can just stay right there, and we'll just move -81 to the end.

Chip Saunders: Okay, -77 is a change order for the Maple Avenue Waterline Project. When we first put our ordinance forward, we approved \$500,000 for that job with the labor and materials. So we're still

within that that we're authorized. But anytime that we have a change order on a contract that exceeds 10%, our Auditor likes us to go ahead and do a change order. So this is around 11.2% to pay Hazen's for the work that they did.

Mr. Roberts: And this is final?

Chip Saunders: This is, that's the job's done. Yes.

Mr. Roberts: I'll entertain a motion to recommend to Council as an emergency.

Mr. Pettit: Motion to recommend to Council as an emergency.

Mr. Ballmer: Second.

Mr. Roberts: All those in favor, aye. Opposed same sign.

A voice vote was taken with all being in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

Ordinance No. 2023-78 – Introduced by Council – An Ordinance authorizing the Public Service Director to act as the City of Zanesville's agent and execute a grant agreement with the Ohio Emergency Management Agency for the Hazard Mitigation Grant Program for the Muskingum Avenue Project and declaring an emergency.

Chip Saunders: -78 is our grant agreement with the Ohio Emergency Management Agency. It is to authorize Scott to sign that and be our agent and move it forward with the paperwork.

Mr. Roberts: And just to bring everybody else up to speed, this is the FEMA money for Dug Road?

Chip Saunders: This is the \$5.4 million from FEMA for the Dug Road/Muskingum Avenue Project.

Mr. Roberts: We don't want to mess around with that. Any questions from the committee? I'll entertain a motion.

Mr. Pettit: Move to recommend to Council to pass as an emergency.

Mr. Ballmer: Second.

Mr. Roberts: A motion and a second. Any further discussion? All those in favor, aye. Opposed same sign.

A voice vote was taken with all being in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

Ordinance No. 2023-79 – Introduced by Council – An Ordinance authorizing the proper city official to advertise for bids for the Muskingum Avenue (Dug Road) Improvements Project, enter into a contract with the lowest and best bidder, and declaring an emergency.

Chip Saunders: -79 is the ordinance authorizing us to go out to bid for the construction of the project and declaring an emergency.

Mr. Pettit: Move to recommend to Council as an emergency.

Mr. Ballmer: Second.

Mr. Roberts: A motion and a second. Any further discussion? All those in favor, aye. Opposed same sign.

A voice vote was taken and all present were in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

Ordinance No. 2023-80 – Introduced by Council – An Ordinance authorizing the proper city official to enter into a professional contract with ADR for the bidding, construction administration, and inspection services for the Muskingum Avenue (Dug Road) Improvements, and declaring an emergency.

Chip Saunders: -80 is a contract with ADR to handle the bidding and the construction engineering associated with the Muskingum Avenue Project.

Mr. Roberts: And what is the percentage on that, Chip?

Chip Saunders: They're at less than \$400,000, and we've got a \$6 million estimate, 6.6 I think was what we got.

Mr. Roberts: So, about 7 or 8 percent?

Chip Saunders: Yes, and the other thing about it, it's time and materials. So, we estimated, I think, 16 months: a year and then a winter break, and then come back and do the stuff in the park. So, if we have good weather, if they don't need to be out there as much, we won't pay for it. So it's kind of like a budget with a cap that's just going to get billed against.

Mr. Roberts: Okay.

Mayor Mason: And our three grants are covering this.

Chip Saunders: Uh-huh.

Mr. Roberts: Good deal. Questions from the committee?

Mr. Pettit: Motion to recommend to Council for passage as an emergency.

Mr. Ballmer: Second.

Mr. Roberts: A motion and a second. Any further discussion? All those in favor, aye. Opposed same sign.

A voice vote was taken and all present were in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

Ordinance No. 2023-84 – Introduced by Council – An Ordinance authorizing the Public Service Director to grant an easement to Muskingum County as part of the Licking View Sanitary Sewer Improvement.

Chip Saunders: -84 is for the City to grant the County an easement. We have a piece of property that is pretty much 100% in the flood plain. It is near the old Greif Brothers, and they want to cross that with a force main that's going to serve that Licking View Project. This does not require emergency passage, but if you want to entertain waiving the readings, it will help them get their easement signed.

Scott Brown: One thing I would add too is that we did include language so that if moving forward, there was some reason that the City should forever need to locate something where their force main is, they would be obligated to move it out of our way.

Mr. Roberts: Questions from the Committee?

Mr. Pettit: Motion to recommend for Council waiving of the readings and passage.

Mr. Ballmer: Second.

Mr. Roberts: A motion and a second. All those in favor, aye. Opposed same sign.

A voice vote was taken and all present were in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

Ordinance No. 2023-81 – Introduced by Council – An Ordinance authorizing the assessment of liens against certain properties with delinquent bills, and declaring an emergency.

Scott Brown: -81 is the current delinquent utility bills for drinking water, wastewater, storm water, and combined sewer across the board. There is a list of all the properties and the property owners and what they owe attached to the legislation.

The Mayor and I have been in constant discussion at the state level. There's been a push to change the legislation, not necessarily to wholeheartedly prevent this type of legislation, but to make it look much different. So, consequently moving forward as the City in preparation of that, we've changed our policies on how we handle delinquent bills. For instance, once a tenant was to move out of a property, we would shut the water off. Therefore, we would not turn the water back on until there's a zero balance due. We've also put in policies to try and protect the property owners, that if a tenant gets to the point where they're behind enough to be shut off, we notify the property owner. But then we will not turn the water back on until the property owner has instructed us to do so. So, in a sense it's their property, if their tenant is so delinquent to the point of being shut off, then ultimately the property owner will then be the one paying the bill. The property owner needs to decide whether they want the water turned back on or not.

So we have instituted a series of new policies. Hopefully that will eliminate the majority of these situations that you see in this legislation. But this is retroactive to last year's, not this year's, and this is the process that we go through to try and make ourselves whole. We are continuing to try and improve the situation. There's a lot of debate over this idea of putting it on the taxes, which I certainly understand. You know, and you have to make that decision. It's just we all here pay for water and sewer, and so these expenses have to be covered. So, if this isn't the method that we do it, then us as fair-paying customers end up picking up the bill through increased rates.

Mayor Mason: So, just to surmise I think it was \$93,000-\$94,000 is incorporated in this ordinance. So, if we were not even going to collect it this way, then you would take the remaining, roughly 10,000 accounts, and we'd split that \$93,000 over those 10,000. And when we wipe something out, the expense was still there.

Mr. Roberts: Questions from the committee? I'll entertain a motion.

Mr. Pettit: Motion to recommend to Council for passage as an emergency.

Mr. Ballmer: Second.

Mr. Roberts: A motion and a second. Any further discussion? All those in favor, aye. Opposed same sign.

A voice vote was taken and all present were in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Motion carries.

DISCUSSION ITEMS:

Paving Update

Mr. Roberts: Chip, do you have a paving update for us?

Chip Saunders: Yes. So, Wayne Avenue is well underway. All the pavement repairs that were associated with the waterline from many years ago have been completed. The intermediate course is put back on, and they're probably about 1/3 of the way through the surface course. I drove through this weekend, and a lot of the northbound is taken care of. The southbound still has a surface course to go. I would expect that they'll wrap up the paving this week. Once they do that, they will be moving up to Maple Avenue. Maple Avenue will all be done at night work, and the operation up there is going to be a little bit different than Wayne. The intent is whatever they mill out, which they're going to mill 3 inches off of it, they have to come right behind that with the intermediate course and not be running on the milled surface. So they'll be up there for a while. That's going to start at Adair and go all the way through the city to a little north of Olde Falls Road, and it's all a 3 inch mill and fill.

Mr. Roberts: The whole way up?

Chip Saunders: The whole way, yes.

Mr. Roberts: The paving that we awarded there a couple months ago, did we get word back? Are they going to do any of that this year?

Chip Saunders: We actually just opened our bids last week.

Mr. Roberts: Okay.

Chip Saunders: And we got good bids. The low bid, I believe, was \$566,000 and the estimate was \$540,000. So, we can go ahead and award that. The asphalt prices didn't go that crazy between last year and this year. I would expect that all of that paving is going to happen in the spring based on all three pavers showed up at the bids. They all put in bids, but they were all complaining about working 6 and 7 days a week.

Mr. Roberts: So, who ended up getting the bid?

Chip Saunders: Shelly and Sands got the city paving. And that will be Eighth Street from Main to Marietta, Harvey Street from Seventh Street to the end, Lindbergh from Pine to Kimble, Sylvania and Spence all of those, Indiana Street – Dryden to Pine, Forest Avenue – Maple to Linden, Taylor Street – Maple to Linden, Olive Street – Norwood to Caleb, Caleb Drive – Olive up to Norwood, and McConnell from Norwood to Linden.

We are currently working on our grant for next year, and we're actually shooting for about ¾ of a million dollar project instead of the typical \$540,000. We're going to take some loan funds out because it's zero percent, and you get more points from this program if you utilize some loan funds. And it's really gotten to the point that everybody's getting really competitive and good at their grant applications. So we feel like we're going to need to kick in some of that to keep our string of awards going here.

Mr. Roberts: So Chip, what's the zero percent loan?

Chip Saunders: The zero percent loan?

Mr. Roberts: Who's that through?

Chip Saunders: That's through OPWC. They are our primary funder for the city streets that aren't major arterials. We use their money, and we use what we call the ODOT STIP funds. ODOT STIP funds are what's paying most of our match for Maple Avenue and Wayne Avenue, actually a couple years of it that was banked.

As far as alleys go, we also have completed most of the slate of alleys that we have budgeted for this year. I talked to the Street Superintendent before the meeting, and he did verify that.

Mr. Roberts: I'm glad to see that they've been milling the alleys before repaving.

Scott Brown: Well, yes. Specifically the alley that was here in downtown that we were...

Mayor Mason: Fountain and Sewer.

Scott Brown: Yes, Fountain and Sewer. We paid a company called BOCA who is the current subcontractor for the Shelly Company on Wayne and Maple to come in and mill that down. We don't own a milling machine. It's something we've looked at. I think that if we're going to continue with an aggressive paving plan internally, where it's probably something we're going to have to have. We don't want to be in a position where we're continuing to put layer over layer over layer on our alleys. Eventually, it prevents the property owner's water from draining, and ends up trapping it, which is the exact opposite of what you want to accomplish. But there is some sticker shock. Even a modest milling machine that would work for our needs would still be around \$500,000.

Chip Saunders: The ones they put on the Bobcats just can't deal with the concrete patches. It just beats the heck out of the guys and it just doesn't...

Mr. Roberts: Knowing what we find when we mill downtown, I can only imagine something like that. If it caught hold of a railroad track, that would be the end of it.

Chip Saunders: Yes.

Mr. Roberts: Any questions from the Committee?

Mr. Vincent: Mr. Roberts?

Mr. Roberts: Mr. Vincent.

Mr. Vincent: Just an update, Athletic and Central? You didn't touch on that, correct?

Scott Brown: We haven't been able to do it because we haven't been able to pass the legislation because we didn't have adequate councilmembers the last time.

Mr. Vincent: So it can happen this year, then?

Scott Brown: Yes.

Mr. Roberts: Anything else for the good of the order?

Mr. Pettit made a motion to adjourn. Mr. Ballmer seconded the motion.

Mr. Roberts: A motion and a second to adjourn. All those in favor, aye. Opposed same sign.

A voice vote was taken and all present were in favor. None were opposed. Mrs. Osborn was absent.

Mr. Roberts: Thanks, guys.

The meeting adjourned about 5:13 p.m.

Regular scheduled meetings with the next dates as follows:

Monday, September 11, 2023
Monday, October 10, 2023

Monday, November 13, 2023
Monday, December 11, 2023

Billie Corns, Clerk

Andrew Roberts, Chairman

Public Service Committee
Andrew Roberts, Chair

**ORDINANCE NO. 2023 - 91
INTRODUCED BY COUNCIL**

AN ORDINANCE AUTHORIZING THE PUBLIC SERVICE DIRECTOR TO EXECUTE A PURCHASE AGREEMENT WITH WATER & LAND SOLUTIONS, L.L.C FOR THE STREAM MITIGATION CREDITS FOR THE MUSKINGUM AVENUE PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, as part of the Muskingum Avenue Improvements Project the City desires to fill in the ravine in Putnam Hill Park with the spoils from cutting back the hillside along Muskingum Avenue to create additional usable park area; and

WHEREAS, a condition of the approved Environmental Assessment for the project required that the streams to be filled in park ravine be mitigated by the purchase of credits in the nearby Hodgson Mitigation Bank in Licking County; and

WHEREAS, authorizing legislation by City Council is required to designate the City of Zanesville's Agent to execute the Mitigation Credit Purchase Agreement included as Attachment A; and

WHEREAS, to expeditiously complete the Muskingum Avenue Improvements project and provide for an alternate route which will mitigate delayed emergency response time and promote highway safety during the I-70 reconstruction project, this ordinance needs passage as an emergency.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Zanesville, State of Ohio, that:

SECTION ONE: The Public Service Director is hereby authorized as the City of Zanesville's agent execute the Mitigation Credit Purchase Agreement included as Attachment A for the Muskingum Avenue project.

SECTION TWO: The cost of the mitigation credit purchase is Four Hundred Twenty-Five Thousand Three Hundred Fifteen Dollars and no cents (\$425,315.00), shall be taken from Line Item 350-7951-53399, and is a fully grant reimbursable project expense.

SECTION THREE: For the reasons stated above, this Ordinance is declared to be an emergency measure. Provided it receives the affirmative vote of six (6) or more members of City Council, this Ordinance shall take effect and be in force immediately upon its passage and approval of the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2023

ATTEST:

Billie Corns
Clerk of Council

Daniel M. Vincent
President of Council

ORDINANCE NO. 2023 - 91

APPROVED: _____, 2023

THIS LEGISLATION APPROVED
AS TO FORM

DONALD MASON
Mayor

Law Director's Office

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (the "Agreement") is made as of this 16th day of August 2023 ("Effective Date"), by and between WATER & LAND SOLUTIONS, L.L.C, as seller ("Seller"), and CITY OF ZANESVILLE as purchaser ("Purchaser").

RECITALS

A. Whereas Seller is the sponsor and owner of that certain mitigation bank identified as Hodgson Mitigation Bank, U.S. Army Corps of Engineers ("USACE") Action No.: LRH-2021-00250, located in the Licking watershed (HUC 05040006) (the "Mitigation Bank"). The establishment, use, operation, and maintenance of the Mitigation Bank, including the sale and transfer of stream mitigation bank credits ("Mitigation Credits"), are subject to the requirements of that certain Hodgson Mitigation Bank Banking Instrument ("MBI") approved by the Interagency Review Team ("IRT," as defined in the MBI) on April 13, 2022.

B. Whereas Purchaser is undertaking the development and/or construction of the project commonly known as **MUSKINGUM AVE. IMPROVEMENTS** located in Muskingum County, Ohio (the "Development Impacts") and in connection therewith has applied for certain permits from USACE Permit Application **LRH-2021-598-MUS**.

C. Whereas Seller desires to sell, and Purchaser desires to buy **1,149.50 STREAM** bank credits ("Purchased Credits") generated from the Mitigation Bank for Purchaser to mitigate for the Development Impacts, as more particularly set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutually dependent covenants contained herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree to the following terms and conditions:

1. **Term and Termination**. The term of this Agreement shall commence upon the Effective Date and shall expire upon the earlier of Ninety (90) days from the Effective Date or upon completion of the purchase and sale of the Purchased Credits.

2. **Sale of Credits**. Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign, convey and transfer to Purchaser, and Purchaser agrees to purchase from Seller, the Purchased Credits, solely to mitigate for the Development Impacts.

3. **Purchase Price**. The aggregate purchase price for the Purchased Credits shall be **Four Hundred Twenty-Five Thousand Three Hundred Fifteen Dollars and no cents (\$425,315.00)** (the "Purchase Price"), determined as follows:

(a) Purchaser shall pay **Three Hundred Fifty Dollars and no cents (\$350.00)** per credit for 1,149.50 Stream Mitigation Credits for a total of **Four Hundred Twenty-Five Thousand Three Hundred Fifteen Dollars and no cents (\$425,315.00)**.

4. **Payment of Purchase Price**. The Purchase Price shall be paid by Purchaser to Seller in the following manner:

(a) **Full Payment of Purchase Price.** Within thirty (30) days of the Purchaser's execution and delivery to Seller of this Agreement, Purchaser shall deliver to Seller by wire transfer, the amount **Four Hundred Twenty-Five Thousand Three Hundred Fifteen Dollars and no cents (\$425,315.00)** in full satisfaction of the Purchase Price. Notwithstanding any provision of this Agreement to the contrary, if the Closing has not occurred within thirty (30) days after the Effective Date, Seller, in its sole discretion, may terminate this Agreement at any time without any rights, obligations or liability to Purchaser whatsoever.

5. **Buyer's Deliveries.** At Closing, Buyer shall deliver to Seller the balance of the Purchase Price as provided in Section 3 above.

6. **Seller's Deliveries.** Upon receipt of the full Purchase Price and within thirty (30) days after Closing, Seller shall deliver to Purchaser a Bill of Sale evidencing the sale of the Purchased Credits to Purchaser.

7. **Closing Costs.** Seller shall pay the cost of preparing the Bill of Sale, any taxes and costs customarily paid by sellers of credits from the Mitigation Bank, and Seller's attorney's fees. Purchaser shall pay the cost of Purchaser's attorney's fees, any taxes, and any other costs customarily paid by purchasers of credits from the Mitigation Bank, if any.

8. **Limitations on Purchaser's Rights.** Seller's sale and conveyance of the Purchased Credits to Purchaser shall not constitute the conveyance or transfer of any right, interest or ownership in real property, nor shall such sale and conveyance impose upon Purchaser any right, obligation, duty or liability arising from or incident to any right, interest or ownership in real property.

9. **Default.**

(a) **By Purchaser.** If Purchaser fails to make any payment required of it in Section 4 hereunder, or fails to otherwise perform any of its other material obligations under this Agreement, or if any representation or warranty provided by Purchaser in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, Purchaser shall be deemed to be in default and, at Seller's election, in its sole and absolute discretion, Seller may terminate this Agreement and all of Seller's obligations hereunder. Upon any such termination, (A) if prior to Closing, (i) the Deposit shall be forfeited to Seller, (ii) Purchaser shall lose all of its right and privilege to purchase the Purchased Credits from Seller, (iii) Seller may notify, if required by law, [USACE OR OTHER REQUIRED STATE OR AUTHORITY] of Purchaser's failure to fulfill its obligations under this Agreement; and (B) if after Closing (or is discovered by Seller after Closing), Seller shall have the right to pursue all remedies as may be available to Seller at law or in equity. All rights and remedies of Seller hereunder shall be cumulative and not mutually exclusive of one another.

(b) **By Seller.** If Seller defaults in performing any of Seller's material obligations under this Agreement, and such default continues for a period of thirty (30) days after Purchaser has provided written notice to Seller of such default, or if any representation or warranty provided by Seller in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, then Seller shall be deemed to be in default and (i) if prior to Closing, Purchaser's sole remedies shall be to terminate this Agreement by providing written notice thereof to Seller, and to receive a refund of the Deposit, in which event neither party shall have any further rights or obligations hereunder, except as expressly provided herein; or (ii) if after Closing (or such default is discovered by Purchaser after Closing), Purchaser shall have the right to pursue such remedies as may be available to it at law or in equity.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTINUED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL ANY OTHER LIABILITY BE INCURRED BY EITHER PARTY FOR ANY OBLIGATIONS WHICH ARISE UNDER THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES IN TORT, CONTRACT OR OTHERWISE. EXCEPT AS OTHERWISE PROVIDED UNDER THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING THE MERCHANTABILITY OF THE PURCHASED CREDITS OR, WITH RESPECT TO THE PURCHASED CREDITS, ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY GOVERNMENTAL AUTHORITY. REDRESS FOR ANY CLAIM AGAINST SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO AND ENFORCEABLE ONLY AGAINST AND TO THE EXTENT OF SELLER'S INTEREST IN THE MITIGATION BANK. THE OBLIGATIONS OF SELLER AND PURCHASER UNDER THIS AGREEMENT ARE NOT INTENDED TO BE AND SHALL NOT BE PERSONALLY BINDING ON, NOR SHALL ANY RESORT BE HAD TO THE PRIVATE PROPERTIES OF, ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, BENEFICIARIES, MEMBERS, STOCKHOLDERS, EMPLOYEES, OR AGENTS.

(d) This Section 9 shall survive Closing or earlier termination of this Agreement.

10. **Representations and Warranties.** Each of Seller and Purchaser represents and warrants to the other now and as of Closing that: (i) it is organized and validly existing under the laws of the jurisdiction of its organization or incorporation; and (ii) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other relevant documentation and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance.

11. **Miscellaneous.**

(a) **No Joint Venture.** This Agreement is made solely for the purposes set forth herein and no joint venture, partnership or other relationship between Purchaser and Seller is created hereby.

(b) **No Third-Party Beneficiary.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and authorized assigns. The Agreement does not create or convey any rights, benefits or interests on behalf of any other person.

(c) **Assignment.** This Agreement may not be assigned by Purchaser without Seller's prior written consent in Seller's sole and absolute discretion, and any assignee shall assume the rights and obligations of its assignor.

(d) **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreement, written or oral. This Agreement may be modified only by a written instrument duly executed by Seller and Purchaser.

(e) **Prior Agreements.** This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written document stating the specifics of such amendment, executed by both Seller and Buyer.

(f) Choice of Laws. This agreement shall be construed, performed and enforced under the laws of the State of North Carolina.

(g) Attorney's Fees. In the event any action, suit, or other proceeding at law or in equity is brought to enforce the covenants and agreements contained in this Agreement or to obtain monetary damages for breach thereof, and such action results in an award judgment for monetary damages, or the granting of any equitable relief in favor of any party hereto, all expenses, including reasonable attorney's fees, of the successful party in such action, suit, or other proceeding shall, upon demand of such party, be paid by the other party.

(h) Counterparts. This Agreement may be executed in one or more counterparts by the parties. All counterparts shall collectively constitute a single agreement.

(i) Notices. All notices shall be in writing and sent by hand, facsimile transmission, overnight delivery service or certified mail, return-receipt requested, to the following addresses (or such other addresses as either party may designate to the other from time to time by written notice) and any such notice of other communication shall be deemed to have been given on the day so delivered or refused by the party to whom such notice was sent (it being acknowledged that a facsimile or an e-mail transmission shall not be deemed to be a "writing"):

If to Seller: Water & Land Solutions, L.L.C.
7721 Six Forks Road, Suite 130
Raleigh, NC 27615

With a copy to: Michael Best & Friedrich LLP
Attn: Michael S. Green, Esq.
1 South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806

If to Purchaser: City of Zanesville
401 Market Street
Zanesville, OH 43701

(j) Legal Capacity of Signatory. Each person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

[Signature page follows]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed on their behalf by their duly authorized representatives as of the date first written above.

SELLER:

WATER & LAND SOLUTIONS, L.L.C.

By: _____

Name: Tommy Cousins

Title: President

PURCHASER:

CITY OF ZANESVILLE

By: _____

Name: Scott Brown

Title: Public Service Director

EXHIBIT A

BILL OF SALE

This Bill of Sale is made by Water & Land Solutions, L.L.C. ("Seller") to **City of Zanesville** ("Purchaser").

WHEREAS, Seller and Purchaser have entered into that certain Mitigation Credit Reservation and Purchase Master Agreement dated as of _____ ("Purchase Agreement"), with respect to the sale and purchase of stream bank credits generated within the Hodgson Mitigation Bank in Licking County, Ohio, LRH-2021-00250 ("Mitigation Site").

NOW THEREFORE, for and in consideration of the payment of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, assigns, conveys and transfers to Purchaser **1,149.50 stream bank credits** from the Mitigation Site, for the purpose of Purchaser's mitigation of impacts to that certain property commonly known as **Muskingum Ave. Improvement** (LRH-2021-598-MUS).

Dated this _____ day of _____, 2023.

Water & Land Solutions, L.L.C.

By: Kae Hovater, Authorized Agent

Department of Public Service
Scott Brown, Director

**ORDINANCE NO. 2023-94
INTRODUCED BY COUNCIL**

**AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS FOR THE
PURCHASE OF BADGER WATER METERS.**

WHEREAS, the City of Zanesville uses Badger brand water meters for the purpose of metering the water use at a water customer's water connection, and

WHEREAS, Badger water meters are a proprietary water meter system used by the City of Zanesville; and

WHEREAS, the Public Service Director has determined that Badger is a sole source provider as defined by the Ohio Revised Code, this matter does not have to go out for public bid.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Zanesville, State of Ohio, that:

SECTION ONE: The Public Service Director is hereby authorized to expend funds for the purchase of Badger water meters for \$100,000.

SECTION TWO: The Badger water meters shall be purchased using the City's Water Fund Line Item 611-5473-54457.

SECTION THREE: This Ordinance shall take effect and be in force immediately upon its passage and approval of the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2023

ATTEST: _____
Billie Corns
Clerk of Council

Daniel M. Vincent,
President of Council

APPROVED: _____, 2023

This legislation approved as to form:

Donald L. Mason, Mayor

Law Directors Office