

AMENDED MEMORANDUM OF UNDERSTANDING

THIS AMENDED MEMORANDUM OF UNDERSTANDING (the “AMENDED MOU”) is made and entered into as of the 16th day of June, 2021, by and among the City of Muncie, Indiana (“City”) and the Muncie Sanitary District (“MSD”).

RECITALS

WITNESSETH:

WHEREAS, As a part of an Interlocal Agreement the City of Muncie has agreed to make certain improvements to the “Riverside-Jackson Trail” (“Trail Project”) and shall considered the owner of this Trail Project; and

WHEREAS, MSD is the owner of the storm sewers and payee of stormwater improvements and associated roadway restoration and has long desired to make stormwater improvements to the area involved in the Trail Project, in order to address and improve stormwater management issues; and

WHEREAS, in order to further economic development in the City of Muncie and to improve stormwater management in the affected area of the Trail Project, the City and MSD desire to work together to implement the stormwater management improvements along certain portions of the Riverside-Jackson Trail (the “Stormwater Improvements”); and

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (H.R. 1319) (“ARP Act”) into law. The \$1.9 trillion package, based on President Biden’s American Rescue Plan, is intended to combat the COVID-19 pandemic, including the public health and economic impacts; and

WHEREAS, Cities are one of the benefactors receiving ARP funds which can be used for:

- Responding to the COVID-19 pandemic;
- Covering costs incurred from the public health emergency;
- Replacing lost, delayed, or decreased revenues due to COVID-19;
- Addressing the negative economic impacts on local businesses and nonprofits; and
- Making necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, the City owns the right of way of both Riverside Street and Jackson Street, is the owner of the trail and the administrator of the ARP funds; and

WHEREAS, the City has allocated approximately \$7 Million for making necessary investments in qualifying public infrastructure, however the City may not receive the final installment of the ARP funds until after May of 2022; and

WHEREAS, the parties agree that this is a good opportunity to combine the Riverside-Jackson Trail project with the Stormwater Improvements project and use ARP funds to do so; and

WHEREAS, MSD would agree to use its own funds up front to pay approximately \$1 Million for the construction pay applications associated with the Riverside-Jackson Trail project in 2021. In exchange, the City agrees to reimburse MSD, in full, when the City receives the ARP funds in 2022.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. RECITALS

1.01. Recitals Part of AMENDED MOU. The representations, covenants and recitations set forth in the foregoing recitals are material to this AMENDED MOU and are hereby incorporated into and made a part of this AMENDED MOU as though they were fully set forth in this Section 1.01.

ARTICLE II. DUTIES OF THE PARTIES

2.01. Stormwater Improvements. MSD hereby agrees to engage a contractor of its choosing to construct the Stormwater Improvements. MSD will make every reasonable effort to see that the Stormwater Improvements are completed on or before May 2022.

2.02. Grant and Reimbursement of Funds by MSD. MSD will provide the complete construction cost of making necessary investments in water and sewer infrastructure on the Riverside-Jackson Trail and the City agrees to reimburse MSD for all costs incurred by MSD for this project. The MSD's financial contribution shall be made from time-to-time upon being presented with contractor invoices for the Stormwater Improvements, and upon MSD's satisfaction that the Stormwater Improvement work billed for on the presented invoice has been adequately performed.

ARTICLE III. AUTHORITY

Powers. The City and MSD represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this AMENDED MOU, subject to the approval of their respective governing bodies.

ARTICLE IV. GENERAL PROVISIONS

4.01. Indemnity; No Joint Venture or Partnership. Nothing contained in this AMENDED MOU shall be construed as creating either a joint venture or partnership relationship among the City and MSD.

4.02. Time of Essence. Time is of the essence of this AMENDED MOU. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this AMENDED MOU requires their continued cooperation.

4.03. Breach. Before any failure of any party of this AMENDED MOU to perform its obligations under this AMENDED MOU shall be deemed to be a breach of this AMENDED MOU, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this AMENDED MOU may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity and recover its reasonable attorney fees.

4.04. Amendment. This AMENDED MOU, and any exhibits attached hereto, may be amended only by the mutual written.

4.05. No Other Agreement. Except as otherwise expressly provided herein, this AMENDED MOU supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

4.06. Severability. If any provision, covenant, agreement or portion of this AMENDED MOU or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this AMENDED MOU and, to that end, any provisions, covenants, agreements or portions of this AMENDED MOU are declared to be severable.

4.07. Indiana Law. This AMENDED MOU shall be construed in accordance with the laws of the State of Indiana.

4.08. Notices. All notices and requests required pursuant to this AMENDED MOU shall be deemed sufficiently made if delivered, as follows:

To the City of Muncie:
Dan Ridenour, Mayor
300 N. High Street
Muncie, IN 47305
Attn:Linda Gregory, President of Board of Public Works

To MSD:
Muncie Sanitary District
300 N. High Street
Muncie, IN 47305
Attn: John Barlow, District Administrator

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

4.09. Counterparts. This AMENDED MOU may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

4.10. Assignment. The rights and obligations contained in this AMENDED MOU may not be assigned by the City of Muncie or MSD without the express prior written consent of the other party.


4.11. No Third-Party Beneficiaries. This AMENDED MOU shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.


4.12. Effective Date. Notwithstanding anything herein to the contrary, this AMENDED MOU shall not be effective until all parties hereto have executed this AMENDED MOU and MSD has approved or ratified this AMENDED MOU.


IN WITNESS WHEREOF, the parties have duly executed this AMENDED MOU pursuant to all requisite authorizations as of the date first above written.


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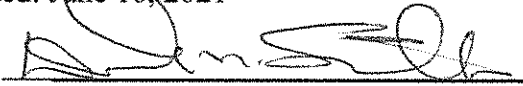
MUNCIE SANITARY DISTRICT

By: 
Printed: Stephen Brand
Title: Board President
Dated: June 16, 2021


By: 
Printed: Brian Stephens-Hotopp
Title: Board Vice President
Dated: June 16, 2021

By: 
Printed: Joseph Evans
Title: Board Secretary
Dated: June 16, 2021

By: 
Printed: Tonya Brothers-Bridge
Title: Board Member
Dated: June 16, 2021

By: 
Printed: David Smith
Title: Board Member
Dated: June 16, 2021

CITY OF MUNCIE

By: 
Printed: Dan Ridenour
Title: Mayor of Muncie, IN
Dated: June 16, 2021.