

ORDINANCE NO. 14-2020  
(As Amended)

Amending Ordinance No. 45-2019 (As Amended) to Adjust the Annual Budget by Providing for Appropriations from the General Fund Unappropriated Balance and to Authorize the City Manager to Enter into a Settlement Agreement with Dustin and Susan Mondrach.

WHEREAS, Dustin and Susan Mondrach, through legal counsel, have claimed that the City of Worthington is responsible for certain erosion damages to their property located at 290 E. South Street, Worthington, Ohio; and,

WHEREAS, the Mondrach’s legal counsel and the City’s insurance defense counsel, without admitting any liability or wrongdoing, engaged in extensive negotiations to reach a proposed settlement that would be acceptable to the Mondrachs, the City’s insurance company, and the City; and,

WHEREAS, the terms of the proposed settlement are set forth in the Settlement Agreement and Release attached hereto as “Exhibit A”; and,

WHEREAS, it is the opinion of the Law Director that it is in the best interest of the City of Worthington to resolve the Mondrach’s claim by entering into the proposed settlement; and,

WHEREAS, the Charter of the City of Worthington, Ohio, provides that City Council may at any time amend or revise the Budget by Ordinance, providing that such amendment does not authorize the expenditure of more revenue than will be available;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That there be and hereby is appropriated from the General Fund unappropriated balances to:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
<b><u>General Fund #101</u></b>		
101.1060.560989	Legal Settlement	\$ 50,000.00
<b>General Fund Totals</b>		<b>\$ 50,000.00</b>

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SECTION 2. That the City Manager, Finance Director, and Law Director are each hereby authorized, acting singly or jointly, to take all actions, including the creation of any special funds or entering into any escrow agreements or other documents, necessary to make sure that the appropriation provided in Section 1 is available to meet the City's financial obligations under the proposed settlement for a period of thirty (30) years.

SECTION 3. That the City Manager is hereby authorized to execute a Settlement Agreement and Release in substantially the form contained in the attached Exhibit "A" and approved to form by the Director of Law.

SECTION 4. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed April 6, 2020



\_\_\_\_\_  
President of Council

Attest:

  
\_\_\_\_\_  
Clerk of Council

Introduced March 16, 2020  
P.H. April 6, 2020  
Effective April 9, 2020

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between the City of Worthington, Ohio (“City of Worthington”) and residents Dustin and Susan Mondrach (referred to collectively as the “Mondrachs”), and is effective on the date last executed below (the “Effective Date”). The City of Worthington and the Mondrachs collectively are referred to as the “Parties.”

### **RECITALS**

WHEREAS, the Mondrachs own the property located at 290 E. South Street, Worthington, Ohio 43085, Parcel ID No. 100-001238-00, a National Historic Registrar Property (the “Property”), being ±0.2424 acres, rectangular in shape, with access to all public utilities, and having a 1,710 sq. ft. house located on it; and

WHEREAS, the Mondrachs believe they have or may have certain constitutional claims and real property invasion claims against the City of Worthington due to erosion damages to the Property claimed to have resulted from the City of Worthington’s construction and operation of the redesigned McCoy Avenue bridge and culvert and connected overall management of Rush Run, a creek that neighbors the Property (collectively, the City of Worthington’s “Rush Run Construction and Management Activities”); and

WHEREAS, beginning on September 14, 2018, the Mondrachs, through legal counsel, made written demand to the City of Worthington and its officials for claimed monetary damages to cover extensive structural repairs, stabilization, and damages to the Property which the Mondrachs believe were attributed to the Rush Run Construction and Management Activities; and

WHEREAS, after review, assessment, and consultation with the Mondrachs, and without admitting any liability or wrongdoing, the City of Worthington, through legal counsel, engaged in extensive communications with the Mondrachs to discuss a proposed monetary settlement amount that would satisfactorily address needed repairs to the Property without resorting to litigation; and

WHEREAS, in addition to a monetary settlement amount to address the Mondrachs’ individually claimed damages, the City of Worthington will move forward with implementation of its 2019 Capital Improvement Program (“CIP”) as adopted by the Worthington City Council on December 3, 2018, accessible at <https://worthington.org/ArchiveCenter/ViewFile/Item/29078>, which includes certain improvements, slope repairs, and rehabilitation in the vicinity of the Property, and hydrologic studies and analysis of additional erosion control measures for Rush Run (“2019 CIP erosion control measures”), for the benefit of all City of Worthington property owners who own land neighboring Rush Run, including but not limited to the Mondrachs; and

WHEREAS, after several discussions and written communications, the Parties have agreed as to the final compensation amount of \$50,000.00 to the Mondrachs to cover individual expenses related to their claimed Property damages, which is in addition to the City’s implementation of the 2019 CIP erosion control measures; and

WHEREAS, the Parties hereto, in good faith, and in the interests of full and final compromise, settlement, and satisfaction of all claims between them related to the City of Worthington's Rush Run Construction and Management Activities and related claimed damages to the Property, desire to resolve and settle their dispute outside of any formal litigation.

NOW, THEREFORE, in consideration of the exchange of valuable consideration and upon the mutual promises, covenants, and commitments, the sufficiency of which is agreed and acknowledged, the Parties hereby agree as follows:

1. **Authority.** The Parties represent and warrant that they have full and complete authority to make, sign, execute, and deliver this Agreement.
2. **Settlement Payment to the Mondrachs.** In consideration for all promises, covenants, representations, commitments, and releases contained in this Agreement, the City of Worthington, through its insurance carrier, shall cause one separate check to be issued to the Mondrachs in the total gross amount of Fifty Thousand Dollars and No Cents (\$50,000.00) ("Settlement Payment"), and payable to Dustin and Susan Mondrach. The City of Worthington shall cause the Settlement Payment to be issued to the Mondrachs through legal counsel within 10 days' receipt of this executed Agreement.
3. **Erosion Control Measures.** By November 1, 2020, the City of Worthington further acknowledges and agrees to install the 2019 CIP erosion control measures, accessible at <https://worthington.org/ArchiveCenter/ViewFile/Item/2907>. If, as a result of the Rush Run Analysis included under the 2019 CIP and as reasonably determined by the City, additional erosion control measures and/or maintenance improvements outside of the 2019 CIP must necessarily be constructed in the immediate vicinity of the Property, the City further agrees to install such additional measures and/or improvements. The City's obligation to install, implement, and maintain erosion control measures for the Property as provided herein shall be in effect for a period of no more than thirty (30) years from the Effective Date of this Agreement. Further, the City's obligation to install, implement, and maintain erosion control measures for the Property as provided herein shall be limited to the total sum of Fifty Thousand Dollars and No Cents (\$50,000.00) for said thirty (30) year period.
4. **Release and Waiver of Claims.** The Mondrachs, for themselves as well as their agents, representatives, heirs, successors, assigns, attorneys, and other parties on whose behalf they could bring a legal action, hereby fully release, acquit, and forever discharge the City of Worthington, its officials (elected and appointed), employees, agents, administrators, representatives, insurers, attorneys, successors and/or assigns, of and from any and all claims, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses, or losses of any type, whether known or unknown, fixed or contingent, suspected or unsuspected, accrued or unaccrued, which the Mondrachs have, as of the Effective Date, arising out of the City of Worthington's Rush Run Construction and Management

Activities and any resulting effect on the Property; provided, however, that this release shall not apply to any rights, duties, or obligations arising under, or actions to be taken pursuant to, this Agreement.

5. **Compromise Settlement.** This Agreement is the result of a compromise of disputed claims. Neither this Agreement nor any of the actions to be taken hereto shall ever at any time, for any reason or purpose, be construed as, or be deemed to be evidence of, an admission of liability, culpable conduct, or other wrongdoing on the part of the Parties.
6. **Application of Agreement.** All terms of this Agreement shall be applicable to and binding upon the Parties, their agents and related assigns. Nothing in this Agreement is intended to confer any benefit upon any third party unless expressly stated herein.
7. **Entire Agreement.** This Agreement constitutes and contains the entire agreement and understanding between the Parties as to the matters addressed herein and supersedes all prior and contemporaneous oral and written agreements, representations and discussions. The Parties intend for this Agreement to be complete and shall not be subject to any claim of mistake of fact or law. This Agreement is intended to avoid the uncertainty of litigation and to be final and complete.
8. **Applicable Law.** This Agreement shall be governed by the laws of the State of Ohio, without regard to any potential conflict of laws.
9. **Duty to Act in Good Faith.** The Parties shall act in good faith and in accordance with this Agreement, and not participate in, encourage, condone, or take any action to facilitate any challenge to the terms of this Agreement.
10. **No Assignment.** The Parties represent they have not assigned any rights or otherwise transferred or granted, or purported to assign, transfer or grant, to any person or entity any claim or right to assert any claim of any kind or character, or any portion thereof that they have against the opposing party.
11. **Amendment.** This Agreement shall not be amended or modified, except in writing, and signed by the Parties.
12. **Severability.** Should any provision or term of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, unenforceable, or void, such declaration or determination shall not affect the remaining terms of this Agreement, which shall remain independent, fully legal, valid, and enforceable pursuant to the terms of this Agreement.

13. **Construction.** This Agreement shall be considered to have been jointly drafted by the Parties, and it is agreed that it shall be governed by and construed in accordance with the laws of the State of Ohio regardless of conflicts of laws rules.
14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
15. **Acknowledgment.** The Parties acknowledge that they: have read carefully this Agreement; are satisfied with all of the Agreement's terms; had adequate time to review and consider this Agreement and to consult with their legal counsel with respect thereto; entered into this Agreement voluntarily and of their own free will; and agree to all provisions contained herein.

WHEREFORE, the Parties hereto have read all of the foregoing, understand the same, and agree to all of the provisions contained herein.

**CITY OF WORTHINGTON, OHIO**

By: \_\_\_\_\_  
 Its: City Manager

\_\_\_\_\_  
 Dustin Mondrach

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 Susan Mondrach

Date: \_\_\_\_\_

APPROVED:

Approved as to form

\_\_\_\_\_  
 Tom Lindsey  
 Law Director