

On motion of Mr. _____, seconded by Mr. _____ the resolution was adopted.

**RESOLUTION
ADOPTING THE FY 2016 – 2020 CAPITAL IMPROVEMENT PROGRAM
THE METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI
HAMILTON COUNTY, OHIO**

AND CAPITAL IMPROVEMENT PROGRAM APPROPRIATION

WHEREAS, the Board of County Commissioner of Hamilton County, Ohio (“Board”) did, on May 1, 1968, enter into an agreement with the City of Cincinnati (“City”) for the management and operation of the Metropolitan Sewer District of Greater Cincinnati (“MSD”), a County Sewer District organized in accordance with Chapter 6117 of the Ohio Revised Code; and

WHEREAS, under the terms of that agreement, the County owns the MSD and the City operates the MSD, subject to the exclusive control and direction of the Board; and

WHEREAS, said agreement, at Section 5.3, provides that the City of Cincinnati will prepare annually a Capital Improvement Program (“MSD CIP”) for the year next ensuing and submit said program to the Board and that the Board will hold a public hearing thereon; and

WHEREAS, the Executive Director of MSD and the City of Cincinnati Department of Sewers has submitted to this Board, a Capital Improvement Program for the years 2016 – 2020; and

WHEREAS, this Board has reviewed said FY 2016 -2020 MSD CIP as submitted by MSD; and

WHEREAS, after legal advertisement, this Board did conduct a public hearing on November 18, and December 9, 2015 on the FY 2016 – 2020 MSD CIP, at which hearing all persons desiring to ask questions and make statements were afforded such opportunity; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board also is specifically authorizing the preparation of detailed plans, specifications, estimates of costs, and where appropriate, preparation of tentative assessments, subject to the conditions of the Board, for the projects contained and outlined in Exhibit A, for 2016, which are attached hereto and by reference made a part thereof, subject to the modifications, terms, conditions, and restrictions contained in this Resolution; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board also is specifically approving the detailed plans, specifications, and estimates of cost for the projects contained and outlined in Exhibit B, subject to the conditions of the Board, which are attached hereto and by reference made a part thereof; and

WHEREAS, by approving this FY 2016 -2020 MSD CIP, the Board is requiring that any project contained in Exhibit A, when ordered constructed, have specific authorization and

appropriation of funds through legislation passed by the Board, subject to the modifications, terms, conditions, and restrictions contained in this Resolution; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board is specifically approving the amounts for certain projects identified in Exhibits A and B with modifications as specified in this Resolution; and

WHEREAS, where conflicts exist between this Resolution and any Exhibits attached hereto, this Resolution shall control; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board is approving, in concept only, the submitted project list and total project cost estimates not contained in Exhibits A or B, and any such project not contained in these Exhibits, when ordered designed or constructed, will require specific authorization and appropriation of funds through legislation passed by the Board; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board is also specifically appropriating funds amounting to \$22,648,495 for either (a) planning activities and studies, (b) the preparation of detailed project plans, specifications, cost estimate; (c) project easement acquisition; or (d) a combination of only these project activities for projects contained in Exhibit A; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board is specifically appropriating funds amounting to \$30,543,000 for construction and authorizing the construction of projects as identified in Exhibit B; and

WHEREAS, by approving this FY 2016 – 2020 MSD CIP, the Board is specifically appropriating funds amounting to \$11,500,000 for the establishment of a program contingency (Project ID 13090000); and

WHEREAS, it has been determined sufficient unappropriated funds are available for use by MSD to temporarily finance construction costs prior to the issuance of long-term revenue and/or special assessment bonds.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Hamilton County, Ohio, that the FY 2016 – 2020 Capital Improvement Program of the Metropolitan Sewer District of Greater Cincinnati, as amended by the County, for the period of January 1, 2016 – December 31, 2016, which is inclusive of Exhibits A and B, be and hereby is approved and adopted, subject to the terms, conditions, and restrictions in this Resolution.

BE IT FURTHER RESOLVED, by the Board of County Commissioners of Hamilton County, Ohio, that the following terms, conditions, and restrictions apply to all funds legislated for the Capital Improvement Program budget of MSD:

1. The approved 2016 – 2020 MSD CIP budget amount shall be treated as an amount not to be exceeded. If MSD proposes a new project to be added to the 2016 – 2020 MSD CIP, MSD shall identify a project (or multiple projects) currently in the CIP that will be cancelled or delayed until the 2017 program or later to offset the additional cost of the proposed project. If no

offsetting projects can be identified, and the County concurs, MSD shall provide documentation of the need for the project to be added to the 2016 – 2020 MSD CIP for review and concurrence by the County prior to requesting Board of County Commissioners approval

2. By approving this FY 2016 – 2020 MSD CIP, the Board is specifically placing a hold on certain projects in Exhibits A and B, and explained in MSD Resolution Requesting Additional Information for Specific Projects Approved in the FY 2016-2020 Capital Improvement Program CIP Book; a hold which shall be lifted once MSD obtains written County approval to proceed with each project; and

3. By approving this FY 2016 – 2020 MSD CIP, the Board is specifically directing MSD, when submitting for approval design funding legislation, to provide a quality assurance report that compares the current project design to the approved BCE project approach. This quality assurance report must be approved by the County prior to any expenditure of any authorized funds; and

4. By approving this FY 2016 – 2020 MSD CIP, the Board is specifically directing MSD, when submitting for approval construction funding legislation, to provide a quality assurance report that compares the current project design to the approved BCE project approach. This quality assurance report must be approved by the County prior to any expenditure of any authorized funds; and

5. By approving this FY 2016 – 2020 MSD CIP, the Board directs MSD, no later than January 31, 2016, to submit to the Board a Lower Mill Creek Partial Remedy (LMCPR) program cost estimate report. In addition to the data MSD provides in its routine monthly report this cost estimate will include all related Program Management and Support Services (PMC) and other Allowance related costs already expended and anticipated to be spent throughout the completion of the LMCPR program; and

6. For any Allowance funded expense exceeding \$100,000, MSD will provide to the County for approval prior to the expenditure of any funds a Business Case Evaluation (BCE) justifying the expense.

BE IT FURTHER RESOLVED, that the sum of \$64,691,495 currently existing in unappropriated funds available for use by MSD in Capital Improvement Fund 704 maintained by the City of Cincinnati, and the Surplus Account held at US Bank is hereby appropriated to pay costs for planning, design, easement acquisition, and/or other related pre-construction activity costs incurred in connection with the 2016 – 2020 MSD CIP as outlined in Exhibit A or the construction costs of those projects as identified in Exhibit B.

BE IT FURTHER RESOLVED, by the Board as follows:

SECTION 1. Hamilton County, Ohio (the “County”) may be expected to pay and/or incur costs with respect to the Project (“Prior Capital Expenditures”) on or after the date of this resolution and prior to the issuance of the obligations (the “Obligations”) which will finance the projects defined in Exhibits A and B.

SECTION 2. The Board hereby approves the use of the Obligations in the maximum principle amount of \$64,691,495 dollars to finance the costs of the Projects contained in Exhibits A and B and declares its intent that any prior Capital expenditures made by the County will be made in anticipation of the issuance of such Obligations to reimburse said prior Capital expenditures. This declaration is made pursuant to Treas. Reg. Section 1.150-2 or any success thereto.

SECTION 3. The County Administrator, the Director of MSD, the Director of Finance of the City of Cincinnati, the County Auditor and/or US Bank, NA, as trustee, each as applicable are hereby authorized and directed to reimburse, not later than 18 months after the later of (i) the date the original expenditure was paid or (ii) the date the item was placed in service, only those prior Capital expenditures from Projects contained in Exhibits A and B and made with respect to assets having a reasonably expected economic life of at least one year, and, in addition, eligible preliminary expenditures paid and incurred in connection with the Project from the Revenue Fund, Replacement and Improvement Account and/or the Surplus Account.

SECTION 4. The Board finds and determines that, consistent with the County's budgetary and financial circumstances, it does not have funds currently available and does not expect to have funds available in the future that may be allocated on a long-term basis, other than the proceeds of the Obligations, to finance the prior Capital expenditures from Projects contained in Exhibits A and B.

SECTION 5. The Board hereby directs the County Administrator, the Director of MSD, the Director of Finance of the City of Cincinnati, the County Auditor and/or US Bank, NA, as trustee, each as applicable, to take the following action at the time the prior Capital expenditures from Projects contained in Exhibits A and B are reimbursed from proceeds of the Obligations only if said reimbursement relieves the proceeds used for reimbursement from any restrictions imposed by both legal documents under which the Obligations were issued and applicable state law: (1) evidence the reimbursement on the books and records maintained with respect to the Obligations, and (2) identify either the actual prior expenditure to be reimbursed or, in the case of reimbursement of a fund or account, the fund or account from which the expenditure was paid.

SECTION 6. The books, records, and processing of the County and MSD with respect to this resolution shall be made reasonably available by the County for inspection by the general public at the County's administrative office every business day during normal business hours commencing no later than 30 days after the passage of this resolution. Said books, records and proceedings of the County with respect to this resolution will continue to be reasonably available to the general public until the date of issuance of the Obligations.

BE IT FURTHER RESOLVED, that no less than 24 months after the adoption of this FY 2016 - 2020 MSD CIP, the Hamilton County Administrator is hereby authorized to review and submit to this Board an evaluation of the use and continued applicability of the MSD Financial Policy Manual provision regarding the Programmatic Contingency and de-appropriation of previously-appropriated capital funds.

BE IT FURTHER RESOLVED, that the Clerk of this Board be and hereby is directed to certify copies of this resolution to Christian Sigman, Hamilton County Administrator; John Cranley, Mayor, City of Cincinnati; the Council of the City of Cincinnati in care of the Clerk of

Council; Cincinnati City Manager; and Gerald Checco, Executive Director of the Metropolitan Sewer District of Greater Cincinnati.

BE IT FURTHER RESOLVED, that this Board of County Commissioners hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board of County Commissioners, and that all deliberations of this Board of County Commissioners and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

ADOPTED at a regularly adjourned meeting of the Board of County Commissioners of Hamilton County, Ohio, this 16th day of December, 2015.

Mr. Monzel _____

Mr. Hartmann _____

Mr. Portune _____

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution adopted by the Board of County Commissioners in session this ____ day of December, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners of Hamilton County, Ohio, this ____ day of December, 2015.

Jacqueline Panioto, Clerk
Board of County Commissioners
Hamilton County, Ohio