

ORDINANCE NO. 44-23

AN ORDINANCE TO AUTHORIZE ^{CORPS OF ENGINEERS} THE CITY MANAGER TO EXECUTE A DEPARTMENT OF THE ARMY RIGHT OF ENTRY FOR CONSTRUCTION, AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the City of Conneaut, County of Ashtabula and State of Ohio:

SECTION 1. That the City Manager, on behalf of the City of Conneaut, is hereby authorized to execute a Right-of-Entry for Construction from the Department of the Army, attached hereto as Exhibit A.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council or any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is declared to be an emergency measure in the interests of public peace, health and safety and to facilitate the continuance of construction on the Conneaut Dredge Reclamation Facility and, shall take effect immediately upon passage and signing by the President of Council.

Passed this TEN day of APRIL, 2023.



President of Council

ATTEST:



Clerk of Council

**DEPARTMENT OF THE ARMY
RIGHT-OF-ENTRY FOR CONSTRUCTION**

2023 Conneaut Harbor Maintenance
Dredging

Portions of parcels 12-303-00-007-00 and
12-202-00-002-00

(Project, Installation, or Activity)	(Tract Number or Other Property Identification)
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The undersigned, hereinafter called the “Lessee,” hereby grants to the UNITED STATES OF AMERICA, hereinafter called the “Government,” a right-of-entry upon the following terms and conditions:

WHEREAS, by the River and Harbor Act of August 30, 1935 and other applicable Acts of Congress, the Lessee, as the local sponsor, agreed to furnish, without cost to the Government, access to lands, easements, and rights-of-ways, including suitable spoil-disposal areas and dredge material staging areas, necessary for the construction of such projects when and as required, in addition to other items.

NOW THEREFORE, the Lessee, in consideration of the mutual benefits of the work described below, hereby grants the Government a right of entry upon following terms and conditions:

1. The Lessee hereby grants to the Government, its agents, and assigns an irrevocable right to enter upon the lands hereinafter described at any time within a period of one year starting April 1st, 2023 to March 31st, 2024, in order to perform dredge placement of material to support dredging of Conneaut Harbor (the “Conneaut Harbor Dredging Project”). The designated area is depicted in **Exhibit A**, attached hereto.

2. This right-of-entry includes the right of ingress and egress on other lands of the Lessee not described below, provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.

3. The Lessee will undertake the responsibility for any future maintenance and control of deposited dredged material including any shoal or upland areas created by this project. The dredge material will remain after the project is complete and will become the responsibility of the Lessee.

4. Subject to Paragraph 7, the Lessee shall hold and save the Government free from all damages arising from construction, operation, placement of dredge material in support of the Conneaut Harbor Dredging Project, except for damages due to fault of, or negligence by the Government, its assigns, and/or contractors.

5. All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be

removed by the Government at any time within a reasonable period after the expiration of this right-of-entry.

6. Additional Provisions. The Lessee and the government agree to the following additional provisions

- a. The confined disposal facility will be available to the dredging contractor, 24 hours per day, 7 days per week. Lessee shall notify the Government of any changes in the security requirements, with such requirement changes not unreasonably restricting the Government's access to the designated area within the facility.
- b. The facility will accept up to 3,100 CY of dredged sediment per day (as measured in-place prior to dredging), and all associated water that will be added to facilitate hydraulic placement or otherwise.
- c. The Government, its contractors, agents, or assigns will have no obligation to perform maintenance or monitoring of any structure or feature of the facility, including but not limited to monitoring water quality. Dredged material such as logs or similar (non-manufactured) debris will be placed in designated areas within the facility. Non-organic material (i.e. tires) shall be removed offsite at contractor's cost.

7. The parties agree that if any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, at its option, either repair such damage or make an appropriate settlement with the Lessee. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Lessee may have to make a claim under applicable laws for any other damages than provided herein. The Government's liability for damages, claims, suits, costs, and expenses that arise from the activities of the Government under this Right of Entry shall be governed by the Federal Tort Claims Act, 28 USC 1346(c), and other applicable federal laws.

The land affected by this right-of-entry is located in the County of Ashtabula, State of Ohio, and is described as follows: Portions of parcels 12-303-00-007-00 and 12-202-00-002-00, as shown in Exhibit A.

WITNESSES MY HAND AND SEAL this _____ day of _____, 2023.

SIGNATURE

James Hockaday, City Manager

TITLE

UNITED STATES OF AMERICA

By: _____

MICHAEL B. ROHDE

Chief, Real Estate (Buffalo, Chicago, and Detroit Districts)

Real Estate Contracting Officer

NOTE: THE CERTIFICATE OF AUTHORITY must be executed by an individual other than by the person who signed the agreement. The individual must certify that the official who signed the agreement was authorized to act in that capacity.

CERTIFICATE OF AUTHORITY

I, Jon J. Arcaro, do hereby certify that I am the
(someone other than the person signing the agreement)

Council President of the City of Conneaut
(my position of responsibility within the organization)

_____ and that JAMES HOCKADAY,

who signed the agreement on behalf of the CITY OF CONNEAUT

was at the time of signature its CITY MANAGER,
(position held)

and that the person who executed the agreement on behalf of the

CITY OF CONNEAUT acted within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification

this 10th day of April, 2023.

Jon J. Arcaro
(Name)

CITY COUNCIL PRESIDENT
(Title)