

NOTICE
SPECIAL MEETING OF COUNCIL

Clerk's Office, Brook Park, Ohio

MAY 10, 2019

TO: COUNCILMEMBERS STEMM, MENCINI, ORCUTT, SCOTT, BURGIO,
POINDEXTER, SALVATORE, COUNCIL PRESIDENT VECCHIO, MAYOR GAMMELLA,
LAW DIRECTOR HORVATH, FINANCE DIRECTOR CINGLE

YOU ARE HEREBY NOTIFIED THAT A SPECIAL MEETING OF COUNCIL
HAS BEEN CALLED FOR THE PURPOSE OF:

XXX COUNCIL MEETING

_____ CAUCUS MEETING

_____ EXECUTIVE SESSION

_____ OTHER (Specify)

SUCH SPECIAL MEETING WILL ACCORDINGLY BE HELD ON TUESDAY, THE 14th DAY
OF MAY, 2019 IMMEDIATELY FOLLOWING THE REGULAR CAUCUS MEETING AND
FIRST (1st) SPECIAL COUNCIL MEETING, AT THE PLACE OF HOLDING REGULAR
MEETINGS. (*Refer to Rules of Council No.4, if applicable.

ROLL CALL OF MEMBERS

PLEDGE OF ALLEGIANCE

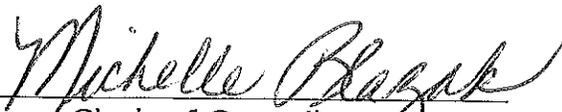
REMARKS FROM THE AUDIENCE ON THE ORDINANCES AND/OR
RESOLUTIONS THAT PERTAIN TO THE AGENDA ONLY:

INTRODUCTION OF ORDINANCES AND RESOLUTIONS: (FIRST READING):

SEE ATTACHED SHEET

ADJOURNMENT


Michael L. Vecchio
President of Council


Michelle Blazek
Clerk of Council

INTRODUCTION OF ORDINANCES AND RESOLUTIONS: (FIRST READING):

1. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH MCIMETRO ACCESS TRANSMISSION SERVICES CORP., DBA VERSION ACCESS TRANSMISSION SERVICES TO OCCUPY AND USE THE VARIOUS PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF WIRELINE TELECOMMUNICATIONS FACILITIES AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

2. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY COST-SHARE AGREEMENT BY AND BETWEEN THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORS) AND THE CITY OF BROOK PARK AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

CITY OF BROOK PARK, OHIO

PIC 4-16-19 SAFETY
CA 5-14-19
1st R _____
2nd R _____
3rd R _____
E/C _____

ORDINANCE NO. _____

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT
WITH MCIMETRO ACCESS TRANSMISSION SERVICES CORP.,
DBA VERSION ACCESS TRANSMISSION SERVICES TO OCCUPY AND
USE THE VARIOUS PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE
INSTALLATION, MAINTENANCE AND OPERATION OF WIRELINE
TELECOMMUNICATIONS FACILITIES,
AND DECLARING AN EMERGENCY

WHEREAS, the City of Brook Park is the owner in fee of all public rights-of-way within the City and is responsible for the competent management of such rights-of-way in furtherance of the public interest generally, and specifically to preserve, coordinate and optimize the various existing and future uses of the public right-of-way for the benefit of Brook Park residents; and

WHEREAS, management of the public right-of-way is a matter of local concern, protected by the first clause of Section 3 of Article 18 of the Ohio Constitution; and

WHEREAS, MCI metro Access Transmission Services Corp., d/b/a/ Version Access Transmission Services seeks authority of the City of Brook Park to install, maintain and operate certain wireline telecommunications facilities in the public right-of-way subject to the approval and supervision of the City Engineer pursuant to Chapter 901 of the Codified Ordinances; and

WHEREAS, this Ordinance is enacted expressly as an exercise of local self-government, pursuant to the first clause of Section 3 of Article 1 of the Ohio Constitution; and

WHEREAS, the public interest, convenience and necessity will not be harmed by the grant of authority requested, subject to the terms and conditions of the license authorized herein.

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

SECTION 1: The Mayor is hereby authorized to enter into a License Agreement with MCI metro Access Transmission Services Corp., dba Version Access Transmission Services, a subsidiary of

Version, a Delaware Corporation ("Licensee") for the installation, maintenance and operation of wireline telecommunications pursuant to the License Agreement, which is hereby made a part of and attached as Exhibit "A."

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of said City, and for the further reason that City Council deems it necessary to authorize the Mayor to enter into a License Agreement with MCImetro Access Transmission Services Corp., dba Version Access Transmission Services, as soon as possible, therefore, provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED: _____
MAYOR

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

DATE


DIRECTOR OF LAW



LICENSE AGREEMENT

Project Name: MCImetro Fiber/Conduit - Brookpark Rd. (Ford)
Project Number: 1-2019

This REVOCABLE LICENSE ("License"), made and entered into this _____ day of _____, 2019, by and between the City of Brook Park, Ohio, a municipal corporation (hereinafter referred to as the "City") as licensor and MCImetro Transmission Services Corp., hereinafter collectively referred to as the "Licensee") as licensee:

WITNESSETH, that in consideration of the mutual obligations and covenants herein, the parties hereto do mutually agree as follows:

1. Recital. The Licensee is the owner of certain real property ("Licensee's Property") located at _____, in Brook Park, Ohio and more particularly described as (give legal description/filing information/street address): _____

The City is the owner of a certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within Licensee's Property, and more particularly described in a certain Dedication Deed/Plat (give legal description/filing information/street address) and known as: _____

If the City's Property is an easement, then give legal description and filing information: _____

2. License. Subject to the terms and conditions of this License, the City licenses Licensee to construct, install, operate, maintain, replace, and remove _____ (hereinafter referred to as the "Facility") within the City's Property at the following location, as more particularly shown on the drawing which is attached hereto as Exhibit A and made a part of this License:

Location: _____ hereinafter referred to as the "Location").

3. Use. The Licensee shall use the Facility for the purpose described above and will not use it for any other purpose whatsoever without first obtaining the written consent of the City.



Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation on any part of the rights-of-way or to fence the rights-of-way or any part thereof.

4. Compensation. As compensation for this License, the Licensee shall pay the City a one-time administrative fee of \$500.00 plus the sum of Not Applicable for Project No. 1-2019 Dollars (\$ --) for each year this License is in effect (hereinafter referred to as the "Annual Fee").

The Annual Fee shall be paid to the City at the office of the City Building Department upon execution of this License, and by the same month and day each year thereafter for the term of this License (*Not Applicable for Project No. 1-2019*).

5. Term. Termination and Removal. This License will remain in effect for a period of ninety-nine (99) years from the date of execution of this License, so long as the need for the Facility exists and the Facility continues to function as initially intended (hereinafter referred to as the "Term"), unless terminated and revoked as a result of:

- a. The Licensee's uncured (within thirty (30) days after written notice) breach of term of this License; or
- b. The City's giving the Licensee written notice one (1) year in advance of termination (provided that any termination by the City shall be pursuant to all applicable law, including a hearing before City Council if requested by Licensee); or
- c. The Licensee's giving the City written notice one (1) year in advance of termination; or
- d. An order of a court of competent jurisdiction.

Upon termination of this License and any renewal hereof, the Licensee shall abandon the use of the Facility, and shall remove the Facility and restore the City's Property as nearly as possible to the condition it was in prior to removal, all at the sole expense of the Licensee.

If, after termination and within thirty (30) days after being directed to do so by the City, the Licensee fails to remove the Facility and restore the City's Property, the City may perform the work and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such work.

Termination of this License for any reason shall not release the Licensee from any liability or obligation relating to the installation, operation, maintenance, or removal of the Facility or any other term of this License.

6. Renewal of License. If both the City and the Licensee wish to extend the Term of this License, then, before the expiration of the Term, the City and the Licensee shall enter into good faith negotiations, the object of which will be to agree upon the terms of a renewal of this License. The agreement of the City shall not be withheld unreasonably. If an agreement is reached, all terms, including the agreed-upon consideration shall be reduced to a writing signed by both parties.

7. Location, Installation, Maintenance and Removal. At its own expense, the Licensee shall install and construct the Facility of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City's present or future use of the City's Property, or the use of the City's Property by any utility presently franchised by the City, or interfere with its use as a public way. If during installation it becomes evident that the Licensee's proposed installation will interfere with existing City installations or any existing underground installations, then the Licensee shall modify its installation within the Location to avoid the conflict, after obtaining the City's approval for the change, at the sole expense of the Licensee.

The Facility shall be constructed, installed, and maintained in conformity with plans and specifications, which must be approved in advance by the City and which are made a part of this License by reference, and with recognized standards, applicable federal, state, or local laws, codes ordinances and regulations. Before performing any construction, the Licensee's contractors shall obtain all permits and insurance required by the City for work within the right-of-way and will pay all fees and reimburse the City for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facility, the Licensee shall be responsible for maintaining and immediately repairing/replacing/repaving, to original condition, at Licensee's sole cost and expense, all resulting trenches, fence, curbs, gravel, pavement, landscaping, utilities or culverts damaged by Licensee, its employees, agents or representatives which results directly or indirectly from its operations to the full but reasonable satisfaction of the City, in accordance with the latest version of Cuyahoga County Department of Public Works Standard Construction Drawings/Specifications, ODOT CMS, or as directed by the City. Licensee shall regrade and reseed all areas disturbed by construction and place barriers to prevent erosion of the topsoil in the construction area. Reseeding shall be accomplished during the first appropriate seeding season following regrading.

Facility/equipment requires routine maintenance that would disrupt public right of way on a periodic basis: Yes No

If, in the judgment of the City, the Licensee at any time fails to perform its obligations under this section, the City, at the City's option, may perform whatever work the City deems necessary for the public safety, health and welfare, and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of performing such work. However, the City is not required to perform such work, and any failure by the City to perform the Licensee's obligations shall not release the Licensee from liability for any loss or damage caused by the Licensee's failure to perform its obligations.

Installation, maintenance, and removal of the Facility shall be accomplished in a manner which will not unreasonably impede City access on the Route or impede its use for operation and maintenance of infrastructure, as determined by the City. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the City's requirements.

If the Facility or any part thereof is the cause of an emergency condition, and the City determines that the situation makes it unreasonable to notify the Licensee or await action by the Licensee, the City may take over whatever actions it deems necessary to remedy the emergency situation at the sole expense of the Licensee, which will reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such actions.

8. As-Builts. Upon completion of the construction and installation of the Facility, the Licensee shall promptly provide the City with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.

9. Location Markers and Marking. As deemed necessary the Licensee shall furnish, install, and place signs required by the City to give notice and location of the Facility.

Licensee shall install permanent markers situated so as not to impede use of the Route by the City, members of the public or currently franchised utilities on each side of the Route where the Facility crosses the Route. The permanent markers shall indicate the location of the Facility, the name and address of Licensee, and a telephone number to contact for information regarding the Facility. Licensee shall conduct periodic inspections of the markers to insure that such markers are legible and in place as required herein.

The Licensee shall provide access to the location of the Facility whenever requested to do so by the City, and franchised utility or any licensed contractor excavating along the route.

10. Insurance. During the Term of this License, including renewals, if any, the Licensee shall obtain and maintain liability insurance in an amount of not less than \$1,000,000.00 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to the construction, installation, operation, maintenance replacement, removal or other activity related to the Facility. The insurance policy shall provide coverage per occurrence and shall state the project name and project number. The insurance policy shall name the City of Brook Park, its employees and elected officials, as their interest may appear, as additional insured. Any cancellation provision must provide that if the policy is canceled prior to the expiration date of the License, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: Building Commissioner. A certificate of insurance in compliance with the above must be furnished to the City prior to the City's execution of this License.

11. Damages and Indemnity. The Licensee shall repair or pay for all actual damages done to the City Property and improvements, or to the improvements of the City's Tenants caused by Licensee's Operations.

The Licensee shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Licensee agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its

agents, representatives, contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of Ohio.

This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the City, or the agents or employees of the City.

12. City Use. The City reserves the right to place along, under, across and over the Route and the Facility as many roads, streets, sidewalks, passageways, conduits, electric light and power lines, waterlines, storm drains, sanitary sewer lines, gas lines, telephone poles and telephone lines, and other utilities and facilities as the City may desire.

13. Interference with City. Whenever, after the Licensee installs the Facility, it is the City's good faith, reasonable determination that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the City's reasonable use of the City's Property, the Licensee shall immediately relocate the Facility to another location approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and the Facility interferes with the City's reasonable use of its City's Property, the City will provide written notice to the Licensee that relocation of the Facility is required and the Licensee shall relocate the Facility within sixty (60) days of notice to the new location as approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

14. Interference with Utility. Whenever, after the Licensee installs the Facility, it is determined that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the reasonable use of the City's Property by a utility franchised by the City prior to execution of this License, the Licensee shall immediately relocate the facility to a location within the Route approved in advance by the City. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and it is alleged by a utility franchised by the City prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the City's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

15. Installation by Third Party. If any road, street, sidewalk, passageway, conduits, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facility by any entity other than the City, and the construction requires the Licensee to relocate the Facility, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by the City.

16. Entire Agreement. This License contains the entire agreement of the parties regarding the Facility and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Changes. Changes to this License are not binding unless made in writing, signed by both parties.

18. Captions. The captions to the sections or paragraphs of this License are not part of this License and will not affect the meaning or construction of any of its provisions.

19. Binding Effect. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties.

20. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person. The Licensee's attention is specifically drawn to ORC 3781.25 through 3781.38 regarding protection of utility lines.

21. Applicable Law. This License is governed by and construed and enforced in accordance with the laws of the State of Ohio.

22. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.

23. Assignment. The Licensee shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City which consent shall not be unreasonably withheld.

24. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

Phone No.: _____

For purposes of giving formal, written notice of the City, the City's address is:

Mayor
City of Brook Park
6161 Engle Road
Brook Park, Ohio 44142

Copies of any notices to the City must also be given to:

Building Commissioner
City of Brook Park
6161 Engle Road
Brook Park, Ohio 44142

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this section. Notice of discontinued use of the Facility by the Licensee will be given in the same manner as required by this section and within thirty (30) days of such action.

25. Approval Required. This License Agreement shall not become effective or binding until approved by the City of Brook Park's Designated Representative.

26. Run with the Property. This Agreement shall be binding upon Licensee's Property, its successors and assigns and shall run with title to the Property. The Licensee shall be the property owner or agents working for the utility company. Contractor or third party installation group is not acceptable.

LICENSEE:

By [signature]: _____
Name [print]: _____
Title: _____
Date: _____
Company/Utility Name: _____
Address: _____
City: _____
State: _____
Zip Code: _____
Phone: _____
Other (fax, e-mail): _____

CITY OF BROOK PARK:

By [signature]: _____
Name [print]: _____
Title: _____
Date: _____

LICENSEE NOTARY

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

This instrument was acknowledged before me on this ____ day of _____, 20____
by [name of person:] _____, [title or capacity, for
instance, "President", "General Partner" or "Managing Member":] _____ on
behalf of [name of Licensee:] _____.

Notary Public

My commission expires:

CITY NOTARY

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

This instrument was acknowledged before me this ____ day of _____, 20____, by
_____, _____, on behalf of the City of Brook Park,
Ohio a municipal corporation.

Notary Public

My commission expires:

P/C 4/16/19 Safety
Caucus 5-14-19
1st R
2nd R
3rd R
B/C

CITY OF BROOK PARK, OHIO

ORDINANCE NO: _____

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
A COMMUNITY COST-SHARE AGREEMENT BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORS)
AND THE CITY OF BROOK PARK,
AND DECLARING AN EMERGENCY

WHEREAS; THE City of Brook Park entered into a regional Stormwater Management Program Service (SMP Service Agreement) as evidenced by Ordinance No. 10032-2016, passed August 2, 2016 and

WHEREAS, as a component of implementing a regional stormwater management program a "Community Cost-Share Account" has been created; and

WHEREAS, the Community Cost-Share Account is to provide funding to assist the City of Brook Park with the District approved project; and

WHEREAS, the District supports the Community Cost-Share Stormwater MCM #6 Implementation Plan as a Community Cost-Share project proposed by the City of Brook Park; and

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

SECTION 1: The Mayor is authorized and directed to execute on behalf of the Municipality a Community Cost-Share Stormwater MCM #6 Implementation Plan by and between the Northeast Ohio Regional Sewer District and the City of Brook Park, set forth in the Agreement attached hereto as Exhibit "A."

SECTION 2: The money needed for the aforesaid transaction shall be paid from funds theretofore appropriated for said purposes.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of

this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and authorizing the Mayor to enter into an Agreement for a Community Cost-Share with Northeast Ohio Regional Sewer District; therefore, provided this ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

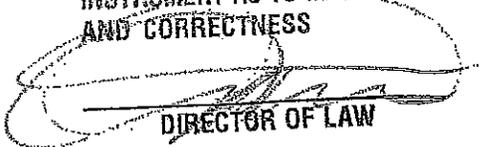
PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

APPROVED: _____
MAYOR

I HEREBY APPROVE THE WITHIN
INSTRUMENT AS TO LEGAL FORM
AND CORRECTNESS



DIRECTOR OF LAW

DATE

**COMMUNITY COST-SHARE AGREEMENT
BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
CITY OF BROOK PARK**

This Agreement is made and entered into this _____ day of _____, 2017, by and between the Northeast Ohio Regional Sewer District (District) acting pursuant to Resolution No. 114-13, adopted by the Board of Trustees of the District on May 16, 2013 (Exhibit "A"), and the City of Brook Park (City), acting pursuant to Ordinance/Resolution No. _____, adopted on _____, 20____ (Exhibit "B").

Recitals

WHEREAS, the District, as a component of implementing a regional stormwater management program, manages a financial account termed the "*Community Cost-Share Account*" that is for the aggregation and dissemination of funds derived from revenues collected from the Stormwater Fee; and

WHEREAS, the purpose of the Community Cost-Share Account is to provide funding to assist the City with District-approved projects through the Community Cost-Share Program; and

WHEREAS, the Community Cost-Share Program funds are used for construction, operation, and maintenance of the Local Stormwater System or Regional Stormwater System, including administrative costs directly associated with such projects as well as costs related to repair or upgrade; and

WHEREAS, the District supports the Community Cost-Share Stormwater MCM #6 Implementation (the "Project") as a Community Cost-Share project proposed by the City; and

NOW THEREFORE, in consideration of the foregoing, the payment and the mutual promises contained in this Agreement, the parties agree as follows:

Article 1.0 City Obligations

1.1 The City agrees to perform as follows:

1.1.1 Complete work as detailed in the District approved Community Cost-Share application. (Exhibit "C")

1.1.2 Complete and submit Progress Reports when submitting Request for Payment as needed, or within 30 days of close of the Project, per Section 5.0 of the *Community Cost-Share Program Policy*.

1.1.3 Notify the City's Watershed Team Leader at least 7 business days prior to the start of the Project.

1.1.4 Meet with District staff when requested to review the Project status.

1.1.5 Submit requests for approval to modify the budget, deadline, deliverables, or other components of the Project to the City's Watershed Team Leader at least 30 business days prior to the desired date of execution of the modification.

1.2 Failure to meet any of the requirements listed in Article 1.1 may result in termination of this Agreement and reimbursement of disbursed funds to the District.

Article 2.0 District's Obligations

2.1 The District agrees to perform as follows:

2.1.1. Allocate \$200,000.00 to the City for the Project from the City's Community Cost-Share Account.

2.1.2. Provide reimbursement of funds up to \$200,000.00 to the City within 60 days of receipt of a complete Request for Payment from the City, detailing costs related to the Project.

2.1.3. Timely review and approval or disapproval of requests to modify the budget, deadline, deliverables, or other components of the Project.

2.1.4. Acknowledge the City in presentations or publications related to the Project.

Article 3.0 Dispute Resolution

3.01 The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.

3.02 The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representative	City Representative
Watershed Team Leader	Service Director
Deputy Director of Watershed Programs	

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

District Representative	City Representative
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Director of Watershed Programs	Mayor
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- 3.03 If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after mediator appointment, which meeting shall be attended by at least the respective representatives listed in paragraph 3.02 above. The Parties shall attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator equally.
- 3.04 Such mediation shall be non-binding between the Parties and, to the extent permitted by law, shall be kept confidential. If the dispute is resolved and settled through the mediation process, the decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Article 4, Remedies, below.

Article 4 Remedies

- 4.01 The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counter-claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the law of the State of Ohio.

Article 5 Counterpart Signatures

- 5.01 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

Article 6 Governing Law

- 6.01 The terms and provisions of this Agreement shall be construed under and governed by the laws of Ohio (to which all Parties hereto consent to venue and jurisdiction).

Article 7 Disclaimer of Joint Venture

- 7.01 This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Article 8 Authority to Execute

- 8.01 Each person executing this Agreement represents and warrants that it is duly authorized

to execute this Agreement by the party on whose behalf it is so executing.

Article 9 **Exhibits**

The following exhibits are attached hereto and incorporated herein:

Exhibit "A" – District Resolution

Exhibit "B" – City Ordinance/Resolution

Exhibit "C" – District-Approved Community Cost Share Application

The parties have executed this Agreement on the day and year first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

BY: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

AND

BY: _____
Darnell Brown, President
Board of Trustees

CITY OF BROOK PARK

By: _____
Title: _____

The Legal Form and Correctness of this
Instrument is hereby Approved:

CITY OF BROOK PARK


Assistant Director of Law

This Instrument Prepared By:
Katarina K. Waag
Assistant General Counsel
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

CONTRACT NO. .

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

CITY OF BROOK PARK

FOR

COMMUNITY COST-SHARE PROJECT:
STORMWATER MCM #6 IMPLEMENTATION

Total Approximate Cost: \$200,000.00

The legal form and correctness of the within
instrument are hereby approved.

CHIEF LEGAL OFFICER

Date

CERTIFICATION

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in process of collection to the credit of the fund free from any obligation or certification now outstanding.

CHIEF FINANCIAL OFFICER

Date

EXHIBIT A

NORTHEAST OHIO REGIONAL SEWER DISTRICT
RESOLUTION NO. 114-13

Authorizing the Executive Director to enter into Regional Stormwater
Management Program Community Cost-Share Program Agreements
with Member Communities.

WHEREAS, the Code of Regulations of the Northeast Ohio Regional Sewer District, Title V – Stormwater Management Code Chapter 9 outlines the Community Cost-Share Program developed to provide funds to District Member Communities for construction, operation and maintenance activities of community-specific stormwater management projects; and

WHEREAS, under the Community Cost-Share Program, 25% of the annual collected stormwater revenue from each Member Community will be held by the District in a Community Cost-Share account, whereby Communities, with review and approval by the District, through specific applications outlining the community-specific stormwater work to be performed can access reimbursement of their funds; and

WHEREAS, the District is seeking authority to enter into Regional Stormwater Management Program Community Cost-Share Program Agreements with Member Communities for the purpose of detailing and memorializing responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE NORTHEAST OHIO REGIONAL SEWER DISTRICT:

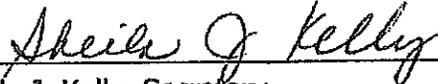
Section 1. That this Board finds that for the reasons stated in the preamble hereof it is in the best interests of the District to enter into Regional Stormwater Management Program Cost-Share Program Agreements with Member Communities to memorialize responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program.

Section 2. That this Board hereby authorizes the Executive Director to enter into Regional Stormwater Management Program Cost-Share Agreements with Member Communities to memorialize responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program under such terms and conditions that are satisfactory to the Director of Law and in the best interests of the District.

Section 3. That this Board authorizes the Executive Director to execute all documents and do all things necessary to effect the terms and conditions of the Stormwater Management Program Direct Billing Agreements with Member Communities.

Section 4. That this Board declares that all formal actions of the Board concerning and relating to the adoption of this resolution and that all deliberations of the Board and any of its committees that resulted in said formal action were conducted in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On motion of Mayor Starr seconded by Mr. O'Malley, the foregoing resolution was unanimously adopted on May 16, 2013.



Sheila J. Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District

EXHIBIT B

(Insert Member Community
Ordinance/Resolution)

EXHIBIT C



*Community Cost-Share Program
Application*

**Community Cost-Share Program
APPLICATION**

Member Community Information

Community:	<u>City of Brook Park</u>
Primary Project Contact: (Name & Title)	<u>Mr. Randy Garner</u> <u>Service Director</u>
Mailing Address:	<u>19065 Holland Road</u> <u>Brook Park Ohio 44142</u>
Phone Number:	<u>216 433 7192</u>
Email:	<u>rgarner@cityofbrookpark.com</u>

Project Information

Project Title:	<u>Stormwater MCM #6 Implementation</u>
Address or Location of Project:	<u>19065 Holland Road</u> <u>Brook Park, Ohio 44142</u>
Project Start Date:	<u>April 16, 2019</u>
Project End Date:	<u>December 31, 2019</u>
Community Cost-Share Fund Request:	<u>\$200,000.00</u>
Submission Date:	<u>March 19, 2019</u>



*Community Cost-Share Program
Application*

Project Narrative

1) Project Summary (1,000 word maximum)

Describe the Project and include the following information, as applicable:

- Describe the Project and deliverables; provide a map if applicable
- Submit a deliverable worksheet listing tasks and deliverables with start dates and end dates for the significant benchmarks.
- List permitting requirements necessary to initiate and complete project and how the requirements will be met.

The City would like to clean approximately 300 stormwater catch basins and dispose of the approximately 400 cubic yards of materials. The City will use BFI Lorain Co Landfill to test and dispose of the solid waste that is removed from the catch basins. The catch basin cleaning will mostly be done during the spring of 2019 and be completed by July 2019.

Street Sweep approximately 500 miles of City streets three times during 2019. The City will use City equipment and personal to complete the work. The City will use BFI Lorain Co Landfill to test and dispose of the solid waste that is removed from the City streets.

No permits will be required to complete the work, the materials will be tested by BFI to make sure it is appropriate for disposal in a solid waste facility and not a hazardous waste facility. The work being performed will also satisfy the Cities SWMP under its 2015-2019 MS4 Permit obligations.



*Community Cost-Share Program
Application*

2) Ability to Provide Long Term Maintenance (500 word maximum)

Describe the plans for long-term maintenance, addressing the following question:

- **Who is responsible to provide on-going maintenance for the project and how will maintenance be ensured?**
- **Provide documentation of scheduled maintenance and operation for completed stormwater project(s).**

The city will maintain the streets and catch basins under its normal maintenance program and under its SWMP.



*Community Cost-Share Program
Application*

3) Visibility and Public Outreach: (500 word maximum)

Public outreach is required if appropriate for your project.

- **What audiences will be exposed to this Project (neighbors, students, community groups, general public)?**

There is no planned public education and outreach events for this work, but the serve director will update the City Council during normal Council Meetings on the work that is being performed. The meetings are open to the public.



*Community Cost-Share Program
Application*

4) Budget Summary (500 words maximum)

The Budget Summary and Project Budget (see page 3) represent the Community Cost-Share Project components exclusively. Include details on the provider of all services such as design, engineering, construction management and materials including specific material cost, equipment, and hourly rate.

If an engineer's estimate is included with the application, indicate which line items are included in the Community Cost-Share Project application.

The City Service Director will submit cost reimbursement requests as the work is completed. The City will use its standard salary and fringe for employees and will show invoices and canceled checks for other cost such as landfill cost.

The City Service Director estimates the proposed work to cost +_ \$200,000.00 and will be performed during 2019.



*Community Cost-Share Program
Application*

Vendor Registration

Prior to submission, ensure that the Member Community is a registered vendor with the District. Vendor Registration can be done by accessing http://www.nearsd.org/supplier_homepage.php and completing the New Vendor Registration. If unsure of the Member Community vendor status, by initiating the New Vendor Registration a message of active registration will appear if currently registered as a vendor.

Project Budget

Project Expenses	Community Cost-Share Expense	Line Item Description
Professional Services		
Personnel (Member Community staff only)	155,000.00	Street sweeping and cash basin cleaning work
Subcontract	\$45,000.00	BFI Lorain CO Landfill to test and dispose of material
Equipment		
Materials		
Other		
TOTAL	\$ 200,000.00	

*** YELLOW CIRCLES*** INDICATE HORTONS INSIDE SANITARY MAINS - IF JETTING, GO UP STREAM OR DOWN STREAM.
*** QUESTIONS OR CONCERNS? CONTACT FOREMAN ON CALL.

**Northeast Ohio
Regional Sewer District**

Southwest Interceptor - Local Sewer System Evaluation Study

