

CITY OF BROOK PARK, OHIO

P/C 8-22-23 Service
CA 8-22-23
1st R _____
2nd R _____
3rd R _____
B/O _____

ORDINANCE NO: 11351-2023

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
A COMMUNITY COST-SHARE AGREEMENT BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORS D)
AND THE CITY OF BROOK PARK, FOR A WEDO PARK RETENTION BASIN, 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 NEORS D will reimburse funds up to \$1,800,000.00 to the City for this Wedo Park Retention Basin.

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 project for a Wedo Park Basin, by and between the Northeast Ohio Regional Sewer District and the City of Brook Park, set forth in the Agreement attached hereto as Exhibit "1."

SECTION 2: The money needed for the aforesaid transaction shall be paid from fund 459.

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

RECEIVED

AUG 17 2023

BROOK PARK CITY COUNCIL



**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 _____, 2023, 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 City of Brook Park (City) acting pursuant to Ordinance/Resolution No. _____, adopted on _____, 2023 (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 Wedo Park Retention Basin - Construction project (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, in accordance with 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 Obtain all necessary legal agreements with affected property owners to perform the Project and to bind any successor in title to maintain compliance as specified in this Agreement between the District and City for the Project.
- 1.1.6 Comply with all applicable local, state and federal requirements. This may include, but is not limited to, U.S. Army Corp of Engineers Section 404, Ohio EPA Section 401 water quality certification, and Ohio Department of Natural Resources Dam Safety Laws.
- 1.1.7 If the City fails to maintain the Project in accordance with this Agreement, the City shall be liable for the full amount of any Community Cost-Share Program funds paid for the Project. Such amount shall be offset against the City Community Cost-Share Account.
- 1.1.8 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.
- 1.1.9 Acknowledge the District on any public advertisement or outreach efforts including all publications and signage related to the Project which shall include the following disclaimer:

This project was funded in part or totally through the Northeast Ohio Regional Sewer District (NEORS D) Community Cost-Share Program in coordination with City, under the provisions of the NEORS D Regional Stormwater Management Program. The contents and views, including any opinions, findings, or conclusions or recommendations, contained in this publication are those of the authors and have not been subject to NEORS D review and may not necessarily reflect the views of NEORS D, and no official endorsement should be inferred.
- 1.1.10 Provide the District the opportunity to have design approval for any signage or public education and outreach efforts related to the Project.
- 1.1.11 Permit the District to photograph the Project and to incorporate the Project into the District's overall public education and outreach efforts for stormwater management.
- 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.

- 1.3 The City agrees that the City's Community Cost-Share funds will be withdrawn from the City's Community Cost-Share Account over the course of five (5) years upon submittal by the City of the Fund Transfer Request Form. The Community Cost-Share funding will be encumbered and transferred from the City's Community Cost-Share Account in one initial payment of \$800,000.00 and in increments of \$200,000.00 for the following five (5) years.
- 1.1 The City agrees to use the Fund Transfer Request Form (Exhibit "D") to initiate annual fund transfers to the District from the City's Community Cost-Share account.

Article 2.0 **District's Obligations**

- 2.1 The District agrees to perform as follows:
- 2.1.1 Allocate \$1,800,000.00 to the City for the Project from the City's Community Cost-Share Account.
- 2.1.2 Provide reimbursement of funds up to \$1,800,000.00 to the City within 60 days of receipt of a complete Fund Transfer Request Form 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.
- 2.2 The District is not liable for any and all claims, damages, losses, liens, causes of action, suits, judgments and expenses of any nature, kind or description, that result from and to the extents caused by the acts or omissions of the City, their design professional, and their contractor, including all of their officers, owners, principals, subcontractors, employees, and agents. The District is not responsible for the accuracy, correctness and reliability of the plans as it is not reviewing or approving any plans as to suitability of the design/fitness for a particular purpose.

Article 3.0 **Dispute Resolution**

- 3.1 The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.
- 3.2 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

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
Director of Watershed Programs	Mayor

- 3.3 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.
- 3.4 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**

- 4.1 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 laws of the State of Ohio.

Article 5 **Counterpart Signatures**

- 5.1 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**

- 6.1 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**

- 7.1 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**

8.1 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.
Exhibit "D" - Fund Transfer Request Form

[signatures on the following page]

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:

Anka M. Davis
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.

[FOR NEORS D USE]

AGREEMENT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

CITY OF BROOK PARK

FOR

COMMUNITY COST-SHARE PROJECT:
WEDO PARK RETENTION BASIN –
CONSTRUCTION

Total Approximate Cost: \$1,800,000.00

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

ERIC J. LUCKAGE
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.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

Date

Budget Center 8100

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:

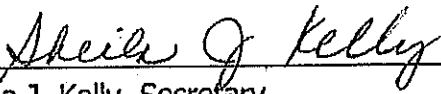
Section 1. That this Board finds that for the reasons stated in the preamble hereof it is in the best interests of the District to enter into Regional Stormwater Management Program Cost-Share Program Agreements with Member Communities to memorialize responsibilities of the District and Member Communities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

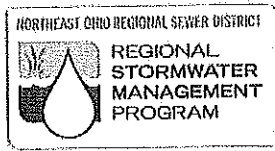


Sheila J. Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District

EXHIBIT B

(Insert Member Community
Ordinance/Resolution)

EXHIBIT C



*Community Cost-Share Program
Application*

**Community Cost-Share Program
APPLICATION**

Member Community Information

Community:	City of Brook Park
Primary Project Contact: (Name & Title)	Brian Beyer Service Director
Mailing Address:	19065 Holland Road Brook Park, Ohio 44142
Phone Number:	216-433-7192
Email:	bbeyer@cityofbrookpark.com

Project Information

Project Title:	Wedo Park Storm Water Basin
Address or Location of Project:	Wedo Park 0 Shelby Drive
Project Start Date:	August 7, 2023
Project End Date:	April 1, 2024
Community Cost-Share Fund Request:	\$1,800,000.00
Submission Date:	July 6, 2023



*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.

Final design and construction documents for the proposed storm water basin at Wedo Park (PPN 343-06-126) were completed under a previously authorized Community Cost Share Agreement. This Agreement will reimburse the City for a portion of construction costs associated with the new basin. A map of the area is included at the end of this application.

Deliverables include construction/installation of a new storm water basin at Wedo Park.

Permitting included in this Phase of the Project includes submittal to NEORS via Sages.Gov Portal and an OEPA Construction Site Storm Water Discharge (NOI) permit.



*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 long term maintenance required for the basin will be the responsibility of the Brook Park Service Department. Maintenance activities include but are not limited to grass cutting and sediment removal as required.



*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)?

Final design of the basin and preparation of construction documents are now complete. City Council has been informed of the status/progress of the Project in reports made at Council Meetings. Copies of the final design calculations and construction documents are available upon request. An informal neighborhood meeting is currently being coordinated to inform the area residents to what to expect during construction. Further public outreach can be provided, as requested by the City Administration. Information regarding the basin has been included in recent publications of the local newsletter which is delivered to over 8,000 households within the City.



*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.

NOI Permit - Ohio EPA = \$200.00
Advertising - Plain Dealer = \$1,331.20
Bidding Phase - Euthenics = \$5,531.06
Const. Admin. - Euthenics = \$48,126.09
Const. Observation - Euthenics = \$52,984.53
Testing - Euthenics = \$7,500.00
Construction Contract - Independence Excavating = \$1,935,716.75
Total = \$2,051,389.63

Anticipated Reimbursements
Initial - \$800,000.00
Year 1 - \$200,000.00
Year 2 - \$200,000.00
Year 3 - \$200,000.00
Year 4 - \$200,000.00
Year 5 - \$200,000.00



*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.neorsd.org/isupplier_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	\$100,000.00	Construction Admin., Observ., & Testing (Euthenics)
Personnel (Member Community staff only)		
Subcontract	\$1,700,000.00	Construction Contract (Independence Excavating)
Equipment		
Materials		
Other		
TOTAL	\$ 1,800,000.00	

EXHIBIT D



*Community Cost-Share Program
Transfer Funds to NEORSD Request*

**Community Cost-Share Program
TRANSFER FUNDS TO NORTHEAST OHIO REGIONAL SEWER DISTRICT
REQUEST - COVER SHEET**

Project Information

Member Community: _____

Project Title: _____

Amount to be Transferred to NEORSD: _____

Authorized Signature

I certify that the costs outlined in this reimbursement request have been incurred in accordance with the approved project proposal as set forth in the Community Cost-Share agreement document(s). Furthermore, I affirm that the information contained herein is, to the best of my knowledge and belief, accurate and complete.

Name (print or type): _____

Title: _____

Telephone Number: _____

Email Address: _____

Signature: _____

Date: _____

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 for a Wedo Park Retention Basin 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:

August 22, 2023

M. P. Kenzio
PRESIDENT OF COUNCIL

ATTEST:

Michelle Blazal
Asst. Clerk of Council

APPROVED:

E. J. A. Smith
MAYOR

8-22-2023
DATE

CERTIFICATE

Assistant Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution

No. 11351-2023

passed on the 22nd day of August, 2023 by said council.

Michelle Blazal

I, Assistant Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location: City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing

August 24, 2023
Michelle Blazal

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Polindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

[Signature]
DIRECTOR OF LAW