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CITY OF BROOK PARK, OHIO

ORDINANCE NO: 1113-2019

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 Mayor is authorized and directed to procure the necessary construction services in order to complete the work described in Exhibit "A."

SECTION 3: The Consulting City Engineer is authorized to provide the necessary professional services in order to complete the work and will be compensated as described in Exhibit "A."

SECTION 4: The money needed for the aforesaid transaction shall be paid from funds theretofore appropriated for said purposes.

SECTION 5: 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 6: 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: August 20, 2019

M. P. Kerchio
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak
Clerk of Council

APPROVED: [Signature]
MAYOR

[Signature]
DATE

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

[Signature]
DIRECTOR OF LAW

I, Michelle Blazak, 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 six 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, #1 Fire Station 5590 Smith 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 21, 2019
Michelle Blazak
MICHELLE BLAZAK
Clerk of Council

CERTIFICATE
Michelle Blazak, 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. 1113-2019 passed on the 20th day of August 2019 by said council.
Michelle Blazak
Clerk of Council

	Yea	Nay
Stemm	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orcutt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Burgio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**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

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

RECEIVED
CITY OF BROOK PARK
COMMUNITY COST-SHARE PROJECT

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:

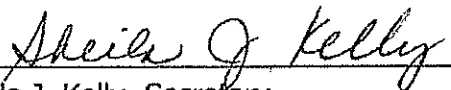
Section 1. That this Board finds that for the reasons stated in the preamble hereof it is in the best interests of the District to enter into Regional Stormwater Management Program Cost-Share Program Agreements with Member Communities to memorialize responsibilities of the District and Member Communities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

Mailing Address: 19065 Holland Road
Brook Park Ohio 44142

Phone Number: 216 433 7192

Email: rgarner@cityofbrookpark.com

Project Information

Project Title: Stormwater MCM #6 Implementation

Address or Location of Project: 19065 Holland Road
Brook Park, Ohio 44142

Project Start Date: April 16, 2019

Project End Date: December 31, 2019

Community Cost-Share Fund Request: \$200,000.00

Submission Date: March 19, 2019



*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 City's 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 preformed. 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 <i>(Member Community staff only)</i>	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 MONITORS INSIDE SANITARY MAINS -- IF JETTING, DO UP STREAM OR DOWN STREAM.
ANY QUESTIONS OR CONCERNS, CONTACT FOREMAN OR CALL.

**Northeast Ohio
Regional Sewer District**

Southwest Interceptor - Local Sewer System Evaluation Study

