

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-76

By Dale F. Lange Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### **AUTHORIZING THE MAYOR OF THE CITY OF BEREA TO ENTER INTO A PREVENTIVE MAINTENANCE AGREEMENT WITH THE CUYAHOGA COUNTY DEPARTMENT OF PUBLIC WORKS PROVIDING FOR PREVENTATIVE MAINTENANCE SERVICES FOR THE CITY OF BEREA, AND DECLARING AN EMERGENCY.**

**WHEREAS**, a proposed agreement between the Cuyahoga County Department of Public Works and the City of Berea, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, has been presented to the Council providing for preventative maintenance services for the City of Berea; and

**WHEREAS**, by the provisions of said agreement, the Cuyahoga County Department of Public Works agrees to provide the City of Berea with certain preventive maintenance services related to roadways, including, but not limited to, sidewalk and curb ramp repairs, rebuilding catch basins/manholes, pavement striping, crack sealing, street sweeping and other related services; and

**WHEREAS**, according to the terms of said agreement, the Cuyahoga County Department of Public Works agrees to provide the City of Berea with a task order of preventive maintenance services that CCDPW is willing to perform for the city including the scope of work to be performed, together with an estimate of the cost of the work for approval before work is undertaken; and

**WHEREAS**, according to the terms of said agreement, the City of Berea, through its Mayor, can approve, in whole or part, the list of tasks to be undertaken by the County, for which the City would pay pursuant to its budget and other authorizing legislation.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That the Mayor of the City of Berea, Ohio, be and he hereby is authorized and directed to enter into an agreement contract with the Cuyahoga County Department of Public Works for preventive maintenance services related to roadways, including, but not limited to, sidewalk and curb ramp repairs, rebuilding catch basins/manholes, pavement striping, crack sealing, street sweeping and other related services in the form attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 2.** That funding needed to carry out any projects pursuant to the agreement authorized herein is to be provided through the City of Berea budget and funding process and no unfunded work is authorized herein.

**SECTION 3.** That 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 actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare or providing for the usual daily operation of a municipal department, and for the further reason that the agreement must be submitted to the County as soon as possible. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all 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.

# COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2014-76

By Lange Sponsored By Mayor Klesm

PASSED: October 6, 2014

[Signature]  
President of Council

ATTEST: [Signature]  
Clerk of Council

APPROVED: October 7, 2014  
[Signature]  
Mayor

Approved as to Form:  
[Signature]  
Director of Law

**A G R E E M E N T**

This AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 between the County of Cuyahoga, Ohio, hereinafter referred to as "COUNTY", on behalf of Cuyahoga County Department of Public Works (hereinafter referred to as CCDPW), and the City or Village of Name of Municipality, hereinafter referred to as "MUNICIPALITY" a municipal corporation of the State of Ohio, pursuant to the authority of Resolution/Ordinance No. \_\_\_\_\_ passed by Council on \_\_\_\_\_ for MUNICIPALITY.

**WITNESSETH:**

**WHEREAS**, MUNICIPALITY desires to retain CCDPW to perform certain preventive maintenance services related to roadways, including, but not limited to, sidewalk and curb ramp repairs, rebuilding catch basins/manholes, pavement striping, crack sealing, street sweeping and other related services for the MUNICIPALITY; and,

**WHEREAS**, MUNICIPALITY desires to have CCDPW direct bill said services; and

**NOW THEREFORE**, in consideration of the promises and mutual obligations contained herein to be observed and performed by the parties hereto, COUNTY and MUNICIPALITY hereby agree as follows:

**ARTICLE ONE – APPROVAL OF TASK ORDER FOR SERVICES**

- a. At the request of MUNICIPALITY, CCDPW will develop a task order of preventive maintenance services that CCDPW is willing to perform for the MUNICIPALITY.
- b. The task order shall include the scope of work to be performed, together with an estimate of the cost of the work prepared by CCDPW.
- c. CCDPW shall present the task order to the Mayor of MUNICIPALITY for approval. If CCDPW receives written approval from the Mayor, CCDPW shall proceed to perform the services set forth in the task order. After completing the services, CCDPW shall send an invoice to MUNICIPALITY for the cost of the services performed, which cost shall not exceed the estimate contained in the task order.
- d. MUNICIPALITY shall pay the invoice within thirty (30) days of receipt of same.
- e. MUNICIPALITY shall be responsible for acquiring and paying for any and all permits, easements and/or rights-of-entry required by COUNTY when performing the services set forth in an approved task order.

**ARTICLE TWO – GENERAL CONDITIONS**

This AGREEMENT constitutes the entire AGREEMENT between COUNTY and MUNICIPALITY, and supersedes any prior understanding or representation of any kind preceding the date of this AGREEMENT. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

- a. If any provision of this AGREEMENT is invalid or unenforceable for any reason, this AGREEMENT shall be divisible as to such provision and the remainder of this AGREEMENT shall be and remain valid and binding as though such provision was not included herein.
- b. This AGREEMENT may be modified in writing upon the mutual agreement of COUNTY and MUNICIPALITY.
- c. By entering into this AGREEMENT, MUNICIPALITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring COUNTY signatures may be executed by electronic means, and that the electronic signatures affixed by COUNTY to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. MUNICIPALITY also agrees to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of COUNTY.
- d. All COUNTY agreements, including this AGREEMENT, are subject to all applicable COUNTY ordinances, including but not limited to, the Cuyahoga County Ethics ordinance and Cuyahoga County Inspector General Ordinance. MUNICIPALITY agrees that the charter provisions and all ordinances, resolutions, rules and regulations of the COUNTY now or hereafter applicable shall be included in this AGREEMENT for all purposes.
- e. MUNICIPALITY represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24.
- f. This AGREEMENT has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of COUNTY and MUNICIPALITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of COUNTY and MUNICIPALITY. MUNICIPALITY recognizes and agrees that no public official or employee of COUNTY may be deemed to have apparent authority to bind COUNTY to any contractual obligations not properly authorized pursuant to COUNTY’S Contracting and Purchasing Procedures.

### **ARTICLE THREE – INDEMNITY AND INSURANCE**

MUNICIPALITY and COUNTY agree that neither entity can or will indemnify the other as both parties are political subdivisions and are prohibited by law from entering into an indemnification agreement. Accordingly, MUNICIPALITY and COUNTY agree that each will be solely and entirely responsible for its acts, errors, and omissions, and those of its employees and agents, during the performance of this AGREEMENT. MUNICIPALITY and COUNTY further agree that each will maintain and carry sufficient and appropriate liability insurance relative to the duties and obligations under this AGREEMENT.



IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the Day and Year first mentioned above.

**CITY or VILLAGE OF Name of MUNICIPALITY**

By: \_\_\_\_\_  
Name of Mayor, Mayor

**COUNTY OF CUYAHOGA, OHIO**

By: \_\_\_\_\_  
Edward FitzGerald, County Executive

The legal form and correctness  
of this Agreement is hereby approved.

**CITY or VILLAGE OF Name of MUNICIPALITY**

By: \_\_\_\_\_  
Name of Law Director, Law Director

Date: \_\_\_\_\_

**CUYAHOGA COUNTY LAW DEPARTMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_