

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-26

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND ENTER INTO A REGIONAL STORMWATER MANAGEMENT PROGRAM SERVICE AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT.

WHEREAS, The Northeast Ohio Regional Sewer District has developed a stormwater management program which will provide services of value to the City of Berea and other members; and

WHEREAS, the City of Berea has determined that it is in the best interests of Berea to enter into an agreement for these services; and

WHEREAS, these services are available to the City of Berea through the Northeast Ohio Regional Sewer District from fees paid by users of the system, and without further or direct cost to the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEREA,
STATE OF OHIO:

SECTION 1. That the Regional Stormwater Management Program Service Agreement, attached hereto as "Exhibit A", is hereby approved, and that the Mayor be and he is hereby authorized and directed to execute the same on behalf of the City of Berea.

SECTION 2. That the Clerk be directed to send copies of this Ordinance to the Northeast Ohio Regional Sewer District upon its adoption and approval by the Mayor.

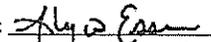
SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were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

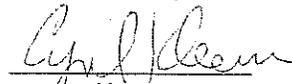
SECTION 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: March 21, 2016



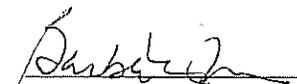
President of Council

ATTEST: 
Clerk of Council

APPROVED: March 23, 2016


Mayor

APPROVED AS TO FORM:



Director of Law

This Agreement is made and entered into this _____ day of _____, 20____, by and between the Northeast Ohio Regional Sewer District (District) acting pursuant to Resolution No. 54-13, adopted by the Board of Trustees of the District on March 21, 2013 (Exhibit "A"), and the City of Berea (City) acting pursuant to Ordinance No. _____, adopted on _____, 20____ (Exhibit "B").

WHEREAS, the District, pursuant to the authority of Ohio Revised Code Chapter 6119, and Title V of the District's Stormwater Management Code (Title V) is authorized to provide overall Stormwater Management of the Regional Stormwater System, including planning, financing, design, improvement, construction, inspection, monitoring, maintenance, operation, and regulation for the proper handling of stormwater runoff and the development and provision of technical support information and services to Member Communities; and

WHEREAS, the District has been established as a regional governmental entity mandated to operate and maintain a Regional Stormwater System in the general area encompassing fully or partially the City of Berea; and

WHEREAS, flooding is a significant threat to public and private property, streambank erosion is a significant threat to public and private property, water quality, wildlife, and aquatic and terrestrial habitats; and inadequate stormwater management practices damage the water resources of Northeast Ohio, impairing the ability of these waters to sustain ecological and aquatic systems; and

WHEREAS, there is a manifest need for a watershed-based approach to stormwater management to effectively and efficiently plan, design, construct, and maintain long-term solutions to stormwater problems; and

WHEREAS, to ensure the consistent and coordinated delivery of District Regional Stormwater Management Program services within the City, a Service Agreement between the District and the City is required.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises contained in this Agreement, the District and the City agree to the following:

Article 1
Definitions

- 1.01 Emergency shall mean the following: 1) a serious, unexpected, and/or potentially dangerous situation or event requiring immediate action by the District, as determined by the District's Chief Executive Officer, including but not limited to, the potential for personal injury, damage to property of the District or any other party, or damage to the environment; or 2) a situation or event affecting the District Chief Executive Officer's

ability to properly carry out his or her responsibilities relative to the operation of the District's Stormwater Management Program.

- 1.02 Local Stormwater System shall mean the entire system of watercourses, stormwater conveyance structures, or Stormwater Control Measures owned and/or operated by a private entity or a unit of local government other than the District. The Local Stormwater System shall include those watercourses, stormwater conveyance structures, or Stormwater Control Measures not designated as part of the Regional Stormwater System.
- 1.03 Member Community shall mean any city, village, or township wholly or partly within the District's stormwater service area.
- 1.04 Regional Stormwater System shall mean the entire system of watercourses, stormwater conveyance structures, and Stormwater Control Measures in the District's stormwater service area that are owned and/or operated by the District or over which the District has right of use for the management of stormwater, including both naturally occurring and constructed facilities. The Regional Stormwater System shall generally include those watercourses, stormwater conveyance structures, and Stormwater Control Measures receiving drainage from three hundred (300) acres of land or more. The District shall maintain a map of the Regional Stormwater System that shall serve as the official delineation of such system.
- 1.05 Stormwater Service Area shall mean all of the District's service area, excluding non-Member Communities and including those non-Member Communities with which the District has entered into an agreement for stormwater-only services as detailed in Section 5.0103 of Title V.
- 1.06 Stormwater Control Measure (SCM) shall mean an activity, measure, structure, device, or facility that helps to achieve stormwater management objectives, including, but not limited to, schedule or activities, prohibitions of practices, operation and maintenance procedures, treatment requirements, and other practices to prevent or reduce the pollution of water resources, to control stormwater volume and/or rate, or to otherwise limit impacts to the Regional Stormwater System. Stormwater control measures shall be designed to minimize maintenance and reduce the potential for failure.
- 1.07 Stormwater Management Plan shall mean the written documents and plans that set forth the stormwater management for a particular site, parcel, or area which meet the requirements of a Member Community's stormwater management regulation.
- 1.08 Stormwater Master Plan shall mean the District's plans for protecting and managing the Regional Stormwater System within a watershed.

- 1.09 Stormwater Construction Plan shall mean the District's plans for the construction of physical improvements to the Regional Stormwater System and District owned or operated Stormwater Control Measures.

Article 2

Stormwater Service Area and Regional Stormwater System

- 2.01 It is agreed that the Stormwater Service Area is located within the territorial boundaries of the City as set forth in the map and description attached as Exhibit "C." It is expressly understood that all territories annexed by the City during the term of this Agreement shall be automatically and immediately included within the District Stormwater Service Area and depicted on an amended map as Exhibit "C." The City shall notify the District within ninety (90) days of all territories annexed to the Stormwater Service Area.
- 2.02 It is agreed that the Regional Stormwater System within the territorial boundaries of the City are set forth in the map attached as Exhibit "C" that shall serve as the official delineation of such system.

Article 3

Regional Stormwater Management Services Performed By District

- 3.01 The District shall be responsible for and shall bear the expense of operating and maintaining the Regional Stormwater System, as the District deems necessary, in its sole discretion, except as otherwise provided herein. The cost of such operation and maintenance shall be included as part of the stormwater fee on a system-wide basis. The District shall provide the following inspection, operation, maintenance and monitoring activities along the Regional Stormwater System, as described more fully in the District's Stormwater Management Program Inspection and Maintenance Policy, attached hereto as Exhibit "D", and as may be updated from time to time.
- 3.01.01 The District shall have the right to perform inspections of the Regional Stormwater System and the Local Stormwater System that affects the Regional Stormwater System. Such inspections may include the following:
- i. Inspections in response to reports of problems or issues by account holders or the City, or related to problems or issues discovered by the District;
 - ii. Preventive maintenance inspections, defined as routine inspections on the Regional Stormwater System to ensure continued operation; and
 - iii. Base-line inspections and survey activities, defined as a systematic inspection of the Regional Stormwater System.
- 3.01.02 The District shall have the right to provide, at its own cost and expense, the planning, engineering, purchasing, construction, installation, inspection,

operation, maintenance, and monitoring activities along the Regional Stormwater System that the District, in its sole discretion, deems necessary or conducive to the proper and efficient functioning of the Regional Stormwater System, unless otherwise provided in this Agreement.

3.01.02.01 The District shall have the right to use the easements, streets, and other public ways and places of the City to the extent the City has such rights, for the purpose of inspection, operation, maintenance, and monitoring activities of the District as the District deems to be necessary for the operation of the Regional Stormwater System. After the District performs maintenance activities for the Regional Stormwater System, the surface easements and streets impacted by the District's maintenance activities shall be restored to previous condition at the District's expense, unless otherwise agreed to in writing between the Parties.

3.01.02.02 The District shall pay for the restoration of areas in which maintenance and construction is undertaken, shall pay for any property taken for such maintenance and construction and to the extent allowed by law, hold the City harmless from all damages or claims for damages to person or property arising from the performance of the District or its agents of any work to maintain Stormwater Control Measures unless otherwise provided in this Agreement. The City reserves the right to require its own inspectors, where it deems necessary, for work performed within its boundaries. The cost of any such inspections shall be borne by the City.

3.01.02.03 The District may coordinate work performed under this Agreement with projects performed by or at the request of the City. In such case, the Parties shall enter into a separate project agreement, setting forth the responsibilities of each party as to the components of the project, such as payment for utility relocations and betterments, scheduling, and site restoration requirements.

3.02 The District may undertake Emergency response activities to maintain areas of the Regional Stormwater System.

3.02.01 Emergency response activities may include the following:

- i. Damage assessments related to any hazard event;

- ii. Coordination activities with local, state, and federal agencies, including fire and service departments, local hazmat teams, Ohio EPA, U.S. Coast Guard, and Emergency Management agencies;
- iii. Responding to chemical or petroleum discharges;
- iv. Identification of the sources of spilled/illicitly discharged materials;
- v. Remedying or facilitating the remediation of spilled/illicitly discharged materials;
- vi. Evaluating facility performance during and following wet weather events;
- vii. Remediation of major blockages; and
- viii. Dissemination of public information related to an Emergency event.

3.02.02 The Parties shall designate the following individuals to serve as the primary and secondary points of contact in the event of any Emergency:

DISTRICT

Primary: Customer Service Department
(216) 881-8247

CITY

Primary: [TITLE],
[Phone]
Secondary: [TITLE],
[Phone]

3.03 The District shall develop and implement a Stormwater Construction Plan for the construction of physical improvements to the Regional Stormwater System and District-owned or -operated stormwater control measures. Projects included in the Stormwater Construction Plan shall be related to the proper function of the Regional Stormwater System and may require separate project agreements setting forth the responsibilities of the District and the City. The Stormwater Construction Plan shall be reviewed annually and updated as reasonable and necessary as new needs are identified. The District shall not undertake these activities without having the appropriate legal agreements with applicable property owners and obtaining clearance from applicable local, state, and federal agencies.

3.04 The District shall facilitate, coordinate, integrate, and maintain other stormwater related services, programs, and initiatives, generally on a watershed basis. Such services, programs, and initiatives shall be supportive of District and Member Community goals and objectives, including clean water, stream stability, flood control, education, account-holder service, and development of additional funding for Member Community stormwater management priorities.

3.04.01 The District shall provide support to the City with the Ohio Environmental Protection Agency's National Pollutant Discharge Eliminations System

(NPDES) General Permit for Municipal Separate Storm Sewer Systems requirements ("Phase II Stormwater NPDES Permit"), as Regional Stormwater Management Program funds are available and at the District's discretion. The City is responsible for all of its NPDES Permits, and any and all regulatory actions arising therefrom.

3.04.01.01 For Phase II Stormwater NPDES Permit Minimum Control Measure (MCM) #1 Public Education and Outreach, and MCM #2 Public Participation and Involvement, at the City's request, the District shall provide funding to the Cuyahoga County Soil and Water Conservation District (SWCD) for services agreed upon between the Cuyahoga County SWCD and the District.

3.04.01.02 For Phase II Stormwater NPDES Permit MCM #3 Illicit Discharge Detection and Elimination and MCM #6 Pollution Prevention and Good Housekeeping, at the City's request, the District shall provide funding to the Cuyahoga County Board of Health for services agreed upon between Cuyahoga County Board of Health and the District.

3.04.02 The District shall provide the City with Community Cost Share of 25% from funds derived from revenues collected from the City from the Stormwater Fee through a District-established application process. Member Communities may apply to the District for Community Cost Share revenues any time such funds are available, the project meets the Community Cost Share requirements, and is approved by the District. The Community Cost Share Program requirements, project application and approval process are detailed in the *Community Cost Share Policy* attached hereto as Exhibit "E." The *Community Cost Share Policy* may be revised or updated without formal need to modify this agreement.

3.05 The District shall establish Watershed Advisory Committees for those portions of the Rocky River, Cuyahoga River, Lake Erie Direct Tributaries, and Chagrin River watersheds within the District's stormwater service area. Per Section 5.0401 of Title V, the District shall establish rules, policies, and procedures for the membership and administration of the Watershed Advisory Committees and these shall be available for the City review and comment. The City shall annually appoint one (1) representative to participate in the Rocky River Watershed Advisory Committee. The Watershed Advisory Committee will convene at least two (2) times per year. The District Watershed Advisory Committee roles and responsibilities are detailed in the District's *Watershed Advisory Committee Policy* attached hereto as Exhibit "F." The *Watershed Advisory Committee Policy* may be revised or updated without entering into a written modification to this agreement.

- 3.06 The District shall develop Stormwater Master Plans for portions of the Rocky River Watershed within the District's stormwater service area. The plans shall address both the needs of the Regional Stormwater System and of the watersheds. The District shall consider input from the City.
- 3.07 The District shall review proposed Stormwater Management Plans for any project regulated by the City by ordinance or resolution and located wholly within the District's stormwater service area. The Stormwater Management Plan submission process is detailed in the *Review of Separate Stormwater Management Plans Submitted by Member Communities Policy*. The *Review of Separate Stormwater Management Plans Submitted by Member Communities Policy* is attached hereto as Exhibit "G." The *Review of Separate Stormwater Management Plans Submitted by Member Communities Policy* may be revised or updated without entering into a written modification to this agreement. This requirement does not apply to Stormwater Management Plans for new development or redevelopment in the combined sewer system. These Stormwater Management Plans shall be submitted to the District and reviewed by the District pursuant to the requirements set forth in *Title IV: Combined Sewer Use Code*.
- 3.08 The District shall cooperate with all applicable federal, state, and local authorities to obtain permits and comply with applicable requirements to conduct activities described in Section 3.

Article 4
Obligations of City to the District

- 4.01 The City shall remain in compliance at all times with Title V.
- 4.02 The City shall provide access to the Regional Stormwater System accessible through public rights of way and assist with private property access for the activities described in Article 3 of this Agreement.
- 4.03 The City shall provide the District with available or applicable data and information on the Regional Stormwater System and the Local Stormwater System to assist the District in the development of the Stormwater Construction Plan and Stormwater Master Plans as described in Sections 3.03 and 3.06 of this Agreement.
- 4.04 The City shall provide representation for the District's Watershed Advisory Committee described in Section 3.05 of this Agreement. The City roles and responsibilities on the Watershed Advisory Committee are detailed in the District's *Watershed Advisory Committee Policy attached hereto*. The *Watershed Advisory Committee Policy* may be revised or updated without formal need to modify this agreement.
- 4.05 The City shall cooperate with and assist the District in obtaining the City permits, easements, rights-of-way, access, traffic control, and other rights and privileges

necessary to facilitate the District's work in an expeditious manner. The City shall not unreasonably withhold any necessary approvals, or interfere with the District's acquisition of the above items. The City shall not charge the District for any permits in connection with the District's work.

4.05.01 The City designates its Insert Title to serve as the District's primary contact for the purpose of assisting the District in obtaining permits, access to rights-of-way, and traffic control.

4.06 The City shall provide the District copies of the proposed Stormwater Management Plan for any project that is regulated by the City's local stormwater management ordinance or resolution and that is located within the District's Stormwater Service Area. Copies shall be submitted in hard copy and/or electronic format to the District within seven (7) business days of the submission of such plans to the City. The Stormwater Management Plan submission process is detailed in the *Review of Separate Stormwater Management Plans Submitted by Member Community's Policy*. The *Review of Separate Stormwater Management Plans Submitted by Member Community's Policy* is attached hereto. The *Review of Separate Stormwater Management Plans Submitted by Member Community's Policy* may be revised or updated without formal need to modify this agreement. This requirement does not apply to Stormwater Management Plans for new development or redevelopment in the combined sewer system. These Stormwater Management Plans shall be submitted to the District and reviewed by the District pursuant to the requirements set forth in the District's *Title IV: Combined Sewer Use Code*.

4.07 The City agrees to make no claim against the District on account of any damage to person or property or to any regional facility in any public street, highway, or easement, which claim arises before the District has notice of the condition causing such damage and before the District has had a reasonable period of time to respond to such condition after such notice is received.

Article 5

District's Authority to Enter Property

5.01 Nothing in this Agreement or Title V shall be construed to impair the District's emergency powers or restrict any powers the District may have to operate the Regional Stormwater System, including the right to enter upon property to perform inspections and exercise other rights and obligations contained in Chapter 6119 of the Ohio Revised Code.

5.02 The District shall not undertake the activities described in Section 3.03 of this Agreement without having the appropriate legal agreements with applicable property owners, and/or following the appropriate legal processes, and obtaining clearance from applicable local, state, and federal agencies.

Article 6
General Conditions

- 6.01 The City shall have a cause of action against the District if the City is damaged as the direct result of the District's breach of any term of this Agreement.
- 6.02 The District may provide additional service(s) or expand the stormwater service area to the City beyond what is provided in this Agreement and under the Regional Stormwater Management Program, upon request by the City.
- 6.02.01 When the City requests the District provide service(s) or perform work outside the scope of this Agreement and under the Regional Stormwater Management Program, and the District agrees to provide such additional services or work, the Parties shall enter into a separate project agreement to memorialize the understanding of the Parties with respect to such additional services.
- 6.02.02 When the City requests the District expand the stormwater service area to the City beyond the area included within the Regional Stormwater Management Program, and the District agrees to such expansion, the Parties shall enter into an amendment to this Agreement or a new Stormwater Management Program Service Agreement, setting forth the expanded service area and fee structure.
- 6.03 This Agreement shall at all times be governed in accordance with Title V of the District's Stormwater Management Code, including any future modifications thereto.

Article 7
Dispute Resolution

- 7.01 The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.
- 7.02 The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representative	City Representative
Deputy Director of Watershed Programs	<i>{Insert Representative(s)}</i>

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	<i>{Insert Representative(s)}</i>

- 7.03 If the Parties remain unable to resolve the dispute within 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 7.02 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.
- 7.04 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 9, Remedies, below.

Article 8
Term

- 8.01 This Agreement shall begin as of the date first-above written and shall continue for the duration of the District's Regional Stormwater Management Program.

Article 9
Remedies

- 9.01 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 10
Counterpart Signatures

- 10.01 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 11
Governing Law

- 11.01 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 12
Disclaimer of Joint Venture

12.01 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 13
Authority to Execute

13.01 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 14
Exhibits

The following exhibits are attached hereto and incorporated herein:

- Exhibit "A" – NEORS Resolution
- Exhibit "B" – City Ordinance
- Exhibit "C" – Stormwater Service Area
- Exhibit "D" – Stormwater Management Program Inspection and Maintenance Policy
- Exhibit "E" – Community Cost Share Policy
- Exhibit "F" – Watershed Advisory Committee Policy
- Exhibit "G" - Review of Separate Stormwater Management Plans Submitted by Member Communities Policy

The Parties hereto have executed and delivered this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Julius Ciaccia
Chief Executive Officer

AND: _____
Darnell Brown, President
Board of Trustees

CITY OF BEREA

By: _____
Title: _____

The legal form and correctness
of this instrument is approved.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Chief Legal Officer

Date: _____

The legal form and correctness
of this instrument is approved.

CITY OF BEREA

By: _____
Director of Law

Date: _____

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.