

RESOLUTION NO.: 65-2015
INTRODUCED BY: Mayor Roche

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
UTILITY AGREEMENT WITH CUYAHOGA COUNTY.

WHEREAS, the Cuyahoga County Department of Public Works has offered a "Utility Agreement" to the City of Richmond Heights to replace the current "Memorandum of Agreement for the Construction, Operation and Maintenance of Sewerage Systems in the City of Richmond Heights", dated January 22, 1991, which provided for maintenance and repair of the City's sanitary sewers and to a limited extent the City's storm sewers; and the proposed Agreement will also provide for maintenance, repair, permitting and inspection services for City-owned sanitary sewers, as well as the same services for City-owned storm sewers and water lines, and provides for funding for these services through real estate tax assessments; and

WHEREAS, the Mayor, Director of Service and City Engineer have met and discussed the Utility Agreement with the County official responsible for administration of the proposed Agreement, reviewed the provisions of the Agreement and have recommended to this Council the benefits, potential savings and funding sources provided by the proposed "Utility Agreement".

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Richmond Heights, County of Cuyahoga, State of Ohio, that:

Section 1: The Mayor is authorized and directed to execute, for and on behalf of the City of Richmond Heights, a "Utility Agreement" with Cuyahoga County, in substantially the form set forth in Exhibit A, attached hereto and incorporated herein, but subject to this Council's agreement to and establishment of a schedule of rates for the services to be provided by the County and to be set forth in an Exhibit A to the Agreement.

Section 2: The Director of Finance is authorized to appropriate to a proper account the funds necessary in 2015 for the agreement authorized in Section 1.

Section 3: The Clerk of Council is directed to certify a copy of this Resolution along with executed copies of the contract to Cuyahoga County.

Section 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

David H. Roche, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

Eloise Cotton-Henry
President of Council

EXHIBIT A

Utility Agreement Between County of Cuyahoga, Ohio And the City of Richmond Heights, Ohio

This AGREEMENT is made this _____ day of _____ 2015 ("Effective Date"), by and between **Cuyahoga County, Ohio** (hereinafter referred to as "COUNTY"), pursuant to the authority of Resolution/Ordinance No. _____, passed by Cuyahoga County Council/Board of Control on _____, on behalf of the Cuyahoga County Department of Public Works (hereinafter referred to as "CCDPW"), and the City of Richmond Heights (hereinafter referred to as "CITY"), pursuant to the authority of Ordinance/Resolution No. _____ passed by Council on _____.

WHEREAS, the entire territory within the limits of the CITY is designated within County Sewer District No. 3;

WHEREAS, the CITY owns all of the storm and sanitary sewers and sanitary sewerage systems within the CITY located in the public right-of-way and easements (the "CITY Sewers"), excluding any sanitary sewers owned and maintained by the Northeast Ohio Regional Sewer District, hereinafter NEORSD. Future improvements to CITY Sewers shall similarly be owned by the CITY;

WHEREAS, the CITY owns all distribution water lines located in the public right-of-way and easements within the CITY, excluding the transmission lines owned and maintained by the City of Cleveland Water Department ("CWD");

WHEREAS, the CITY desires to have the COUNTY maintain its CITY Sewers as part of the storm and sanitary sewer system of County Sewer District No. 3;

WHEREAS, the CITY desires to have the COUNTY collect funds for the CITY'S maintenance of the CITY Sewers;

WHEREAS, the CITY may request the COUNTY to collect funds for the CITY'S maintenance of the CITY'S water lines;

WHEREAS, Council for the CITY has adopted Ordinance/Resolution No. _____, on _____, authorizing the Mayor to enter into a Utility Agreement with the COUNTY;

NOW THEREFORE, it is agreed that in consideration of the covenants and agreements contained herein and the conditions enumerated below, the CITY and the COUNTY agree as follows:

SECTION I. GENERAL CONDITIONS

- A. This AGREEMENT shall supersede all other agreements heretofore made between COUNTY and CITY relative to the maintenance and repair of the CITY Sewers.
- B. By entering into this AGREEMENT, CITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, sub-grantees, 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. CITY 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.
- C. 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. CITY 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.
- D. CITY represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.
- E. This AGREEMENT has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of COUNTY and CITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of the COUNTY and the CITY. CITY 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.

SECTION II. SUPPLEMENTAL GENERAL CONDITIONS

- A. The CITY shall own all storm and sanitary systems within its limits, including any improvements made during the term of this AGREEMENT and shall obtain all regulatory permits required, except for any sanitary sewer system owned by NEORSD.
- B. The CITY shall be responsible for acquiring any and all permits, easements and rights of entry necessary for the construction, operation, maintenance and repair of the CITY Sewers.
- C. The CITY shall be responsible for the design and construction of the expansion of the CITY Sewers, and shall notify the COUNTY prior to approving any expansion of the service area. Upon completion of the work on any CITY Sewers, the same becomes part of the County Sewer District No. 3, to be thereafter maintained by the COUNTY under the terms and conditions of this AGREEMENT.
- D. All storm and sanitary sewer improvements, maintenance and repair shall be in accordance with the County Rules and Regulations dated October 2010 and the *Uniform Standards for*

Sewerage Improvements dated December 1998, and as such standards, rules and regulations may be hereafter amended.

- E. The CITY shall notify the COUNTY when any work is to be performed in the vicinity of the storm or sanitary sewerage system that may affect the integrity of said system.
- F. Before construction of any storm or sanitary sewerage improvement, the plans shall be reviewed by the CITY Engineer and approved by the COUNTY.
- G. No work or construction of any storm and/or sanitary sewer improvements shall be done except in the presence of an inspector employed by the COUNTY. The COUNTY shall be responsible for inspection of the following:
 - i. Storm and sanitary sewers;
 - ii. Residential storm and sanitary service connection or laterals;
 - iii. Commercial storm and sanitary service connections or laterals; and
 - iv. Industrial storm and sanitary service connections or laterals.

The CITY may also inspect construction work on main line sanitary and storm sewers.

- H. The COUNTY shall be the custodian of records for the CITY Sewers. Upon execution of this AGREEMENT, the CITY shall deliver to the COUNTY those storm and sanitary sewerage system and appurtenances records currently in the control of the CITY.
- I. The COUNTY will prepare and submit an annual service report for all services performed for the CITY pursuant to this AGREEMENT no later than the end of the first quarter following the end of the fiscal year. Said annual service report shall include an accounting of revenue collected by the COUNTY as well as the charges associated with the services performed by the COUNTY for and on behalf of the CITY. Upon agreement of the parties, more frequent reports, such as monthly or quarterly reports, shall be provided.
- J. The monies collected for the storm and sanitary sewer lines cannot be comingled. Additionally, upon reasonable notice by the CITY, the CITY may request an itemization of the balances contained in the storm and sanitary sewer funds.

SECTION III. SANITARY SEWERS

- A. The COUNTY and the CITY may each provide planning and engineering of all sanitary sewerage projects in cooperation with each other. The CITY shall have the right of first refusal to perform said planning and engineering services, provided further that all planning and engineering projects must be reviewed and approved by the COUNTY.
- B. The COUNTY shall establish a schedule of just and equitable rates to be collected from the owners of all parcels within the CITY that have accessibility to sanitary sewers. In accordance with Section 729.49 of the Ohio Revised Code, the COUNTY shall at any time after billing said users, collect unpaid charges for system use in the manner prescribed by law for municipal corporation taxes. Upon collection by the County Treasurer, such sanitary sewer system money shall be placed in a distinct fund to the credit of Sewer District No. 3 (hereinafter referred to as the District Sanitary Fund.) It is understood that the established rate for Sanitary Sewer System services shall be set forth in the attached Pricing Schedule, identified as Exhibit "A", but that said rate may be adjusted by the COUNTY to ensure sufficient monies within the District Sanitary Fund to cover the cost of services performed by the COUNTY under the terms of this AGREEMENT, as well as providing for a reasonable carry-over balance. The COUNTY agrees to provide the CITY with a six (6) months notice for any sanitary rate increase.

C. Unless otherwise authorized in writing by the parties, during the term of this AGREEMENT (and any extension thereof), the CITY agrees to utilize the services of the COUNTY as sole provider, to the exclusion of all other entities, regarding the following sanitary sewer system services (“core services”):

1. Mainline sanitary sewer cleaning and televising;
2. Maintenance and repair of sanitary mainlines and lateral connections in the public right-of-way and public easements;
3. Engineering (plan review and approval only);
4. Pump station maintenance;
5. Twenty-four hour service;
6. Sanitary sewer lateral cleaning in the public right-of-way. COUNTY shall not be responsible for sanitary sewer lateral cleaning on private property, but may do so at COUNTY’s discretion or at the request of the CITY;
7. Issuance of permits;
8. Inspection; and
9. Inflow & Infiltration inspection.

It is understood that the CITY may, by written submission, request additional services from the COUNTY beyond these “core services.”

D. For and in consideration of the COUNTY’s performance of said “core services” and any additional services requested by the CITY, the CITY agrees to pay the COUNTY an amount equal to those charges enumerated in the current County Hourly Rate Sheet, as may be amended from time to time, or such other reasonable charge if not specifically enumerated therein. Said charges shall be deducted by the COUNTY from the District Sanitary Fund.

E. The CITY agrees that the current County Hourly Rate Sheet applies only to services performed by the employees of the CCDPW, Sewer Division. All other services performed by parties other than employees of the Sewer Division will be billed for actual costs incurred.

F. Sewer connection permits shall be obtained and issued by the CCDPW, Sewer Division for all sanitary lateral and service connections prior to tie in, after authorization by the CITY.

G. The CITY shall be responsible for the collection of all tap-in fees.

H. The COUNTY shall be responsible for the sampling, testing, and metering of sanitary sewers and service connections.

SECTION IV. STORM SEWERS

A. Before construction of any storm sewers, the plans shall be reviewed and approved by the CITY Engineer. The COUNTY shall review and approve the plans financed by the District Storm Water Fund (Defined herein.)

B. The COUNTY, as directed by the CITY, shall establish a schedule of just and equitable storm water rates to be collected from the owners of all parcels within the CITY (unless accepted by mutual agreement of the COUNTY and CITY.) Upon collection by the County Treasurer, such storm water money shall be placed in a distinct fund to the credit of Sewer District No. 3 (hereinafter referred to as the District Storm Water Fund.) The established rate for Storm Water shall be set forth in the attached Pricing Schedule, identified as Exhibit “A”, but that said rate may be adjusted by the COUNTY, as directed

by the CITY, to ensure sufficient monies within the District Storm Water Fund to cover the cost of services performed by the CITY and/or COUNTY under the terms of this AGREEMENT, as well as providing for a reasonable carry-over balance.

- C. Unless otherwise agreed in writing by the parties, the CITY agrees to provide the necessary personnel, equipment and material for the operation, maintenance and repair of city-owned storm sewer main lines, lateral connections in the public right-of way or easements, service connections on public property, catch basins, catch basin laterals, retention and detention basins, manholes, culverts, ditches and natural water courses all on public property or easements only. Provided sufficient funds exist, the CITY may apply to the COUNTY, and the COUNTY shall reimburse the CITY from the District Storm Water Fund, for the reasonable cost of maintenance, repair, replacement and construction of storm water sewerage systems.
- D. Provided sufficient funds exist in the District Storm Water Fund, the COUNTY agrees, on a request basis only, to provide the necessary personnel, equipment and material for the maintenance of city-owned storm sewer main lines in the public right of way or easements.
- E. For and in consideration of the COUNTY's performance of said services requested by the CITY, the CITY agrees to pay the COUNTY an amount equal to those charges enumerated in the current County Hourly Rate Sheet as may be amended from time to time, or such other reasonable charge if not specifically enumerated therein. Said charges shall be deducted by the COUNTY from the District Storm Water Fund.
- F. The CITY agrees that the current County Hourly Rate Sheet applies only to services performed by the employees of the CCDPW, Sewer Division. All other services performed by parties other than employees of the Sewer Division will be billed for actual costs incurred.
- G. Except as otherwise provided herein, new work or construction of any storm sewer main lines, catch basins, catch basin laterals, manholes, culverts and storm water detention and retention basins shall be done by, permitted by, and inspected by the County, unless otherwise directed by the CITY.
- H. Storm sewer connection permits shall be obtained from the COUNTY for all lateral connections prior to tie in. The construction of such lateral connections shall be in the presence of an inspector employed by the COUNTY.
- I. The CITY shall be responsible for the collection of any storm sewer tap-in fees.

SECTION V. WATER LINES

- A. The COUNTY, as directed by the CITY, shall establish a schedule of just and equitable water line rates to be collected from the owners of all parcels within the CITY that have accessibility to a water line. Upon collection by the County Treasurer, such water line money shall be placed in a distinct fund to the credit of County Sewer District No. 3 (hereinafter referred to as the District Water Line Fund.) The established rate for Water Lines shall be set forth in the attached Pricing Schedule, identified as Exhibit "A", but that said rate may be adjusted by the COUNTY, as directed by the CITY, to ensure sufficient monies within the District Water Line Fund to cover the cost of services performed by the CITY and/or COUNTY under the terms of this Agreement, as well as providing for a reasonable carry-over balance.

- B. Unless otherwise agreed in writing by the parties, the CITY agrees to provide the necessary personnel, equipment and material for performing capital improvements of the city-owned water lines in the public right-of-way or easements. Provided sufficient funds exist, the CITY may apply to the COUNTY, and the COUNTY shall reimburse the CITY from the District Water Line Fund, for the reasonable cost of capital improvements to the water system.
- C. Provided sufficient funds exist in the District Water Line Fund, the COUNTY agrees, on a request basis only, to provide the necessary personnel, equipment and material for performing capital improvements for the city-owned distribution water lines in the public right of way or easements on behalf of the CITY.
- D. Before performing any improvements to the water lines, the CITY shall submit plans and obtain approval from the Cleveland Water Department
- E. For and in consideration of the COUNTY's performance of said services requested by the CITY, the CITY agrees to pay the COUNTY for the actual cost incurred by the COUNTY in performing all capital improvements to the city-owned distribution water lines. Said charges shall be deducted by the COUNTY from the District Water Line Fund.

SECTION VI. TERMINATION OF AGREEMENT

This AGREEMENT shall remain in full force and effect until abrogated by either party to the AGREEMENT upon one year written notice. Any notice of termination shall be certified mail, addressed to the person designated for receipt of notices in this AGREEMENT. Upon termination of the Agreement by the CITY, the CITY shall pay any and all outstanding expenses relating to the performance of this AGREEMENT within thirty (30) days of the receipt of a statement showing monies owed. However, either the CITY or the COUNTY may elect to have the COUNTY continue collecting funds from the respective parcels within the CITY until such time as all debt and/or liabilities incurred by the CITY under the terms of this AGREEMENT are paid, unless the CITY elects to pay all outstanding debts and/or liabilities in full within thirty (30) days of the receipt of a statement showing monies owed.

SECTION VII. LIABILITY AND INSURANCE

- A. Each party assumes responsibility for its own acts, omissions, negligence and intentional acts that may cause damage or injury.
- B. COUNTY shall have self-insurance or an insurance policy sufficient to cover the work of CCDPW in the CITY. The CITY shall be named an additional insured on any policy of insurance and provided a certificate of insurance showing such additional insured status.

SECTION VIII. INDEPENDENT CONTRACTOR

The COUNTY shall be considered an independent contractor, and its employees and the employees of CCDPW shall not be considered employees of the CITY.

SECTION IX. NOTICES

Any notices provided under this AGREEMENT shall be provided to the following, unless a party notifies the other party in writing of a change of contact:

a. For the CITY:

City of Richmond Heights
26789 Highland Road
Richmond Heights, Ohio 44143

b. For the COUNTY:

Director of Public Works
Cuyahoga County Department of Public Works
2079 E. 9th Street
Cleveland, Ohio 44115

IN WITNESS WHEREOF, authorized representatives of each party to this AGREEMENT, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

COUNTY OF CUYAHOGA, STATE OF OHIO

By: _____
Armond Budish – County Executive

Date: _____

Approved as to legal form:

Director of Law
Cuyahoga County

CITY OF RICHMOND HEIGHTS
By: _____
David Roche, Mayor

Date: _____

Approved as to legal form:

Director of Law
City of Richmond Heights

