

ORDINANCE NO. 2020 - 72

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

AN EMERGENCY ORDINANCE AUTHORIZING THE VILLAGE ENGINEER TO PREPARE PLANS AND SPECIFICATIONS AND TO ADVERTISE FOR BIDS, FOR THE CONSTRUCTION OF A SALT STORAGE FACILITY AT THE OAKWOOD VILAGE SERVICE GARAGE AND FOR THE MAYOR TO ENTER INTO A COMMUNITY COST-SHARE AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT TO OBTAIN COST REIMBURSEMENTS FOR SUCH WORK AND DECLARING AN EMERGENCY

WHEREAS, the Oakwood Village Service Director has informed the Mayor and the Village Engineer that the existing salt storage facility located at the Oakwood Village Service Garage is in a state of disrepair and can no longer provide adequate protection against the Northeast Ohio climatic conditions; and

WHEREAS, the Village is currently operating under the Ohio EPA's National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit Coverage (Small MS4 General Permit) which gives authorization to discharge to the surface waters of Ohio; and

WHEREAS, the Ohio EPA's (NPDES) Storm Water General Permit for a Small MS4 (Municipal Separate Storm Water System) requires the Village of Oakwood to provide effective storm water management by using a holistic system management approach known as Best Management Practices (BMPs); and

WHEREAS, the Ohio EPA's BMPs encourage Pollution Prevention and Good Housekeeping at all municipal facilities including, but not limited to maintenance areas, storage yards, waste transfer stations and salt storage areas; and

WHEREAS, municipal activities such as winter road maintenance, and in particular the storage of road salt, can release pollutants into MS4s that ultimately discharge to the surface waters of Ohio; and

WHEREAS, the Northeast Ohio Regional Sewer District (NEORS) provides funding to Member Communities, including the Village, for community specific storm water management projects under the Community Cost-Share Program; and

WHEREAS, the Village Engineer and the Service Director have been informed by NEORS that the construction of a new salt storage facility would effectively serve as a Pollution Prevention and Good Housekeeping BMP and thus qualify as a storm water management project eligible for Community Cost-Share Program funds; and

WHEREAS, the Village Engineer and the Service Director were successful in their application to the NEORS for the disbursement of Community Cost-Share Program funds associated with the construction of a new salt storage facility at the Oakwood Village Service Garage facility in the amount of Ninety Six Thousand Five Hundred Dollars (\$96,500.00) for such services.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio that:

SECTION 1. The Mayor is hereby authorized and directed to execute a Community Cost Share Agreement, attached hereto and incorporated herein as Exhibit 1, and any other documents with the NEORSB as required for the disbursement of Community Cost Share Program funds in the total amount of Ninety Six Thousand Five Hundred Dollars (\$96,500.00) to provide services associated with the construction of a new salt storage facility at the Oakwood Village Service Garage facility in the Village of Oakwood.

SECTION 2. The Engineer be and is hereby authorized and directed to prepare all required plans and specifications for the construction of new salt storage facility at the Oakwood Village Service Garage facility and to advertise for bids. Such plans and specifications shall be placed on file with the Village of Oakwood prior to advertising for bids. Upon receipt of the bids, the Mayor shall provide all members of Council with a bid tabulation summary for each bidder prior to the Board of Control awarding any contract for the matters described in Section 1 hereof in accordance with the provisions contained in Ordinance 1994-80.

SECTION 3. Council hereby appropriates a sum not to exceed Ninety Six Thousand Five Hundred Dollars (\$96,500.00) for the purposes provided in Section 1 hereof. The Director of Finance be and is hereby authorized and directed to issue vouchers in the amounts and for the purposes as expressed in Section 1 hereof upon the award of contracts pursuant to Board of Control approval, said amounts to be charged to the Sewer Fund.

SECTION 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village, the reason for the emergency being that the same relates to the daily operation of a municipal department, therefore, provided it receives two-thirds (2/3) of the vote of all members of Council elected thereto, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: _____

Johnnie A. Warren III, President of Council

Debra L. Hladky, Clerk of Council

Presented to the
Mayor _____

Approved: _____

Mayor, Gary V. Gottschalk

I, Debra L. Hladky, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that the foregoing Ordinance No. 2020 - 72 was duly and regularly passed by this Council at the meeting held on the _____ day of _____, 2020.

Debra L. Hladky, Clerk of Council

POSTING CERTIFICATE

I, Debra L. Hladky, Clerk of Council of the Village of Oakwood, County of Cuyahoga and State of Ohio, do hereby certify that Ordinance No. 2020 -72 was duly posted on the _____ day of _____, 2020, and will remain posted for a period of fifteen (15) days thereafter in the Council Chambers and in not less than five (5) of the most public places in the municipality as determined by the Council of the said Village.

Debra L. Hladky, Clerk of Council

DATED: _____

**COMMUNITY COST-SHARE AGREEMENT
BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
VILLAGE OF OAKWOOD**

This Agreement is made and entered into this _____ day of _____, 2020, 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 Village of Oakwood (Village) acting pursuant to Ordinance/Resolution No. _____, adopted on _____, 2020 (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 Village 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 Salt Shed project (the “Project”) as a Community Cost-Share project proposed by the Village; 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 **Village Obligations**

1.1 The Village 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 Village’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 the Village 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 Village fails to maintain the Project in accordance with this Agreement, the Village 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 Village 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 Village'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 Village, 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.

Article 2.0 **District's Obligations**

- 2.1 The District agrees to perform as follows:
 - 2.1.1 Allocate \$96,500.00 to the Village for the Project from the Village's Community Cost-Share Account.
 - 2.1.2 Provide reimbursement of funds up to \$96,500.00 to the Village within 60 days of receipt of a complete Request for Payment from the Village, 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 Village 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 | Village Representative |
|--------------------------------|-------------------------------|
| Watershed Team Leader | Village Engineer |

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 | Village Representative |
|--------------------------------|-------------------------------|
| Director of Watershed Programs | Mayor |

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" – Village Ordinance/Resolution
- Exhibit "C" – District-Approved Community Cost Share Application

Signatures on next 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

VILLAGE OF OAKWOOD

By: _____

Title: _____

The Legal Form and Correctness of this
Instrument is hereby Approved:

VILLAGE OF OAKWOOD

Assistant/Director of Law

This Instrument Prepared By:
Cyrus L. Patton
Associate 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]

CONTRACT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

VILLAGE OF OAKWOOD

FOR

COMMUNITY COST-SHARE PROJECT:
SALT SHED

Total Approximate Cost: \$96,500.00

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

Budget Center 8100