

1st reading 8-7-19 _____
2nd reading suspended rules _____
3rd reading _____
Voted On 8-7-19 _____
Ayes: 7 _____ Nays: 0 _____
PASSED DEFEATED

ORDINANCE NO. 2019-19

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN
AGREEMENT WITH THE NORTHEAST OHIO REGIONAL
SEWER DISTRICT (“DISTRICT”) AND DECLARING AN
EMERGENCY.**

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 Orange 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 Miles Road Culvert Replacement project (the “Project”) as a Community Cost-Share project proposed by Orange Village; and

WHEREAS, this Council desires to approve an agreement with the Northeast Ohio Regional Sewer District.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, CUYAHOGA COUNTY, STATE OF OHIO:

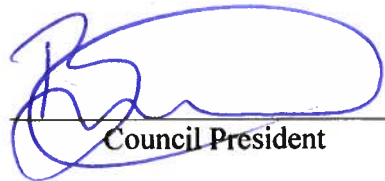
SECTION 1. That the Mayor be, and hereby is, authorized to enter into an Agreement with the Northeast Ohio Regional Sewer District to allocate \$62,786.03 to Orange Village for the Miles Road Culvert Replacement project from the Village’s Community Cost-Share Account and provide reimbursement of funds up to \$62,786.03 within sixty (60) days of receipt of a complete Request for Payment from the Village, detailing costs related to the Project. The Agreement shall be in a form substantially similar to “Exhibit A”, attached hereto and incorporated herein, provided that the Mayor and Law Director may make changes to the

Agreement in the best interests of the Village. The approval of the contract for the construction of the improvements shall be in accordance with the Charter and Ordinances of Orange Village.

SECTION 2. That the actions of this Council concerning and relating to the passage of this legislation 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 held in compliance with all legal requirements of the law.

SECTION 3. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of Orange Village, wherefore, this Ordinance shall be in full force and effect immediately upon its passage by Council and its approval by the Mayor, or as otherwise provided by law..

PASSED: August 7, 2019

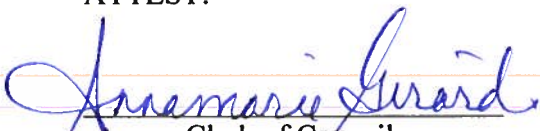


Council President

Submitted to the Mayor for approval on this 7th day of August, 2019

Approved by the Mayor this 7th day of August, 2019

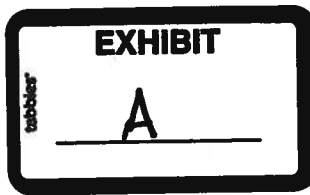
ATTEST:



Clerk of Council



Mayor



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

2019 This Agreement is made and entered into this 7th day of AUGUST, 2018, 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 Orange (Village) acting pursuant to Ordinance/Resolution No. 2019-19, adopted on AUGUST 7, 2019 (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 Miles Road Culvert Replacement 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 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) Community Cost-Share Program in coordination with Village, under the provisions of the NEORS 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 review and may not necessarily reflect the views of NEORS, 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 \$62,786.03 to the Village for the Project from the Village's Community Cost-Share Account.

2.1.2 Provide reimbursement of funds up to \$62,786.03 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

3.1 The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.

3.2 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

3.3 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.

- 3.4 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

- 4.1 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 laws of the State of Ohio.

Article 5 Counterpart Signatures

- 5.1 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

- 6.1 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

- 7.1 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

- 8.1 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

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 ORANGE

By: Kathy U. Mulcahy
Title: Mayor

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

VILLAGE OF ORANGE

[Signature]
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.

[FOR NEORS D USE]

CONTRACT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

VILLAGE OF ORANGE

FOR

COMMUNITY COST-SHARE PROJECT:
MILES ROAD CULVERT REPLACEMENT

—
Total Approximate Cost:
\$62,786.03

—

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

The legal form and correctness of the within instrument are hereby approved.

—
Date

—
CHIEF LEGAL OFFICER

—
Date