

RESOLUTION NO. 2024-23
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY RESOLUTION
AUTHORIZING AND DIRECTING THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO A REIMBURSEMENT AGREEMENT WITH THE
NORTHEAST OHIO REGIONAL SEWER DISTRICT AS AND FOR
THE COSTS TO ACQUIRE THE REAL ESTATE AT 1006 WOODLANE DRIVE
FOR THE WORTON PARK PHASE 2 CULVERT REPLACEMENT PROJECT**

WHEREAS, the Village, in coordination with the Northeast Ohio Regional Sewer District (“NEORS D”), has been working on a plan to improve stormwater drainage and related infrastructure in the Worton Park neighborhood; and

WHEREAS, Phase 1 of the Worton Park Culvert Replacement Project was completed in 2023; and

WHEREAS, the Village now wishes to proceed with Phase 2 of the Worton Park Culvert Replacement Project; and

WHEREAS, in order to do so, it is necessary to acquire certain real estate located at 1006 Woodlane Drive for the Phase 2 of the Worton Park Culvert Replacement Project; and

WHEREAS, NEORS D has agreed to reimburse the Village for the costs related to the acquisition of the real estate and has set forth the terms and conditions related to the reimbursement of those costs in a Reimbursement Agreement; and

WHEREAS, the Village deems it in the best interest of the health, safety and welfare of all Village residents and inhabitants to enter into the Reimbursement Agreement with the NEORS D for the Worton Park Phase 2 Culvert Replacement Project.

BE IT RESOLVED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. The Council of Mayfield Village does hereby authorize and direct the Mayor and President of Council to enter a Reimbursement Agreement with the Northeast Ohio Regional Sewer District for the costs to acquire the real estate at 1006 Woodlane Drive that is necessary for the Worton Park Phase 2 Culvert Replacement Project on the terms and in a form substantially similar to the Agreement attached hereto and incorporated herein as Exhibit “A”.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council, and of its committees, resulting in such formal action, took place

in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it provides for funding necessary to facilitate the Worton Park Phase 2 Culvert Replacement Project. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.



STEPHEN SCHUTT
Council President

First Reading: April 15, 2024

Second Reading: Suspended, 2024

Third Reading: Suspended, 2024

PASSED: April 15, 2024



BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:



DIANE A. CALTA, ESQ.,
Director of Law

ATTEST: 

MARY BETH BETSA, MMC
Clerk of Council

Reimbursement Agreement

between

Northeast Ohio Regional Sewer District

and

Village of Mayfield

for

Worton Park Neighborhood Phase II Culvert Replacement Project

THIS AGREEMENT is made this ____ day of April, 2024, between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Board of Trustees Resolution No. _____, adopted _____, 2024 (Exhibit “A”), and the Village of Mayfield (“Village”), pursuant to the authority of Village Council Resolution No. 2024-23, adopted April 15, 2024 (Exhibit “B”).

RECITALS:

WHEREAS, the District, pursuant to the authority of Ohio Revised Code Chapter 6119, and Title V Stormwater Management Code of the District’s Code of Regulations (“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, to ensure the consistent and coordinated delivery of the District's Regional Stormwater Management Program ("RSMP") services within the Village, the District and the Village entered into a RSMP Service Agreement on July 18, 2013; and

WHEREAS, the Village is performing a stormwater project on the Regional Stormwater System known as the Worton Park Neighborhood Phase II Culvert Replacement project (the "Project"), which requires the acquisition of the property known as PPN 831-34-056 located at 1006 Woodlane Drive, Mayfield Village (the "Parcel"); and

WHEREAS, the Village's acquisition of the Parcel under the Project serves the mutual interest of flood mitigation; and

WHEREAS, the District has determined that the Project will rehabilitate and improve essential stormwater functions along Beecher's Brook to remove failing stream infrastructure, reduce erosion, improve conveyance and expand the floodplain along this segment of the Regional Stormwater System; therefore, the District has agreed to reimburse the Village for certain Project costs as further described in this Agreement from district funds ("District Funds"); and

WHEREAS, the District is authorized under Ohio Revised Code Section 6119.06 (P) to enter into contracts with any person or any political subdivision to render services to such contracting party for any service the District is authorized to provide; is authorized under Ohio Revised Code Section 6119.06 (F) to make grants to any person or political subdivisions for the acquisition or construction of water resource projects by such person or political subdivisions; and is authorized under Ohio Revised Code Section 6119.06 (O) to make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6119 of the Revised Code; and

WHEREAS, the Village has agreed to grant the District a stormwater easement over the entirety of the Parcel for stormwater inspection and maintenance in accordance with the RSMP Service Agreement; and

WHEREAS, the parties desire to enter into this Agreement to memorialize the understanding of the parties with respect to the usage of the District Funds;

Now, therefore, in consideration of the foregoing, the District and the Village agree to enter into this Agreement for the continued benefit of the Regional Stormwater System, as set forth below.

ARTICLE 1. OBLIGATIONS OF THE VILLAGE

1.1 Performance of the Project. The Village shall be responsible for performance of the Project, which shall consist of the demolition and disposal of a residential structure and associated contents and improvements at the Parcel, all according to applicable Federal, State, and local laws.

1.1.1 Project Coordination. The Village shall coordinate with the District's representatives during all critical stages and milestones of the Project. The Village shall submit to the District Settlement Statements for the acquisition of and final invoices for demolition services for the Parcel.

1.1.2 Project Presentations. The Village shall acknowledge the District in presentations or publications related to the Project.

1.2 Utilization of District Funds. The Village shall use 100% of the District Funds for activities and/or expenses related to the Project, as approved by the District. The approved activities and/or expenses consist of Parcel acquisition

costs, including the preparation of the appraisal report by C.P. Braman & Co., Inc., preliminary judicial report, closing costs, court filing and service fees and demolition costs. Any other use of District-provided funding shall require a written amendment to this Agreement. The Village shall obtain the prior written approval of the District prior to modifying any of the components of the Project.

1.2.1 Application for Payment of Funds. The Village must submit contractor pay applications to the District, monthly or such other timing as mutually agreed by the Village and the District, prior to payment for any costs incurred by the Village related to demolition, along with the consultant's or contractor's detailed invoicing detailing the Project costs that are eligible for District payment. Any such consultant invoice or contractor pay application submitted by the Village to the District for payment shall include cost and work details and other information in accordance with this Agreement, and shall also include a signed, then-current "Payment Request Accuracy Verification and Approval to Pay" ("PRAV") document (attached hereto as Exhibit "C"). The PRAV may be updated or otherwise amended by the District from time-to-time.

1.2.2 The Village understands, and agrees, that the PRAV document may only be signed by a duly authorized representative of the Village and that signature of the PRAV by such representative shall be an affirmative representation of the Village that the Village has verified the accuracy of the consultant invoice or contractor pay application, that the contractor's materials and/or services were furnished and performed in

accordance with the conditions of the contract for the work and performed to the satisfaction of the Village, that contractor pay application is not in dispute by either the Village or its contractor, that the representative recommends payment, and that the Village shall pay the contractor as expeditiously as possible following receipt of approved funds from the District and within the time period prescribed in the Village's contract with the contractor to avoid any late fees or other penalties for late payment.

1.2.3 Provided that such any undisputed contractor pay application is accompanied with a complete and duly executed PRAV and is otherwise compliant with District requirements and this Agreement, upon District review and approval, the District shall pay its approved amount directly to the Village within forty-five (45) days of receipt. The absence of written inquiry or objection to an invoice within the 45-day period shall not be deemed approval of the invoice by the District. Notwithstanding anything to the contrary in this Agreement, the District shall not pay any Project costs until such work is completed and accepted by the District as satisfactory, which acceptance shall not be unreasonably withheld, conditioned or delayed.

1.2.4 All invoicing shall be in accordance with an agreed-upon format between the District and the Village. The District shall not be responsible for payment of any late fees and/or other penalties invoiced by consultants or contractors. The Village shall submit proof of payment to its consultant or contractor within thirty (30) days of the District's payment to

the Village. The District shall have the right to withhold future payment(s) to the Village until such time that the Village provides proof of payment of approved District Funds to the consultant or contractor and any failure of the Village to comply with payment requirements in this Agreement may be considered a material breach of this Agreement and be cause for termination of the Agreement, in addition to any other remedies available to the District.

1.2.5 All requests for payment of District Funds for project management and design services shall be documented to the District's reasonable satisfaction based on the agreed upon scope and fee for the design services.

1.2.6 All requests for payment of District Funds for construction shall be documented to the District's reasonable satisfaction. All requests shall be submitted in a form sufficient to allow the District to review, inspect and approve materials, labor, and quantities installed for the Project.

1.2.7 The Village shall keep all records and documents relevant to the Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and will be submitted upon request together with any other compliance information which may be reasonably required.

1.2.8 The Village shall bear the risk and remain solely responsible for any payments made by the Village to third parties for work not approved by the District.

1.2.9 100% of the District Funds must be used for activities and/or expenses related to the Project, as approved by the District. Only project components described in Article 2 and/or approved modifications will be eligible for payment. Any modifications must be documented by written District approval. All payments require the following to occur:

1.2.9.1 Submission of a PRAV form and supporting document(s), including the relevant procurement documentation, such as an itemized bill, receipt, invoice, and/or timecard.

1.2.9.2 The PRAV form is submitted to the District and reviewed for completeness by the District contact listed in Exhibit "C."

1.2.9.3 Upon successful review of the submission, the District's Director of Watershed Programs will have the final review of the request for payment to occur.

1.2.9.4 Upon the final approval by the Director of Watershed Programs the PRAV will be processed for payment.

ARTICLE 2. OBLIGATIONS OF THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

2.1 Disbursement of District Funds. The District agrees to disburse District Funds directly to the Village, in a total amount not-to-exceed \$177,650.00 ("Total Agreement Amount"), for performing approved Project elements, as follows:

- i) Parcel Acquisition Costs: Not-to-exceed \$120,000.00
- ii) Demolition Costs: Not-to-exceed \$30,000.00
- iii) Appraisal Costs: Not to exceed \$2,650.00
- iv) Contingency Allowance: Not-to-exceed \$25,000.00

2.2 Timing of Payments. The District shall use its best efforts to pay the Village for any uncontested billings within forty-five (45) days of the District's receipt of each PRAV.

ARTICLE 3. TERM

3.1 Expiration of the Agreement

This Agreement shall expire upon successful completion of the obligations contained herein.

ARTICLE 4. MISCELLANEOUS

4.1 Execution in Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart, when so executed, shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

4.2 Severability

If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.

4.3 Headings

The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.

4.4 Relationship of Agreement to Exhibits

The Exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various Exhibits attached to this Agreement.

ARTICLE 5. EXHIBITS

The following exhibits are attached hereto and incorporated herein:

1. Exhibit "A" – District's Board of Trustees Resolution
2. Exhibit "B" – Village's Resolution
3. Exhibit "C" - Payment Request Accuracy Verification and Approval to Pay (PRAV)

The parties listed below have entered into this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

AND: _____
Darnell Brown
President, Board of Trustees

VILLAGE OF MAYFIELD

By: Brenda Bodnar
Brenda T. Bodnar
Title: Mayor

By: [Signature]
Stephen Schutt
Title: Council President

Approved as to Legal Form:

Diane A. Calta
Diane A. Calta, Director of Law
Mayfield Village, Ohio

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.

AGREEMENT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

VILLAGE OF MAYFIELD

FOR

REIMBURSEMENT OF PROJECT EXPENSES:
VILLAGE'S WORTON PARK
NEIGHBORHOOD PHASE II CULVERT
REPLACEMENT PROJECT

Total Approximate Cost: \$160,000.00

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

ERIC J. LUCKAGE
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.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

Date

EXHIBIT A

EXHIBIT B

EXHIBIT C