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COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-66

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH CUYAHOGA COUNTY ON BEHALF OF THE CUYAHOGA COUNTY DEPARTMENT OF PUBLIC WORKS (CCDPW), FOR PARTICIPATION IN THE CUYAHOGA COUNTY PREVENTIVE MAINTENANCE PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, Cuyahoga County has established a Preventive Maintenance Program providing for assistance to Cuyahoga County communities in the maintenance of roadways, including such roadways in the City of Berea; and

WHEREAS, entering into an agreement with the County for preventive maintenance of roadways can save the City of Berea money in the maintenance of some of our roadways.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, Cuyahoga County, State of Ohio:

SECTION 1. That the Mayor be and is hereby authorized and directed to enter into an agreement contract with Cuyahoga County substantially similar to the "Agreement" marked as Exhibit "A", attached hereto and incorporated herein by reference, and to do all things necessary in furtherance thereof.

SECTION 2. 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 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the demolition services of Cuyahoga County's Preventive Maintenance Program to the inhabitants of this City cannot otherwise be assured. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: November 2, 2015



President of Council

Exhibit "A"

AGREEMENT

This AGREEMENT is entered into this _____ day of _____, 2015 between the County of Cuyahoga, Ohio, hereinafter referred to as "COUNTY", on behalf of Cuyahoga County Department of Public Works (hereinafter referred to as CCDPW), and the City of Berea, hereinafter referred to as "MUNICIPALITY" a municipal corporation of the State of Ohio, pursuant to the authority of Ordinance No. _____ passed by Council on _____ for MUNICIPALITY.

WITNESSETH:

WHEREAS, MUNICIPALITY desires to retain CCDPW to perform certain preventive maintenance services related to roadways, including, but not limited to, sidewalk and curb ramp repairs, rebuilding catch basins/manholes, pavement striping, crack sealing, street sweeping and other related services for the MUNICIPALITY; and,

WHEREAS, MUNICIPALITY desires to have CCDPW direct bill said services; and

NOW THEREFORE, in consideration of the promises and mutual obligations contained herein to be observed and performed by the parties hereto, COUNTY and MUNICIPALITY hereby agree as follows:

ARTICLE ONE – APPROVAL OF TASK ORDER FOR SERVICES

- a. At the request of MUNICIPALITY, CCDPW will develop a task order of preventive maintenance services that CCDPW is willing to perform for the MUNICIPALITY.
- b. The task order shall include the scope of work to be performed, together with an estimate of the cost of the work prepared by CCDPW.
- c. CCDPW shall present the task order to the Mayor of MUNICIPALITY for approval. If CCDPW receives written approval from the Mayor, CCDPW shall proceed to perform the services set forth in the task order. After completing the services, CCDPW shall send an invoice to MUNICIPALITY for the cost of the services performed, which cost shall not exceed the estimate contained in the task order.
- d. MUNICIPALITY shall pay the invoice within thirty (30) days of receipt of same.
- e. MUNICIPALITY shall be responsible for acquiring and paying for any and all permits, easements and/or rights-of-entry required by COUNTY when performing the services set forth in an approved task order.

ARTICLE TWO – GENERAL CONDITIONS

This AGREEMENT constitutes the entire AGREEMENT between COUNTY and MUNICIPALITY, and supersedes any prior understanding or representation of any kind preceding the date of this AGREEMENT. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

- a. If any provision of this AGREEMENT is invalid or unenforceable for any reason, this AGREEMENT shall be divisible as to such provision and the remainder of this AGREEMENT shall be and remain valid and binding as though such provision was not included herein.
- b. This AGREEMENT may be modified in writing upon the mutual agreement of COUNTY and MUNICIPALITY.
- c. By entering into this AGREEMENT, MUNICIPALITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, subgrantees, 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. MUNICIPALITY 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.
- d. 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. MUNICIPALITY 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.
- e. MUNICIPALITY represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24.
- f. This AGREEMENT has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of COUNTY and MUNICIPALITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of COUNTY and MUNICIPALITY. MUNICIPALITY 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.

ARTICLE THREE – INDEMNITY AND INSURANCE

MUNICIPALITY and COUNTY agree that neither entity can or will indemnify the other as both parties are political subdivisions and are prohibited by law from entering into an indemnification agreement. Accordingly, MUNICIPALITY and COUNTY agree that each will be solely and entirely responsible for its acts, errors, and omissions, and those of its employees and agents, during the performance of this AGREEMENT. MUNICIPALITY and COUNTY further agree that each will maintain and carry sufficient and appropriate liability insurance relative to the duties and obligations under this AGREEMENT.

ARTICLE FOUR – TERMINATION

This AGREEMENT shall remain in full force and effect until terminated as follows:

Either party shall have the right to terminate this AGREEMENT at any time with thirty (30) days advance written notice to the other party.

Any notice of termination shall be by certified mail, addressed to the Director in case of CCDPW or the highest ranking official in case of MUNICIPALITY. Upon termination of the AGREEMENT, MUNICIPALITY shall pay any and all outstanding expenses relating to the performance of this AGREEMENT within thirty (30) days of the receipt of an invoice showing monies owed for services rendered.

ARTICLE FIVE – NOTICES

Any notice to be given under this AGREEMENT by either party to the other may be effected either by personal delivery in writing or by certified mail, postage-prepaid, return receipt requested, unless it is a notice of termination which must be certified mail. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To COUNTY: Attn: Director of Public Works
 2079 East Ninth Street
 Cleveland, Ohio 44115

With a copy to: Attn: Cuyahoga County Director of Law
 Cuyahoga County Department of Law
 2079 East Ninth Street
 Cleveland, Ohio 44115

To MUNICIPALITY: Attn: Director of Law
 City of Berea
 11 Berea Commons
 Berea, OH 44017

ARTICLE SIX – GOVERNING LAW AND JURISDICTION

This AGREEMENT shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this AGREEMENT, and each party consents to the exclusive jurisdiction of such courts.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the Day and Year first mentioned above.

CITY OF BEREA

By: _____
Cyril Kleem, Mayor

COUNTY OF CUYAHOGA, OHIO

By: _____
Armond Budish, County Executive

The legal form and correctness of this Agreement is hereby approved.

CITY OF BEREA

By: _____
James N. Walters III, Law Director

Date: _____

CUYAHOGA COUNTY LAW DEPARTMENT

By: _____

Date: _____