

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2020-12

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO AMEND A CONTRACT WITH THE CUYAHOGA COUNTY DEPARTMENT OF PUBLIC WORKS TO EXTEND THE TERM OF THE CONTRACT AND TO INCREASE THE MAXIMUM FEES IN PROVIDING CERTAIN SERVICES RELATIVE TO THE CITY SEWERS, AS DETERMINED FROM TIME-TO-TIME, TO FURTHER ADVANCE THE CITY'S SANITARY AND STORM SEWER MAINTENANCE PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea owns and operates certain sanitary and storm sewers, catch basins, manholes, culverts and storm water detention and retention basins located in the public right-of-way and in or along easements, excluding any sanitary sewers owned and maintained by the Northeast Ohio Regional Sewer District; and

WHEREAS, the Council of the City of Berea authorized the Director of Public Service to enter into a contract with the Cuyahoga County Department of Public Service in Ordinance No. 2017-34 to provide certain services relative to the City sewers, as determined from time-to-time, to further advance the City's sanitary and storm sewer maintenance program; and;

WHEREAS, on or about July 17, 2018, the Council of the City of Berea authorized extending the contract through December 31, 2018 and appropriated additional funding thereto; and

WHEREAS, on or about January 8, 2019, the parties entered into a Second Amendment to extend the term of the Agreement to March 31, 2019; and

WHEREAS, on or about March 4, 2019, the parties entered into a Third Amendment to extend the term of the Agreement to March 31, 2020; and

WHEREAS, the parties desire to enter into a Fourth Amendment to extend the term of the Agreement to March 31, 2021 and increase the contract by 1,600,000.00; and

WHEREAS, in order to continue providing services to the City from March 31, 2020 to March 31, 2021, the County requires that the Council of the City of Berea formally extend the term of the existing contract, as amended; and

WHEREAS, the City and the Cuyahoga County Department of Public Works wish to amend the contract to extend its term through March 31, 2021.

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

SECTION 1. That the Director of Public Service be, and hereby is authorized to enter into a fourth amendment to the contract, in substantially the same form as Exhibit "A", attached hereto and incorporated herein, with the Cuyahoga County Department of Public Works to provide additional services relative to the City sewers from March 31, 2020 to March 31, 2021, as determined from time-to-time, to further advance the City's sanitary and storm sewer maintenance program.

SECTION 2. That the Director of Finance be, and hereby is, authorized and directed to pay out such contract sum(s) and charge the same to, and the funds therefor are hereby appropriated from the Sewer Capital Improvement Fund, designated for accounting purposes as Fund No. 420 and the Sewer Revenue Fund, designated for accounting purposes as Fund No. 520, for the purposes set forth in Section 1 hereinabove.

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SECTION 3. 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 4. 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 certain services relative to the City's sanitary and storm sewer maintenance program will be allowed to continue without interruption. 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: March 23, 2020 [Signature]
President of Council

ATTEST: [Signature]
Clerk of Council

APPROVED: March 24, 2020
[Signature]
Mayor

Approved as to Form:
[Signature]
Director of Law

Exh. "A"

**FOURTH AMENDMENT
TO
AGREEMENT
BETWEEN
COUNTY OF CUYAHOGA, OHIO
AND
CITY OF BEREA, OHIO**

This FOURTH AMENDMENT ("Amendment") made this date upon which this Amendment is fully executed by both parties ("Effective Date") by and between the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof, (the "COUNTY"), on behalf of the Cuyahoga County Department of Public Works (hereinafter referred to as "CCDPW"), and the City of Berea (hereinafter referred to as "CITY"), a municipal corporation of the State of Ohio, pursuant to the authority of Ordinance No. 2020-12 passed by Berea City Council on March 23, 2020.

RECITALS:

WHEREAS, the COUNTY and CITY entered into a sanitary and storm sewer maintenance agreement for the period June 1, 2017 to December 31, 2017 for an amount not to exceed \$150,000.00 (the "Agreement"); and

WHEREAS, on or about July 17, 2018 the parties entered into a First Amendment to extend the term of the Agreement to December 31, 2018 and increase the contract amount by \$300,000.00; and

WHEREAS, on or about January 8, 2019 the parties entered into a Second Amendment to extend the term of the Agreement to March 31, 2019; and

WHEREAS, on or about March 26, 2019 the parties entered into a Third Amendment to extend the term of the Agreement to March 31, 2020 and increase the contract amount by \$110,000.00;

WHEREAS, the parties desire to enter into a Fourth Amendment to extend the term of the Agreement to March 31, 2021 and increase the contract amount by \$1,600,000.00.

WHEREAS, the parties agree to the terms and conditions indicated herein below.

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

I. INCORPORATION

- A. The original Agreement, together with the amendments, are herein collectively referred to as the "Agreement." The foregoing recitals are incorporated in the Agreement as if fully rewritten herein.
- B. The provisions of this Amendment are incorporated into the original Agreement, as if fully rewritten in the Agreement. All terms used in this Amendment shall be defined and construed in the manner set forth in the original Agreement. Except as otherwise provided in, or as otherwise necessary or appropriate to give effect to the terms of this Amendment, all the provisions, terms, and conditions contained in the Contract and not inconsistent with this Amendment shall remain unchanged and in full force and effect. In the event of any conflict between the original Agreement and this Amendment, the terms, the conditions and provisions of this Amendment shall control.

II. TERM

The term of the Agreement is extended from April 1, 2020 to March 31, 2021, unless otherwise canceled or terminated under the terms of the Agreement. The Effective Date of this Amendment is the date this Amendment has been duly executed by the County Executive or his duly authorized designee.

III. COMPENSATION

The contract amount is hereby increased by \$1,600,000.00.

IV. ELECTRONIC SIGNATURE

CITY AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL AMENDMENT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE 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 ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, 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 CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the day and year first above mentioned.

COUNTY OF CUYAHOGA, OHIO

By: _____
Armond Budish, County Executive

Date: _____

Approved as to legal form:

Assistant Law Director
Cuyahoga County

CITY OF BEREA, OHIO

By: _____
Cyril Kleem, Mayor

Date: _____

Approved as to legal form:

Director of Law
City of Berea