

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2024-7

By: Councilwoman Mary K. Brown Sponsor: Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO A CONTRACT WITH THE CUYAHOGA COUNTY DEPARTMENT OF PUBLIC WORKS 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, APPROPRIATING THE FUNDS THEREFORE, 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, pursuant to Ordinance No. 2017-34, the City of Berea entered into a contract with the Cuyahoga County Department of Public Works 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, the Council of the City of Berea subsequently authorized extending the contract through seven yearly amendments; and

WHEREAS, the City wishes to enter into a new contract with the Cuyahoga County Department of Public Works to provide the same services, commencing April 1, 2024; and

WHEREAS, the City desires that the County direct bill the City for performing said services.

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 contract in substantially the same form as Exhibit A, with the Cuyahoga County Department of Public Works, 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 for an amount not to exceed \$400,000.

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, Sewer Capital Improvement Fund, designated for accounting purposes as

BEREA CITY COUNCIL

City of Berea, Ohio

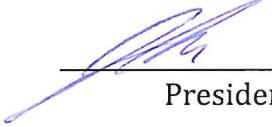
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Fund No. 420 and the Sewer Revenue Fund, designated for accounting purposes as Fund No. 520, for the purposes set forth in Section 1 hereinabove.

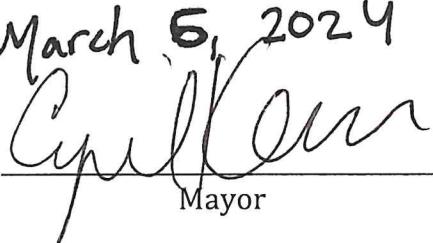
SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were 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 may be immediately commenced. 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 4, 2024


President of Council

ATTEST: 
Clerk of Council

APPROVED: 
March 5, 2024
Mayor

APPROVED AS TO FORM:


Director of Law

AGREEMENT
FOR
SANITARY & STORM SEWER MAINTENANCE
FOR THE
CITY OF BEREAL, OHIO

This AGREEMENT is made this 1st day of April 2024 ("Effective Date"), by and between **Cuyahoga County**, 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 date hereof (hereinafter referred to as "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. 2024-7 passed by Berea City Council on March 4, 2024.

RECITALS:

WHEREAS, the entire territory within the limits of CITY is designated as County Sewer District No. 8; and

WHEREAS, CITY 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 (the "City Sewers"), excluding any sanitary sewers owned and maintained by the Northeast Ohio Regional Sewer District (hereinafter NEORSD). Future improvements to the City Sewers or newly-constructed City Sewers shall be similarly owned by the CITY; and

WHEREAS, CITY desires to engage the COUNTY to perform certain services relative to the City Sewers, as determined from time-to-time, to further advance CITY's sanitary and storm sewer maintenance program as part of County Sewer District No. 8 ; and

WHEREAS, CITY desires the COUNTY to direct bill the CITY for performing said services; and

WHEREAS, Council for the CITY has adopted Ordinance No. 2024-7, on March 4, 2024, authorizing the Mayor to enter into a this AGREEMENT with the COUNTY;

NOW THEREFORE, it is agreed that in consideration of the covenants and agreements contained herein and the conditions enumerated below, CITY and COUNTY agree as follows:

SECTION I. GENERAL CONDITIONS

- A. This AGREEMENT shall supersede all other agreements heretofore made between COUNTY and CITY relative to the maintenance and repair of the City Sewers.

- B. By entering into this AGREEMENT, CITY agrees on behalf of its respective elected officials, officers, employees, subcontractors, sub-grantees, 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. CITY 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.
- C. All COUNTY agreements, including this AGREEMENT, are subject to the Cuyahoga County Charter, the Cuyahoga County Code and all applicable laws, resolutions, regulations, rules and policies of the COUNTY, including, but not limited to, Title 4 pertaining to Cuyahoga County Ethics and the Inspector General, and Title 5 pertaining to Cuyahoga County Contracting and Purchasing Procedures. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>.
- D. CITY agrees that the Cuyahoga County Code 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. CITY 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 CITY. The individuals signing on behalf of the parties to this AGREEMENT are authorized to execute this AGREEMENT on behalf of COUNTY and CITY. CITY 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.

SECTION II. STORM AND SANITARY SEWERS

- A. Scope of Services:
 - (1) Upon written request from the CITY, CCDPW agrees to provide the following storm and sanitary sewer system services ("Core Services") to the CITY:
 - a. Mainline storm and sanitary sewer cleaning and televising; and
 - b. Maintenance and repair of mainline storm and sanitary sewers in the public right-of-way or public easements; and
 - c. Maintenance and repair of storm and sanitary sewer lateral service lines in the public right-of-way and public easements. CCPDW shall not be responsible for cleaning storm and sanitary sewer lateral service lines and lateral connections located on private property; and
 - d. Engineering Services; and
 - e. Pump Station Maintenance; and
 - f. Cleaning, maintenance and repair of catch basins and manholes; and
 - g. Construction Inspection; and

- h. Emergency services such as sewer backups, breaks and other malfunctions of the City Sewers as described in paragraph 4; and
- i. Inflow & Infiltration inspection.

The parties agree that the CITY may, by written submission, request additional services from the CCDPW in addition to the Core Services. The CITY agrees to pay the actual cost incurred by CCPWD in providing such additional services.

- (2) Each request for Core Services from the CITY to the CCPDW shall include all existing record plans, a map describing the area where the work is to be performed and a detailed scope of services.
- (3) In response to the CITY's request, CCDPW will perform a field investigation and prepare a cost estimate for the Core Services described in the detailed scope of services submitted by the CITY. The COUNTY will bill the CITY for the actual number of hours expended for performing a cost estimate for each request. If CCPDW determines that the request for Core Services necessitates additional work than originally estimated, CCPDW will contact the CITY for further instruction on how to proceed. CCPDW shall start performing the Core Services requested by the CITY upon receiving written approval from the CITY.
- (4) In addition to the Core Services, the CITY may request Emergency Services from CCDPW, including, but not limited to, response to sewer backups, sewer breaks and other malfunctions of the City Sewers. In the event the CITY requires the COUNTY to perform Emergency Services, the CITY shall submit to CCDPW a description of the scope of services for a specific location. CCDPW will make best efforts to respond within two (2) hours of receipt of a written or verbal request for Emergency Service, except in circumstances of extreme weather or other circumstances beyond its control. In any such circumstances that prevent the response by CCDPW in this time periods, CCDPW shall advise the CITY verbally or in writing immediately and provide an alternative time for response.
- (5) The CITY shall be responsible for acquiring and paying for any and all permits, easements and rights of entry necessary for the construction, operation, maintenance and repair of City Sewers requested by the CITY to be performed by the CCDPW.

B. Term:

- (1) The term of this AGREEMENT shall begin on **April 1, 2024** and expire on **March 31, 2025**, unless sooner canceled or terminated as permitted in this AGREEMENT.
- (2) The parties may exercise the option to renew this AGREEMENT for additional terms of twelve (12) calendar months thereafter if both parties so agree in writing.

C. Compensation:

- (1) In consideration for providing the Core Services, including performing preliminary field investigations and cost estimates, the CITY shall pay the COUNTY according to the rate structure set forth in the Hourly Rate Schedule, attached hereto and incorporated in this AGREEMENT as Exhibit A. The CITY agrees that the Hourly

Rate Schedule applies only to Core Services performed by the employees of the CCDPW, Sewer Division. All other Core Services performed by parties other than employees of the Sewer Division will be billed for actual costs incurred.

- (2) In consideration for performing Emergency Services, the CITY shall pay CCPWD on a time and materials/force account basis. In the event the emergency services are performed by parties other than employees of the Sewer Division, the CITY shall pay for actual costs incurred by CCPWD.
- (3) The COUNTY shall provide detailed invoices to the CITY after completion of Core Services and emergency services, but no more frequently than monthly. The invoices shall provide a detailed explanation of the work completed, the time for completion, the hourly rate, or if a lump sum is agreed to, the agreed price.
- (4) The total amount to be paid by the CITY to CCDPW for work performed under this AGREEMENT shall not exceed **\$400,000.00**, unless the CITY agrees in writing to additional compensation. CCDPW shall not provide any services under this agreement that would cause the contract amount to exceed the maximum amount stated in this paragraph, unless the CITY has agreed in writing to pay the additional compensation.
- (5) The CITY shall pay any invoice within thirty (30) days after receipt, unless the CITY advises CCPDW of any discrepancy in the invoice. Once any claimed discrepancy is resolved, the CITY shall pay within 30 days thereafter. No interest, fees, or charges shall be added to any invoice.

D. Termination and Suspension:

- (1) This AGREEMENT may be terminated by either party to the AGREEMENT upon thirty day (30) written notice. Any notice of termination shall be by certified mail, addressed to the person designated for receipt of notices in this AGREEMENT. Upon termination of the AGREEMENT, the CITY shall pay any and all outstanding expenses relating to the Core Services requested and authorized within thirty (30) days of the receipt of an invoice for such services.
- (2) If the CITY determines that there is any imminent risk to public safety or property, the CITY may suspend the work of CCDPW immediately upon verbal or written notice, and shall provide a written explanation of the suspension and steps needed to resume work.

E. Liability and Insurance

- (1) Each party assumes responsibility for its own acts, omissions, negligence and intentional acts that may cause damage or injury.
- (2) COUNTY shall have self-insurance or an insurance policy sufficient to cover the work of CCDPW in the CITY.

F. Independent Contractor

The COUNTY shall be considered an independent contractor, and its employees and the employees of CCDPW shall not be considered employees of the CITY.

G. Notices:

Any notices provided under this AGREEMENT shall be provided to the following, unless a party notifies the other party in writing of a change of contact:

(1) For the CITY:

Director of Public Works
City of Berea
11 Berea Commons
Berea, Ohio 44017

(2) For the COUNTY:

Director of Public Works
Cuyahoga County Department of Public Works
2079 East 9th Street, 5th Floor
Cleveland, Ohio 44115

H. Ownership and Construction of Sewers

- (1) The CITY owns and operates all City Sewers, as defined herein, within its municipal limits.
- (2) The CITY shall be responsible for the construction, extension or expansion of the City Sewers.
- (3) Before the CITY constructs, extends or expands any City Sewers, the plans shall be reviewed and approved by the CITY's Engineer. CCDPW shall review the plans, if requested by the CITY, per the established rate structure. The parties agree that the design for such work will be in accordance with the Uniform Standards for Sewage Improvements dated December 2019 and the County Rules and Regulations dated December 2019, and as such standards, rules and regulations may be hereafter amended.
- (4) Except as otherwise provided herein, any construction, extension or expansion of any sanitary and/or storm sewer main lines, catch basins, catch basin laterals, manholes, culverts and storm water detention and retention basins shall be paid for, permitted, performed, and inspected by the CITY. CCDPW shall inspect new work or construction, if requested by the CITY; CCDPW shall invoice the CITY for the costs of such inspection in accordance with the established rate structure.

IN WITNESS WHEREOF, authorized representatives of each party to this AGREEMENT, indicating their party's approval of the terms herein, have signed as of the dates set forth below.

COUNTY OF CUYAHOGA, OHIO

BY:

Chris Ronayne, County Executive,
or designee, pursuant to Executive Order 2023-
0003, dated July 6, 2023

Date: _____

Approved as to legal form:

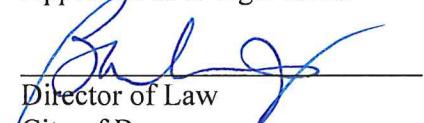
Victor E. Manolache
Assistant Law Director for
Richard D. Manoloff,
Director of Law,
Cuyahoga County

CITY OF BEREAL, OHIO

By: Cyril Kleem
Cyril Kleem, Mayor

Date: 3-6-24

Approved as to legal form:



Director of Law
City of Berea

EXHIBIT A
HOURLY RATE SCHEDULE