

**ORDINANCE NO. 2017-1**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY COST-SHARE AGREEMENT BY AND BETWEEN THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORS) AND THE CITY OF PARMA HEIGHTS AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Parma Heights entered into a regional Stormwater Management Program Service Agreement (SMP Service Agreement) as evidences by Ordinance No. 2013-20 passed May 28, 2013; and,

**WHEREAS**, as a component of implementing a regional stormwater management program a “Community Cost-Share Account” has been created; and,

**WHEREAS**, the Community Cost-Share Account is to provide funding to assist the City of Parma Heights with District approved project; and,

**WHEREAS**, the District supports the Community Cost-Share Big Creek Watershed 9-Element NPS Implementation Strategy Plan as a Community Cost-Share project proposed by the City of Parma Heights; and,

**WHEREAS**, the City desires to enter into a Cost-Share Agreement with NEORS.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. The Mayor is authorized and directed to execute on behalf of the Municipality a Community Cost-Share for the Big Greek Watershed-9 Element NPS Implementation Strategy Plan Project by and between the Northeast Ohio Regional Sewer District and the City of Parma Heights, substantially in the form attached hereto as Exhibit A, and as approved by the Director of Law.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Council declares this Ordinance to be an emergency measure for the immediate preservation of the public health, peace and safety of this municipality and for the further reason that it is immediately necessary to enter into said Agreement to provide for

Ord. No. 2017-1

Page two

services to the Municipality; wherefore, it shall be in full force and effect immediately after its passage by council and approval by the Mayor.

PASSED: 2-27-2017

Johann B. Koch

PRESIDENT OF COUNCIL

PROTEM

2-27-2017

ATTEST: Florence A. Bohdan

APPROVED

FILED WITH  
THE MAYOR: 2-27-2017

[Signature]

MAYOR

**COMMUNITY COST-SHARE AGREEMENT  
BY AND BETWEEN  
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT  
AND  
CITY OF PARMA HEIGHTS**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, 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 City of Parma Heights (City) acting pursuant to Ordinance/Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, 20\_\_ (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 City 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, 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 Big Creek Watershed 9-Element NPS Implementation Strategy Plan project (the "Project") as a Community Cost-Share project proposed by the City; 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 City Obligations**

- 1.1 The City 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 City'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 Submit requests for approval to modify the budget, deadline, deliverables, or other components of the Project to the City's Watershed Team Leader at least 30 business days prior to the desired date of execution of the modification.
- 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 \$2,000.00 to the City for the Project from the City's Community Cost-Share Account.
  - 2.1.2. Provide reimbursement of funds up to \$2,000.00 to the City within 60 days of receipt of a complete Request for Payment from the City, 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 City in presentations or publications related to the Project.

**Article 3.0 Dispute Resolution**

- 3.01 The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.
- 3.02 The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

<b>District Representative</b>	<b>City Representative</b>
Senior Watershed Team Leader	<i>{Insert Representative(s)}</i>

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:

<b>District Representative</b>	<b>City Representative</b>
Director of Watershed Programs	<i>{Insert Representative(s)}</i>

- 3.03 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.
- 3.04 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**

- 4.01 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 law of the State of Ohio.

#### **Article 5 Counterpart Signatures**

- 5.01 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**

- 6.01 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**

- 7.01 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**

- 8.01 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" – City 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: \_\_\_\_\_  
Julius Ciaccia  
Chief Executive Officer

AND

BY: \_\_\_\_\_  
Darnell Brown, President  
Board of Trustees

**CITY OF PARMA HEIGHTS**

By: \_\_\_\_\_  
*[Handwritten Signature]*

Title: \_\_\_\_\_  
*MAJOR*

\_\_\_\_\_  
Federal Taxpayer I.D. Number

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

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS.  
*[Handwritten Signature]*  
DIRECTOR OF LAW

**CITY OF PARMA HEIGHTS**

\_\_\_\_\_  
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.

# CONTRACT NO.

NORTHEAST OHIO REGIONAL SEWER  
DISTRICT

WITH

PARMA HEIGHTS

FOR

COMMUNITY COST-SHARE PROJECT: BIG  
CREEK WATERSHED 9-ELEMENT NPS  
IMPLEMENTATION STRATEGY PLAN

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Total Approximate Cost:           \$2,000.00

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

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CHIEF LEGAL OFFICER

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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.

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CHIEF FINANCIAL OFFICER

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Date