

RESOLUTION NO.: 43-2023
INTRODUCED BY: Mayor Thomas

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A PROJECT AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (“NEORSD”) TO PROCURE PROFESSIONAL ENGINEERING DESIGN SERVICES TO PREPARE THE PLANS, SPECIFICATIONS, AND COST ESTIMATES FOR THE SEWER CAPACITY IMPROVEMENT PROJECT.

WHEREAS, the City of Richmond Heights has determined that the Sewer Capacity Improvement Project (“Project”), consisting of a drop structure to a NEORSD interceptor to accommodate future mall redevelopment and other improvements to local sewer capacity, would benefit from additional engineering services from NEORSD;

WHEREAS, the City intends to utilize funds from the Water Pollution Control Loan Fund (“WPCLF”) Principal Forgiveness loan from the Ohio Water Development Authority (“OWDA”) to fund NEORSD’s procurement of plans, specifications, and cost estimates of the Project;

WHEREAS, Council desires NEORSD to procure professional engineering design services to prepare the plans, specifications, and cost estimates for such Project improvements, and to file such specifications for bidding documents in the Office of the Clerk of this Council.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Richmond Heights, Ohio:

Section 1: The Mayor is hereby authorized to execute a Project Agreement with NEORSD, and to execute any further documents and take any further actions to procure professional engineering design services to prepare the plans, specifications, and cost estimates for the Project under the provisions, terms, and conditions substantially as set forth in the Project Agreement attached hereto (without exhibits).

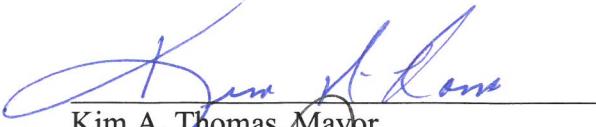
Section 2: The Director of Finance is authorized to expend WPCLF Principal Forgiveness loan funds from OWDA to compensate NEORSD for the necessary professional engineering design services.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

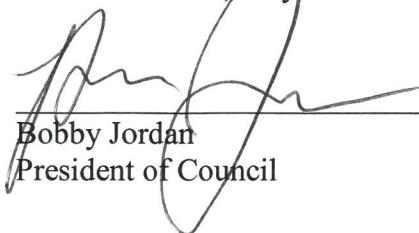
Section 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: March 28, 2023

APPROVED: March 28, 2023


Kim A. Thomas, Mayor

ATTEST: Donnie L. Hunter
Donnie L. Hunter
Clerk of Council


Bobby Jordan
President of Council

PROJECT AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
CITY OF RICHMOND HEIGHTS
FOR
SEWER CAPACITY IMPROVEMENTS PROJECT

This Agreement ("Agreement") is entered into this _____ day of _____, 2023 ("Effective Date") by and between the Northeast Ohio Regional Sewer District ("District") a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, acting pursuant to Resolution No. 274-22, adopted by the Board of Trustees of the District on August 18, 2022 (attached hereto as Exhibit "A"), and the City of Richmond Heights ("City"), a Charter Municipality of the State of Ohio, acting pursuant to Ordinance No. _____ passed by its City Council on _____ (attached hereto as Exhibit "B").

RECITALS

WHEREAS, the State of Ohio has created the Water Pollution Control Loan Fund (WPCLF) pursuant to O.R.C. 6111.036 to provide financial assistance for water resource protection and improvement actions; and

WHEREAS, 33 U.S.C. §§ 1381-1389 created clean water state revolving funds for the design of clean water projects (Clean Water SRF), which are being distributed in Ohio through the WPCLF; and

WHEREAS, Ohio Environmental Protection Agency's (Ohio EPA) Division of Environmental and Financial Assistance (DEFA), with the support of the Ohio Water Development Authority (OWDA), administer Ohio's Clean Water SRF funds through the WPCLF through the acceptance of nominations for clean water projects; and

WHEREAS, the District assisted the City in nominating the design portion of the City's Sewer Capacity Improvements Project (the "Project") for WPCLF funding; and

WHEREAS, DEFA is in the process of reviewing the nominations and may award the WPCLF funds to the City via a principal forgiveness loan in an amount up to \$500,000.00 (Loan Amount) for the design portion of the City's Project,

WHEREAS, the District has agreed to procure professional engineering design services for the design of the City's Project (the "District Services"), and to be reimbursed for such District Services from the City's WPCLF funds, all in accordance with the terms and conditions contained in this Agreement; 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; and is further 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;

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth herein, the parties agree as follows:

Section 1. District Procurement of Design of the City's Project

- 1.1 District Services. The District shall be responsible for the performance of the District Services, which generally consist of procurement and administration of professional design services for the design of the City's Project. The Project is described in the City's Nomination Form (Exhibit "C").
- 1.2 Procurement Process. The District Services shall be procured by the District in accordance with the District's contracting requirements, including those contained in Ohio Revised Code Chapter 153, and in accordance with the design and performance specifications contained in the nomination for WPCLF funds submitted by the City to the Ohio EPA, subject to modifications agreed upon by the City and the District.
- 1.3 Contracting. The District's standard professional services agreement and other contract forms and documents shall be used by the District relative to performance of the District Services. The City shall be contractually named as a direct third-party beneficiary of all professional services agreements for the District Services and the District shall provide the City fully-executed copies of such agreements.
- 1.4 Project Documentation. The City shall provide the District any documents in its possession related to any design services performed for the Project, including any studies or assessments. The City shall further authorize its engineering and design professionals to fully communicate with and provide to the District any documentation they may have related to the Project.

- 1.5 Application Schedule. The City shall submit a complete DEFA loan application, including the professional services agreements referenced in Section 1.3 above and all other supporting documents and information required by DEFA, by the end of third quarter 2023.
- 1.6 Final Design Documents. The District shall provide the City the final design documents at the completion of the District's Services.
- 1.7 Real Estate Interests. The District and the City shall coordinate with all necessary utility companies and persons or entities in finalizing the plans and specifications.

Section 2. Reviews for Design

- 2.1 The City shall:
 - (i) review the Basis of Design Report, 60% design submittal, the 90% design submittal, and the 100% design for final design review;
 - (ii) receive up to ten (10) working days for each round of review and comment at the minimum Basis of Design, 60%, 90% and 100% design completion milestones; and
 - (iii) attend all monthly progress meetings, for which the City will receive at least five (5) working days advance notice, and receive meeting minutes with five (5) working days for review and comment as necessary.

Section 3. DEFA Funding

- 3.1 Project Costs. The Loan Amount is equivalent to the District's conservative estimate of design costs. In the event the actual cost of the District Services are in excess of the Loan Amount, including, but not limited to, costs for unforeseen conditions, costs for asserting or defending claims arising from the Project design, or the costs for acquiring the real estate interests described in Section 1.7 above, such additional costs shall be borne by the City and the District shall have no responsibility to pay such costs. The District shall provide quarterly progress reports to the City relative to schedule/milestones and cost estimate updates, as well as identify potential costs not covered by WPCLF funds.

In the event that the District incurs consultant or other expenses due to City action or inaction, and such expenses are not covered by the WPCLF funds, then the City shall timely pay all said costs or reimburse the District all said costs.

The City shall pay all OWDA loan administration fees, which are presently estimated to be 0.35% of the total Loan Amount, in the approximate amount of

\$1,750.00. The District shall have no obligation to perform the District Services until the City satisfies all OWDA loan administration fees.

For avoidance of doubt, the Loan Amount does not include costs for legal, administrative or project management services performed in-kind by the District.

- 3.2 **Payment of Funds.** The parties agree that the WPCLF funds shall be paid by the City to the District for the District's performance of the District Services, after District approval of consultant pay requests.
- 3.3 **Additional Work.** Should the City determine there is potential for performance of additional design work under the Project, the City may request the District add work scope to the Project at the City's cost. The District may accept or deny this request. In such event, the parties may enter into a modification to memorialize such additional work to be paid for by the City.

Section 4. Public Participation. The City shall take the lead on public participation under the Project. The District shall support the City to develop public participation plans to inform and encourage participation by the public relative to the Project, as well as responding to and resolving any disputes or complaints from the public.

Section 5. Term. The term of this Agreement shall begin as of the date first-above written and shall expire upon completion of all obligations contained herein. This Agreement shall automatically terminate by its own terms in the event that (i) the City does not execute the DEFA loan agreement or fails to complete any necessary steps to secure the WPCLF funds; or (ii) DEFA revokes all or part of the WPCLF funding for any reason; or (iii) the City determines not to proceed with the Project at any point prior to completion of District Services, in which case the City shall reimburse the District for all Project expenses incurred by the District.

Section 6. Dispute Resolution. The parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The Parties shall first try to resolve the dispute at the level of the designated representatives, or their successors, as follows:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
Engineering & Construction Program Manager	

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the issue to the following level to resolve the dispute:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
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Director of Engineering and Construction	
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If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the issue to the following level to resolve the dispute:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
Chief Executive Officer	

Section 7. Remedies. The parties agree that, after exhausting the dispute resolution process outlined above, all claims, counter-claims, disputes and other matters in question between the District and City arising out of or relating to this Agreement, or the breach thereof, will be decided at law in Cuyahoga County. This Agreement shall be governed by and interpreted according to the law of the State of Ohio.

Section 8. Counterpart Signatures. 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.

Section 9. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the City and the District, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Section 10. Authority to Execute. 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.

Section 11. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

Section 12. 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.

Section 13. Release of Liability. The City hereby releases the District from all liability for the design services performed by the District's professional design consultant(s).

Section 14. Exhibits. The following exhibits are attached hereto and incorporated herein:

Exhibit "A" – District Resolution

Exhibit "B" – City Ordinance

Exhibit "C" – City's Nomination Form

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties hereto have executed and delivered 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

CITY OF RICHMOND HEIGHTS

By: Kymberly L. Jones

Title: Mayor

The legal form and correctness
of this instrument is approved.

City of Richmond Heights

By: _____
Assistant/Director of Law

Date: _____

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
CITY OF RICHMOND HEIGHTS
FOR
SEWER CAPACITY IMPROVEMENTS
PROJECT

Total Approximate Cost: \$500,000.00

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