Referred to COW 11/15/21

RESOLUTION NO. 2021-55

BY: Bullock, Kepple, Litten, O'Malley, Rader, Shachner

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor, Director of Public Works or City Engineer to enter into an agreement under the Community Cost-Share program with Northeast Ohio Regional Sewer District for reimbursement of the cost of city labor for required city-wide catch basin cleaning.

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 or Regional Stormwater System, including administrative costs directly associated with such projects as well as costs related to repair or upgrade; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that Lakewood must enter into this agreement by year end to be able to obtain reimbursement in 2022; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor, Director of Public Works or City Engineer is hereby authorized to enter into an agreement under the Community Cost-Share program with Northeast Ohio Regional Sewer District for reimbursement of the cost of city labor for required city-wide catch basin cleaning, in substantially the same form attached as Exhibit "A".

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: 12/6/2021

Daniel J. O'Malley, Council President

Maureen M. Bach, Council Clerk

Approved: 12/7/21

Meghan F. George, Mayor

Exhibit A

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

This Agreement is made and entered into this _____ day of _____, 2021, 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 the City of Lakewood (City) acting pursuant to Ordinance/Resolution No. _____, adopted on _____, 2021 (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

WHERAS, 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 or Regional 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 City-Wide Catch Basin Cleaning 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 Obtain all necessary legal agreements with affected property owners to perform the Project and to bind any successor in title to maintain compliance as specified in this Agreement between the District and the City for the Project.

1.1.3 Comply with all applicable local, state and federal requirements. This may include, but is not limited to, U.S. Army Corp of Engineers Section 404, Ohio

EPA Section 401 water quality certification, and Ohio Department of Natural Resources Dam Safety Laws.

1.1.4 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.

1.1.5 Acknowledge the District on any public advertisement or outreach efforts including all publications and signage related to the Project which shall include the following disclaimer:

> *This project was funded in part or totally through the Northeast Ohio Regional Sewer District (NEORSD) Community Cost-Share Program in coordination with City, under the provisions of the NEORSD Regional Stormwater Management Program. The contents and views, including any opinions, findings, or conclusions or recommendations, contained in this publication are those of the authors and have not been subject to NEORSD review and may not necessarily reflect the views of NEORSD, and no official endorsement should be inferred.*

1.1.6 Provide the District the opportunity to have design approval for any signage or public education and outreach efforts related to the Project.

1.1.7 Permit the District to photograph the Project and to incorporate the Project into the District's overall public education and outreach efforts for stormwater management.

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 $21,576.00 to the City for the Project from the City's Community Cost-Share Account.

2.1.2. Provide reimbursement of funds up to $21,576.00 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:

District Representative	City Representative
Watershed Team Leader	City Engineer

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:

District Representative	City Representative
Director of Watershed Programs	Mayor

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

[remainder of page intentionally left blank]

The parties have executed this Agreement on the day and year first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

BY:_____
Kyle Dreyfuss-Wells
Chief Executive Officer

AND

BY:_____
Darnell Brown, President
Board of Trustees

CITY OF LAKEWOOD

By: _____

Title: _____

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

CITY OF LAKEWOOD

_____
Assistant/Director of Law

This Instrument Prepared By:
Cyrus L. Patton
Associate 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

CITY OF LAKEWOOD

FOR

COMMUNITY COST-SHARE PROJECT:

CITY-WIDE CATCH BASIN CLEANING

Total Approximate Cost: $21,576.00

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

_____
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.

_____
CHIEF FINANCIAL OFFICER

_____
Date

BUDGET CENTER 8100