

RESOLUTION NO. 57-2012

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO
ENTER INTO A SETTLEMENT AGREEMENT IN SUMMIT COUNTY COMMON
PLEAS COURT CASE NO. CV 2009 12 9273 AND CUYAHOGA COUNTY
COMMON PLEAS COURT CASE NO. CV-10-714945

WHEREAS, in 2009, several Summit County local governments, including the Village of Richfield (collectively "Summit County Communities") filed an action in the Summit County Common Pleas Court (Case No. CV 2009 12 9273) for declaratory and injunctive relief against the Northeast Ohio Regional Sewer District (the "District") related to the District's implementation of a stormwater management program which included those Summit County Communities and also, in early 2010, the District filed a lawsuit in Cuyahoga County Common Pleas Court (Case No. CV-10-714945) against those same Summit County Communities, as well as municipalities and townships in Cuyahoga County and Lorain County, requesting declaratory and injunctive relief related to the District's proposed stormwater management program; and

WHEREAS, the Summit County Common Pleas Court case was stayed pending the outcome of the Cuyahoga County Common Pleas Court case, wherein the trial court has generally upheld the legality of the District's stormwater management program with certain revisions to the program.

WHEREAS, the Summit County Communities and the District have both appealed the trial court's rulings but wish to settle and forever resolve all claims in both the Summit County and Cuyahoga County cases through a mutually acceptable settlement agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. The Mayor and Finance Director are authorized and directed to enter into a settlement agreement with the Northeast Ohio Regional Sewer District in order to settle both the Summit County and Cuyahoga County lawsuits and all appeals therefrom, as set forth in the preamble to this Resolution, and a copy of which Settlement Agreement is attached hereto as Exhibit A and is fully incorporated herein by reference.

SECTION 2. 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 of any of its committees that resulted in such formal action, were in meetings including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 9-4-12

Michael Wheeler
President of Council

Bakelul Beshara
Mayor

Dated: 9-4-12

ATTEST:

Lawyn E Sullivan
Clerk of Council

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("AGREEMENT") is made by and between the Northeast Ohio Regional Sewer District ("Plaintiff" or the "District") pursuant to the authority of Resolution No. 50-12 adopted by the Board of Trustees on February 16, 2012, attached as Exhibit A; and the County of Summit, pursuant to Ordinance No. _____, adopted on _____, 2012 attached as Exhibit B; and the City of Hudson, pursuant to Resolution No. _____, adopted on _____, 2012 attached as Exhibit C; the City of Macedonia, pursuant to Ordinance No. _____, adopted on _____, 2012 attached as Exhibit D; Northfield Village, pursuant to Ordinance No. _____, adopted on _____, 2012 attached as Exhibit E; Richfield Village, pursuant to Ordinance No. _____, adopted on _____, 2012 attached as Exhibit F; and Sagamore Hills Township, pursuant to Ordinance No. _____, adopted on _____, 2012 attached as Exhibit G; (collectively the "Five Summit County Communities").

WHEREAS, Plaintiff, the County of Summit, and the Five Summit County Communities have been litigating the issues arising out of Cuyahoga County Common Pleas Case No. CV-10-714945, the Five Summit County Communities being defendants in that matter; and in Summit County Common Pleas Case No. CV 2009 12 9273, the County of Summit and the Five Summit County Communities being plaintiffs in that matter; and

WHEREAS, Plaintiff, the County of Summit and the Five Summit County Communities intend to resolve and settle the issues now pending among them.

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below, the parties agree as follows.

1. **Community Cost-Share:** The District, the County of Summit and the Five Summit County Communities agree that a minimum of twenty-five percent (25%) of the total annual revenue collected in each Member Community shall be allocated to that Member Community through the Community Cost-Share Account as set forth in Chapter 9 of Title V of the District's Stormwater Management Code.
2. **Declining Block Fee for Non-Residential Property Owners:** the District, the County of Summit and the Five Summit County Communities agree to the declining block fee structure for non-residential parcels having more than 10 equivalent residential units (ERUs) as set forth in Chapter 7 Section 5.0707 (e) of Title V of the District's Stormwater Management Code.
3. **Fixed Fee Schedule:** The County of Summit and the Five Summit County Communities agree to be bound by the stormwater fee schedule set forth in Chapter 7 of Title V of the District's Stormwater Management Code through the year 2014, and the District agrees that it will not raise stormwater fees by more than five percent (5%) per year thereafter through December 31, 2021.
4. **Withdrawal of Five (5) Summit County Communities from the Northeast Ohio Regional Sewer District's Regional Stormwater Management Program:** The District agrees that at any time after five years from the date of execution of this Agreement, the Five Summit County Communities may petition to withdraw from the District's Regional Stormwater Management

Program when either the County (including the Five Summit County Communities) or the Five Summit County Communities as a group establish a regional stormwater management program (the "Program") designed to manage drainage areas of 300 acres or more and can demonstrate that such Program includes, at a minimum, the following essential elements of a regional stormwater management program similar to the District's Regional Stormwater Management Program as stated in Title V of the District's Stormwater Management Code:

- a. The Program includes, at a minimum, the entirety of the Five Summit County Communities that drain to the Lake Erie Watershed.
- b. A stormwater management code that embodies the essential elements of a regional stormwater management program similar to the District's Title V Stormwater Management Code.
- c. The Program has a permanent, adequate and dedicated funding stream to provide for the essential elements outlined herein, a qualified staff to carry out the Program, and a capital improvement and maintenance program with acceptable turnaround time on projects.
- d. Stormwater master planning for all watersheds within the Five Summit County Communities, including:
 - i. Uniform standards to identify and define the Five Summit County Communities' stormwater system.
 - ii. Performance of condition assessments throughout the Five Summit County Communities' stormwater system.
 - iii. Development of hydraulic models to identify and prioritize maintenance and construction projects.
- e. Construction projects selected based upon stormwater master planning including:
 - i. Construction projects that address current flooding, erosion, and water quality problems, and minimize new problems.
 - ii. Primary focus of construction program must be on solving problems as close to their source as feasible and not negatively impacting downstream communities.
- f. Inspection and maintenance activities along the Five Summit County Communities' stormwater system, including:
 - i. Activities selected based upon established processes for community input.
 - ii. Responsive to community and resident concerns.
- g. Support and facilitation for regional/watershed based coordination, NPDES Phase II compliance, and public education and outreach efforts.
- h. The Program must not include provisions making it possible for a community to opt out of the Program.
- i. The agreement by which the Five Summit County Communities withdraw from the District's program shall also include provisions requiring the District and the Five Summit County Communities to collaborate on maintenance activities and construction projects within the Lake Erie Watershed.

- j. If the Program fails to be sustained with adequate funding and timely implementation of stormwater master planning, maintenance, and construction project, all former District Member Communities included therein shall default back to the District's Regional Stormwater Management Program.
 - k. Should a conflict or dispute between the Five Summit County Communities and the District arise regarding whether or not the Program is comparable in scope and meets the essential elements outlined pursuant to this Agreement, the District and the Five Summit County Communities agree to resolve any such disputes by way of a declaratory judgment action filed in the Cuyahoga County common pleas court.
5. **Withdrawal of the Five Summit County Communities from the District:** Any of the Five Summit County Communities, either collectively or separately, may withdraw from the District's territory entirely, provided the withdrawing community is legally permitted to divert its sanitary waste to a treatment facility not owned or operated by the District. Any party to this Agreement may terminate its current agreement for wastewater services with the District after providing three (3) years notice of its intent to terminate; however, such 3-year notice may not be given until at least two (2) years after the date of execution of this Agreement. A community's termination of its agreement with the District under this Paragraph 5 shall automatically withdraw that community from the District's Regional Stormwater Management Program.
6. **Amendment of the Agreement:** This Agreement may be amended only by means of a written document signed by all parties. This Agreement may be executed in counterparts, each of which shall be considered an original. In the event that any one or more of the parties hereto requests the preparation and execution of a document to implement this Agreement, including but not limited to an order of court, the other parties shall cooperate and participate in the preparation and execution of said document. Ohio law shall apply to this Agreement, and the parties acknowledge exclusive jurisdiction of the common pleas court of Cuyahoga County, Ohio for the purpose of enforcement of this Agreement.
7. **Authority to Bind:** Each individual who signs below hereby represents and warrants that he or she has full and complete authority to bind the named party. The County of Summit and the Five Summit County Communities shall each obtain authorization to execute this Agreement from their respective governing bodies and incorporate such authority as an Exhibit to this Agreement.
8. **Resolution of Claims and Defenses:** The County of Summit and the Five Summit County Communities withdraw any and all claims against the Northeast Ohio Regional Sewer District arising out of Cuyahoga County Common Pleas Case No. CV-10-714945, and all parties to this Agreement agree to the dismissal of the appeal of said case in the Eighth Appellate Judicial District by a filing made pursuant to Ohio Appellate Rule 28 within (10) days of the date of execution of this Agreement. The County of Summit and the Five Summit County Communities further agree to dismiss any and all claims against the Northeast Ohio Regional Sewer District arising out of Summit County Common Pleas Case No. CV 2009 12 9273 and will use their best efforts to effectuate the dismissal of any and all claims against the Northeast Ohio Regional Sewer District by all other Summit County plaintiffs in the Summit County litigation.

9. Exhibits:

- Exhibit "A" – Northeast Ohio Regional Sewer District Board of Trustees Resolution No. 50-12
- Exhibit "B" -- County of Summit Council Ord. No. _____
- Exhibit "C" -- City of Hudson Resolution No. _____
- Exhibit "D" -- City of Macedonia Ord. No. _____
- Exhibit "E" -- Northfield Village Ord. No. _____
- Exhibit "F" -- Richfield Village Ord. No. _____
- Exhibit "G" -- Sagamore Hills Township Res. No. _____

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth below, effective as of August _____, 2012 regardless of the date of execution.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____

By: _____

Its: EXECUTIVE DIRECTOR

Its: DIRECTOR OF LAW

Date: _____

Date: _____

CITY OF HUDSON

CITY OF HUDSON

By: _____

By: _____

Its: _____

Its: DIRECTOR OF LAW

Date: _____

Date: _____

CITY OF MACEDONIA

CITY OF MACEDONIA

By: _____

By: _____

Its: _____

Its: DIRECTOR OF LAW

Date: _____

Date: _____

NORTHFIELD VILLAGE

By: _____

Its: _____

Date: _____

NORTHFIELD VILLAGE

By: _____

Its: DIRECTOR OF LAW

Date: _____

RICHFIELD VILLAGE

By: _____

Its: _____

Date: _____

RICHFIELD VILLAGE

By: _____

Its: DIRECTOR OF LAW

Date: _____

SAGAMORE HILLS TOWNSHIP

By: _____

Its: _____

Date: _____

SAGAMORE HILLS TOWNSHIP

By: _____

Its: DIRECTOR OF LAW

Date: _____

COUNTY OF SUMMIT

By: _____

Its: _____

Date: _____

COUNTY OF SUMMIT

By: _____

Its: PROSECUTING ATTORNEY

Date: _____