

ORDINANCE NO. 72-2011

Offered by All of Council

AN ORDINANCE OF THE VILLAGE OF RICHFIELD AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AMENDMENT TO THE 1989 AGREEMENT BETWEEN THE VILLAGE AND THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

WHEREAS, the Village of Richfield and the Northeast Ohio Regional Sewer District (“the District”) are parties to an agreement dated February 27, 1989 (referred to by the District as Agreement No. 1878; hereinafter, “1989 Agreement”), authorized by Ordinance 56-1988, providing the terms and conditions under which the District would provide sewer services to the Village on a master meter basis; and

WHEREAS, the 1989 Agreement requires that the Village pay the District charges for sewer service based upon eighty percent (80%) of the metered flow; and

WHEREAS, the Village and the District have discussed modifying the methods by which the Village is to be billed for sewer services by the District; and

WHEREAS, the billing methods discussed by the Village and the District would result in the Village continuing to pay charges based on 80% of the metered flow through the end of 2011, after which time the charges would be based upon a diminishing percentage of the metered flow beginning with 70% of metered flow in 2012 and decreasing each year until 2016, when the charges would be based upon 50% of the metered flow; after which time, beginning with 2017, the Village would pay sewer service charges based upon the quarterly quantity of metered water, at the District’s standard Subdistrict II rate per MCF; and

WHEREAS, the Village has determined to authorize an amendment to the 1989 Agreement in order to approve the modified billing method for sewer services.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield, State of Ohio, that:

SECTION 1. The Village of Richfield hereby authorizes the Mayor and the Finance Director to enter into an Amendment to Agreement No. 1878 By and Between the Northeast Ohio Regional Sewer District and the Village of Richfield, Ohio substantially in accordance with the Amendment attached hereto as Exhibit “A.”

SECTION 2. It is found and determined that all formal actions by the 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 action, were in meetings open to the public in

compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

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

PASSED: 2/7/12

Michael Wheeler
President of Council

Colbie Bestman
Mayor

Dated: 2/7/12

ATTEST:

Carolyn E. Sullivan
Clerk of Council

AMENDMENT

TO

AGREEMENT NO. 1878

BY AND BETWEEN

THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

THE VILLAGE OF RICHFIELD, OHIO

THIS AMENDMENT TO AGREEMENT NO. 1878 (the "Amendment") is made as of this 1st day of January, 2012, by and between the Northeast Ohio Regional Sewer District (the "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. 263-11, adopted by the Board of Trustees of the District on November 3, 2011 (Exhibit "A"), and the Village of Richfield, Ohio (the "Village") acting pursuant to Ordinance No. _____, adopted by the Village on _____, 2012 (Exhibit "B").

WHEREAS, on or around February 27, 1989, the District and the Village entered into Agreement No. 1878 for the purpose of memorializing the terms and conditions under which the District would provide sanitary sewer services on a master meter basis to the Village, including the requirement that the Village pay for all charges based on eighty-percent (80%) of the metered flow; and

WHEREAS, the Village has requested the District modify the method under which the Village is billed by the District; and

WHEREAS, the Village is agreeable to modifying its billing method with respect to those areas of the Village served by the District, as well as supplementing Agreement No. 1878 with additional terms and conditions that are desired by the parties.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Amendment, and for other good, sufficient, and valuable consideration, the District and the Village do hereby mutually covenant and agree to the following:

SECTION 1. It is the intention of the parties that Section 5 of Agreement No. 1878 be and is hereby amended to replace the existing language of paragraph (A) with the following:

“The Village agrees that the sanitary sewage flow to the District’s facilities shall be metered and billed at the rate of 80% of the metered flow through calendar year 2011, 70% of the metered flow beginning during calendar year 2012, 65% of the metered flow during calendar year 2013, 60% of the metered flow during calendar year 2014, 55% of the metered flow during calendar year 2015, and 50% of the metered flow during calendar year 2016 and continuing until modification or termination of this Agreement. The Village shall maintain books, records, documents, and other evidence directly pertinent to performance under this Amendment in accordance with generally accepted accounting principles. Any authorized representative of the District shall, at all reasonable times and with reasonable notice, have the right to audit, inspect and examine the Village’s accounting books and financial records related to this Amendment. Nothing in this Agreement shall prevent the Village from requesting to convert billings based upon the quarterly quantity of metered water consumed by Village customers after calendar year 2016.

SECTION 2. The term of this Amendment shall begin as of the date first above written and shall remain in full force and effect until such time as the amended Agreement is terminated pursuant to this provision. The amended Agreement shall remain in effect for a period of not less than ten (10) years. Either party may terminate the amended Agreement after providing three (3) years’ notice of its intent to terminate.

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Such three (3) year notice may not be given until seven (7) years after the date first above written.

SECTION 3. The District shall provide the Village copies of any future rate studies completed by the District as well as documentation of yearly actual totals of revenue and expenditures in as much detail as available from District's accounting system(s) on a year-end basis or as soon as such documentation is available. At minimum, revenue and expenditures shall be provided by each account established in District's Financial System Chart of Accounts.

SECTION 4. A determination that any part of this Amendment is invalid shall not invalidate or impair the force or effect of any other part thereof, except to the extent that such other part is wholly dependent for its operation upon the part so declared invalid.

SECTION 5. The provisions of this Amendment are hereby incorporated into the Agreement as if fully rewritten therein. All terms used above shall be defined and construed in the manner set forth in the Agreement. Except as otherwise provided in, or as otherwise necessary or appropriate to give effect to the terms of the Amendment, all the provisions, terms and conditions contained in the Agreement and not inconsistent with this Amendment shall remain unchanged and in full force and effect.

SECTION 6. This Amendment includes the exhibits attached hereto, all of which are made fully a part of this Amendment as if fully written herein:

1. Exhibit "A" - Northeast Ohio Regional Sewer District Resolution No. 263-11
2. Exhibit "B" - Village of Richfield Ordinance No. _____

SECTION 7. The parties acknowledge that certain litigation is ongoing involving the parties and some communities within Summit County regarding the District's jurisdiction and/or service area for stormwater management in Summit County. The parties agree that this Amendment shall not be used or construed in any way to establish or evidence the District's jurisdiction or service area for stormwater management within Summit County or the Village's acknowledgement or consent to the same.

The Village County and the District, through their authorized officers, have executed this Amendment to the Agreement No. 1878 as of the day and year first stated above.

VILLAGE OF RICHFIELD

BY: _____
Bobbie Beshara
Mayor

DATE: _____

BY: _____
Sandy Turk
Director of Finance

DATE: _____

**The legal form and correctness
of this Instrument is approved:**

William Hanna
Law Director
Village of Richfield

Date

**THE NORTHEAST OHIO REGIONAL SEWER
DISTRICT**

BY: _____
Julius Ciaccia, Jr.
Executive Director

DATE: _____

BY: _____
Darnell Brown, President
Board of Trustees

DATE: _____

**The legal form and correctness
of this Instrument is approved:**

**MARLENE SUNDHEIMER
DIRECTOR OF LAW**

Katarina K. Waag
Assistant Director of Law
Northeast Ohio Regional Sewer District

Date