

AN ORDINANCE AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO EXECUTE THE “COMMUNITY COST-SHARE AGREEMENT” WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT, AND DECLARING AN EMERGENCY

WHEREAS, the Northeast Ohio Regional Sewer District (“NEORS D”), pursuant to the authority of Ohio Revised Code Chapter 6119, and Title V of NEORS D’s Stormwater Management Code, is authorized to provide overall stormwater management of the regional stormwater system, including planning, financing, design, improvement, construction, inspection, monitoring, maintenance, operation, and regulation for the proper handling of stormwater runoff and the development and provision of technical support information and services to member communities; and

WHEREAS, NEORS D has been established as a regional governmental entity with the authority to operate and maintain a regional stormwater system in the general area encompassing fully or partially the Village of Richfield; and

WHEREAS, flooding is a significant threat to public and private property; streambank erosion is a significant threat to public and private property, water quality, wildlife, and aquatic and terrestrial habitats; and inadequate stormwater management practices damage the water resources of Northeast Ohio, impairing the ability of these waters to sustain ecological and aquatic systems; and

WHEREAS, there is a need for a watershed-based approach to stormwater management to effectively and efficiently plan, design, construct, and maintain long-term solutions to stormwater problems; and

WHEREAS, a service agreement between NEORS D and the Village is required to ensure the consistent and coordinated delivery of NEORS D regional stormwater management program services within the Village, and for the Village to participate in NEORS D’s cost-share program that can fund local stormwater projects and the costs associated with local stormwater issues.

NOW, THEREFORE, Be It Ordained by the Council of the Village of Richfield, Summit County, State of Ohio, that:

SECTION 1. The Mayor and the Finance Director are authorized and directed to execute the “Community Cost-Share Agreement” with the Northeast Ohio Regional Sewer District substantially in accordance with the agreement attached hereto as Exhibit A, and 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 Ordinance 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 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary for the Community Cost-Share Agreement to go into effect to allow the consistent and coordinated delivery of NEORS regional stormwater management program services within the Village; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 4-7-2020



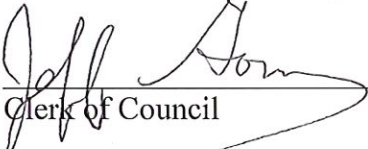
President of Council



Mayor

Dated: 4/24/2020

ATTEST:



Clerk of Council

EXHIBIT A

NORTHEAST OHIO REGIONAL SEWER DISTRICT
RESOLUTION NO. 114-13

Authorizing the Executive Director to enter into Regional Stormwater
Management Program Community Cost-Share Program Agreements
with Member Communities.

WHEREAS, the Code of Regulations of the Northeast Ohio Regional Sewer District, Title V – Stormwater Management Code Chapter 9 outlines the Community Cost-Share Program developed to provide funds to District Member Communities for construction, operation and maintenance activities of community-specific stormwater management projects; and

WHEREAS, under the Community Cost-Share Program, 25% of the annual collected stormwater revenue from each Member Community will be held by the District in a Community Cost-Share account, whereby Communities, with review and approval by the District, through specific applications outlining the community-specific stormwater work to be performed can access reimbursement of their funds; and

WHEREAS, the District is seeking authority to enter into Regional Stormwater Management Program Community Cost-Share Program Agreements with Member Communities for the purpose of detailing and memorializing responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE NORTHEAST OHIO REGIONAL SEWER DISTRICT:

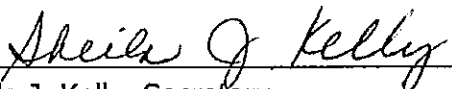
Section 1. That this Board finds that for the reasons stated in the preamble hereof it is in the best interests of the District to enter into Regional Stormwater Management Program Cost-Share Program Agreements with Member Communities to memorialize responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program.

Section 2. That this Board hereby authorizes the Executive Director to enter into Regional Stormwater Management Program Cost-Share Agreements with Member Communities to memorialize responsibilities of the District and Member Communities under specific applications to the Community Cost-Share Program under such terms and conditions that are satisfactory to the Director of Law and in the best interests of the District.

Section 3. That this Board authorizes the Executive Director to execute all documents and do all things necessary to effect the terms and conditions of the Stormwater Management Program Direct Billing Agreements with Member Communities.

Section 4. That this Board declares that all formal actions of the Board concerning and relating to the adoption of this resolution and that all deliberations of the Board and any of its committees that resulted in said formal action were conducted in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On motion of Mayor Starr seconded by Mr. O'Malley, the foregoing resolution was unanimously adopted on May 16, 2013.



Sheila J. Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District

EXHIBIT B

(Insert Member Community
Ordinance/Resolution)

EXHIBIT C



**Community Cost-Share Program
APPLICATION**

Member Community Information

Community: Village of Richfield

Primary Project Contact: Brian M. Frantz
(Name & Title) Planning & Economic Development Director

Mailing Address: 4410 West Streetsboro Road
Richfield, OH 44286

Phone Number: 330-659-9201x6

Email: bfrantz@richfieldvillageohio.org

Project Information

Project Title: Slowbe Property Acquisition

Address or Location of Project: Wheatley Road - Parcel #5001179
Richfield, OH 44286

Project Start Date: 03-16-2020

Project End Date: 06-30-2020

Community Cost-Share Fund Request: \$120,000

Submission Date: 02-28-2020



Project Narrative

1) Project Summary (1,000 word maximum)

Describe the Project and include the following information, as applicable:

- Describe the Project and deliverables; provide a map if applicable
- Submit a deliverable worksheet listing tasks and deliverables with start dates and end dates for the significant benchmarks.
- List permitting requirements necessary to initiate and complete project and how the requirements will be met.

The Village is in the process of acquiring the Slowbe property (see Exhibit I) to further implement the 2012 Crossroad District Plan. One of the elements of the Plan is a map that indicates future development of the south side of Wheatley Road. In particular, the Plan details a number of strategic acquisitions which includes the Slowbe property for the purposes of stormwater management. As illustrated on the Concept Map (see Exhibit II), the Slowbe property serves as a regional stormwater management basin, handling stormwater for the entire development of south Wheatley.

In general, the topography on the property on the south side of Wheatley Road falls from west to east, towards I-77. Since the elevation of the Slowbe property is lower than the rest of the properties, the intent is to utilize a portion of this parcel for stormwater management. The goal is to maximize the storage of this basin to account for as much of the future development as possible.

The stormwater management basin will not be "inline," meaning it will not be an extension of an existing wetland and nor will it impact any wetlands or streams. Given this, no jurisdictional approvals are needed from the Environmental Protection Agency (EPA) or Army Corp of Engineers.



*Community Cost-Share Program
Application*

2) Ability to Provide Long Term Maintenance (500 word maximum)

Describe the plans for long-term maintenance, addressing the following question:

- Who is responsible to provide on-going maintenance for the project and how will maintenance be ensured?
- Provide documentation of scheduled maintenance and operation for completed stormwater project(s).

Long-term maintenance of the stormwater management will initially be handled by the Village of Richfield Service Department, but the responsibilities will eventually be transitioned to a private company and managed by an association. To ensure the Village will be responsible for long-term maintenance, an easement will be executed that provides the Village ultimate authority to maintain the basin in the event the managing association defaults. Moreover, Village Council will, through legislation, enter into a long-term maintenance agreement with the association to further ensure compliance. As with the easement, the Village will be required to maintain the basin the event the association does not fulfill its obligations. The stormwater management basin will not be under ownership of a private developer at any time after implementation.

Given the basin is not constructed at this time, no schedule is in place.



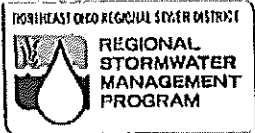
*Community Cost-Share Program
Application*

3) Visibility and Public Outreach: (500 word maximum)

Public outreach is required if appropriate for your project.

- What audiences will be exposed to this Project (neighbors, students, community groups, general public)?

Acquisition of the property is publicly announced and provided through legislation (see Exhibit III). There likely will not be any additional public outreach. The general public and the business community will be exposed to the stormwater project as the basin will likely contain a fountain and be designed as a decorative feature along Wheatley Road.



*Community Cost-Share Program
Application*

4) Budget Summary (500 words maximum)

The Budget Summary and Project Budget (*see page 3*) represent the Community Cost-Share Project components exclusively. Include details on the provider of all services such as design, engineering, construction management and materials including specific material cost, equipment, and hourly rate.

If an engineer's estimate is included with the application, indicate which line items are included in the Community Cost-Share Project application.

The budget to acquire the property is as follows:

\$120,000 Community Cost-Share
\$380,000 Tax Increment Financing Fund
\$325,000 Village of Richfield General Fund
\$825,000 Total Acquisition Cost

The basin has not been designed yet, but the costs associated with design, engineering, construction, etc. will be paid for by the Village of Richfield through its General Fund.



*Community Cost-Share Program
Application*

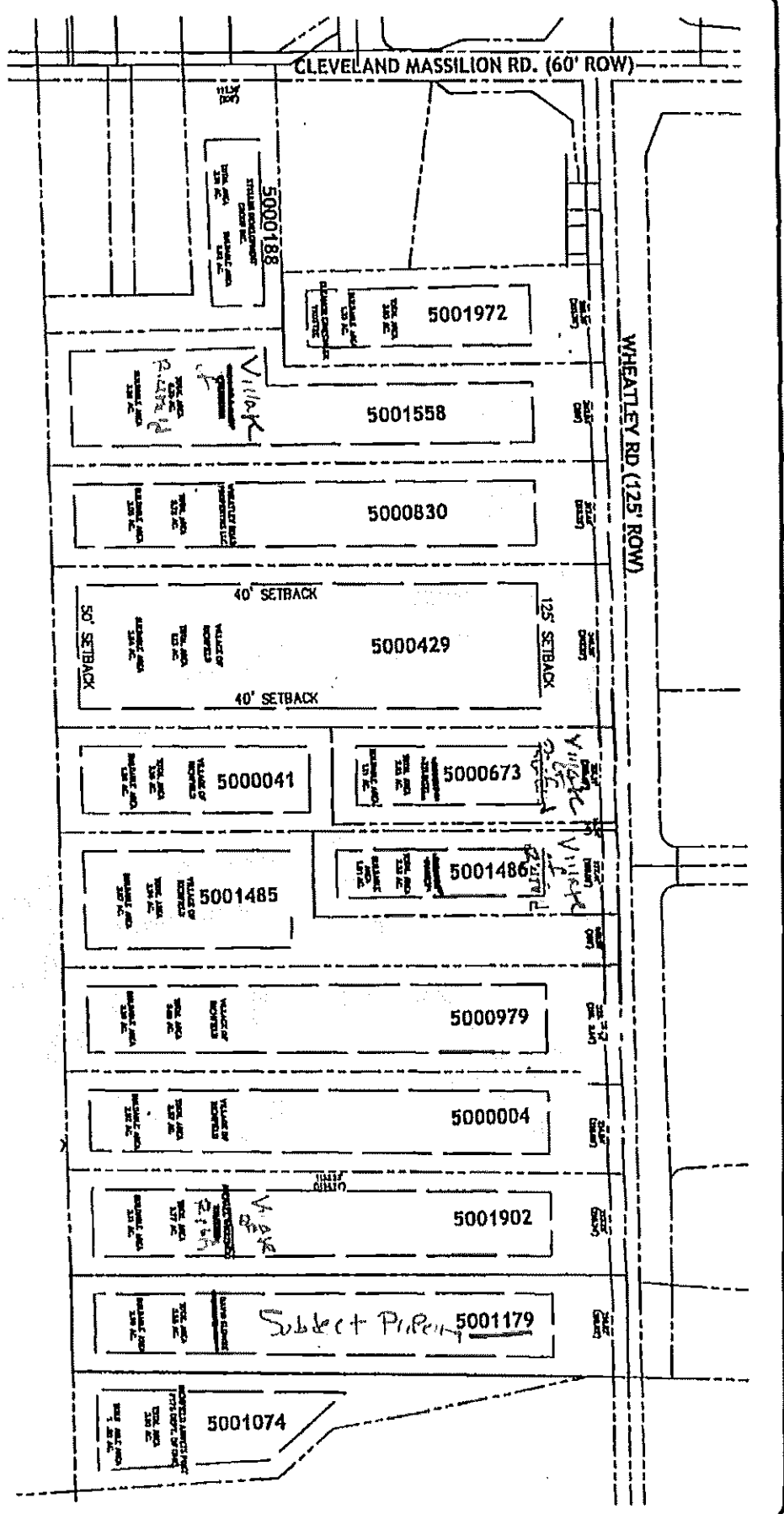
Vendor Registration

Prior to submission, ensure that the Member Community is a registered vendor with the District. Vendor Registration can be done by accessing http://www.neorsd.org/lsupplier_homepage.php and completing the New Vendor Registration. If unsure of the Member Community vendor status, by initiating the New Vendor Registration a message of active registration will appear if currently registered as a vendor.

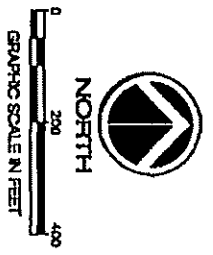
Project Budget

Project Expenses	Community Cost-Share Expense	Line Item Description
Professional Services		
Personnel <i>(Member Community staff only)</i>		
Subcontract		
Equipment		
Materials		
Other	120,000	Pay for a small portion of land acquisition costs.
TOTAL	\$ 120,000	

Exhibit I



Lot Size & Ownership Analysis
 SOUTH WHEATLEY PROPERTIES
 Village of Richfield
 September 19, 2019



RESOLUTION NO. 8-2020

Offered by: All of Council

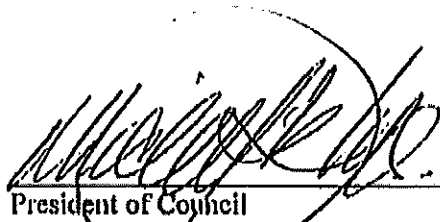
A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A PURCHASE AGREEMENT WITH DAVID SLOWBE, NEDYNE DANZEY AND T700 LAND GROUP, LLC FOR PROPERTY LOCATED ON WHEATLEY ROAD IN THE VILLAGE OF RICHFIELD AND DECLARING AN EMERGENCY

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

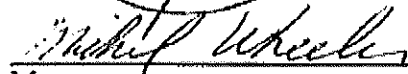
- SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into an agreement with David Slowbe, Nedyne Danzey and T700 Land Group, LLC, a Texas limited liability company, for the purchase of approximately six (6) acres of property on Wheatley Road, Permanent Parcel No. 5001179, substantially in the form of the agreement on file with the Clerk of Council and incorporated herein fully as if by reference, subject to final approval of the Village Law Director.
- SECTION 2. That the Mayor, the Finance Director and the Law Director are hereby authorized and directed to take all necessary actions to complete the purchase of the aforesaid parcel of land in accordance with the Purchase Agreement, and that such purchase is for public purposes, which may include additional municipal storage and/or green space or other public uses.
- SECTION 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions 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 is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this Village, and for the further reason that this Resolution is required to be immediately effective in order to have the purchase close by May 1, 2020, as required under the agreement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto or six affirmative votes if all members of Council are present at the meeting at which it is passed; otherwise it shall be in full force and effect after the earliest period allowed by law.

Exhibit III

PASSED: 1-21-20



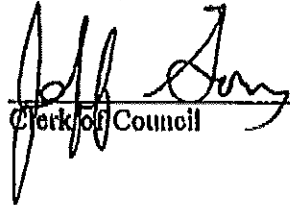
President of Council



Mayor

Dated: 1/21/2020

ATTEST:



Clerk of Council

**COMMUNITY COST-SHARE AGREEMENT
BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
VILLAGE OF RICHFIELD**

This Agreement is made and entered into this _____ day of _____, 2020, 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 Village of Richfield (Village) 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 Village 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 Slowbe Property Acquisition (the "Project") as a Community Cost-Share project proposed by the Village; 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 Village Obligations

- 1.1 The Village 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 Village'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 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 Village for the Project.
- 1.1.6 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.
- 1.1.7 If the Village fails to maintain the Project in accordance with this Agreement, the Village shall be liable for the full amount of any Community Cost-Share Program funds paid for the Project. Such amount shall be offset against the Village Community Cost-Share Account.
- 1.1.8 Submit requests for approval to modify the budget, deadline, deliverables, or other components of the Project to the Village's Watershed Team Leader at least 30 business days prior to the desired date of execution of the modification.
- 1.1.9 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 (NEORS D) Community Cost-Share Program in coordination with Village, under the provisions of the NEORS D 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 NEORS D review and may not necessarily reflect the views of NEORS D, and no official endorsement should be inferred.
- 1.1.10 Provide the District the opportunity to have design approval for any signage or public education and outreach efforts related to the Project.
- 1.1.11 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 \$120,000.00 to the Village for the Project from the Village’s Community Cost-Share Account.
 - 2.1.2 Provide reimbursement of funds up to \$120,000.00 to the Village within 60 days of receipt of a complete Request for Payment from the Village, 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 Village in presentations or publications related to the Project.

Article 3.0 **Dispute Resolution**

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

District Representative	Village Representative
Watershed Team Leader	Village 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	Village Representative
Director of Watershed Programs	Mayor

- 3.3 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.

- 3.4 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**

- 4.1 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 laws of the State of Ohio.

Article 5 **Counterpart Signatures**

- 5.1 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**

- 6.1 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**

- 7.1 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**

- 8.1 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" – Village Ordinance/Resolution
- Exhibit "C" – District-Approved Community Cost Share Application

[FOR NEORS D USE]

CONTRACT NO.

CERTIFICATION

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

VILLAGE OF RICHFIELD

FOR

COMMUNITY COST-SHARE PROJECT:

SLOWBE PROPERTY ACQUISITION

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.

Total Approximate Cost: \$120,000.00

CHIEF FINANCIAL OFFICER

Date

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

CHIEF LEGAL OFFICER

Date

Budget Center 8100

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

VILLAGE OF RICHFIELD

By: Michael Wheeler
Title: MAYOR

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

VILLAGE OF RICHFIELD

Allyson V. Cole
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.