

ORDINANCE 56-1988

Offered by Mr. Morrison and Mayor Waszak

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT AND AUTHORIZING APPLICATION BY MEANS OF SUCH PROPOSED AGREEMENT FOR INCLUSION OF THE VILLAGE OF RICHFIELD AND SURROUNDING AREAS WITHIN THE NORTHEAST OHIO REGIONAL SEWER DISTRICT AND DECLARING AN EMERGENCY

WHEREAS, the Village of Richfield is contemplating constructing an interceptor sewer in Brecksville Road; and

WHEREAS, this Council, after careful review of alternative proposals available for providing wastewater treatment to the residents of the Village of Richfield and surrounding areas, has found and determined that the inclusion of the Village of Richfield and surrounding areas in the Northeast Ohio Regional Sewer District will afford the greatest benefit to the residents of the Village of Richfield at the lowest possible cost; and

WHEREAS, a proposed Agreement between the Village of Richfield and the Northeast Ohio Regional Sewer District has been negotiated by the Village Administration, subject to the ratification of the text of such contract by this Council; and

WHEREAS, this Council has received the proposed text of such contract between the Village of Richfield and the Northeast Ohio Regional Sewer and by means of the same is desirous of making application for the inclusion of the Village of Richfield and surrounding areas into the Northeast Ohio Regional Sewer District.

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

SECTION 1: That this Council hereby finds and determines that, in order to avoid hazard to the health of the residents of the Village of Richfield and surrounding areas which may be occasioned by inadequate treatment of wastewater, and to enable the Village of Richfield to provide essential services to its residents and resident of surrounding areas in the contemplated Service District without being burdened by the costs of constructing and improving a wastewater treatment facility, it is necessary that the Village of Richfield and surrounding areas be included in the Northeast Ohio Regional Sewer District.

- SECTION 2: That this Council further finds and determines that it is conducive to the public health, safety, welfare and convenience for the Village of Richfield and surrounding areas in the Richfield Service District to be included in the Northeast Ohio Regional Sewer District for the reason that such inclusion is the most economical and efficient way by which adequate, effective and efficient wastewater treatment services may be provided to the residents of the Village of Richfield and the surrounding Service Districts.
- SECTION 3: That this Council further finds and determines that, due to the location of the Village of Richfield and surrounding areas, it is feasible and practical for the Village of Richfield and surrounding areas to be included as part of said Sewer District.
- SECTION 4: That the Village of Richfield hereby applies for inclusion of all of the municipal territory of said Village and surrounding territory as indicated on Exhibit "A" attached hereto for inclusion into the Northeast Ohio Regional Sewer District and the within Ordinance shall constitute an application by the Village of Richfield and surrounding areas for inclusion into the Sewer District; and that the Clerk of this Council is hereby authorized and directed to make such application by certifying a copy of this Ordinance to the Board of Trustees of the Northeast Ohio Regional Sewer District immediately upon the passage hereof in accordance with Section 6119.05 of the Ohio Revised Code.
- SECTION 5: That this Council further finds and determines that a proposed Agreement between the Village of Richfield and the Northeast Ohio Regional Sewer District marked Exhibit "B" and attached hereto and made a part hereof as if fully rewritten herein, is fair, just and equitable, and that the same be, and hereby is, authorized, approved and ratified as containing all of the terms and conditions by which the Village of Richfield makes application to be included in the Northeast Ohio Regional Sewer District.
- SECTION 6: That this Council finds and determines that all actions of the Council concerning and relating to the passage of this Ordinance were accomplished in open meetings of the Council, and that all deliberations of this Council and any of its committees which resulted in formal action upon the same were done in meetings open to the public as mandated by Section 121.22 of the Ohio Revised Code.

SECTION 7: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of the residents of the Village of Richfield and to provide essential health services to the Village and provided this Ordinance receives the affirmative vote of two-thirds (2/3) of the members elected or appointed, it shall take effect and be in force from and after its approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest date provided by law.

Passed: 2/21, 1989

David W. Howard
President of Council

Royal W. Wagoner
Mayor

Dated: 2/21/89

ATTEST:

Mary L. Higley
Clerk of Council

AN

AGREEMENT

BY

AND

BETWEEN

THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

THE VILLAGE OF RICHFIELD, OHIO

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19____, by and between the Northeast Ohio Regional Sewer District, a regional sewer district organized and existing as a political subdivision of the State of Ohio pursuant to Chapter 6119 of the Ohio Revised Code, acting pursuant to Resolution No. _____, adopted by the Board of Trustees of said District on _____, 1989 (hereinafter referred to as the "District"), and the Village of Richfield, Ohio, acting pursuant to Ordinance No. _____, adopted by the Council of said Village on _____, 1989 (hereinafter referred to as the "Village").

W I T N E S S E T H:

WHEREAS, there is a need to maintain adequate wastewater treatment service in the Village; and

WHEREAS, it has been determined that such adequate wastewater treatment can most efficiently and economically be provided by the inclusion of the Village in the District and the extension of service to the Village by the District through a local sewer system to be constructed by the Village which will ultimately cause the wastewater generated in the Village to flow into the Cuyahoga Valley Interceptor Sewer and be eventually conveyed to the District's Southerly Wastewater Treatment Plant for treatment and disposal; and

WHEREAS, the District has planned for the inclusion of the Village and other areas of Summit County to become a part of the District and has adequately sized the Brecksville Trunk of the Cuyahoga Valley Interceptor Sewer and its Southerly Wastewater Treatment Plant to accept the flows from the Village and other adjoining areas of Summit County; and

WHEREAS, the Council of the Village recognizes the need for the establishment of such a regional wastewater treatment system; and

WHEREAS, the Northeast Ohio Regional Sewer District has been established as the regional governmental entity to carry out such a regional wastewater treatment system; and

WHEREAS, pursuant to Ordinance No. _____, adopted by the Council of said Village on _____, 1989 (a copy of which is attached hereto and made a part hereof as Exhibit "A"), the Village has applied for the inclusion of all of its territory in the Northeast Ohio Regional Sewer District, and has requested connection of its presently planned local sewer system to the Cuyahoga Valley Interceptor Sewer; and

WHEREAS, pursuant to Resolution No. _____, adopted by the Board of Trustees of said District on _____, 1989 (a copy of which is attached hereto and made a part hereof as Exhibit "B"), the application of the Village for inclusion of all of its territory in the District has been accepted, and the connection of the Village's presently planned local sewer system to the Cuyahoga Valley Interceptor Sewer has been authorized; and

WHEREAS, it is the intent of this agreement to memorialize the terms under which the Village will become a part of the Northeast Ohio Regional Sewer District and thereafter receive wastewater treatment and disposal services from the District;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other good and valuable consideration, the District and the Village do hereby promise and agree:

Section 1. Subject to the provisions of this Agreement, the District promises and agrees that the entire Village shall be part of Subdistrict No. 2 of the District, which presently includes all member communities outside of the City of Cleveland, with all rights, privileges, and duties coequal to all other communities in the District as delineated in the Plan of Operation for the District and subject to the provisions of Chapter 6119 of the Ohio Revised Code. The District further agrees to serve the Village in the same manner as it serves all other areas of the District pursuant to the Plan of Operation set out in the Judgment of the Cuyahoga County Court of Common Pleas in Case No. SD 69411 dated June 15, 1972, and as amended by later judgment and orders of said Court, a current copy of which is attached hereto and made a part hereof as Exhibit "C", and as may from time to time be amended, and pursuant to the statutory authority granted the District in the Ohio Revised Code, Chapter 6119.

Section 2.

(A) In order to receive sanitary sewage treatment and disposal service from the District, the Village shall design and construct gravity sewers, force mains, pump stations and all appurtenances (hereinafter referred to as "local sewer system") in whatever combination necessary to collect the wastewater generated in the Village and to transport same to Cuyahoga County Sewer No. 1313 in Route 21, and thence to the Brecksville Trunk of the Cuyahoga Valley Interceptor Sewer. The local sewer system to be designed and constructed by the Village shall be in the service area as described in Exhibit "D", a copy of which is attached hereto and made a part hereof, and in accordance with plans and specifications to be reviewed by the District as set forth later in this Agreement. The Village acknowledges that it has sole responsibility for the preparation of the design, including the plans, specifications and other documents necessary for the construction of the local sewer system, and for the actual construction thereof. The design preparation and all additional engineering services shall be done at the sole expense of the Village.

(B) The construction of the local sewer system shall be in accordance with the plans and specifications which shall be subject to review by the District's designated representative. No changes may be made in the plans and specifications, or in other components of the design, be they structural or otherwise, without the prior written approval of the designated representative of the District, except that minor and insubstantial changes

may be made at the discretion of the Village when such changes do not affect the design or the structural integrity of the local sewer system.

(C) As part of the criteria for the review of the plans and specifications by the District, and to allow the District to prepare for accepting wastewater from the Village, the Village shall submit a schedule for completion of the overall project as well as the major component parts thereof which will result in the generation of wastewater flow into the District's facilities.

(D) Design and construction shall include the installation of a meter of a type and at a location to be specified by the District, but installed by the contractor selected by the Village. The installation shall be in accordance with the plans and specifications, and in accordance with shop drawings which shall be submitted and approved by the District.

(E) During the period of construction, all construction, work, workmanship, materials and installation involved in or incidental to the construction of the local sewer system shall be subject, at all times, to inspection by the District's designated representative. The Village shall give or cause to be given to the District not less than seventy-two (72) hours written notice before starting any work, and shall ensure all work performed, and materials and equipment furnished, comply in all respects with the approved plans and specifications. In the event the District's designated representative determines that work being performed, or materials or equipment being furnished,

are not in compliance with the approved plans and specifications, the Village shall take all necessary corrective measures to comply with the approved plans and specifications.

(F) The Village shall be solely responsible for obtaining all permits and approvals necessary for the construction of the local sewer system under the laws, rules and regulations of the Federal Government, the State of Ohio or any political subdivision thereof having jurisdiction over the activities of the Village. In addition, the Village shall be solely responsible for obtaining permission, if necessary, from other governmental agencies, including but not limited to Cuyahoga County and the City of Brecksville, to utilize sewers owned by those agencies to obtain access to the Cuyahoga Valley Interceptor Sewer.

(G) In the event it is necessary to acquire easements and/or permits for the use and occupancy of the land necessary for the construction of the local sewer system, the Village shall, at its own expense, have prepared all legal descriptions and sketches necessary to acquire such easements and/or permits. The Village shall also have the responsibility for actually acquiring all of the necessary easements and/or permits for the use and occupancy of the property. The Village shall expend all necessary sums for the appraisals, title work and the purchase of any easements and/or permits. In addition, the Village shall be responsible for obtaining approval of the Ohio Environmental Protection Agency and any and all other approvals mandated. The Village shall also be responsible for the NPDES permit, if required.

(H) Recognizing that the Village has incurred substantial expense in the construction of its local sewer system, and further recognizing that the Village has accepted responsibility for payment of the wastewater generated in Summit County flowing through the master meter, the District agrees not to accept or treat any wastewater generated outside the Village but within the service area shown on Exhibit "D" and flowing through the master meter without the prior written consent of the Village. The Village further agrees not to allow any area of Summit County outside of the Village shown on Exhibit "D" to become a part of the Village's local sewer system without the prior written consent of the District. The Village and the District agree, however, that should areas of Summit County outside of the Village but shown in Exhibit "D" as being planned for future inclusion within the District be annexed to the Village, the Village will not have to obtain the prior written consent of the District to provide wastewater treatment.

Section 3.

(A) In accordance with the Plan of Operation for the District as set forth in the Orders of the Cuyahoga County Common Pleas Court which established the District, the Village shall retain ownership and responsibility for its local sewer system including the operation, maintenance, replacement, repair and expansion thereof. The Village agrees that the regulation, use, construction, operation, maintenance, and repair of its local sewerage collection facilities will be accomplished in accordance with the rules and regulations of the District. From and after

commencement of service to the Village, all applications for sewer connection permits by industrial users (as defined in the Standard Industrial Classification Manual of the United States Office of Management and Budget) in the Village shall be, prior to issuance, subject to approval by the District as to conformance with the District's Code of Regulations. From and after commencement of service to the Village by the District, the Village hereby agrees to inform the District monthly of all sewer connection permits issued in the Village.

(B) The Village covenants that it shall maintain its local sewer system, including all pump stations and force mains, in good repair and in full operating condition at all times. If at any time the District discovers that any facilities have not been maintained in proper repair and are adversely impacting the volume and/or strength of sewage discharged into the District's facilities, the District shall give notice to the Village of such deficiencies and the Village shall, as soon as practical thereafter, commence the necessary repairs, or perform the required maintenance. In addition, the Village assumes the responsibility for all operating costs and maintenance and repair costs for the local sewer system, excluding any such costs for the meter referenced in Section 4, below.

Section 4.

(A) Upon installation of the meter described in Exhibit "D", and the discharge of flow from the Village into the District's facilities, the District shall assume ownership of the meter. The District will then be responsible for all costs of

maintenance and repair of such meter, and shall hold the Village and its residents harmless for any of such costs.

(B) The District shall have access at all times to the area where the meter is installed. The District shall also have the exclusive right to certify the metering methods and controls as to their accuracy and operability; however, the District shall provide reasonable notice to the Village prior to any testing or calibration of the metering equipment and the Village shall have the right to be present when such work is performed. In the event that the meter, from time to time, fails and requires maintenance, then the parties shall immediately agree upon a method to prorate the flow for the interim period. In the event of a sustained outage of the meter, the District and the Village will prorate for the most recent calculable period, and the Village shall pay an estimated amount until such time as the meter may be repaired or replaced. In addition, the flow rate shall not exceed 6.495 MGD without the written permission of the District.

Section 5.

(A) Upon initiation of District treatment and disposal services to the Village, the Village agrees it shall cause the meter to be read during the first five days of each calendar month. Said reading shall be submitted to the district on a notarized statement, and bills based upon eighty percent (80%) of the metered flow shall be sent to the Village on a monthly basis. The Subdistrict 2 rate charged by the District shall initially

apply. Thereafter, the District shall from time to time establish sewerage service rates for users in the Village in the same manner as it establishes rates for all other users of its facilities.

(B) In addition to the charges specified in Section 5(A), above, the District will bill directly all industrial users for any surcharges necessitated by the waste loadings and degrees of concentration of the wastewater discharged by each industrial user, in accordance with Chapter 6 of the District's Sewer Use Code.

(C) The Village shall pay for all charges rendered for the previous month within thirty-five (35) days from the date of tender of the invoice. The Village shall not withhold payment in the event of any billing or collection dispute or in the event of any other dispute arising from the construction, operation or maintenance of its local sewer system. In such instance the parties shall settle such differences at law.

(D) No portion of the capital cost of the Cuyahoga Valley Interceptor Sewer shall be charged directly to the Village or to its residents, except that the rates for sewage treatment and disposal service set by the District shall include an increment for payments required to be made on account of such capital costs in the same amount as charged to all other users in Subdistrict No. 2.

(E) The payment of any capital debt outstanding on the Village's local sewer system at the time service is instituted to the Village shall remain the responsibility of the Village, and

the users of the District's facilities outside the Village shall in no way be responsible for participating in the payment of such debt; provided, however, the Village shall be entitled to receive reimbursement from the District for all or part of such outstanding capital debt commensurate with any future reimbursement by the District to any similarly situated community.

(F) The Village and the District agree that if, at some future date, water service from the City of Cleveland Department of Public Utilities becomes available to the majority of the sewer users in the Village, the Village and the District will consider changing the method of billing from the master meter method described herein to individual bills to the users with the basis of billing to be based upon water consumed. Said agreement shall be upon such reasonable terms and conditions as may be agreed to by the Village and the District, and shall be similar to the agreements with and services provided to other similarly situated communities.

Section 6. All users of the District's facilities shall be subject to the District's Code of Regulations as now enacted, which is hereby incorporated into this Agreement by reference, and to subsequent additions, deletions, amendments and revisions as may be made from time to time pursuant to the authority of the Board of Trustees of the District, provided that said Code shall be applied uniformly to all users within the District.

Section 7. The area described in Exhibit "D" shall generally define the service area to be encompassed by the local

sewer system. There shall be no additional area included, nor shall there be any area excepted out, without the prior approval of the District. Upon initiation of District treatment and disposal service, a list of customers shall be provided immediately by the Village.

Section 8. The Village also agrees to maintain adequate insurance or equivalent self-insurance, being not less than \$1,000,000 comprehensive general liability and \$1,000,000 umbrella liability, naming the District as a coinsured during the course of construction of the local sewer system. Further, the Village agrees to indemnify and hold the District harmless from any liability whatsoever arising from the construction of the local sewer system or from any operation and maintenance problems with said local sewer system.

Section 9. The Village agrees that it shall be liable for the discharge of any lien, encumbrance or charge (levied because of any mechanic's, laborer's or materialman's lien or otherwise) which may be or become a lien, encumbrance or charge upon the easement properties or the material to be installed in connection with the construction of said local sewer system.

Section 10. Despite anything in this Agreement to the contrary, no covenant, promise, term or condition of this Agreement to be performed or complied with by either party, and no breach shall be waived, altered or modified except by a written instrument executed by the party against whom enforcement of such waiver, alteration or modification is sought. Additionally, no waiver of any breach shall affect or alter this Agreement, but

each and every covenant, promise, term and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

Section 11. This Agreement contains all the promises, agreements, conditions, inducements and understandings between the District and the Village, and there are no promises, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as set forth in this Agreement.

Section 12. A determination that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such other part is wholly dependent for its operation upon the part so declared invalid.

Section 13. All notices, invoices, and requests hereunder shall be in writing and personally delivered or sent by registered or certified mail. Notices to the District shall be delivered or addressed to: Director, 3826 Euclid Avenue, Cleveland, Ohio 44115-2504, or to such other person and place as the District may, from time to time, designate in writing, and notices to the Village shall be delivered or addressed to the Village are to Mayor, Village of Richfield, 4410 West Streetsboro Road, Richfield, Ohio 44286; or to such other person and place as the Village may, from time to time, designate in writing.

Section 14. This Agreement includes the exhibits hereto, all of which are as fully a part of this Agreement as if

herein set forth in writing, or if not attached, as if attached,
to-wit:

1. Exhibit "A" - Village of Richfield Ordinance No. _____;
2. Exhibit "B" - Northeast Ohio Regional Sewer District Resolution No. _____;
3. Exhibit "C" - Court Orders; and
4. Exhibit "D" - General Description of Local Sewer System and Service Area

IN WITNESS WHEREOF, the Village and the District have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

SIGNED IN THE
PRESENCE OF:

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

By: _____
Its: _____

And: _____
Its: _____

VILLAGE OF RICHFIELD

By: _____
Its: _____

APPROVED AS TO FORM:

Solicitor, Village of
Richfield, Ohio