

ORDINANCE 57-1988

Offered by Mr. Morrison and Mayor Waszak

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COMMISSIONERS OF CUYAHOGA COUNTY PERTAINING TO THE BRECKSVILLE ROAD SEWER AND DECLARING AN EMERGENCY

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

SECTION 1: That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into an agreement with the Board of Commissioners of Cuyahoga County pertaining to various services in regard to the Brecksville Road sewer, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2: 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 and the services contemplated by the agreement are immediately necessary for the construction of the Brecksville Road sewer 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: 2/21/89, ~~0000~~

David W. Howard
President of Council

Raymond H. Mason
Mayor

Dated: 2/21/89

ATTEST:
Mary L. Hegley
Clerk of Council

2/1/89

AGREEMENT BETWEEN VILLAGE OF RICHFIELD
AND THE BOARD OF COUNTY COMMISSIONERS OF
CUYAHOGA COUNTY, OHIO

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EXHIBIT A Richfield Ordinance Authorizing Agreement

EXHIBIT B Service Area

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AGREEMENT

This Agreement is made by and between the Village of Richfield, an Ohio Municipal Corporation ("Richfield"), and the Board of County Commissioners of Cuyahoga County, Ohio ("County"), this ____ day of _____, 1988.

WHEREAS, Richfield desires individually to construct and install a Sanitary Sewer Trunk Line Project (the "Sewer") along Brecksville Road at a point beginning in Richfield, traversing Brecksville Road northerly, into and through the City of Brecksville, to a point ending and connecting with the Cuyahoga County Sewer No. 1313 ("Sewer 1313") at or near Parkview Drive;

WHEREAS, Richfield desires the County to cause the wastewater generated by Richfield to be transported from Snowville Road via Sewer 1313 to the Brecksville Trunk of the Cuyahoga Valley Interceptor Sewer (the "Brecksville Trunk") for treatment and disposal to the Northeast Ohio Regional Sewer District's Southerly Wastewater Treatment Plant and to cause the gravity portion of the sewer thus used in Cuyahoga County, Ohio for transporting said wastewater to be operated and maintained properly;

WHEREAS, the Council of Richfield has adopted Ordinance No. _____, dated _____ and attached as Exhibit "A", authorizing the Mayor and Finance Director to enter into an agreement with the County for the transportation of wastewater from Snowville Road via Sewer 1313 to the Brecksville Trunk and

for the operation and maintenance of the sewer thus used in Cuyahoga County, Ohio; and

WHEREAS, Richfield and the County desire to specify and fix the respective obligations, duties, costs, and responsibilities of each of the parties;

NOW, THEREFORE, in consideration of the mutual covenants expressed below, the parties agree as follows:

SECTION 1

Section 1.1. Service Area

The area described in Exhibit "B" will generally define the service area to be encompassed by the local sewer system (defined below). There will be no additional area included, nor will there be any area excepted out, without the prior approval of the County.

Section 1.2. Maximum Flows Accepted by the County

The County shall accept and receive into the Sewer 1313 wastewater originating in Richfield subject to the following:

The amount of wastewater accepted and received by the County shall not exceed the following:

Maximum daily flow including infiltration: 6,350,000
gpd

Maximum pumping rate: 4510 gpm

Section 1.3. Operation and Maintenance by the County

The County shall provide at its expense and in accordance with the provisions of this Agreement the necessary personnel, facilities, and equipment to operate, maintain and service the gravity sanitary sewer collection facilities from Snowville

Road north to the terminus of the sanitary sewer trunk line project constructed or to be constructed within the City of Brecksville.

Section 1.4. Inspection During Construction

The Cuyahoga County Sanitary Engineer shall have a full time inspection during construction on the gravity and force main portion of the sewer in Brecksville from the County Line north to the terminus of the construction of the sewer. The Cuyahoga County Sanitary Engineer agrees that the inspection of surface restoration shall be performed by the City of Brecksville.

All other Construction of the tributary sewers, pump stations and force mains shall be subject to part time inspection by the County.

The County's representative shall witness all leakage tests for gravity sewers and force mains. Richfield will notify the County 48 hours prior to the tests being performed.

Section 1.5. Improvements to County's Sewer System

In the event that the County shall determine it to be necessary to enlarge, expand or otherwise improve any portion of the sanitary sewer system used jointly by the County and Richfield from Snowville Road northerly to the tie in with the Cuyahoga Valley interceptor sewer or to construct additional sewers for such joint use the cost of such improvements shall be shared by the County and Richfield as their interests shall require and shall be made upon such terms and conditions as are mutually agreed upon and incorporated in an amendment or supplement to this Agreement.

SECTION 2

Section 2.1. The County Procedures

Section 2.2. Operation and Maintenance Charges

Sixty days after the service to be provided by the County are initiated, the County will bill Richfield a fee for operation and maintenance of the gravity sewer in Brecksville. The County shall bill Richfield quarterly and Richfield shall pay such billing to the County within thirty (30) days of receipt. The County shall compute the expenses in the manner described in paragraph 3.2. Any extraordinary operation or maintenance expenses shall be agreed to by the County and the Village and, if necessary, may be paid by the Village on an extended schedule.

Section 2.3. Plans and Specifications for the Service Area Improvements

Richfield shall submit to the County the plans and specifications for any sanitary sewer to be constructed in the service area. The County shall furnish comments without unreasonable delay. The County shall have the right to inspect any sewer in the Service area during or after construction. The cost of such inspections shall be an expense of operation, maintenance and replacement of joint facilities as described in Section 3.3.

Section 2.4. Maximum Infiltration

Infiltration in the sanitary sewers in the Service Area shall not exceed 200 gallons per inch of diameter per mile of length per 24 hours or 175 gallons/acre/day, whichever is less. Total inflow and infiltration for the sanitary sewers in the Service Area shall not exceed 1,885,229 gallons per day.

The County may require Richfield to make infiltration tests conforming to American Society of Testing Materials Specifications for the applicable material used to construct the sewers, as revised from time to time. In the event that the County shall ascertain by its own test or from Richfield, that infiltration or inflow into the collector sewers in the Service Area, or any part thereof exceeds the limitations specified, the County shall notify Richfield in writing of the condition and request that Richfield reduce that infiltration or inflow sufficiently to comply with those limitations within a reasonable period of time.

Section 2.5. Richfield Investigations

Richfield shall conduct, at its sole expense, the required infiltration and inflow surveys and investigations, and reports thereof shall be submitted to the County. Richfield shall take such actions as required in accordance with subsection 2.4.

Section 2.6. County Inspection

For the purpose of assuring compliance with subsection 2.4, the County shall have the right to perform such tests as it deems necessary to determine the amount of infiltration and inflow from the service area. The cost of such test shall be an expense of operation and maintenance.

SECTION 3

Section 3.1. User Charge System

Section 3.2. Service Fees

The Village of Richfield will be charged for the County's operation and maintenance of the gravity sewer in Brecksville according to the following:

The Cost of operation and maintenance of the gravity sewer between Snowville Road and CVI (Brecksville Trunk) will be determined upon current rates for Brecksville. The charges will be divided between Brecksville and Richfield as follows:

- Sewer from Snowville Road to Parkview Road
- Richfield 57%, Brecksville 43%
- Sewer from Parkview Road to CVI
- Richfield 34%
- Brecksville 66%

Section 3.3. Charges for Capital Improvements

Subject to Section 1.5 of this Agreement, charges for capital improvements will be based upon procedures described in Section 3.2. Charges for capital improvements due to the increased flow from Brecksville only will be borne by City of Brecksville.

Section 3.4. Expenses of Operation, Maintenance and Replacement of Joint Use Facilities

"Expenses of operation, maintenance and replacement of the Joint Use Facilities" and "expenses of operating,

maintaining and replacing the Joint Use Facilities", as used in this Agreement, mean all reasonable and proper expenses of operating and maintaining the Joint Use Facilities (that portion of the sewer between Snowville Road and the Cuyahoga Valley Interceptor), including all ordinary replacement costs, all customary and usual expenses of maintenance and repair, and all administrative, engineering and labor expenses required to perform the same, but excluding capital debt service and further excluding extraordinary capital replacements. Such extraordinary capital replacements, shall be made upon terms as are mutually agreeable to Richfield and the County, and incorporated, if so determined, in an amendment or supplement hereto. "Expenses of operation, maintenance and replacement of the Joint Use Facilities" and "expenses of operating, maintaining and replacing the Joint Use Facilities" shall not include costs of operating, maintaining and replacing sewer collection facilities that are located in Richfield, or the force main located in Brecksville.

SECTION 4

Section 4.1. Duties of Richfield

Section 4.2. Design and Construct Local Sewer System

Richfield agrees to design and construct gravity sewers, force mains, pump stations, and all necessary appurtenances (the "local sewer system") in whatever combination necessary to collect the wastewater generated in Richfield and to transport it to Sewer 1313, for further transportation to the Brecksville Trunk. The local sewer system will be designed and

constructed as generally described in Exhibit "C", attached and made a part hereof, and in accordance with the plans and specifications the final preparation of which is to be reviewed and approved by the County or its designated representative.

As part of the criteria for the review of the plans and specifications by the County, Richfield will submit a schedule for completion of the overall project that details the completion of each major component which will result in the generation of wastewater flow into Sewer 1313.

The construction of the local sewer system will be in accordance with the aforesaid plans and specifications as approved by the County or its designated representative. No changes, structural or otherwise, may be made in the plans and specifications or in any other components of the design without the prior written approval of the County's designated representative, except that changes which do not materially affect the design or the structural integrity of the local sewer system may be made at Richfield discretion.

Section 4.3. Secure all Permits, Easements, Approvals, and Necessary Collateral Agreements

Richfield will be solely responsible for and bear all costs related to obtaining all permits, approvals, and necessary collateral agreements required for the construction and ultimate operation 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 Richfield's activities.

Richfield will, at its own expense, acquire all easements and/or permits required for the use and occupancy of any land needed for the construction of the local sewer system.

Section 4.4. Be Responsible for all Design, Construction and Inspection Costs

Richfield acknowledges that it has sole responsibility for the preparation and cost of all required design work, including all plans, specifications, and engineering services, for the local sewer system. Richfield also acknowledges that it is solely responsible for all costs incurred for the actual construction, including necessary insurance and regulatory inspection costs, of the local sewer system, including force main and gravity sewer in Brecksville.

Section 4.5. Retain Title to Local Sewer System and Provide Access to Pump Stations, Gravity Sewers, and Force Mains

Except for the gravity sewer located in Brecksville, which will become a part of sewer 1313 and the metering device, Richfield will retain title to the local sewer system, including all physical facilities, easements, permits, and licenses. Title to the actual physical extension of Sewer 1313 shall remain in the County.

Title to the metering device will at all times remain in the District. Notwithstanding the generality of the foregoing, Richfield will provide the County or its designated representative and all regulatory institutions with access to the pump stations, gravity sewers, and force main facilities of the local sewer system to observe, report on, or inspect them during the

pre-construction, acquisition, construction, or operational periods, as the case may require.

Section 4.6. Maintain Adequate Insurance

Richfield will maintain adequate insurance or equivalent self-insurance program, in an amount not less than \$1,000,000 comprehensive general liability and \$1,000,000 umbrella liability, naming the County as a coinsured, during the course of construction of the local sewer system. Further, Richfield agrees to indemnify and hold the County harmless from any liability whatsoever arising from the construction of or from any operation and maintenance problems of the local sewer system.

Section 4.7. Permit Inspections and Comply with Plans and Specifications

During the construction period, all construction, work, workmanship, materials, and installations involved in or incidental to the construction of the local sewer system will be subject, at all times, to inspection by the County's designated representative and other institutional regulators. Richfield will ensure that all work performed and materials and equipment furnished, comply in all respects with the approved plans and specifications. If the County's designated representative or other institutional regulator determines that work being performed, or materials or equipment being furnished, is not in compliance with the approved plans and specifications, Richfield will take all necessary corrective measures to comply with the approved plans and specifications. All testing shall comply with Uniform Standards for sewerage improvements requirements.

Section 4.8. Adopt Sewer Use Ordinance

Richfield agrees to adopt a sewer use ordinance, made applicable to all users of the local sewer system, incorporating the rules and regulations of the Northeast Ohio Regional Sewer District as now enacted and as the same may be amended from time to time, provided that the rules and regulations are applied uniformly to all users.

Section 4.9. Pay County for Services Provided

Richfield agrees to pay County for reasonable, necessary, and actual pre-construction and construction period engineering, legal, inspection, and administrative charges. Richfield will pay for all charges rendered in the previous month within thirty-five (35) days from the date the County's invoice is tendered. Richfield will not withhold payment in spite of any billing or collection dispute or in spite of any other dispute arising from the construction, operation, or maintenance of the local sewer system. If there is such a dispute, the parties agree to settle their differences at law.

Section 4.10. Provide as Built Plans for Gravity Sewer in Brecksville

After completion of the gravity sewer in Brecksville, Richfield will provide at no cost to the County a copy of plans, specifications and profiles of the sewer on an as built basis.

SECTION 5

Section 5.1. Duties of the County

Section 5.2. Receive and Transport Sewage

The County agrees to accept and receive the wastewater from the local sewer system at Snowville and to transport the same to the Brecksville Trunk thru sewer 1313 for treatment and disposal at the Northeast Ohio Regional Sewer District's Southerly Wastewater Treatment Plant. The amount of wastewater accepted shall be in conformance with Section 1.1.

Section 5.3. Maintain and Operate the Physical Facilities Between Snowville Road and the Brecksville Trunk

The County agrees to provide the personnel, equipment, and material needed to operate and maintain properly the physical facilities of the gravity sewer system between Snowville Road and the Brecksville Trunk through and by which the wastewater from the local sewer system will be transported by the County. As used here, the term (a) "operate" means the organized procedure for causing a piece of equipment, a treatment plant, or other physical facility or system to perform its intended function, but does not include the initial building, installation, or replacement of that physical facility, and (b) "maintain" means the organized procedure for keeping the equipment, plant, or other physical facility or system in proper condition to enable it to continually and reliably perform its intended function.

Section 5.4. Absorb Costs Incident to Services Provided

The County agrees to pay all costs incurred incident to its obligations under Sections 5.1 and 5.2, including any and all

administrative and insurance costs involved in the performance of those obligations.

Section 5.5. Provide Annual financial report and consult on Annual Operating and Maintenance Program and Budget

The County will prepare and submit an annual financial and service report by July 1st of the year following the service year for the services and charges contemplated by this Agreement. The County agrees to maintain accurate books and financial records of all pertinent data and to provide Richfield with reasonable access to the books and records during normal business hours. The County will present to and consult with Richfield on the annual operating and maintenance program and budget for the physical facilities that are used to fulfill its obligations under Sections 5.1 and 5.2.

Section 5.6. Provide Other Services

The County agrees, subject to availability and upon a request basis only, unless amended by separate agreement, to provide the necessary equipment, personnel, and material to operate and maintain the local sewer system. The County will bill Richfield for actual cost of such services.

Section 5.7. Establish Schedule for Charges to Richfield

In order to charge Richfield for the County's transportation, operation, and maintenance services, the County will establish a formula, fee, or rate schedule for use of the sanitary sewer coequal to other communities utilizing the same or similar services (the "Ordinary Rate Schedule"). The County will bill Richfield quarterly in accordance with Section 2.1. The

County will also establish an incremental charge schedule for nonrecurring, capital, or extraordinary charges in a manner and in an amount coequal to other communities utilizing the same or similar services as Richfield. These incremental charges will be added to the rates indicated in the Ordinary Rate Schedule. It being understood by the parties that no nonrecurring, capital, or extraordinary charges will be charged directly to Richfield or its residents. The County agrees to provide Richfield with copies of the aforesaid rate schedules upon request and to notify Richfield promptly of any proposed changes thereto. A copy of the rate schedule, now in effect, is attached hereto as Exhibit "D."

SECTION 6

Section 6.1. Miscellaneous

Section 6.2. Entire Agreement

This Agreement contains the entire agreement between the parties, and no representation, warranty, agreement, or other undertaking not specifically set forth in this Agreement will be binding upon or inure to the benefit of either party. The terms of this Agreement may not be modified except in a writing signed by each of the parties.

Section 6.3. Section Headings

The section headings are intended for convenience only and will not be used to construe or interpret this Agreement.

Section 6.4. No Third Parties

Nothing herein, expressed or implied, is intended or will be construed to confer upon or give to anyone other than the parties hereto, any rights, remedies, or other benefits under or by reason of this Agreement, nor will it be construed as creating any personal liability on the part of any officer or agent of either party hereto.

Section 6.5. Waiver

No waiver of any of the provisions or conditions of this Agreement or any of the rights of either party will be effective or binding unless the waiver is in writing and signed by the party claimed to have given or consented thereto. Except to the extent that a party hereto otherwise agrees in writing, no waiver by that party of any condition of this Agreement, or breach by the other party of any of its obligation or representation by the other party, nor will any forbearance by the first party to seek a remedy for any noncompliance or breach by the other party be deemed to be a waiver by the first party of its rights and remedies for such noncompliance or breach.

Section 6.6. Assurances

The parties hereto will assist and cooperate with each other in connection with their respective obligations hereunder.

Section 6.7. Notice

All notices, requests, invoices, demands, or other communications required or permitted under this Agreement will be deemed to have been duly given, if in writing and personally delivered to the party for whom it is intended or if sent by

registered or certified mail and addressed as shown below, or to such other address as may be designated from time to time by either party in writing:

If to County:

If to Richfield:

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

APPROVED AS TO FORM:

VILLAGE OF RICHFIELD

Director of Law

By: _____
Its: _____

By: _____
Its: _____

APPROVED AS TO FORM:

BOARD OF COUNTY COMMISSIONERS
OF CUYAHOGA COUNTY, OHIO

Assistant County Prosecutor

