

FINAL

SETTLEMENT AGREEMENT

CITY OF NORTH ROYALTON

THIS SETTLEMENT AGREEMENT ("AGREEMENT") is made by and between the Northeast Ohio Regional Sewer District ("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 City of North Royalton (North Royalton), pursuant to Ordinance No. _____, adopted on _____, 2013 attached as Exhibit B.

WHEREAS, the District and the City of North Royalton have been litigating the issues arising out of Cuyahoga County Common Pleas Case No. CV-10-714945, North Royalton being a defendant and counterclaimant in that matter; and

WHEREAS, the District and North Royalton intend to resolve and settle the issues now pending between them; and

WHEREAS, the District and North Royalton desire to enter into a Direct Billing Agreement whereby North Royalton will pay the District directly for stormwater fees for all billable properties in North Royalton located within the District's Stormwater Service Area known as North Royalton Consolidated Sanitary Sewer District C ("District C"); and

WHEREAS, North Royalton agrees that the terms and conditions of the Direct Billing Agreement shall comply with Title V of the District's Stormwater Management Code.

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

1.0 Community Cost-Share

1.1 The District and North Royalton agree that a minimum of twenty-five percent (25%) of the gross annual fees charged to the North Royalton service area District C shall be available to North Royalton through the Community Cost-Share Program as set forth in Chapter 9 of Title V of the District's Stormwater Management Code.

1.2 North Royalton shall make application to the District for stormwater management projects to be funded through the Community Cost-Share Program. In making such application, North Royalton shall follow District policy and procedures detailed in the most current version of the *Northeast Ohio Regional Sewer District Community Cost-Share Program Policy (Program Policy)*.

1.3 The District shall allocate funds for approved Community Cost-Share Program projects in North Royalton as a credit towards the North Royalton Stormwater Bill in accordance with the *Program Policy*, Section 5.0905 of Title V of the Stormwater Management Code and Section 4.0 of this Agreement.

1.4 North Royalton hereby acknowledges that maintaining compliance with Title V is a prerequisite for participation in the Community Cost-Share Program.

1.5 All credits due to North Royalton pursuant to this Agreement, including but not limited to, the Community Cost-Share account credit, shall be applied to North Royalton's Stormwater Bill at the earliest opportunity and any overage carried forward until all credits are exhausted.

2.0 Declining Block Fee for Non-Residential Property Owners

2.1 The District and North Royalton 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.

3.0. Fixed Fee Schedule

3.1 North Royalton agrees and acknowledges 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, 2019.

4.0 Direct Bill North Royalton for Stormwater Fees

4.1 Beginning in January 2013, the District agrees to submit a quarterly Stormwater Bill to North Royalton and North Royalton agrees to pay the stormwater fees for all billable properties in North Royalton located within the District's Stormwater Service Area District C as further described in the map labeled Exhibit "C." The billable properties in North Royalton within the District's Stormwater Service District consist of a list of parcel numbers, property types (residential and non-residential) and Equivalent Residential Units per parcel as further described in Exhibit "D," as amended from time to time. Stormwater fees for each parcel will be updated annually based upon new data sources and any adjustments made as a result of any approved stormwater fee credits obtained through the District's Stormwater Fee Credit process as set forth in Chapter 8 of Title V of the District's Stormwater Management Code.

4.2 The District agrees to deduct North Royalton's approved Community Cost-Share program project reimbursements from each quarterly North Royalton Stormwater Bill as soon as such reimbursements are approved per District policy and procedures.

4.3 The parties agree and acknowledge the financial benefit to the District from the billing of the North Royalton service area directly to North Royalton, and further agree that such yearly benefit amount (the Cleveland Division of Water stormwater only billing fee multiplied by the number of North Royalton billable properties) shall be a credit due to North Royalton. Said credit shall be applied at the earliest opportunity and any overage carried forward until all credits are exhausted.

5.0 Reimbursements for District Approved Maintenance on Regional Stormwater System

5.1 The District agrees to reimburse North Royalton for certain costs of any pre-approved maintenance activities for woody debris removal and related activities performed by North Royalton on the Regional Stormwater System located only within the District's Stormwater Service Area in North Royalton known as District C. North Royalton shall provide the District with reasonable notice of its intent to perform such maintenance activities and provide the District with a scope of work, on a case-by-case basis, to obtain pre-approval from the District

prior to performing any such maintenance activities.¹ District further agrees that such approval shall not be unreasonably withheld.

5.2 Eligible costs for reimbursement shall be limited to District approved labor, materials and equipment costs substantiated by invoices and other relevant documentation. North Royalton agrees that labor rates and equipment charges for approved maintenance activities shall be limited to contract bid prices for labor and equipment stated in the District's stormwater maintenance contracts in effect at the time maintenance work is performed by North Royalton.

5.3 North Royalton agrees to submit an invoice for approved maintenance activities to the District for reimbursement pursuant to the District's invoicing procedures at the time the maintenance activities have been completed and actual costs are incurred.

5.4 The District reserves the right to revoke approval of maintenance activities and refuse payment if North Royalton does not perform such activities as detailed in North Royalton's pre-approval submission to the District.

5.5 North Royalton shall be solely responsible for obtaining necessary permits and for obtaining access to property to perform such maintenance activities. North Royalton shall be solely responsible for the quality of the work performed and shall assume any and all responsibilities and liabilities related to such maintenance activities.

6.0 *Reimbursement for Basin Portion Only of Cedar Estates Detention Project*

6.1 The District acknowledges that the construction of the basin portion of the Cedar Estates Detention Project, while providing local stormwater benefit, is also impacting the Regional Stormwater System, specifically Baldwin Creek and the residents of the cities of Parma and Middleburg Heights. Therefore, the District agrees to reimburse North Royalton only for the actual cost of design and construction of the basin portion of the Cedar Estates Detention Project, at the completion of the basin construction. The District agrees to reimburse North Royalton for such approved design and construction costs based upon actual contract award prices, in an amount not to exceed Seven Hundred Thousand Dollars (\$700,000). The payment of said amount by the District is conditioned upon the District's right to approve the design of the basin to ensure it is providing a regional stormwater management function and benefit and upon the right to inspect the work during construction. District further agrees that such approval shall not be unreasonably withheld.

6.2 It shall be within the District's sole discretion to determine the function and benefit to the Regional Stormwater System of the basin, including assessing the impacts of the basin on downstream properties and flooding and erosion concerns. The District shall not provide funding for the basin project if the District determines the final design of the project contributes to flooding or erosion problems on the Regional Stormwater System.

¹ Any and all such work performed by North Royalton in 2012 in District C will be considered for credit qualification, lack of pre-approval notwithstanding.

6.3 The District agrees to credit North Royalton the reimbursement amount in equal quarterly installments over a twenty-year period beginning January 1 of the year following the completion of the basin in accordance with the provisions of this Agreement.

7.0 Amendment of the Agreement

7.1 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.

8.0 Authority to Bind

8.1 Each individual who signs below hereby represents and warrants that he or she has full and complete authority to bind the named party. North Royalton shall obtain authorization to execute this Agreement from its governing body and incorporate such authority as an Exhibit to this Agreement.

9.0 Resolution of Claims and Defenses

9.1 North Royalton withdraws any and all claims against the Northeast Ohio Regional Sewer District arising out of Cuyahoga County Common Pleas Case No. CV-10-714945 and agrees to dismiss its currently pending appeal and any subsequent proceedings in said matter.

10.0 Option to Void Agreement

10.1 The District and North Royalton agree that all obligations and agreements set forth herein will be voidable, at the option of either party, if a final judicial determination in the litigation known as *NEORS v. Bath Township, et al.*, holds that the District's stormwater program (or its associated fee), as set forth in Title V of the District's Stormwater Code, is illegal or unenforceable. If either party exercises the above-described right to void this Agreement, all obligations hereunder, including the reimbursement obligation set forth in Section 6, shall become immediately void and unenforceable. All fees paid to the District under the terms of this Agreement shall be reimbursed to the City. In the event that the District is obligated to reimburse any other of the joint defendants for litigation cost incurred an/or attorney fees, then such terms shall be applied to this Agreement and to the benefit of the City of North Royalton as well.

11.0 Exhibits:

- Exhibit "A" -- Northeast Ohio Regional Sewer District Board of Trustees Resolution No. 50-12
- Exhibit "B" -- City of North Royalton Ord. No. _____
- Exhibit "C" -- Stormwater Service Area Map -- 2011 Cuyahoga County Imagery
- Exhibit "D" -- List of billable properties in Stormwater Service Area ("C" District)

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth below, effective as of [_____], 2013 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 NORTH ROYALTON

CITY OF NORTH ROYALTON

By: _____

By: _____

Its: _____

Its: DIRECTOR OF LAW

Date: _____

Date: _____