

ORDINANCE NO. 2019-05
INTRODUCED BY: MR. NEWELL

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT
WITH THE CUYAHOGA COUNTY BOARD OF HEALTH TO
PROVIDE PHASE II STORMWATER SERVICES
COMMENCING IN 2019 AND ENDING IN 2021 AND
DECLARING AN EMERGENCY.**

WHEREAS, the Village has determined that it is necessary to engage the services of the Cuyahoga County Board of Health ("Board") in order to inspect and monitor stormwater systems within the Village; and

WHEREAS, the Village desires to enter into a Phase II Stormwater Services Agreement to provide for the Board to perform Phase II Stormwater Services in order to maintain compliance with the Municipal Separate Storm Sewer Systems (MS4) Permit issued by the Ohio EPA.

**NOW THEREFORE, BE-IT ORDAINED BY THE COUNCIL OF THE VILLAGE
OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:**

SECTION 1. The Mayor is authorized and directed to enter into a Phase II Stormwater Services Agreement with the Board and to pay the Board the amount set forth in the Agreement for the Phase II Stormwater Services described in Exhibit A, Scope of Work, in the Agreement which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2. The Finance Director is authorized to appropriate to a proper account a sum sufficient to cover the costs of the services to be rendered by the Board as authorized in Section 1 of this Ordinance and as set forth in the attached Phase II Stormwater Services Agreement.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

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SECTION 5. That this Ordinance be and is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the habitants of the Village and for the further reason that this Ordinance is necessary to timely commence monitoring of stormwater discharge in order to maintain compliance with the MS4 permit. Wherefore, provided it receives two-thirds (2/3) of the votes of all members elected to Council, this Ordinance shall be in full and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise it shall take effect and be in force after the earliest period allowed by law.

PASSED: JANUARY 14, 2019



Karl Maersch, Council President

Submitted to the Mayor for
his approval on this 15
day of JANUARY,
2019

Approved by the Mayor this 15
day of JANUARY, 2019



Mayor William Tomko

I hereby certify that Ordinance No. 2019- 05 was duly enacted on the 14 day of JANUARY 2019, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.



Clerk of Council

PHASE II STORMWATER SERVICES AGREEMENT

This Agreement is entered into on the 1st day of January, 2019 ("Effective Date") by and between the Cuyahoga County Board of Health (the "Board"), a separate political subdivision of the State of Ohio organized under the Constitution and Laws of the State of Ohio, and the Village of Chagrin Falls, a political subdivision of the State of Ohio organized under the Constitution and Laws of the State of Ohio ("Community"), for and in consideration of the promises, covenants, and conditions hereinafter set forth.

WHEREAS: The Cuyahoga County Board of Health is committed to improving the water quality in Cuyahoga County and protecting the health of the residents within its jurisdiction; and

WHEREAS: In response to the implementation of the US EPA's Phase II Stormwater Regulations on March 10, 2003, the Board has developed its Stormwater Management Program to assist municipalities in Cuyahoga County and Northeast Ohio in creating their stormwater management plans and meeting their required stormwater management goals; and

WHEREAS: Each municipality within Northeast Ohio has been issued a Municipal Separate Storm Sewer Systems (MS4) permit by the Ohio EPA which requires each municipality to perform specific functions related to inspecting and monitoring stormwater within the municipality; and

WHEREAS: The Board will continue to provide communities Phase II Stormwater services in support of the community's compliance with the Ohio EPA NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4); and

WHEREAS: The Board will continue to provide Phase II Stormwater services to communities whose service areas are located partially or completely outside of the Northeast Ohio Regional Sewer District's ("District") Regional Stormwater Management Program area in support of Ohio EPA's General Permit for Municipal Separate Storm Sewer Systems for Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination (IDDE) programming and MCM #6: Pollution Prevention/Good Housekeeping for Municipal Operations; and

WHEREAS: Community has the authority to grant consent and authorizes the Board to perform the services outlined herein; and

WHEREAS: Both parties desire to enter this Agreement for the purposes outlined herein.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. EFFECTIVE DATE, TERM AND TERMINATION.

- (a) **Effective Date, Term.** This Agreement shall commence on the Effective Date first stated above and shall continue through December 31, 2021, unless earlier terminated pursuant to Section 1(b).

(b) **Termination.** This Agreement may be terminated upon the occurrence of one of the following events:

(i) Failure for any reason of the either party to fulfill its obligations under this Agreement, after written notice is provided by the non-breaching party of such failure providing at least ninety (90) days for the breaching party to correct any such failure, and if such failure is not corrected within said period, the non-breaching party may give written notice of immediate termination;

(ii) Upon nine (9) months written notice, or on or before April 1 of the year prior to termination by either party for any reason.

2. **THE SERVICES.**

(a) **Scope of Services.** Subject to the terms and conditions contained in this Agreement and its exhibits, the Board will provide to the Community and, as applicable, to all persons receiving the direct services provided for herein, the Services that are set forth and described in the Scope of Work (SOW) attached as Exhibit A, which Exhibit is incorporated herein.

(b) Unless otherwise agreed by the Parties in writing, all transactions for Services through Board will be provided in accordance with the provisions of Ohio law and/or this Agreement, including any revisions of the same, as both Parties may from time to time execute to document the addition, revision, or enhancement of Services.

3. **CONSENT STATEMENT**

Being in the public interest, The Community hereby grants consent and authority to the Board to complete the services and work described herein.

4. **COOPERATION STATEMENT**

The Community shall cooperate with the Board in the above described project as follows:

(a) Provide the Board any maps, assistance, and/or direction to aid in obtaining access and/or collecting samples for testing purposes;

(b) Provide the Board aid in accessing and opening storm sewer manholes where and when needed.

5. **PAYMENT.**

(a) **Compensation.** In consideration for the Phase II Stormwater services described in Exhibit A, which will be provided by the Board to and within the Community, the Community shall pay to the Board the total annual sum of two thousand six hundred twenty-five dollars and no cents (\$2,625.00) for calendar year 2019 and the total annual sum of two thousand six hundred twenty-five dollars and no cents (\$2,625.00) for calendar year 2020 and the total annual sum of two thousand six hundred twenty-five dollars and no cents (\$2,625.00) for calendar year 2021 for a total compensation of \$7,875.00. The Board shall submit an invoice to the Community for the payment due hereunder.

6. RECORDS.

- (a) The Board shall maintain copies of all records created or received by the Board in the performance of the work under this Agreement as required by Ohio's public records law. Any records created or received as a part of this Agreement shall be made available to the Community upon request subject to exceptions listed below.
- (b) Any non-private health information in confidential records or information in the records created by the Board or that come into the possession of the Board under this Agreement shall, if provided to the Community, be kept confidential by the Community.
- (c) The Board is prohibited by State and Federal law from sharing protected health information and said records will not be shared with the Community unless there is compliance with the proper method for release of said information.

7. REPORTS.

The Board shall provide reports as specified in the Scope of Work, Exhibit A.

8. NO ASSIGNMENT, TRANSFER, OR SUBAGREEMENT.

In performing the services specified under the terms of this Agreement, the Board shall not assign, transfer, or delegate any of the work or services, nor subcontract the work out to any other entity, nor shall any subcontractor commence performance of any part of the work or services included in this Agreement, unless such subcontracting is specified in this Agreement or its Exhibits, or unless prior written consent is provided by the Community.

9. INDEPENDENT CONTRACTOR.

- (a) The Board hereby acknowledges that it is an independent contractor and neither it nor its employees or agents are employees of the Community. The Board shall be responsible for the payment or withholding of any federal, state or local taxes, including, but not limited to, income, unemployment, and workers' compensation for its employees, and the Community will not provide, or contribute to any plan which provides for benefits, including but not limited to unemployment insurance, workers' compensation, retirement benefits, liability insurance or health insurance. All individuals employed by the Board provide personal services to the Community are not public employees of the Community under Ohio state law.
- (b) No agency, employment, joint venture or partnership has been or will be created between the parties pursuant to the terms and conditions of this Agreement. Inasmuch as the Community is interested in the Board's end product, the Community does not control the manner in which the Board performs this Agreement.

10. NOTICES.

All notices, invoices and correspondence which may be necessary or proper for either party shall be addressed as follows:

TO THE BOARD:

Cuyahoga County District Board of Health
Attention: Terry Allan, Health Commissioner
5550 Venture Drive
Parma Ohio 44130

TO THE COMMUNITY:

Community of Chagrin Falls
Attention: Mayor William Tomko
21 W. Washington Street
Chagrin Falls, Ohio 44022

And

Community of Chagrin Falls
Attention: Director of Law
21 W. Washington Street
Chagrin Falls, Ohio 44022

11. EFFECT OF ELECTRONIC SIGNATURE

By entering into this Agreement, the parties agree that this transaction may be conducted by electronic means, including, without limitation, that all documents requiring signatures by the parties may be executed by electronic means, and that the electronic signatures affixed by the authorized representatives of the parties shall have the same legal effect as if the signatures were manually affixed to a paper version of the documents. The parties also agree to be bound by the provisions of Chapter 1306 of the Ohio Revised Code as it pertains to electronic transactions.

12. APPLICABLE LAW AND VENUE

Any and all matters of dispute between the Parties to this Agreement whether arising from the Agreement itself or arising from alleged extra contractual facts prior to, during, or subsequent to the Agreement, including without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the Agreement, will be governed by, construed, and enforced in accordance with the Laws of the State of Ohio, without regard to the conflict of laws or the legal theory upon which such matter is asserted.

13. SEVERABILITY.

If any provision hereof shall be determined to be invalid or unenforceable, such determination shall not affect the validity of the other provisions of this Agreement. Moreover, any provisions that should survive the expiration or termination will survive the expiration or termination of this Agreement.

14. AMENDMENT

This Agreement shall not be modified except by the express written consent by both parties hereto.

15. **WAIVER.**

Waiver by either party or the failure by either party to claim a breach of any provision of this Agreement shall not be deemed to constitute a waiver or estoppel with respect to any subsequent breach of any provision hereof.

16. **FORCE MAJEURE.**

Neither party shall be liable for any delay or failure to perform any duty or obligation it may have pursuant to this Agreement where such delay or failure has been occasioned by any act of God, fire, strike, inevitable accident, war or any cause outside the party's reasonable control.

17. **COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one Agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

18. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements, representations or understandings, whether written or oral, as to the same.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representative to be effective as of the Effective Date as specified in Section 1 of this Agreement.

FOR THE BOARD:



Terry Allan
Health Commissioner

Date: 2/6/19

Approved as to form.
Cuyahoga County Board of Health
Office of General Counsel

By: 

Date: 1/28/19

FOR THE COMMUNITY:



William A. Tomko
Mayor

Date: 1-15-19

Approved as to form.

By: 
DALE H. MARKOWITZ
Director of Law

Date: 1-14-19

EXHIBIT A

SCOPE OF WORK

1. PROJECT DESCRIPTION

The Board and the Community have identified the need for the following described project:

- The implementation of Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination (IDDE) programming;

2. BOARD SERVICES

1. The Board will monitor 20 percent (20%) of the Community's designated Municipal Separate Stormwater System outfall locations during a dry weather period (a minimum of 72 hours with no rain event) and sample up to 13 of the flowing outfall locations that are outside of the Northeast Ohio Regional Sewer District's Regional Stormwater Management Program area during the 2019, 2020, and 2021 report periods. The samples collected will be analyzed for the presence of E. coli bacteria.
2. The Board will source track for possible sources of an illicit discharge, for up to a maximum of 15 hours. This activity would be coordinated between the community and the Board of Health in relation to previous inspections.
3. The Board will provide the Community an annual summary of the work performed as it relates to Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination, which can then be included in the Community's Phase II Stormwater Annual Report to the Ohio EPA.
4. The Board may request the Community to provide assistance in gaining access to and opening storm sewer manholes where and when deemed necessary for the purpose of sample collections.