



18-107

**INTERGOVERNMENTAL AGREEMENT**  
**between**  
**COUNTY OF SUMMIT, OHIO**  
**and**  
**THE VILLAGE OF CLINTON**  
**concerning**  
**THE CLINTON SANITARY SEWER IMPROVEMENT PROJECT**

**THIS INTERGOVERNMENTAL AGREEMENT** is made this \_\_\_ date of \_\_\_\_\_, 2018 by and between the County of Summit, Ohio (“County”), an Ohio political subdivision, with its principal place of business located at 175 South Main Street, 8<sup>th</sup> Floor, Akron, Ohio 44308, on behalf of the County of Summit Department of Sanitary Sewer Services (“County”), and the Village of Clinton (“Village”), an Ohio political subdivision, with its principal place of business located at 7871 Main Street, Clinton, Ohio 44216.

**WHEREAS**, the Summit County Combined General Health District (“Health District”) has found certain areas within the Village’s corporate boundaries to be polluted with contamination from failing septic systems; and,

**WHEREAS**, Village Ordinance No. 0-15-33 designated the County, through its Department of Sanitary Sewer Services, as the sanitary sewer provider for all areas within the Village’s corporate boundaries, and authorized the County to acquire, construct, maintain, and operate sanitary sewer facilities within the Village’s corporate boundaries; and,

**WHEREAS**, pursuant to the authority granted to the County pursuant to Village Ordinance No. 0-15-33, the County plans to complete a Sanitary Sewer Improvement Project (“Project”) to remedy the pollution from the failing septic systems located throughout the Village’s corporate boundaries; and,

**WHEREAS**, it is anticipated that the Project will benefit at least 475 properties within the Village’s corporate boundaries as those properties are able to abandon their current septic systems and connect to the County’s Sanitary Sewer System (“System”); and,

**WHEREAS**, the County intends to initially fund the Project, including a contribution of County funds for a portion of the total cost of the Project, and further

intends to finance the balance of the Project, which will be repaid through an assessment against the properties that will be benefitted by the Project; and,

WHEREAS, the Village desires to enter into this Intergovernmental Agreement in order to approve the Project, approve the assessment methodology used to calculate the assessments to be levied against the properties benefitting from the Project, and to approve the timeframe for properties to connect to the System following construction of the Project; and,

WHEREAS, this Intergovernmental Agreement was authorized by County Council by the adoption of County Council Resolution No. 2018-\_\_\_\_\_; and,

WHEREAS, this Intergovernmental Agreement was authorized by Village's Council by the adoption of Village Council Resolution No. \_\_\_\_\_.

NOW, THEREFORE, in consideration of the covenants and promises set forth below, the parties agree as follows:

#### **SECTION 1. CONSENT AND COOPERATION**

A. Village acknowledges that its advisory panel has had input in the Project as required in Section 915.02 of its Ordinances.

B. Village hereby gives its consent for the County to construct the Project as more fully set forth on Exhibit A, attached hereto and incorporated herein, with modifications and adjustments that the County determines necessary and approved by the Village Mayor.

C. Village further agrees to and approves the assessment methodology set forth in this Intergovernmental Agreement for the assessment of a portion of the costs of the Project against the properties within the corporate boundaries of the Village that are benefitted by the Project.

D. Village further agrees and consents to the timeframe for properties within the corporate boundaries of the Village to connect to the System upon completion of the Project as set forth in this Agreement.

E. Village agrees to cooperate with the County on the implementation of this Agreement and the construction of the Project, including, but not limited to, enacting legislation requiring residents within the Village to connect to the System upon the timeframes set forth in this Intergovernmental Agreement.

## **SECTION 2. CONSTRUCTION OF THE PROJECT AND COUNTY'S FUNDING COMMITMENT**

A. In consideration of the agreement and consents of the Village set forth in Section 1 of this Intergovernmental Agreement, the County agrees to construct the Project as set forth on Exhibit A, with such modifications and adjustments as the County deems necessary and approved by the Village Mayor. County shall procure and construct the Project consistent with the Codified Ordinances of the County and its own policies, procedures and specifications.

B. To date, County has spent \$805,399.00 to design the Project, and anticipates that it may expend additional funds for the design of the Project. County agrees that it will bear 100% of the costs of the design of the Project, both already incurred and to-be incurred prior to construction of the Project.

C. In addition to the costs of the design of the Project, County shall contribute \$922,869.00 towards the cost of the construction of the Project. County may elect to contribute said funds as cash or to finance the same in its sole discretion. County shall initially fund the 100% of the cost of the Project using County funds, and shall then assess the properties benefitting from the construction of the Project as set forth below, excluding therefrom the aforementioned \$805,399.00 design costs and the County's \$922,869.00 in contribution to the construction of the Project.

D. In order for the Project to benefit the properties within the Village's corporate boundaries, the parties acknowledge that the County must first enter into an agreement with Stark County and/or Canal Fulton whereby the County will purchase at least 140,000 gallons per day of sewer capacity in a wastewater treatment plant located in Canal Fulton, and further obtain authority to transport wastewater to said plant for treatment. The parties acknowledge that in the event that the County is not able to purchase such capacity and obtain such authority, that County shall not have the obligation to construct the Project. Additionally, the parties agree that the County's cost to acquire said capacity and authority shall be included as costs of the construction of the Project.

E. For purposes of this Agreement, references to the completion of the construction of the Project or a Project completion date shall mean the date upon which the County certifies the final construction costs of the Project for assessment purposes.

### **SECTION 3. ASSESSMENTS FOR SYSTEM**

A. The parties agree that the following assessment methodology shall be used to assess the properties that benefit from the Project:

1. All parcels set forth in the service area depicted on Exhibit B, attached hereto and incorporated herein, shall be assessed an amount equal to 10% of the appraised land value of that parcel (excluding the value of any structure or improvements) upon completion of the construction of the Project.
2. The 10% of the appraised land value component shall be calculated utilizing the land valuation for each parcel determined by the Summit County Fiscal Officer for real property taxation purposes and displayed on the Summit County Fiscal Officer's property tax card at the time of the completion of the construction of the Project.
3. In addition to the 10% of the appraised land value assessment, the 475 properties set forth on Exhibit C shall be assessed a fixed assessment amount upon completion of the construction of the Project. The tentative fixed assessment per connection is equal to \$11,629.00, and is calculated as follows: Beginning with the anticipated total construction cost of the Project (\$7,333,820), and subtracting therefrom the amount of the County's contribution (\$922,869.00), and further subtracting therefrom the amount that the parties anticipate will be assessed through the 10% of the appraised land value component (\$887,306.00), and then dividing that sum (\$5,523,645.00) by the 475 connections.

B. The parties agree that to the extent the final construction cost of the Project is more or less than the anticipated total construction cost, or the amount that the parties anticipate will be assessed through the 10% of the appraised land value component changes

between the date of the execution of this Agreement and the final construction of the Project, the fixed portion of the tentative assessment will change, and the actual assessment will be based on the final construction costs and the land valuations at the time of the completion of the construction of the Project.

C. The parties agree that the County shall assess the aforementioned costs against the benefitted properties in the manner set forth in Chapter 6117 of the Ohio Revised Code. At no time shall any interest be assessed to the residents of Clinton as a part of this assessment process.

D. Any property within the service area set forth on Exhibit B that is not one of the 400 properties set forth on Exhibit C, shall pay a tap-in fee equal to the amount of the fixed assessment calculated in this Section.

E. No additional tap-in fee shall be charged for any property within the service area set forth on Exhibit B to connect to the System beyond those set forth in this Section.

#### **SECTION 4. CONNECTIONS TO SYSTEM**

A. The parties agree that the following will be the schedule for connections to the System by the 400 properties set forth on Exhibit C:

1. Any property may connect voluntarily to the System at any time following the completion of construction of the Project.
2. Any property with a failing septic system, as determined by the Health District, at the time of the completion of construction of the Project shall immediately connect to the System at that time.
3. If, at any time between the completion of construction of the System and the five (5) year anniversary of the date of the completion of construction of the System, the Health Department determines that a property has a failing septic, the property shall immediately connect to the System at that time.

4. All properties shall connect to the System no later than the five (5) year anniversary of the date of the completion of construction of the System, regardless of whether or not it has a failing septic system.

B. The Village hereby agrees to adopt a municipal ordinance, pursuant to its police powers, requiring the owners of all property benefitting from the Project to connect upon the terms set forth in this Section, making it a minor misdemeanor to fail to do so, providing for a fine of up to \$100.00 per day for a failure to do so, and providing the Village with the authority to enjoin any violation of the ordinance.

C. In order to induce voluntary connections to the System, the County shall adopt an ordinance prior to commencement of construction of the Project providing for a program whereby a resident who ties into the System within two years of the completion of construction of the Project, may elect to have the cost of abandoning the septic system serving the property, installation of a new private lateral to the County's public sewer, and a private grinder pump on the private portion of the property, as appropriate, assessed to their taxes over a 10 year period at an interest rate not to exceed 4%.

#### **SECTION 5. SERVICE CHARGES**

- A. Properties shall be charged the County's set county-wide monthly service charge once sewer service has been connected. At any point after the completion of the construction of the Project if water service is made available and connections to any property within the area set forth in Exhibit C are completed, the monthly sewer charge shall be calculated based upon the water metering for each such connected property.

#### **SECTION 6. MISCELLANEOUS PROVISIONS**

- A. Integration. This Intergovernmental Agreement represents the entire and integrated agreement between the parties. This Intergovernmental Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Intergovernmental Agreement.
- B. Amendment and Waiver. This Intergovernmental Agreement may not be amended, supplemented, or waived except by a writing signed by the parties. The waiver of any particular right or claim does not constitute a waiver of any other right or claim. This Intergovernmental Agreement may

be amended to achieve additional goals of the County and Village with the written consent of the parties.

- C. Assignment. Neither party shall assign its rights or delegate its duties under this Intergovernmental Agreement without the prior written consent of the other party. Subject to such consent, Intergovernmental Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.
- D. Capacity to Execute. Each party hereby certifies that all actions necessary to execute this Intergovernmental Agreement were taken and that the person executing this Intergovernmental Agreement is authorized to do so and has the power to bind their respective party to the terms and conditions contained herein.
- E. Review by Legal Counsel. Each party has had the opportunity to review this Intergovernmental Agreement with the assistance of legal counsel. Accordingly, the County and Village agree that the rule of construction that any ambiguity in this Intergovernmental Agreement is to be construed against the drafting party is not applicable.
- F. No Authority to Bind. Neither party has the power or Authority to bind the other party to contracts or other obligations.
- G. Severability. If any provision of this Intergovernmental Agreement is found invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, the remainder of this Intergovernmental Agreement must continue in full force and effect.
- H. Force Majeure. No party shall be considered in default in the performance of any obligation hereunder, except the obligation to make payment, to the extent that the performance of such obligation is prevented or delayed by fire, flood, explosion, strike, war, insurrection, embargo, government requirement, civil or military Village, act of God, or any other event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party. The parties must take all reasonable action to minimize the effects of any such event, occurrence or condition.
- I. Reservation of Rights. A delay or failure in enforcing any right or remedy afforded hereunder or by law must not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Intergovernmental Agreement, whether of a like or different character.

- J. Relationship of Parties. The parties agree that the County is serving as an independent contractor as to the provision of the Services to Village. The parties further agree that at no time shall the relationship between the parties under this Intergovernmental Agreement be construed, held out or considered a joint venture or principal-agent.
- K. Notices. Every notice and demand required under the terms of this Intergovernmental Agreement shall be in writing and must be sent by certified mail, return receipt requested, or by other means of delivery requiring a signed receipt, to the other party's address first set forth above. All notices are effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this Section.
- L. Governing Law. This Intergovernmental Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts of choice of laws.
- M. Forum. Any litigation arising under this Intergovernmental Agreement must be litigated in the Barberton Municipal Court, Akron Municipal Court or the County of Summit Court of Common Pleas, and each party submits itself to the jurisdiction and venue of those courts.

(End of text. Signatures appear on the next page.)



Intending to be legally bound, the parties have signed this Intergovernmental Agreement effective as of the date signed by the County's Executive.

**COUNTY OF SUMMIT, OHIO**

**VILLAGE OF CLINTON, OHIO**

\_\_\_\_\_  
By: Ilene Shapiro, Executive

\_\_\_\_\_  
By: Allen Knack, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Deborah S. Matz  
Director of Law, Insurance and Risk  
Management

\_\_\_\_\_  
By: Marshal M. Pitchford  
Solicitor

Date: \_\_\_\_\_

Date: \_\_\_\_\_