

COPY

OPERATING AGREEMENT

229

BY AND BETWEEN

THE CLEVELAND REGIONAL SEWER DISTRICT

AND

THE CITY OF CLEVELAND

THIS AGREEMENT made and entered into this 15th day of August, 1974 by and between the Cleveland Regional Sewer District, a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, acting pursuant to Resolution No. 149-73, adopted by the Board of Trustees of said District on November 15, 1973, hereinafter referred to as "District", and the City of Cleveland, a municipal corporation of the State of Ohio, acting through its Mayor duly authorized by Ordinance No. 1139-72, passed by the Council of said City on July 17, 1972.

WITNESSETH:

WHEREAS, the Cleveland Regional Sewer District has been created pursuant to Chapter 6119 of the Ohio Revised Code by orders of the Cuyahoga County Court of Common Pleas in Case No. 886,594 (Consolidated) and Case No. SD 69411; and

WHEREAS, said court orders provide, among other things, that the City shall, by agreement, provide services to the District; and

WHEREAS, the parties entered into a Memorandum of Agreement dated August 11, 1972 (City of Cleveland Contract File No. 25177—Cleveland Regional Sewer District Contract No. 101), wherein the City agreed to operate District facilities and provide services on behalf of the District; and

WHEREAS, the parties now wish to provide for the orderly assumption of such operational responsibility by the District, including the gradual phasing out of the City's services; and

WHEREAS, the parties have, by separate agreement, provided for the collection and distribution of sewer revenues to be performed by the City; and

WHEREAS, the parties wish further to provide for the completion of all transactions between them necessary to fully comply with the terms of the above-referenced court order relative to the transfer of property from the City to the District.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth and of other good and valuable consideration, the District and the City do hereby mutually agree as follows:

Section 1. Until the District develops its own staff, the City shall continue to operate the District's wastewater treatment facilities and provide support services therefore under the same terms as provided for in the Memorandum of Agreement referred to in the preamble hereof and attached hereto and made a part hereof as Exhibit A. Direct operational services and direct support services shall continue pursuant to such terms subject to the orderly termination thereof as hereinafter provided for herein.

Section 2. It is mutually agreed and understood that the District shall hire its own staff to operate its wastewater treatment facilities and provide support services now being supplied by the City, pursuant to the District's own rules, regulations, job descriptions and classifications. The City agrees that, in hiring its own staff, the District may hire City employees engaged in performing operational or support services on behalf of the District.

In order to achieve an orderly assumption of operational responsibility, the District shall develop its staff within the following broad, general categories which correspond to the categories in the City's existing structure:

- 1) Direct Operational—sewage treatment plant employees and administrative office staff
- 2) Direct Support Services—Water Quality Laboratory, Control Systems, Engineering, Interceptor Sewer Maintenance

Upon employment by the District of sufficient personnel to assume operational responsibility in the above-referenced categories, the District shall give the City thirty (30) days notice of that fact and the City's obligation to provide personnel in such categories on behalf of the District shall cease at the end of such notice period.

In the case of any City employee(s) currently working on behalf of the District in the above categories who is hired by the District, the City shall promptly process the necessary "off payroll" notices and shall provide the District with the complete personnel file on such employee(s). In the case of any City employee(s) working on behalf of the District in the above categories whose services will not be required by the District, the District shall give the City fifteen (15) days notice of that fact prior to discontinuance of such employee's services to the District.

Section 3. Pursuant to Section 2 above, the District shall employ its own engineering staff and shall assume responsibility for engineering functions currently performed on behalf of the District by the City's Division of Utilities Engineering.

The District shall assume responsibility for engineering projects on a gradual basis. As engineering functions or specific engineering

projects are transferred to the District, all pertinent records and documents shall also be transferred to the District. Original documents and records shall be transferred.

Section 4. Until the District employs its own sewer maintenance staff pursuant to Section 2 above, the City shall maintain the intercepting sewer system tributary to the District's treatment plant, and the sludge force main between the Easterly and Southerly Plants on behalf of the District, and all sewers which are jointly used by the City and the suburban communities within the District.

The cost of such maintenance shall be paid from revenues derived from the interceptor maintenance increment of \$.063 in the rates to users of the District's treatment system. The revenues derived from such charge to Cleveland users shall be retained by the City and expended for such maintenance. The City shall make an accurate accounting of all such maintenance performed and monies expended. Such maintenance shall be performed in the regular course of work by City sewer maintenance crews without further authorization or direction by the District.

Section 5. The City agrees that the titles to the motor vehicles listed in Exhibit B attached hereto and made a part hereof, shall be transferred to the District at the District's expense within thirty (30) days after the execution of this Agreement.

Section 6 The terms of this Agreement shall take effect on the date hereof and shall continue in effect subject to termination of the various functions performed by the City as hereinabove provided.

It is understood and agreed that this Agreement will be in substitution of and will supercede in its entirety the Memorandum of Agreement heretofore entered into between the District and the City dated August 11, 1972 relating to the subject matter hereof--City of Cleveland Contract

File No. 25177, Cleveland Regional Sewer District Contract No. 101—and that said Memorandum of Agreement shall terminate on the date hereof, provided however that the liabilities of the parties thereunder up to the effective date of termination shall be adhered to and shall not be affected by such termination.

Section 7. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

Section 8. This Agreement shall inure to the benefit of and be binding upon the City and the District and their respective successors, assigns, and personal representatives.

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

WITNESS

[Signature]

CLEVELAND REGIONAL SEWER DISTRICT

[Signature]

Director

[Signature]

President Board of Trustees

CITY OF CLEVELAND

[Signature]

MAYOR

WITNESS

[Signature]

The legal form and correctness of the within instrument is hereby approved

[Signature]

DIRECTOR OF LAW

By [Signature]
ASSISTANT DIRECTOR OF LAW

Date August 5, 1974

The legal form of correctness of the within instrument is hereby approved

[Signature]

General Counsel
Cleveland Regional Sewer District

MEMORANDUM OF AGREEMENT

This agreement made this 11th day of AUGUST 19

by and between the City of Cleveland through its Mayor duly authorized by Ordinance No. 1139-72 passed by the Council of said City on July 17, 1972 (hereinafter referred to as the "CITY"), and the Cleveland Regional Sewer District acting through the President of its Board of Trustees duly authorized by action of the Board at its regular meeting on AUGUST 10 1972 (hereinafter referred to as the "DISTRICT").

WITNESSETH:

WHEREAS, the operation of the District will essentially be the same as those performed by the City's Division of Water Pollution Control; and

WHEREAS, the revenue which supports the operations of the Division of Water Pollution Control (i. e., revenue derived from sewer rates) will be the same revenue which will support the operations of the District; and

WHEREAS, the operating fund of the Division of Water Pollution Control is the 102 Fund; and

WHEREAS, public improvements for the District will be financed through the Ohio Water Development Authority or through such other funding as the Board of Trustees shall determine necessary;

hereinafter contained the parties hereto agree as follows:

I. THE CITY AGREES:

A. The Division of Water Pollution Control will continue to operate the Wastewater Treatment Facilities and appurtenances thereto which now belong to the District and will perform all other operations currently performed by it.

B. The appropriate Departments and Divisions of the City which provide support services for the operation of the Division of Water Pollution Control will continue to provide those services and will keep accurate records of such services.

1. Such services will include purchasing, accounting, finance, engineering and any other support service required by said Division.

C. The City will continue to process minor purchases (under \$3,500) for the ordinary needs of the Division on requisitions signed by the Commissioner of Water Pollution Control and the Director of Public Utilities. In addition the Commissioner of Water Pollution Control will also originate requisitions as he may from time to time be directed by the District.

D. Bids for major purchases or for Public Improvement will be authorized by the District and the appropriate Departments of the City will perform the mechanical act of taking bids. Evaluation of bids will be performed by the agency designated to do so by the District. The final determination of awarding and entering into a contract will be made by separate act of the District.

City payroll and paid from the 102 Fund.

II THE DISTRICT AGREES:

A. The District agrees that it will, as soon as it has retained legal counsel, begin negotiations with the City for a formal contract for services to be performed by the City on behalf of the District.

B. The District will reimburse the City for all services performed by the City on its behalf (other than those which are normally paid from the 102 Fund) under the terms of the formal contract which will be negotiated as provided for herein.

C. The District further agrees that until it has its own staff and fiscal operation it will adopt and operate within the bounds of the budget of the Division of Water Pollution Control as enacted by the City, however, the District may direct that funds be transferred between items in the budget as long as the total appropriation is not exceeded.

IN WITNESS WHEREOF, the parties hereto have set their hands this 11th day of AUGUST 1972 at Cleveland, Ohio.

WITNESSES:

Marian C. Regan

CITY OF CLEVELAND

By: [Signature]

Mayor

Marian C. Regan

CLEVELAND REGIONAL SEWER DISTRICT

The legal form and correctness of the within instrument is hereby approved

By: [Signature]

President of Board of Trustees

[Signature]

DIRECTOR OF LAW

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By: [Signature]

ASSISTANT DIRECTOR OF LAW

8/11/72