



AGREEMENT

BETWEEN DISTRICT AND CONSULTANT

AGREEMENT

effective as of the day of in the year of 2015.

BETWEEN the District:

Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115-2506

The Consultant is:

<<consultant firm name>>
Address

The Project is:

<<project name>>

The District and Consultant agree as set forth below.

THIS AGREEMENT, effective as of the date first above written between the Northeast Ohio Regional Sewer District, a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code (“District”), by authority of Resolution <<resolution number>>, adopted by the Board of Trustees of the District <<adoption date>> (Exhibit “A”), and <<Consultant Firm Name>> with its principal place of business located at <<Consultant Firm location city and state>> (“Consultant”). The District and Consultant agree as set forth below:

WHEREAS, it is necessary to perform professional <<list standard District tasks applicable to this contract, separated by commas>> for the <<Project Name>> (herein after known as <<Project ACRONYM>>); and

WHEREAS, in order to perform such services, it is necessary to supplement regularly employed District staff with outside professional consulting services; and

WHEREAS, the District finds Consultant’s proposal acceptable and desires to hire and engage Consultant to supplement the staff of the District and to furnish the services necessary, in accordance with the Consultant’s proposal and the terms, conditions and provisions contained herein. Consultant, pursuant to the information provided in its proposal and evaluated by the District, has been determined to be qualified and competent to provide the required professional services;

NOW, THEREFORE, it is agreed that the District shall and does hereby employ Consultant to perform the services as hereinafter specified; and that, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed by and between the parties as follows:

Section 1. DEFINITIONS

1.1 “District” means the Northeast Ohio Regional Sewer District.

1.2 “Chief Executive Officer” means the Chief Executive Officer of the Northeast Ohio Regional Sewer District, his successor, or his Authorized Designee.

1.3 “Services” means those services performed by Consultant as detailed in the Scope of Services (Exhibit “B”) as per this Agreement.

1.4 “Base Agreement Price” means the Consultant’s base agreement price for Services as specified in the Scope of Services (Exhibit “B”) and Compensation (Exhibit “C”), excluding specific and general allowances.

1.5 “Agreement Modification” means changes to this original agreement as executed. Agreement Modifications require prior authorization by the Chief Executive Officer and approval by the Board of Trustees, and be executed by both the District and the Consultant.

1.6 “General Allowance” means funds, not included in the Base Agreement Price, reserved for additional services not foreseeable at the time of scope development but necessary to complete the project to meet the District’s needs.

1.7 “Reallocation of Funds” means a transfer of funds between tasks, as presented in Exhibit “C” – Compensation, that does not result in a change to the original Agreement Scope of Services or Total Agreement Price.

1.8 “Schedule Delay” means a projected or actual delay in completion of tasks, activities, or project completion that does not result in a change to the original Agreement scope of Services or Total Agreement Price.

1.9 “Specific Allowance” means funds, as established by the District, that are included in the Total Agreement Price for specific scope of Services tasks that are either 1) generally known to be required for the project but whose level of effort is unknown until after select items of the base Services have been performed, or 2) pre-identified optional tasks that

may or may not be required to complete the project as contemplated. The price of Specific Allowance items are usually defined with a dollar amount.

1.10 “Total Agreement Price” means the sum of Consultant’s Base Agreement Price for the original scope of Services, Specific Allowances, and General Allowances.

Section 2. SCOPE OF SERVICES

2.1 Consultant does hereby promise and agree to provide the professional engineering and design services as described in the Scope of Services (Exhibit “B”).

Section 3. REPRESENTATIVES

3.1 Consultant shall designate and authorize an employee of Consultant to act as its agent for all purposes under this Agreement, who shall be available during working hours to the representatives of the District for the purpose of notification and consultation, and who shall be designated as the Project Manager having overall responsibility for all phases of Consultant’s participation in the project. The Consultant’s Project Manager must be approved by the District, and any change in the Consultant’s Project Manager requires prior approval by the District.

3.2 For purposes of this Agreement, the agent for the District who is authorized to bind the District and liaison officer with respect to the matters contained herein shall be the District's Director of Engineering and Construction or such other person designated by the Chief Executive Officer.

Section 4. COMPENSATION FOR CONSULTANT’S SERVICES

4.1 The District will pay the Consultant for the successful completion of the Scope of Services in Exhibit “B”, subject to the terms and conditions of this Agreement, a Total Agreement Price not to exceed _____ Dollars (\$_____.00). Compensation for the Services described in this Agreement will be according to the terms and methods of this Agreement and Exhibit “C” - Compensation. The approved methods for

compensation are “time and materials” and “lump sum” as defined below. The compensation method for this Agreement is designated and further defined in Exhibit “C” – Compensation.

4.1.1 Time and Materials. Time and materials, if specified in Exhibit “C” - Compensation, is based on a combination of labor, subconsultant, and direct expense costs as specified in Exhibit “C” - Compensation and defined in this Agreement.

4.1.1.1 Labor Costs. Labor costs are computed by multiplying the Consultant’s direct or “raw” labor rates by a factor (as designated in Exhibit “C” - Compensation) that comprises all overhead and profit applied to the actual labor hours worked on the Services. Direct labor rates consist of the actual costs of all allowable and allocable salaries and wages (exclusive of overtime premiums, bonuses, and payroll related tax, insurance and fringe benefits). A Consultant employee’s direct hourly rate shall be that individual’s annual salary divided by 2080 hours.

4.1.1.2 Subconsultant Costs. Subconsultant costs (both labor - using the same cost approach as the Consultant - and direct expense costs incurred by Subconsultant) are invoiced by Consultant with no markup.

4.1.1.3 Direct Expense Costs. Direct expense costs in support of delivering the Services are included on the Consultant invoice. Direct expense costs (non-labor) may include, but are not limited to, mileage, travel and lodging expenses, mail, shipping, supplies, printing and reproduction services, and other direct expenses routinely charged by Consultant to specific projects that are applicable to delivering the Services.

4.1.2 Lump Sum. Lump sum, if specified in Exhibit “C” - Compensation, defines the fee considered to be full compensation for the Services described in Exhibit “B” including all labor, materials, supplies, and equipment necessary to deliver the services as specified in Exhibit “C” - Compensation and defined in this Agreement.

4.2 The task budgets are presented in Exhibit “C” - Compensation. Task funds may be reallocated within individual tasks, as long as reallocations do not negatively affect the business opportunity program goals, upon written approval to Consultant by the District’s Project Manager or supervisors. Task funds may be reallocated between tasks, so long as the changes do not result in a change to the original Scope of Services or Total Contract Price, upon written approval in accordance with the District’s Professional Service Change Policy.

4.3 Tasks may be modified with prior written authorization of the Director of Engineering and Construction, in which case funds may be shifted from one task budget to another, in accordance with Section 4.2. In the event funds are not available to perform a modified Task, or Services are considered to be outside the original contract scope, such items will be deemed additional Services.

4.4 Consultant shall not perform Additional Services, nor incur any expenses which are not required by this Agreement, and the District shall not be obligated to pay for such services and expenses until the following conditions have been satisfied:

4.4.1 Submittal by Consultant of written notice to the District prior to the initiation of such additional Services, including an estimate of cost and schedule implications and a detailed scope of such Services;

4.4.2 Prior approval of the District's Board of Trustees of the modification of this Agreement by the addition of such Services and additional compensation, if any;

4.4.3 If the additional Services increase the Total Agreement Price under this Agreement, certification of such additional cost by the District's Chief Finance Officer;

4.4.4 A written modification to the Agreement; and

4.4.5 Written notification to Consultant from the Director of Engineering and Construction directing Consultant to perform such additional Services prior to commencement of the additional Services.

4.5 For additional Services deemed by the District to be time critical, Consultant may commence Services with verbal authorization from the Chief Executive Officer.

4.6 Specific and general allowance funds may be utilized according to the District's Professional Services Change Policy.

4.7 Any costs which are paid by the District and are determined by a final audit or subsequent audit to be non-allowable in accordance with generally accepted cost accounting principles shall be refunded to the District. The District is exempt from all sales, use, and excise taxes and the District shall not be obligated to pay for such taxes. Upon request by Consultant, the District shall provide a copy of the District's certificate of tax exemption.

4.8 The Consultant shall assist the District in preparing any required permits or licenses; however District shall be responsible for paying for the permit, licenses or access fees required to complete the Services.

Section 5. METHOD OF PAYMENT

5.1 For the purpose of providing progress payments for the performance of the Services under this Agreement, Consultant will submit monthly invoices on the District's standard invoice template and on a schedule stipulated by the District. Progress payments will be made according to the provisions in Exhibit "C" - Compensation.

5.2 Invoices must be accompanied by backup information appropriate to the compensation method designated in Exhibit "C" – Compensation. However invoices will not be paid unless schedule updates are submitted as required in Section 6.0 - Term and Schedule, and per the District's Schedule Guidance Document.

5.3 All compensation procedures and invoice requirements set forth herein shall also apply to all subconsultants directly contracted to the prime Consultant. Deviations from said procedures and requirements may be allowed only after written application by the Consultant to the District and written acceptance of such deviation by the District. The District will not compensate Consultant for labor costs not billed within 3 months of performance of such labor.

5.4 The District retains the right to limit progress payments if, in the opinion of the District, the percentage of the Total Agreement Cost billed exceeds the earned value in delivering the Services as measured by the District's earned value tracking system.

5.5 Prior to payment of the final invoice, Consultant agrees to deliver to the District the following, if applicable to the Services:

5.5.1 All electronic data files, plans, sketches, drawings, documents, reports, memoranda and reproducibles related to the project and as required by the District's representative. Consultant may retain one copy of any or all of the aforementioned materials for its files.

5.5.2 Record drawings.

5.5.3 All non-expendable personal property purchased and approved by the District as other Direct Costs.

5.5.4 A formal written release of all claims and financial requirements arising by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by Consultant from the operation of the release in stated amounts to be set forth therein.

5.6 All accounting and financial matters relating hereto shall be processed by the District's Chief Financial Officer. Payments shall be made by the District on the monthly statements only after they have been certified by the District's representatives and approved by the Director of Engineering and Construction and the Chief Financial Officer. Provided the District receives the required backup documentation, the District shall endeavor to make payment to the Consultant within thirty (30) days from the District's receipt of a monthly statement.

5.7 No approval or payment made under this Agreement shall be conclusive evidence of the acceptance of performance under this Agreement either wholly or partially, and no payment made hereunder shall be construed to be an acceptance of deficient or unsatisfactory Services.

5.8 Right to Inspect; Right to Audit Books. The Consultant and all subconsultants shall maintain books, records, documents, and other evidence directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles. Any authorized representative of the District shall, at all reasonable times and with reasonable notice, have the right to inspect and examine the drawings, specifications and other contract documents at Consultant's office during the period of their preparation. Any authorized representative of the District shall, at all reasonable times and with reasonable notice, also have the right to examine

records of payments to Subconsultants. Further, if the Time and Materials method of compensation is designated in Exhibit “C” – Compensation, any authorized representative of the District shall, at all reasonable times and with reasonable notice, have the right to audit, inspect and examine the Consultant’s accounting books and financial records for the Project, including, but not limited to, records of hours expended, personnel utilized, payments of employee salaries, and records of payments made to Subconsultants.

5.9 In the event of a disputed invoice, only the disputed portion shall be withheld from payment by the District and the District will process the remaining undisputed portion of the invoice.

Section 6. TERM AND SCHEDULE

6.1 Consultant shall not perform any Services hereunder until receipt of written Notice to Proceed from the District. The term of this Agreement shall begin upon performance of the Services hereunder, and shall, unless extended by the District, or unless sooner canceled or terminated pursuant to the provisions hereof, expire on upon successful completion of the Services.

6.2 The completion of the Services in a timely and orderly manner is essential. Consultant shall perform all Services and submit deliverables required by the Agreement within the times stipulated in the approved baseline Project Schedule.

6.3 Consultant shall prepare and submit a baseline project schedule for District approval in accordance with the District’s Schedule Guidance Document.

6.4 Consultant shall provide monthly status updates, and submit the project schedule and schedule narrative for review by the District in accordance with the District’s Schedule Guidance Document. The requirement to submit schedule updates on a monthly basis may only be revised by authorization of the Director of Engineering and Construction.

6.5 Neither party to this Agreement shall be deemed in default in the performance of its obligations if that party is prevented or delayed from performing by forces beyond its control, (hereinafter “Force Majeure”) including, without limitation, acts of God or of a public enemy; acts of a municipal, state, federal or other governmental legislative, administrative or judicial entity; any catastrophe resulting from flood, fire, extreme weather conditions, explosion; labor disturbances; and other cause beyond the control of the non-performing party. Consultant may be granted a time extension and cost adjustment for its performance based on the duration of the Force Majeure.

Section 7. STANDARDS OF PERFORMANCE, ERRORS AND OMISSION

7.1 Services provided by the Consultant and all of its agents, subconsultants, and employees under this Agreement shall be performed in a manner consistent with the degree of care and skill customarily accepted as good professional practices and procedures by members of the same profession currently practicing under similar circumstances in the Cleveland metropolitan area, as well as having the experience and qualifications to complete the Services.

7.2 The District shall not be responsible for discovering deficiencies in the technical accuracy of Consultant’s Services. During the term of the Agreement, the Consultant shall be solely responsible for the accuracy of Services and shall promptly make necessary revisions or corrections to the Services performed to the extent that the necessary revisions or corrections resulted from Consultant’s negligent acts, errors or omissions, without any additional compensation from the District.

7.3 Acceptance of Services, including payment for same, shall not relieve the Consultant of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

7.4 In the event of any negligent act, error, or omission which the District determines, using a reasonableness standard, to be the responsibility of the Consultant in any phase of the service, the correction, repair or reconstruction of which may require additional field or office work or services, the Consultant shall be promptly notified and shall be required to perform such corrective Services as may be necessary without delay and without additional cost to the District. The period of re-performance for Services under this Section shall be limited to five (5) years from the time the original Services were performed. Consultant shall be reimbursed for any costs incurred for the correction, repair, or reconstruction of which requires additional field or office work or services that have been subsequently determined not to be the responsibility of Consultant as per above.

7.5 The District will provide to Consultant all data in District's possession relating to the Services. The Consultant shall be able to reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the District, however, prior to relying upon such data and information, the Consultant shall be required to take reasonable measures to verify its accuracy, timeliness and completeness.

7.6 The District will endeavor to review Consultant- provided reports, studies, drawings, specifications, proposals and other documentation in a timely manner and provide prompt written notice of any inconsistencies, errors or items of concern.

Section 8. INSURANCE AND WAIVER OF SUBROGATION

8.1 INSURANCE

8.1.1 Liability Insurance to be provided by Consultant, Consultant's subconsultants and professionals engaged by Consultant. For any Services under this Agreement, and until completion of the entire Services, the Consultant, Consultant's subconsultant(s), and Professionals engaged by Consultant shall purchase and maintain, at its own expense, insurance coverage as specified below. All insurance required hereunder shall apply to and cover all loss or liability caused by, arising from, or resulting from the Services performed or required to be performed, provided or required to be provided, hereunder.

8.1.1.1 Auto Liability Insurance. Auto Liability coverage for Owned, Non-owned and Hired Auto Liability with a limit of not less than Five Million Dollars (\$5,000,000) for the Consultant, not less than Two Million Dollars (\$2,000,000) for the non-MBE/WBE/SBE Subconsultant(s), and not less than One Million Dollars (\$1,000,000) for MBE/WBE/SBE Subconsultant(s) minimum annual combined single limit, bodily injury and property damage. Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of the Consultant, Consultant's subconsultants, or Professionals engaged by Consultant. The Auto Liability Insurance limit requirement can be satisfied by the purchase and maintenance of any combination of primary, excess and/or Umbrella insurance.

The District and its trustees, board members, officers, members, employees, representatives, agents, and consultants including the District's consultants for the Project shall be named as additional insureds on the Consultant's, Consultant's subconsultant's(s'), and Professional's(s') engaged by Consultant Automobile Liability policies. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CA 20 48 02/99 for Auto Liability, or a substitute form providing equivalent coverage.

8.1.1.2 Workers' Compensation. Workers' Compensation with statutory limits. Employers Liability with an annual limit of not less than One Million Dollars (\$1,000,000) bodily injury by accident, each accident, One Million Dollars (\$1,000,000) bodily injury by disease, each employee, and One Million Dollars (\$1,000,000) bodily injury by disease, policy aggregate minimum coverage including defense of an allegation against the employer for injury believed to have been substantially certain to occur. The Consultant, Consultant's subconsultant(s), and Professionals engaged by Consultant shall subscribe to and comply with, throughout all phases of the Project, the Workers' Compensation laws of the State of Ohio. The Employers Liability insurance requirement may be satisfied by including such coverage within the General Liability policy.

8.1.1.3 General Liability Insurance. Commercial General Liability insurance on an occurrence coverage basis (including without limitation, bodily injury, personal injury and advertising injury, property damage, and

broad-form contractual liability arising from or relating to this Agreement, coverage as respects independent contractors, operating mobile equipment, products and completed operations, explosion, collapse and underground hazards) of not less than the following amounts:

(a) Consultant's General Liability (occurrence basis, limits per occurrence and annual aggregate):

\$5,000,000 General Aggregate
\$5,000,000 Products/Completed Operations Aggregate
\$5,000,000 Personal Injury and Advertising Injury
\$5,000,000 Bodily Injury and Property Damage Limit - Each Occurrence

(b) Non-MBE/WBE/SBE Subconsultant(s) and Professionals engaged by the Consultant's General Liability (occurrence basis, limits per occurrence and annual aggregate):

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$2,000,000 Personal Injury and Advertising Injury
\$2,000,000 Bodily Injury and Property Damage Limit - Each Occurrence

(c) MBE/WBE/SBE Subconsultant(s) engaged by the Consultant's General Liability (occurrence basis, limits per occurrence and annual aggregate):

\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Injury
\$1,000,000 Bodily Injury and Property Damage Limit - Each Occurrence

The District and its trustees, board members, officers, administrators, members, employees, representatives, agents, and District's consultants for the Project shall be named as additional insureds on the Consultant's, Consultant's subconsultant's(s'), and Professionals' engaged by the Engineer Commercial General Liability policies (including Employers

Liability) and Excess/Umbrella Liability. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85 for General Liability, or substitute form providing equivalent coverage. The additional insured coverage afforded under the Consultant's, Consultant's subconsultant's(s') and Professionals' engaged by the Consultant policies shall include both ongoing operations (services in progress) and completed operations (completed services). All coverage shall be maintained for a minimum of five (5) years after expiration of this Agreement.

The General Liability Insurance limit requirement can be satisfied by the purchase and maintenance of any combination of primary, excess and/or Umbrella insurance.

Commercial General Liability and Umbrella/Excess limits of liability (including Product/Completed Operations coverage) shall apply on a per project basis.

8.1.1.4 Professional Liability Insurance. Consultant, Consultant's subconsultant's(s) and Professionals engaged by the Consultant shall purchase and maintain in force Professional Liability insurance (including contractual liability coverage) covering liability and damages arising out of or resulting from Consultant's professional services rendered, or which should have been rendered, pursuant to this Agreement. Each of Consultant's subconsultant(s) or Professionals engaged by Consultant who are required to render or provide professional services pursuant to this

Agreement and/or the contract between the Consultant, Consultant's subconsultant(s) or Professionals engaged by Consultant, or at any other subconsultant level, shall purchase and maintain Professional Liability insurance coverage with limits of liability of not less than and coverage no less broad than requested herein.

(a) Consultant's Professional Liability limits of not less than:

\$5,000,000 Annual Aggregate

\$5,000,000 Per claim

(b) Non-MBE/WBE/SBE subconsultant(s) and Professionals engaged by Engineer Professional Liability limits of not less than:

\$2,000,000 Annual Aggregate

\$2,000,000 Per Claim

(c) MBE/WBE/SBE subconsultant(s) engaged by Engineer Professional Liability limits of not less than:

\$1,000,000 Annual Aggregate

\$1,000,000 Per Claim

Professional Liability insurance may be written on a claims-made basis provided such policy shall either (i) be renewed annually for a period of not fewer than five (5) years following expiration of this Agreement with substantially the same terms and conditions or (ii) include an extended reporting period endorsement or clause providing not less than five (5) years within which a claim may be made under the policy respecting the Consultant's, Consultant's subconsultant(s) or Professionals engaged by

Consultant performance of Services; the cost of coverage for such five (5) year period shall be borne exclusively by the Consultant, Consultant's subconsultant(s), or Professionals engaged by Consultant as the case may be.

8.2 Property Insurance. The Consultant shall purchase and maintain Property insurance covering construction machinery, equipment, special equipment, falsework, scaffolding, materials, mobile equipment, valuable papers, trailers, and tools used or owned by the Consultant in the performance of the Services. The Consultant also agrees to require Consultant's subconsultant(s) and Professionals engaged by Consultant to insure any and all property listed above used or owned by the Consultant's subconsultant(s) or Professionals engaged by Consultant in the performance of the Services. District shall in no circumstance be responsible or liable for the loss or damage to, or disappearance of, any property listed above used or owned by the Consultant, Consultant's subconsultant(s) or Professional engaged by Consultant in the performance of the Services.

8.3 Insurance Coverage Requirements:

8.3.1 Primary Coverage. The insurance coverage to be purchased and maintained by the Consultant, Consultant's subconsultant(s) and Professionals engaged by Consultant as required herein to name the District as Additional Insured shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by District which shall not contribute therewith, and there shall be severability of interests under the insurance policies required herein for all coverages provided under said insurance policies and otherwise provide cross liability coverage.

8.3.2 Thirty Days Notice. Either the insurance coverage required of Consultant, Consultant's subconsultant(s), and Professionals engaged by Consultant, or the

Consultant, Consultant's subconsultant(s), or Professionals engaged by Consultant shall incorporate a provision requiring the giving of written notice to District, Consultant, and to any other person(s) or party(ies) reasonably designated by District, at least thirty (30) days prior to the cancellation, non-renewal, and/or material modification of any insurance policy required to be purchased and maintained pursuant to this Agreement. Consultant, Consultant's subconsultant(s), and Professionals engaged by Consultant shall promptly notify District of a downgrade in the AM Best Company rating of any insurance company providing the insurance coverage for Consultant, Consultant's subconsultant(s) and/or Professionals engaged by Consultant.

8.3.3 Financial Strength. The insurance coverage required of Consultant, Consultant's subconsultant(s), and Professionals engaged by Consultant herein shall be placed and maintained until expiration of this Agreement with insurance companies rated at least A-, Financial Size Category of at least VII, by A.M. Best Company, licensed or otherwise authorized and able to do business in Ohio.

8.3.4 Consultant(s) and Professionals engaged by Consultant Insurance. Consultant shall not sublet or subcontract any part of this Agreement without assuming absolute responsibility for requiring and taking actions to know that each Consultant's subconsultant(s) and Professionals engaged by Consultant (and each subconsultant at every tier) purchase and maintain the types of insurance required hereby with the same terms and conditions as herein required of the Consultant and the limits of liability herein required of Consultant's subconsultant(s) and Professionals engaged by Consultant. Failure of Consultant, Consultant's subconsultant(s), or Professionals engaged by Consultant to purchase and maintain insurance for a minimum of five (5) years after expiration of this Agreement shall be deemed a material breach of this Agreement,

allowing the District, in addition to all other remedies available to District under this Agreement, at law and/or in equity, to terminate this Agreement or to provide insurance at the Consultant's sole expense, in neither case, however, shall the Consultant's liability hereunder be lessened.

8.3.5 Notice of Occurrence. Upon Consultant's knowledge of any actual or alleged occurrence, event, or third-party claim(s) which may result in or give rise to a claim against liability imposed upon, or loss suffered by Consultant, Consultant's subconsultant(s), or Professionals engaged by Consultant which may exceed One Million Dollars (\$1,000,000), Consultant shall (i) immediately provide the District with written notice of such occurrence, event or third-party claim(s) with reasonable detail; this requirement applies irrespective of when, where, or how the claim, liability, or loss occurred, whether or not the claim, liability or loss relates to or arises from the Consultant's, Consultant's subconsultant(s) or Professionals engaged by Consultant Services, or the validity or status of such claim, liability or loss, and applies to the entire Contract term and the five (5) years following expiration of this Agreement; and (ii) all such notice shall be issued in accordance with this Agreement.

8.3.6 Evidence of Insurance. Consultant shall submit to the District within ten (10) Calendar Days after District's notice of Contract award and prior to Date of Commencement, certificates of insurance evidencing the effectiveness of the insurance policies required by this Agreement and all endorsements to any such policies. The Project Site shall be identified on the certificate(s) and the certificate(s) shall be delivered to District pursuant to the terms of this Agreement.

At any time during the term of this Agreement and annually (measured from the Date of Commencement) for a period of five (5) years following expiration of this Agreement,

the Consultant shall promptly provide certificates of insurance to the District evidencing the effectiveness of the insurance coverages required pursuant to this Agreement, including all endorsements no less frequently than upon the renewal of any insurance coverage required by this Agreement.

All endorsements to or modifications of insurance purchased and maintained by the Consultant, Consultant's subconsultant(s) and Professionals engaged by Consultant pursuant to this Agreement shall be subject to District's review and final acceptance. District's review, receipt and/or acceptance of any insurance policy purchased and maintained by the Consultant, Consultant's subconsultant(s), or Professionals engaged by the Consultant or a certificate of insurance evidencing such insurance, shall not constitute nor be deemed to constitute District's approval of such insurance or District's agreement that such insurance satisfies the insurance requirements set forth in this Agreement.

8.3.7 Compliance. If any insurance purchased and maintained by the Consultant, Consultant's subconsultant(s) or Professionals engaged by Consultant pursuant to this Contract contains a warranty or other clause providing that coverage is null and void (or words to that effect), or otherwise reduced in scope or limit if the Consultant, Consultant's subconsultant(s), or Professionals engaged by Consultant does not comply with the regulations or statutes governing the Project, such policy or policies shall be modified or endorsed so that coverage shall be afforded in all cases except for the Consultant's, Consultant's subconsultant(s) and Professionals engaged by Consultant intentional or willful non-compliance with Applicable Laws.

8.3.8 No Limitation. The types and limits of insurance to be purchased and maintained by the Consultant, Consultant's subconsultant(s) or Professionals engaged by Consultant pursuant to these Contract Document shall not be deemed to constitute a limitation of the

Consultant's, Consultant's subconsultant's(s'), Professionals' engaged by Consultant liability hereunder or otherwise, or otherwise to limit or affect the Consultant's indemnification obligations hereunder; by requiring insurance herein, District does not represent or warrant that coverage and limits will be adequate or sufficient to protect the Consultant, Consultant's subconsultant(s) or Professionals engaged by Consultant.

8.3.9 Other Insurance. Any insurance or any increase of limits of liability not described in this Article 3 which Consultant, Consultant's subconsultant(s) and Professionals engaged by Consultant requires for their own protection shall be its own responsibility and at its own expense and shall not be considered part of the Consultant's fee for base Services or part of Consultant's Reimbursable Expenses or be subject to a request for Additional Services.

8.3.10 Upon request of the District, Consultant shall provide complete copies of the insurance policies required under this Agreement.

Section 9. TERMINATION OF AGREEMENT AND THE DISTRICT'S RIGHT TO PERFORM CONSULTANT'S OBLIGATIONS

9.1 Termination for Cause and Default of Consultant. This Agreement may be terminated by the District at any time for cause upon written notice to Consultant of such intent when either the progress or results achieved under this Agreement are unacceptable to the District, and upon giving Consultant reasonable notice and opportunity to cure such unacceptable progress or results, which Consultant fails to perfect. In no event, shall the reasonable notice be less than thirty (30) calendar days.

9.2 If this Agreement is cancelled by the District prior to completion, Consultant, within ten (10) working days of such cancellation, shall submit a certified final progress report of the percentage of Services completed by the date of cancellation. The District shall pay Consultant for the Services completed as certified in this statement and as approved by the Chief

Executive Officer. Notwithstanding any other provision of this Agreement, all records, documents, materials, equipment, and working papers prepared or purchased as part of the Services under this Agreement shall become and remain the property of the District, and upon any such cancellation, Consultant shall turn over to the District all records, documents, working papers, equipment and other materials which should be necessary, in the opinion of the District, to maintain continuity in progress of the Services by another Consultant. The District shall allow the Consultant to retain copies for their records, if Consultant chooses to do so.

9.3 Upon the occurrence and during the continuance of an event of default, the District may, but shall not be obligated to, take such actions as the District deems reasonable in order to cure the act or omission of Consultant that is the basis of the default, and the Total Contract Price shall be reduced by the cost to the District of taking such actions. Costs associated with the start-up and shut-down of the Services shall be at Consultant's expense.

9.4 This Agreement may be terminated by Consultant for event of default by the District, which would include failure to perform a material obligation and non-payment by District, upon thirty (30) days written notice, based upon the breach provisions as contained in this Agreement. Within ten (10) working days, Consultant shall submit a certified final progress report of the percentage of Services completed by the date of the termination. The District shall pay Consultant for the Services completed as certified in the statement and approved by the Chief Executive Officer.

9.5 Termination without Cause. The District may terminate this Agreement without cause upon thirty (30) days written notice. If the District terminates this Agreement without cause it shall make payment to Consultant for Services performed prior to the date of termination and reasonable demobilization costs, including any reimbursable expenses, if any then due, which shall be subject to the District's review and approval, and which shall not be

unreasonably withheld. Consultant shall, as a condition of receiving the payments referred to in this Section, execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as the District may require for the purposes of fully vesting in it the rights and benefits of Consultant under such obligations or commitments. The payment under this Section for termination by the District without cause shall constitute full and complete satisfaction of any and all damages and claims of Consultant regarding the Consultant's performance of the Services and the termination of Consultant's Services by the District.

Section 10. WORKERS' COMPENSATION COVERAGE

10.1 Consultant shall at all times during the term of this Agreement subscribe to and comply with the Workers' Compensation Laws of the State of Ohio, shall pay such premiums as may be required thereunder, and shall save the District harmless from any and all liability arising from or under said Act. It shall furnish at the time of delivery of this Agreement and at such other times as may be requested, a copy of the official certificate of receipt showing the payment hereinbefore referred.

Section 11. INDEMNITY

11.1 Consultant shall be responsible for the safety of its personnel related to and during the performance of Services required by this Agreement and will take reasonable measures to ensure that it and its Subconsultants provide and maintain a safe working environment. Consultant shall ensure that its employees and the employees of its Subconsultants, before they begin and throughout their employment at any Project site, are made aware of the requirements of all applicable safety and health regulations including, but not limited to, Applicable Laws and are notified that compliance therewith is a condition of their continued employment. Consultant shall remove from the site any employees or Subconsultants that fail to abide by applicable health and safety regulations. Consultant shall not knowingly permit a hazardous, unsafe,

unhealthy or environmentally unsound condition or activity to be conducted at any Project site. If Consultant becomes aware of any hazardous, unsafe, unhealthy or environmentally unsound condition at any Project site, it shall notify the District and take reasonable steps to eliminate, terminate, abate or rectify any condition over which Consultant has control. The District may, but is not obligated to, inspect at reasonable times, the Project site and Consultant's facilities and appropriate Project Records to ascertain Consultant's and its Subconsultants' compliance with the requirements of this Agreement; provided however, neither the existence nor exercise of such right will relieve Consultant of its responsibility for its own and its Subconsultants' compliance with this Agreement, to always use due care in the performance of Services and for fulfilling all of its other obligations hereunder with respect to health and safety. Consultant shall promptly notify the District of any injury, death, loss or damage to persons, animals, or property, which is in any way related to Services performed under the Agreement, even though such occurrence was not caused or consented to by Consultant, its employees, Subconsultants or agents. Smoking is prohibited at the Project site. Consultant shall monitor the District's no smoking rule with respect to its employees and Subconsultants while they are working at the Project site.

11.2 Consultant shall indemnify, defend, save and hold the District and its officers, employees, and agents free and harmless against any and all claims, demands, actions, losses, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising directly or indirectly out of or relating to any and all negligent acts, errors, or omissions by the Consultant (including its employees and agents) or any ambiguities in the plans and specifications, providing that such ambiguities are originated by or the responsibility of the Consultant and to the extent that such ambiguity is the result of a negligent act, error, or omission of the Consultant in the performance of this Agreement. The Consultant shall be given the opportunity to defend on behalf of the District, any action or claim brought

against it which, if successfully prosecuted, would give rise to a claim hereunder against the Consultant. This indemnification shall not result in the unjust enrichment of the District. In the case of any ambiguities, the District shall afford the Consultant a reasonable opportunity to mitigate the damage and clarify any such ambiguities within a reasonable time after discovery by or notice to District. District shall promptly notify the Consultant of any claim, demand, action, cause of action, or other liability for which the District may seek indemnification from the Consultant. The provisions of this paragraph shall survive the termination/expiration of this Agreement

11.3 In any and all claims against the District, Consultant or any of its members, officers, agents or employees, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

11.4 Consultant further agrees to indemnify and hold harmless the District from claims made by employees of Consultant or employees of Consultant's subconsultants and based on injuries, sickness, disease, death or disability, to the extent arising out of the professional negligence of Consultant. As between Consultant and the District, Consultant agrees that it will not assert a claim of and expressly waives any and all immunity pursuant to applicable Workers' Compensation laws, with regard to this indemnification.

Section 12. MBE/WBE/SBE COMPLIANCE

12.1 The Minority- and Women Business Enterprise ("MBE/WBE") and/or Small Business Enterprise ("SBE") subcontracting goals established for this Agreement are defined in Exhibit "D" – MBE/WBE/SBE Compliance Goals. Consultant agrees to comply with the

District's Business Opportunity Program during performance of this Agreement, including making a good faith effort to meet or exceed the MBE, WBE and/or SBE utilization goals established for this Agreement in cooperation with the District's Office of Contract Compliance.

Section 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 Consultant agrees to adopt and maintain a policy of non-discrimination in employment. It further agrees that it will comply with all applicable Federal and State laws with regard to Equal Employment Opportunity and Fair Employment Practices, and with the District's Equal Employment Opportunity Policy, Guidelines and Procedures.

13.2 Consultant agrees to provide the District with information regarding its employment practices, in such forms as the District may prescribe; and that compliance with such requests is a condition of this Agreement.

Section 14. WPCLF ASSISTANCE AND APPLICABILITY OF FEDERAL REQUIREMENTS

14.1 Should the District seek Water Pollution Control Fund (WPCLF) financing for this Agreement under the Clean Water Act, as amended, it is the intent of the parties that the Agreement be construed in a manner most favorable to obtaining such financing.

14.2 In the event that WPCLF financing is utilized for this Agreement, it is specifically agreed that the District Standard Clauses for WPCLF Assisted Professional Services Agreements (Exhibit "E") shall apply to this Agreement.

Section 15. INDEPENDENT CONTRACTOR

15.1 Consultant shall be and remain an independent contractor with respect to all Services performed hereunder, and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions or annuities, now or hereafter imposed under

any State or Federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Consultant on Services performed under the terms of this Agreement, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and Consultant agrees to indemnify and save harmless the District from any such contribution or taxes or liability therefore.

Section 16. SUBCONSULTANTS

16.1 Since this Agreement is made pursuant to the proposal submitted by Consultant and in reliance upon Consultant's qualifications and responsibility, Consultant shall not sublet nor shall any subconsultant commence performance of any part of the Services except as specifically included in this Agreement without prior written consent of the District. In making the application for subletting any portion of the Services, Consultant shall state in writing the portion of the Services which each subconsultant is to do or the material which it is to furnish, his place of business, and such other information as may be required by the District. Subletting, if permitted, shall not relieve Consultant of any of its obligations under this Agreement.

16.2 All subconsultants for Services covered by this Agreement must conform to the requirements of this Agreement.

16.3 Debarment. The Consultant acknowledges the EPA regulations regarding the use of businesses which are included on the EPA Master List (40 CFR Part 32) of businesses which have been debarred, suspended or voluntarily excluded from participating in EPA assisted activities, and expressly agrees not to subcontract to any such businesses.

Section 17. ASSIGNMENT OF AGREEMENT

17.1 The District and Consultant bind themselves and their successors, administrators and assigns to the other party of this Agreement and to the successors, administrators and assigns

of the other party of this Agreement, in respect to all covenants of this Agreement. Except as stated above, neither the District nor Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

Section 18. DISPUTE RESOLUTION

18.1 In the event of a dispute between the Parties for obligations under this Agreement, either Party may request the following dispute resolution process. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.

18.1.1 The Parties are committed to working with each other to resolve disputes and agree to communicate regularly so as to avoid or minimize disputes. The Parties shall first try to resolve the dispute at the level of the designated representatives in Section 3. If the Parties are unable to resolve the dispute at that level within 10 working days, the Parties shall escalate the issue to the next higher level within their respective organizations to resolve the dispute.

18.1.2 If the Parties are unable to resolve the dispute through the above meetings, then on the written notice of either party requesting the matter may be taken to mediation, the Parties shall begin the mediation process within 20 days of such notice. The Parties shall select a mediator, who is experienced in consulting design and construction administration services. The mediator shall review all documents and written invoices, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within 10 working days after mediator appointment, which meeting shall be attended by at least the respective representatives in Section 3. The Parties shall

attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator equally.

18.1.3 Such mediation shall be non-binding between the Parties and shall be kept confidential. If the dispute is resolved and settled through the mediation process, the decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Section 20.2 below.

Section 19. CONSTRUCTION

19.1 All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender. Consultant agrees that no representations or warranties of any type shall be binding upon the District, unless expressly authorized in writing herein. In the event of any variance between the provisions of this Agreement and Consultant's Scope of Services (Exhibit "B"), the provisions of this Agreement shall govern. The headings of sections and paragraphs, if any, to the extent used herein are used for reference only, and in no way define, limit or transcribe the scope or intent of any provision hereof. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered in any number of counterparts, shall be deemed original, but such counterparts together shall constitute but one and the same instrument. Invalidation of any provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the

application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

Section 20. MISCELLANEOUS

20.1 **Copyrights.** The Consultant acknowledges and agrees to follow the EPA requirements of 40 CFR Part 30 regarding copyrights and rights in data for any discovery or invention which arise or is developed in the course of implementing this Agreement. All specific deliverables developed under this Agreement shall become the property of the District. All work product (including pre-existing intellectual property) of the Consultant in executing the Services shall remain the property of Consultant. Any inventions, patents, copyrights, computer software, or other intellectual property developed during the course of, or as a result of the Services shall remain the property of the Consultant.

20.2 **Remedies.** The parties agree that all claims, counter-claims, disputes and other matters in question between the District and the Consultant arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the law of the State of Ohio.

20.3 **Defective Pricing.** The Consultant and subconsultant, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiated agreements, lower tier subagreements, and change orders is based on current, accurate, and complete data supported by their books and records. If the District determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and the Agreement shall be modified in writing to reflect such action.

20.4 Contingent Fees. The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

20.5 Gratuities. If the District finds after a notice and hearing that the Consultant, or any of the Consultant's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the District in an attempt to secure an Agreement or favorable treatment in awarding, amending, or making any determination related to the performance of this Agreement, the District may, by written notice to the Consultant, terminate this Agreement. The District may also pursue other rights and remedies that the law or this Agreement provides.

20.6 The Consultant shall retain all records relating to this Agreement and the Services performed for a period of five (5) years after its termination.

Section 22. EXHIBITS

21.1 It is mutually understood and agreed that all Exhibits attached hereto are made a part hereof as if fully written herein. In the case of any conflict or variance between the terms of this Agreement and the terms of referenced documents, the terms of this Agreement shall govern.

The following Exhibits attached hereto are hereby incorporated with and made a part of this Agreement:

- a. Exhibit "A" – Resolution
- b. Exhibit "B" – Scope of Services
- c. Exhibit "C" – Compensation
- d. Exhibit "D" – Business Opportunity Program Compliance Goals
- e. Exhibit "E" - Standard Clauses for WPCLF Assisted Projects

IN WITNESS WHEREOF, this Agreement was entered into on the date and year first written above.

WITNESS:

**NORTHEAST OHIO REGIONAL
SEWER DISTRICT**

BY: _____

(Title): Chief Executive Officer

AND: _____

(Title): President, Board of Trustees

WITNESS:

BY: _____

(Title): _____

TAXPAYER I.D. NUMBER

This instrument prepared by:
Katarina K. Waag
Assistant General Counsel
Northeast Ohio Regional Sewer District