

**Northeast Ohio Regional Sewer District
2025 Member Community Infrastructure Program
Request for Proposals
March 2024**

Introduction

The Northeast Ohio Regional Sewer District (District) through the Member Community Infrastructure Program (MCIP) will fund local communities and other eligible political subdivisions that own, operate, and maintain public sewer infrastructure that is tributary to a District wastewater treatment plant to address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

The District will provide funding for up to 75% of project costs. The MCIP funds will be provided by the District on a direct disbursement basis directly to the grantee based on MCIP project costs, conditioned on the District's prior approval of the design and/or construction of the project.

The District will determine the appropriate funding mechanism, grant, or community operating lease, during project evaluation. Determination of the funding mechanism for the project will be at the discretion of the District. Refer to the MCIP Policy for additional background and information on the funding mechanism.

As per the Code of Regulations of the District, [Title III Separate Sanitary Sewer Code](#), Chapter 8, a community must have an approved Water Quality Technical Support Program to be eligible for MCIP funding. However, for the 2025 MCIP funding year, communities will only be required to submit a Letter of Acknowledgement (Attachment A) with this year's proposal. For additional information on Title III requirements contact Jeff Jowett, Community Discharge Permit Program Manager Jowettj@neorsd.org.

Eligible Projects

Eligible projects include, but are not limited to the following:

- **Projects to Mitigate Sanitary Sewer Overflows (SSO) and Illicit Discharges:** Projects necessary to mitigate separate sanitary sewer overflows and illicit discharges.
- **Projects to Mitigate Infiltration & Inflow (I/I):** Projects necessary to address inflow and infiltration problems, including but not limited to, rehabilitation or separation of common trench pipes and manholes, removal of direct inflow connections, repair, or replacement of cracked or exfiltrating combined, sanitary or storm sewers, and reduction of public and private sources of I/I.
- **Projects to Remove/Eliminate Failing Home Sewage Treatment Systems (HSTS):** Projects to construct new separate sanitary sewers to eliminate failing HSTSs. HSTS failure should be confirmed by the jurisdictional Board of Health.

- **Projects that Improve Local Sewer System Level of Service:** Projects that reduce local sewer flooding and backups in the local system that can be attributed to undersized or structurally deficient local sewers. Such projects include efforts to address basement flooding in separate and combined sewer systems, and to the extent practical, on-site stormwater management practices to mitigate the increase in downstream flows.
- **Projects to Manage Stormwater Flow that Improve Combined/Sanitary Level of Service:** Projects that reduce volume, flow rate, or pollutant load of stormwater to a combined sewer, separate storm sewer, and/or directly to receiving water body that improve a combined or sanitary sewer level of service.
- **Projects that Separate Over/Under Sewers:** Complete separation of common trench over/under sewers, with new infrastructure to transport storm and/or sanitary flows.

To ensure project eligibility, communities should schedule a pre-proposal meeting prior to submitting a proposal. Details on scheduling a pre-proposal meeting are found under the Pre-Proposal Meeting section of this document.

Ineligible Projects

MCIP funds should not be used for any project that causes, accelerates, or contributes to water quality degradation or water quantity issues that increase flooding, erosion, or is otherwise detrimental to human health within the District's service area. Ineligible projects include, but are not limited to the following:

- The proposal of fill materials in floodplains, riparian areas or wetlands, and the culverting or channelizing of watercourses;
- Capital, operation, maintenance, and administrative expenses not directly related to an eligible project; and
- Projects that increase the potential for flooding within a community and/or neighboring community's combined, sanitary, or storm sewer systems or local watercourses. The applicant is responsible for evaluating any potential downstream or upstream impacts of the proposed work on other users, or on the level of service of the infrastructure.

Project Requirements

To be considered for funding, projects at a minimum must meet the following requirements:

- Reduce water quantity issues and/or address water quality issues that impact human health and the environment associated with combined or separate sanitary infrastructure problems, as determined by the applicant or the District.
- Be located in the District's sanitary sewer service area (<http://arcg.is/2bPxzEt>).
- Meet all applicable District, federal, state, and local regulations.
- Design-only projects must complete design within 12 months of MCIP Project Agreement start.

- Construction-only projects must include professional engineer stamped design drawings at the time of application, and construction activity must be complete within 12 months of a signed MCIP Project Agreement.
- Include at least 25% non-District matching funds dedicated to the project. These funds may include cash and/or in-kind sources. For example, costs associated with road rehabilitation in which MCIP funding is proposed for sanitary or combined sewer replacement or rehabilitation may be captured as non-District matching funds. Community Cost Share (CCS) may be used in accordance with CCS policy as community match. In addition, the following project costs may be captured to meet this 25% non-District matching fund requirement:
 - Personnel: Fully-loaded labor costs for employees of the community related to the direct performance of engineering and design, construction services, project management, and performance verification on the project.
 - Planning and design costs directly related to the project that were incurred prior to the submittal of a project proposal that have a material benefit to the proposal. These costs include, but are not limited to CCTV costs, manhole inspection costs, pre- construction performance verification activities (i.e. flow monitoring, water quality sampling), and engineering services such as surveying, design engineering, and cost estimating. Itemization and documented proof of these costs is required to be submitted with the proposal for consideration.

All funds must be approved as eligible by the District for the 25% non-District match requirement. Funds acquired from previous District awards cannot be used as match. Communities should contact the District's Grant Programs Administrator to assess if the funding source is eligible.

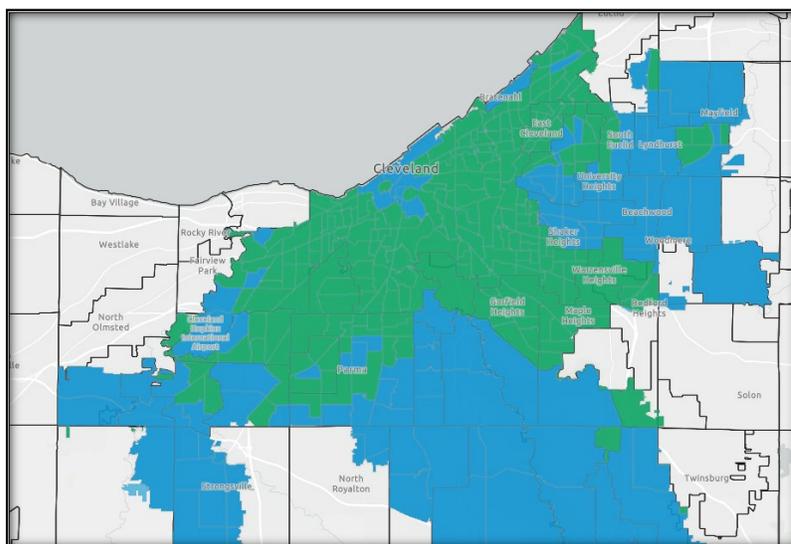
The District, at its sole discretion, may waive the 25% requirement for a community identified by the Office of the Auditor of the State of Ohio as being a local government in fiscal distress. This includes a community in fiscal caution, watch, or emergency as defined by the Office of the Auditor of the State of Ohio (<https://ohio.auditor.gov/fiscal/local.html>).

Equity Investment Focus Areas

The District will designate separate funding for the award of projects within Equity Investment Focus Areas (EIFA). For the purposes of this RFP, EIFA is defined as those areas within the District's sanitary sewer service area that are included in a census tract with high poverty levels. Households earning less than 250% of the Federal Poverty Level (FPL) are eligible for the District's Affordability Program. This criterion (FPL) is based on 2021 Census Data regarding Median Household Income and Average Household Size.

A 25% match is still required for projects within an Equity Investment Focus Area. A map delineating the EIFA can be viewed at the following link: <https://arcg.is/0e5v15> or in **Figure 1** below.

Figure 1: Equity Investment Focus Area (in green)



Terms of Grant Funding

The MCIP is a direct disbursement grant and payment will be made only on project-specific invoices as referenced in the approved project budget accrued on or after January 1, 2025. If the project for which you are applying is part of a larger construction project, the District will require individual, itemized, and verified invoices to support direct disbursement. Refer to the District’s *MCIP Policy, Process, and Procedures* document for additional information on direct disbursement.

Costs associated with services provided by third-parties towards the project, including technical services such as engineering and design, construction services, project management, performance verification, testing, and inspection, and/or other direct costs as approved by the District, are eligible for grant funding. Indirect cost allocations are not eligible for grant funding.

Project Performance Verification

The District will require project performance verification to demonstrate how the project is functioning. Verification activities and data collection may include reporting, pre- construction rainfall and flow monitoring, water quality sampling, and modeling or other type of evaluation, such as Rainfall Derived Inflow and Infiltration (RDII) determination depending on the type of project.

For projects that address I/I reduction or elimination, communities will only be responsible for pre-construction flow monitoring (which can also be completed as part of design), as opposed to both pre- and post-construction. Performance Verification Guidelines on the type of pre and/or post construction monitoring, sampling and evaluation are provided at:

[Performance Verification Technical Guidance](#)

Communities should review the guidelines and include their anticipated method(s) of data collection, project verification and the estimated associated costs in their proposal. It is the applicant's responsibility to ensure that no negative impacts will occur as a result of the proposed project through investigations, modeling, or other analysis.

Project Evaluation

The District will review and prioritize proposed projects for available funding based on the following criteria:

1. Infrastructure Condition (25%)

The current and actual condition of the structure using the condition descriptions defined in **Table 1**. Information that expands on the description should be provided with the proposal to assist with the scoring of this category. This may include but is not limited to condition assessments, identification of broken pipes, televised underground system inspection reports, age inventory reports and maintenance records, and any additional information that may impact the evaluation of the infrastructure condition. If available, condition assessments should be provided in accordance with NASSCO's Pipeline and Manhole Assessment and Certification Program (PACP and MACP). NASSCO condition is recommended. Only provide a high-level summary spreadsheet that details the sewer system's condition. If available, please provide photo or video proof of major defects with detailed documentation indicating defect(s).

Due to deficiencies commonly experienced with Over/Under sewer configurations (deteriorating, leaky, contribute high I/I and are difficult to maintain), Over/Under systems will automatically be scored 25 points in the Infrastructure Condition category.

Table 1. Rating System for Structural Infrastructure Condition

Condition Rating	Description	Score
Failed	Complete reconstruction needed – existing infrastructure is failed, in the Over/Under configuration, and/or a PACP/MACP structural condition scores of 5.	25
Critical	Major reconstruction needed to maintain integrity, and/or PACP/MACP structural condition scores between 4-5.	20
Poor	Partial reconstruction or extensive rehabilitation required to maintain integrity, and/or PACP/MACP structural condition scores between 3-4.	15
Fair	Major rehabilitation needed to maintain integrity, and/or a PACP/MACP structural condition scores between 2-3.	10
Good	Routine maintenance and periodic repairs required to maintain integrity, and/or a PACP/MACP structural condition scores between 1-2.	5

Note: To validate condition rating, photo/video evidence or a structural PACP/MACP report must be submitted.

For projects where the infrastructure condition is unknown, the infrastructure condition will be assessed and scored based on age and/or common trench configuration, using **Table 2**. Trench type can be verified through photo documentation, Local Sewer System Evaluation Study report(s), or as-built drawings detailing the configuration. Applications should include documentation verifying the age of infrastructure, as well as any additional qualitative or historical information that can confirm the current condition.

Table 2. Rating System for Unknown Structural Infrastructure Condition

Condition Rating	Description	Score
Failed	50 years or older, and/or an Over/Under configuration	25
Critical	40-49 years and/or Over Under or Dividing Wall configuration	20
Poor	30-39 years and/or common trench	15
Fair	20-29 years and/or common trench	10
New/Good	0-19 years	5

For projects proposing to remove/eliminate failing HSTSs, the infrastructure condition will be assessed using **Table 3**. Information that expands on the description should be provided with the proposal to assist with the scoring of this category.

Table 3. Rating System for Home Sewage Treatment System Projects

Age of HSTS	Score
20 years or older	25
19-16 years old	20
15-11 years old	15
10-7 years old	10
6 years old or less	5

NOTE: Projects proposing to remove/eliminate failing HSTSs must provide:

- Documentation that the area the community is targeting is part of an approved prescription of the Municipality’s 208 Plan, or
- A feasibility study for removal has been completed, or
- A letter and/or agreement with the property owners or for the sanitary sewer assessment has been executed.

2. Water Quality and Quantity Impacts on Human Health and the Environment (40%)

Demonstrate the effects of the project on water quality and quantity. The water quality and quantity impacts will be assessed using **Table 4**. Responses should be formulated that provide clarity to the following questions:

- What is the frequency and/or magnitude of the problem?
- What is the direct human health or environmental impact?
- How many verified homes, businesses, or other occupied structures will see a benefit from this project?
- How will the proposed project eliminate or reduce the water quality/quantity impact?
- How will the proposed project mitigate the potential for unregulated release of sewage to the environment.

Information that verifies and quantifies the water quality and quantity issues should be provided with the proposal and appropriately referenced within the response (e.g., page or document reference). Examples of project type and corresponding, supporting evidence include but are not limited to the following:

- HSTS /Illicit Discharge Elimination
 - Findings & Orders or Public Nuisance issued (e.g. Board of Health, Ohio EPA)
 - Sampling data supporting water quality deficiency issues (e.g. *E. Coli*, Pollutant Load)
 - Regulatory agency mandates citing deficiencies
 - Documentation of failing HSTS

- Basement Flooding Elimination
 - Documentation of reported flooding events such as:
 - Household surveys with addresses and details of flooding event
 - Call logs with flood event dates
 - Photos of event
 - Desktop or hydrologic/hydraulic modeling results (hydraulic grade line, projected basements at-risk)
- Combined Sewer Overflow (CSO)/ Sanitary Sewer Overflow (SSO) Elimination/Reduction/Control
 - Monitoring results
 - Modeling results (Overflow volume, number of activations, dates)
 - Sampling data supporting water quality deficiency issues (e.g. *E. coli*, Pollutant Load)
- I/I Reduction, Elimination
 - Dye testing
 - Smoke testing
 - CCTV
 - Peak flows identified from modeling or study (District Local Sewer System Evaluation Study (LSSES) or other study)
- Common Trench Rehabilitation - Trench Type Verification
 - Photographs
 - Design plans
 - CCTV
 - Dye Testing
 - Smoke Testing
- Reduction of surcharge and providing relief capacity
 - Peak flows identified from modeling or study (District Local Sewer System Evaluation Study (LSSES) or other study)

Table 4. Rating System for Water Quality/Quantity Impacts*

Water Quality and Human Health Issue	Description	Score Range	
		Low	High
Failed HSTS, Illicit Discharge	Removal of a continuous source of water quality impairment during wet and dry weather	11 < 10 units	20 > 50 units
Basement Flooding	Reducing intermittent and direct water quality impairments to human health and private property	11 <10 basements	20 > 20 basements
CSO/SSO	Removal of wet weather source of water quality impairment	6 <i>Unknown effect of project</i>	10 <i>Modeled quantity and/or multiple locations</i>
Inflow/Infiltration	Conserving capacity in the common trench/separate sewer system	1-5 <i>Sliding scale depending on severity of I/I</i>	
Common Trench	Work varying from minimum rehabilitation to full separation	1-5	
<i>Documentation</i>			
Problem(s) is/are verified through documentation		1-10	

***40 points scoring maximum**

3. Project Provides Source Control of Stormwater (10%)

Project demonstrates source control of stormwater by preventing (removal) or controlling (detention/retention) stormwater from entering the combined or separate sanitary sewer system. To be considered for points under this criterion, the applicant will have to show volume reduction and/or peak rate control of stormwater entering the combined or separate sanitary sewer system using stormwater control measures such as disconnection, detention, or other innovative practices; see **Table 5** and **Attachment B**. Bonus points are available for projects that are in an identified excessive I/I area as defined in table.

Table 5. Rating System for Source Control of Stormwater

Description	Score
Removal of stormwater from combined or sanitary sewer system and managed for quality and/or quantity. This can be accomplished by a single SCM that provides a dual function (<i>ex. retention basin with critical storm and wet extended detention</i>), or by one or more SCMs that provide independent functions (<i>ex: infiltration, harvesting, impervious area reduction, critical storm, WQv treatment</i>).	9-10
Control of stormwater prior to discharging into the combined or sanitary sewer system via a SCM that provides a quantity management function via runoff reduction or peak rate control (<i>ex: infiltration, harvesting, impervious area reduction, critical storm</i>).	6 - 8
Removal of stormwater from the combined or sanitary sewer system.	5
BONUS: Project is in an identified excessive I/I area as defined by the Community Discharge Permit; an area having a 5-year, 1-hour peak flow rate greater than 20,000 gallons per acre per day (gpad) and causing local or downstream issues or any peak flows greater than 35,000 gpad. Provide the source of I/I data (LSSES or other study).	2

4. Project Provides a Significant Benefit to the District (15%)

Demonstrate the benefits to the District of the project. Benefits include but are not limited to projects that assist in attaining compliance with a District community discharge permit, addresses private property flows to District collection system infrastructure, reduce infrastructure flooding/basement back-ups, expand water quality treatment benefit to new District customers, are recommended by a District study, and/or improve water quality in area waterways to compliment the District’s ongoing programs, such as the Project Clean Lake Program, Local Sewer System Evaluation Studies, or Regional Stormwater Management Program.

5. Non-District Matching Funding (10%)

One point will be provided for meeting the minimum requirement of 25% non-District matching funds; see **Table 6**. If the District waives this for a community in fiscal distress as discussed under the Project Requirements section in the Request for Proposals, the proposal will be awarded one point. Projects within Equity Investment Focus Areas (EIFA) are required to provide only a 25% match and will be scored and awarded independently from other projects outside of the EIFA. Proposals for projects within EIFAs that choose to provide greater than the 25% minimum required matching funds will not receive additional points under the Non-District Matching Funding scoring category. Proposals must provide documentation of funding sources.

Table 6. Non-District Project Match Scoring

% Match	Point Score
25	1
26-28	2
29-31	3
32-34	4
35-37	5
38-40	6
41-43	7
44-47	8
48-49	9
50-99	10

6. Design Complete (5 extra points)

Five extra points will be added to the overall project score if the design is complete (professional engineer stamp) and ready for bidding at the time of proposal submission due date.

7. Intercommunity Projects (5 extra points)

Up to five extra points will be added to the overall project score if the project assists in conserving sewer capacity, addressing water quality concerns at a specific outfall of a downstream community, or a downstream community is able to remove additional flows from an upstream community. The community should reference District Local Sewer System Evaluation Study findings or other data including certification from the benefiting community.

MCIP Workshop

The District has created a MCIP StoryMap Workshop that can be accessed at the following link:

[MCIP StoryMap Workshop](#)

Application

Access to the 2025 Member Community Infrastructure Program application requires registration through the Watershed Funding Programs Application link:

[Watershed Funding Programs Application Access Request](#)

Pre-proposal Meetings

District staff will provide an opportunity to meet with applicants to discuss projects prior to submission. Pre-proposal meetings will be scheduled in April. Please contact the District's Grant Programs Administrator II, Linda Mayer, by close of business on April 5, 2024 to schedule a meeting.

Submissions Due

The District must receive submissions by close of business on **May 17, 2024**.

The District will not review incomplete proposals. If a proposal is determined to be incomplete, the community will have 5 business days, from the date of email receipt notification, to submit the necessary information to complete the proposal.

Awards

Award selections and announcements are anticipated in August 2024. Awards are contingent on funding availability. The District is under no obligation to fund any MCIP request.

Direct workshop inquiries, pre-proposal meeting requests, and questions to the Grant Programs Administrator II, **Linda Mayer** at mayerl@neorsd.org

Included with this document:

- Attachment A – Letter of Acknowledgement Template
- Attachment B – Stormwater Control Measure Guidance
- Attachment C – MCIP Agreement Template – Design Only Projects
- Attachment D – MCIP Agreement Template – Construction Only Projects
- Attachment E – MCIP Agreement Template – Design & Construction Projects

ATTACHMENT A

Title III - Water Quality Technical Support Program
Letter of Acknowledgement - Template

SUBMIT ON MEMBER COMMUNITY LETTERHEAD

(Date)

(Contact Name)

(Address)

(City, State, Zip Code)

Subject: Acknowledgement of the Water Quality Technical Support Program participation requirement to be eligible for the Member Community Infrastructure Program (MCIP)*

Dear Mr. Jowett,

This is to acknowledge that (Member Community) recognizes and understands the Water Quality Technical Support Program in the District's Sewer Use Code of Regulations, Title III - Separate Sanitary Sewer Code, Section 8. [Member Community] understands that the Water Quality Technical Support Program applies to all Member Communities. [Member Community] understands it must submit a Water Quality Technical Support Program to the District to be eligible for MCIP funding. This requirement will begin with the 2026 MCIP funding year.

Sincerely,

(Name of Signatory)

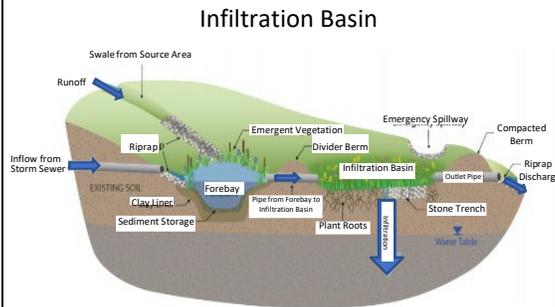
(Title)

**Submitted with 2025 MCIP Proposal*

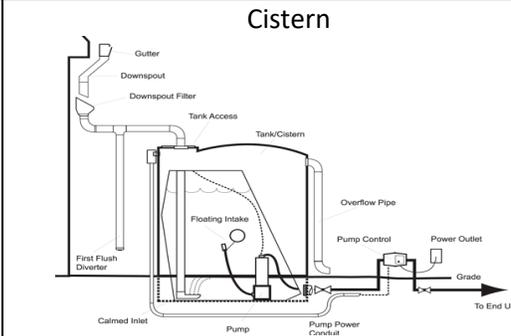
ATTACHMENT B
Stormwater Control Measure Guidance

Stormwater Control Measure Examples per Function

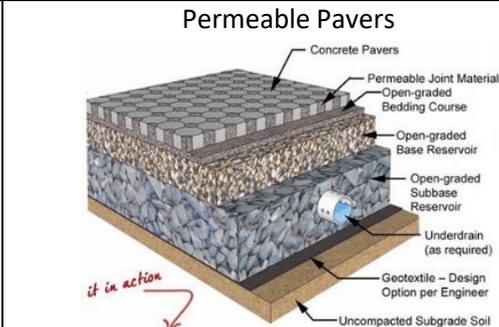
Stormwater infiltration is the process by which rainfall and stormwater runoff flows into and through the subsurface soil. Stormwater infiltration occurs when rainfall lands on pervious surfaces, when runoff flows across pervious surfaces, and when runoff is collected and directed to an infiltrating stormwater control measure (SCM).



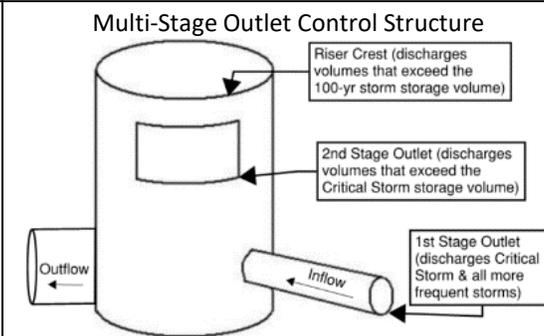
Rainwater harvesting is the practice of collecting and storing rain for reuse, rather than letting the water be channeled into drains, streams, or rivers. To truly be effective, there must be a dedicated need for the harvested rainwater to ensure the storage vessels are consistently emptied and that storage volumes are available to collect and hold the next rain event.



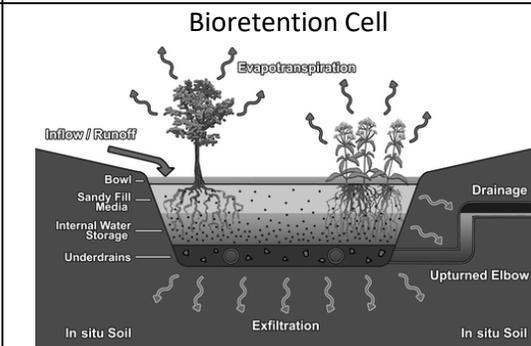
Impervious area reduction is the practice of converting impervious areas (e.g., rooftops & parking lots) into pervious surfaces (e.g., natural vegetation, permeable pavers, green roofs, etc.). This can also be accomplished by disconnecting and conveying impervious surfaces and roof drains to suitable pervious areas.



Peak Rate Control for stormwater runoff (i.e., Critical Storm) is the process of reducing the post-dvl'p peak runoff rate from the critical storm (CS) & all more-frequent storms to the pre-dvl'p peak runoff rate from a 1-yr, 24-hr storm. Storms less frequent than the CS (up to the 100-yr) have peak runoff rates \leq peak runoff rates from equivalent size storms under pre-dvl'p conditions.



Water Quality Volume (WQv) Treatment is accomplished in Ohio via designing post-construction SCMs that store storm water runoff (from developed areas) from rainfall events $\leq 0.90''$ (estimated 80% reduction in total suspended solids on an average annual basis). Ohio EPA feels this precipitation depth will adequately control pollutants in runoff and minimize channel & bank erosion.



ATTACHMENT C

MCIP Agreement – Design Only Projects

**MEMBER COMMUNITY INFRASTRUCTURE GRANT PROGRAM AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
MEMBER COMMUNITY
FOR
PROJECT
DESIGN ONLY**

THIS AGREEMENT (“Agreement”) is entered into as of the 1st day of January, 2025 (“Effective Date”), by and between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. -24, adopted by the District’s Board of Trustees on August 1, 2024 (Exhibit “A”), and the (“Member Community”), a political subdivision of the State of Ohio, acting pursuant to Ordinance No. _____, passed on _____, 2024 (Exhibit “B”). The District and the Member Community may be collectively referred to herein as “Parties.”

RECITALS:

WHEREAS, the District is interested in assisting member communities with water quality and quantity issues associated with sewer infrastructure that adversely impact human health and the environment; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), the District established the Member Community Infrastructure Program (“MCIP”) to provide water resource project funding opportunities to member communities and other qualifying political subdivisions for sewer infrastructure projects in the District’s service area; and

WHEREAS, the District issued a Request for MCIP Proposals (Exhibit “C”); and

WHEREAS, in response to the District’s Request for MCIP Proposals, the Member Community, a District member community, submitted an application for _____ (the “Project” or “MCIP Project”), attached hereto as Exhibit “D;”

WHEREAS, the District has determined that the MCIP Project will address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

NOW THEREFORE, in consideration of the foregoing, the grant to be made by the District and the mutual promises contained in this Agreement, the parties agree as follows:

Article 1. The MCIP Project

- 1.1. The MCIP Project. The Member Community will manage a Design Only MCIP Project, which generally consists of [REDACTED], as set forth in Exhibit “D.”
- 1.2. Compliance with District’s Code of Regulations. The MCIP Project shall be designed to ensure compliance with the District’s Code of Regulations. The goal of the MCIP is to reduce water quality and quantity issues that impact human health and the environment associated with combined or separate sanitary and/or storm sewer infrastructure problems.
- 1.3. MCIP Project Modifications. The Member Community shall submit requests to modify the budget, deadlines, deliverables, or other components of the Project to the District Representative for approval at least fifteen (15) business days prior to the execution of the modification. Any modification to the MCIP Project must be approved by the District Representative in writing.
- 1.4. Photographs of MCIP Project. The District shall have the right to observe, monitor, inspect, and photograph the MCIP Project at any and all stages of design.

Article 2. Design of the MCIP Project

- 2.1. District Review of Design Work. The Parties agree that the District shall have the right to review and comment on the final MCIP Project design. The Member Community shall submit the final MCIP Project design plans to the District Representative in a timely manner that provides the District with at least fifteen (15) business days to review.
- 2.2. MCIP Project Meetings. The District shall have the right to attend all MCIP Project progress meetings and shall receive at least five (5) business days advance notice of all such meetings.
- 2.3. Final Design. The Member Community shall provide to the District Representative the final design, approved by the Member Community’s Engineer, at the closure of the MCIP Project.

- 2.4. District Request for Progress Meetings. The Member Community agrees to meet with the District to review the MCIP project status and progress, as may be requested by the District.

Article 3. Project Costs and Funding

- 3.1. District Funds. The District agrees to pay the Member Community an amount not to exceed [REDACTED] Dollars (\$) (the "District Funds") on a direct disbursement basis, in accordance with the terms of this Article and Article 4. The anticipated disbursement amount for calendar year 2025 is \$ [REDACTED]. The District shall withhold five percent (5%) or \$ [REDACTED] of the District Funds until the District receives the final MCIP project design drawings and/or the match obligation has been met as outlined in Section 3.2 below.

3.2. Member Community Funds.

3.2.1. The Member Community shall provide at least 25% non-District matching funds for the MCIP Project that may include cash and/or in-kind contributions ("Member Community Funds"). Funds acquired by the Member Community from previous District awards cannot be counted as a match. The Member Community agrees to pay all MCIP Project costs that exceed the amount of the District Funds. Under no circumstance, shall the District be responsible for payment of any costs that, in aggregate, exceed the amount of the District Funds.

3.2.2. Prior to the Member Community issuing a notice-to-proceed for any MCIP Project related work or service, the Member Community shall provide the District a copy of the certification by the Member Community's Finance Director that the Member Community Funds have been lawfully appropriated by the Member Community for the Project. This certification is attached hereto as Exhibit "E."

3.2.3. Each invoice submitted for disbursement to the District in accordance with Section 3.3 below shall include the percentage of the Member Community Funds committed by the Member Community as matching funds for the MCIP Project.

- 3.3. Use of District Funds - Direct Disbursement Requests and Quarterly Progress Reports. The District Funds must be used for activities and expenses approved by the District that are related to the MCIP Project accrued on or after January 1, 2025 and in accordance with the project schedule requirements set forth in

Article 4. In accordance with the provisions of this Agreement, the District shall disburse directly to the Member Community the eligible MCIP Project expenses based upon invoices, prepared and submitted by the Member Community to the District, in the form prescribed by the District, and including all supporting documentation as required by this Agreement and the MCIP Policy, Process, and Procedures, attached hereto as Exhibit "F." All disbursement requests must include the Payment Request Accuracy Verification and Progress Report (the "PRAV"), attached to this agreement as Exhibit "G."

3.3.1. Application for Payment of Funds. The Member Community must submit consultant invoices to the District monthly or such other timing as mutually agreed by the Member Community and the District, prior to payment for any costs incurred by the Member Community related to design, property acquisition, along with the consultant's detailed invoicing detailing the eligible MCIP Project expenses. Any such consultant invoice submitted by the Member Community to the District for payment shall include cost and work details and other information in accordance with this Agreement, and shall also include a signed, then-current PRAV document. The PRAV may be updated or otherwise amended by the District from time to time. The PRAV shall include supporting document(s), including the relevant procurement documentation, such as an itemized bill, receipt, invoice, and/or timecard.

3.3.2. The Member Community understands, and agrees, that the PRAV document may only be signed by a duly authorized representative of the Member Community and that signature of the PRAV by such representative shall be an affirmative representation of the Member Community that the Member Community has verified the accuracy of the consultant invoice, that the consultant's services were furnished and performed in accordance with the conditions of the contract for the work and performed to the satisfaction of the Member Community, that the consultant invoice is not in dispute by either the Member Community or its consultant, that the Member Community's representative recommends payment, and that the Member Community shall pay the consultant as expeditiously as possible and consistent with Member Community's policies following receipt of approved funds from the District and within the time period prescribed in Member Community's contract with the consultant to avoid any late fees or other penalties for late payment. The District agrees that the signatory to this Agreement

may, by designation, authorize an appropriate Member Community staff member to execute the PRAV on behalf of the Member Community.

- 3.3.3. The PRAV form is submitted to the District and reviewed for completeness by the District. Provided that such any undisputed consultant invoice is accompanied by a complete and duly executed PRAV and is otherwise compliant with District requirements and this Agreement, upon District review and approval by the District's Director of Watershed Programs, the District shall pay its approved amount directly to Member Community within forty-five (45) days of receipt. The absence of written inquiry or objection of an invoice within the 45-day period shall not be deemed approval of the invoice by the District. Notwithstanding anything to the contrary in this Agreement, the District shall not pay any Project costs until such work is completed and accepted by the District as satisfactory, which acceptance shall not be unreasonably withheld, conditioned or delayed.
- 3.3.4. All invoicing shall be in accordance with an agreed-upon format between the District and the Member Community that is sufficient to allow the District to review, inspect and approve the services provided for the Project. The District shall not be responsible for payment of any late fees and/or other penalties invoiced by consultants. The Member Community shall submit proof of payment to its consultant within forty-five (45) days of the District's payment to the Member Community. Should the Member Community fail to submit such proof within forty-five (45) days, the District shall have the right to withhold future payment(s) to the Member Community until such time that the Member Community provides proof of payment of MCIP funds to the consultant, and any failure of the Member Community to comply with the material payment requirements in this Agreement may be considered a material breach of this Agreement and be cause for termination of the Agreement, in addition to any other remedies available to the District.
- 3.3.5. All requests for payment of District Funds for project management and design services shall be documented to the District in reasonable satisfaction based on the agreed-upon scope and fee for such services.
- 3.3.6. The Member Community shall keep all records and documents relevant to the Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the Project. Such records and documents shall be available at reasonable times and

places for inspection and copying by the District or any authorized representative thereof and will be submitted upon request together with any other compliance information which may be reasonably required.

- 3.3.7. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved by the District.
- 3.3.8. The Member Community will provide a copy of the professional services agreement with the first direct disbursement request.
- 3.3.9. Quarterly progress reports shall be submitted to the District in accordance with the following:
- First Request: Due April 30, 2025 for work completed January 1, 2025– March 31, 2025;
 - Second Request: Due July 31, 2025 for work completed April 1, 2025 - June 30, 2025;
 - Third Request: Due October 31, 2025 for work completed July 1, 2025 – September 30, 2025;
 - Fourth Request: Due January 31, 2026 for work completed October 1, 2025 – December 31, 2025;
- 3.3.10. Failure to submit the quarterly progress report in accordance with these deadlines may result in the revocation of the Agreement by the District.
- 3.3.11. The Member Community agrees to meet with District staff, as requested, to review MCIP Project progress and to use the PRAV and progress report form provided as Exhibit “G” and available at: <http://www.neorsd.org/mcip.php>.
- 3.4. Third Party Payments. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved for direct disbursement by the District.
- 3.5. Records Retention. The Member Community shall keep all records and documents relevant to the MCIP Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the MCIP Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and shall be submitted to the District upon request along with any other compliance information which may be reasonably required.

- 3.6. District Funds Not Used. Any District Funds that are not used to complete the MCIP Project shall be retained by the District.
- 3.7. Final Project Costs. If final project costs decrease from the project proposal estimate, then the amount of the District’s final contribution shall be adjusted to maintain the same District contribution percentage of the final project cost. (Exhibit C).

Article 4. Project Costs and Funding

- 4.1. Project Schedule. The MCIP Project schedule shall be as set forth in the Project Schedule and Budget Section of Exhibit “D.” Any change to the Project schedule must be approved in writing by the District Representative.

Article 5. Term

- 5.1. Term. This Agreement shall begin on the date first above written and expire upon successful completion of the obligations contained herein.

Article 6. Dispute Resolution

- 6.1. Continuation of Obligations. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The District reserves the right to deposit District Funds in an escrow account until the dispute is resolved.
- 6.2. Designated Representatives. The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representatives	Member Community Representatives
Director of Watershed Programs	City Engineer

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

District Representatives	Member Community Representatives
District Chief Legal Officer or CLO's designee	Law Director

6.3. Mediation. If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The Parties shall mutually select a mediator who is experienced in public utility infrastructure engagements. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after the mediator appointment, which meeting shall be attended by at least the respective representatives in Article 6.2 above. 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.

6.4. Mediation Resolution. Such mediation shall be non-binding between the Parties and, to the extent permitted by law, 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 Article 7, Remedies, below.

Article 7. Remedies.

7.1. Remedies and Ohio Law. The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counterclaims, disputes and other matters in question between the Parties 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. A party may file a lawsuit in a court of competent jurisdiction in Cuyahoga County, Ohio.

Article 8. Notifications

8.1. Points of Contact. The Parties hereby designate the following individuals to serve as the primary points of contact under this Agreement:

District Representative	Member Community Representative
Grant Programs Administrator II	City Engineer

Article 9. Release of Liability

9.1. Release of All Liability. The Parties understand and agree that the District has no responsibilities or interest in the MCIP Project with respect to ownership, operation and maintenance and is acting solely as a funding source. The Member Community hereby releases the District from all liability related to the grant funding provided by the District hereunder. The Member Community further releases the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Member Community’s MCIP Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, inspection and every other aspect of the Member Community’s MCIP Project; (iii) any defective performance of the Member Community’s MCIP Project by the Member Community and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the grant funds by the Member Community.

Article 10. Miscellaneous

10.1. Limit of Commitment. This grant is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Member Community’s MCIP Project. This grant does not represent any commitment to, or expectation of, future support, including maintenance of the Member Community’s MCIP project from the District.

10.2. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

10.3. Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.

- 10.4. Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.
- 10.5. Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 10.6. Merger Clause. This Agreement, along with any exhibits attached hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.
- 10.7. Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 10.8. Prohibition on Assignment and Subcontracting. The Member Community may not assign or subcontract its rights or duties under this Agreement, in whole in part, whether by operation of law or otherwise, without the prior consent of the District. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
- 10.9. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.
- 10.10. Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.
- 10.11. Relationship of Agreement to Exhibits. The exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various exhibits attached to this Agreement.

Article 11. Exhibits

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:

- Exhibit "A" District Resolution
- Exhibit "B" Member Community's Authorizing Ordinance Exhibit "C" – Request for MCIP Proposals
- Exhibit "D" Member Community's MCIP Application
- Exhibit "E" Member Community's Certification of Funds
- Exhibit "F" MCIP Policy, Process, and Procedure
- Exhibit "G" Payment Request Accuracy Verification and Progress Report ("PRAV")

<< INTENTIONALLY LEFT BLANK >>

DRAFT

The parties hereto have executed and delivered this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____
Darnell Brown, President
Board of Trustees

MEMBER COMMUNITY

By: _____

The legal form and correctness of this instrument is approved.

By: _____
Assistant/Director of Law
MEMBER COMMUNITY

Date: _____, 2024

This Instrument Prepared By:

Anka M. Davis
Assistant General Counsel
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

[FOR DISTRICT USE ONLY]

AGREEMENT NO.

NORTHEAST OHIO REGIONAL
SEWER DISTRICT

WITH

[ENTITY]

FOR

2025 MEMBER COMMUNITY
INFRASTRUCTURE PROGRAM

PROJECT:

[PROJECT]

CERTIFICATION

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in process of collection to the credit of the fund free from any obligation or certification now outstanding.

Total Approximate Cost: \$***.00

The legal form and correctness of the within instrument are hereby approved.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

ERIC J. LUCKAGE
CHIEF LEGAL OFFICER

Date

Date

ATTACHMENT D

MCIP Agreement – Construction Only Projects

**MEMBER COMMUNITY INFRASTRUCTURE GRANT PROGRAM AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT**

**AND
MEMBER COMMUNITY
FOR
PROJECT**

CONSTRUCTION ONLY

THIS AGREEMENT (“Agreement”) is entered into as of the 1st day of January 2025 (“Effective Date”), by and between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No., adopted by the District’s Board of Trustees on August 1, 2024 (Exhibit “A”), and the City of Cleveland, on behalf of the Division of Water Pollution Control (“Member Community”), a political subdivision of the State of Ohio, acting pursuant to Ordinance No. _____, passed on _____, 2024 (Exhibit “B”). The District and the Member Community may be collectively referred to herein as “Parties.”

RECITALS:

WHEREAS, the District is interested in assisting member communities with water quality and quantity issues associated with sewer infrastructure that adversely impact human health and the environment; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), the District established the Member Community Infrastructure Program (“MCIP”) to provide water resource project funding opportunities to member communities and other qualified political subdivisions for sewer infrastructure projects in the District’s service area; and

WHEREAS, the District issued a Request for MCIP Proposals (Exhibit “C”); and

WHEREAS, in response to the District’s Request for MCIP Proposals, the Member Community, a District member community, submitted an application for _____ (the “Project” or “MCIP Project”), attached hereto as Exhibit “D;”

WHEREAS, the District has determined that the MCIP Project will address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

NOW THEREFORE, in consideration of the foregoing, the grant to be made by the District and the mutual promises contained in this Agreement, the parties agree as follows:

Article 1. The MCIP Project

- 1.1. The MCIP Project. The Member Community will manage a Construction Only MCIP Project, which generally consists of improving the capacity of the existing sewer, as set forth in Exhibit “D.”
- 1.2. Performance Goal and Verification. The performance goal for the MCIP Project is set forth in Exhibit D. At the request of the District, the Member Community will provide data relevant to the project performance verification as set forth in Exhibit C. The Member Community agrees to provide the District with post-construction verification of the performance goal. Failure to do so may impact future grant awards.
- 1.3. Compliance with District’s Code of Regulations. The MCIP Project shall be designed and constructed to ensure compliance with the District’s Code of Regulations. The goal of the MCIP is to reduce water quality and quantity issues that impact human health and the environment associated with combined or separate sanitary and/or storm sewer infrastructure problems.
- 1.4. Permits and Approvals. The Member Community shall obtain and pay the cost of all required federal, state, and local approvals, including permits, necessary to initiate and complete the MCIP Project.
- 1.5. Affected Property Owners. The Member Community shall obtain all easements, rights of entry, and other necessary legal agreements with affected property owners to perform construction and to bind any successor in title to maintain compliance as required in this Agreement. The costs of obtaining such legal agreements are eligible for MCIP funding, if they are part of the proposal and approved by the District.
- 1.6. MCIP Project Modifications. The Member Community shall submit requests to modify the budget, deadlines, deliverables, or other components of the Project to the District Representative for approval at least fifteen (15) business days

prior to the execution of the modification. Any modification to the MCIP Project must be approved by the District Representative in writing.

- 1.7. Photographs of MCIP Project. The District shall have the right to observe, monitor, inspect, and photograph the MCIP Project at any and all stages of design and construction, as well as post-construction.

Article 2. Construction of the MCIP Project

- 2.1. MCIP Project Meetings. The District shall have the right to attend all MCIP Project progress meetings and shall receive at least five (5) business days advance notice of all such meetings.
- 2.2. Member Community to Bid and Construct MCIP Project. After the District's review of the MCIP Project design in accordance with Article 2.1 above, the Member Community shall bid and complete the construction work pursuant to the final MCIP Project plans and specifications and in accordance with all applicable laws and regulations. The Member Community shall be responsible for construction procurement, supervision, and inspection in accordance with the terms of this Agreement. The Member Community shall provide the District Representative a copy of the awarded bid.
- 2.3. Construction Schedule. The District shall have the right to review and provide written comments to the proposed MCIP Project construction schedule, prior to the selected contractor beginning field activities.
- 2.4. Pre-Construction and Construction Meetings. The District shall have the right to attend all pre-construction and construction meetings with the MCIP Project contractor. The Member Community shall notify the District Representative, in writing or via e-mail, of such meetings at least five (5) business days prior to the meeting date.
- 2.5. Daily Construction Supervision. The District is not required to and will not provide any daily construction supervision, or inspection and testing services for the MCIP Project.
- 2.6. As-Built Drawings. At the District's request, the Member Community shall provide the District Representative with "as-built" drawings for the MCIP Project.

- 2.7. Record Drawings. The Member Community shall provide to the District Representative record drawings, approved by the Member Community's Engineer, at the closure of the MCIP Project.
- 2.8. District Request for Construction Progress Meetings. The Member Community agrees to meet with the District to review the MCIP construction project status and progress, as may be requested by the District.
- 2.9. Payment of Prevailing Wage. The Member Community shall be responsible for determining whether the payment of prevailing wages, as set forth in Chapter 4115 of the Ohio Revised Code, are required for labor used in constructing the MCIP Project, and shall ensure compliance with any prevailing wage requirements in such Chapter.

Article 3. Ownership, Operation, and Maintenance

- 3.1. Member Community Operation and Maintenance Responsibilities. During construction and after construction, the Member Community shall own, operate, and maintain the MCIP Project. The Member Community shall reimburse the District in an amount equal to one hundred percent (100%) of the District Funds provided by the District under this Agreement if this provision is violated. In the event that the District determines a violation of this section has occurred, the District shall notify the Member Community in writing. The Parties agree to resolve any dispute relating to such alleged violation in accordance with the procedure set forth in Article 9 of this Agreement.
- 3.2. Post-Construction Operation and Maintenance Plan. The Member Community shall provide the District with a letter referencing the post- construction operation and maintenance plan for the MCIP Project. Operation and maintenance plans shall be updated by the Member Community, as may be necessary, and as may be requested by the District.
- 3.3. Maintenance Inspection Records. The Member Community shall maintain a record of the Member Community's maintenance inspections and overall performance of the MCIP Project for at least three (3) years and shall submit a copy to the District upon reasonable request.

Article 4. Project Costs and Funding

- 4.1. District Funds. The District agrees to pay the Member Community an amount not to exceed Dollars (\$) (the "District Funds") on a direct

disbursement basis, in accordance with the terms of this Article and Article 6. The anticipated disbursement amount for calendar year 2025 is \$ [REDACTED] .. Yearly anticipated disbursement amounts may only be altered in writing at the discretion of the District's Director of Watershed Programs. The District shall withhold five percent (5%) or \$ [REDACTED] of the District Funds until the District receives the documents listed below and/or the match obligation has been met as outlined in Section 4.2:

- a) final record drawings for the MCIP Project,
- b) a letter referencing the post-construction operation and maintenance plan.

4.2. Member Community Funds.

4.2.1. The Member Community shall provide at least 25% non-District matching funds for the MCIP Project that may include cash and/or in-kind contributions ("Member Community Funds"). Funds acquired by the Member Community from previous District awards cannot be counted as a match. The Member Community agrees to pay all MCIP Project costs that exceed the amount of the District Funds Under no circumstance, shall the District be responsible for payment of any costs that, in aggregate, exceed the amount of the District Funds, including, but not limited to, differing site conditions or other unforeseen situations.

4.2.2. Prior to the Member Community issuing a notice-to-proceed for any MCIP Project related work or service, the Member Community shall provide the District a copy of the certification by the Member Community's Finance Director that the Member Community Funds have been lawfully appropriated by the Member Community for the Project. This certification is attached hereto as Exhibit "E."

4.2.3. Each invoice submitted for disbursement to the District in accordance with Section 4.3 below shall include the percentage of the Member Community Funds committed by the Member Community as matching funds for the MCIP Project.

4.3. Use of District Funds - Direct Disbursement Requests and Quarterly Progress Reports. The District Funds must be used for activities and expenses approved by the District that are related to the MCIP Project accrued on or after January 1, 2025 and in accordance with the project schedule requirements set forth in Article 6. In accordance with the provisions of this Agreement, the District shall disburse funds directly to the Member Community the eligible MCIP Project expenses based upon invoices, prepared and submitted by the Member

Community to the District, in the form prescribed by the District, and including all supporting documentation as required by this Agreement and the MCIP Policy, Process, and Procedures, attached hereto as Exhibit "F." All disbursement requests must include the Payment Request Accuracy Verification and Progress Report (the "PRAV"), attached to this agreement as Exhibit "G."

4.3.1. Application for Payment of Funds. The Member Community must submit consultant invoices to the District monthly or such other timing as mutually agreed by the Member Community and the District, prior to payment for any costs incurred by the Member Community related to design, construction, property acquisition, along with the consultant's detailed invoicing detailing the eligible MCIP Project expenses. Any such consultant invoice submitted by the Member Community to the District for payment shall include cost and work details and other information in accordance with this Agreement, and shall also include a signed, then-current PRAV document. The PRAV may be updated or otherwise amended by the District from time to time. The PRAV shall include supporting document(s), including the relevant procurement documentation, such as an itemized bill, receipt, invoice, and/or timecard.

4.3.2. The Member Community understands, and agrees, that the PRAV document may only be signed by a duly authorized representative of the Member Community and that signature of the PRAV by such representative shall be an affirmative representation of the Member Community that the Member Community has verified the accuracy of the consultant and contractor invoice, that the consultant's and contractor's services were furnished and performed in accordance with the conditions of the contract for the work and performed to the satisfaction of the Member Community, that the consultant and the contractor invoice is not in dispute by either the Member Community or its consultant/contractor, that the Member Community's representative recommends payment, and that the Member Community shall pay the consultant and the contractor as expeditiously as possible and consistent with Member Community's policies following receipt of approved funds from the District and within the time period prescribed in Member Community's contract with the consultant and the contractor to avoid any late fees or other penalties for late payment. The District agrees that the signatory to this Agreement may, by designation, authorize an

appropriate Member Community staff member to execute the PRAV on behalf of the Member Community.

- 4.3.3. The PRAV form is submitted to the District and reviewed for completeness by the District. Provided that such any undisputed consultant and contractor invoice is accompanied by a complete and duly executed PRAV and is otherwise compliant with District requirements and this Agreement, upon District review and approval by the District's Director of Watershed Programs, the District shall pay its approved amount directly to Member Community within forty-five (45) days of receipt. The absence of written inquiry or objection of an invoice within the 45-day period shall not be deemed approval of the invoice by the District. Notwithstanding anything to the contrary in this Agreement, the District shall not pay any Project costs until such work is completed and accepted by the District as satisfactory, which acceptance shall not be unreasonably withheld, conditioned or delayed.
- 4.3.4. All invoicing shall be in accordance with an agreed-upon format between the District and the Member Community that is sufficient to allow the District to review, inspect and approve the services provided for the Project. The District shall not be responsible for payment of any late fees and/or other penalties invoiced by consultants. The Member Community shall submit proof of payment to its consultant and contractors within forty-five (45) days of the District's payment to the Member Community. Should the Member Community fail to submit such proof within forty-five (45) days, the District shall have the right to withhold future payment(s) to the Member Community until such time that the Member Community provides proof of payment of MCIP funds to the consultant and the contractor, and any failure of the Member Community to comply with the material payment requirements in this Agreement may be considered a material breach of this Agreement and be cause for termination of the Agreement, in addition to any other remedies available to the District.
- 4.3.5. All requests for payment of District Funds for project management, design services, and construction shall be documented to the District in reasonable satisfaction based on the agreed-upon scope and fee for such services.

- 4.3.6. The Member Community shall keep all records and documents relevant to the Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and will be submitted upon request together with any other compliance information which may be reasonably required.
- 4.3.7. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved by the District.
- 4.3.8. The Member Community will provide a copy of the professional services agreement and the bid award with the first direct disbursement request.
- 4.3.9. Quarterly progress reports shall be submitted to the District in accordance with the following:
- First Request: Due April 30, 2025 for work completed January 1, 2025– March 31, 2025;
 - Second Request: Due July 31, 2025 for work completed April 1, 2025 - June 30, 2025;
 - Third Request: Due October 31, 2025 for work completed July 1, 2025 – September 30, 2025;
 - Fourth Request: Due January 31, 2026 for work completed October 1, 2025 – December 31, 2025;
- 4.3.9.1. Failure to submit the quarterly progress report in accordance with these deadlines may result in the revocation of the Agreement by the District.
- 4.3.10. The Member Community agrees to meet with District staff, as requested, to review MCIP Project progress and to use the PRAV and progress report form provided as Exhibit ‘G’ and available at: <http://www.neorsd.org/mcip.php>.

- 4.4. Third-Party Payments. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved for reimbursement by the District.
- 4.5. Records Retention. The Member Community shall keep all records and documents relevant to the MCIP Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the MCIP Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and shall be submitted to the District upon request along with any other compliance information which may be reasonably required.
- 4.6. District Funds Not Used. Any District Funds that are not used to complete the MCIP Project shall be retained by the District.
- 4.7. Final Project Costs. If final project costs decrease from the project proposal estimate, then the amount of the District's final contribution shall be adjusted to maintain the same District contribution percentage of the final project cost. (Exhibit C).

Article 5. Public Participation and Outreach

- 5.1. Educational Signage and Public Outreach. The Member Community shall coordinate any educational signage and any public outreach with the District. The Member Community shall acknowledge the District on MCIP Project related outreach communications and in public meetings that discuss the MCIP Project.
- 5.2. District Right to Reject. The District reserves the right to reject any signage, related to the MCIP Project.

Article 6. Project Schedule and Warranty Period.

- 6.1. Project Schedule. The MCIP Project schedule shall be as set forth in the Project Schedule and Budget Section of Exhibit "D." Any change to the Project schedule must be approved in writing by the District Representative.
- 6.2. MCIP Project Warranty. The Member Community's construction agreement shall require the contractor to provide a minimum of a one (1) year warranty period that commences upon final completion of the MCIP Project construction ("Warranty Period"). Prior to the conclusion of the Warranty Period the Member

Community shall perform a CCTV inspection of the installed Project, if applicable, and provide a report to the District.

Article 7. Term.

7.1. Term. This Agreement shall begin on the date first above written and expire upon successful completion of the obligations contained herein.

Article 8. Insurance.

8.1. Insurance. The Member Community shall require MCIP Project consultants and contractors to name the Northeast Ohio Regional Sewer District as an Additional Insured for general liability, automobile liability, and property liability insurance coverages.

Article 9. Dispute Resolution.

9.1. Continuation of Obligations. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The District reserves the right to deposit District Funds in an escrow account until the dispute is resolved.

9.2. Designated Representatives. The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representatives	Member Community Representatives
Director of Watershed Programs	

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

District Representatives	Member Community Representatives
District Chief Legal Officer or CLO's designee	

- 9.3. Mediation. If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The Parties shall mutually select a mediator who is experienced in public utility infrastructure engagements. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after the mediator appointment, which meeting shall be attended by at least the respective representatives in Article 9.2 above. 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.
- 9.4. Mediation Resolution. Such mediation shall be non-binding between the Parties and, to the extent permitted by law, 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 Article 10, Remedies, below.

Article 10. Remedies.

- 10.1. Remedies and Ohio Law. The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counterclaims, disputes and other matters in question between the Parties 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. A party may file a lawsuit in a court of competent jurisdiction in Cuyahoga County, Ohio.

Article 11. Notifications.

- 11.1. Points of Contact. The Parties hereby designate the following individuals to serve as the primary points of contact under this Agreement:

District Representatives	Member Community Representatives
Grant Programs Administrator	

Article 12. Release of Liability.

- 12.1. Release of All Liability. The Parties understand and agree that the District has no responsibilities or interest in the MCIP Project with respect to ownership, operation and maintenance and is acting solely as a funding source. The Member Community hereby releases the District from all liability related to the grant funding provided by the District hereunder. The Member Community further releases the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Member Community's MCIP Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, inspection and every other aspect of the Member Community's MCIP Project; (iii) any defective performance of the Member Community's MCIP Project by the Member Community and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the grant funds by the Member Community.

Article 13. Miscellaneous.

- 13.1. Limit of Commitment. This grant is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Member Community's MCIP Project. This grant does not represent any commitment to, or expectation of, future support, including maintenance of the Member Community's MCIP project from the District.
- 13.2. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 13.3. Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.
- 13.4. Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

- 13.5. Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 13.6. Merger Clause. This Agreement, along with any exhibits attached hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.
- 13.7. Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 13.8. Prohibition on Assignment and Subcontracting. The Member Community may not assign or subcontract its rights or duties under this Agreement, in whole in part, whether by operation of law or otherwise, without the prior consent of the District. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
- 13.9. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.
- 13.10. Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.
- 13.11. Relationship of Agreement to Exhibits. The exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various exhibits attached to this Agreement.

Article 14. Exhibits.

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:

Exhibit "A" District Resolution

Exhibit "B"	Member Community's Authorizing Ordinance
Exhibit "C"	Request for MCIP Proposals
Exhibit "D"	Member Community's MCIP Application
Exhibit "E"	Member Community's Certification of Funds
Exhibit "F"	MCIP Policy, Process, and Procedure
Exhibit "G"	Payment Request Accuracy Verification and Progress Report ("PRAV")

<< INTENTIONALLY LEFT BLANK >>

DRAFT

The parties hereto have executed and delivered this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____
Darnell Brown, President
Board of Trustees

**CITY OF CLEVELAND
(DIVISION OF WATER POLLUTION CONTROL)**

By: _____

The legal form and correctness of this instrument is approved.

By: _____
Assistant/Director of Law
CITY OF CLEVELAND

Date: _____, 2024

This Instrument Prepared By:

Anka M. Davis
Assistant General Counsel
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

[FOR DISTRICT USE ONLY]

AGREEMENT NO.

NORTHEAST OHIO REGIONAL
SEWER DISTRICT

WITH

[ENTITY]

FOR

2024 MEMBER COMMUNITY
INFRASTRUCTURE PROGRAM

PROJECT:

[PROJECT]

CERTIFICATION

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in process of collection to the credit of the fund free from any obligation or certification now outstanding.

Total Approximate Cost: **\$\$\$**.00

The legal form and correctness of the within instrument are hereby approved.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

ERIC J. LUCKAGE
CHIEF LEGAL OFFICER

Date

Date

ATTACHMENT E

MCIP Agreement - Design & Construction Projects

**MEMBER COMMUNITY INFRASTRUCTURE GRANT PROGRAM AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
[MEMBER COMMUNITY]
FOR
[PROJECT]**

DESIGN AND CONSTRUCTION

THIS AGREEMENT (“Agreement”) is entered into as of the 1st day of January 2025 (“Effective Date”), by and between the Northeast Ohio Regional Sewer District (“District”), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. -24, adopted by the District’s Board of Trustees on August 1, 2024 (Exhibit “A”), and the [REDACTED] (“Member Community”), a _political subdivision of the State of Ohio, acting pursuant to Ordinance No. _____, passed on _____, 2024 (Exhibit “B”). The District and the Member Community may be collectively referred to herein as “Parties.”

RECITALS:

WHEREAS, the District is interested in assisting member communities with water quality and quantity issues associated with sewer infrastructure that adversely impact human health and the environment; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), the District established the Member Community Infrastructure Program (“MCIP”) to provide water resource project funding opportunities to member communities and other qualified political subdivisions for sewer infrastructure projects in the District’s service area; and

WHEREAS, the District issued a Request for MCIP Proposals (Exhibit “C”); and

WHEREAS, in response to the District’s Request for MCIP Proposals, the Member Community, a District member community, submitted an application for _ (the “Project” or “MCIP Project”), attached hereto as Exhibit “D;”

WHEREAS, the District has determined that the MCIP Project will address water quality and quantity issues associated with sewer infrastructure that adversely impacts human health and the environment.

NOW THEREFORE, in consideration of the foregoing, the grant to be made by the District and the mutual promises contained in this Agreement, the parties agree as follows:

Article 1. The MCIP Project

- 1.1. The MCIP Project. The Member Community will manage, design, procure and construct the MCIP Project, which generally consists of [REDACTED], as set forth in Exhibit “D.”
- 1.2. Performance Goal and Verification. The performance goal for the MCIP Project is set forth in Exhibit D. At the request of the District, the Member Community will provide data relevant to the project performance verification as set forth in Exhibit C. The Member Community agrees to provide the District with post-construction verification of the performance goal. Failure to do so may impact future grant awards.
- 1.3. Compliance with District’s Code of Regulations. The MCIP Project shall be designed and constructed to ensure compliance with the District’s Code of Regulations. The goal of the MCIP is to reduce water quality and quantity issues that impact human health and the environment associated with combined or separate sanitary and/or storm sewer infrastructure problems.
- 1.4. Permits and Approvals. The Member Community shall obtain and pay the cost of all required federal, state, and local approvals, including permits, necessary to initiate and complete the MCIP Project.
- 1.5. Affected Property Owners. The Member Community shall obtain all easements, rights of entry, and other necessary legal agreements with affected property owners to perform construction and to bind any successor in title to maintain compliance as required in this Agreement. The costs of obtaining such legal agreements are eligible for MCIP funding, if they are part of the proposal and approved by the District.
- 1.6. MCIP Project Modifications. The Member Community shall submit requests to modify the budget, deadlines, deliverables, or other components of the Project to the District Representative for approval at least fifteen (15) business days

prior to the execution of the modification. Any modification to the MCIP Project must be approved by the District Representative in writing.

- 1.7. Photographs of MCIP Project. The District shall have the right to observe, monitor, inspect, and photograph the MCIP Project at any and all stages of design and construction, as well as post-construction.

Article 2. Design and Construction of the MCIP Project

- 2.1. District Review of Design Work. The Parties agree that the District shall have the right to review and comment on the final MCIP Project design plans prior to construction. The Member Community shall submit the final MCIP Project design plans to the District Representative, Brian Paige, in a timely manner that provides the District with at least fifteen (15) business days to review. Any modification to the MCIP Project must be submitted to the District Representative in writing.
- 2.2. MCIP Project Meetings. The District shall have the right to attend all MCIP Project progress meetings and shall receive at least five (5) business days advance notice of all such meetings.
- 2.3. Member Community to Bid and Construct MCIP Project. After the District's review of the MCIP Project design in accordance with Article 2.1 above, the Member Community shall bid and complete the construction work pursuant to the final MCIP Project plans and specifications and in accordance with all applicable laws and regulations. The Member Community shall be responsible for construction procurement, supervision, and inspection in accordance with the terms of this Agreement. The Member Community shall provide the District Representative a copy of the awarded bid.
- 2.4. Construction Schedule. The District shall have the right to review and provide written comments to the proposed MCIP Project construction schedule, prior to the selected contractor beginning field activities.
- 2.5. Pre-Construction and Construction Meetings. The District shall have the right to attend all pre-construction and construction meetings with the MCIP Project contractor. The Member Community shall notify the District Representative, in writing or via e-mail, of such meetings at least five (5) business days prior to the meeting date.

- 2.6. Daily Construction Supervision. The District is not required to and will not provide any daily construction supervision, or inspection and testing services for the MCIP Project.
- 2.7. As-Built Drawings. At the District's request, the Member Community shall provide the District Representative with "as-built" drawings for the MCIP Project.
- 2.8. Record Drawings. The Member Community shall provide to the District Representative record drawings, approved by the Member Community's Engineer, at the closure of the MCIP Project.
- 2.9. District Request for Construction Progress Meetings. The Member Community agrees to meet with the District to review the MCIP construction project status and progress, as may be requested by the District.
- 2.10. Payment of Prevailing Wage. The Member Community shall be responsible for determining whether the payment of prevailing wages, as set forth in Chapter 4115 of the Ohio Revised Code, are required for labor used in constructing the MCIP Project, and shall ensure compliance with any prevailing wage requirements in such Chapter.

Article 3. Ownership, Operation, and Maintenance

- 3.1. Member Community Operation and Maintenance Responsibilities. During construction and after construction, the Member Community shall own, operate, and maintain the MCIP Project. The Member Community shall reimburse the District in an amount equal to one hundred percent (100%) of the District Funds provided by the District under this Agreement if this provision is violated. In the event that the District determines a violation of this section has occurred, the District shall notify the Member Community in writing. The Parties agree to resolve any dispute relating to such alleged violation in accordance with the procedure set forth in Article 9 of this Agreement.
- 3.2. Post-Construction Operation and Maintenance Plan. The Member Community shall provide the District with a letter referencing the post- construction operation and maintenance plan for the MCIP Project. Operation and maintenance plans shall be updated by the Member Community, as may be necessary, and as may be requested by the District.

- 3.3. Maintenance Inspection Records. The Member Community shall maintain a record of the Member Community's maintenance inspections and overall performance of the MCIP Project for at least three (3) years and shall submit a copy to the District upon reasonable request.

Article 4. Project Costs and Funding

- 4.1. District Funds. The District agrees to pay the Member Community an amount not to exceed _____ Dollars (\$) (the "District Funds") on a direct disbursement basis, in accordance with the terms of this Article and Article 6. The anticipated disbursement amount for calendar year 2025 is \$_____ and for 2026 is \$_____. Yearly anticipated disbursement amounts may only be altered in writing at the discretion of the District's Director of Watershed Programs. The District shall withhold five percent (5%) or \$_____ of the District Funds until the District receives the documents listed below and/or the match obligation has been met as outlined in Section 4.2:

- a) final record drawings for the MCIP Project,
- b) a letter referencing the post-construction operation and maintenance plan.

4.2. Member Community Funds.

4.2.1. The Member Community shall provide at least 25% non-District matching funds for the MCIP Project that may include cash and/or in-kind contributions ("Member Community Funds"). Funds acquired by the Member Community from previous District awards cannot be counted as a match. The Member Community agrees to pay all MCIP Project costs that exceed the amount of the District Funds. Under no circumstance, shall the District be responsible for payment of any costs that, in aggregate, exceed the amount of the District Funds, including, but not limited to, differing site conditions or other unforeseen situations.

4.2.2. Prior to the Member Community issuing a notice-to-proceed for any MCIP Project related work or service, the Member Community shall provide the District a copy of the certification by the Member Community's Finance Director that the Member Community Funds have been lawfully appropriated by the Member Community for the Project. This certification is attached hereto as Exhibit "E."

4.2.3. Each invoice submitted for disbursement to the District in accordance with Section 4.3 below shall include the percentage of the Member

Community Funds committed by the Member Community as matching funds for the MCIP Project.

4.3. Use of District Funds - Direct Disbursement Requests and Quarterly Progress Reports. The District Funds must be used for activities and expenses approved by the District that are related to the MCIP Project accrued on or after January 1, 2025 and in accordance with the project schedule requirements set forth in Article 6. In accordance with the provisions of this Agreement, the District shall disburse funds directly to the Member Community the eligible MCIP Project expenses based upon invoices, prepared and submitted by the Member Community to the District, in the form prescribed by the District, and including all supporting documentation as required by this Agreement and the MCIP Policy, Process, and Procedures, attached hereto as Exhibit "F." All disbursement requests must include the Payment Request Accuracy Verification and Progress Report (the "PRAV"), attached to this agreement as Exhibit "G."

4.3.1. Application for Payment of Funds. The Member Community must submit consultant invoices to the District monthly or such other timing as mutually agreed by the Member Community and the District, prior to payment for any costs incurred by the Member Community related to design, construction, property acquisition, along with the consultant's detailed invoicing detailing the eligible MCIP Project expenses. Any such consultant invoice submitted by the Member Community to the District for payment shall include cost and work details and other information in accordance with this Agreement, and shall also include a signed, then-current PRAV document. The PRAV may be updated or otherwise amended by the District from time to time. The PRAV shall include supporting document(s), including the relevant procurement documentation, such as an itemized bill, receipt, invoice, and/or timecard.

4.3.2. The Member Community understands, and agrees, that the PRAV document may only be signed by a duly authorized representative of the Member Community and that signature of the PRAV by such representative shall be an affirmative representation of the Member Community that the Member Community has verified the accuracy of the consultant and contractor invoice, that the consultant's and contractor's services were furnished and performed in accordance with the conditions of the contract for the work and performed to the satisfaction of the Member Community, that the consultant and the

contractor invoice is not in dispute by either the Member Community or its consultant/contractor, that the Member Community's representative recommends payment, and that the Member Community shall pay the consultant and the contractor as expeditiously as possible and consistent with Member Community's policies following receipt of approved funds from the District and within the time period prescribed in Member Community's contract with the consultant and the contractor to avoid any late fees or other penalties for late payment. The District agrees that the signatory to this Agreement may, by designation, authorize an appropriate Member Community staff member to execute the PRAV on behalf of the Member Community.

- 4.3.3. The PRAV form is submitted to the District and reviewed for completeness by the District. Provided that such any undisputed consultant and contractor invoice is accompanied by a complete and duly executed PRAV and is otherwise compliant with District requirements and this Agreement, upon District review and approval by the District's Director of Watershed Programs, the District shall pay its approved amount directly to Member Community within forty-five (45) days of receipt. The absence of written inquiry or objection of an invoice within the 45-day period shall not be deemed approval of the invoice by the District. Notwithstanding anything to the contrary in this Agreement, the District shall not pay any Project costs until such work is completed and accepted by the District as satisfactory, which acceptance shall not be unreasonably withheld, conditioned or delayed.
- 4.3.4. All invoicing shall be in accordance with an agreed-upon format between the District and the Member Community that is sufficient to allow the District to review, inspect and approve the services provided for the Project. The District shall not be responsible for payment of any late fees and/or other penalties invoiced by consultants. The Member Community shall submit proof of payment to its consultant and contractors within forty-five (45) days of the District's payment to the Member Community. Should the Member Community fail to submit such proof within forty-five (45) days, the District shall have the right to withhold future payment(s) to the Member Community until such time that the Member Community provides proof of payment of MCIP funds to the consultant and the contractor, and any failure of the Member Community to comply

with the material payment requirements in this Agreement may be considered a material breach of this Agreement and be cause for termination of the Agreement, in addition to any other remedies available to the District.

- 4.3.5. All requests for payment of District Funds for project management, design services, and construction shall be documented to the District in reasonable satisfaction based on the agreed-upon scope and fee for such services.
- 4.3.6. The Member Community shall keep all records and documents relevant to the Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and will be submitted upon request together with any other compliance information which may be reasonably required.
- 4.3.7. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved by the District.
- 4.3.8. The Member Community will provide a copy of the professional services agreement and the bid award with the first direct disbursement request.
- 4.3.9. Quarterly progress reports shall be submitted to the District in accordance with the following:
 - First Request: Due April 30, 2025 for work completed January 1, 2025 - March 31, 2025;
 - Second Request: Due July 31, 2025 for work completed April 1, 2025 - June 30, 2025;
 - Third Request: Due October 31, 2025 for work completed July 1, 2025 - September 30, 2025;
 - Fourth Request: Due January 31, 2026 for work completed October 1, 2025 – December 31, 2025;
 - Fifth Request: Due April 30, 2026 for work completed January 1, 2026 – March 31, 2026;

- Sixth Request: Due July 31, 2026 for work completed April 1, 2026- June 30, 2026;
- Seventh Request: Due October 31, 2026 for work completed July 1, 2026 – September 30, 2026; and
- Eighth Request: Due January 31, 2027 for work completed October 1, 2026 – December 31, 2026

4.3.9.1. Failure to submit the quarterly progress report in accordance with these deadlines may result in the revocation of the Agreement by the District.

4.3.10. The Member Community agrees to meet with District staff, as requested, to review MCIP Project progress and to use the PRAV and progress report form provided as Exhibit ‘G’ and available at: <http://www.neorsd.org/mcip.php>.

- 4.4. Third-Party Payments. The Member Community shall bear the risk and remain solely responsible for any payments made by the Member Community to third parties for work not approved for reimbursement by the District.
- 4.5. Records Retention. The Member Community shall keep all records and documents relevant to the MCIP Project, including but not limited to, an accurate, current, and complete accounting of all financial transactions for the MCIP Project. Such records and documents shall be available at reasonable times and places for inspection and copying by the District or any authorized representative thereof and shall be submitted to the District upon request along with any other compliance information which may be reasonably required.
- 4.6. District Funds Not Used. Any District Funds that are not used to complete the MCIP Project shall be retained by the District.
- 4.7. Final Project Costs. If final project costs decrease from the project proposal estimate, then the amount of the District’s final contribution shall be adjusted to maintain the same District contribution percentage of the final project cost. (Exhibit C).

Article 5. Public Participation and Outreach

- 5.1. Educational Signage and Public Outreach. The Member Community shall coordinate any educational signage and any public outreach with the District. The Member Community shall acknowledge the District on MCIP Project related outreach communications and in public meetings that discuss the MCIP Project.
- 5.2. District Right to Reject. The District reserves the right to reject any signage, related to the MCIP Project.

Article 6. Project Schedule and Warranty Period.

- 6.1. Project Schedule. The MCIP Project schedule shall be as set forth in the Project Schedule and Budget Section of Exhibit "D." Any change to the Project schedule must be approved in writing by the District Representative.
- 6.2. MCIP Project Warranty. The Member Community's construction agreement shall require the contractor to provide a minimum of a one (1) year warranty period that commences upon final completion of the MCIP Project construction ("Warranty Period"). Prior to the conclusion of the Warranty Period the Member Community shall perform a CCTV inspection of the installed Project, if applicable, and provide a report to the District.

Article 7. Term.

- 7.1. Term. This Agreement shall begin on the date first above written and expire upon successful completion of the obligations contained herein.

Article 8. Insurance.

- 8.1. Insurance. The Member Community shall require MCIP Project consultants and contractors to name the Northeast Ohio Regional Sewer District as an Additional Insured for general liability, automobile liability, and property liability insurance coverages.

Article 9. Dispute Resolution.

- 9.1. Continuation of Obligations. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The District reserves the right to deposit District Funds in an escrow account until the dispute is resolved.

9.2. Designated Representatives. The Parties shall first try to resolve the dispute at the level of the designated representatives as follows:

District Representatives	Member Community Representatives
Director of Watershed Programs	City Engineer

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the dispute to the following level to resolve the dispute:

District Representatives	Member Community Representatives
District Chief Legal Officer or CLO's designee	Law Director

9.3. Mediation. If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The Parties shall mutually select a mediator who is experienced in public utility infrastructure engagements. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after the mediator appointment, which meeting shall be attended by at least the respective representatives in Article 9.2 above. 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.

9.4. Mediation Resolution. Such mediation shall be non-binding between the Parties and, to the extent permitted by law, 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 Article 10, Remedies, below.

Article 10. Remedies.

10.1. Remedies and Ohio Law. The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counterclaims, disputes and other matters in question between the Parties 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. A party may file a lawsuit in a court of competent jurisdiction in Cuyahoga County, Ohio.

Article 11. Notifications.

11.1. Points of Contact. The Parties hereby designate the following individuals to serve as the primary points of contact under this Agreement:

District Representatives	Member Community Representatives
Grant Programs Administrator	City Engineer

Article 12. Release of Liability.

12.1. Release of All Liability. The Parties understand and agree that the District has no responsibilities or interest in the MCIP Project with respect to ownership, operation and maintenance and is acting solely as a funding source. The Member Community hereby releases the District from all liability related to the grant funding provided by the District hereunder. The Member Community further releases the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Member Community's MCIP Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, inspection and every other aspect of the Member Community's MCIP Project; (iii) any defective performance of the Member Community's MCIP Project by the Member Community and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the grant funds by the Member Community.

Article 13. Miscellaneous.

- 13.1. Limit of Commitment. This grant is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Member Community's MCIP Project. This grant does not represent any commitment to, or expectation of, future support, including maintenance of the Member Community's MCIP project from the District.
- 13.2. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 13.3. Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.
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- 13.8. Prohibition on Assignment and Subcontracting. The Member Community may not assign or subcontract its rights or duties under this Agreement, in whole in part, whether by operation of law or otherwise, without the prior consent of the District. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
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Exhibit "D"	Member Community's MCIP Application
Exhibit "E"	Member Community's Certification of Funds
Exhibit "F"	MCIP Policy, Process, and Procedure
Exhibit "G"	Payment Request Accuracy Verification and Progress Report ("PRAV")

<< INTENTIONALLY LEFT BLANK >>

The parties hereto have executed and delivered this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____
Darnell Brown, President
Board of Trustees

MEMBER COMMUNITY

By: _____

The legal form and correctness of this instrument is approved.

By: _____
Assistant/Director of Law
MEMBER COMMUNITY

Date: _____, 2024

This Instrument Prepared By:

Anka M. Davis
Assistant General Counsel
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

[FOR DISTRICT USE ONLY]

AGREEMENT NO.

NORTHEAST OHIO REGIONAL
SEWER DISTRICT

WITH

[ENTITY]

FOR

2025 MEMBER COMMUNITY
INFRASTRUCTURE PROGRAM

PROJECT:

[PROJECT]

CERTIFICATION

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in process of collection to the credit of the fund free from any obligation or certification now outstanding.

Total Approximate Cost: **\$\$\$**.00

The legal form and correctness of the within instrument are hereby approved.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

ERIC J. LUCKAGE
CHIEF LEGAL OFFICER

Date

Date