

**2019 NORTHEAST OHIO REGIONAL SEWER DISTRICT
GREEN INFRASTRUCTURE GRANTS
FOR THE COMBINED SEWER AREA
July 2, 2018**

Introduction

The Northeast Ohio Regional Sewer District (Sewer District) supports the strategic implementation and long-term maintenance of green infrastructure that protects, preserves, enhances, and restores natural hydrologic function, including funding green infrastructure projects within the combined sewer area through the Green Infrastructure Grants (GIG) Program. Green infrastructure refers to stormwater source control measures that store, filter, infiltrate or evapotranspire stormwater to increase resiliency of infrastructure by reducing stress on wet-weather drainage and collection system thereby supporting healthy environments and strong communities.

The GIG Program for the Combined Sewer Area is open to member communities, governmental entities, non-profit organizations 501(c)(3), or business working in partnership with their community in the combined sewer area interested in implementing water resource projects that remove stormwater from the combined sewer system and in ensuring the long-term maintenance of the green infrastructure practices. Projects may be awarded up to \$250,000. Applications exceeding this limit with projects of higher costs may be considered.

Eligibility Requirements

Proposal must meet the minimum conditions described herein to be considered for funding under the Sewer District's GIG Program:

- Project must be located in the Sewer District's combined sewer area:
<http://neorsd.maps.arcgis.com/apps/webappviewer/index.html?id=cec847169f1f4690b6052231157f6206>
- Applicant must represent a Sewer District member community, governmental entity, a non-profit 501(c)(3) or business working in partnership with their community.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

2019 GREEN INFRASTRUCTURE GRANT FOR THE COMBINED SEWER AREA

- Applicant must be able to demonstrate permanent control of the GIG project site.
- Applicant and the property associated with the proposed GIG project must be current and in good standing with all Sewer District bills.
- Project must demonstrate on-site stormwater control measures using green infrastructure.
- The GIG project must quantifiably reduce the stormwater runoff volume
- Applicants are subject to the requirements of Title IV of the Sewer District's Sewer Use Codes <http://www.neorsd.org/images/147/TitleIV.pdf> and as outlined in the *Submittal Requirements for Connections to the Combined Sewer System*. GIG Program funding cannot be used for compliance with these requirements. Projects subject to Title IV must submit cost details for compliance with Title IV and the cost details for green infrastructure features that exceed the Title IV compliance requirements. Only those project costs that exceed Title IV requirements are eligible for GIG Program funding.

For more information on the plan review process associated with Title IV Submittal Requirements for Connections to the Combined Sewer Systems refer to https://www.neorsd.org/I_Library.php?SOURCE=library/NEORSD_SubmittalRequirements_09-09-2014.pdf&a=download_file&LIBRARY_RECORD_ID=6870 or contact: Mary Maciejowski, Community Discharge Permit Program Manager, maciejowskim@neorsd.org (216) 881-6600.

- In addition to the cost proposal breakdown for Title IV requirements as detailed above, GIG Program proposals that include parking lots must include the estimated cost of resurfacing the subject parking lot without stormwater control measures.
- Construction must be completed by November 30, 2019. If the proposed GIG project will extend past this deadline, please contact the Sewer District to discuss.

Contractual Requirements

- Governmental Entity. In the event of a GIG award to a member community or government agency, the applicant must have the ability to fulfill all the terms and obligations required in the *Green Infrastructure Grant Program Agreement*, see Attachment 1 (changes to a final agreement are at the Sewer District's sole discretion).
- Non-Governmental Entity. In the event of a GIG award to a non-profit 501(c)(3) or business working in partnership with their community, the applicant must have the

NORTHEAST OHIO REGIONAL SEWER DISTRICT

2019 GREEN INFRASTRUCTURE GRANT FOR THE COMBINED SEWER AREA

ability to fulfill all the terms and obligations required in the *Green Infrastructure Grant Program Water Resource Lease Agreement*, see Attachment 2 (changes to a final agreement are at the Sewer District's sole discretion). **Please note that the applicant must grant to the Sewer District a non-exclusive lease in the water resource project.**

Terms of Grant Funding

The GIG Program is a reimbursement grant and payment will be made only on project specific invoices as referenced in the approved project budget. If the GIG project for which an applicant is applying for funding is part of a larger construction project, the Sewer District requires individual, itemized, and verified invoices to support reimbursement of expenses related to the GIG project. Grant funding may include the following:

- Professional Services such as design and engineering costs, structural analysis, and soil testing costs, if required, to determine suitability of a project; and
- Construction costs such as labor, materials, plants, and equipment rental.

The Sewer District's current reimbursement policy for the GIG Program can be reviewed at: <https://www.neorsd.org/stormwater-2/green-infrastructure-grant-program/>

Use for Public Outreach and Education

The following applies to all projects:

- Sewer District shall be permitted to photograph any project selected for funding and to incorporate this project into public education and outreach efforts.
- Sewer District shall have design approval for any signage or public education and outreach efforts related to the project. In most instances, educational signage will be required.
- If education signage is required, the Sewer District will be responsible for the initial fabrication and installation. Sign maintenance and/or replacement will be the responsibility of the Member Community/Lessor.
- Sewer District shall be acknowledged on any public advertisement or outreach efforts related to the project.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

2019 GREEN INFRASTRUCTURE GRANT FOR THE COMBINED SEWER AREA

Evaluation

Sewer District staff will evaluate eligible requests for GIG funding based on the following criteria:

1) **Expected Benefits of the Project (30 points)**

- Anticipated volume of stormwater controlled and/or removal from the combined sewer system.
- Project's ability to manage stormwater runoff on-site to the maximum extent possible.

2) **Project Feasibility (25 points)**

Feasibility of construction and implementation demonstrated by the concept design, maps, and stormwater calculations. Anticipated completion date will also be considered.

3) **Programmatic Capacity of the Applicant to Maintain the Project for Design Life Expectancy (25 points)**

The project design life expectancy is defined with an operation and maintenance implementation plan for the life of the project. The Sewer District will determine the design life expectancy of the project. Entity providing maintenance must be identified and possess a clear ability to manage the project through the design life.

4) **Visibility and Additional Community Benefits (20 points)**

The project furthers public understanding of the value of green infrastructure as a stormwater control measure within the combined sewer area.

The project provides additional community benefits and helps to address community needs and goals. Additional community benefits may include, but are not limited to:

- mitigating environmental justice disparities,
- improving public health or safety,
- mitigating urban heat island effect,
- providing access to green space,
- improving urban tree canopy,
- programming to increase social cohesion,
- improving community mobility and access to adjacent amenities or transit,
- ecosystem improvements.

5) **Design Complete (10 extra points)**

Ten extra points will be added to the overall project score if a complete design is submitted with the services of a professional engineer.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

2019 GREEN INFRASTRUCTURE GRANT FOR THE COMBINED SEWER AREA

Pre-application Meeting

Sewer District staff will provide an opportunity to meet with applicants to discuss projects prior to submission. It is strongly encouraged that applicants take advantage of this opportunity. Dates for meetings are **August 3, 10 and 17**. Contact Linda Mayer to schedule, see below for additional information. Note – applicants must schedule for these meetings, walk-ins will not be accommodated.

Application

The application portal is located on the Green Infrastructure Grant Program webpage:

<https://www.neorsd.org/stormwater-2/green-infrastructure-grant-program/>

Timeline and Submissions

The Sewer District must receive complete applications no later than **September 28, 2018**. Anticipate a notice of application receipt within 24 hours of submission.

Direct pre-application meeting requests, submissions, and questions to:

Linda Mayer

(440)-253-2147

mayerl@neorsd.org

Awards

Award selection and announcements are anticipated December 2018.

Awards are contingent on funding availability and approval by the Sewer District's Board of Trustees. The Sewer District is under no obligation to fund any GIG request.

GREEN INFRASTRUCTURE GRANT PROGRAM AGREEMENT

BY AND BETWEEN

THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

THIS GREEN INFRASTRUCTURE GRANT PROGRAM AGREEMENT

(“Agreement”) is made as of the 1st day of January, 2019 (the “Effective Date”), between the Northeast Ohio Regional Sewer District (the “District”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. _____, adopted by the District’s Board of Trustees on _____ (Exhibit “A”), and ******** (“Grantee”), a political subdivision of the State of Ohio, pursuant to the authority of Ordinance/Resolution _____, passed by Grantee’s _____ on _____ (Exhibit “B”).

RECITALS:

WHEREAS, pursuant to Ohio Revised Code Section 6119.06 (F), the District is authorized to make grants to political subdivisions for the acquisition or construction of water resource projects by such political subdivision; and

WHEREAS, the District has established a Green Infrastructure Grants (“GIG”) Program for the purpose of promoting the implementation of water resource projects through the construction of green infrastructure (“GI”) in the District’s combined sewer area to remove stormwater from the combined sewer system and reduce the release of combined sewage into the

environment; and

WHEREAS, in response to the District's Request for Grant Applications (Exhibit "C"), the Grantee, a Grantee of the District, applied for grant funds (the "Application" and attached hereto as Exhibit "D") for the construction of the *** project (the "Grantee Project" or "Project"); and

WHEREAS, the Grantee Project will remove approximately *** gallons of stormwater annually from the combined sewer system; and

WHEREAS, the District has determined that the Grantee's Project will promote the purpose of the GIG Program to remove stormwater from the combined sewer system and reduce the release of combined sewage into 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. **DISTRICT GRANT**

- 1.1 The District hereby agrees to provide a GIG Program grant to the Grantee for the Project, on a reimbursement basis, in an amount not to exceed *** Dollars (\$***.00).
- 1.2 Location. The Grantee Project must be performed within the District's combined sewer service area and in the area set forth in the Grantee's Application.
- 1.3 Green Infrastructure Design. The Grantee Project shall be designed and constructed utilizing GI to remove stormwater from the combined sewer system.
- 1.4 Compliance with Title IV, the District's Combined Sewer Code. The Grantee Project shall be designed and constructed to ensure compliance with Title IV of the District's Code of Regulations. Title IV shall serve as a minimum requirement for stormwater management on the Project. The GIG program goal is to implement GI for stormwater management beyond the minimum requirements

established by Title IV. Under no circumstance shall grant funds be used for Title IV compliance.

- 1.5 Grant Funds. The GIG Program grant funds shall be provided by the District on a reimbursement basis, as detailed in Article 4, directly to the Grantee for Grantee Project costs, conditioned upon the District's prior approval of the design and construction of the Grantee's Project. District staff members, selected by the District, shall be a permanent part of the Grantee's Project team dedicated to design review and construction inspection throughout the duration of the Project. Funds must be used in accordance with the authorized amount indicated. Any funds not expended for the purposes agreed to by the Grantee and the District shall remain with the District.

ARTICLE 2. **DISTRICT'S OBLIGATIONS**

The District agrees to perform as follows:

- 2.1 Grant Administration. Provide oversight and final approval for Project scope of work, schedules, changes, recordkeeping, reports, budgets, accounting, and any and all activities related to expenditure of grant funds in accordance with the terms and conditions of this Agreement.
- 2.2 Technical Assistance. Provide technical review to the Grantee for design, specifications, construction, installation, monitoring, and development of operation and maintenance manuals for the Grantee's Project.
- 2.3 District Review. Provide timely review and comments to the Grantee related to the design and construction documents at various stages and milestones of the Grantee's Project.
- 2.4 District Approvals. (i) Review and approve or disapprove in writing the components of the Grantee's Project; (ii) inspect and approve or disapprove in writing any and all components of the Grantee's Project to determine compliance with the plans and specifications of the Grantee's Project; and (iii) approve or disapprove in writing any changes to the Grantee's Project.
- 2.5 Public Acknowledgment. Acknowledge the Grantee, in presentations or publications related to the Grantee Project.

ARTICLE 3. **GRANTEE'S OBLIGATIONS**

The Grantee agrees as follows:

- 3.1 Notice of Project Commencement. Provide notification to the District at least seven (7) business days prior to the start of the Project construction.
- 3.2 Utilization of Grant Funds. Use 100% of the District's grant funds for activities and/or expenses related to the green infrastructure components of the Grantee's Project, as approved by the District. These activities and expenses may include design, construction, materials, and signage specifically related to the green infrastructure components of the Grantee's Project. Any other use of District-provided funding shall require prior written approval by the District. The Grantee shall obtain the prior written approval of the District prior to modifying any of the green infrastructure components of the Project.
- 3.3 Design and Construction of GI Measures. The Grantee shall install the Grantee Project in accordance with the District-approved plans and drawings and provide on-site construction inspection and oversight. The Grantee shall coordinate with the District's representatives during all critical stages and milestones of the design and construction to allow sufficient time for the District to review and provide comments related to the design documents and inspect the construction work. The Grantee shall submit all construction-related drawings and stormwater management reports to the District for review and approval prior to commencing construction of the Grantee's Project. Upon completion of the Project, the Grantee shall provide copies of as-built drawings of the Grantee's Project to the District.
- 3.4 Project Schedule. The Grantee shall complete the project by November 30, 2019 unless extended or revised pursuant to written approval of the District. The Grantee's failure to meet the District-approved schedule may negatively impact the Grantee's ability to receive future grant funding from the District. Requests for reimbursement must be submitted no later than December 31, 2019.
- 3.5 Complete and submit quarterly progress report - as follows:
 - 1) First Request shall be due April 30, 2019 for work completed January 1, 2019 through March 31, 2019;
 - 2) Second Request shall be due July 31, 2019 for work completed April 1, 2019 through June 30, 2019;
 - 3) Third Request shall be due October 31, 2019 for work completed July 1, 2019 through September 30, 2019;

- 4) Fourth Request shall be due December 31, 2019 for work completed October 1, 2019 through November 30, 2019.

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

The Grantee agrees to meet with District staff, as requested, to review GIG Program Project progress and to use the reimbursement request and progress report form provided by the District and available at: <https://www.neorsd.org/stormwater-2/green-infrastructure-grant-program/>

- 3.6 Operation and Maintenance. Once constructed, the Grantee shall remain responsible for the operation and maintenance of the Grantee Project for the design life expectancy of the Project, as determined by the District. The Grantee shall permit the District to provide technical review of the operation and maintenance manual developed for the Grantee Project prior to completion of construction. An annual operation and maintenance inspection report for the Grantee's Project shall be submitted to the District annually by April 1st following completion of construction for the design life expectancy of the Project, as determined by the District.
- 3.7 Inspection of Grantee's Project. The Grantee shall permit the District to periodically inspect the Grantee's Project for the design life expectancy of the completed project. If the District determines the Grantee's Project is not being properly maintained, the District shall notify the Grantee of such in writing. The Grantee shall provide the District with a plan to address maintenance issues within thirty (30) days of receipt of the District's written notice.
- 3.8 Educational Signage. The Grantee shall coordinate the educational signage content and placement with the District, utilizing the District's guidelines and template, and ensure that the educational signage is installed within fifteen (15) days of the completion of the Project. The District will manage the fabrication and initial installation of the educational signage and expense under this Agreement. The Grantee shall maintain the signage at the Grantee's expense for the design life expectancy of the Project.
- 3.9 Access to the Grantee's Project Sites. The Grantee shall provide the District reasonable access to the Grantee's Project site for the design life expectancy of the project as necessary for inspection of the Grantee's Project. The Grantee agrees to immediately notify the District of any changes to or termination of the Grantee's access rights in the Project site. In the event that the Grantee is required to vacate the premises on which the Project is located, the Grantee shall provide

the District with a plan for relocation of the Project if the Project is of a nature that relocation is possible. In the event that relocation is not possible, at the District's sole discretion, this Agreement may be assigned to a successor owner or occupier of the Project site only in accordance with Article 5.7 of this Agreement or the District shall be entitled to a refund of all grant funds provided by this Agreement. Failure to comply with this provision may be considered a default under this Agreement, pursuant to Article 7 herein.

- 3.10 Prohibition on Transfer of Project Property. The Grantee shall not transfer ownership, maintenance or operational control of the Project or the real property wherein the Project is located, during the design and construction of the Project or during the operation and maintenance of the Project's life, as further described in paragraph 3.6 above, unless the Grantee retains a property interest in the Project property for obligations under this Agreement, including maintenance, or unless some other arrangement consistent with this Agreement, including Grantee's successor agreeing to Grantee's obligations herein, is accepted by the District. The Grantee's property interest in the Project, as contained in this Agreement, shall be irrevocable for the design life expectancy of the Project, as determined by the District, but in any event, so long as the Project is operational with reasonable ongoing maintenance as determined by the District. The Grantee shall inform the District anytime there is a proposed transfer. Grantee shall reimburse the District in an amount equal to one hundred percent (100%) of the grant payments provided by the District to Grantee under this Agreement if the Project, or the real property wherein the Project is located, is transferred in contravention of this provision.
- 3.11 Payment of Prevailing Wage. The Grantee 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 Water Resource Project, and shall ensure compliance with any prevailing wage requirements in said Chapter.
- 3.12 Public Acknowledgment. Acknowledge the District in presentations or publications related to the Grantee's Project.

ARTICLE 4. REIMBURSEMENT OF GRANT FUNDS AND INVOICING

- 4.1 The District shall reimburse the Grantee for eligible Project expenses based upon paid invoices, prepared and submitted by the Grantee to the District, in the form prescribed by the District, and including supporting information as required in this agreement and the Green Infrastructure Grant Program Reimbursement Policy, attached hereto as Exhibit "E."

ARTICLE 5.

MISCELLANEOUS

- 5.1 Limit of Commitment by the District. This award is made with the understanding that the District has no obligation to provide other or additional support, beyond that identified in this Agreement, including maintenance of the Grantee Project, nor does this award represent any commitment to, or expectation of, future support, including maintenance of the Grantee Project, from the District for this or any other project of the Grantee.
- 5.2 Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Grantee or the District, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 5.3 Term. The term of this Agreement shall begin as of the date first above written, and shall be in effect for the design life expectancy of the Project.
- 5.4 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.
- 5.5 Authority to Execute. Each person executing this Agreement represents and warrants that he is duly authorized to execute this Agreement by the party on whose behalf he is so executing.
- 5.6 Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 5.7 Prohibition on Assignment and Subcontracting. The Grantee may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written 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.
- 5.8 Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 5.9 Merger Clause. This Agreement, along with any exhibits and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.

ARTICLE 6. **RELEASE OF LIABILITY**

6.1 The Grantee hereby releases the District from all liability related to the grant payments provided by the District hereunder. The Grantee further releases the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, and inspection of the Project; (iii) any defective performance of the Project by the Grantee and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the grant funds by the Grantee.

ARTICLE 7. **DEFAULT OF GRANT OBLIGATIONS**

7.1 Failure of the Grantee to meet any of the material requirements contained in this Agreement may result in termination of this Agreement and reimbursement of the disbursed funds by the Grantee to the District. The Agreement may be terminated only after the District has notified Grantee of the default and Grantee has failed to cure such default within thirty (30) days.

ARTICLE 8. **NOTICES**

8.1 All notices delivered hereunder shall be made by email or regular U.S. mail to the following:

DISTRICT
Linda Mayer or Successor
Watershed Funding Administrator
3900 Euclid Avenue
Cleveland, OH 44115
mayerl@neorsd.org

GRANTEE

ARTICLE 9. **EXHIBITS**

- Exhibit A - District Resolution No. ***
- Exhibit B - Grantee Ordinance/Resolution

Exhibit C - District Request for Grant Applications

Exhibit D - Grantee Grant Application

Exhibit E - GI Grant Program Reimbursement Policy

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DRAFT

The parties have executed this Agreement on the day and year first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

BY: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

AND

BY: _____
Darnell Brown, President
Board of Trustees

By: _____
Name
Title

The Legal Form and Correctness of this Instrument is Hereby Approved.

By: _____

Title: _____

This Instrument Prepared By:
Katarina K. Waag
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.

CONTRACT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

FOR

GREEN INFRASTRUCTURE GRANT
PROGRAM LEASE AGREEMENT:

*** PROJECT

Total Approximate Cost: \$***.00

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

CHIEF LEGAL OFFICER

Date

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.

CHIEF FINANCIAL OFFICER

Date

**GREEN INFRASTRUCTURE GRANT PROGRAM
WATER RESOURCE PROJECT LEASE AGREEMENT**

BY AND BETWEEN

THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

THIS GREEN INFRASTRUCTURE GRANT PROGRAM WATER RESOURCE PROJECT LEASE AGREEMENT (“Agreement”) is made as of the 1ST day of January, 2019 (the “Effective Date”), between the Northeast Ohio Regional Sewer District (the “District”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. _____, adopted by the District’s Board of Trustees on _____ (Exhibit “A”), and _____ (the “Lessor”), a 501(C)(3) non-profit organization of the State of Ohio.

RECITALS:

WHEREAS, the District has established a Green Infrastructure Grants (“GIG”) Program for the purpose of promoting the implementation of water resource projects through the construction of green infrastructure (“GI”) in the District’s combined sewer service area to remove stormwater from the combined sewer system and reduce the release of combined sewage into the environment; and

WHEREAS, in response to the District’s Request for Lease Applications (Exhibit “B”) the Lessor has submitted an application for a GIG Program lease to perform the ******* Project (the

“Water Resource Project”), attached hereto as Exhibit “C”; and

WHEREAS, the Water Resource Project will remove approximately *** gallons of stormwater annually from the combined sewer system; and

WHEREAS, the District has determined that the Lessor’s Water Resource Project will promote the District’s purpose of the GIG Program to remove stormwater from the combined sewer service area and reduce the release of combined sewage into the environment; and

WHEREAS, pursuant to Ohio Revised Code Section 6119.06(G), the District may lease Water Resource Projects from any entity within or without the District; and

WHEREAS, the Lessor has agreed to lease the Water Resource Project to the District to ensure access to the project site and facilitate ongoing compliance with the terms and conditions of this Agreement, and for use of the Water Resource Project in furtherance of the District’s purposes.

NOW THEREFORE, in consideration of the foregoing, and the mutual promises contained in this Agreement, the parties agree as follows:

ARTICLE 1. **DISTRICT LEASE OF THE WATER RESOURCE PROJECT**

- 1.1 Lease. The Lessor hereby grants to the District a non-exclusive lease (the “Lease”) in the Water Resource Project, as depicted in Lessor’s Lease Application (Exhibit “C”) (the “Leased Premises”).
- 1.2 District Use. The District shall have the right to access the Leased Premises for the purposes of performing its rights and duties under this Agreement, including ensuring Lessor’s compliance with its obligations under this Agreement, and to ensure that the Water Resource Project is functioning in accordance with the District’s purposes, including the removal of stormwater from the District’s combined sewer system service area.

- 1.3 Lessor Use. The Lessor shall have the unrestricted right to access and utilize the Leased Premises for any purpose not inconsistent with the purposes of this Agreement.
- 1.4 The Lessor shall have the right to request periodic joint reviews of the Leased Premises to determine whether upgrades or modifications are necessary to maintain the value of Lessor's property as well as the Leased Premises. Approval of such upgrades or modifications shall be in the District's discretion, but shall not be unreasonably withheld.
- 1.5 Rent. As consideration for this Lease, the District shall make Lease payments to Lessor in accordance with Article 2 herein.

ARTICLE 2. **DISTRICT LEASE PAYMENTS**

- 2.1 The District hereby agrees to provide payments under this Agreement to the Lessor for the Water Resource Project, on a reimbursement basis, in the not-to-exceed aggregate total amount of *** Dollars (\$***.00):
- 2.2 Location. The Water Resource Project must be performed within the District's combined sewer service area as specifically described in the Lessor's GIG Program application.
- 2.3 GI Design. The Water Resource Project shall be designed and constructed using GI to remove stormwater from the combined sewer system.
- 2.4 Compliance with Title IV, the District's Combined Sewer Code. The Water Resource Project shall be designed and constructed to ensure compliance with Title IV of the District's Code of Regulations. Title IV shall serve as a minimum requirement for stormwater management on the Lessor's project. The GIG program goal is to implement GI for stormwater management beyond the minimum requirements established by Title IV. Under no circumstance shall Lease funds be used for compliance under Title IV of the District's Code of Regulations.
- 2.5 Lease Payments. The Lease payments shall be provided by the District on a reimbursement basis, as detailed in Article 4, directly to the Lessor for the Water Resource Project use, conditioned upon the District's prior approval of the design and construction of the Lessor's Project. District staff members, selected by the District, shall be a permanent part of the Lessor's Project team dedicated to design review and construction inspection throughout the duration of the Lessor's Project. Lease payments must be used in accordance with the authorized amount indicated.

Any funds not expended for the purposes agreed to by the Lessor and the District shall remain with the District.

ARTICLE 3. **DISTRICT'S OBLIGATIONS**

The District agrees to perform as follows:

- 3.1 Water Resource Project Administration. Provide oversight and final approval for project scope of work, schedules, changes, recordkeeping, reports, budgets, accounting, and any and all activities related to expenditure of Lease funds in accordance with the terms and conditions of this Agreement.
- 3.2 Technical Assistance. Provide technical review to the Lessor for design, specifications, construction, installation, monitoring, and development of operation and maintenance manuals for the Water Resource Project.
- 3.3 District Review. Provide timely review and comments to Lessor related to the design and construction documents at various stages and milestones of the Water Resource Project.
- 3.4 District Approvals. (i) Review and approve or disapprove in writing the components of the Water Resource Project; (ii) inspect and approve or disapprove in writing any and all components of the Water Resource Project to determine compliance with the plans and specifications of the Water Resource Project; and (iii) approve or disapprove in writing any changes to the Water Resource Project.
- 3.5 Public Acknowledgment. Acknowledge the Lessor in presentations or publications related to the Water Resource Project.

ARTICLE 4. **LESSOR'S OBLIGATIONS**

The Lessor agrees as follows:

- 4.1 Notice of Project Commencement. Provide notification to the District at least seven (7) business days prior to the start of the construction of the Water Resource Project.
- 4.2 Utilization of Lease Payments. Use 100% of the District's paid Lease funds for activities and/or expenses related to the GI components of the Water Resource Project, as approved by the District. These activities and expenses may include design, construction, materials, and signage specifically related to the GI components of the Water Resource Project. Any other use of District-provided funding shall require prior written approval by the District. The Lessor shall obtain

the prior written approval of the District prior to modifying any of the GI components of the Water Resource Project.

- 4.3 Design and Construction of GI Measures. The Lessor shall install the Water Resource Project in accordance with the District-approved plans and drawings and provide on-site construction inspection and oversight. The Lessor shall coordinate with the District's representatives during all critical stages and milestones of the design and construction to allow sufficient time for the District to review and provide comments related to the design documents and inspect the construction work. The Lessor shall submit all construction-related drawings and stormwater management reports to the District for review and approval prior to commencing construction of the Water Resource Project. Upon completion of the Water Resource Project, the Lessor shall provide copies of as-built drawings of the Water Resource Project to the District.
- 4.4 Project Schedule. The Lessor shall complete the project by November 30, 2019, unless extended or revised pursuant to written approval of the District. Lessor's failure to meet the District-approved original or modified schedule may negatively impact Lessor's ability to receive further Lease funds or future Lease funding from the District. Requests for reimbursement must be submitted no later than December 31, 2019.
- 4.5 Complete and submit quarterly progress report - as follows:
- 1) First Request shall be due April 13, 2019 for work completed January 1, 2019 through March 31, 2019;
 - 2) Second Request shall be due July 13, 2019 for work completed April 1, 2019 through June 30, 2019;
 - 3) Third Request shall be due October 12, 2019 for work completed July 1, 2019 through September 30, 2019;
 - 4) Fourth Request shall be due December 31, 2019 for work completed October 1, 2019 through November 30, 2019.

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

Lessor agrees to meet with District staff, as requested, to review GIG Program Project progress and to use the reimbursement request and progress report form provided by the District and available at: <https://www.neorsd.org/stormwater-2/green-infrastructure-grant-program/>

- 4.6 Operation and Maintenance. Once constructed, the Lessor or Lessor's successors or assigns shall not remove or relocate the Water Resource Project, and shall remain responsible for the operation and maintenance of the Water Resource Project for the design life expectancy of the Water Resource Project, as determined by the District, but in any event, so long as the Water Resource Project is operational with reasonable ongoing maintenance. The Lessor shall permit the District to provide technical review of the operation and maintenance manual developed for the Lessor's Water Resource Project prior to completion of construction. An annual operation and maintenance inspection report for the Water Resource Project shall be submitted to the District annually by April 1 following completion of construction for the design life expectancy of the project, as determined by the District.
- 4.7 Inspection of Lessor's Water Resource Project. The Lessor shall permit the District to periodically inspect the Water Resource Project for the design life expectancy of the Water Resource Project, as determined by the District, but in any event, so long as the Water Resource Project is operational with reasonable ongoing maintenance. If the District determines the Water Resource Project is not being properly maintained, the District shall notify the Lessor of such in writing. The Lessor shall provide the District with a plan to address maintenance issues within fourteen (14) days of receipt of the District's written notice.
- 4.8 Educational Signage. The Lessor shall coordinate the educational signage content and placement with the District, utilizing the District's guidelines and template, and ensure that the educational signage is installed within fifteen (15) days of the Water Resource Project installation. The District will manage the fabrication and initial installation of the educational signage and expense under this Agreement. The Lessor shall maintain the signage at Lessor's cost so long as the Water Resource Project is in place.
- 4.9 Access to Water Resource Project Sites. The Lessor shall provide the District reasonable access to the Water Resource Project site for inspection of the Water Resource Project. The Lessor shall immediately notify the District of any changes or termination of Lessor's access rights in the Water Resource Project site. In the event that Lessor is required to vacate the premises on which the Water Resource Project is located, Lessor shall provide the District with a plan for relocation of the Water Resource Project if the Water Resource Project is of a nature that relocation is possible. In the event that relocation is not possible, at the District's sole discretion, this Agreement may be assigned to a successor owner or occupier of Water Resource Project site only in accordance with Article 6.7 of this Agreement or the District shall be entitled to a refund of all funds provided under this

Agreement. Failure to comply with this provision shall be considered a default under this Agreement, pursuant to Article 8 herein.

- 4.10 Prohibition on Transfer of Water Resource Project Property. The Lessor shall not transfer ownership, maintenance or operational control of the Water Resource Project or the real property wherein the Water Resource Project is located, during the design and construction of the Water Resource Project or during the operation and maintenance of the Water Resource Project's life, as further described in paragraph 4.6 above, unless the Lessor retains a property interest in the Water Resource Project property for obligations under this Agreement, including maintenance, or unless some other arrangement consistent with this Agreement, including Lessor's successor agreeing to Lessor's obligations herein, is accepted by the District. The Lessor's property interest in the Water Resource Project, as contained in this Agreement, shall be irrevocable for the design life expectancy of the Water Resource Project, as determined by the District, but in any event, so long as the Water Resource Project is operational with reasonable ongoing maintenance as determined by the District. The Lessor shall inform the District anytime there is a proposed transfer. Lessor shall reimburse the District in an amount equal to one hundred percent (100%) of the Lease Payments provided by the District to Lessor under this Agreement if the Water Resource Project, or the real property wherein the Water Resource Project is located, is transferred in contravention of this provision.
- 4.11 Payment of Prevailing Wage. The Lessor 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 Water Resource Project, and shall ensure compliance with any prevailing wage requirements in said Chapter.
- 4.12 Public Acknowledgment. Acknowledge the District in presentations or publications related to the Water Resource Project.

ARTICLE 5. LEASE PAYMENTS AND INVOICING

- 5.1 The District shall pay the Lessor for eligible Water Resource Project expenses based upon paid invoices, prepared and submitted by the Lessor to the District, in the form prescribed by the District, and including supporting information as required in this agreement and the GIG Program Reimbursement Policy, attached hereto as Exhibit "D."

ARTICLE 6.

MISCELLANEOUS

- 6.1 Limit of Commitment. This award is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Water Resource Project. This award does not represent any commitment to, or expectation of, future support, including maintenance of the Water Resource Project, from the District.
- 6.2 Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the District or the Lessor, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 6.3 Term. The term of this Agreement shall begin as of the date first above written, and shall be in effect for the design life expectancy of the Water Resource Project, as determined by the District, but in any event, so long as the Water Resource Project is operational with reasonable ongoing maintenance.
- 6.4 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.
- 6.5 Authority to Execute. Each person executing this Agreement represents and warrants that he is duly authorized to execute this Agreement by the party on whose behalf he is so executing.
- 6.6 Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns, including any successor owners of the real property wherein the Water Resource Project is located.
- 6.7 Prohibition on Assignment. Lessor may not assign its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the District. Consent may be withheld for any reason or no reason. Any assignment made in contravention of the foregoing shall be void and of no effect.
- 6.8 Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.

- 6.9 Merger Clause. This Agreement, along with any exhibits and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.
- 6.10 Recordation. The Parties agree that this Agreement, or a memorandum of same, may be recorded with the office of the Cuyahoga County Fiscal Officer, at the discretion of the District.

ARTICLE 7. **RELEASE OF LIABILITY AND INDEMNIFICATION**

- 7.1 The Lessor hereby releases and indemnifies the District from all liability related to the Lease payments provided by the District hereunder. The Lessor further releases and indemnifies the District from all liability for: (i) the design, construction, implementation, operation, maintenance, and inspection of the Water Resource Project; (ii) any damages to third parties caused by the design, construction, implementation, operation, maintenance, and inspection of the Water Resource Project; (iii) any defective performance of the Water Resource Project by the Lessor and/or its agents; and (iv) any damages caused by malfeasance or misfeasance of the Lease funds by the Lessor.

ARTICLE 8. **DEFAULT OF AGREEMENT OBLIGATIONS**

- 8.1 Failure of the Lessor to meet any of the requirements contained in this Agreement may result in termination of the Agreement and reimbursement of the disbursed funds by the Lessor to the District.

ARTICLE 9. **NOTICES**

- 9.1 All notices delivered hereunder shall be made by email or regular U.S. mail to the following:

DISTRICT

Linda Mayer or Successor
Watershed Funding Administrator
3900 Euclid Avenue
Cleveland, OH 44115
mayerl@neorsd.org

LESSOR

ARTICLE 10.

EXHIBITS

- Exhibit A - District Resolution No ***
- Exhibit B - District Request for Lease Application
- Exhibit C - Lessor's Water Resource Lease Application
- Exhibit D - GIG Program Reimbursement Policy

[remainder of page intentionally left blank]

DRAFT

The parties have executed this Agreement on the day and year first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

BY: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

AND

BY: _____
Darnell Brown, President
Board of Trustees

By: _____
Signature

Printed Name

Title

This Instrument Prepared By:
Katarina K. Waag
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.

CONTRACT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

FOR

GREEN INFRASTRUCTURE GRANT
PROGRAM LEASE AGREEMENT:

*** PROJECT

Total Approximate Cost: \$***.00

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

CHIEF LEGAL OFFICER

Date

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.

CHIEF FINANCIAL OFFICER

Date