

AGREEMENT
BY AND BETWEEN
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND

THIS AGREEMENT made as of this _____ day of _____, 201__ by and between the Northeast Ohio Regional Sewer District, a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code (hereinafter referred to as "District"), by authority of Resolution No. _____, adopted by the Board of Trustees on _____ (a copy of which is attached hereto and made a part hereof as Exhibit "A"), and _____ **NAME, ADDRESS** (hereinafter known as "Consultant").

WITNESSETH:

WHEREAS, it is necessary to perform professional services for _____; and

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

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

that does not result in the change to the original contract scope of Services or Total Contract Price.

1.8 "Total Contract Price" means the sum of the Consultant's Base Contract Price for the original scope of Services, plus the General Allowance, if applicable.

1.9 "General Allowance" means funds added to the Base Contract Price in a professional services contract for additional services that were not foreseeable at the time of scope development but is necessary to complete the project as originally contemplated. A General Allowance is the Base Contract Price times a defined percentage, not to exceed ten percent (10%) of the Base Contract Price unless authorized by the Chief Executive Officer and approved by the Board of Trustees.

Section 2. SCOPE OF SERVICES

2.1 Consultant does hereby promise and agree to provide the professional services as are described in the District's Request for Proposals dated [REDACTED] (the "RFP") (Exhibit "B"), Consultant's Proposal dated [REDACTED] (Exhibit "C"), and the Scope of Services (Exhibit "D"), which generally consist of [REDACTED] (hereinafter the "Services").

Section 3. REPRESENTATIVES

3.1 Consultant shall designate and authorize [REDACTED], who is an employee of Consultant, to act as its agent for all purposes under this Agreement, who shall be available at all times to the representatives of the District for the purpose of notification and consultation, and who shall be designated as the Project Manager having overall responsibility for all phases of Consultant participation in the project.

3.2 For purposes of this Agreement, the agent for the District who is authorized to bind

the District and liaison officer with respect to the matters contained herein shall be the Director or his/her successor, or such other person designated by the Chief Executive Officer. [REDACTED] shall be designated as the Project Manager having overall responsibility for all phases of District's participation in the project.

Section 4. COMPENSATION

4.1 After submission by Consultant of an itemized billing, the District will pay the Consultant for the successful completion of the Services referenced in Section 2.1 above, subject to the terms and conditions in the Agreement documents, up to a maximum amount not to exceed [REDACTED] Dollars (\$ [REDACTED].00) (the "Total Contract Price").

4.2 The tasks to be performed under this Agreement and their associated budgets for the scope of Services described in Section 2.1 are as follows:

Task Name	Not-to-Exceed Task Budget
A.	\$
B.	\$
C.	\$
Base Contract Price	\$
General Allowance	\$
TOTAL CONTRACT PRICE	\$

4.3 Each task budget shall include all direct costs, indirect costs, other direct costs and profit as identified in the Consultant's Fee Proposal (Exhibit "D"). Task funds may be reallocated

within or between tasks with prior authorization of the Director, so long as the changes do not result in a change to the original contract scope or Total Contract Price.

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

4.5 Consultant shall not perform additional services, or incur any expenses which are not required by this Agreement, and the District shall not be obligated to pay for such services and expenses until the following conditions have been satisfied:

1. Submittal by Consultant to the District of written notice prior to the initiation of such additional services, including an estimate of cost (direct labor, indirect costs, other direct costs and profit) and schedule implications and a detailed scope of such services;
2. Prior approval of the Board of Trustees of the modification of this Agreement by the addition of such services and additional compensation, if any;
3. If the additional services increase the total compensation under this Agreement, certification of such additional cost by the District's Chief Financial Officer;
4. A written modification to the Agreement; and
5. Written notification to Consultant from the District directing Consultant to perform such additional services prior to commencement of the additional services.

4.6 General Allowance funds, if any, shall not be utilized without prior written authorization from the Director to perform such services prior to commencement of the services.

4.7 Any costs which are paid by the District and are determined by a final audit or subsequent audit to be non-allowable in accordance with generally accepted cost accounting principles shall be refunded to the District.

4.8 All funds remaining in the contract at completion of the Services will be retained by the District.

4.9 The District is exempt from all sales, use, and excise taxes, and the District shall not be obligated to pay for such taxes. Upon request by Consultant, the District shall provide a copy of the District's certificate of tax exemption.

Section 5. METHOD FOR PAYMENT

5.1 All accounting and financial matters relating hereto shall be processed by the District's Chief Financial Officer.

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

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

and examine the Consultant's accounting books and financial records for the Project, including, but not limited to, records of hours expended, personnel utilized, payments of employee salaries and benefits, and records of payments made to subconsultants.

Section 6. TERM & SCHEDULE

6.1 The term of this Agreement shall begin as of commencement of the Services hereunder and shall, unless extended by the District, or unless sooner canceled or terminated pursuant to the provisions hereof, expire upon completion of the Services or exhaustion of the funds hereunder, whichever should occur first.

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

6.3 An extension of a project completion schedule or milestones that do not result in the change to the original contract scope of Services or to the Total Contract Price, may be granted with prior written authorization from the Director.

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

Section 7. STANDARDS OF PERFORMANCE, ERRORS AND OMISSIONS

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

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

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

7.4 In the event of any negligent act, error, or omission which the District determines, using a reasonableness standard, to be the responsibility of the Consultant in any phase of the service, the correction, repair or reconstruction of which may require additional field or office work, the Consultant shall be promptly notified and shall be required to perform such corrective Services as may be necessary without delay and without additional cost to the District.

Section 8. TERMINATION OF AGREEMENT AND THE DISTRICT'S RIGHT TO

PERFORM CONSULTANT'S OBLIGATIONS

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

8.2 If this Agreement is cancelled by the District prior to completion, Consultant, within ten (10) working days of such cancellation, shall submit a certified final progress report of the percentage of Services completed by the date of cancellation. The District shall pay Consultant for the Services completed as certified in this statement and as approved by the Chief Executive Officer. Notwithstanding any other provision of this Agreement all records, documents, materials, equipment, and working papers prepared or purchased as part of the Services under this Agreement shall become and remain the property of the District, and upon any such cancellation, Consultant shall turn over to the District all records, documents, working papers, equipment and other materials which should be necessary, in the opinion of the District, to maintain continuity in progress of the Services by another consultant.

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

up and shut-down of the Services shall be at Consultant's expense.

8.4 Termination without Cause. The District may terminate this agreement without cause, in which case the District shall make payment to Consultant for Services performed prior to the date of termination, including any reimbursable expenses, if any then due, which shall be subject to the District's review and approval, and which shall not be unreasonably withheld. Consultant shall, as a condition of receiving the payments referred to in this Section, execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as the District may require for the purposes of fully vesting in it the rights and benefits of Consultant under such obligations or commitments. The payment under this Section for termination by the District without cause shall constitute full and complete satisfaction of any and all damages and claims of Consultant regarding the Consultant's performance of the Services and the termination of Consultant's Services by the District.

Section 9. INSURANCE

9.1 Consultant shall take out and maintain during the life of this Agreement such commercial general liability and property damage insurance, wherein the District is included as an additional insured to the Commercial General Liability and Automobile Liability Insurance and shall protect itself and the District while performing Services hereunder from claims for property damages which may arise from operations hereunder, subcontractors, or by anyone directly or indirectly employed by either of them. All insurance must be provided through companies admitted to do business in the State of Ohio and rated at least "A" by the A.M. Best Company.

9.2 All liability policies required in Section 9, Insurance, except for Professional Liability

and Workers' Compensation, shall be primary and non-contributory to any insurance maintained by the District.

9.3 Prior to commencing the Services on site, Consultant shall provide a Certificate of Insurance, completed and signed by an authorized agent of its insurance company(ies), as evidence of Consultant's compliance with Section 9, Insurance, of this Agreement. FAILURE OF THE DISTRICT TO ENFORCE THIS REQUIREMENT SHALL NOT CONSTITUTE A WAIVER OF CONSULTANT'S OBLIGATIONS TO PROVIDE INDEMNITY AS SPECIFIED HEREIN. In the event that Consultant fails to obtain and keep in full force and effect any of the insurance requirements under this Agreement, the District may purchase, but is not obligated to purchase, such coverage and use any funds payable to Consultant to satisfy any premium requirements.

The Certificate Holder shall be:	The Northeast Ohio Regional Sewer District Attn: John Wasko, Risk Manager 3900 Euclid Avenue, Cleveland, OH 44115 216-881-6600 telephone 216-881-4407 fax Email: waskoj@neorsd.org
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9.4 Certificates of insurance shall be deposited with the District. The certificate shall reference the project name and agreement/purchase order number assigned by the District. The District reserves the right to refuse insurance written by an unacceptable company. All policies shall be endorsed to provide mandatory 30 days written notice of cancellation or non-renewal (10 days in event of nonpayment) to the District. Failure to inform the District of cancellation or non-renewal, without securing replacement coverage equivalent to that specified herein, shall constitute material breach of this Agreement to provide insurance. All deductibles, self-insured retentions and

exclusionary endorsements affecting coverage for the Additional Insureds must be fully disclosed and are subject to approval by the District. Consultant shall be solely responsible for and shall solely pay all deductibles, self-insurance or similar retentions. NONCONFORMING INSURANCE SHALL NOT RELIEVE CONSULTANT OF ITS OBLIGATION TO PROVIDE INDEMNITY AS SPECIFIED HEREIN unless waived in writing by the District, and this obligation shall survive this Agreement even though Consultant has completed its Services and has been fully paid.

9.5 It is hereby expressly understood and agreed that Consultant shall require any subcontractor hereunder to provide insurance, to the extent specified herein, also including the District as an additional insured, except for professional liability insurance or worker's compensation.

9.6 General Liability. Consultant shall secure and maintain standard occurrence general liability insurance, which will include completed operations coverage, protecting Consultant against claims for bodily injury, death, or property damage which may arise as a result of Consultant's actions during the performance of the Services in an amount of \$1,000,000 per occurrence and \$1,000,000 general aggregate. The District shall be named as additional insured under this policy.

9.7 Automobile Liability. In addition to the above, the policy shall contain combined single limit coverage of not less than \$2,000,000 per accident, for "any auto" or "all owned, hired and non-owned autos." The coverage shall include contractual liability coverage applicable to this Agreement and shall name the District as additional insured.

9.8 Professional Liability. Consultant shall purchase and maintain insurance to protect itself from claims arising out of the performance of professional services caused by its negligent

acts, errors or omissions for which it may be legally liable. The amount of such insurance shall be in an amount of \$1,000,000.00 per claim and in the aggregate. Such insurance shall extend to its legal representatives in the event of death, dissolution or bankruptcy, and shall cover negligent acts, errors and omissions of the Consultant's agents, subcontractors and employees and the liabilities assumed under this Agreement. Such insurance shall extend to any negligent act, error or omission in the performance of the Services committed or alleged to have been committed by the Consultant, its agents, subcontractors, or employees, or any other person or entity for whom the Consultant is responsible. Such coverage shall be in effect from the date Services are first provided under this Agreement and shall be maintained in force until the later of (i) the completion of the Services or (ii) official acceptance of the Services by the District; and, provided that such insurance is generally available, shall be maintained for an additional period of five (5) years after the later of (i) the completion of the Services, or (ii) official acceptance of the Services by the District.

9.9 Section 12, Indemnification and Section 9, Insurance shall survive the completion of the Services to be performed hereunder.

Section 10. WORKERS' COMPENSATION COVERAGE

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

Section 11. INDEPENDENT CONTRACTOR

11.1 Consultant shall be and remain an independent contractor with respect to all Services performed hereunder, and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions or annuities, now or hereafter imposed under any State or Federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Consultant on Services performed under the terms of this Agreement, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and Consultant agrees to indemnify and save harmless the District from any such contribution or taxes or liability therefore.

Section 12. INDEMNIFICATION

12.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the District, their officers, agents and employees against all losses, damages, expenses, suits, claims, demands, fines, penalties, awards, liabilities and costs, including reasonable attorneys fees, to the proportionate extent that the liability, or the underlying harm causing the liability, is attributable to, may arise out of or be based upon, any negligent error or omission in any drawings or specifications, other documents or Consultant's negligent performance under this Agreement, including injury or death or damage to person or property; negligent act, error or omission of Consultant, its principals, employees and subcontractors.

12.2 At the District's option, Consultant shall defend or reimburse the District in any

litigation and pay on behalf of the District all sums that the District shall become legally obligated to pay as a result of any litigation or claims incurred in connection therewith and satisfy and cause to be discharged such judgments that may be obtained against the District, its officers, agents, and employees to the extent of Consultant's indemnification obligations as set forth above.

Section 12, Indemnification and Section 9, Insurance shall survive the completion of the Services to be performed hereunder and the termination of this Agreement.

Section 13. ASSIGNMENT OF AGREEMENT

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

Section 14. CONSTRUCTION

14.1 All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender. Consultant agrees that no representations or warranties of any type shall be binding upon the District, unless expressly authorized in writing

herein. The headings of sections and paragraphs, if any, to the extent used herein are used for reference only, and in no way define, limit or transcribe the scope or intent of any provision hereof.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered in any number of counterparts, shall be deemed original, but such counterparts together shall constitute but one and the same instrument. Invalidation of any provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

Section 15. MISCELLANEOUS

15.1 Copyrights. The Consultant acknowledges and agrees to follow the EPA requirements of 40 CFR Part 30 regarding copyrights and rights in data for any discovery or invention which arise or is developed in the course of implementing this Agreement.

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

15.3 Defective Pricing. The Consultant and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiated agreements, lower tier subagreements, and change orders is based on current, accurate, and complete data supported by their books and records. If the District determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not

current at the time of submission, then such price or cost or profit shall be reduced accordingly; and the Agreement shall be modified in writing to reflect such action.

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

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

15.6 Confidentiality. During the performance of Services under this Agreement, the Consultant will have access to confidential information of the District, including but not limited to, social security numbers, federal taxpayer i.d. numbers, employee and vendor information, and information related to the operations of the District (hereinafter "Information"). The Consultant agrees to hold such Information in confidence and shall not disclose such Information to any third-parties.

Section 16. MBE/WBE/SBE COMPLIANCE

16.1 The Minority- and Women Business Enterprise ("MBE/WBE") and/or Small Business Enterprise ("SBE") subcontracting goals established for this Agreement are [REDACTED]. Consultant agrees to comply with the District's Business Opportunity Program during performance of this Agreement, including making a good faith effort to meet or exceed the MBE, WBE and/or SBE utilization goals established for this Agreement in cooperation with the District's Office of Contract Compliance.

Section 17. EXHIBITS

17.1 It is mutually understood and agreed that all Exhibits attached hereto are made a part hereof as if fully written herein. In the event of any conflict among the terms of this Agreement and the Exhibits, the Agreement and the Exhibits shall govern in the following order: 1) the District's Resolution; 2) this Agreement; 3) the RFP; and 4) Consultant's Proposal.

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

- a. Exhibit "A" – Northeast Ohio Regional Sewer District Resolution
- b. Exhibit "B" – The District's RFP
- c. Exhibit "C" – Consultant's Proposal
- d. Exhibit "D" – Consultant's Fee Proposal
- e. Exhibit "E" – Scope of Services

The parties hereunto have caused this Agreement to be executed and to become effective on the day and year first above written.

**NORTHEAST OHIO REGIONAL
SEWER DISTRICT**

BY: _____

Kyle Dreyfuss-Wells
Chief Executive Officer

AND: _____

Darnell Brown, President
Board of Trustees

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

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