



REQUEST FOR PROPOSALS

PORTABLE GAS METER REPLACEMENT AND IMPLEMENTATION PROJECT

November 2020

REQUEST FOR PROPOSAL
Portable Gas Meter Replacement and Implementation Project

This Request for Proposal (RFP) is being sent to qualified firms to perform as the Professional Services Vendor or Vendor for the purchase of portable gas detection instruments, associated calibration and maintenance equipment, a fleet management system and associated professional implementation services for the Northeast Ohio Regional Sewer District (NEORSd/the District). Proposals for providing these services will be received until 4:30 P.M. on **Friday, December 11, 2020**. Proposals shall be no more than 20 pages as printed and the font size shall be equivalent to Times New Roman 12 pt. or larger (see **Section 3.0**). Proposals are to be delivered **via email** to:

Carla DeSantis, Manager of Health & Safety, Northeast Ohio Regional Sewer District
DeSantisC@neorsd.org

Late submittals will not be considered. Questions regarding this RFP shall be directed to Carla DeSantis by emailing DeSantisC@neorsd.org. Questions related to the RFP must be received by **4:30 P.M. on Friday, December 1, 2020**. A virtual, non-mandatory pre-proposal meeting will be held at **1:00 P.M. on Wednesday, December 2, 2020** via Go To Meeting. Vendors who wish to attend the pre-proposal meeting must contact Carla DeSantis via email at DeSantisC@neorsd.org with a request to receive the meeting link by 4:30 P.M. on Tuesday, December 1, 2020. The District will compile all questions and responses will be available on the District's Bid & Proposals website <https://www.neorsd.org/business-home/bids/>. Any future addenda related to this contract will be posted to the District's website under the "Bids and Proposals" section. The District shall not be responsible for any costs incurred in relation to the preparation of the proposals. All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.

ANTICIPATED VENDOR SELECTION SCHEDULE		DATES
1	RFQ released	November 23, 2020
2	Submittal deadline for vendor questions by 4:30 p.m. EST	December 1, 2020
3	Pre-proposal meeting (attendance optional)	December 2, 2020
4	Proposals due to the District by 4:30 p.m. EST	December 11, 2020
5	Three highest scoring bidders will be notified	December 23, 2020
6	Bidder demonstrations	January 4-6, 2020
7	District will notify selected Vendor	January 8, 2021
8	Contract negotiation begins	January 11, 2021
9	Contract Award approval(Board of Trustees Meeting)	February 4, 2021
10	Notice to Proceed - Project Begins	February 8, 2021

The above dates are subject to extension at the District's discretion.

This RFP is organized as follows:

<u>SECTION 1.0</u>	<u>INTRODUCTION</u>
<u>SECTION 2.0</u>	<u>SCOPE OF WORK</u>
<u>SECTION 3.0</u>	<u>SCHEDULE</u>
<u>SECTION 4.0</u>	<u>PROPOSAL CONTENT & FORMAT</u>
<u>SECTION 5.0</u>	<u>EVALUATION & SELECTION PROCESS</u>

ATTACHMENTS

- Attachment A, NEORS D Standard Clauses for Professional Services Agreements
- Attachment B, Cost Proposal Form
- Attachment C, Business Opportunity Program Policy

SECTION 1.0 – INTRODUCTION

1.1 NEORS D OVERVIEW

The Northeast Ohio Regional Sewer District is a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code. Originally named the Cleveland Regional Sewer District, it was created in 1972 to assume ownership, operation, and management of wastewater collection, treatment, and disposal facilities serving the member communities in the Cleveland metropolitan area. The District currently has approximately 800 employees and a service area encompassing over 62 communities in the Greater Cleveland area. The District's mission is to provide progressive sewage and stormwater management through innovation, fiscal responsibility, and community partnerships.

The District's Administration Building is located at 3900 Euclid Avenue, Cleveland, Ohio 44115. This location includes Engineering & Construction, Operations & Maintenance Administration, Watershed Programs, Employee Resources, Finance, Law, and Information Technology Departments.

The District owns and operates four (4) operation and maintenance facilities including three wastewater treatment facilities:

Environmental and Maintenance Services Center (EMSC)
4747 East 49th Street
Cuyahoga Heights, Ohio 44125
(north of the Southerly Wastewater Treatment Center)

Westerly Wastewater Treatment Plant
5800 West Memorial Shoreway
Cleveland, Ohio 44102
(near Edgewater State Park)

Southerly Wastewater Treatment Center
6000 Canal Road
Cuyahoga Heights, Ohio 44125
(near the Interstate 77/Interstate 480 intersection)

Easterly Wastewater Treatment Plant
14021 Lakeshore Boulevard
Cleveland, Ohio 44110
(near the Cleveland/Bratenahl border)

The District's Sewer System Maintenance & Operation (SSMO) Department, Water Quality & Industrial Surveillance (WQIS) Department, Analytical Services, and Fleet Services are housed at the EMSC facility. Additional information about the District, its history, and its operations is available at the District's Internet site at <http://www.neorsd.org>.

The District's Health and Safety group is responsible for ensuring the District's compliance with employee health and safety rules, regulations, and best management practices. One component of this program is to provide and maintain portable gas detection equipment and systems to support a variety of District Departments in operations and maintenance work tasks where hazardous atmospheres may be present. Currently, approximately 160 portable 4-gas monitoring instruments are used on a routine basis throughout the District to execute critical work in wastewater/stormwater collections and treatment system. Of primary concern is employee health and safety as many of these areas have the potential to contain hazardous atmospheres as a natural by-product of wastewater collections and treatment processes. The current fleet of gas monitoring instruments and associated calibration and maintenance equipment is approximately 9 years old and has reached its useful end of life.

1.2 PROJECT GOALS

The District seeks to replace and upgrade the District's existing fleet of portable four-gas detectors with new portable gas monitoring instruments as well as the necessary calibration and charging equipment (see **Table 1**). The District is also seeking the purchase and implementation of a software management system to allow the District to proactively monitor and manage the gas detector fleet remotely. These services will enable the District to continue to ensure employee health and safety and maintain District operations in compliance with State of Ohio Public Employment Risk Reduction Program (PERRP) health and safety regulatory requirements. The addition of a fleet management software will afford greater control and oversight of the equipment, allowing for instrument tracking, expedient preventative maintenance, settings control and data management.

Table 1. Current Fleet of Portable Gas Meters¹

Location	4-Gas Monitor Instruments	Test Stands (Calibration Stations)
EMSC	80	33
Southerly WWTP	38	23
Easterly WWTP	20	15
Westerly WWTP	20	15
TOTAL	158	86

¹ The above information is provided to assist the vendor in understanding the scope and volume of work. It is understood by the District that quantities above are subject to minor changes based upon available system components and features.

It is in the District's intent to hire one firm (Vendor) for Professional Services to fulfill its needs for this project. It is necessary that the Vendor can provide:

- The required quantity of 4-gas aspirated portable gas monitoring instruments, associated calibration and maintenance equipment, and a software solution for managing the entire equipment fleet;
- Best in class solutions to meet the District's employee safety and work process gas detection needs; and
- The requested services in a cost effective, professional, and efficient manner.

1.3 INFORMATION TECHNOLOGY ENVIRONMENT

The District's information system infrastructure consists of two physically separated networks: the business network and the process control network.

The process control network supports plant automation and control processes at the District's wastewater treatment plants and collection system.

The business network environment is the platform for the District's business information systems supporting many District departments, including Finance, Human Resources, Operations & Maintenance, Engineering & Construction, Health & Safety, Security, Purchasing, Regulatory Compliance, Analytical Services, and Customer Service.

The District maintains maintenance and support agreements with our application vendors to have access to application patches and upgrades.

SECTION 2.0 – SCOPE OF WORK

The District seeks to purchase portable 4-gas meters and associated calibration and maintenance equipment as well as the purchase and implementation of a fleet management system software solution to fulfill the District's needs to protect employees working in potentially hazardous atmospheres. The requested services are described in the following sections.

2.1 PORTABLE 4-GAS METERS & ASSOCIATED EQUIPMENT

Provide a new fleet of portable 4-gas detection instruments and associated calibration and maintenance equipment to replace the existing fleet as shown in **Table 1**. Key features of the desired gas monitoring equipment and systems include the following:

- Instrument and component durability and warranty
- Ease of use for employees in the field
- Instrument efficiency
- Speed of sensor responsiveness
- Battery life and charging capability
- Calibration/bump test efficiency (speed and calibration gas usage)
- Overall functionality/utility/reliability
- Ongoing support (initial implementation and beyond)
- Data logging, download and retention capability
- Minor repair capability (i.e. changing sensors, replacing covers, etc.)
- Equipment maintenance and repair contract options
- Purchase cost and ongoing maintenance costs

In addition, provide the following services:

- Expert guidance in selecting a portable gas monitoring system appropriate for District needs and working conditions;
- Training for the District's Health and Safety staff as fleet managers and equipment subject matter experts;
- Support in deploying new equipment at District locations in coordination with Health & Safety staff;
- Support to the District's Information Technology staff on appropriate network integration at each location; and
- Provide for ongoing technical support for hardware equipment and software during implementation (estimated approximately one (1) year).

2.1.1 The portable 4-gas monitoring instruments must meet the following technical specifications:

PHYSICAL CHARACTERISTICS											
Gas delivery	Instrument shall have non-detachable integral pump										
Environmental protection	Instrument shall be minimum IP65-rated for dust and water ingress.										
Display location	Instrument display shall be viewable from the front.										
BASIC OPERATIONAL FEATURES											
Instrument buttons	Buttons on instrument must be easy to operate while use wears gloves.										
Zero adjustments	Instrument shall provide fresh air setup.										
Zero adjustment safety lockout	Fresh air setup function shall not allow instrument to zero out hazardous readings.										
Confidence signals	Instrument shall provide periodic audible and visual signals indicating instrument operation.										
Time/date	Instrument must be able to display time and date.										
Last calibration date	Instrument must be able to display last successful calibration date.										
MONITORING CAPABILITY											
Sensor configuration	User shall be able to enable/disable individual sensor channels.										
Sensor missing alarm	All sensor channels provide missing sensor alarm if sensor has been removed and sensor channel has not been disabled.										
Sensor types	<p>Instrument shall be configured with the following gas sensing options:</p> <table> <tr> <th><u>Gas type</u></th><th><u>Range</u></th></tr> <tr> <td>Combustible</td><td>0-100%LEL</td></tr> <tr> <td>Oxygen</td><td>0-30%Vol</td></tr> <tr> <td>Carbon Monoxide</td><td>0-10,000 ppm</td></tr> <tr> <td>Hydrogen Sulfide</td><td>0-200 ppm</td></tr> </table>	<u>Gas type</u>	<u>Range</u>	Combustible	0-100%LEL	Oxygen	0-30%Vol	Carbon Monoxide	0-10,000 ppm	Hydrogen Sulfide	0-200 ppm
<u>Gas type</u>	<u>Range</u>										
Combustible	0-100%LEL										
Oxygen	0-30%Vol										
Carbon Monoxide	0-10,000 ppm										
Hydrogen Sulfide	0-200 ppm										
ADVANCED DISPLAY AND SOFTWARE OPTIONS											
Industrial Hygiene displays	Instrument shall have capability of displaying PEAK, STEL, and TWA.										
Instrument settings	All settable instrument parameters shall have the ability to be protected by user-selected password.										
Measurement Instruments	Instrument shall be capable of displaying both types of gas sensors installed and the measurement instruments for each gas.										
INSTRUMENT ALARMS											
Instrument movement feature	Instrument shall have the option to activate an alarm when no instrument movement is detected for 30 seconds (Man-down feature)										
User's manual alarm feature	Instrument shall have a feature to allow user's manual activation of all alarms.										
Visual alarms	Visual alarms shall consist of bright, flashing LEDs.										
Audible alarm	Audible alarm shall be rated at a minimum 95 dB.										
Vibrating alarm	Instrument shall be offered with a vibrating alarm.										

Oxygen alarms	Oxygen channel shall have alarm set points for both oxygen deficiency and oxygen enrichment.
Alarms set points	Alarm set points must be user settable.
STEL and TWA alarm	Instrument shall provide audible, visual and vibrating alarms if STEL or TWA levels are exceeded. Alarm set points for STEL and TWA shall be user selectable.
Battery alarms	Monitor shall provide user with a warning of battery power loss.
INSTRUMENT POWER	
Power supply	Instrument shall be equipped with rechargeable lithium-ion battery.
Charging cradle	Charging cradle shall be offered.
Charger input voltages	Chargers shall be available for 110VAC/220 VAC.
Charging status	Both instrument and charging cradle shall provide visual indication of battery charging status.
CALIBRATION	
Calibration tools	Instrument shall require no special tools for calibration other than cylinder, regulator and tubing to supply gas to instrument.
Pushbutton calibration	Calibration shall be easily performed using instrument's push buttons. Internal instrument access or tools shall not be necessary for calibration.
Calibration time	Span calibration shall not exceed 60 seconds for LEL, O ₂ , CO, and H ₂ S.
Automatic calibration	Instrument shall be compatible with optional automated test and with calibration system able to store data. External system shall automatically recognize and calibrate instrument and retain all calibration records
SAMPLING SYSTEMS	
Sampling modes	Instrument shall be configured with a non-detachable internal pump.
Sampling systems filters	Pump must contain user-replaceable filters to prevent liquids and dust ingress.
Fluid ingress protection	Sample probe shall be offered that is designed to prevent water and debris from entering instrument.
SENSOR CHARACTERISTICS AND PERFORMANCE	
Sensor life	LEL, O ₂ , CO, H ₂ S sensors shall have minimum expected 2-year life.
End-of-life sensor indicator	Instrument shall notify user when sensor is close to and at its end-of-life following calibration.
DATA LOGGING (INSTRUMENT DATA STORAGE)	
Data logging	Instrument must be available with standard data logging.
Event log	Instrument shall record at least 100 events.
Data log capacity	Data log shall record and store data for average of 200 hours without overwriting existing information during normal use.
Gas record content	Data log entries shall contain as minimum date, time and record of peak and average readings for each gas sensor (oxygen shall be recorded as maximum and minimum for these intervals).

Data retention	Instrument data stored in memory shall not be lost or corrupted in event of sudden instrument power loss.
Activity record content page	Instrument data log shall record and be capable of reporting significant instrument events including gas and battery alarms, fresh air setups, sensor re-zeroing and calibrations, battery voltage and elapsed run time.
MAINTENANCE AND WARRANTIES	
Sensor replacement	Sensors shall be easily accessed and replaced by users if desired by purchaser.
Warranty, consumables	Instrument shall have a standard 3-year back-to-back warranty under normal use conditions.

2.1.2 The Calibration Stations and accessories for the portable 4-gas instruments must meet the following technical specifications:

TEST STAND	
Charging	Test stand must be capable of charging docked Instruments.
Display Type	Test stand shall have a durable touch screen.
INSTRUMENT CHARGERS	
Instrument charger	Each Instrument shall be capable of battery charging independent of the calibration test stand.
SYSTEM FEATURES / OPTIONS	
Network Accessibility	Two Ethernet interfaces shall be provided at calibration station system. Ports should allow for connection and communication distribution between multiple test stands.
Fleet Management Software	System must have available fleet management software to proactively manage the gas detection program.
Stand-alone	System must be capable of operating without network, controller or computer.
Instrument Configuration	Test stands must have the ability to configure set points for gas detectors.
Instrument Always Ready	Instruments must have ability to independently "wake up" and be calibrated within the calibration test stand.
Charging	Each multi-gas detector test stand must provide for charging 1 detector. Multi-instrument chargers/ charging stations are desired.
Interconnectivity	Must have ability to connect up to 5 test stands and test stands must have ability to perform calibrations simultaneously.
Data Access	Data logs shall be downloaded from portable gas detectors and relayed via calibration test stand, preferably via an Ethernet connection.
USB Drive	Test stand shall provide data access via USB port on test stand.
SAMPLING SYSTEM	
Gas Delivery System	System must be capable of automatically drawing calibration gas from cylinder through demand flow regulator.
Pump Test	Test stand shall provide capability to automatically test pump for flow and proper operation.

Cylinder Test	Test stand shall provide capability to automatically determine if calibration gas cylinder is empty.
Sampling System Filters	System pump must have easily accessible replaceable filters for user.
ADVANCED SOFTWARE FEATURES	
Licensing	Software must be provided via digitally keyed USB drive.
Installers	Installers must be provided via USB software key or via web download.
Dashboard System Status	Dashboard must provide view of the current system status including number and type of alarm events, calibration gas status and any failed or overdue testing.
Data management	Access to data (gas sensor data, gas alarms and system events) must be provided via reporting screens. Must have ability to export data as a Microsoft Excel file.
Remote Management of Calibration Test Stand Banks	Test stand configuration properties must have ability to be changed and saved remotely via an Ethernet connection and the software system. Ability for changes to be propagated to one whole bank or individual test stands.
Instrument Configuration	Ability for instrument configurations to be created in software and transferred via secure digital USB key to the calibration test stand bank.
Fleet Management	Ability for new instruments to be added to the database automatically when docked with a calibration test stand.
Email Notifications	System must have capability of being configured with email lists to automatically email alerts to designated personnel for a select list of gas alarms and system events.
SYSTEM POWER	
Test Stand	Power module input power requirements: 100-240 VAC
Multi-Instrument Charger	Power module input power requirements: 100-240 VAC
WARRANTY / MAINTENANCE	
Warranty	Test stands shall have a minimum 2-year back-to-back warranty under normal use conditions.

2.2 GAS DETECTOR FLEET MANAGEMENT SYSTEM

Provide the necessary hardware, software and support for implementation of a fleet management system at the District. Key features of the system include the following:

- Ease of fleet management system use by Health and Safety staff
- Proactive managing of entire gas detector fleet regardless of location
- Instrument tracking
- Data management and retention
- Settings control

The proposed solution must also include professional services to install, configure, and deploy the hardware and software within the District's Infrastructure. Customization, where required to satisfy the requirements described herein, must also be included in the proposal. Services shall include:

- **Network Integration Services.** Ensure integration of new fleet management system with the District's existing network. Provide detailed requirements for the network to ensure that the performance of the network is adequate for the requested service
- **Installation & Configuration Services.** Ensure proper functioning of software and communication between the selected equipment and the web-based software system. Provide technical support services for installation and configuration of the fleet management software solution at the identified four (4) District locations: EMSC, Easterly WWTP, Southerly WWTC, and Westerly WWTC. Services shall include:
 - Provide server specifications to NEORSD in order to provide a virtual server for software installation
 - Install or assist NEORSD in installing the application software on the virtual server
 - Configure instruments, calibration stations and software to communicate as expected
 - Ensure that the application is accessible on NEORSD infrastructure to end users
 - Ensure network and device security
 - Provide documentation related to technical settings on the server and within the application
- **System Testing Services.**
 - Provide initial and on-going validation for all devices installed
 - Provide a Test Plan to NEORSD to verify functionality
 - Provide training to the system administrator and Health and Safety staff on the operation and maintenance of the software and equipment including backing up data and configurations
- **System Acceptance Testing Services.**
 - Provide an Acceptance Test Plan to NEORSD
 - Assist in the execution of the Acceptance Test Plan
- **System Training Services.**
 - Provide on-site training to the system administrator and Health and Safety staff
 - Answer any questions from Health and Safety staff
- **System Maintenance Services.** Provide initial implementation and arrange for ongoing technical support for the fleet management system for the duration of license or subscription agreement, including:
 - Access to technical support
 - Access to software updates as applicable

The fleet management software system must comply with the District's Infrastructure Standards. Most notably, it must support:

- Microsoft Windows Server 2016 and above
- VMWare virtual server, version 6.7
- Microsoft Windows Internet Information Server (IIS), version 7 or higher, or Apache
- Oracle database server, version 12C or higher, or SQL Server 2014 or higher
- Microsoft Windows10 (32-bit and 64-bit) for client computers
- Microsoft Office 365, including Office 2016 and above
- Microsoft Internet Explorer 11 and one additional browser (i.e. Google Chrome, Mozilla Firefox, Microsoft EDGE)

2.3 PROJECT MANAGEMENT

Project Management is a critical activity to be included within the execution of all tasks identified above. Tasks should be planned, executed, and controlled to meet the agreed upon goals within the agreed upon timeframe. Procedures related to scheduling, project documentation, risk management, QA/QC, and others as necessary should be utilized to enhance budget, scope and time management.

In order to ensure that tasks authorized under this contract are successfully completed in a timely manner and to the satisfaction of the District, the selected Vendor shall provide Monthly Project Summary Reports, conduct and/or attend project meetings as required, and prepare monthly invoices.

2.4 DELIVERY OF SERVICES

The selected Vendor shall deliver all services under this RFP in a timely and effective manner to meet the District's needs. The specific schedule for each task will be agreed upon between the District and the Vendor at the time of Task Order issuance. The selected Vendor shall begin work immediately upon authorization to proceed on a task (typically via email) and shall adhere to the schedule mutually agreed upon by the District and the Vendor for said task. Adequate time shall be built into the schedule for each task to allow for sufficient review time of any reports, technical information, documents, etc. by District staff. The Vendor shall also provide monthly status updates and invoices in accordance with the District's standard procedures.

SECTION 3.0 – SCHEDULE

In order to balance resources and impacts to operations, the District anticipates a phased implementation schedule for the Portable Gas Detector Replacement & Implementation Project. The phased implementation of the selected equipment will be largely structured around the four (4) geographic locations and IT infrastructure availability. The District's preferred approach is as follows.

Phase 1: Software Integration and Equipment Delivery

Upon executed agreement between the District and the Vendor, the Vendor may begin work with the District's Information Technology and Health & Safety staff to proceed with fleet management software integration. Once final order is placed, it is preferred that all gas monitoring equipment and accessories purchased be delivered in bulk to a single, agreed-upon location.

Phase 2: Equipment and Software Testing

Each geographic location will have installed a minimum of two (2) complete units (instrument, calibration station and associated accessories). Each unit must be installed at a different location within the geographical site. Connection to the fleet management software will be established from each complete unit to ensure proper functioning and communications.

Phase 3: Site-Specific Equipment Implementation

The District anticipates implementation of the new equipment to be fully executed one location at a time. The goal will be that each site's implementation is fully completed before moving to the next location. The schedule will largely depend upon existing IT infrastructure and the installation timing of new infrastructure that will be needed to connect the equipment via ethernet.

- Phase 3a: Implementation at Site 1
- Phase 3b: Implementation at Site 2
- Phase 3c: Implementation at Site 3
- Phase 3d: Implementation at Site 4

Phase 4: Full System Integration

The final phase will ensure that the equipment and software systems are fully functioning as intended at all of the four (4) locations listed above. The Vendor should expect to provide ongoing technical support and troubleshooting services for the duration of the contract

The project is anticipated to last approximately one (1) year.

SECTION 4.0 – PROPOSAL FORMAT & REQUIRED INFORMATION

Each Vendor shall submit an electronic version, in PDF format with bookmarks, via email to Carla DeSantis at DeSantisC@neorsd.org. The font size on all submitted materials shall be equivalent to Times New Roman 12 pt. or larger. Proposals shall be no more than **20** pages as printed. All pages will be counted unless indicated otherwise in this RFP. Sheets that are 11"x17" shall be counted as two (2) pages.

The following information shall be included in the proposal:

4.1 EXECUTIVE SUMMARY

The Vendor shall provide a summation of the proposal including the recommended portable 4-gas meter instruments, recommended accessories and associated fleet management software, and why it is the best solution to the District's needs. In addition, the Vendor shall provide a brief synopsis of their specific expertise, resource capacity and understanding of the project requirements to assist the District in meeting its needs for implementation of the Portable Gas Detector Replacement & Implementation Project. The Vendor should also identify any key considerations that would make them a reliable source of assistance for this critical project.

4.2 PROJECT DELIVERY

The District is looking for a Vendor that will provide excellent service and deliver quality work. The District expects this quality service to extend through the entire duration of the project. In this section of the Proposal, present the capabilities, skills, and experience of your project manager as well as how you have served the District on prior projects, if applicable. These factors will be strongly considered in selecting the successful Vendor for this project.

4.2.1 Proposed Project Manager

The District expects the proposed project manager to lead the Vendor project team, be the single point of accountability for project delivery, and provide the primary point of communication between the District and project team. Describe the proposed project manager's experience on similar projects, experience on other District projects if applicable, and skills and results supporting the ability to serve the District. The project manager is considered the most important key team member and will be committed for the Contract's duration. Any change in project manager, or any other key team member, will require prior approval by the District.

The Vendor's proposed project manager must be experienced in projects of the magnitude and complexity of the services listed in **Section 2.0** and should be an organized individual that has the ability and availability to effectively perform contract management activities. It is expected that the Vendor's proposed project manager will be available for frequent personal interaction with the District. In addition, the project manager must meet the following requirements:

- Must be experienced in projects of the nature outlined in the Scope of Services (**Section 2.0**) in this RFP.

- Must have had a key role in projects of similar or complementary nature.
- Must have managed projects of a similar or greater complexity and/or size.

4.3 QUALIFICATIONS

Because of the critical nature of the work described within this RFP, the District seeks services from highly experienced and qualified Vendor project teams who can demonstrate evidence of successful portable gas monitoring equipment and software implementations within the last five (5) years. The Vendor must be able to staff this project with qualified individuals, experienced in the key technical disciplines needed, who shall remain committed to this work from inception through completion. A clear and comprehensive organization chart must be presented to illustrate the organization of the team and key team members.

Vendors must meet or exceed the minimum qualifications listed below and are asked to clearly demonstrate this in their proposal.

- Successful implementations of systems similar in scope to those requested in this current project;
- Previous experience in utility industry, preferably water/wastewater, providing equipment and services as noted in this RFP;
- Representatives with expert knowledge of portable gas monitoring equipment and practices, employee safety and regulatory workplace safety requirements, including work in environments with hazardous atmospheres (such as permit required confined spaces);
- Ability to provide local gas detection system equipment support representative(s) during implementation; and
- Ability to provide readily available and responsive software support representative(s) during and through implementation.

4.3.1 Experience of Key Team Members on Similar Projects

Include brief resumes for proposed key team members (excluding the proposed project manager, who should be addressed as noted in **Section 4.2.1**) proposed to work on the project. The information should be focused on experience on similar and/or complementary projects. The information for these projects shall include, at a minimum, the following: project description, key staff member's role, client, client contact information, project cost (as applicable), and year completed. Identify the office locations of all proposed key team members.

4.3.2 Project Examples/References

Include a description of three (3) recent projects/programs/efforts that included a similar scope of work as the requested services. The following information shall be included for each project:

- Client Name
- Client Contact (address, phone, email)

- Project Title
- Product Description
- System Description (equipment and software configuration)
- Start and end dates of project
- Vendor fees/project budget and overall project performance
- Vendor's role in project – highlight roles of staff

4.3.3 Business Opportunity Program Participation

The District encourages Minority and Women Business Enterprises (MBE/WBE) and Small Business Enterprises (SBE) participation on this project. All certified firms will receive notification of the RFP and have the opportunity to submit individually or as a part of a team. Teaming with District-certified MBE/WBE firms will be considered as part of the proposal evaluation.

MBE and/or WBE firms submitting proposals for this project shall be certified with the District at the time of proposal. Questions regarding the District's Business Opportunity Program shall be addressed to Ms. Tiffany Jordan, Contract Compliance Manager, at (216) 881-6600, extension 6640, or JordanT@neorsd.org. A copy of the District's Business Opportunity Program MBE/WBE policy is included as **Attachment C**.

4.4 TECHNICAL APPROACH

The Vendor's technical approach to the Project is a very important component of the selection. In the Proposal, the Vendor is requested to demonstrate their understanding of the project, provide a summary of the critical issues, and describe the Vendor's proposed approach to meet the District's objectives.

4.4.1 Critical Issues

The Vendor should include a description of what they view as the critical issues (e.g., the main risks, improvement opportunities, processes, etc.) associated with this contract in this section of the Proposal.

4.4.2 Proposed Approach

The Vendor shall describe their approach to providing the requested services including identification of the selected portable gas detection instruments, associated calibration and maintenance equipment, and the fleet management software. The Vendor shall clearly identify how the selected equipment and systems meets the Technical Requirements in **Section 2.1** and **Section 2.2** of this RFP. In addition, the Vendor shall demonstrate the suitability of the selected products to meet the District's needs. Please describe in detail your processes to successfully configure and implement a new fleet of portable gas detectors and a fleet management system. Include your expected resource allocation from NEORSd in order to provide the required services, including staffing and time commitments. Describe any innovative management methods to increase effectiveness of the Project, as well as their projected value to the Project.

4.4.3 Proposed Schedule

Provide a proposed schedule in accordance with the requirements in **Section 3.0** of this RFP.

4.5 FEE PROPOSAL

Submit the completed fee proposal spreadsheet provided in *Attachment B Fee Proposal*. Vendors are encouraged to also provide a detailed fee proposal in a format of their own choosing in addition to the Fee Proposal form. **Indicate the hourly or daily labor rates used to determine labor costs.**

Provide all costs associated with this project:

- Instruments and associated calibration and maintenance equipment costs must be presented by manufacturer part number with individual costs for each part. Components required for the system must be indicated as such. Optional equipment offering must be indicated as optional and not integral to operating the system or equipment.
- All additional costs associated with ordering, shipping, handling, or delivery must be included in the cost of the equipment.
- All costs (hours and associated labor rates) associated with the deployment of units must be included in the Fee Proposal.
- The District is a sales tax-exempt organization. Tax exempt certificate will be provided at the time of order placement. Sales tax must not be included in this proposal.
- Any costs associated with equipment fleet management software implementation and/or support must be included as a separate line item.
- Software license fees and/or annual subscription fees must be indicated as separate line items.

No additional charges, other than those listed in the cost proposal, shall be made.

4.6 PROPRIETARY INFORMATION

All material submitted to the District becomes public property and is subject to the Ohio Open Public Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The District will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Ohio Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

4.7 ADDITIONAL INFORMATION

Any additional information that may support the decision to purchase your system. Product brochures, technical documents, and literature are encouraged. If the materials must be distributed as hard copies, you may mail them to:

Northeast Ohio Regional Sewer District
4747 East 49th Street
Cuyahoga heights, Ohio 44125
Attn: Carla DeSantis

4.8 EXCEPTIONS AND DEVIATIONS

If the Vendor finds any portion of the specifications described in this RFP to be impractical or impossible, it must be so stated in the submitted proposal, with all exceptions and deviations explicitly described in a section entitled, “Exceptions and Deviations.” These items should be clearly defined and all-inclusive. Each exception or deviation must contain a definition statement with adherence to specific RFP sections. Exceptions and deviations noted, described, or included in other sections of the Proposal without inclusion in the Exceptions and Deviations section will not be accepted as exceptions or deviations.

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

4.9 CONFLICT OF INTEREST

Each proposal submitted must include the following statement, acknowledged and signed by a responsible party of the Vendor:

“By submitting this proposal response, I acknowledge, on behalf of the entity submitting this proposal, that I have familiarized myself with the District’s Code of Ethics which is located on the District’s web page at https://neorsdpmo.org/ExternalUserPage/Pages/125P_DistrictCodeofEthicsPUBLIC.pdf and certify that, to the best of my knowledge, there is no conflict of interest involving my entity and that I have authority to make such certification. I understand that any conflict or potential conflict of interest, must be reported to the District’s contact person for this request for proposal in writing prior to the submission of the proposal response. I further understand that conflict of interest or potential conflict of interest information may be considered by the District in evaluating a proposal response.”

SECTION 5.0 – EVALUATION & SELECTION PROCESS

Once all proposals have been received, the Selection Committee will follow these steps. Additionally, a phone survey may be conducted to evaluate the past performance of the participating vendors on similar projects. This survey will be limited to the contacts provided in the proposal as required in Section IV. NEORSD reserves the right to request any additional information that may be deemed necessary during the evaluation process.

5.1 EVALUATION CRITERIA

Written proposals that comply with the requirements described in Section IV will be evaluated and scored by a cross-functional team of subject matter experts based on the following:

Criteria	Description	Points
Equipment and System Capabilities	Proposed Equipment and Software <ul style="list-style-type: none">• Compliance with functional requirements• Compliance with technical requirements• Ability of system to scale to meet future needs and objectives• System stability• Equipment warranty	30
	Qualifications and Implementation Plan Experience and Availability of Project Team <ul style="list-style-type: none">• Demonstrated knowledge of utility environment and ability to meet project needs• Experience developing and supporting proposed system in environments similar to NEORSD• Availability to support implementation	10
	Implementation Plan <ul style="list-style-type: none">• Understanding of NEORSD's specific needs and goals• Implementation methodology designed to meet District needs• Technical support options during implementation• Training plan and resources	20
System Sustainability	Hardware <ul style="list-style-type: none">• Instrument and accessories software updating options (portable instruments and calibration stations)• Instrument user maintenance capability• Maintenance and repair service contract options	20
	Fleet Management Software <ul style="list-style-type: none">• Hosted software update process• Ease of use, dashboard and reporting capability• Data retention and recovery process	10
Cost	<ul style="list-style-type: none">• Initial system purchase cost• Annual system maintenance costs, including fleet management software costs	10
		100

5.2 PRODUCT AND PROOF OF CONCEPT DEMONSTRATION

Upon completion of the scoring and ranking of the written submittals, the District will select the top ranked Vendors to present the product and proof of concept demonstration to the District. Proposers will be provided a list of demonstration topics to address in their demonstration. All topics must be covered. Additional topics may be demonstrated as time allows. The District may prepare and submit a list of questions to each of the short-list Vendors to address during their presentation. Proposers will be provided a minimum of ten (10) business days' notice of their scheduled date and time.

Upon completion of the presentations, the District Selection Committee will score (up to 50 additional points) each Vendor according to the following criteria:

- Demonstration of the recommended solution including all gas monitoring system equipment and a demonstration of the proposed fleet management software
- Degree of alignment with business objectives
- System ease of use and performance
- Ability of the solution to address the business and technical requirements
 - How well the solution meets future needs of the organization
 - Flexibility, configurability, and extensibility of the solution
- Response to District Questions

5.3 NEGOTIATION

After evaluation, the District will enter into negotiations with the highest ranked Vendor to develop a final and mutually agreed-upon scope of work and fee structure. If agreement cannot be reached with the highest ranked Vendor, the District may initiate negotiations with the next highest ranked Vendor.

5.4 RECOMMENDATION TO AWARD

Upon reaching agreement on the scope and fee structure for the contract, the Selection Committee will make a recommendation to award to the District's Consultant Review Committee (CRC).

5.5 RECOMMENDATION TO ENTER INTO AN AGREEMENT

Upon approval by CRC, District staff will report to the Board of Trustees and make a recommendation to enter into an agreement based on the outcome of the negotiations.

The selected Vendor cannot commence work on any aspects of the project prior to Board approval and subsequent execution of the District's standard Agreement.

END OF RFP

ATTACHMENT A – STANDARD AGREEMENT

ATTACHMENT A
AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND

THIS AGREEMENT made as of this ____ day of _____, 20____ 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 required professional services;

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

Section 1. DEFINITIONS

1.1 "District" means the Northeast Ohio Regional Sewer District.

1.2 "Chief Executive Officer" means the Chief Executive Officer of the Northeast Ohio Regional Sewer District, his/her successor, or his/her authorized designee.

1.3 "Consultant" means [REDACTED].

1.4 "Director" means the District's Director of [REDACTED].

1.5 "Services" means the work and services performed by Consultant as detailed in the exhibits to this Agreement.

1.6 "Base Contract Price" means the Consultant's base contract price for Services as specified in the original contract scope of Services developed from the Request for Proposal and the Consultant's written proposal or revised proposal.

1.7 "Contract Modification" means changes to the original contemplated contract scope of Services, contract terms and conditions, or Total Contract Price. A Contract Modification must receive prior authorization by the Chief Executive Officer and be executed by both parties.

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.

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 monthly 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"). The District shall use best efforts to compensate Consultant within thirty (30) days after the District's approval of each invoice.

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. If required under the District's Bylaws, 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.

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 by the District.

6.3 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.

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.

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

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 \$1,000,000 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, 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 OF AGREEMENT

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. Invalidity 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. CONSULTANT USE OF DISTRICT EQUIPMENT

15.1 Should the District authorize Consultant to use any District-owned or leased property, including but not limited to, desktops, laptops, and/or other equipment (the "Equipment"), Consultant shall to do all of the following:

1. Return the Equipment in the same condition as when provided to Consultant;

2. If lost, damaged, or stolen, compensate the District the replacement cost of the Equipment in a timely manner with the agreement that the District may also subtract said replacement cost from any amounts owed to the Consultant by the District;
3. Complete and return any District-required forms relative to use of the Equipment;
4. Comply with all District policies, rules and instructions relative to the use of the Equipment;
5. Release the District from any and all liability relative to the Consultant's use of the Equipment;
and
6. Indemnify the District in accordance with the indemnity provisions contained in this Agreement with respect to any damages to third parties caused by the negligent use of the Equipment by Consultant.

15.2 The Consultant shall not allow access to or use of the Equipment by any individual(s) not expressly authorized in writing by the District to access and/or use the Equipment.

Section 16. MISCELLANEOUS

16.1 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.

16.2 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.

16.3 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.

16.4 Confidentiality. Should the Consultant be granted access to confidential information of the District during performance of Services hereunder, 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 17. MBE/WBE/SBE COMPLIANCE

17.1 The Minority- and Women Business Enterprise ("MBE/WBE") and/or Small Business Enterprise ("SBE") subcontracting goals established for this Agreement are . 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 18. EXHIBITS

18.1 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.

ERIC J. LUCKAGE
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.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

Date

ATTACHMENT B – FEE PROPOSAL

ATTACHMENT B – FEE PROPOSAL

EQUIPMENT / ACCESSORIES			
	Qty	Cost/Per Unit	Manufacturer Part Number
4-Gas Monitor (O2, CO, H2S, LEL)	158		
4-Gas Monitor 1 Year Extended Warranty	158		
Test Stands (Calibration Stations)	86		
Additional Required / Optional Equipment			
	Required or Optional?	Cost/Per Unit	Manufacturer Part Number
Multi-unit Charging Station			
Demand Flow Regulator			

**All additional costs associated with ordering, shipping, handling, or delivery must be included in the cost of the equipment.*

FLEET MANAGEMENT SOFTWARE		
	Description	Fee(s)
Software		
License		
Annual Subscription		
Implementation Fee		

PROJECT IMPLEMENTATION TEAM				
Name	Title	Hourly Rate	Number of Hours	Notes

TOTAL PROJECT COST

**No additional charges, other than those listed in the cost proposal, shall be made.*

ATTACHMENT C – BUSINESS OPPORTUNITY PROGRAMS



**Northeast Ohio Regional Sewer District
Small Business Enterprise (SBE) Program**

Policies and Procedures Manual

November 16, 2017

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INTRODUCTION

The Northeast Ohio Regional Sewer District (NEORSRD) has an interest in maintaining and advancing the public welfare by assuring that its public expenditures promote the financial growth and stability of small businesses. NEORSRD endeavors to increase economic opportunity for small businesses to advance the well-being of citizens of the greater Cleveland metropolitan area as well as Cuyahoga County and its surrounding counties.

NEORSRD has developed this SBE Program in order to administer a race- and gender-neutral contracting program for the benefit of all small businesses that meet the requirements under the program.

ARTICLE 1. **DEFINITIONS**

For the purpose of this SBE Program, the following words, terms, phrases and abbreviations shall have the following meanings:

“Affiliate” of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity, or an identity of interest between or among parties exists such that affiliation may be found. In determining Affiliation, the NEORSRD shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether an applicant meets small business size criteria of this Policy. The NEORSRD will follow the requirements of 13 C.F.R. Part 121, as amended, in applying this definition.

“Annual Aspirational Goals” shall mean the targeted levels established by the NEORSRD for the annual aggregate participation of SBEs in NEORSRD Contracts.

“Bidder” or “Contractor” shall mean any person or entity that submits a bid or proposal to NEORSRD, or has expressed interest in submitting a bid or proposal in response to a solicitation issued by NEORSRD, or who has been awarded a Contract by NEORSRD.

“Broker” shall mean a person or entity that fills orders by purchasing or receiving supplies from a third party rather than out of its own existing inventory, and provides no Commercially Useful Function other than acting as a conduit between his or her supplier and his or her customer.

“Commercially Useful Function” shall mean responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually

performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner, as determined by NEORSD in its sole discretion. To determine whether a firm is performing a Commercially Useful Function, the NEORSD will evaluate the amount of work subcontracted, normal industry practices and other relevant factors.

A SBE performs a Commercially Useful Function when it is responsible for the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a Commercially Useful Function, the SBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The determination that a SBE is performing a Commercially Useful Function will be determined by the amount of work subcontracted, normal industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other relevant factors.

A SBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of SBE participation.

Generally, if a SBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the SBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a Commercially Useful Function.

“Compliance” shall mean the condition existing when NEORSD has determined that a participant has met the requirements of this Program.

“Contract” shall mean any mutually binding legal obligation of NEORSD created to acquire some good and/or service from one or more firms, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of NEORSD. In this context, the terms “contracting,” “purchasing,” and “procurement” are synonymous and refer to the process or processes under which NEORSD undertakes such acquisitions. Contract does not include sole source procurements, which by their very nature limit the source of supply to one vendor; State of Ohio contract purchases that do not require competitive bidding; the acquisition of any interest in real property, including lease holdings; direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures; agreements with non-profit or governmental entities; agreements with utility providers; and any other categories and subcategories of goods and services that NEORSD may from time to time establish as excluded.

“Contract Goal” shall mean the goal or goals for SBE participation on a particular project or Contract based upon the availability of SBEs in the scopes of work of the project or Contract.

“Economically Disadvantaged” shall mean a firm with gross receipts that do not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at www.neorsd.org, relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts.

“Expertise” means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required. A firm shall be entitled to a rebuttable presumption that it has the Expertise to perform in the categories for which it is applying for certification under the SBE Program if the firm has been in continuous operation in those categories for at least one (1) year prior to its application for certification.

“Joint Venture” shall mean an association of two or more independent Bidders or Contractors formed to carry out a for-profit business enterprise in a single transaction or a series of transactions, for which, pursuant to a written agreement (i) the parties combine, pool, or integrate some of their assets with a view to mutual gain, but otherwise remain independent operations and (ii) the SBE has a legal and actual right or obligation, consistent with its equity share of the Joint Venture (A) to contribute to the operating capital of the Joint Venture; (B) share in the operating profits or losses of the Contract and the Joint Venture; and (C) to perform clearly defined services under the Contract in the name of the Joint Venture.

“Local Small Business” shall mean a business entity with a functioning office located within the Marketplace of the NEORSD. Mailbox facilities or other similar arrangements are not sufficient to establish office location. Additionally, the firm must be registered to conduct business within the State of Ohio, as demonstrated through official documents filed with the Secretary of State of Ohio. Additionally, the firm’s gross receipts must not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at www.neorsd.org, relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts. A firm does not qualify as a Local Small Business for any calendar fiscal year in which its gross receipts, averaged over the firm’s previous five (5) fiscal years, exceed the size standards established by the NEORSD.

“Manufacturer” shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, Materials and/or Equipment, or supplies equipment required under the Contract and of the general character described by the specifications.

“Marketplace” shall mean the NEORSD’s geographic and procurement markets as established by the Disparity Study for the District’s Minority- and Woman-Owned Business Enterprise (MBE/WBE) Program: the Metropolitan Statistical Areas of Cleveland-Elyria-Mentor, Ohio; Akron, Ohio; Canton-Massillon, Ohio; Youngstown-Warren, Ohio; and Ashtabula, Ohio. Such Metropolitan Statistical Areas include the counties of Cuyahoga, Lorain, Medina, Summit, Portage, Geauga, Lake, Ashtabula, Trumbull, Stark, Mahoning, and Carroll.

“Material” shall mean supplies that may be incorporated into, or attached to, an end product, or that may be consumed or expended in the manufacturing process.

“Non-Compliance” shall mean the condition that exists when a Bidder or Contractor has failed to meet the requirements of this SBE Policy.

“Prime Contractor” shall mean the Contractor who enters into Contract with NEORSD and who is primarily responsible for performance under such Contract.

“Regular Dealer” shall mean a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt, without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

“Small Business Enterprise (SBE)” shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by NEORSD as meeting each of the following requirements:

1. **Operational Control.** The enterprise is in actual control of the management, major business decisions, and the conduct of the business and operations of the enterprise, independent from the control of another entity.
2. **Local Small Business.** The enterprise is qualified as a Local Small Business.

3. **Expertise.** The enterprise meets the NEORSD standards as to Expertise and Commercially Useful Function applicable to the certification being sought by the enterprise.

“User Department” shall mean the specific NEORSD department for which the Contract is entered into.

“Utilization Plan” shall mean the document(s) provided by the Contractor and approved by the NEORSD identifying the SBEs that the Contractor intends to utilize on a Project, including the corresponding scopes of work and dollar amounts.

ARTICLE 2.

SBE PROGRAM ADMINISTRATION

Definition and Purpose: The Office of Contract Compliance (OCC) is responsible for administering and enforcing the Small Business Enterprise Program (SBE Program) as established by this SBE Policy. The OCC shall periodically report to the Board of Trustees, the Chief Executive Officer and the Chief Financial Officer of NEORSD on all matters concerning the SBE Program.

Functions of the OCC: The OCC shall encourage contracting opportunities for SBEs, and strive to achieve the objectives of this SBE Policy and the SBE Program by, among other things:

1. Recommending written rules, regulations and procedures for adoption by NEORSD with respect to the administration of the SBE Program consistent with this SBE Policy.
2. Maintaining outreach assistance programs and Contractor advisory council(s) to promote contracting opportunities for SBEs, the efficacy of the SBE Policy, and the fair and equitable administration of the SBE Program.
3. Establishing, enhancing and maintaining relationships with agencies and stakeholders that share the goals of the SBE Program and, whenever possible, coordinating the operation of the SBE Program with the programs of such agencies and stakeholders.
4. Establishing uniform procedures and criteria for certifying, recertifying and decertifying businesses as SBEs, accepting certifications by other agencies, maintaining a directory of certified firms, and making the directory available to all interested persons.
5. Monitoring and tracking data related to utilization of SBEs and non-SBEs as Prime Contractors, subcontractors and/or Joint Venture partners in connection with the award or performance of Contracts.

6. Establishing Contract Goals with User Departments.
7. Responding to inquiries at pre-bid/proposal conferences regarding Contract solicitations that include Contract Goals.
8. Attending kick-off meetings for major projects to explain this SBE Policy and the SBE Program and applicable Contract Goals.
9. Tracking Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
10. Working with other NEORSD departments to monitor Contracts to ensure prompt payments to SBEs and compliance with Contract Goals and commitments, including gathering data to facilitate such monitoring.
11. Monitoring the Program and the NEORSD's progress towards the Annual Goals.
12. Investigating written complaints regarding the administration of the SBE Program.

Functions of the User Departments: The User Departments that have responsibility for Contract management shall have the following duties and responsibilities with regard to the Program:

1. Assisting the OCC with setting Contract Goals.
2. Assisting in the identification of available SBEs, and providing other assistance in meeting the Contract Goals.
3. Performing other activities to support the Program.
4. Gathering and maintaining prime contracting and subcontracting data for those Contracts that they manage.
5. Submitting subcontracting data as required to OCC.
6. Evaluating Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
7. Reporting Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.

ARTICLE 3.
MEASURES TO ENSURE EQUAL OPPORTUNITIES FOR ALL
CONTRACTORS AND SUBCONTRACTORS

The NEORSD shall develop and use measures, whenever economically feasible and authorized by law, to facilitate the participation of all firms in NEORSD construction contracting activities. These measures shall include, but are not limited to:

1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms.
2. Segmenting Contracts to facilitate the participation of SBEs, MBEs, and WBEs.
3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities.
4. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing.
5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available firms as subcontractors.
6. Adopting prompt payment procedures, including, requiring by Contract that prime Contractors promptly pay subcontractors.
7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the NEORSD.
8. Prohibiting the substitution of subcontractors without prior NEORSD approval.
9. At the discretion of the NEORSD, letting a representative sample of NEORSD construction Contracts without goals, to SBE utilization in the absence of goals.
10. Maintaining information on all firms bidding on NEORSD prime Contracts and utilization of subcontracts.
11. Referring complaints of discrimination to the appropriate authority(ies) for investigation.

ARTICLE 4.
ELIGIBILITY STANDARDS FOR SBE CERTIFICATION

The following standards will be used by OCC in determining an applicant's eligibility to participate in the SBE Program. The determination of OCC shall be within the sole discretion of OCC, subject to review as herein provided. The applicant has the burden of persuasion by a preponderance of the evidence to prove that it meets the eligibility criteria set forth in the SBE Policy.

Affiliation. Only an independent firm may be certified as a SBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the OCC will:

1. Scrutinize relationships with non-certified Firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
2. Consider whether present or recent employer/employee relationships between the Economically Disadvantaged owner(s) of the applicant and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.
3. Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.
4. Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

Certification. An applicant shall be certified only for specific types of work in which the Economically Disadvantaged owner(s) has the ability and Expertise to manage and control the firm's operations and work.

The NEORSD shall certify the eligibility of Joint Ventures involving SBEs and non-certified firms.

A firm may be certified under both the SBE Program and the District's MBE/WBE Program.

All applications for certification must be on NEORSD's SBE certification forms and any required affidavits must be properly completed and accompanied by notarized signatures.

In lieu of conducting its own certifications, the OCC by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the OCC determines that the certification standards of such entities are comparable to those of the NEORSD.

Recertification. The certification status of all SBEs shall be reviewed biannually by the OCC. Failure of the firm to seek recertification by filing the necessary documentation shall result in decertification.

It is the responsibility of the certified firm to notify the OCC of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.

Certification Denial and Decertification. Notwithstanding the ability of an applicant to meet these standards, the OCC reserves the right to deny SBE certification to any firm that, within five (5) years prior to submission of the SBE certification application, is or has been:

1. In arrears or declared to be in default to the NEORSD upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with the NEORSD;
2. In arrears or declared to be in default to another public or private entity upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with another public or private entity;
3. In default, as surety or otherwise, upon any obligation to the NEORSD; or
4. In default, as surety or otherwise, upon any obligation to another public or private entity.

This provision shall include, but not be limited to, a firm that has common ownership or control, or right of control, of any person, firm, corporation, joint venture, or joint venture partner that committed any of the above within the last five (5) years. Further, this paragraph shall apply equally to any firm that has committed any of the above while performing as a prime contractor, a subcontractor, or as a joint venture partner under a joint venture arrangement, even if such firm is submitting an application for SBE certification as a partner in a different joint venture arrangement, and regardless of whether the firm was the managing joint venture partner under the prior joint venture.

The OCC shall decertify a firm that does not continuously meet the eligibility criteria.

OCC may move to decertify a firm that repeatedly fails to respond to requests for quotations from Bidders who timely solicit participation on a Contract, that repeatedly fails to attend relevant pre-Bid conferences, or that repeatedly fails to honor quotations in good faith.

If an applicant is denied certification or recertification, it may not reapply for certification for a period of one (1) year from the date of the notice of denial. An applicant whose application for certification or recertification is denied may appeal the denial by filing a hearing application to the Chief Executive Officer within thirty (30) calendar days after of the notice of denial.

Decertification by another agency shall create a *prima facie* case for decertification by the OCC. The challenged firm shall have the burden of proving that its NEORSD certification should be maintained.

Such challenges to eligibility shall be subject to an appeal. The Chief Executive Officer shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the NEORSD renders a final decision.

ARTICLE 5.

ESTABLISHMENT OF GOALS

Annual Aspirational Goals. Annual Aspirational Goals for the utilization of SBEs on NEORSD Contracts and associated subcontracts shall be established each year by NEORSD.

Annual Aspirational Goals will be established by a committee appointed by the Chief Executive Officer made up of representatives from the Departments of Finance (OCC and Purchasing), Engineering and Construction, and Law. The committee will review utilization data of the prior year and analyze NEORSD needs for procurement for the upcoming year. The committee will submit goal recommendations to the Chief Executive Officer who will determine utilization goals for the upcoming year and report such goals to the Board of Trustees.

Contract Goals. OCC and the User Department, shall establish Contract Goals for Contracts based upon the availability of SBEs certified under the NEORSD SBE Program. Generally, SBE Contract Goals may be established on a Contract if there are at least three (3) SBEs certified to perform the anticipated subcontracting functions of the project. NEORSD may set Contract goals for SBEs in addition to MBEs and WBEs under the NEORSD MBE/WBE Program.

ARTICLE 6.
COUNTING SBE PARTICIPATION

OCC will count the entire amount of any of the following:

1. The portion of a Contract that is performed by the SBEs own forces, including the cost of supplies and materials obtained by the SBE for the work of the Contract, and supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
2. The entire amount of fees or commissions charged by a SBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. One hundred percent of the cost of the materials or supplies obtained from a SBE Manufacturer or Regular Dealer. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site will be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. A SBE certified in the area of trucking that is delivering bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt, do not require additional certification in order for the cost of such bulk items to be counted toward a SBE goal. Fees to Brokers will not be counted toward a SBE goal.
4. **Joint Ventures.** When a SBE performs as a participant in a Joint Venture, OCC will count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the SBE with its own forces and for which it is separately at risk.

The SBE must be certified at the time of bid or proposal submission to be counted towards meeting a Contract Goal.

The participation of a firm that is certified as a SBE and a MBE or WBE may be counted towards either goal in the Bidder's discretion, but cannot be double counted or split between such goals.

OCC will count only expenditures to a SBE that is performing a Commercially Useful Function. If a SBE subcontracts a greater portion of the work of a Contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a SBE is

presumed not to be performing a Commercially Useful Function, the certified Firm may present evidence to rebut this presumption.

If a firm ceases to be a certified during its performance on a Contract, the dollar value of work performed under a Contract with that firm after it has ceased to be certified shall not be counted.

In determining achievement of Contract Goals, the participation of a SBE shall not be counted until that amount has been paid to the SBE.

ARTICLE 7.

CONTRACT AWARD PROCEDURES

Meeting Goals. All Contractors must make Good Faith Efforts to attain Contract Goals. A SBE performing as a Prime Contractor or as part of a Joint Venture may count its own participation towards meeting the SBE goal. Bidders are required to complete all forms and submit all documents as described in the solicitation regarding SBE participation. Unless otherwise stated in the solicitation, information regarding specific SBEs shall be required at the time of the submission of a proposal for professional services, but shall not be required at the time of submission of a competitive bid. In the case of a competitive bid, SBE utilization information shall be submitted at the request of NEORS in accordance with the timeframe stated in the solicitation. Such information shall include:

1. A list of all SBEs and other subcontractors to be utilized on the Contract.
2. The dollar amount and percentage of Contract funds related to each first- and second-tier SBE and non-SBE subcontractor.

Unless otherwise stated in the solicitation, proposed SBE utilization toward special allowance or general allowance work will not be counted at the time of award. Subsequent utilization of SBEs for special allowance and general allowance work during performance of a Contract will be counted toward fulfillment of the SBE Contract Goal.

Evaluation of Good Faith Efforts. All Bidders for competitively bid Contracts must submit an Affidavit of Business Opportunity Program Compliance or other similar form provided in the solicitation, certifying that the Bidder will use Good Faith Efforts to meet the established Contract Goal. Failure to submit such Affidavit may render a bid non-responsive. In the event that a Bidder is unable to meet the Contract Goal, the Bidder must demonstrate that it made a Good Faith Effort to meet the Contract Goal. The Bidder must submit all NEORS-required Good Faith Effort forms, including any affidavits and SBE utilization plans that NEORS may require, at the time specified in the bid documents or requests for proposal. All Good Faith Efforts must be thoroughly documented.

The Bidder must document all solicitations and responses of SBEs, including the names, contact information, method of contact, dates, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and reasons for failure to reach agreement. The Bidder may not reject SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract Goals, as long as such costs are reasonable. The ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

The OCC will evaluate not only the kinds of efforts made by a Bidder, but also the quantity and intensity of such efforts. In evaluating whether a Bidder has made a good faith effort to achieve the Contract Goal, the OCC will evaluate at a minimum the Bidder's efforts to:

1. Solicit through all reasonable and available means (*e.g.*, attendance at pre-bid meetings, advertising and written notices) the interest of all SBEs certified in the scopes of work of the Contract. The Bidder shall provide interested SBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow SBEs to respond to the solicitation. The Bidder must follow up initial solicitations with interested SBEs.
2. Seek the OCC's assistance when experiencing difficulty identifying subcontracting opportunities or available SBEs.
3. Identify portions of the Contract capable of being performed by SBEs and, where appropriate, breaking out work items into economically feasible units to facilitate SBE participation, even when the Bidder would otherwise prefer to perform these work items with its own forces. It is the Bidder's responsibility to make a portion of the work available to SBEs and to select those portions of the work or material needs consistent with the availability of SBEs to facilitate their participation.
4. Assist interested SBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, or technical assistance, as may be required for performance on the Contract.
5. Utilize resources available to identify available SBEs, including SBE assistance groups, governmental business assistance offices, NEORSO-sponsored training programs, and other organizations that provide assistance in the recruitment and placement of SBEs.

A signed letter of intent from each listed SBE, describing the work, materials, equipment or services to be performed or provided by the SBE and the agreed upon dollar value shall be due within the timeframe specified in the bid or proposal solicitation.

OCC shall timely review the SBE documents before award, including the scope of work and the letters of intent from SBEs. OCC may request clarification in writing of items listed in the documents, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.

If OCC finds that a Bidder did not make sufficient Good Faith Efforts, the Bidder may be deemed non-responsive.

Good Faith Effort Requirements Ongoing. In the event that a Bidder is awarded a Contract without meeting the Contract Goal(s), such Contract award does not relieve the Bidder from the continuing contractual obligation to exercise Good Faith Efforts throughout performance of the Contract in order to meet the Contract Goal(s) before Contract completion. Failure to comply with this provision may subject a Contractor to the sanctions and penalties set forth in the Contract and/or this SBE Policy.

Determination of Non-Responsiveness or Lack of Responsibility. In addition to other factors in its evaluation, NEORSD may declare a bid or proposal to be non-responsive or not the "best", or the Bidder to not be responsible where it is determined that a Bidder has not submitted with its bid or proposal any form, affidavit, or other document required by the solicitation, this Policy or requested by NEORSD.

ARTICLE 8.

CONTRACT PERFORMANCE PROCEDURES

Upon award of a Contract by the NEORSD that includes Contract Goals, the Contract Goals shall become covenants of performance by the Contractor in favor of the NEORSD.

Reporting Requirements. Prime Contractors performing under NEORSD Contracts shall comply with all reporting requirements of NEORSD related to utilization of SBEs and other subcontractors, including, but not limited to, completing on-line reporting of payments made to such SBEs and other subcontractors.

OCC and the User Department shall monitor subcontractor participation during the course of the Contract. The NEORSD shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to SBE participation and the status of any SBE

performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the NEORSD for any purpose.

Contract Assignment by SBE. A SBE performing as a Prime Contractor or a subcontractor shall not be prohibited from assigning its interest in any NEORSD Contract or subcontract for the purpose of obtaining assistance from a financial institution.

Changes to Utilization Plans. The Contractor shall not make changes to the Utilization Plan or substitute SBEs named in the Utilization Plan without the prior written notification to OCC and the User Department. Changes or substitutions made without such notification shall be a violation of this Policy and may constitute a breach of Contract, subject to the breach provisions contained in the Contract.

All notifications of changes or substitutions of a SBE subcontractor(s) named in the Utilization Plan shall be made to OCC and the User Department in writing, and shall clearly and fully set forth the basis for such change or substitution. A Contractor shall not allow a substituted subcontractor to begin work until notification has been given to OCC and the User Department.

Substitutions of a SBE subcontractor shall be permitted only on one or more of the following bases:

1. Unavailability after receipt of reasonable notice to proceed.
2. Failure of performance.
3. Financial incapacity.
4. Refusal by the subcontractor to honor the bid or proposal price.
5. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
6. Failure of the subcontractor to meet insurance, licensing or bonding requirements.
7. The subcontractor's withdrawal of its bid or proposal.

Where the Contractor notifies the District of its intention to change or substitute a SBE subcontractor, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan, if achievement of the SBE Goal is affected. The Contractor may seek the assistance of OCC in obtaining a new SBE. If the Contract Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of OCC and the User Department to modify the Utilization Plan and must make Good Faith Efforts to ensure that SBEs have a fair opportunity to bid on the new scope of work.

Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the SBE Contract Goal.

Before Contract closeout, OCC shall evaluate the Contractor's fulfillment of the Contracted Goals, taking into account all substitutions, terminations and changes to the Contract's scope of work. If OCC determines that Good Faith Efforts to meet the SBE contractual commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the Contract or violation of this Policy has occurred, a remedy or sanction may be imposed, as provided in the Contract or other NEORSD rules.

ARTICLE 9.

REMEDIES, SANCTIONS AND PENALTIES

Scope and Applicability. Any SBE allegedly aggrieved by the provisions of this SBE Program may submit a written complaint to the OCC, setting forth the bases of such complaint. After receipt of a written complaint, the allegedly aggrieved party (the Complainant) may be afforded a hearing before the SBE Hearing Panel. The SBE Hearing Panel shall be empowered to hear all grievances concerning certification, de-certification, and any other grievances relative to the SBE Program.

Notice of Hearing. Upon receipt of a written complaint from the Complainant, NEORSD shall schedule a hearing before the SBE Hearing Panel within a reasonable time after receipt of such complaint. NEORSD shall provide notice of the date, time, and location of the hearing to the Complainant via registered mail. A Complainant may make one (1) request to reschedule a hearing after receipt of any hearing notice provided under this SBE Policy. NEORSD shall have no obligation to provide a rescheduled hearing for any Complainant who fails to appear at a properly scheduled hearing.

Hearing Conduct. The SBE Hearing Panel shall consist of at least three (3) manager- or director-level NEORSD officials, who shall be appointed by the Chief Executive Officer. The Chief Executive Officer shall have the discretion to serve on the Panel as one of the Panel members. The Chief Executive Officer may designate Panel members on a hearing-by-hearing basis, or at any other interval. Hearings before the designated SBE Hearing Panel shall be informal. The

Complainant may appear in person or via a representative designated by the Complainant. The Complainant may present evidence and witness testimony in support of the Complainant's alleged grievances. The Complainant may bring legal counsel. All hearings shall comply with State of Ohio law relative to the Open Meetings Act. Abusive or otherwise disruptive language or behavior at a hearing by a Complainant will be grounds for discontinuance and/or forfeiture by the Complainant of any hearing described under this Policy.

Hearing Decisions. The designated SBE Hearing Panel shall issue a written opinion setting forth the Panels' findings and recommendations within a reasonable time after the hearing.

Exhaustion of Legal Remedies. A Complainant must comply with the hearing process outlined above in order to exhaust its administrative remedies. Thereafter, a Complainant may seek any other statutory, legal or equitable remedies that may be available. Failure to exhaust all administrative remedies listed in this SBE Policy is an affirmative defense to any statutory, legal or equitable proceeding that may arise.

Advisory Recommendations. The designated SBE Hearing Panel shall have authority to render advisory recommendations to NEORSD, absent a hearing, upon the request of the NEORSD Contract Compliance Manager.

Sanctions. Any Bidder or Contractor who violates any provision of this SBE Policy may be subject to administrative sanctions. Violations of this Policy that may result in a breach of Contract include, but are not limited to, providing false or misleading information to NEORSD in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.

In addition, violations of this SBE Policy and Program may constitute a material breach of Contract, enforceable at law or in equity, and subject to the remedies contained in the Contract, including the imposition of penalties. A Contractor or subcontractor may be subject to sanctions and penalties if it is found by NEORSD to have:

1. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
2. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
3. Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or
4. Failed to comply in good faith with substantive provisions of this Policy.

In addition to the breach of Contract remedies available to NEORSD, the following sanctions and penalties are established for the enforcement of this Program:

1. Suspension for not to be less than two (2) years, unless the Chief Executive Officer determines that a shorter time period is warranted. The Chief Executive Officer may impose suspensions in excess of two (2) years in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct.
2. Other appropriate sanctions as the Chief Executive Officer deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the Contractor to the satisfaction of the Chief Executive Officer.

Guidelines for Imposition of Sanctions. The sole authority and power for imposition of sanctions shall lie with NEORSD. NEORSD's procurement policies shall apply to sanctions under this Policy.

1. **Severity of Sanctions.** In determining the length of any suspension, NEORSD shall consider the following factors:
 - a. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a reasonable misunderstanding on the part of the Bidder or Contractor of the requirements of this Program.
 - b. The number of specific incidences of Non-Compliance of this Policy by the Bidder or Contractor.
 - c. Whether the Bidder or Contractor has been previously suspended or has a history of violations of this Policy.
 - d. Whether the Bidder or Contractor has failed or refused to provide NEORSD with any information required or requested pursuant to the SBE Program.
 - e. Whether the Bidder or Contractor has materially misrepresented any applicable facts in any filing or communication to NEORSD.
 - f. Whether any subsequent restructuring of the Bidder's or Contractor's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

2. **Prohibition Against False Statements.** It shall be unlawful for any person, knowingly, willfully and with intent, to mislead or to make any false or fraudulent representations to NEORSD. NEORSD may impose sanctions against any person making such false representation in connection with the SBE Program. In addition, knowingly providing false information to a public official is punishable as a first degree misdemeanor, pursuant to O.R.C. § 2921.13.

ARTICLE 10. **SEVERABILITY**

If any of the provisions set forth in this Policy or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

ARTICLE 11. **CONTRACT-SPECIFIC MODIFICATIONS TO THIS POLICY**

Upon approval of the NEORSD's Chief Executive Officer and Manager of OCC, a User Department may make Contract-specific modifications to this Policy for a particular project. Such modifications shall be set forth in the NEORSD solicitation for bids or proposals.



**Northeast Ohio Regional Sewer District
Minority- and Women-Owned
Business Enterprise (MBE/WBE) Program**

Policies and Procedures Manual

November 16, 2017

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INTRODUCTION

The NEORSD engaged a consultant to perform an intensive disparity study (Disparity Study) to examine evidence regarding the experiences of minority- and women-owned firms in NEORSD's geographic and procurement marketplaces. The Disparity Study found both statistical and anecdotal evidence of business discrimination against MBEs and WBEs in the NEORSD's relevant market area.

Based upon the results of the Disparity Study, NEORSD has developed this MBE/WBE Policy in order to implement narrowly tailored race- and gender-based remedies for the existence of discrimination within the NEORSD's Marketplace.

ARTICLE 1. **DEFINITIONS**

For the purpose of this MBE/WBE Program, the following words, terms, phrases and abbreviations shall have the following meanings:

"Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity, or an identity of interest between or among parties exists such that affiliation may be found. In determining Affiliation, the NEORSD shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether an applicant meets small business size criteria of this Policy. The NEORSD will follow the requirements of 13 C.F.R. Part 121, as amended, in applying this definition.

"Annual Aspirational Goals" shall mean the targeted levels established by the NEORSD for the annual aggregate participation of MBEs and WBEs in NEORSD Contracts.

"Bidder" or "Contractor" shall mean any person or entity that submits a bid or proposal to NEORSD, or has expressed interest in submitting a bid or proposal in response to a solicitation issued by NEORSD, or who has been awarded a Contract by NEORSD.

"Broker" shall mean a person or entity that fills orders by purchasing or receiving supplies from a third party rather than out of its own existing inventory, and provides no Commercially Useful Function other than acting as a conduit between his or her supplier and his or her customer.

"Commercially Useful Function" shall mean responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner, as determined by NEORSD in its sole

discretion. To determine whether a firm is performing a Commercially Useful Function, the NEORSD will evaluate the amount of work subcontracted, normal industry practices and other relevant factors.

A MBE/WBE performs a Commercially Useful Function when it is responsible for the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a Commercially Useful Function, the MBE/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The determination that a MBE/WBE is performing a Commercially Useful Function will be determined by the amount of work subcontracted, normal industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other relevant factors.

A MBE/WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE participation.

Generally, if a MBE/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the MBE/WBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a Commercially Useful Function.

“Compliance” shall mean the condition existing when NEORSD has determined that a participant has met the requirements of this Program.

“Contract” shall mean any mutually binding legal obligation of NEORSD created to acquire some good and/or service from one or more firms, which is paid or which is to be paid for, in whole or in part, with monetary appropriations of NEORSD. In this context, the terms “contracting,” “purchasing,” and “procurement” are synonymous and refer to the process or processes under which NEORSD undertakes such acquisitions. Contract does not include sole source procurements, which by their very nature limit the source of supply to one vendor; State of Ohio contract purchases that do not require competitive bidding; the acquisition of any interest in real property, including lease holdings; direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures; agreements with non-profit or governmental entities; agreements with utility providers; and any other categories and subcategories of goods and services that NEORSD may from time to time establish as excluded.

“Contract Goal” shall mean the goal or goals for MBE and WBE participation on particular project or Contract based upon the availability of MBEs or WBEs in the scopes of work of the project or Contract.

“Economically Disadvantaged” shall mean a firm whose gross receipts do not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at www.neorsd.org, relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts.

“Expertise” means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required. A firm shall be entitled to a rebuttable presumption that it has the Expertise to perform in the categories for which it is applying for certification under the MBE/WBE Program if the firm has been in continuous operation in those categories for at least one (1) year prior to its application for certification.

“Joint Venture” shall mean an association of two or more independent Bidders or Contractors formed to carry out a for-profit business enterprise in a single transaction or a series of transactions, for which, pursuant to a written agreement (i) the parties combine, pool, or integrate some of their assets with a view to mutual gain, but otherwise remain independent operations and (ii) the MBE or WBE has a legal and actual right or obligation, consistent with its equity share of the Joint Venture (A) to contribute to the operating capital of the Joint Venture; (B) share in the operating profits or losses of the Contract and the Joint Venture; and (C) to perform clearly defined services under the Contract in the name of the Joint Venture.

“Local Small Business” shall mean a business entity with a functioning office located within the Marketplace of the NEORSD. Mailbox facilities or other similar arrangements are not sufficient to establish office location. Additionally, the firm must be registered to conduct business within the State of Ohio, as demonstrated through official documents filed with the Secretary of State of Ohio. Additionally, the firm’s gross receipts must not exceed the business size standards established by the NEORSD and posted on NEORSD’s internet site at www.neorsd.org, relevant to the scope(s) of work the firm seeks to perform on NEORSD Contracts. A firm does not qualify as a Local Small Business for any calendar fiscal year in which its gross receipts, averaged over the firm’s previous five (5) fiscal years, exceed the size standards established by the NEORSD.

“Manufacturer” shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, Materials and/or Equipment, or supplies equipment required under the Contract and of the general character described by the specifications.

“Marketplace” shall mean the NEORSD’s geographic and procurement markets as established by the Disparity Study: the Metropolitan Statistical Areas of Cleveland-Elyria-Mentor, Ohio; Akron, Ohio; Canton-Massillon, Ohio; Youngstown-Warren, Ohio; and Ashtabula, Ohio. Such Metropolitan Statistical Areas include the counties of Cuyahoga, Lorain, Medina, Summit, Portage, Geauga, Lake, Ashtabula, Trumbull, Stark, Mahoning, and Carroll.

“Material” shall mean supplies that may be incorporated into, or attached to, an end product, or that may be consumed or expended in the manufacturing process.

“Minority-Owned Business Enterprise (MBE)” shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by NEORSD as meeting each of the following requirements:

1. **Ownership.** At least 51% of the equity of the enterprise is owned by one or more Minority Individuals.
2. **Operational Control.** Minority Individuals are in actual control of the management, major business decisions, and the conduct of the business and operations of the enterprise.
3. **Local Small Business.** The enterprise is qualified as a Local Small Business.
4. **Expertise.** The enterprise meets the NEORSD standards as to Expertise and Commercially Useful Function applicable to the certification being sought by the enterprise.

“Minority Individual” shall mean a natural person who is a citizen or permanent resident of the United States and is a member of one of the following groups:

1. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa.
2. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
3. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
4. Asian-Americans (persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent).
5. Natural Persons who are not neither women nor members of other groups that are not described in subparagraphs 1-4 above and that are found by the NEORSD to be socially disadvantaged by having suffered racial or ethnic

prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the NEORSD's Marketplace or to do business with the NEORSD.

"Non-Compliance" shall mean the condition that exists when a Bidder or Contractor has failed to meet the requirements of this MBE/WBE Policy.

"Prime Contractor" shall mean the Contractor who enters into Contract with NEORSD and who is primarily responsible for performance under such Contract.

"Regular Dealer" shall mean a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt, without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

"Socially Disadvantaged" shall mean a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

"User Department" shall mean the specific NEORSD department for which the Contract is entered into.

"Utilization Plan" shall mean the document(s) provided by the Contractor and approved by the NEORSD identifying the MBEs and WBEs that the Contractor intends to utilize on a Project, including the corresponding scopes of work and dollar amounts.

"Woman" shall mean a natural person of the female gender, as defined under Ohio law.

"Woman-Owned Business Enterprise (WBE)" shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by NEORSD as meeting each of the following requirements:

1. **Ownership.** At least 51% of the equity of the enterprise is owned by one or more Women.
2. **Operational Control.** A Woman or Women are in actual control of the management, major business decisions, and the conduct of the business and operations of the enterprise.
3. **Local Small Business.** The enterprise is qualified as a Local Small Business.
4. **Expertise.** The enterprise meets the NEORSD standards as to Expertise and Commercially Useful Function applicable to the certification being sought by the enterprise.

ARTICLE 2.

MBE/WBE PROGRAM ADMINISTRATION

Definition and Purpose: The Office of Contract Compliance (OCC) is responsible for administering and enforcing the Minority- and Women-Owned Business Enterprise Program (MBE/WBE Program) as established by this MBE/WBE Policy. The OCC shall periodically report to the Board of Trustees, the Chief Executive Officer and the Chief Financial Officer of NEORSD on all matters concerning the MBE/WBE Program.

Functions of the OCC: The OCC shall encourage contracting opportunities for MBEs and WBEs, and strive to achieve the objectives of this MBE/WBE Policy and the MBE/WBE Program by, among other things:

1. Recommending written rules, regulations and procedures for adoption by NEORSD with respect to the administration of the MBE/WBE Program consistent with this MBE/WBE Policy.
2. Maintaining outreach assistance programs and Contractor advisory council(s) to promote contracting opportunities for MBEs/WBEs, the efficacy of the MBE/WBE Policy, and the fair and equitable administration of the MBE/WBE Program.
3. Establishing, enhancing and maintaining relationships with agencies and stakeholders that share the goals of the MBE/WBE Program and, whenever possible, coordinating the operation of the MBE/WBE Program with the programs of such agencies and stakeholders.
4. Establishing uniform procedures and criteria for certifying, recertifying and decertifying businesses as MBEs/WBEs, accepting certifications by other agencies, maintaining a directory of certified firms, and making the directory available to all interested persons.

5. Monitoring and tracking data related to utilization of MBEs/WBEs and non-MBEs/WBEs as Prime Contractors, subcontractors and/or Joint Venture partners in connection with the award or performance of Contracts.
6. Establishing Contract Goals with User Departments.
7. Responding to inquiries at pre-bid/proposal conferences regarding Contract solicitations that include Contract Goals.
8. Attending kick-off meetings for major projects to explain this MBE/WBE Policy and the MBE/WBE Program and applicable Contract Goals.
9. Tracking Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
10. Working with other NEORSD departments to monitor Contracts to ensure prompt payments to MBEs/WBEs and compliance with Contract Goals and commitments, including gathering data to facilitate such monitoring.
11. Monitoring the Program and the NEORSD's progress towards the Annual Goals.
12. Investigating written complaints regarding the administration of the MBE/WBE Program.

Functions of the User Departments: The User Departments that have responsibility for Contract management shall have the following duties and responsibilities with regard to the Program:

1. Assisting the OCC with setting Contract Goals
2. Assisting in the identification of available MBEs and WBEs, and providing other assistance in meeting the Contract Goals.
3. Performing other activities to support the Program.
4. Gathering and maintaining prime contracting and subcontracting data for those Contracts that they manage.
5. Submitting subcontracting data as required to OCC.
6. Evaluating Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
7. Reporting Contractors' achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.

ARTICLE 3.
RACE- AND GENDER- NEUTRAL MEASURES TO ENSURE EQUAL
OPPORTUNITIES FOR ALL CONTRACTORS AND SUBCONTRACTORS

The NEORSD shall develop and use measures, whenever economically feasible and authorized by law, to facilitate the participation of all firms in NEORSD construction contracting activities. These measures shall include, but are not limited to:

1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms.
2. Segmenting Contracts to facilitate the participation of MBEs, WBEs and other Local Small Businesses.
3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities.
4. Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing.
5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available firms as subcontractors.
6. Adopting prompt payment procedures, including, requiring by Contract that prime Contractors promptly pay subcontractors.
7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the NEORSD.
8. Prohibiting the substitution of subcontractors without prior NEORSD approval.
9. At the discretion of the NEORSD, letting a representative sample of NEORSD construction Contracts without goals, to determine MBE and WBE utilization in the absence of goals.
10. Maintaining information on all firms bidding on NEORSD prime Contracts and utilization of subcontracts.
11. Referring complaints of discrimination to the appropriate authority(ies) for investigation.

ARTICLE 4.
ELIGIBILITY STANDARDS FOR MBE AND WBE CERTIFICATION

The following standards will be used by OCC in determining an applicant's eligibility to participate in the MBE/WBE Program. The determination of OCC shall be within the sole discretion of OCC, subject to review as herein provided. The applicant has the burden of persuasion by a preponderance of the evidence to prove that it meets the eligibility criteria set forth in the MBE/WBE Policy.

Social and Economic Disadvantage. Only a Local Small Business that is owned and managed by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

1. The firm's ownership by a Socially and Economically Disadvantaged person must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
2. The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.
3. A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the dispersing of funds.
4. The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.
5. The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of

authority must be revocable, and the Socially Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy. The Socially Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

6. If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially Disadvantaged owner(s) must possess the required license or credential. If state law or other law or regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially Disadvantaged owner(s) actually controls the firm.
7. A Socially Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

Affiliation. Only an independent firm may be certified as a MBE or WBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the OCC will:

1. Scrutinize relationships with non-Certified Firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
2. Consider whether present or recent employer/employee relationships between the Socially Disadvantaged owner(s) of the applicant and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.
3. Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.

4. Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

Certification. An applicant shall be certified only for specific types of work in which the Socially Disadvantaged owner(s) has the ability and Expertise to manage and control the firm's operations and work.

The NEORSD shall certify the eligibility of Joint Ventures involving MBEs or WBEs and non-certified firms.

A firm owned by a Minority and Woman Individual or Individuals may be certified as both a MBE and a WBE.

All applications for certification must be on NEORSD's MBE/WBE certification forms and any required affidavits must be properly completed and accompanied by notarized signatures.

In lieu of conducting its own certifications, the OCC by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the OCC determines that the certification standards of such entities are comparable to those of the NEORSD.

Recertification. The certification status of all MBEs/WBEs shall be reviewed biannually by the OCC. Failure of the firm to seek recertification by filing the necessary documentation shall result in decertification.

It is the responsibility of the certified firm to notify the OCC of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.

Certification Denial and Decertification. Notwithstanding the ability of an applicant to meet these standards, the OCC reserves the right to deny MBE/WBE certification to any firm that, within five (5) years prior to submission of the MBE/WBE certification application, is or has been:

1. In arrears or declared to be in default to the NEORSD upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with the NEORSD;
2. In arrears or declared to be in default to another public or private entity upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with another public or private entity;
3. In default, as surety or otherwise, upon any obligation to the NEORSD; or

4. In default, as surety or otherwise, upon any obligation to another public or private entity.

This provision shall include, but not be limited to, a firm that has common ownership or control, or right of control, of any person, firm, corporation, joint venture, or joint venture partner that committed any of the above within the last five (5) years. Further, this paragraph shall apply equally to any firm that has committed any of the above while performing as a prime contractor, a subcontractor, or as a joint venture partner under a joint venture arrangement, even if such firm is submitting an application for MBE/WBE certification as a partner in a different joint venture arrangement, and regardless of whether the firm was the managing joint venture partner under the prior joint venture.

The OCC shall decertify a firm that does not continuously meet the eligibility criteria.

OCC may move to decertify a firm that repeatedly fails to respond to requests for quotations from Bidders who timely solicit participation on a Contract, that repeatedly fails to attend relevant pre-Bid conferences, or that repeatedly fails to honor quotations in good faith.

If an applicant is denied certification or recertification, it may not reapply for certification for a period of one (1) year from the date of the notice of denial. An applicant whose application for certification or recertification is denied may appeal the denial by filing a hearing application to the Chief Executive Officer within thirty (30) calendar days after of the notice of denial.

Decertification by another agency shall create a *prima facie* case for decertification by the OCC. The challenged firm shall have the burden of proving that its NEORSD certification should be maintained.

Such challenges to eligibility shall be subject to an appeal. The Chief Executive Officer shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the NEORSD renders a final decision.

ARTICLE 5.

ESTABLISHMENT OF GOALS

Annual Aspirational Goals. Annual Aspirational Goals for the utilization of MBEs and WBEs on NEORSD Contracts and associated subcontracts, as supported by the Disparity Study, shall be established each year by NEORSD.

Annual Aspirational Goals will be established by a committee appointed by the Chief Executive Officer made up of representatives from the Departments of Finance (OCC and Purchasing), Engineering and Construction, and Law. The

committee will review utilization data of the prior year and analyze NEORSD needs for procurement for the upcoming year. The committee will submit goal recommendations to the Chief Executive Officer who will determine utilization goals for the upcoming year and report such goals to the Board of Trustees.

Contract Goals. OCC and the User Department, shall establish Contract Goals for Contracts based upon the availability of MBEs and WBEs certified under the NEORSD MBE/WBE Program. Contract goals may be set separately for MBEs and WBEs or for MBEs and WBEs combined. Generally, MBE Contract Goals will be set on Contracts when there are at least three (3) MBE firms certified to perform the anticipated subcontracting functions of the Contract, and WBE Contract Goals will be set on Contracts when there are at least three (3) WBE firms certified to perform the anticipated subcontracting functions of the Contract. A combined MBE/WBE Contract Goal may be set when there are at least three (3) of any combination of MBE and WBE firms certified to perform the anticipated subcontracting functions of the Contract. NEORSD may also set Contract Goals for MBEs and WBEs in conjunction with a Small Business Enterprise (SBE) goal under the NEORSD SBE Program.

ARTICLE 6.

COUNTING MBE AND WBE PARTICIPATION

OCC will count the entire amount of any of the following:

1. The portion of a Contract that is performed by the MBEs or WBEs own forces, including the cost of supplies and materials obtained by the MBE or WBE for the work of the Contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
2. The entire amount of fees or commissions charged by a MBE or WBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. One hundred percent of the cost of the materials or supplies obtained from a MBE or WBE Manufacturer or Regular Dealer. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site will be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. A MBE or WBE certified in the area of trucking that is delivering bulk items such as petroleum products, steel, cement,

gravel, stone, or asphalt, do not require additional certification in order for the cost of such bulk items to be counted toward a MBE or WBE goal. Fees to Brokers will not be counted toward a MBE or WBE goal.

4. **Joint Ventures.** When a MBE or WBE performs as a participant in a Joint Venture, OCC will count only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the MBE or WBE with its own forces and for which it is separately at risk.

The MBE or WBE must be certified at the time of bid or proposal submission to be counted towards meeting a Contract Goal.

The participation of a firm that is certified as a MBE and a WBE may be counted towards either goal in the Bidder's discretion, but cannot be double counted or split between the MBE and the WBE goal.

OCC will count only expenditures to a MBE or WBE that is performing a Commercially Useful Function. If a MBE or WBE subcontracts a greater portion of the work of a Contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a MBE or WBE is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.

If a firm ceases to be certified during its performance on a Contract, the dollar value of work performed under a Contract with that firm after it has ceased to be certified shall not be counted.

In determining achievement of Contract Goals, the participation of a MBE or WBE shall not be counted until that amount has been paid to the MBE or WBE.

ARTICLE 7.

CONTRACT AWARD PROCEDURES

Meeting Goals. All Contractors must make Good Faith Efforts to attain Contract Goals. A MBE or WBE performing as a Prime Contractor may count its own participation towards meeting the goal for which it qualifies. Bidders are required to complete all forms and submit all documents as described in the solicitation regarding MBE/WBE participation. Unless otherwise stated in the solicitation, information regarding specific MBEs/WBEs shall be required at the time of the submission of a proposal for professional services, but shall not be required at the time of the submission of a competitive bid. In the case of a competitive bid, MBE/WBE utilization information shall be submitted at the request of NEORS in accordance with the timeframe stated in the solicitation. Such information shall include:

1. A list of all MBEs/WBEs and other subcontractors to be utilized on the Contract.
2. The dollar amount and percentage of Contract funds related to each first- and second-tier MBE/WBE and non-MBE/WBE subcontractor.

Unless otherwise stated in the solicitation, proposed MBE/WBE utilization toward special allowance or general allowance work will not be counted at the time of award. Subsequent utilization of MBEs/WBEs for special allowance and general allowance work during performance of a Contract will be counted toward fulfillment of the MBE/WBE Contract goal.

Evaluation of Good Faith Efforts. All Bidders for competitively bid Contracts must submit an Affidavit of Business Opportunity Program Compliance or other similar form provided in the solicitation, certifying that the Bidder will use Good Faith Efforts to meet the established Contract Goal. Failure to submit such Affidavit may render a bid non-responsive. In the event that a Bidder is unable to meet the Contract Goal, the Bidder must demonstrate that it made a Good Faith Effort to meet the Contract Goal. The Bidder must submit all NEORSO-required Good Faith Effort forms, including any affidavits and MBE/WBE utilization plans that NEORSO may require, at the time specified in the bid documents or requests for proposal. All Good Faith Efforts must be thoroughly documented. The Bidder must document all solicitations and responses of MBEs/WBEs, including the names, contact information, method of contact, dates, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and reasons for failure to reach agreement. The Bidder may not reject MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs/WBEs is not in itself sufficient reason for a Bidder's failure to meet the Contract Goals, as long as such costs are reasonable. The ability or desire of a Bidder to perform the work of a Contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

The OCC will evaluate not only the kinds of efforts made by a Bidder, but also the quantity and intensity of such efforts. In evaluating whether a Bidder has made a good faith effort to achieve the Contract Goal, the OCC will evaluate at a minimum the Bidder's efforts to:

1. Solicit through all reasonable and available means (*e.g.*, attendance at pre-bid meetings, advertising and written notices) the interest of all MBEs/WBEs certified in the scopes of work of the Contract. The Bidder shall provide interested MBEs/WBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow MBEs and WBEs to respond to the solicitation. The Bidder must follow up initial solicitations with interested MBEs/WBEs.

2. Seek the OCC's assistance when experiencing difficulty identifying subcontracting opportunities or available MBEs/WBEs.
3. Identify portions of the Contract capable of being performed by MBEs/WBEs and, where appropriate, breaking out work items into economically feasible units to facilitate MBE/WBE participation, even when the Bidder would otherwise prefer to perform these work items with its own forces. It is the Bidder's responsibility to make a portion of the work available to MBEs/WBEs and to select those portions of the work or material needs consistent with the availability of MBEs/WBEs to facilitate their participation.
4. Assist interested MBEs/WBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, or technical assistance, as may be required for performance on the Contract.
5. Utilize resources available to identify available MBEs/WBEs, including MBE/WBE assistance groups, governmental business assistance offices, NEORSD-sponsored training programs, and other organizations that provide assistance in the recruitment and placement of MBEs/WBEs.

A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due within the timeframe specified in the bid or proposal solicitation.

OCC shall timely review the MBE/WBE documents before award, including the scope of work and the letters of intent from MBEs/WBEs. OCC may request clarification in writing of items listed in the documents, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.

If OCC finds that a Bidder did not make sufficient Good Faith Efforts, the Bidder may be deemed non-responsive.

Good Faith Effort Requirements Ongoing. In the event that a Bidder is awarded a Contract without meeting the Contract Goal(s), such Contract award does not relieve the Bidder from the continuing contractual obligation to exercise Good Faith Efforts throughout performance of the Contract in order to meet the Contract Goal(s) before Contract completion. Failure to comply with this provision may subject a Contractor to the sanctions and penalties set forth in the Contract and/or this MBE/WBE Policy.

Determination of Non-Responsiveness or Lack of Responsibility. In addition to other factors in its evaluation, NEORSD may declare a bid or proposal to be non-responsive or not the "best", or the Bidder to not be responsible where it is determined that a Bidder has not submitted with its bid or proposal any form,

affidavit, or other document required by the solicitation, this Policy or requested by NEORSD.

ARTICLE 8.

CONTRACT PERFORMANCE PROCEDURES

Upon award of a Contract by the NEORSD that includes Contract Goals, the Contract Goals shall become covenants of performance by the Contractor in favor of the NEORSD.

Reporting Requirements. Prime Contractors performing under NEORSD Contracts shall comply with all reporting requirements of NEORSD related to utilization of MBE/WBE and other subcontractors, including, but not limited to, completing on-line reporting of payments made to such MBEs/WBEs and other subcontractors.

OCC and the User Department shall monitor subcontractor participation during the course of the Contract. The NEORSD shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE/WBE performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the NEORSD for any purpose.

Contract Assignment by MBE/WBE. A MBE/WBE performing as a Prime Contractor or a subcontractor shall not be prohibited from assigning its interest in any NEORSD Contract or subcontract for the purpose of obtaining assistance from a financial institution.

Changes to Utilization Plans. The Contractor shall not make changes to the Utilization Plan or substitute MBEs/WBEs named in the Utilization Plan without the prior written notification to OCC and the User Department. Changes or substitutions made without such notification shall be a violation of this Policy and may constitute a breach of Contract, subject to the breach provisions contained in the Contract.

All notifications of changes or substitutions of a MBE/WBE subcontractor(s) named in the Utilization Plan shall be made to OCC and the User Department in writing, and shall clearly and fully set forth the basis for such change or substitution. A Contractor shall not allow a substituted subcontractor to begin work until notification has been given to OCC and the User Department.

Substitutions of a MBE/WBE subcontractor shall be permitted only on one or more of the following bases:

1. Unavailability after receipt of reasonable notice to proceed.
2. Failure of performance.
3. Financial incapacity.
4. Refusal by the subcontractor to honor the bid or proposal price.
5. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
6. Failure of the subcontractor to meet insurance, licensing or bonding requirements.
7. The subcontractor's withdrawal of its bid or proposal.

Where the Contractor notifies the District of its intention to change or substitute a MBE or WBE subcontractor, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan, if achievement of the MBE or WBE Goal is affected. The Contractor may seek the assistance of OCC in obtaining a new MBE or WBE. If the Contract Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of OCC and the User Department to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBEs/WBEs have a fair opportunity to bid on the new scope of work.

Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE or WBE Contract Goal.

Before Contract closeout, OCC shall evaluate the Contractor's fulfillment of the Contracted Goals, taking into account all substitutions, terminations and changes to the Contract's scope of work. If OCC determines that Good Faith Efforts to meet the MBE or WBE contractual commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the Contract or violation of this Policy has occurred, a remedy or sanction may be imposed, as provided in the Contract or other NEORSD rules.

ARTICLE 9.

REMEDIES, SANCTIONS AND PENALTIES

Scope and Applicability. Any MBE/WBE allegedly aggrieved by the provisions of this MBE/WBE Program may submit a written complaint to the OCC, setting forth the bases of such complaint. After receipt of a written complaint, the allegedly

aggrieved party (the Complainant) may be afforded a hearing before the MBE/WBE Hearing Panel. The MBE/WBE Hearing Panel shall be empowered to hear all grievances concerning certification, de-certification, and any other grievances relative to the MBE/WBE Program.

Notice of Hearing. Upon receipt of a written complaint from the Complainant, NEORSD shall schedule a hearing before the MBE/WBE Hearing Panel within a reasonable time after receipt of such complaint. NEORSD shall provide notice of the date, time, and location of the hearing to the Complainant via registered mail. A Complainant may make one (1) request to reschedule a hearing after receipt of any hearing notice provided under this MBE/WBE Policy. NEORSD shall have no obligation to provide a rescheduled hearing for any Complainant who fails to appear at a properly scheduled hearing.

Hearing Conduct. The MBE/WBE Hearing Panel shall consist of at least three (3) manager- or director-level NEORSD officials, who shall be appointed by the Chief Executive Officer. The Chief Executive Officer shall have the discretion to serve on the Panel as one of the Panel members. The Chief Executive Officer may designate Panel members on a hearing-by-hearing basis, or at any other interval. Hearings before the designated MBE/WBE Hearing Panel shall be informal. The Complainant may appear in person or via a representative designated by the Complainant. The Complainant may present evidence and witness testimony in support of the Complainant's alleged grievances. The Complainant may bring legal counsel. All hearings shall comply with State of Ohio law relative to the Open Meetings Act. Abusive or otherwise disruptive language or behavior at a hearing by a Complainant will be grounds for discontinuance and/or forfeiture by the Complainant of any hearing described under this Policy.

Hearing Decisions. The designated MBE/WBE Hearing Panel shall issue a written opinion setting forth the Panels' findings and recommendations within a reasonable time after the hearing.

Exhaustion of Legal Remedies. A Complainant must comply with the hearing process outlined above in order to exhaust its administrative remedies. Thereafter, a Complainant may seek any other statutory, legal or equitable remedies that may be available. Failure to exhaust all administrative remedies listed in this MBE/WBE Policy is an affirmative defense to any statutory, legal or equitable proceeding that may arise.

Advisory Recommendations. The designated MBE/WBE Hearing Panel shall have authority to render advisory recommendations to NEORSD, absent a hearing, upon the request of the NEORSD Contract Compliance Manager.

Sanctions. Any Bidder or Contractor who violates any provision of this MBE/WBE Policy may be subject to administrative sanctions. Violations of this Policy that may result in a breach of Contract include, but are not limited to, providing false or

misleading information to NEORSD in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.

In addition, violations of this MBE/WBE Policy and Program may constitute a material breach of Contract, enforceable at law or in equity, and subject to the remedies contained in the Contract, including the imposition of penalties. A Contractor or subcontractor may be subject to sanctions and penalties if it is found by NEORSD to have:

1. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
2. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
3. Failed in bad faith to fulfill Contract Goals, thereby materially breaching the Contract; or
4. Failed to comply in good faith with substantive provisions of this Policy.

In addition to the breach of Contract remedies available to NEORSD, the following sanctions and penalties are established for the enforcement of this Program:

1. Suspension for not to be less than two (2) years, unless the Chief Executive Officer determines that a shorter time period is warranted. The Chief Executive Officer may impose suspensions in excess of two (2) years in cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in breach of the Program, cases where the Participant has been previously suspended, or other similarly situated misconduct.
2. Other appropriate sanctions as the Chief Executive Officer deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the Contractor to the satisfaction of the Chief Executive Officer.

Guidelines for Imposition of Sanctions. The sole authority and power for imposition of sanctions shall lie with NEORSD. NEORSD's procurement policies shall apply to sanctions under this Policy.

1. **Severity of Sanctions.** In determining the length of any suspension, NEORSD shall consider the following factors:

- a. Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a reasonable misunderstanding on the part of the Bidder or Contractor of the requirements of this Program.
 - b. The number of specific incidences of Non-Compliance of this Policy by the Bidder or Contractor.
 - c. Whether the Bidder or Contractor has been previously suspended or has a history of violations of this Policy.
 - d. Whether the Bidder or Contractor has failed or refused to provide NEORSD with any information required or requested pursuant to the MBE/WBE Program.
 - e. Whether the Bidder or Contractor has materially misrepresented any applicable facts in any filing or communication to NEORSD.
 - f. Whether any subsequent restructuring of the Bidder's or Contractor's business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.
2. **Prohibition Against False Statements.** It shall be unlawful for any person, knowingly, willfully and with intent, to mislead or to make any false or fraudulent representations to NEORSD. NEORSD may impose sanctions against any person making such false representation in connection with the MBE/WBE Program. In addition, knowingly providing false information to a public official is punishable as a first degree misdemeanor, pursuant to O.R.C. § 2921.13.

ARTICLE 10.

PROGRAM REVIEW

The NEORSD Board of Trustees (Board) shall receive quarterly and annual reports from OCC detailing NEORSD's performance under this Policy. The Board shall review these reports, including the Annual Aspirational Goals and NEORSD's progress towards meeting those Goals and eliminating discrimination in its contracting activities and Marketplace.

ARTICLE 11.

SEVERABILITY

If any of the provisions set forth in this Policy or any section, subsection, paragraph, sentence, clause, phrase, or word thereof shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this Program shall not be affected by such invalidity.

ARTICLE 12.

CONTRACT-SPECIFIC MODIFICATIONS TO THIS POLICY

Upon approval of the NEORSD's Chief Executive Officer and Manager of OCC, a User Department may make Contract-specific modifications to this Policy for a particular project. Such modifications shall be set forth in the NEORSD solicitation for bids or proposals.