

**PROJECT AGREEMENT
BY AND BETWEEN
NORTHEAST OHIO REGIONAL SEWER DISTRICT
AND
CITY OF NORTH ROYALTON
FOR
BIG CREEK BANK STABILIZATION AT WEST SPRAGUE ROAD PROJECT**

This Project Agreement (the "Agreement") is entered into as of this _____ day of _____, 2023 ("Effective Date") by and between the Northeast Ohio Regional Sewer District ("District") a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of its Board of Trustees Resolution No. _____, adopted _____ (attached as Exhibit "A"), and the City of North Royalton ("City"), a Charter Municipality of the State of Ohio, acting pursuant to Ordinance No. ____, passed by its City Council on _____, 2023 (attached hereto as Exhibit "B").

RECITALS:

1. The District and the City are working jointly in the Big Creek watershed near West Sprague Road, along Big Creek, which is part of the Regional Stormwater System (RSS) (District Asset ID: BC00392); and

2. The City agreed to perform the engineering design, property acquisition and manage the construction for the Big Creek Bank Stabilization near West Sprague Road (the "Project"); and

3. The scope of the Project is to rehabilitate and improve essential stormwater functions along the Big Creek to reduce erosion, improve water quality and maintain conveyance along this segment of the Regional Stormwater System; and

4. The City requested the District to contribute funds to the Project and the District agreed to disburse such funds to the City for the engineering design, property acquisition and construction costs in the amount not to exceed \$1,000,000.00 (the "District Funds"); and

5. The District is authorized under Ohio Revised Code Section 6119.41 to enter into contracts or other arrangements with a drainage, conservation, conservancy, or other improvement districts for co-operation or assistance in planning, constructing, maintaining, using, and operating the works of the District; is authorized under Ohio Revised Code Section 6119.06 (P) to enter into contracts with any person or any political

subdivision to render services to such contracting party for any service the District is authorized to provide; is authorized under Ohio Revised Code Section 6119.06 (F) to make grants to any person or political subdivisions for the acquisition or construction of water resource projects by such person or political subdivisions; and is authorized under Ohio Revised Code Section 6119.06 (0) to make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6 I 19 of the Revised Code; and

6. The parties desire to enter into this Agreement to memorialize their understanding with respect to the usage of the District Funds; and

NOW, THEREFORE, in consideration of the foregoing, the District and the City agree to enter into this Agreement for the continued benefit of the Regional Stormwater System, as set forth below.

Section I. City's Performance of Project Services

A. Performance of the Project. The City shall be responsible for the performance of the Project in accordance with the Scope of Services, attached hereto as Exhibit "C," which involves the engineering design, easements acquisition, and construction of the stabilization of an approximately 300 linear foot portion of the Big Creek, as further depicted in Exhibit "D," in order to mitigate erosion as described in the Cuyahoga River North Stormwater Master Plan. The purpose of the Project is to stabilize the section of the Big Creek depicted in Exhibit "D" without increasing erosion along other reaches of the Regional Stormwater System.

1. Design. The City shall develop plans, specifications, and bid documents for the Project in accordance with the conceptual design described in Alternative 2 of the Site Assessment and Analysis submitted by Biohabitats, Inc. on November 18, 2022, attached to this Agreement as Exhibit "E". The City shall include the District in the design process as further outlined in this agreement.
2. Hydraulic Analysis. The City shall perform a hydraulic analysis of the Regional Stormwater System within the Project area to confirm the benefits of the Project to the Regional Stormwater System and provide the hydraulic analysis to the District. The City shall provide the District with all final models or model updates developed for the Project.
3. Provision of Data. The City shall provide the District any data collected in furtherance of its performance of the Project.
4. Right-of Way Acquisition & Utilities Coordination. The City shall perform the acquisition of all real estate interests necessary for the construction of the

Project, including all temporary access and permanent easements and all other real estate interests necessary to perform the Project, and will coordinate with all utility companies in finalizing the plans and specifications. All easements and other property interests will be assigned to the District following the completion of the Warranty Period (defined below). The City shall seek written approval from the District for the acquisition of any real estate interest that exceeds 10% of the appraised value, as such appraisal is performed by an appraiser that holds a State of Ohio Certified General Appraiser License and the Appraisal Institute's MAI designation. The City shall immediately notify the District in the event the City is unable to acquire all the necessary easements needed along properties depicted in Exhibit "D", and District will reevaluate the Project.

5. Construction Services. The City shall provide the District bid documentation for review prior to advertising the Request for Bids. The City shall provide the District with a walkthrough of this site at substantial completion, and any other time requested by the District.
6. Project Coordination. The City shall coordinate with the District during all critical stages and milestones of the design and construction to allow sufficient time for the District to review and provide comments related to the design documents and inspect the construction work. Upon the completion of the construction of the Project, the City shall provide to the District copies of record as-built drawings.
7. Disbursement Requests. The City shall provide requests for disbursement to the District no more than monthly in accordance with the disbursement procedure outlined in Section I (B) below. All disbursement requests shall include the Payment Request Accuracy Verification and Progress Report ("PRAV") attached to this Agreement as Exhibit "F".
8. Prevailing Wages. The City shall be responsible for determining whether the payment of prevailing wages, as set forth in Chapter 4115 of the Ohio Revised Code, are required for labor used in constructing the Project, and shall ensure compliance with any prevailing wage requirements in said Chapter.
9. Project Schedule. The City shall complete the Project in accordance with a Project schedule developed by the City and approved by the District. The Project duration for construction shall not exceed two (2) years from the Effective Date of this Agreement without prior written approval by the District.

10. Warranty Period. The City's construction agreement shall require the contractor to provide a one (1) year warranty period ("Warranty Period") that commences upon substantial completion of the Project construction. At the completion of the Warranty Period the City shall provide the District with a final warranty inspection report including how all warranty items were addressed.

B. Utilization of District Funds. The City shall use 100% of the District Funds for activities and/or expenses related to the regional stormwater functions of the Project, as approved by the District. These activities and expenses may include engineering design, real property acquisition, construction, restoration, and materials specifically related to the Project. Any other use of District-provided funding shall require prior written approval by the District.

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

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

designation, authorize an appropriate City staff member to execute the PRAV on behalf of City.

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

submitted upon request together with any other compliance information which may be reasonably required.

8. The City shall bear the risk and remain solely responsible for any payments made by the City to third parties for work not approved by the District.

C. Public Participation, Outreach, and Signage. The City shall acknowledge the District in presentations or publications related to the Project. The City shall lead, and the District will assist, the development of a public notification plan to inform the public of the Project. The City shall acknowledge the District on Project-related public outreach communications and in City public meetings that discuss the Project. The City shall provide the District no less than fifteen (15) days' notice prior to any public meetings relative to the Project.

D. Access. The City hereby grants the District access to the public rights-of-way and shall grant any necessary easements and/or other rights of entry to the District for access to the Project for stormwater inspection and maintenance in accordance with the RSMP Service Agreement.

Section II. District Responsibilities and Disbursement of City Costs

A. Project Presentations. The District shall acknowledge the City in presentations or publications related to the Project.

B. District Funds. The District agrees to compensate the City one hundred percent (100%) of the City's actual costs associated with engineering design, right-of-way acquisition, utility coordination, and construction for the Project in a total amount not-to-exceed \$1,000,000.00, in accordance with the disbursement procedure outlined in Section I (B) above. The District shall disburse funds to the City after receipt of documentation to the District's reasonable satisfaction and submitted in a form sufficient to allow the District to review, inspect and approve the City's invoices.

The amount of District Funds described above also includes the estimated cost of the permanent and temporary easements that the City will pay to the property owners for acquiring the property rights necessary to construct the Project in accordance with this Agreement.

In the event that the initial amount of District Funds authorized hereunder is insufficient to fully compensate the City up to one hundred percent (100%) of the City's actual costs associated with the engineering design, right-of-way acquisition, utility coordination, and construction for the Project, the District and the City shall negotiate in good faith whether the District will add additional funds to this Agreement through an Agreement amendment.

C. Timing of Payments. The District shall use best efforts to pay the City for any uncontested billings within forty-five (45) days of the District's receipt of each PRAV.

D. Review of Findings. Prior to the final report submittal, the District shall review the City's design and contribute comments throughout the design process.

E. Provision of Data. The District shall provide the City any data it may have related to the Project area.

F. Monitoring, Operation and Maintenance. During construction and through the Warranty Period, the City shall own and maintain all installed Project components, and shall operate and maintain the Project components. The District shall maintain the Project upon the expiration of the Warranty Period. Liabilities. The District is not liable for any and all claims, damages, losses, liens, causes of action, suits, judgments and expenses of any nature, kind or description, that result from and to the extent caused by the acts or omissions of the City, the design professional, and the contractor, including all of their officers, owners, principals, subcontractors, employees, and agents. The District is not responsible for the accuracy, correctness, and reliability of the plans, specifications or construction means and methods as it is not reviewing or approving any plans as to suitability of the design/fitness for a particular purpose.

Section III. Term

This Agreement shall expire upon successful completion of the obligations contained herein.

Section IV. Remedies

The parties agree that all claims, counter-claims, disputes and other matters in question between the District and City 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.

Section V. Counterpart Signatures

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

Section VI. Governing Law

The terms and provisions of this Agreement shall be construed under and governed by the laws of Ohio (to which all parties hereto consent to venue and jurisdiction).

Section VII. Disclaimer of Joint Venture

This Agreement is not intended to create a joint venture, partnership or agency relationship between the City and District, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Section VIII. No Third-Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the parties hereto, any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

Section IX. Authority to Execute

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

Section X. Severability

If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.

Section XI. Headings

The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.

Section XII. Relationship of Agreement to Exhibits

The Exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be construed to modify, alter, clarify, or give effect to the terms and conditions of the various Exhibits attached to this Agreement.

Section XIII. Exhibits

The following exhibits are attached to this Agreement and incorporated as fully rewritten herein:

- Exhibit "A" - District's Board Resolution
- Exhibit "B" - City of North Royalton Ordinance
- Exhibit "C" - Scope of Work
- Exhibit "D" - Sprague Road Stream Stabilization Project Site Map
- Exhibit "E" - Biohabitat's Site Assessment and Restoration Alternatives Analysis
- Exhibit "F" - Payment Request Accuracy Verification and Progress Report (PRAV)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____

Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____

Darnell Brown
President, Board of Trustees

CITY OF NORTH ROYALTON

By: _____

Title: _____

The legal form and correctness of this instrument is approved.

Thomas A. Kelly
Director of Law

By: _____

Date: _____

This Instrument Prepared By:

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

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

AGREEMENT NO.

NORTHEAST OHIO REGIONAL
SEWER DISTRICT

WITH

CITY OF NORTH ROYALTON

FOR

BIG CREEK BANK STABILIZATION
AT WEST SPRAGUE ROAD PROJECT

Total Approximate Cost: \$1,000,000.00

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