

MEMBER COMMUNITY INFRASTRUCTURE GRANT PROGRAM AGREEMENT

BY AND BETWEEN

NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

CITY OF PARMA

FOR

KRUEGER AVENUE AREA SEWER IMPROVEMENTS

THIS AGREEMENT ("Agreement") is entered into as of the 1st day of January, 2021 ("Effective Date"), by and between the Northeast Ohio Regional Sewer District ("District"), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, pursuant to the authority of Resolution No. 253-20, adopted by the District's Board of Trustees on September 17, 2021 (Exhibit "A"), and the City of Parma ("Member Community"), a municipality of the State of Ohio, acting pursuant to Ordinance No. _____, passed on _____, 2020 (Exhibit "B"). The District and the Member Community may be collectively referred to herein as "Parties."

RECITALS:

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

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

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

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

WHEREAS, in response to the District's Request for MCIP Proposals, the Member Community, a District member community, submitted an application for the Krueger Avenue Area Sewer Improvements Project (the "Project" or "MCIP Project"), attached hereto as Exhibit "D;"



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

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

Article 1. The MCIP Project

- 1.1 The MCIP Project. The Member Community will manage a Design Only MCIP Project, which generally consists of performance of a design to reduce I/I by addressing both the separation of the common trench as well as addressing the under capacity issues by increasing the storm sewer from Krueger - Torrington - Milford and into the existing storm sewer on State Road, as set forth in Exhibit "D."
- 1.2 Compliance with District's Code of Regulations. The MCIP Project shall be designed to ensure compliance with the District's Code of Regulations. The goal of the MCIP is to reduce water quality and quantity issues that impact human health and the environment associated with combined or separate sanitary and/or storm sewer infrastructure problems.
- 1.3 MCIP Project Modifications. The Member Community shall submit requests to modify the budget, deadlines, deliverables, or other components of the Project to the District Representative for approval at least fifteen (15) business days prior to the execution of the modification. Any modification to the MCIP Project must be approved by the District Representative in writing.
- 1.4 Photographs of MCIP Project. The District shall have the right to observe, monitor, inspect, and photograph the MCIP Project at any and all stages of design.

Article 2. Design of the MCIP Project

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

- 2.3 Final Design. The Member Community shall provide to the District Representative the final design, approved by the Member Community's Engineer, at the closure of the MCIP Project.
- 2.4 District Request for Progress Meetings. The Member Community agrees to meet with the District to review the MCIP project status and progress, as may be requested by the District.

Article 3. Project Costs and Funding

- 3.1 District Funds. The District agrees to pay the Member Community an amount not to exceed Two Hundred Sixty Thousand Dollars (\$260,000.00) (the "District Funds") on a reimbursement basis for calendar year 2021, in accordance with the terms of this Article and Article 4. The District shall withhold five percent (5%) or \$13,000.00 of the District Funds until the District receives the final MCIP project design.
- 3.2 Member Community Funds. The Member Community agrees to pay all MCIP Project costs that exceed the amount of the District Funds ("Member Community Funds"). Under no circumstance, shall the District be responsible for payment of any costs that, in aggregate, exceed the amount of the District Funds. Prior to the Member Community issuing a notice-to-proceed for any MCIP Project related work or service, the Member Community shall provide the District a copy of the certification by the Member Community's Finance Director that the Member Community Funds have been lawfully appropriated by the Member Community for the Project. This certification is attached hereto as Exhibit "E."
- 3.3 Use of District Funds - Reimbursement Requests and Quarterly Progress Reports. The District Funds must be used for activities and expenses approved by the District that are related to the MCIP Project accrued on or after January 1, 2021 and in accordance with the project schedule requirements set forth in Article 4. In accordance with the provisions of this Agreement, the District shall reimburse the Member Community for eligible MCIP Project expenses based upon paid invoices, prepared and submitted by the Member Community to the District, in the form prescribed by the District, and including all supporting documentation as required by this Agreement and the MCIP Policy, Process, and Procedures, attached hereto as Exhibit "F."

The Member Community will provide a copy of the award bid with the first reimbursement request.

Quarterly progress reports shall be submitted to the District in accordance with the following:

- First Request: Due April 30, 2021 for work completed January 1, 2021– March 31, 2021;
- Second Request: Due July 31, 2021 for work completed April 1, 2021 - June 30, 2021;
- Third Request: Due October 31, 2021 for work completed July 1, 2021 – September 30, 2021;
- Fourth Request: Due January 31, 2022 for work completed October 1, 2021 – December 31, 2021;

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

The Member Community agrees to meet with District staff, as requested, to review MCIP Project progress and to use the reimbursement request and progress report form provided by the District available at: <http://www.neorsd.org/mcip.php>.

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

Article 4. Project Schedule.

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

Article 5. Term.

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

Article 6. Dispute Resolution.

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

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

| District Representatives | Member Community Representatives |
|---------------------------------|---|
| Director of Watershed Programs | Service Director |

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

| District Representatives | Member Community Representatives |
|--|---|
| District Chief Legal Officer or CLO's designee | City Engineer |

6.3 Mediation. If the Parties remain unable to resolve the dispute within an additional ten (10) working days, the Parties shall proceed to mediation upon request by either party. The Parties shall mutually select a mediator who is experienced in public utility infrastructure engagements. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within ten (10) working days after the mediator appointment, which meeting shall be attended by at least the respective representatives in Article 6.2 above. The Parties shall attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator equally.

6.4 Mediation Resolution. Such mediation shall be non-binding between the Parties and, to the extent permitted by law, shall be kept confidential. If the dispute is resolved and settled through the mediation process, the

decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Article 7, Remedies, below.

Article 7. Remedies.

7.1 Remedies and Ohio Law. The Parties agree that, after exhausting the dispute resolution process outlined above, all claims, counterclaims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the law of the State of Ohio. A party may file a lawsuit in a court of competent jurisdiction in Cuyahoga County, Ohio.

Article 8. Notifications.

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

| District Representative | Member Community Representative |
|------------------------------|---------------------------------|
| Grant Programs Administrator | City Engineer |

Article 9. Release of Liability.

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

Article 10. Miscellaneous.

10.1 Limit of Commitment. This grant is made with the understanding that the District has no obligation to provide other or additional support, including maintenance of the Member Community's MCIP Project. This grant does

not represent any commitment to, or expectation of, future support, including maintenance of the Member Community's MCIP project from the District.

- 10.2 Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the Parties, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.
- 10.3 Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.
- 10.4 Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.
- 10.5 Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 10.6 Merger Clause. This Agreement, along with any exhibits attached hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written.
- 10.7 Binding on Successors. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.
- 10.8 Prohibition on Assignment and Subcontracting. The Member Community may not assign or subcontract its rights or duties under this Agreement, in whole in part, whether by operation of law or otherwise, without the prior consent of the District. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
- 10.9 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.
- 10.10 Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement.
- 10.11 Relationship of Agreement to Exhibits. The exhibits to this Agreement are attached for reference purposes only. Nothing in this Agreement shall be

construed to modify, alter, clarify, or give effect to the terms and conditions of the various exhibits attached to this Agreement.

Article 11. Exhibits.

It is mutually understood and agreed that all Exhibits attached hereto are made a part hereof as if fully written herein. In the case of any conflict or variance between the terms of this Agreement and the terms of referenced documents, the terms of this Agreement shall govern. The following Exhibits attached hereto are hereby incorporated with and made a part of this Agreement:

- Exhibit "A" – District Resolution
- Exhibit "B" – Member Community's Authorizing Ordinance
- Exhibit "C" – Request for MCIP Proposals
- Exhibit "D" – Member Community's MCIP Application
- Exhibit "E" - Member Community's Certification of Funds
- Exhibit "F" – MCIP Policy, Process, and Procedures

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NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____

Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____

Darnell Brown, President
Board of Trustees

CITY OF PARMA

By: _____

Title: _____

The legal form and correctness of
this instrument is approved.

By: _____

Assistant/Director of Law
City of Parma

Date: _____

This Instrument Prepared By:
Katarina 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.

FOR DISTRICT USE ONLY]

AGREEMENT NO.

NORTHEAST OHIO REGIONAL
SEWER DISTRICT
WITH
CITY OF PARMA
FOR
2021 MEMBER COMMUNITY
INFRASTRUCTURE PROGRAM PROJECT:
KRUEGER AVENUE AREA SEWER
IMPROVEMENTS

Total Approximate Cost: \$260,000.00

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