

EXHIBIT “A”

PROJECT AGREEMENT

BY AND BETWEEN

NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

CITY OF BRECKSVILLE

FOR

RIVERVIEW ROAD FLOOD REDUCTION PROJECT

This Project Agreement (“Agreement”) is entered into as of this _____ day of _____, 2024 (“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 Brecksville (“City”), a Charter Municipality of the State of Ohio, acting pursuant to Ordinance No. ____, passed by its City Council on _____, 2024 (attached hereto as Exhibit “B”).

RECITALS

WHEREAS, the District, pursuant to the authority of Ohio Revised Code Chapter 6119, and Title V Stormwater Management Code of the District’s Code of Regulations (“Title V”) is authorized to provide overall Stormwater Management of the Regional Stormwater System, including planning, financing, design, improvement, construction, inspection, monitoring, maintenance, operation, and regulation for the proper handling of stormwater runoff and the development and provision of technical support information and services to member communities; and

WHEREAS, the City and the District entered into a Regional Stormwater Management Program Service Agreement dated February 16, 2016 (the “RSMP Service Agreement”); and

WHEREAS, two (2) crossings under Riverview Road between Greenhaven Parkway and Wiese Road, and which are also located on the Regional Stormwater System, have been shown to be hydraulically constrictive, causing roadway flooding ; and

WHEREAS, the District’s Flood Reduction at Riverview Road in Brecksville Basis of Design Report (2022) found that the Riverview Road profile between Greenhaven Parkway and Wiese Road needs to be raised in order to reduce surface flooding risk; and

WHEREAS, the District desires to perform the Flood Reduction at Riverview Road Design Project (“the Project” or “the Water Resource Project”), which includes raising the profile of the Road to reduce surface flooding risk at Riverview Road between Greenhaven Parkway and Wiese Road, in furtherance of the goals of the District’s Regional Stormwater Management Program; and

WHEREAS, the City of Brecksville is responsible for the routine maintenance and repair of Riverview Road; and

WHEREAS, the District agrees to perform the engineering design for the Project; and

WHEREAS, the City agrees to perform the property acquisition services for the Project as detailed in the Scope of Services (Exhibit “C”), and the District has agreed to disburse funds to the City for such services, up to an amount not-to-exceed \$250,000.00. The construction costs will be shared among the City and the District, which are addressed in a separate agreement; and

WHEREAS, the District is authorized to enter into this agreement, generally, under Ohio Revised Code Section 6119.09, and specifically, under Ohio Revised Code Section 6119.06(G) to contract with any political subdivision to construct, reconstruct, enlarge, improve, maintain, repair, and operate Water Resource Projects; and under Ohio Revised Code Section 6119.09 to enter into agreements with political subdivisions for the effective cooperative action and safeguarding of the respective interests of the parties for the construction and funding of projects by one or more of the parties; and is authorized under Ohio Revised Code Section 6119.06 (O) 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 6119 of the Ohio Revised Code.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth herein for the continued benefit of the Regional Stormwater System, the parties agree as follows:

SECTION 1. CITY OF BRECKSVILLE

1.1. Property Acquisition & Utilities Coordination. The City shall perform the property acquisition of all the properties and easements necessary for the construction and maintenance of the Project, as identified in Exhibit “D,” and will coordinate with the District in finalizing the plans and specifications.

1.1.1. The City shall be responsible for negotiating with and compensating the property owners for the acquisition of all easements and other real estate interests necessary for the Project. The District shall compensate the City the total amount of such real estate acquisitions based upon documentation demonstrating such amount including but not limited to settlements and jury awards, if needed. The City shall seek written approval from the District for the acquisition of any real estate interest exceeding 10% of the appraised value, as such appraisal is performed by an appraiser with a State of Ohio Certified General Appraiser License and the Appraisal Institute’s MAI designation. The City shall hold title of all easements and other real estate interests necessary for the Project, unless otherwise provided in this Agreement.

1.1.2. The City hereby authorizes the District and its contractors to access all real estate interests acquired by the City pursuant to this Agreement, including, but not limited to, temporary and permanent easements, to perform all the work necessary for the construction and maintenance of the Project.

1.1.3. Notwithstanding the above, upon completion of the Project, the City shall assign to the District any permanent easements necessary for the District to perform maintenance of the facilities located on the Regional Stormwater System, as described in the RSMP Service Agreement.

- 1.2. Compliance with Laws and Regulations. The City shall comply with all applicable local, state, and federal laws, rules, regulations, and requirements in performing the Project. The City shall apply for and obtain any permits necessary to comply with the above.
- 1.3. Project Coordination. The City shall coordinate with the District’s representatives to allow sufficient time for the District to review and provide comments related to the easement real estate acquisition documents where necessary.
- 1.4. Modifications to Project Components. The City shall submit written requests for District approval to modify the budget, deadline(s), deliverables, or other components of the Project to the District at least five (5) business days prior to the desired date of execution of such modification.
- 1.5. 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 1.6 below. All disbursement requests must include the Payment Request Accuracy Verification (PRAV) and Progress Report (Exhibit “E”).
- 1.6. Utilization of District Funds. The City shall use 100% of the District Funds for property acquisitions necessary for the Project, as approved by the District. Any other use of District-provided funding shall require prior written approval by the District.
 - 1.6.1. Application for Payment of Funds. The City must submit consultant invoices 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 property acquisition, along with the consultant's detailed invoicing detailing the Project costs that are eligible for District payment. Any such consultant invoice 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.

- 1.6.2. 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, that the consultant's 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 is not in dispute by either the City or its consultant, that the City's representative recommends payment, and that the City shall pay the consultant 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 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 the City.
- 1.6.3. The PRAV form is submitted to the District and reviewed for completeness by the District. Provided that such any undisputed consultant invoice is accompanied by 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.
- 1.6.4. 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. The City

shall submit proof of payment to its consultant 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, 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.

1.6.5. 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.

1.6.6. 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 the services provided for the Project.

1.6.7. 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.

1.6.8. 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.

1.7. Project Schedule. The City shall complete the property acquisition services in accordance with a Project schedule developed by the City and approved by the District.

- 1.8. 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 2. NORTHEAST OHIO REGIONAL SEWER DISTRICT

- 2.1. Performance of the Project. The District shall be responsible for the engineering design of the Project in accordance with the Scope of Services attached hereto as Exhibit “F”, which shall involve raising the profile of Riverview Road to mitigate flooding as described in the Flood Reduction at Riverview Road in Brecksville Basis of Design Report. In addition, the District will provide all necessary drawings and legal descriptions for each easement acquired by the City.
- 2.2. Property Acquisition. In the event the District acquires real estate interests for the Project outside of this Agreement, the District will assign to the City any property rights necessary for the City to maintain the facilities that are not located on the Regional Stormwater System and that are the responsibility of the City to maintain.
- 2.3. Disbursement of District Funds. The District agrees to compensate the City one hundred percent (100%) of the City’s actual costs associated with right-of-way acquisition for the Project in a total amount not-to-exceed \$250,000.00 (the “District Funds”). The District shall compensate 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.

For the avoidance of doubt, the amount of District Funds described above includes all real estate acquisition costs, appropriation costs, as well as the estimated cost of the permanent and temporary easements that the City will pay to the private 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 right-of-way acquisition for the Project, the District and the City shall discuss in good faith whether additional District funds will be added to this Agreement through an Agreement amendment. The District's disbursement of the Project costs shall be conditioned on the District's approval of the deliverables as outlined below.

- 2.4. Deliverables. All deliverables included in Exhibit "C" shall also be provided to the District.

SECTION 3. TERM

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

SECTION 4. MISCELLANEOUS

- 4.1. Execution in Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart, when so executed, shall be deemed to be an original and all of which together shall constitute one and the same Agreement.
- 4.2. 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.
- 4.3. Heading. 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.
- 4.4. 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).
- 4.5. Remedies. 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.

- 4.6. 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.
- 4.7. 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.
- 4.8. 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.
- 4.9. Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.
- 4.10. 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.
- 4.11. Relationship of Agreement to Exhibits. The Exhibits attached to this Agreement are incorporated into and made part of this Agreement though expressly rewritten herein. In the event of a conflict between the provisions of this Agreement and the Exhibits, these documents shall be given priority in the following order: 1) the District's Resolution; 2) the main body of this Agreement; 3) the Scope of Services; 4) 1606 Sheldon Road Profile Raising and Reconstruction Study; 5) Payment Request Accuracy Verification and Progress Report; and 6) the City's Ordinance.

Exhibit "A" – District's Resolution

Exhibit "B" – City's Ordinance

Exhibit "C" – City's Scope of Services

Exhibit "D" – Property Acquisition

Exhibit “E” – Payment Request Accuracy Verification and Progress Report
Exhibit “F” – District’s Scope of Services

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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 BRECKSVILLE

By: _____
Daryl Kingston
Mayor

The legal form and correctness of this instrument is approved.

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 BRECKSVILLE

FOR

RIVERVIEW ROAD FLOOD
REDUCTION PROJECT

Total Approximate Cost: \$250,000.00

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