

Project Agreement

between

Northeast Ohio Regional Sewer District

and

City of Hudson

for

Owen Brown Street Bridge Project

THIS AGREEMENT is made this ____ day of _____, 2019, between the Northeast Ohio Regional Sewer District (“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, pursuant to the authority of Board of Trustees Resolution No. 109-19, adopted May 2, 2019 (Exhibit “A”), and the City of Hudson (“City”), pursuant to the authority of Hudson City Council Ordinance No. ____, passed _____.

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, 2017 (the “RSMP Service Agreement”); and

WHEREAS, the Owen Brown Street Bridge (the “Bridge”) has been determined to be hydraulically deficient, causing flooding within Brandywine Creek; and

WHEREAS, the 100-year Federal Emergency Management Agency (FEMA) flood map and the District’s Cuyahoga River South Stormwater Master Plan Study indicate that the properties adjacent to the Bridge are subject to overland inundation; and

WHEREAS, the Bridge over Brandywine Creek is located on the Regional Stormwater System, as such term is defined in Title V; and

WHEREAS, the District’s Cuyahoga River South Stormwater Master Plan found that the current bridge span needs to be increased to convey the 100-year storm event through the structure without causing properties adjacent to the Bridge and upstream of the bridge to flood; and

WHEREAS, the District desires to perform the Owen Brown Street Bridge Replacement project (the “Project” or the “Water Resource Project”), which includes the expansion of the Bridge opening, as such Project will eliminate the 100-year storm event impacts to the adjacent properties and reduce upstream flooding in furtherance of the goals of the District’s Regional Stormwater Management Program; and

WHEREAS, due to timing constraints, the City has proposed to perform the Project and the District has agreed to reimburse the City certain costs related to the design and construction of the Project, up to an amount not-to-exceed \$1,302,000.00; and

WHEREAS, the District is authorized to perform the Project, 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, the District and the City agree to enter into this Agreement for the continued benefit of the Regional Stormwater System, as set forth below.

ARTICLE 1. **CITY OF HUDSON**

1.1 Performance of the Project. The City shall be responsible for performance of the Project in accordance with the Cuyahoga River South Stormwater Master Plan which shall involve replacing, upsizing and expanding the existing Bridge opening at Owen Brown Street over Brandywine Creek, per the level of service defined by the District.

1.1.1 Hydraulic Analysis of Regional Stormwater System. 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 as described in the Cuyahoga River South Stormwater Master Plan. The

City shall provide the hydraulic analysis to the District. If the hydraulic analysis determines that first floor flooding and/or road inundation up to the 100-year event is not occurring under existing conditions the District will not be obligated to contribute funds toward the design or construction of the replacement of the Owen Brown bridge. The District will agree to fund the work necessary to revise the FEMA 100-year floodplain map to align with the results of the hydraulic analysis. The City shall provide the District with all the final models or model updates developed for the project.

1.1.2 Design. The City shall perform the design to identify alternatives and preliminary costs based on the hydraulic analysis, as well as develop improvement plans, specifications and bid documents for the selected alternative. The City shall include District staff in the design process and selection of an alternative, as further outlined in this Agreement.

1.1.3 Easements and Other Real Estate Interests. The City shall be responsible for acquiring all temporary access and permanent easements, and other real estate interests necessary to perform the Project

1.1.4 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 any permits necessary to comply with the above. The City shall submit any permit applications to the District for review prior to making such application.

1.1.5 Construction. After performance of the above activities, the City shall construct the selected alternative under the Project. The City shall provide

notification to the District at least seven (7) business days prior to the start of the Project construction and include District staff in the construction kick-off meeting as well as milestone construction meetings. The City shall install the Project in accordance with the District-approved plans and drawings, and provide on-site construction inspection and oversight.

1.1.6 Project Coordination. The City shall coordinate with the District's representatives 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. The City shall submit all construction-related drawings and stormwater management reports to the District for review and approval prior to commencing construction of the Project. Upon completion of the Project, the City shall provide copies of as-built drawings of the Project to the District.

1.1.7 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 thirty (30) business days prior to the desired date of execution of such modification.

1.1.8 Reimbursement Requests. The City shall provide requests for reimbursement to the District no more than monthly. All reimbursement requests must include a Progress Report and Reimbursement Request (Exhibit "C").

1.1.8.1 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. Any other use of District-provided funding shall require prior written approval by the District.

1.1.9 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.

1.1.10 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 design and construction shall not exceed five (5) years from the Effective Date of this Agreement without prior written approval by the District.

1.1.11 Warranty Period. The City's construction agreement shall require the contractor to provide a one (1) year warranty period that commences upon substantial completion of the Project construction ("Warranty Period"). 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.

1.2 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, 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.

1.3 Signage. The City shall install Project-related signage informing the public of the Project during construction, and shall acknowledge the District on such signage. The District shall have the right to approve all content and format of all materials and signage.

1.4 Ownership, Operation and Maintenance. During construction and after completion of the Project, the City shall own all installed Project components, and shall operate and maintain the Project components, except as otherwise outlined in the RSMP Service Agreement.

1.5 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.

ARTICLE 2. NORTHEAST OHIO REGIONAL SEWER DISTRICT

2.1 Disbursement of District Funds. The District agrees to reimburse the City for performance of the Hydraulic Analysis, Design, Document Development, and Construction Administration, and Construction of the Project in accordance with the requirements of this Agreement a total amount not-to-exceed One Million Three Hundred Two Thousand Dollars (\$1,302,000.00). Any cost overages above the agreed to District funding shall be the City's responsibility.

2.1.1 The District's reimbursement to the City for Project costs shall be conditioned on the District's approval of the deliverables as outlined below.

2.2 Deliverables. The District shall have the right to review, comment on, and approve the deliverables. The City will provide the District with copies of the following deliverables in the formats listed:

2.2.1 Record Drawings in both DWG and PDF format

2.2.2 Hydraulic Models in native format

2.2.3 Easement and property documents in PDF format

2.2.4 Certificate of Substantial Completion

2.2.5 The District shall receive at least fifteen (15) working days to complete review and provide written comment for each deliverable.

2.3 Meeting Participation. The District shall have the right to attend all Project progress meetings, for which the District will receive at least ten (10) working days' advance notice. The District shall receive the meeting minutes from each meeting from the City within five (5) working days of the meeting for review and comment.

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

ARTICLE 3. TERM

3.1 Expiration of Agreement

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

ARTICLE 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 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.

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 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.

4.8 Modification of Agreement. This Agreement may only be modified by written instrument executed by each party.

4.9 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.

4.10 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 5. **EXHIBITS**

The following exhibits are attached hereto and incorporated herein:

1. Exhibit “A” – District’s Board of Trustees Resolution
2. Exhibit “B” – City’s Ordinance
3. Exhibit “C” – Progress Report and Reimbursement Request

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The parties listed below have entered into 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 HUDSON

By: _____
David A. Basil
Mayor

The Legal Form and Correctness
of this Instrument is Hereby Approved:

CITY OF HUDSON

Matthew Vazzana
City Solicitor

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

CITY OF HUDSON

FOR

OWEN BROWN STREET BRIDGE
REPLACEMENT PROJECT

Total Approximate Cost: \$1,302,000.00

The legal form and correctness of the within
instrument are hereby approved.

CHIEF LEGAL OFFICER

Date

CERTIFICATION

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the Treasury or in process of collection to the credit of the fund free from any obligation or certification now outstanding.

CHIEF FINANCIAL OFFICER

Date