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## OHIO LAKE ERIE COMMISSION – SAMPLE TERMS AND CONDITIONS

### ARTICLE I: NATURE OF AGREEMENT

#### 1.1 **Reliance and Experience:**

- a. OLEC enters into this Agreement in reliance upon Grantee's representations that Grantee has the necessary expertise and experience to perform its obligations hereunder, and Grantee warrants that it does possess the necessary expertise and experience.
- b. Unless otherwise specified in Exhibit B, which is attached hereto and incorporated by reference as if fully rewritten herein, Grantee shall perform services and OLEC shall not hire, supervise, or pay any assistants to Grantee in its performance under this Agreement. Grantee shall furnish its own support staff, materials, tools, equipment, and other supplies necessary for the satisfactory performance of the work under this Agreement. Grantee agrees and represents that all persons involved in the performance of work under this Agreement are properly qualified, trained, competent, and possess the required licenses, permits, certifications and registrations necessary to lawfully provide the services.

#### 1.2 **Cancellation:** In the event of a cancellation of this Agreement by OLEC, Grantee shall be reimbursed in accordance with the terms of this Agreement.

#### 1.3 **Confidentiality** All provisions of this Agreement relating to "confidentiality" shall remain binding upon Grantee in the event of cancellation.

#### 1.4 **OLEC Instructions:** OLEC may communicate specific instructions and requests to Grantee concerning the performance of the work described in this Agreement. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks required to ensure satisfactory completion of the work described in this Agreement. Management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with Grantee. OLEC retains the right to ensure that Grantee's work is in conformity with the terms and conditions of this Agreement.

### ARTICLE II: SCOPE OF WORK

#### 2.1 **Scope of Work:** Grantee agrees to perform the work under this Agreement, as more specifically set forth in the Grant Proposal contained in Exhibit A. By entering into this Agreement, the Grantee certifies that the specific information detailed in Exhibit A is current, accurate and complete. Exhibit B sets forth additional terms and conditions. In the event of inconsistencies or conflicts between Exhibit A and this Agreement or Exhibit B, the terms of and conditions of this Agreement and Exhibit B shall govern as determined by OLEC.

#### 2.2 **OLEC Executive Director/ Designee:** Grantee agrees to coordinate all work performed under this Agreement with the OLEC Executive Director, or designee, who shall be responsible for: 1) evaluating whether the Grantee's performance complies with this Agreement; and 2) authorizing payment of compensation to Grantee. Grantee's Project Director, as identified in Exhibit B, shall serve as the primary coordinator under this Agreement for Grantee. As used in this Agreement, OLEC, OLEC Executive Director, and OLEC Executive Director's designee, may be read interchangeably if the sense requires.

### ARTICLE III: TIME OF PERFORMANCE

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- 3.1 **Terms of Agreement:** The services as stated in the *Scope of Work* article shall be commenced on the effective date of this Agreement and concluded on or before June 30, 2027.
- 3.2 **Project Period:** This Agreement shall remain in effect until the work, described in *Scope of Work* article, is completed to the satisfaction of OLEC and until Grantee is paid in accordance with *Payments and Expenditures* article, or until terminated as provided in *Termination of Grantee's Services* article, whichever is sooner.
- 3.3 **Expiration and Renewal:** As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2025 (the end of current biennium). At OLEC's discretion, this Agreement may be renewed for the new biennium (after appropriation of funds by the Ohio General Assembly) through OLEC's written notification to Grantee of the renewal, by the parties executing a new agreement, or by other legally acceptable method. Such renewal shall begin at the start of the next biennium and shall not extend beyond the expiration of the biennium in which the renewal commences.

#### **ARTICLE IV: PAYMENTS AND EXPENDITURES**

- 4.1 **Award Amount:** OLEC shall pay Grantee for services rendered in accordance with this Agreement, a total amount not to exceed X thousand dollars and no cents (\$75417), as set forth in Exhibit B, which monies shall constitute the sole and exclusive consideration offered or furnished by OLEC for the performance of duties and obligations by Grantee.
- 4.2 **Payment:** Unless otherwise stated in Exhibit B, compensation shall be made to Grantee in multiple payments, following Grantee's submission of a proper Payment Request:
- (a) The initial award payment shall be made within forty-five (45) days after the effective date of this Agreement.
  - (b) The remaining funds payment shall be made within thirty (30) days after the approval of Grantee's final report as described in Exhibit B.
- 4.3 **Eligible Costs Reimbursement:** OLEC shall determine whether costs are eligible or ineligible for reimbursement. Eligible cost shall be compliant with this Agreement.
- 4.4 **Unspent Funds:** Within thirty (30) days of receipt of OLEC's written notice of completion of the work under this Agreement, Grantee shall return the awarded compensation that has not been spent. The repayment shall be made by an official check payable to the order of "Treasurer, State of Ohio" and submitted to the attention of the Executive Director's designee for deposit into the Lake Erie Protection Fund.

#### **ARTICLE V: CERTIFICATION OF FUNDS**

- 5.1 **Funding Contingency:** It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the State of Ohio Controlling Board, or in the event that grant funds are used, until such time that OLEC gives Grantee written notice that such funds have been made available to OLEC's funding source. Grantee is hereby given notice that such funds are available.

#### **ARTICLE VI: TERMINATION OF GRANTEE'S SERVICES**

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- 6.1 **Suspension/Termination:** OLEC may, at any time prior to the completion of services by Grantee under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Grantee. OLEC shall provide Grantee a period of fourteen (14) days to remedy any such cause within the control of Grantee. As used in this article, "cause" includes, but is not limited to a determination by OLEC that funds for this Agreement have become unavailable as specified in this Agreement or otherwise; the breach of a material condition of this Agreement by Grantee; as determined by OLEC, Grantee's substantial failure to perform, apparent inability to perform or unreasonable delay in performance of work under this Agreement by Grantee.
- 6.2 **Cessation of Activities:** Grantee, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by OLEC, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work including, without limitation, results, conclusions resulting therefrom, and any other matters OLEC requires.
- 6.3 **Payment for Services Rendered:** Upon submission of a proper invoice, Grantee shall be paid for services rendered up to the date Grantee received notice of termination, less any payments previously made, provided Grantee has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made for which Grantee has not rendered services shall be refunded.
- 6.4 **Work Products:** In the event this Agreement is terminated prior to its completion, Grantee, upon payment as specified, shall deliver to OLEC products and documents which have been prepared by Grantee in the course of providing services under this Agreement. Unless prohibited by law, such materials shall become the property of OLEC to be used in such manner and for such purpose as OLEC may choose. This paragraph is not intended to confer upon OLEC ownership of proprietary instructional materials utilized in connection with training services provided by Grantee, or to supersede any rights or interests to any materials based on federal or state law (e.g., ORC 3345.14 for state colleges and universities).
- 6.5 **Grantee Termination:** Grantee may terminate this Agreement upon thirty (30) days prior written notice to OLEC.
- 6.6 **Legal and Equitable Remedies:** OLEC reserves the right to seek any and all other legal and equitable remedies.

## **ARTICLE VII: RELATIONSHIP OF PARTIES**

- 7.1 **Grantee Responsibilities:** OLEC and Grantee agree that, during the term of this Agreement, Grantee shall be engaged by OLEC solely on an independent contractor basis, and neither Grantee and its subcontractors, if any, nor their respective agents, servants or employees, shall at any time, or for any purpose, be considered as agents, servants or employees of the state of Ohio, and as such, are not public employees for the purposes of R.C. Chapter 145 based solely on being a party or participant to this Agreement. Grantee shall be responsible for all Grantee's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage.

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- 7.2 **Compliance with Law:** Grantee agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder.
- 7.3 **Grantee Independence:** Nothing in this Agreement shall be construed to imply, by reason of Grantee's engagement hereunder on an independent contractor basis, that OLEC has or exercises any right of control over Grantee with regard to the manner or method of Grantee's performance of services hereunder.
- 7.4 **Obligations:** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

#### **ARTICLE VIII: RECORD KEEPING AND AUDIT**

- 8.1 **Records:** During performance of this Agreement and for a period of five (5) years after its completion, Grantee shall maintain, in a manner consistent with generally accepted accounting procedures, auditable records of all financial records pertaining to this Agreement and shall make such records available to OLEC as it may reasonably require.
- 8.2 **Audit:** OLEC and the state of Ohio or their duly authorized representatives shall have the right to audit Grantee's financial records related to this Agreement, and to take such other action as is necessary to verify the accuracy of those financial records. Grantee shall resolve audit findings, including the preparation of a corrective action plan, and comply with any decision issued by OLEC and follow up on such findings as directed.

#### **ARTICLE IX: RELATED AGREEMENTS**

- 9.1 **Subcontracting:** The work contemplated by this Agreement is to be performed by Grantee, who may subcontract without OLEC's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Scope of Work, but which are required for its satisfactory completion. Unless otherwise specific in Exhibit A, Grantee shall not otherwise subcontract without prior written approval by OLEC. All work subcontracted shall be at Grantee's expense.
- 9.2 **Subcontracting Terms:** Grantee shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor and shall not agree to any provision which seeks to bind OLEC to terms inconsistent with, or at variance from, this Agreement.
- 9.3 **Assignment:** This Agreement and any rights, duties or obligations described in this Agreement shall not be assigned by Grantee without the prior written consent of OLEC.

#### **ARTICLE X: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

- 10.1 **Data Sharing:** The parties agree that Grantee shall share data, documents and other materials with other researchers as needed to fulfill terms of this grant Agreement.
- 10.2 **Access:** Grantee shall allow OLEC and their representatives, access at reasonable times and places within the State of Ohio to all documents and other materials prepared by Grantee under this Agreement for the purposes of examining and copying such documents and materials.
- 10.3 **Property Rights:** Property Rights. All rights, title, and interest in and to any materials developed with the funds under this Agreement vests in Grantee with OLEC receiving a fully paid, non-exclusive, perpetual, irrevocable, royalty-free, worldwide, sublicensable,

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transferable, assignable license to modify, publish, reproduce, distribute, make derivative works from, make publicly available, share, and otherwise use in all media, whether now known or otherwise, the same.

- 10.4 **Acknowledgment:** All products and publications (including, but not necessarily limited to, fact sheets, brochures, newsletters, newspaper articles and/or advertisements, signs, watershed management plans, quality assurance project plans, home sewage treatment system plans, design reports, project reports, etc.) and public announcements, regardless of media used, for workshops, conferences, demonstration days or other events, wherein such products, publications and public announcement are funded in whole or in part by award monies under this Agreement shall provide acknowledgment to OLEC as set forth below, to which Grantee may add acknowledgement of funding or in-kind support from its partners and members:

This **[product, publication or public announcement]** was financed in part or totally by the Ohio Lake Erie Commission through a grant from H2Ohio. The contents and views, including any opinions, findings, conclusions, or recommendations contained in this **[product, publication, or public announcement]** are those of the authors and have not been subject to any Ohio Lake Erie Commission peer or administrative review and may not necessarily reflect the views of the Ohio Lake Erie Commission and no official endorsement should be inferred.

#### **ARTICLE XI: COMPLIANCE WITH LAWS**

- 11.1 **Smoke Free and Drug-Free Workplaces:** Grantee shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
- 11.2 **Nondiscrimination:** Pursuant to ORC 125.111, Grantee agrees that Grantee, any subcontractor, and any person acting on behalf of Grantee or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, disability, or military status as defined in section 4112.01 of the Revised Code, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement, nor against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, national origin, disability, or military status as defined in R.C. 4112.01 or ancestry.
- 11.3 **Statutory Conflicts / Contributions / Soliciting Donations / Self Promotion:**
- a. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if this Agreement would be or conflicts with, R.C. 3517.13, R.C. 127.16, or R.C. Chapter 102.
  - b. Pursuant to its standard operating procedures and a due diligence inquiry, Grantee hereby certifies, to the best of its knowledge, that Grantee, its partners, officers, directors, shareholders, or spouses of any such person have not made contributions in excess of the limitations specified in R.C. 3517.13.
  - c. Grantee shall not use any award monies under this Agreement to solicit donations or memberships to Grantee's organization. Use of or reference to,

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this Agreement, or the existence thereof, by Grantee to promote the business of Grantee is prohibited, unless otherwise consented to in writing by OLEC.

- d. No personnel of Grantee or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work and the end of this Agreement, acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his / her functions and responsibilities with respect to said work.
  - e. Any person who acquires, whether voluntarily or involuntarily, an incompatible or conflicting personal interest, in contravention of this paragraph shall immediately disclose said interest to OLEC in writing. Thereafter, said person shall not participate in any action affecting the work under this Agreement, unless OLEC determines that, in light of the personal interest disclosed, participation in any such action would not be contrary to the public interest.
  - f. Grantee certifies, represents, and warrants that Grantee and those employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Grantee further certifies, represents, and warrants that in the performance of this Agreement, Grantee shall at all relevant times comply with R.C. 102.04, and ensure that Grantee's employees comply with said Statute.
  - g. In the performance of this Agreement, any of the persons enumerated in the above paragraph who are not in compliance with R.C. 102.04 shall immediately disclose said noncompliance to OLEC in writing. Thereafter, such person(s) shall not participate in any action affecting any work under this Agreement.
- 11.4 **Human Trafficking:** Grantee and any person acting on behalf of Grantee shall not engage in human trafficking; procure a commercial sex act or use forced labor in the performance of this Agreement.
- 11.5 **Certification Against Unresolved Findings for Recovery:** Grantee represents and warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is deemed to be false, this Agreement shall be void *ab initio* and Grantee shall immediately repay any award monies paid under this Agreement.
- 11.6 **Debarment:** Grantee represents and warrants that Grantee and its principals are not excluded or disqualified from consideration of state awards by the Director of the Department of Administrative Services pursuant to ORC 153.02 or 125.25, and should this certification, representation and warranty be found to be false, this Agreement is void *ab initio* and any award monies provided to Grantee pursuant to this Agreement shall be immediately repaid and an action may be commenced for recovery of said monies.
- 11.7 **Lobbying:** Grantee shall not use any award monies to support any political campaign for elective office, support attempts to lobby legislation before a legislative body or administrative agency, engage in lobbying of the federal, state, or local government or in litigation against the State of Ohio or United States unless authorized by law. Lobbying Activity Forms may be attached to this Agreement.

#### **ARTICLE X11: ENTIRE AGREEMENT/WAIVER**

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- 12.1 **Entire Agreement and Supersedence:** This Agreement contains the entire agreement between the parties and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties. This Agreement supersedes all previous agreements, whether written or oral, between the parties.
- 12.2 **Waiver:** A waiver by any party of any breach or default by the other party shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default.

### **ARTICLE XIII: GENERAL PROVISIONS**

- 13.1 **Communications:** All notices, consents, and communications hereunder shall be given in writing, through email or written correspondence, or through telephone and shall be deemed to be given upon receipt thereof and shall be sent to the addresses or email addresses set forth in Exhibit B.
- 13.2 **Headings:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 13.3 **Severability:** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- 13.4 **Governing Law:** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Grantee hereby irrevocably consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- 13.6. **Liability:**
- a. Each party agrees to be responsible for any and all claims for injury or damages arising from this Agreement which are attributable to its own actions or omissions or those of its trustees, officers, agents, employees, suppliers, third parties utilized by Grantee, subcontractors, or joint venturers, while acting under this Agreement, as determined by a court of competent jurisdiction. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.
  - b. Neither party shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, as determined by a court of competent jurisdiction. Each party shall seek its own legal counsel and bear its own cost, including judgments, in any litigation that may arise from the performance of this Agreement.
  - c. Notwithstanding any other term or condition in this Agreement, OLEC's liability to Grantee for damages, whether in contract or in tort, shall not exceed the amount of award monies earned to date under this Agreement or the amount of direct damages incurred by Grantee, whichever is less. Grantee's sole and exclusive remedies for OLEC, its employee's, or the State's failure to perform under this Agreement shall be as set forth in this paragraph. In no event shall OLEC or any OLEC employee, or the State of

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Ohio be liable to Grantee for any indirect or consequential incidental, special or punitive damages, including, but not limited to, loss of profits, even if the State, OLEC, or OLEC's employees had been advised or knew or should have known of the possibility of such damages. Notwithstanding any language to the contrary, Grantee shall be liable for any personal injury or damage to real property or tangible personal property, caused by its or its agents, successors or assign's fault or negligence. OLEC is hereby released from any and all liability for injury received by Grantee, its agents, successor's or assigns while performing tasks, duties and obligations set forth in this Agreement.

#### **ARTICLE XIV: EXECUTION / EFFECTIVE DATE**

- 14.1 **Execution / Effective Date:** This Agreement shall be effective and binding upon the parties on the date the last required signature is affixed to this Agreement, consistent with the provisions of this Agreement.

#### **ARTICLE XV: STATE OF OHIO EXECUTIVE ORDERS**

- 15.1 **Clothing:** To the extent this Agreement involves the purchase of clothing, Grantee is prohibited from purchasing or arranging for clothing from any supplier that is in noncompliance with applicable laws, including but not limited to laws establishing standards for wages, occupational safety, and work hours. Further, Grantee hereby represents and warrants that it is not using any sweatshop, as described by State of Ohio Executive Order No. 2008-21S, in the production of clothing supplied under this Agreement.
- 15.2 **Purchases:** Pursuant to State of Ohio Executive Order Nos. 2008-12S and 2008-13S, Grantee shall make a good faith effort to purchase from Ohio companies and from Minority Business Enterprise (MBE) and Encouraging Diversity, Growth and Equity (EDGE) program vendors, the goods and services acquired under this Agreement.
- 15.3 **Purchases outside the United States:** State of Ohio Executive Order 2019-12D, signed March 5, 2019, provides that no State Cabinet Agency, Board or Commission shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by OLEC and services provided by granted and any subcontractors. Grantee affirms that it has read, understands, and will abide by the requirements of this State of Ohio Executive Order and shall disclose to the Director or designee:
- a. The location(s) where all services are to be performed by Grantee or any subcontractor and where any state data associated with any of the services to be provided or sought to be provided, will be accessed, tested, maintained, backed-up or stored, and
  - b. Any change in the location of any services being provided by Grantee or any subcontractor and the principal business location of Grantee and any subcontractors.
- 15.4 **Inability to Meet Outputs / Outcomes:** Grantee shall inform OLEC as soon as problems, delays, or adverse conditions that will materially impair Grantee's ability to meet the outputs/outcomes specified in the project's scope of work, work plan or comparable

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activities or tasks, are known.

**By signing below, Grantee assures and certifies that the specific information detailed in this Agreement is current, accurate and complete, and that Grantee has the legal authority to apply for state and federal assistance, and the institutional, managerial, and financial capability to ensure proper planning, management and completion of the project described in this Agreement.**

**By signing below, Grantee further assures and certifies that Grantee and its principals, to the best of its knowledge and belief:**

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from receiving any state or federal awards, grants, contracts, or the like,
- b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph b, and
- d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

**By signing below, Grantee further assures and certifies that Grantee had the opportunity to discuss this matter with and obtain advice from legal counsel of its choosing, has carefully read and fully understands the provisions of this Agreement, understands that this Agreement is generic to Lake Erie Protection Fund Grants and as such certain clauses may not be applicable to certain situations, and has knowingly and voluntarily entered into this Agreement.**