

**OHIO ENVIRONMENTAL EDUCATION FUND
GENERAL GRANT AGREEMENT
SFY 2019**

This agreement is entered into by and between the Ohio Environmental Education Fund, hereinafter referred to as the "OEEF", and **(grantee)** , hereinafter referred to as the "Grantee" (and, together with the OEEF, the "Parties"). The purpose of this agreement is to administer the OEEF Grant Award for the Grant Project submitted for funding by the Grantee-assigned OEEF grant number **(number)**. This agreement is referred to herein as "The Agreement."

WHEREAS, Ohio Revised Code ("ORC") 3745.22 creates in the state treasury the OEEF, consisting of moneys credited to the OEEF pursuant to ORC 3704.06 and ORC 6111.09 and any gifts, grants, or contributions received by the Director (the "Director") of the Ohio Environmental Protection Agency ("Ohio EPA") for the purposes of the OEEF;

WHEREAS, ORC 3745.22 requires the Director to administer the OEEF with the advice and assistance of the Environmental Education council created in ORC 3745.21 and whereas, ORC 3745.22 authorizes the Director to expend moneys credited to the OEEF;

WHEREAS, the Grantee has applied for a grant for a project entitled "[name of project]";

WHEREAS, the OEEF desires to award a grant to the Grantee for the project; and

WHEREAS, the Grantee desires to perform and complete such work, activities, and requirements as prescribed by OEEF.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I: CONTACT AND COORDINATION AND NATURE OF RELATIONSHIP

- 1.1 **(OEE's Chief)** On behalf of the Director, the Chief of the Office of Environmental Education ("OEE") shall be responsible for the evaluation of the Grantee's performance, authorization of payments to the Grantee, and authorizations of any and all modification(s) to the Agreement. The OEE Chief, or his/her designee, shall coordinate communications with the Grantee's Project Director of the Grant Project or Grantee's Authorizing Agent.
- 1.2 **(Grantee's Project Director)** The Grantee's Project Director of the Grant Project ("Grantee's Project Director") shall, in accordance with the proposed budget, coordinate: 1) the work, activities, and requirements set forth in the Agreement; 2) the work, activities and requirements set forth in the Grant Application; and 3) the work, activities, and requirements set forth in any applicable conditions established precedent to the Agreement. The Grantee's Project Director shall coordinate all work through the OEE Chief, or his/her designee.

- 1.3 **(Grantee's Authorizing Agent)** The Grantee's "Authorizing Agent" shall be the person who executes the Agreement on behalf of the Grantee. If the Grantee's Authorizing Agent wishes to communicate with the OEE, such communication must be with the OEE Chief or his/her designee.
- 1.4 **(OEEF's Authorizing Agent)** The OEEF's "Authorizing Agent" shall be the Director, or his/her delegated signatory, who will execute the Agreement on behalf of the OEEF.
- 1.5 **(Signatory Authority)** If the Grantee wishes to delegate signatory authority to a representative, the Grantee shall send written confirmation, signed by the Grantee's Authorizing Agent, to the OEE Chief describing the delegation.
- 1.6 **(Reliance on Grantee's Representation)** The Grantee acknowledges that the OEEF enters into the Agreement in reliance upon Grantee's representations that it has the necessary expertise and experience to perform its obligations hereunder. Grantee warrants that it possesses the necessary expertise and experience to perform its obligations. Further, Grantee warrants and represents that all persons involved in Grantee's performance of work under the Agreement are, or will be, prior to any performance prescribed or required by the Agreement, properly qualified, trained and competent, and possess the required licenses, permits, certifications, and registrations necessary to lawfully provide the services.
- 1.7 **(Grantee Responsible)** OEEF retains the right to ensure, by any means necessary, that Grantee's work is in conformity with the terms and conditions of the Agreement. Aside from that right, Grantee shall be solely responsible for the performance of the requirements under the Agreement. OEEF shall not hire, supervise, nor pay any assistants, workers or any other employees or subcontractors of Grantee. OEEF shall not be required to provide any training to Grantee to enable it to perform services required hereunder. Nothing herein shall be construed to imply that OEEF shall have or may exercise any right of control over Grantee with regard to the manner or method of Grantee's performance of the services. The management of all work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with Grantee.
- 1.8 **(Grantee's Independence)** It is fully understood and agreed that the Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents or employees of the State of Ohio. Grantee acknowledges and agrees that any individual providing services under the Agreement is not a public employee for purposes of ORC Chapter 145.
- 1.9 **(Reimbursement/Confidentiality)** In the event of a termination of the Agreement by OEEF, Grantee shall be reimbursed for applicable expenses in accordance with the procedure described in Section 4.3, below. The provisions of the

Agreement relating to confidentiality, if any, shall remain binding upon Grantee in the event of termination.

- 1.10 **(Grantee Responsible for Business Expenses)** Grantee shall be solely responsible for all of Grantee's business expenses, including, but not limited to, computers, internet access, software, phone services, required licenses and permits, employees' wages, salaries and benefits, 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, if any.
- 1.11 **(Neither Party May Bind Other)** Except as expressly provided herein, neither of the Parties shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- 1.12 **(Compliance with ORC)** The Parties expressly agree that none of the rights, duties, and obligations herein shall be binding on either party if the Agreement, or any part of it, is contrary to the terms of ORC 3517.13, ORC 127.16, or ORC Chapter 102.

ARTICLE II: SCOPE OF WORK

- 2.1 **(Scope of Work)** The Grantee shall successfully perform and complete: 1) the work, activities, and requirements set forth in the body of the Agreement; 2) the work, activities, and requirements set forth in the Grant Application, which is attached hereto and labeled "**Exhibit A**"; and, 3) if applicable, the work, activities, and requirements set forth in the conditions established precedent to the Agreement as those conditions are specified in "**Exhibit B**", which, if applicable, is attached hereto. (Exhibits A and B, if applicable, is/are hereby made a part of the Agreement and incorporated herein by reference.)
- 2.2 **(Adherence to Budget)** The Grantee has submitted to the OEE Chief, as a condition precedent to the Agreement, a proposed Budget. The Grantee represents and warrants that the proposed Budget accurately reflects anticipated project resources and expenditures for the term of the Agreement. The Grantee shall complete the work, activities, and requirements set forth in the body of the Agreement and in "**Exhibit A**" (attached hereto and incorporated herein) in accordance with the proposed Budget. If applicable, the Grantee shall also complete the work, activities, and requirements set forth in "**Exhibit B**" (attached hereto and incorporated herein if applicable) in accordance with the proposed budget. If the Grantee desires to modify the Budget, the Grantee may only do so in accordance with the terms of Article XIX, below.
- 2.3 **(Fiscal & Activity Reports)** The Grantee shall provide the OEE with fiscal and activity reports in accordance with the terms set forth in Article VIII of the Agreement.

- 2.4 **(Three Copies of Products)** The Grantee shall provide the OEE Chief with three copies of any and all guides, brochures, lesson plans, audio/visual materials, activity instructions, and all other instructional or educational materials developed, in whole or in part, under the Agreement. The three copies shall be in formats suitable for public distribution and shall be provided to the OEE Chief within thirty days of development.

ARTICLE III: TIME OF PERFORMANCE

- 3.1 **(Term of Agreement)** The Parties agree that the Agreement is effective on the date when the last required signature is affixed hereto and runs through the date upon which the OEE issues a written letter of closure, except that the Grantee agrees to retain fiscal records according to Article VII.
- 3.2 **(Project Period)** The Parties agree that the "Project Period" is from the date when the last required signature is affixed hereto, or the date suggested in the guidelines, whichever is later, and runs through **xx/xx/xxxx**. The Project Period may not be extended without the express agreement of the Parties through a written request of the Grantee and the written approval of the Director or his/her delegated signatory.
- 3.3 **(Biennium limitation; renewal at discretion of Director)** As the current General Assembly cannot commit a future General Assembly to expenditure, the Parties agree and acknowledge that the Agreement may expire upon the last day of the current State of Ohio biennium. If either or both of the OEEF and/or the Director's expenditure authorization (from ORC 3745.22) are subject to a biennium limitation, then at the Director's discretion, the Agreement may be renewed for the next biennium by executing a new Agreement.

ARTICLE IV: AWARD PAYMENTS AND EXPENDITURES

- 4.1 **(Award Amount)** The OEEF hereby awards a grant amount not to exceed \$ to the Grantee.
- 4.2 **(Initial Payment)** The Grantee shall choose whether to receive: grant payments on a reimbursement basis OR; grant payments in the form of working capital advance payments. The Grantee shall notify the OEE chief in writing of its decision on how to receive such payments and follow the procedures listed in Section 4.3, or 4.4, below.
- 4.3 **(Reimbursement Payments)** If the Grantee elects to receive payments on a reimbursement basis, the Grantee shall follow the procedure described in this section. The Grantee shall submit payment requests on a form provided by Ohio EPA, with copies of supporting documents (including receipts, invoices and payroll records) after costs are incurred. The amount of the payment request

shall be equal to the costs incurred. Reimbursement payment requests shall be submitted every 30 days. If costs are not incurred during a given 30-day period, the Parties may agree to alter the frequency of the reimbursement payment requests.

- 4.4 **(Working Capital Advance Payments)** If the Grantee elects to receive working capital advance payments, the Grantee shall follow the procedures described in this section. The Grantee shall submit an initial request for payment on a form provided by Ohio EPA for the estimated amount needed for the first 90 days (or three-month period) of the project. Subsequent requests for the next 90-day period shall include supporting documents (including receipts, invoices and payroll records) for the actual costs incurred during the prior period. Beginning on the second request for funds, the Grantee shall also include a calculation of the cash balance or shortfall from the cumulative prior advance payments. If, at the time the payment request is made, the Grantee has a cash balance (because the previous advance payments were more than actual expenditures), the requested payment amount shall be reduced by the amount of the cash balance. If, at the time the payment request is made, the Grantee has a cash shortfall (because the previous advance payments were less than the amount of actual expenditures), the requested payment amount shall be increased by the amount of the shortfall. Ohio EPA will hold 10% of the award amount in reserve until the project is complete. The final 10%, or a portion thereof, shall be paid to the Grantee on a reimbursement basis, for final actual project costs that were not reimbursed through working capital advance payments.
- 4.5 **(Final Payment)** OEEF will not make the final payment, if any, until and if the OEE Chief determines that 1) the project has proceeded in accordance with the Grant Application; 2) the project has proceeded in accordance with the conditions established precedent to the Agreement, if any, as specified in Exhibit B, if applicable; 3) the Grantee has satisfactorily performed its obligations pursuant to the Agreement; 4) the pertinent Activity and Fiscal Report(s) have been prepared according to OEEF written instructions; 5) all expenditures have been made in accordance with the Budget; and, 6) the Grantee has satisfactorily established the need for additional funds. The OEE Chief's determinations shall be based upon submitted progress reports, site visits, and/or any other methods deemed appropriate by the OEE Chief.
- 4.6 **(Balance of Grant)** If the OEE Chief makes the determinations set forth in Section 4.5, the OEE Chief shall forward the final payment. The total of all payments to the Grantee shall not exceed the approved total grant award.
- 4.7 **(Satisfactory Performance)** The Parties acknowledge and agree that all payments made under this grant award are based on actual costs and are made in consideration of the Grantee's promises and the Grantee's satisfactory performance as set forth in the Agreement.

- 4.8 **(Unspent Funds)** Within ninety days of the date of the close of the Project Period, the Grantee shall return all unspent funds to the OEEF. Checks shall be made payable to the Treasurer of the State of Ohio and mailed to the Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049.
- 4.9 **(Expenditures Incurred Prior to Effective Date of Agreement)** The Grantee may not utilize any funds granted under the Agreement for payment of expenses or debts incurred prior to the effective date of the Agreement as specified in Section 3.1.
- 4.10 **(No Reimbursement for Certain Expenses)** The Grantee shall not be reimbursed for travel, lodging, or other expenses incurred in the performance of the Agreement.
- 4.11 **(Prohibited Expenditures)** The Grantee may not use any funds granted under the Agreement for payment of: a) real estate acquisitions; b) capital improvements of permanent structures; c) fund-raising or membership drives; d) political campaigning for elective office or political candidates; e) legislative lobbying before a legislative body or administrative agency; f) grants or scholarships; g) food or beverage; h) indirect or overhead charges above the amount allowed in the current OEEF grant application guidelines (all costs must be directly attributed to project activities); and i) anything else listed in current OEEF grant application guidelines as being prohibited.
- 4.12 **(Payment of Debts)** The Grantee assumes full responsibility for the payment of all expenses or debts incurred in the performance of its obligations pursuant to the Agreement. The OEEF, Ohio EPA and its agents and employees, and the Environmental Education Fund Council assume no responsibility for the payment of any expense or debt incurred by the Grantee.
- 4.13 **(Liability)** The OEEF, the Director, employees and representatives of the Ohio EPA, and members of the EEC shall not be liable for any damages or claims made by any party that result from the expenditure of funds for the purposes of the Grant Award.

ARTICLE V: AVAILABILITY OF FUNDS

- 5.1 **(Funds Available)** The Parties acknowledge and agree that none of the rights, duties, and obligations described in the Agreement shall be binding on either party until all relevant funding provisions of the ORC, including, but not limited to, ORC 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 Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that OEEF gives Grantee written notice that such funds have been made available to OEEF by OEEF's funding source. If OEEF should learn that funds are unavailable to meet its obligations set forth

herein, OEEF shall notify Grantee and the Agreement shall be deemed void *ab initio*.

ARTICLE VI: DISPUTES AND TERMINATION

- 6.1 **(Dispute Regarding Duties Other than Payments)** Any controversy, claim or dispute regarding the duties of the Grantee or arising out of or relating to the Agreement, or breach thereof, shall be resolved by the Director, after the OEE Chief has endeavored to resolve the dispute through discussions with the Grantee's Project Director.
- 6.2 **(Suspension/Termination)** As part of the resolution of any controversy, claim or dispute regarding the duties of the Grantee or arising out of or relating to the Agreement, or breach thereof, the Director may immediately, with written notice to the Grantee, suspend or terminate the Agreement and any obligations incidental thereto, in whole or in part, and/or require total or partial refund of payments made to the Grantee by the OEEF, if it appears to the Director that: 1) the Grantee has not substantially performed according to the terms of the Agreement; 2) the Grantee has not shown the ability to perform in the future; 3) the Grantee has violated Federal or State laws or regulations; or 4) the effective performance of the Agreement is substantially endangered.
- 6.3 **(Cessation of Activities)** The Grantee, upon receipt of notice to suspend or terminate project operations, shall cease all work under the Agreement, shall take all necessary and appropriate steps to cease the incurring of debts, and shall furnish a report concerning the work performed to that date, accomplishments, evaluation of project activities, and such other matters as may be required by the OEE. In the event of suspension or termination, any payments made by the OEEF for which Grantee has not performed work shall be refunded.
- 6.4 **(Delivery of Work Product)** In the event the Agreement is terminated prior to Grantee's completion of its obligations hereunder, Grantee shall deliver to OEE Chief all work products and documents that have been prepared by Grantee during the course of the Agreement. All such materials shall become, and remain, the property of the OEEF, to be used in such manner and for such purposes as OEEF may choose, but Grantee is granted a royalty-free non-exclusive license in the materials.
- 6.5 **(Grantee Waiver)** Grantee agrees to waive any right to, and shall make no claim for, additional funds against the OEEF by reason of such suspension or termination.

ARTICLE VII: RECORD KEEPING

- 7.1 **(Records Retention)** The Grantee agrees to keep full and complete documentation of all fiscal accounting on file for five years from the date the conditions of the Agreement are finalized. Documentation supporting fiscal accounting shall be filed in a manner allowing it to be readily located. Grantee shall maintain, in a manner consistent with generally accepted accounting procedures, auditable records of all financial records pertaining to the Agreement.
- 7.2 **(Separate Accounting)** The Grantee shall establish and maintain separate accounting records for the management of funds pursuant to the Agreement consistent with generally accepted accounting practices.
- 7.3 **(Supporting Records)** The Grantee shall be responsible for the expenditure of funds and for maintaining adequate supporting records for such expenditures consistent with generally accepted accounting practices.
- 7.4 **(Access and Audit)** The Grantee shall provide the OEE with access to any and all financial records necessary to document the utilization of funds provided under this Grant within two weeks following the OEE's written request for such access. The OEE Chief, or his/her designee, shall have the right to conduct a compliance audit of the Grantee's financial records of the Grant Project and to take such other action as is necessary to verify the accuracy of the amounts of compensation claimed by the Grantee hereunder.

ARTICLE VIII: GRANTEE PROJECT REPORTS

- 8.1 **(Fiscal Progress Reports)** Fiscal Progress Reports shall account for the fiscal activity of the grant project for the time periods accompanying each Request for Reimbursement or Request for Working Capital Advance. The Fiscal Progress Reports must be signed by two individuals, unless the Parties agree otherwise. The reports may be signed by the Project Director, Authorizing Agent and/or Fiscal Agent.
- 8.2 **(Activity Progress Reports)** Activity Progress Reports shall describe the activities and accomplishments of the grant project for six-month periods. The Activity Progress Reports must be signed by two individuals, unless the parties agree otherwise. The reports may be signed by the Project Director, Authorizing Agent and/or Fiscal Agent. These Activity Progress Reports are due **60 days from the end of each six-month period and from the end of the project period.** The First Activity Progress Report is due to the OEE Chief on **xx/xx/xxxx.**
- 8.3 **(Closing Reports)** Closing Fiscal and Closing Activity Reports shall describe all fiscal activities and all project activities and accomplishments covering the entire

project period. The Closing Reports shall integrate and add to all previously submitted fiscal and activity reports. The Closing Fiscal Report shall also include documentation of all contributions (cash, in-kind, and/or any other) received from sources other than the OEEF in support of the activities of the Grant Project. The reports must be signed by two individuals, unless the Parties agree otherwise. The reports may be signed by the Project Director, Authorizing Agent and/or Fiscal Agent. These Closing Reports are due **sixty days from the end of the Project Period**. These reports are due to the OEE Chief on **xx/xx/xxxx**.

- 8.4 **(Report Information)** With respect to each and every fiscal and activity report, the Grantee agrees to submit information identified by OEE in the "Grants Administration Reference Folder" and, where applicable, on forms supplied by OEE.

ARTICLE IX: RELATED AGREEMENTS

- 9.1 **(Work to be Performed by Grantee)** The work contemplated in the Agreement is to be performed by Grantee, who may subcontract without OEEF's approval for the purchase of articles, supplies, components, or services as contemplated in the Grant Application. Grantee shall not enter into other subcontracts without prior written approval of the OEE Chief. All work subcontracted shall be at Grantee's expense but grant funds may be used.
- 9.2 **(Grantee Remains Responsible)** No agreement between the Grantee and any third party for contractual services related to the grant project shall relieve the Grantee of any of its responsibility under the terms and conditions of the Agreement.
- 9.3 **(Grantee Shall Bind Subcontractors to Terms of This Agreement)** Grantee shall bind its subcontractors to the terms of the Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision that seeks to bind OEEF to terms inconsistent with the Agreement. In addition, the Grantee agrees not to allow the third party to spend money in a manner prohibited by the Agreement or the Grant Guidelines. For example, the Grantee agrees not to use OEEF grant dollars to pay the third party any indirect costs for contractual services above the amount allowed for indirect costs in the current OEEF grant application guidelines.

ARTICLE X: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

- 10.1 **(No Acquisition of Interest)** In the performance of the Agreement, Grantee agrees that neither Grantee nor any personnel of Grantee shall, prior to the completion of the duties and obligations of the Agreement, acquire any interest, direct or indirect, that is incompatible or in conflict with the discharge and fulfillment of Grantee's functions and responsibilities with respect to the Agreement.
- 10.2 **(Disclosure of Conflicting Interest)** Any person who has or acquires, whether voluntarily or involuntarily, an interest in contravention of Section 10.1, shall immediately disclose such interest to the OEE Chief in writing. Thereafter, that person shall not participate in any action affecting the work under the Agreement, unless the OEE Chief shall determine that, in light of the interest disclosed, the person's participation in any such action would not be contrary to the public interest.
- 10.3 **(Compliance with Other Ohio Ethics and Conflicts of Interest Laws)** Grantee represents, warrants, and certifies that Grantee and all personnel of Grantee engaged in the administration or performance of the Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Grantee further represents, warrants, and certifies that neither Grantee nor any of its personnel will do anything that is inconsistent with such laws.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

- 11.1 **(Nondiscrimination in Hiring)** Pursuant to ORC 125.111, Grantee agrees that Grantee, any subcontractor, and any person acting on behalf of Grantee or subcontractor, will not discriminate, by reason of race, color, religion, sex, age, disability as defined in ORC 4112.01, national origin, or ancestry, against any citizen of this state in hiring of any person qualified and available to perform the work under the Agreement.
- 11.2 **(Nondiscrimination in Employment)** Grantee further agrees that Grantee, any subcontractor, and any person acting on behalf of Grantee or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the Agreement on account of race, color, religion, sex, age, disability as defined in ORC 4112.01, national origin, or ancestry.
- 11.3 **(Affirmative Action)** If required by ORC 125.111 to have an affirmative action program, Grantee represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file an affirmative action verification form with the equal employment opportunity office of the Department of Administrative Services. (The form may

be completed with an electronic filing through the Ohio Gateway, available at [http://www.business.ohio.gov/.](http://www.business.ohio.gov/))

- 11.4 **(Compliance with Labor Laws)** Grantee represents, warrants, and certifies that Grantee, any subcontractor, and any person acting on behalf of Grantee or a subcontractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances governing fair labor and employment practices.

ARTICLE XII: PURCHASING REQUIREMENTS; PROHIBITION AGAINST PERFORMANCE OF SERVICES OFFSHORE

- 12.1 **(Purchase Ohio)** Pursuant to Executive Order 2008-12S, Grantee and subcontractors, if any, shall make a good faith effort to purchase from Ohio companies any goods and services acquired under the Agreement.
- 12.2 **(Purchase Minority, Diversity, and Equity)** Pursuant to Executive Order 2008-13S, Grantee and its subcontractors, if any, shall make a good faith effort to purchase goods and services from certified Minority Business Enterprise (MBE) and Encouraging Diversity, Growth, and Equity (EDGE) program vendors. EDGE program guidance may be found by accessing the following website: http://das.ohio.gov/Portals/0/DASDivisions/EqualOpportunity/pdf/MBEEDGE_EDGEProgOverview_4.14.pdf, and a list of State-certified MBE businesses is at: <http://eodreporting.oit.ohio.gov/searchMBE.aspx>.
- 12.3 **(Grantee Will Abide By Executive Order 2019-12D, Governing The Expenditure of Public Funds for Offshore Services)** Grantee affirms to have read and understands Executive Order No. 2019-12D issued by Ohio Governor Mike DeWine. Grantee shall abide by those requirements in the performance of this Agreement, and shall perform no services required under the Agreement outside the United States. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the Grantee performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Agreement. The Executive Order is available at: <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>.
- 12.4 **(Grantee Will Abide By Executive Order 2019-12D and Make Certain Disclosures)** Grantee also affirms, understands, and agrees to immediately notify Ohio EPA of any changes or shift in the location(s) of services performed by Grantee or its subcontractors under this Agreement and no services shall be changed or shifted to a location(s) that is/are outside the United States.
- 12.5 **(Performance of Services Outside U.S. is Material Breach)** If Grantee or any of its subcontractors perform services under the Agreement outside of the United States, the performance of such services shall be treated as a material breach of

the Agreement. The State of Ohio is not obligated to pay and shall not pay for such services.

- A. If Grantee or any of its subcontractors perform any such services, Grantee shall immediately return to the State of Ohio all funds paid for those services. The State of Ohio may also recover from the Grantee all costs associated with any corrective action the State of Ohio may undertake, including, but not limited to, an audit or a risk analysis, as a result of Grantee performing services outside the United States.
- B. The State of Ohio, in its sole discretion, may provide written notice to Grantee of a breach and permit the Grantee to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State of Ohio may buy substitute services from a third party and recover from Grantee any costs associated with acquiring those substitute services.
- C. The State of Ohio does not waive any of its rights and remedies provided to it in the Agreement, including, but not limited to, recovery of funds paid for services the Grantee performed outside of the United States.

ARTICLE XIII: RIGHTS IN MATERIALS AND COPYRIGHTS/PUBLIC USE

- 13.1 **(Public Record)** The Parties understand and agree that it is the intent of the OEEF to make all materials submitted as a part of this project available to the public.
- 13.2 **(Right to Reproduce)** The Grantee hereby assigns to the Director, the Ohio EPA and its agents and employees, and the OEEF and its agents and employees, a royalty-free, nonexclusive, and irrevocable license and right to reproduce (including, but not limited to, any electronic reproductions), distribute (including, but not limited to, on any physical document and/or website), or otherwise use, and to authorize others to use (in whole or in part), any report, data, artwork, or material prepared by Grantee, or its agents, pursuant to this Grant Agreement unless otherwise expressly prohibited by law (e.g., ORC 3345.14 for state colleges and universities). The Grantee further represents and warrants that it has the legal right to include, or will secure the legal right to include (prior to any publication or distribution), any and all intellectual property included or otherwise used in such materials, including, but not limited to, any data or artwork.

ARTICLE XIV: RESPONSIBILITY/DAMAGES

- 14.1 **(Indemnity)** The Grantee agrees to indemnify and to hold the OEEF, the Ohio EPA, and the State of Ohio and its employees harmless from any and all claims for injury and damages arising from the Agreement that are attributable to the Grantee's own actions or omissions or those of its trustees, officers, agents,

employees, subcontractors, suppliers, third parties utilized by the Grantee, or joint venturers while acting under the Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other Federal or State laws involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks. Grantee shall bear all costs associated with defending the OEEF, the Ohio EPA, and the State of Ohio against any and all claims.

- 14.2 **(Responsibility)** Each party will be responsible for its own acts and omissions and will be responsible for any and all damages, costs, and expenses that arise out of that party's own negligence, tortious acts, or other conduct or are due to the negligence, tortious acts, or other conduct of that party's respective agents, officers, or employees.
- 14.3 **(No Special Damages)** In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

ARTICLE XV: COMPLIANCE WITH LAWS

- 15.1. **(Compliance With Other Laws.)** In addition to complying with the laws specifically referenced in this Grant Agreement, Grantee agrees to comply with all applicable Federal, State, and local laws in the performance of the Agreement. Grantee accepts full responsibility for payment of taxes, including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in the performance of the work required to fulfill its obligations under the Agreement.

ARTICLE XVI: DRUG FREE WORKPLACE

- 16.1 **(Drug-Free Workplace)** Grantee agrees to comply with all applicable Federal, State, and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess alcohol, illegal drugs, or abuse prescription drugs in any way during the performance of the Agreement.

ARTICLE XVII: CAMPAIGN CONTRIBUTIONS

- 17.1 **(Campaign Contributions)** Grantee hereby certifies that neither it nor any of its partners, officers, directors, shareholders nor the spouses of any such person, have made contributions in excess of the limitations specified in ORC 3517.13. The Grantee agrees not to use any funds received under the Agreement to support any political campaign for elective office or to support attempts to lobby legislation before a legislative body or administrative agency.

ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER

- 18.1 **(Entire Agreement)** 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.
- 18.2 **(Supersedence)** This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties.
- 18.3 **(No Continuing Waiver)** A waiver by any party of any breach or default by the other party under the Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XIX: MODIFICATION OF PROJECT BUDGET AND PROJECT ACTIVITIES

- 19.1 **(Project Budget Modifications)** The Grantee may modify a budget line item, as contained in Exhibit B, without prior written approval of the OEE, provided these modifications do not modify the project activities and do not increase the total project cost. The Grantee shall provide the OEE Chief written notice of these changes and a revised budget in written form within thirty days after the Grantee's determination that a revision to the budget is needed. The Grantee shall report the Project Budget modifications according to the guidelines set forth in the "Grants Administration Reference Document". Further, the Grantee shall maintain documentation of all budget line item modifications in its fiscal records.
- 19.2 **(Project Activity Modifications)** The Grantee may NOT modify the Project Activities (attached as Exhibit A), without prior written approval of the OEE Chief, or his/her representative. The Grantee shall propose the requested Project Activity modifications according to the guidelines set forth in the "Grants Administration Reference Document".

ARTICLE XX: HEADINGS

- 20.1 **(Headings)** The paragraph and article titles and headings in the Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of the Agreement.

ARTICLE XXI: SEVERABILITY

- 21.1 **(Severability)** A determination that any part of the Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such other part is wholly dependent for its operation on the part so declared invalid.

ARTICLE XXII: CONTROLLING LAW

22.1 **(Governing Law)** This Agreement shall be governed by the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.

ARTICLE XXIII: SUCCESSORS AND ASSIGNS

23.1 **(Written Consent Required)** Neither the Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by Grantee without the prior written consent of the Ohio EPA. Any attempted assignment or delegation not consented to may be deemed void by the Ohio EPA or the OEEF.

ARTICLE XXIV: FINDINGS OF RECOVERY

24.1 **(No Unresolved Findings of Recovery)** Grantee warrants that it is not subject to an “unresolved” finding for recovery under ORC 9.24. Grantee agrees that if Grantee is subject to any “unresolved” finding for recovery under ORC 9.24, the Agreement is void *ab initio* and Grantee shall immediately repay to the State of Ohio any funds paid under the Agreement.

ARTICLE XXV: DEBARMENT

25.1 Grantee represents and warrants that it is not barred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or ORC 125.25. If this representation and warranty is false, the Agreement is void *ab initio* and Grantee shall immediately repay to the State any funds paid under the Agreement.

ARTICLE XXVI: EXECUTION/EFFECTIVE DATE

26.1 **(Full Execution Required)** This Agreement is not binding upon the Parties unless executed in full.

26.2 **(Counterparts)** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. It is agreed that all parties need not sign the same counterpart.

26.3 **(Exchange)** The exchange of copies of this Agreement and of signature pages by electronic mail in “portable document format” (“.pdf”) form, by facsimile transmission, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall constitute effective

execution and delivery of this Agreement to the parties. The alternate exchange means may be used in lieu of exchanging an original Agreement for all purposes. Signatures of the parties transmitted by facsimile or pdf form shall be deemed to be their original signatures for all purposes.

By signing the signature page, the Grantee assures and certifies that the specific information detailed in the Agreement, the Grant Application and the Project Budget (Exhibit A) and, if applicable, any pre-established conditions (Exhibit B) are current, accurate and complete.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by officials thereunto duly authorized as of the date and year signed below.

Signature of Grantee's Authorizing Agent

Date

Name and Title of Authorizing Agent
(Please type or print)

Name of Organization
(Please type or Print)

Craig W. Butler, Director, or Authorized Agent,
Signing on Behalf of
Ohio Environmental Protection Agency, for
Ohio Environmental Education Fund

Date

Exhibits A and B