

**ADDENDUM NO. 1
TO OHIO DEPARTMENT OF HEALTH REQUEST FOR PROPOSAL
(RFP)**

The Ohio Department of Health (ODH) is soliciting proposals for professional services.

1. PROJECT INFORMATION.

1.1. Project Title. Ohio Department of Health/Ohio Environmental Protection Agency Household Sewage Treatment Systems Repair/Replacement Project

1.2. Posting Date. March 5, 2015

* 1.3. Opening Date. April 17, 2015

* 1.4. Inquiry Period. March 5 – April 10, 2015

2. PROJECT OBJECTIVE.

2.1. Project Overview. The Ohio Department of Health (ODH) is working in partnership with the Ohio Environmental Protection Agency (Ohio EPA) to provide funding to local health districts (LHD) for the repair and replacement of failing household sewage systems (HSTS). Evidence shows that failing household sewage treatment systems may be contributing to water quality issues related to harmful algal blooms. To assist Ohio households that face these challenges, along with no or little financial means to correct the issue, the ODH/Ohio EPA Household Sewage Treatment Systems Repair/Replacement Project (ODH/Ohio EPA HSTS Project) has been established.

In this project, LHDs shall submit a funding proposal, manage HSTS repair/replacement activities which must be completed by October 31, 2016 pursuant to a contract between itself and a local contractor, and ensure that improvements are maintained. Only construction eligible under Water Pollution Control Loan Fund (WPCLF), between LHD and a contractor, can be reimbursed under this program.

3. PROJECT FUNDING.

3.1. Project Funding Priority. Funding for the ODH/Ohio EPA HSTS Project will be available to homeowners troubled with environmental and economic needs. More specifically, funding will be prioritized by Ohio EPA in descending order:

Repair/replacement of HSTS for homeowners whose incomes are at or below 100% of the U.S. Department of Health and Human Services (HHS) poverty guidelines living within "Targeted Watersheds" where water quality issues have been identified. The "Targeted Watersheds" include: Sandusky River- Rock Creek; Auglaize River- Flatrock Creek; Swan Creek- Bad Creek; and South Turkeyfoot Creek.

Repair/replacement of HSTS for homeowners living within the Western Lake Erie Basin other than the Targeted Watersheds at the income and funding levels in 3.2, below.

3.2. Project Funding Statewide. Remaining funds will be made available for disbursement to LHDs across the State at the below funding levels with preference given to homeowners whose incomes are at or below 100% of HHS poverty guidelines:

Repair/replacement of HSTS for homeowners whose incomes are at or below 100% of the HHS poverty guidelines- 100% funding (including permit costs)

Repair/replacement of HSTS for homeowners whose incomes are at or below 200% of the U.S. HHS poverty guidelines- 85% funding (including permit costs)

Repair/replacement of HSTS for homeowners whose incomes are at or below 300% of the U.S. HHS poverty guidelines- 50% funding (including permit costs)

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3.3. Funding Notes. Additional funding parameters are noted below:

Funds cannot be used for the connection of a home to a sanitary sewer.

The only construction eligible for WPCLF funding under this program is that performed under contracts between LHD and its installers. Improvements performed under contracts between installers and homeowners are not eligible for assistance under this program.

Rental properties and new build homes will not be eligible for assistance.

4. LHD PROPOSAL REQUIREMENTS. LHDs that wish to apply for funding available through this project shall submit a proposal demonstrating a need for funding for the repair and replacement of failing household sewage treatment systems, a comprehensive plan to manage the project at a local level, and the experience necessary to successfully implement the project.

4.1. Demonstration of Need.

Demonstration of Environmental Need. Provide local data that identifies specific areas (i.e. targeted or at-risk watersheds) and/or systems requiring repair, alteration or replacement (i.e. high impact areas--concentrated areas with high failure rates where repair/replacement will have greatest impact—and high density of discharging systems causing public health nuisance conditions).

Demonstration of Financial Need. Provide data indicating the percentage of households whose incomes represent the noted poverty levels above within the jurisdiction of LHD.

4.2. Comprehensive Plan.

Identify project lead and key health department staff involved in the oversight and implementation of the project.

Demonstrate adequate staffing to implement project.

Identify criteria and process for selection of failed HSTS that will be repaired or replaced.

Describe the process to confirm financial need of the home owners selected (i.e. tax forms, pay stubs)

Describe the selection/competitive bid process for contractors interested in completing the work.

Indicate terms and conditions of Operation Permit for an HSTS that include as applicable, required service contracts, sample collection/analysis, and maintenance reporting/tracking.

Demonstrate how new repairs or systems will be incorporated in accordance with state rules into Operation and Maintenance program.

4.3. LHD shall use the attached model construction contract (Attachment 1), unless a local contract template is submitted with this proposal and approved by ODH. An electronic version of Attachment 1 will be provided upon request to ODH.

Any alternately proposed construction contract shall follow construction contract requirements as outlined at http://www.epa.ohio.gov/Portals/29/wpclf_new/WPCLF%20HSTS%20Construction%20Contract%20Requirements.pdf. Contract requirements are as follows:

Payment and performance bonds – requirement for a Payment and Performance bond are covered in ORC 153.54 & 307.89 and section 3.4 of the WPCLF Loan Agreement;

Completion time – length of the contract time per ORC 153.19;

Contract must include contractor's Equal Employment Opportunity (EEO) Certification Form and Federal Certification Regarding Debarment, Suspension and Other Responsibility form;

Contractor's EEO Certification Form and Federal Certification Regarding Debarment, Suspension and Other Responsibility form must be referenced in the Instructions to Bidders, informing bidders that the form must be completed and submitted with the bid;
 If the local health district has its own EEO requirements, local forms and procedures may be substituted for the Ohio EPA form; and,
 Identify approximate costs associated with repair/replacement of identified HSTS system.

Allowable costs for HSTS repair and replacement include:

Initial pumping of the system;
 Soil evaluation (as applicable);
 Design fees;
 Site and design review fee;
 Installation permit fee;
 National Pollutant Discharge Elimination System (NPDES) General permit fee (as applicable);
 Cost of HSTS repairs (within rule requirements);
 Indoor plumbing repairs if needed per Ohio Administrative Code (OAC) 3701-29 (reviewed on case-by-case basis);
 Cost of installation and materials (estimates required);
 Supplemental electrical work (i.e. addition of box/wiring to support treatment equipment); and
 Extension of service contract beyond initial two year period (2-year maximum) for owners at up to 100% poverty level installing NPDES systems. (Note: the cost of annual sampling for NPDES compliance may only be covered if it is included in the terms and cost of the service contract).

4.4. Previous Experience.

Describe successfully completed projects with similar size and scope of work.

Identify barriers to implementation of projects with similar size and scope.

Describe challenges with expending previously awarded funds.

Identify strategies to overcome barriers.

5. SCOPE OF WORK. The ODH/Ohio EPA HSTS Project shall be administered in accordance with the requirements set forth by Ohio EPA and ODH. Given afore-mentioned information, project deliverables for LHDs to execute have been established accordingly:

- 5.1. Upon execution of a WPCLF loan assistance agreement between Ohio Environmental Protection Agency and LHD (Attachment 2), LHDs begin working with qualifying homeowners to execute the required paperwork and arrange for matching funds, as applicable.
- 5.2. LHDs initiate the local contractor bidding process for work to be completed pursuant to the proposed model construction contract in Attachment 1 or an approved proposed construction contract submitted in its RFP and approved by ODH. LHDs are encouraged to group qualified HSTS projects for the bidding process. All systems included in a grouping will be awarded to the selected bidder. LHD should follow guidance for bidding instruction provided at <http://www.epa.ohio.gov/defa/EnvironmentalandFinancialAssistance.aspx#155494612-documents>.
- 5.3. Bid Security – requirement for a bid guarantee (which can be a bond or a certified check, cashier's check, or letter of credit) are covered in Ohio Revised Code (ORC) 153.54 & 307.88. Each bid must be accompanied by cash, certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by LHD, in the amount of 10% of the bid. Such cash, checks or bid bonds will be returned to all except the three lowest bidders within three days after the opening of bids, and the remaining cash, checks or bid bonds will be returned promptly after LHD and the accepted bidder have executed the contract, or, if no award has been made within thirty (30) days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long

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as he/she has not been notified of the acceptance of his/her bid. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney;

- 5.4. For contracts with an estimated construction cost of less than \$50,000, LHD may choose to competitively bid the contract, but has the option to solicit informal estimates instead. If LHD chooses to solicit estimates rather than competitively bidding, estimates must be solicited from at least three different contractors who could perform the contract. Records of such estimates, including the name of each person from whom an estimate is solicited and the cost estimate provided must be submitted to ODH.
- 5.5. For contracts with estimated costs greater than \$50,000, LHD must competitively bid the contract. If local charter/ordinances specify different dollar limits for solicitation vs. competitive bidding, ODH/Ohio EPA must be informed prior to such solicitation.
- 5.6. LHDs select local contractors to complete the installation work for systems selected for repair or replacement according to rules established by OAC 3701-29 and their local rules.
- 5.7. LHD shall submit the list of selected contractors, along with their bids and proposed construction contracts (signed by the selected local contractor only), to ODH for approval prior to construction contract execution.
- 5.8. Upon approval by ODH, LHDs shall execute construction contracts with approved local contractors using the approved construction contract. LHDs shall forward a copy of the fully executed construction contract to ODH.
- 5.9. LHDs ensure all work performed for the repair/replacement of the HSTS by contractors shall be performed in accordance with Chapter 3701-29 of the Ohio Administrative Code (OAC). LHD installation verification process shall confirm that the systems are installed in accordance with OAC 3701-29, Ohio EPA requirements, and the requirements set for in the project plan.

Soil evaluator must meet the qualifications set forth in paragraph (A) of OAC 3701-29-07.

Soil evaluation must be completed in accordance with OAC 3701-29-07.

Septage hauler must be registered in accordance with OAC 3701-29-03 in the local health district where work will be performed.

Domestic septage must be disposed in accordance with OAC 3701-29-20.

Design must be completed in accordance with OAC 3701-29-10 .

HSTS installer must be registered in accordance with OAC 3701-29-03 in the local health district where work is to be performed prior to beginning and installation/alteration work.

Service provider must be registered in accordance with OAC 3701-29-03 in the local health district where work is to be performed prior to servicing a system.

- 5.10. LHDs inspect on-site contractor work and determine if it was completed in compliance with OAC 3701-29, the approved design, and the installation/alteration permit.
 - 5.11. LHDs shall compare the contractor invoices to the original bid. Once LHDs have verified that the documentation matches, LHDs shall forward contractor invoices, to ODH for payment approval and reimbursement from Ohio EPA.
6. DELIVERABLES. LHDs shall provide the following project deliverables throughout the project term:

- 6.1. LHDs must submit each contract with local contractors for approval by ODH prior to the execution of that contract.
- 6.2. LHDs provide quarterly reports, starting July 1, 2015, on the status of approved projects. Quarterly reports shall be required until all allocated funds have been expended. At a minimum, information included in the project reports shall include:

Homeowner's name and address and list of all contractors participating in the repair/replacement of the HSTS, including septage hauler, soil evaluation, designer, installer, and service provider, as applicable.

Current status of each HSTS homeowner project.

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6.3. LHDs shall confirm that contractors have successfully completed contract deliverables for each project and therefore have been approved by LHD for payment. Aforementioned information shall be submitted to ODH for further approvals.

ODH shall only approve contractor reimbursements for OHIO EPA to pay once:

Contract has been executed by all parties (LHD and contractors) and copy submitted to ODH;

Installation or repair of the HSTS has been inspected by LHD and final inspection certification has been issued;

An invoice that documents costs incurred for the individual HSTS improvements, per the contract between LHD and contractor, is submitted by LHD to ODH (the invoice must be accompanied by the health district final inspection certification).

6.4. ODH reviews and approves the submissions and directs OHIO EPA to authorize disbursement of approved amounts to the contractors to LHD. LHD shall affirm to ODH that payments from OHIO EPA are received by each contractor.

7. PROPOSAL EVALUATION. Submitted proposals will be sorted into two groups: 1) Targeted Watershed areas and 2) rest of state. ODH will score the proposals from each of the two groups separately according to the established scoring criteria below. All proposals received for the targeted watershed areas will receive priority.

Scoring Criteria	Weight (Total 100)
Demonstration of environmental need (local data that identifies specific areas (i.e. targeted or at-risk watersheds) and/or systems requiring repair, alteration or replacement (i.e. high impact areas--concentrated areas with high failure rates where repair/replacement will have greatest impact—and high density of discharging systems causing public health nuisance conditions).	25
Demonstration of economic need (household incomes compared to poverty levels). Awarded funding must be prioritized to qualifying households of greatest need (100% poverty levels).	25
Comprehensive Plan Identification of Project Lead Identification of Project Staffing Selection Process of Failed HSTS Selection Process of Homeowners Selection Process of Contractors	30
Maintenance tracking infrastructure. Demonstration of how new repairs or systems will be incorporated in accordance with state rules into Operation and Maintenance program.	10
Previous Project Experience Identification of Previous Projects Identification of Barriers in Implementing Previous Projects Identification of Challenges With Expending Funds Identification of Strategies to Overcome Barriers	10

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8. FUNDING AWARD. Within 30 days of RFP opening date, ODH shall issue an Intent to Award Funding to LHDs, based on evaluation results and OHIO EPA approval along with the WPCLF Loan Assistance Agreement between OHIO EPA and LHD in the awarded amount.

Remainder of Page Left Intentionally Blank. Attachments 1 & 2 Immediately Follow.

MODEL CONSTRUCTION CONTRACT

For

HOUSEHOLD SEWAGE TREATMENT SYSTEM

This Contract is between

[Local Health Department] (“LHD”)
[Contract Manager Name], (“LHD Contract Manager”)
[LHD Street Address]
[City, State Zip Code]
[Telephone Number]
[Email]

AND

[Local Contractor’s Name] (“Contractor”)
[Contractor’s Contact Name, Title] (“Contractor’s Representative”)
[Contractor’s Street Address]
[City, State Zip Code]
[Contractor’s Telephone Number]
[Contractor’s Email]

For the purpose of this Contract, the terms “Party” or “Parties” may be used to refer to both LHD and/or Contractor, individually or collectively. In order to be valid, this Contract must be signed by Contractor and returned along with required attachments (see §3) to LHD within fourteen (14) days of receipt at the above address.

1. CONTRACT TERM. Subject to §6 and other terms and conditions specified in this Contract:

1.1. “Contract Beginning Date” shall be defined as the date indicated here, or the date of Contract execution by both Parties, whichever is later:

[Enter Date]

1.2. “Contract Ending Date” shall be defined as the date indicated here, the date of Contract termination or the date to which the Contract has been extended:

[Enter Date]

1.3. “Contract Period” shall be defined as the time between the “Contract Beginning Date” and “Contract Ending Date.”

2. CONTRACT FUNDING.

2.1. “Contract Funding Source” shall be defined as:

Water Pollution Control Loan Fund

2.2. Ohio Statute Authorizing Administration of the Program:

Ohio Revised Code (“O.R.C.”) 3701.04(A) & 3718

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3. **ATTACHMENTS.** Attachments specified in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. **PLEASE READ CAREFULLY, INITIAL EACH PARAGRAPH BELOW & PROVIDE DOCUMENTS WHERE NECESSARY:**

Contractor affirms that they have read and understand and agree to be bound by the Contract Terms and Conditions in §5 below;

If Contractor is not subject to the statewide bond requirement of Ohio Administrative Code (OAC) 3701-29-03 and does not have a 2015 Registration Bond for Sewage Treatment Systems Installers, Contractor **must submit** with this Contract either (a) a certificate of liability insurance for 100% of the Total Contract Amount or, in the alternative (b) a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the Terms & Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to LHD. The bond shall be for 100 percent (100%) of the contract price. A Payment Bond and Performance Bond are required. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney. Under certain conditions, and within the limits of State and local laws and regulations, LHD may waive the requirement that the Payment and Performance Bond be underwritten by a surety company and may authorize in lieu thereof, a personal bond backed by a letter of credit from a local lending institution for the full value of the Contract;

Contractor **must complete and submit** with this Contract an American Iron and Steel Acknowledgement, attached and made a part hereof;

Contractor **must use** the attached Change Order to propose any changes to the Work. Said Change Order must be approved and in writing on the prescribed Change Order form and following the instructions as provided in the attached.

IN WITNESS WHEREOF, the Parties by signing below indicate their agreement to this Contract.

CONTRACTOR

LOCAL HEALTH DEPARTMENT

[Signature, Blue Ink Please]

[Signature, Blue Ink Please]

[Print Name & Title]

[Print Name & Title]

Date

Date

Remainder of Page Left Intentionally Blank. Scope of Work, Deliverable & Compensation & General Terms and Conditions Immediately Follow this Page.

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4. DELIVERABLES & COMPENSATION. During the Contract Period, in consideration of their mutual promises contained herein, and for other good and valuable consideration, it is hereby agreed as follows:

	Deliverables (Due Date and Compensation only noted if Applicable or Required)	Due Date	LHD shall pay to Contractor the following Compensation per site project
4.1.	Contractor shall provide paid receipts to LHD evidencing that all materials and supplies used in or provided by Contractor have been paid, and Contractor shall provide waivers of lien in an appropriate form at the conclusion of each site project as requested by LHD. LHD is authorized to withhold from Contractor any and all funds necessary to satisfy any claims brought against LHD by any materialmen or persons performing services under this Contract.	9/16/2016	
4.2.	Contractor shall perform the following services, to-wit: The Contractor shall complete installation or alteration of a new, existing or replacement home sewage treatment system(s) or repair to be in compliance with OAC 3701-29 and local codes at the Sites listed below. Such work shall include all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services and materials testing, obtain all required permits and perform and complete all work required for the service embraced in the project: namely insert list with description(s) specific to each Site.	9/16/2016	List compensation for each site project listed
4.3.	Final bill and required documentation will be due to LHD Contract Manager no later than 10 days following final inspection by LHD and completion of site work. LHD agrees to pay the said assigned funds to Contractor in accordance with the following method: <ul style="list-style-type: none"> a. The contract(s) has been executed by all parties and one original submitted to Ohio Department of Health (ODH); and b. The installation of the Household Sewage Treatment System (HSTS) has been inspected by LHD and a final inspection certification has been issued; and c. An invoice that documents the costs incurred for the individual HSTS improvements are submitted by LHD to ODH (the invoice must be accompanied by LHD's final inspection certification); and d. ODH reviews and approves the submissions and directs Ohio EPA to instruct the Ohio Water Development Authority to disburse approved amounts to LHD. 	9/16/2016	

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4.5.	Contractor shall perform said services in a professional manner to the satisfaction of LHD and having passed a final inspection performed by LHD.		
	TOTAL CONTRACT AMOUNT		\$.00

Remainder of Page Left Intentionally Blank. Terms & Conditions Immediately Follow this Page.

5. CONTRACT TERMS AND CONDITIONS.

- 5.1. Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Contract and intending to be legally bound, Contractor agrees to perform, and LHD agrees to pay Contractor, in accordance with the terms of this Contract.
- 5.2. Purpose of Contract. Contractor will provide LHD services in accordance with the terms of this Contract.
- 5.3. Scope of Work, Deliverables, and Compensation. Contractor shall provide work, services, products and deliverables in the time and manner and for the compensation specified in §4 and any attachment specified or incorporated into this Contract.
 - 5.3.1. Compensation. In consideration of the Scope of Work and Deliverables specified in §4, LHD agrees to pay the Compensation as set forth in §4 for a total not to exceed the Total Contract Amount. LHD will compensate Contractor upon the successful completion of each deliverable, in accordance with §4 of this Contract.
 - 5.3.2. Total Contract Amount. The Total Contract Amount, as indicated in §4, includes the cost for all services, travel, or any other expenses that Contractor may incur as a result of Contractor's performance of this Contract.
 - 5.3.3. Contractor shall monitor the work under this Contract and shall not accept an assignment under this Contract if it will cause or is reasonably likely to cause the Compensation specified in §4 to exceed the Total Contract Amount for the Contract Period.
 - 5.3.4. Contractor waives the interest provisions of O.R.C. 126.30.
 - 5.3.5. Funds Availability. Contractor understands and agrees that this Contract is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Contract Funding Source. If the Ohio General Assembly or other Contract Funding Source fails at any time to continue funding LHD for the Compensation specified in this Contract, this Contract is terminated as of the date funding expires without further obligation of LHD, State of Ohio, or any other Contract Funding Source.
 - 5.3.6. LHD will not compensate Contractor for any work performed prior to receipt of written notification from LHD Contract Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met LHD will not compensate Contractor for any work performed after the Contract Ending Date, as applicable.
 - 5.3.7. Invoices. Contractor shall invoice LHD in accordance with §4 for work or services Contractor provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to LHD at the address indicated on the first page of this Contract. LHD will reimburse Contractor within forty-five (45) days of receipt of a valid invoice for the amount of payment due. LHD shall return any invalid or incomplete invoice to Contractor within fifteen (15) days after LHD receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Contract shall be submitted by Contractor no later than thirty (30) days after the end of the Contract Period.
 - 5.3.8. Contractor shall furnish its own support staff and services as necessary for the satisfactory performance of this Contract. Unless otherwise specified in this

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Contract, LHD will not provide any staff, services, or material to Contractor for the purpose of assisting Contractor's performance.

- 5.3.9. LHD may, from time to time as it deems appropriate, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice and within ten (10) days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to the satisfaction of LHD. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Contract and are not intended to amend or alter this Contract or any part thereof. LHD Contract Manager will communicate all such instructions and requests to Contractor.
- 5.3.10. Attachments. Attachments and documents referenced in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. In the event of a conflict of terms, the terms and conditions of this Contract shall take precedence over any conflicting terms.
- 5.4. Time of Performance & Amendments.
- 5.4.1. Contract Period; Extension. Upon approval by LHD this Contract shall be effective on the Contract Beginning Date and shall remain in effect until the Contract Ending Date.
- 5.4.2. Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Contract may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Contract, without the necessity for executing written amendments. Any written amendments to this Contract shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.
- 5.4.3. Pursuant to O.R.C. 126.07, this Contract is not valid nor enforceable in any fiscal year unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, in an amount at least equal to the current fiscal year funding specified for each fiscal year that comprises the Total Contract Amount. Contractor shall not perform nor charge LHD for any work performed by Contractor in the time period prior to receiving written notification from LHD that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met. Contractor shall neither perform work nor submit an invoice for payment for any Contract performance after the Contract Ending Date.
- 5.5. Suspension and Termination. LHD may suspend or terminate this Contract for any reason thirty (30) days after delivery of written notice to Contractor. LHD may suspend or terminate this Contract immediately after delivery of written notice to Contractor if LHD discovers any illegal conduct on the part of Contractor; discovers a violation of §5.8 of this Contract regarding Conflict of Interest and Ethics Laws; violation of §6.14 regarding a Drug Free Workplace; is subject to a loss of funding as specified in §5.3.6; or discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Contractor. If at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against Contractor, Contractor shall immediately notify LHD of the filing.
- 5.5.1. Contractor to Cease Work and Other Contract Activities. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate any

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subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this Contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as LHD may require.

- 5.5.2. Determining Compensation after Contract Suspension or Termination. With the exception of a material breach, in the event of suspension or termination under this Contract, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by LHD based on the compensation rate set forth in §4, less any funds previously paid by or on behalf of LHD. In the case of services for which Contractor's compensation is based upon a fixed fee per deliverable, compensation shall be based on a reasonable percentage of the total services performed, as determined by LHD, less any funds previously paid by or on behalf of LHD. LHD shall not be liable for any further claims, and the claims submitted by Contractor shall not exceed the total amount of compensation allowed by this Contract.
- 5.6. Breach or Default.
- 5.6.1. Upon breach or default by Contractor of any of the provisions, obligations or duties provided for in this Contract, LHD may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and LHD retains the right to exercise all remedies provided for in this Contract.
- 5.6.2. If LHD or Contractor fail to perform an obligation or obligations under this Contract and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by LHD shall not be effective unless it is in writing and signed, except that LHD Contract Manager may agree in writing to non-substantial changes to §4, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable. Change Orders must be in writing and Contractor must use the form attached herein.
- 5.7. Independent Contractor. Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee (for purposes of O.R.C. Chapter 145) solely on the basis of this Contract. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract. Inasmuch as LHD is interested in Contractor's end product, LHD does not control the manner in which Contractor performs this Contract. LHD is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Contractor assumes responsibility for tax liabilities that result from compensation paid to Contractor by LHD. LHD will report any payment made under this Contract to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Contract shall be construed as entitling Contractor to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of LHD or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).

5.8. Conflict of Interest and Ethics Laws.

- 5.8.1. Neither Contractor nor any officer, member or employee of Contractor shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.
- 5.8.2. Contractor hereby covenants that Contractor, and any officer, member, or employee of Contractor, have no interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Contract.
- 5.8.3. Contractor shall not promise or give to any LHD employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Contractor shall not solicit an LHD employee to violate any LHD rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.
- 5.8.4. Contractor hereby covenants that Contractor and any officer, member or employee of Contractor are in compliance with O.R.C. 102.04 and that if Contractor is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.
- 5.8.5. Contractor hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.
- 5.8.6. Contractor hereby certifies and affirms that, as applicable to Contractor, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 (One Thousand Dollars) to the Governor or to his campaign committees. If it is determined that Contractor's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Contractor shall return to LHD all monies paid to Contractor under this Contract. The provisions of this section shall survive the expiration or termination of this Contract.

5.9. Nondiscrimination and Equal Employment Opportunity. In carrying out this Contract, Contractor shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination as those laws may be amended from time to time, including but not limited to the following:

- 5.9.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see www.lep.gov), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80.
- 5.9.2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86.
- 5.9.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of

benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85.

- 5.9.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91.
- 5.9.5. If grant funding is from the U.S. Department of Justice (“DOJ”), also comply with the nondiscrimination provision of the Violence Against Women Act of 1994, as amended (42 U.S.C. § 13925(b)(13)), which prohibits discrimination on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability in the provision of services and employment practices; 28 C.F.R. pt. 42, subpt. C (the DOJ regulations implementing Title VI of the Civil Rights Act of 1964); 28 C.F.R. pt. 54 (the DOJ regulations implementing Title IX of the Education Amendments of 1972); 28 C.F.R. pt. 42, subpt. G (the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973); 28 C.F.R. pt. 42, subpt. I (the DOJ regulations implementing the Age Discrimination Act of 1975); 28 C.F.R. pt. 38 (the DOJ regulations on the Equal Treatment for Faith-Based Organizations); Ex. Order No. 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations); and Ex. Order No. 13559 (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations).
- 5.9.6. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.
- 5.10. “Sweatshop Free” Certification. Contractor hereby certifies that all facilities used for the production of supplies or performance of services offered in this Contract is in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Contractor in furnishing the supplies or services pursuant to this Contract. If it is determined that Contractor's certification of this requirement is false or misleading, then Contractor understands that it shall be grounds for the termination of this Contract and may result in the loss of other contracts or grants with the State of Ohio.
- 5.11. Records, Documents and Information. All records, documents, writings or other information produced or used by Contractor in the performance of this Contract shall be treated according to the following terms:
- 5.11.1. All LHD information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Contractor. Where there is a question as to whether information is public or private, LHD shall make the final determination. Contractor shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Contractor agrees to be bound by the same standards of confidentiality that apply to the employees of LHD and the State of Ohio. If at any time during the contract period a proceeding has been filed by or against Contractor which would compel disclosure of private information under this Contract, Contractor shall immediately notify LHD of the filing. The terms of this section shall be included in any subcontracts executed by Contractor for work under this Contract.
- 5.11.2. All proprietary information of Contractor shall be held to be strictly confidential by LHD. Proprietary information is information which, if made public, would put Contractor at a disadvantage in the market place and trade of which Contractor is a part. Contractor is responsible for notifying LHD of the nature of the

information prior to its release to LHD. LHD reserves the right to require reasonable evidence of Contractor's assertion of the proprietary nature of any information to be provided.

- 5.11.3. All records relating to costs, work performed and supporting documentation for invoices submitted to LHD by Contractor shall be retained and made available by Contractor for audit by the State of Ohio (including, but not limited to, LHD, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Contract. If an audit, litigation, or other action is initiated during this time period, Contractor shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.
- 5.12. Assignment. Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of LHD. Any assignment or delegation not consented to may be deemed void by LHD.
- 5.13. Drug Free Workplace. Contractor shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Contractor shall make a good faith effort to ensure that all employees of Contractor do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 5.14. Compliance.
- 5.14.1. Contractor affirmatively represents and warrants to LHD that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Contractor further affirmatively represents and warrants to LHD that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Contractor agrees that if this representation and warranty is deemed false, the Contract will be void *ab initio* as between the Parties to this Contract, and any funds paid by LHD hereunder shall be immediately repaid to LHD, or an action for recovery may be immediately commenced by LHD for the recovery of said funds.
- 5.14.2. Contractor certifies that Contractor is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Contractor is federally debarred from participating in government contracts funded by federal money, for whatever reason, Contractor shall immediately notify LHD of the debarment.
- 5.14.3. Contractor certifies that all approvals, licenses, registrations or other qualifications necessary to conduct business where the services are performed have been obtained and are operative. If at any time during the contractual period Contractor becomes disqualified from conducting business in Ohio, for whatever reason, Contractor shall immediately notify LHD of the disqualification.
- 5.15. Limitation of Liability. Contractor agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any responsibility for professional acts or omissions onto LHD; and LHD agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any such responsibility on the Contractor. LHD's liability for damages, whether in contract or in tort, shall not exceed the Total Contract Amount or the amount of direct damages incurred by Contractor, whichever

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is less, and is the Contractor 's sole and exclusive remedy for LHD's failure to perform its obligations under this Contract. In no event shall LHD be liable for any indirect or consequential damages, including loss of profit, even if LHD knew or should have known of the possibility of such damages. Neither party is responsible to the other party for nonperformance or delay in performance of the terms of this Contract due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.

5.16. Indemnification. Contractor shall indemnify and hold LHD, its officials, employees, and staff harmless from any and all loss, damages, claims, suits, or contingent or direct liabilities that may arise as a result of any and all acts performed or that fail to be performed by Contractor during the term or arising out of this Contract.

5.17. Insurance.

5.17.1. Workers' Compensation Insurance. Contractor shall provide Workers Compensation Insurance for all employees engaged in Work who may come within the protection of the workers compensation law, and, where applicable, employer's General Liability Insurances for employees not so protected and shall require all Subcontractors to provide corresponding insurance. The Contractor shall indemnify LHD against any and all liabilities, cost and expenses due to accidents or other occurrences covered by the workers compensation law.

5.17.2. Builders Risk. In addition to such fire and other physical damage insurance as the Contractor elects to carry for his own protection, he shall also secure and maintain in the name of LHD, the government agency sponsoring the Project, Subcontractors, the Consulting Engineer and any other parties having an interest in the Project, as named insured as their interest may appear; a builders' risk policy for fire, extended coverage, vandalism and malicious mischief in the amount of one hundred (100) percent of the value of the complete parts of the Project and Materials in storage, except that such coverage shall not be required in connection with sewer, water main or paving construction. Pump or lift station construction shall not be considered sewer or water main construction for purposes of this paragraph.

5.17.3. Contractor's Motor Vehicle Bodily Injury and Property Damage Liability Insurance. Insurance to cover liability arising from the use and operation of motor vehicles in connection with the performance of the Contract (as customarily defined in liability insurance policies), whether they be owned, hired or non-owned by the Contractor, as follows:

5.17.3.1. Bodily Injury Liability: \$500,000 for each person; limit of \$1,000,000 for each occurrence.

5.17.3.2. Property Damage Liability: \$500,000 for each occurrence.

5.17.4. Contractor's Public Liability and Property Damage Liability Insurance. Contractor's Public Liability Insurance providing a limit of not less than \$500,000 for all damages arising out of bodily injuries, including accidental death to one person, and a total limit of \$1,000,000 for all damages arising out of bodily injuries, including accidental death, to two or more persons in any one occurrence. Contractor's Property Damage Liability Insurance providing for a limit on not less than \$500,000 for all damages to or destruction of property.

5.17.4.1. Coverage under this policy shall include, to the limits indicated above, the collapse or damage to any structure, building or its contents, public or private utility, or pavement during construction and for two (2) years thereafter.

- 5.17.4.2. Whenever Work under this Contract is to be done in the vicinity of existing underground utilities or structures, coverage under the policy shall also include, to the limits indicated, all damages to said underground utilities or structures during construction and for a period of two (2) years thereafter. Whenever Work under this Contract is to be done by blasting, coverage under the policy shall also include, to the limits indicated above, all damages of any kind whatsoever caused by blasting.
- 5.17.5. Contractor's Protective Public Liability and Property Damage Liability Insurance. Contractor's Protective Public Liability and Property Damage Liability Insurance for operations performed by Subcontractors providing for coverage and limits corresponding to those described in §5.17.4.
- 5.17.6. LHD's Protective Public Liability and Property Damage Liability Insurance. Regular LHD's Protective Public Liability and Property Damage Liability Insurance for operations performed by the Contractor or any Sub-contractor providing for coverage and limits corresponding to those described in paragraph §5.17.4. This policy shall be written in the name of LHD as a separate policy from those specified elsewhere herein.
- 5.17.7. Railroad Protective Liability Insurance. If any Work under this Contract is on railroad R/W, Contractor shall at its sole cost and expense, procure and provide, for and in behalf of each railroad company. Protective Liability Insurance (AARAASHO form) with minimum limits per occurrence of not less than \$2,000,000 for bodily injury, death and/or property damage, subject to an aggregate limit of \$6,000,000 per annum. The policy shall name each railroad company as the insured and be issued to the Contractor. Each railroad company shall be provided with a copy of each policy of insurance prior to commencement of any work.
- 5.17.8. Performance and Payment Bonds. If Contractor is not subject to the statewide bond requirement of Ohio Administrative Code (OAC) 3701-29-03 and does not have a 2015 Registration Bond for Sewage Treatment Systems Installers, Contractor must submit with this Contract either (a) a certificate of liability insurance for 100% of the Total Contract Amount or, in the alternative (b) a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the Terms & Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to LHD. The bond shall be for 100 percent (100%) of the contract price. A Payment Bond and Performance Bond are required. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney. Under certain conditions, and within the limits of State and local laws and regulations, LHD may waive the requirement that the Payment and Performance Bond be underwritten by a surety company and may authorize in lieu thereof, a personal bond backed by a letter of credit from a local lending institution for the full value of the Contract.
- 5.18. Construction. This Contract is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Contract. If any portion of this Contract is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Contract shall not be affected thereby, provided that the absence of the

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unenforceable provision does not render impossible the performance of the remainder of this Contract.

- 5.19. Violating Facilities Clause. The Contractor agrees to comply with all applicable standards, orders or requirements under Section 106 of the Clean Air Act, 42 USC 1857 (h), Section 508 of the Clean Water Act, 33 USC 1368, Executive Order 11738, and EPA regulations, 40CFR Part 32, which prohibits the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.
- 5.20. American Iron and Steel Requirements (AIS). Contractor must comply with the AIS requirements (found at http://water.epa.gov/grants_funding/aisrequirement.cfm).

AMERICAN IRON AND STEEL ACKNOWLEDGEMENT

The Contractor acknowledges to and for the benefit of the city or county of _____ (“Purchaser”) and the State of Ohio (the “State”) that it understands the goods and services under this Contract are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Signature

Date

Name and Title of Authorized Signatory, Please Print or Type

Bidder’s Firm

Check here if the WPCLF or WSRLA applicant will be requesting an individual waiver for non- American made iron and steel products. Please note that the waiver box does not need to be marked for nationwide waivers.

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State of Ohio
WATER POLLUTION CONTROL LOAN FUND

CONTRACT CHANGE ORDER

RECIPIENT _____ WPCLF/WSRLA LOAN NBR _____ OWDA PROJECT NBR _____	CHANGE ORDER NBR _____ CONTRACT _____ DATE _____
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Description of Change:

RECOMMENDED BY: _____	DATE: _____
(Engineer)	
APPROVED BY: _____	DATE: _____
(Recipient)	
ACCEPTED BY: _____	DATE: _____
(Contractor)	
_____ (Contractor Company Name)	

Original Contract Amt _____ _____ This Change (+ / -) _____ Adjusted Contract Amt _____ _____	OWDA APPROVAL The above proposal is hereby accepted and I recommend that it be approved and made a part of the contract covered by OWDA _____ Chief Engineer _____ Date _____ Executive Director _____ Date
Ohio EPA _____ DATE _____	

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CHANGE ORDER INSTRUCTIONS:

All Change Orders for this work, regardless of costs and whether Water Pollution Control Loan Fund (WPCLF) funding will be used to finance the changes, must be submitted to Ohio EPA for review.

Changes Requiring Prior Approval

Any change which substantially modifies the Project Facilities as specified in the Ohio EPA approved Facilities Plan and Final Permit to Install or Final Plan Approval (when applicable) or alters the direct or indirect impact of the Project Facilities upon the environment must be incorporated into a Change Order. One copy of the Change Order is to be submitted to Ohio EPA – DEFA for review and confirmation of the acceptability of the change. "Prior to execution" means before the change order is signed by the LHD.

Ohio EPA will review the Change Order and inform the LHD of the technical, environmental and operational acceptability of the change, and give the LHD permission to proceed with the proposed work.

All Other Changes

Change orders not requiring prior approval as described above must be submitted to the Ohio EPA – DEFA within one (1) month of the time at which they are approved by the LHD.

Change Order Approval Process

After the change order is executed, a minimum of three copies are to be sent to Ohio EPA - DEFA for final review. All three copies must have original signatures. Only one copy of the supporting documentation for the change is to be submitted.

After the Change Order is accepted and WPCLF eligible costs determined, Ohio EPA will issue a letter informing the LHD and authorizing OWDA to disburse funds from Project Contingency for the work. Ohio EPA - DEFA will retain one copy of the Change Order plus the supporting documentation and send the remaining two copies to the Ohio Water Development Authority (OWDA) for processing.

OWDA will retain one copy of the Change Order and send the remaining copies, signed by both Ohio EPA - DEFA and OWDA, back to the LHD.

Payments for Change Order Work

The LHD is precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Ohio EPA – DEFA's approval of the change orders has been obtained.

All Change Orders, including Prior Approval requests, should be sent to:

Ohio EPA - Division of Environmental and Financial Assistance
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2828
www.epa.state.oh.us/defa/

WATER POLLUTION CONTROL LOAN FUND ASSISTANCE AGREEMENT

This Agreement made and entered into by and between the Director of Environmental Protection (the "Director"), as the Director of the Environmental Protection Agency of the State of Ohio (Ohio EPA), an agency duly created and existing under the laws of the State of Ohio, and the governmental body specified as the "Borrower" on Exhibit 1, a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or resolution passed on the date specified on Exhibit 1 as the "Resolution Date" by the legislative authority of the Borrower (the capitalized terms not defined in the recitals being as defined in Article I herein);

WITNESSETH:

WHEREAS, Title VI of the Clean Water Act, as amended (the "CWA"), authorizes the Administrator of the United States Environmental Protection Agency to make capitalization grants to states to establish a state water pollution control revolving loan fund; and

WHEREAS, pursuant to the CWA, states may provide loans and other types of financial assistance from a water pollution control revolving loan fund to local communities and intermunicipal and interstate agencies for the construction of publicly-owned wastewater treatment facilities as defined in Section 212 of the CWA and for the implementation of nonpoint source pollution control management programs and development and implementation of plans under the estuary protection programs; and

WHEREAS, the Ohio General Assembly has created the Ohio Water Pollution Control Loan Fund (the "WPCLF") to be administered by the Director pursuant to Ohio Revised Code Section 6111.036 to provide loans and other types of financial assistance as set forth in said Section; and

WHEREAS, Public Law 111-88 authorizes states to provide additional subsidies in the form of principal forgiveness to recipients of assistance from their water pollution control revolving loan funds; and

WHEREAS, to assist the Director (whenever the term "Director" is used herein, such term shall also be deemed to include any representatives the Director may designate to act on his behalf) in providing loans and other types of financial assistance from the WPCLF, and to assist in the administration and operation of the WPCLF as authorized by the Ohio Revised Code Section 6111.036, the Director has entered into an Interagency Agreement with the Ohio Water Development Authority (the "OWDA") and has annually entered into a renewal of that Agreement; and

WHEREAS, the Borrower is desirous of obtaining financing from the WPCLF under PL 111-88 for necessary Project Facilities; and

WHEREAS, the Director proposes to provide financing to the Borrower for necessary Project Facilities, and the Director has determined that the Borrower has complied with the requirements of Ohio Revised Code Section 6111.036, and is therefore eligible for financial assistance for its Project Facilities under the CWA and said Section; and

WHEREAS, the financing provided under this Agreement consists wholly of a loan accompanied by a full principal forgiveness subsidy; and

WHEREAS, as a result of the principal forgiveness subsidy, no repayment of principal and no payment of interest by the Borrower is required or expected, and therefore this Agreement is not a "WPCLF Loan Agreement" and the financial assistance it contemplates is not a "WPCLF Loan" for purposes of trust indentures that secure bonds issued by the OWDA for the WPCLF; and

WHEREAS, under the Interagency Agreement, the OWDA is not required to approve WPCLF assistance of the sort contemplated by this Agreement;

WHEREAS, the Director and the Ohio Department of Health (ODH) have entered into an Memorandum of Understanding (MOU) whereby the Director will provide loan assistance to local health departments and ODH shall administer the responsibilities of the loans;

WHEREAS, ODH has selected Borrower to participate in the Ohio EPA ODH HSTS Remediation Project based on Borrower's response to ODH's Request for Proposal (RFP) both of which are hereby incorporated into this Agreement by reference; and,

WHEREAS, the Director and the Borrower have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE I - DEFINITIONS

Section 1.1. Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

(a) "

(b) "Borrower" means the entity identified on Exhibit 1, which is an entity eligible to receive assistance under Section 603(C) of the CWA and ORC Section 6111.036.

(c) "Effective Date" means the more recent date of execution of this Agreement by the signatories as indicated herein.

(d) "Eligible Project Costs" means the allowable costs associated with the construction of the project that may be requested for disbursement from the WPCLF, as shown in the description and distribution portion of Exhibit 1, which is hereby incorporated into this Agreement.

(e) "Homeowner" means the individual person or persons who hold title to the house where the Project Site and the Project Facilities are located.

(f) "Guidance" means the document published by the Director entitled *State of Ohio Water Pollution Control Loan Fund 2011 Program Management Plan*, including in particular Appendix H.

(g) "Finding of No Significant Impact" means all materials developed by the Borrower and the Director in satisfaction of Ohio Revised Code Section 6111.036 (Q)(4) and Division 6111.0366 (L).

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(h) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit 1 attached hereto and made a part hereof, and more particularly described in the approved plans and specifications on file with the local health district that has jurisdiction for review, approval, and inspection of the home sewage system improvements located at the Project Sites.

(i) "Project Site(s)" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

ARTICLE II - PROPERTY INTEREST IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. Project Sites shall be owned by Homeowners prior to the construction of the Project Facilities.

Section 2.2. The Borrower agrees to ensure that, as a condition of its assistance to individual Homeowners, the Director, ODH or their designated representatives shall have the right at all reasonable times to enter upon the Project Site(s) and Project Facilities, and to examine and inspect the same and to exercise the Director's rights pursuant to this Agreement.

ARTICLE III - CONSTRUCTION OF PROJECT FACILITIES, AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the Borrower agrees to do all things necessary to ensure construction of the Project Facilities on the Project Site(s).

Section 3.2. The Borrower agrees that:

(a) It will proceed expeditiously with, and complete, the Project Facilities in accordance with the specific terms and conditions of the RFP and Borrower's response, plans and specifications as approved by the local health district, the Finding of No Significant Impact, and the approved project schedule. The Borrower accepts such performance as an essential element of this Agreement.

(b) The construction contract(s) for the Project Facilities will provide that the designated representatives of the Director will have access to the work whenever it is in preparation or progress and that the contractor will provide for such access and inspection.

(c) The construction of the Project Facilities on the Project Site(s), including the letting of contracts in connection therewith, will conform to and will be performed in compliance with all applicable requirements of federal, state, and local laws, ordinances, rules and regulations, including, without limitation, all applicable federal, state, and local environmental laws and regulations.

(d) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment furnished to the Borrower may be readily itemized by the Borrower and identified, if necessary, as to Eligible Project Costs and non-Eligible Project Costs.

(e) It will not submit requests for disbursement of non-Eligible Project Costs. If, based on a payment request submitted by the Borrower, the Director or the OWDA disburses funds from the WPCLF which are

subsequently determined to be for non-Eligible Project Costs, the Director will be under no obligation to provide WPCLF funding beyond the Eligible Project Costs as shown on Exhibit 1, as amended.

(f) Any change or changes regardless of costs that substantially modify the proposed Project Facilities or alter the direct or indirect impact of the Project Facilities upon the environment will be submitted to the Director for prior approval. The Borrower shall not submit to the OWDA or to the Director payment requests for Eligible Project Costs associated with the change orders until the Director's approval has been obtained.

(g) The Borrower shall not submit to ODH, the OWDA or to the Director payment requests for Eligible Project Costs unless the Borrower is in full compliance with the terms of this Agreement.

(h) Except as otherwise provided in this Agreement, the Borrower shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

(i) In any year in which disbursements to the Borrower under this Agreement exceed \$500,000 the Borrower shall comply with the Single Audit Act (SAA) of 1984, as amended by the Single Audit Act Amendments of 1996 (see circular A-133) and have an audit of its use of Federal financial assistance. The Borrower agrees to keep a copy of the SAA audit available for review, if requested, by the State for the life of the loan period.

Section 3.3. The Borrower shall keep accurate records of the Eligible Project Costs. These records must be kept in accordance with Generally Accepted Government Accounting Standards (GAGAS). The Borrower shall permit the Director or ODH, acting by or through its designated representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of said audit and examination, which examination may include examination for compliance with the CWA, and Ohio Revised Code Section 6111.036, and the Borrower shall submit to the Director such documents and information as they may require in connection therewith.

Section 3.4. The Borrower shall use the Model Construction Contract from the RFP, or in the alternative, the ODH approved construction contract submitted with its response to the RFP.

Section 3.5. The Borrower shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract.

Section 3.6. The Borrower shall require that each of its contractors and all subcontractors maintain during the life of its contract, Workers' Compensation Insurance, Public Liability, Property Damage, Vehicle Liability Insurance, and Flood Insurance if appropriate. Until the Project Facilities are completed and accepted by the Borrower, the Borrower or (at the option of the Borrower) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a 100 percent basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the Director, the Borrower, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.7. The Borrower shall provide and maintain competent and adequate technical services through the local health department with jurisdiction over the Project Facilities. These services shall include

the supervision and inspection of the development and construction of the Project Facilities in accordance with the specific terms and conditions of each of the following:

(a) pursuant to the terms of the RFP, identify Home Sewage Treatment Systems (HSTS) that are in need of remediation, contact the homeowners where said HSTS are situated, obtain documentation to certify that household income qualifies pursuant to the RFP;

(b) applicable state and local laws, regulations, ordinances, and standards for the design of the Project Facilities, including those contained in the Guidance. Where a conflict may exist between local standards and those identified in the Guidance, those of the Guidance shall be followed;

(b) approved plans and specifications on file with the local health district that has jurisdiction over the individual Project Facilities;

(c) the Finding of No Significant Impact; and

(d) any Director-approved project plans and specifications, or Director-approved amendments thereto.

Section 3.8. Subject to the terms and conditions of this Agreement and the approval of ODH, and upon compliance by the Borrower with all applicable requirements of the WPCLF, Ohio Revised Code Section 6111.036, and the CWA that must be met before receiving disbursement of Eligible Project Costs, ODH shall request that Eligible Project Costs be disbursed by the OWDA. In the event this Agreement is terminated by the Director pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the Borrower, whether or not in breach of the Agreement, and such termination occurs prior to the completion of the Project Facilities, any Eligible Project Costs disbursed but not expended for eligible Project Facilities shall be due and payable in full no later than thirty (30) calendar days after said termination, or, at the Director's option, upon terms mutually agreed to between the Director and the Borrower.

Section 3.9. Upon being satisfied that the applicable pre-construction requirements of this Agreement have been met, the Director shall request that the OWDA deliver to the Borrower a certificate, signed by the trustee for the WPCLF (hereinafter referred to as the "Trustee", which has entered into a Trust Agreement with the Director and the OWDA to provide for the administration of the WPCLF), certifying that monies in the amount necessary to pay all Eligible Project Costs are available or are within the present WPCLF Federal letter of credit ceiling and have been set aside by the Trustee to pay such Eligible Project Costs. When such Eligible Project Costs have been incurred, Borrower shall request payment by the OWDA through ODH, , and subject to the terms and provisions of this Agreement, the Interagency Agreement and the MOU, ODH shall in turn request that the the Director shall instruct OWDA to cause the Trustee to disburse monies of the WPCLF in payment of the invoices, demands for payment, or other evidence of cost incurrence to be made to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth in such certificate to pay such obligated Eligible Project Costs. The Borrower represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the State.

Section 3.10. Upon completion of the Project Facilities, the Borrower shall make a full and complete accounting to the Director of the final Eligible Project Costs.

Section 3.11. The Borrower shall comply with all federal and state laws, executive orders, regulations, policies, and conditions relating to WPCLF assistance.

**ARTICLE IV - GENERAL REPRESENTATIONS AND AGREEMENTS;
EVENTS OF DEFAULT AND REMEDIES**

Section 4.1. The Borrower hereby represents and warrants that:

(a) It is and shall remain in compliance, and shall take whatever actions are necessary to assure compliance, with all applicable federal, state, and local laws, ordinances, rules, regulations, and provisions of this Agreement, including without limitation the CWA and Ohio Revised Code Section 6111.036, subject to its rights to contest in good faith the issue of non-compliance, and

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the Borrower, which has not been disclosed to the Director in writing prior to the Effective Date, wherein a result adverse to the Borrower could reasonably be expected to have a materially adverse effect on the ability of the Borrower to meet its obligations under this Agreement, and

(c) Except as heretofore disclosed in writing to the Director, no judgment or consent order has been rendered against the Borrower, and the Borrower is not a party to any agreement, which imposes, will impose, or has imposed any fines or monetary penalties upon the Borrower for the violation of any federal, state, or local law, ordinance, or regulation, which fines or monetary penalties have not heretofore been paid in full.

(d) It will do all things necessary to ensure that the explicit and implicit actions identified in the Agreement will be implemented in accordance with the terms of the Guidance.

Section 4.2. Each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The Borrower shall fail to observe and perform any obligations, agreements, or provisions of this Agreement, which failure shall continue for thirty (30) days after receipt of written notice thereof from the Director; provided, however, that such failure shall not constitute an Event of Default hereunder if the cure of such failure cannot be effected within thirty (30) days and if the Borrower is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(b) Any representations made by the Borrower in Section 4.1 shall at any time prove to be false.

Section 4.3. Whenever a breach or default by the Borrower shall have occurred and be continuing under this Agreement, or whenever the Director determines that any representation made by the Borrower in this Agreement or in any of the documents referred to in Section 3.2.(a) is false, then, in addition to any other rights or remedies available to the Director at law or otherwise, the Director may (i) terminate or suspend all further financial assistance to the Borrower under this Agreement, (ii) demand the recoupment of financial assistance provided under this Agreement and exercise all lawful remedies for that purpose, and (iii)

prescribe corrective action, or direct that corrective action be undertaken, to remedy the event or violation, and the Borrower agrees to perform such corrective action.

Section 4.4. No right or remedy conferred upon the Director under Sections 4.3 hereof is intended to be exclusive of any other right or remedy given herein, by law, or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law, or otherwise.

Section 4.5. The Borrower releases the State, its officers, employees, and agents from, and agrees, to the fullest extent permitted by law, that they shall not be liable to the Borrower for, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the Project Facilities, or the use thereof; provided that such release under this Section shall not be effective for damages that result from negligent or intentional acts of the State, its officers, employees and agents. The Borrower further agrees, to the fullest extent permitted by law, that the State, its officers, employees, and agents shall be released from, and shall not be liable to the Borrower for, expenses and claims arising from any breach or default on the part of the Borrower in the performance of any covenant or agreement on the part of the Borrower to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities, or arising from any act or negligence of or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities (other than any accident, injury, or damage that results from negligent or intentional acts of the State, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

ARTICLE V - MISCELLANEOUS PROVISIONS

Section 5.1. Any invoice, accounting, demand, should be sent to ODH for verification. For other communication under this Agreement by a party to this Agreement to the other party or to the OWDA shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of ODH, is addressed to or delivered by hand to:

Ohio Department of Health
246 North High Street
Columbus, Ohio 43215
Attn: Andrew Thomas

and,

(b) in the case of the OWDA, is addressed to or delivered by hand to:

Ohio Water Development Authority
480 South High Street
Columbus, Ohio 43215
Attn: Executive Director

and,

* Indicates that Opening Date (Proposal due date) and Inquiry Period is extended by two weeks.

(c) in the case of the Director, is addressed to or delivered by hand to:

Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Chief, Division of Environmental and Financial Assistance

and,

(d) in the case of the Borrower, is addressed to or delivered personally to the Borrower at the address listed on Exhibit 1, or at such other addresses with respect to any such party as that party may from time to time, designate in writing and forward to the other parties as provided in this Section.

Section 5.2. Any approval of the Director or ODH required by this Agreement shall not be unreasonably withheld. Any provision of the Agreement requiring the approval of the Director or the satisfaction or evidence of satisfaction of the Director shall be interpreted as requiring a response by the granting, authorizing, or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 5.3. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the Counsel to the Director and upon the certification of availability of funds as provided in Section 3.8. hereof.

Section 5.4. If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable. In lieu thereof the parties agree that there shall be added a provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.

Section 5.5. This Agreement shall become effective as of the Effective Date, and shall continue in full force and effect until the day the obligations of the Borrower under this Agreement have been fully satisfied.

Section 5.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of any of the parties hereto. This Agreement shall not be assigned by the Borrower without the prior written consent of the Director. The Director, at his option, may assign this Agreement without the consent of the Borrower.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as shown.

APPROVED AS TO FORM

By _____
Ohio EPA Counsel

Print Name _____

OHIO ENVIRONMENTAL PROTECTION AGENCY

By _____
Craig W. Butler, Director

Date _____

APPROVED AS TO FORM

By _____
Borrower's Counsel

Print Name _____

BORROWER

By _____
Authorized Representative

Print Name _____

Title _____

Date _____

* Indicates that Opening Date (Proposal due date) and Inquiry Period is extended by two weeks.