

WATER POLLUTION CONTROL LOAN FUND ASSISTANCE AGREEMENT
Home Sewage Treatment System Improvements

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, 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);

W I T N E S S E T H

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; 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) "Approved Application" means the application submitted to the Director on the date shown on Exhibit 1 as the "Application Date," together with all attachments, supporting documentation, amendments and supplements thereto as approved by the Director, together with any amendments thereto approved by the Borrower and the Director after the date of this Agreement.

(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).

(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 or its 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 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 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, 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 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 3.5. 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 3.6. 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) 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 3.7. Subject to the terms and conditions of this Agreement and the approval of the Director, 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, the Director 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 3.8. 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 and payment requested from the OWDA by the Borrower, subject to the terms and provisions of this Agreement and the Interagency Agreement, the Director shall request that the OWDA 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 3.9. 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 3.10. 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, or 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 the OWDA, is addressed to or delivered by hand to:

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

- and -

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

The Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43215-1049
Attn: Chief, Division of Environmental and Financial Assistance

-and-

(c) 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 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.

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

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APPROVED AS TO FORM

**OHIO ENVIRONMENTAL
PROTECTION AGENCY**

Ohio EPA Legal Counsel

Craig W. Butler
Interim Director

Date

Date

APPROVED AS TO FORM

BORROWER

By _____
Borrower's Counsel

By _____

Print Name and Title

Print Name and Title

Date

Date

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