

**RESOLUTION AUTHORIZING ASHTABULA COUNTY BOARD OF COMMISSIONERS AND ACDES TO APPLY FOR, ACCEPT, AND ENTER INTO A WATER POLLUTION CONTROL LOAN FUND (WPCLF) AGREEMENT ON BEHALF OF ASHTABULA COUNTY FOR CONSTRUCTION OF COFFEE CREEK WASTEWATER TREATMENT PLANT IMPROVEMENTS AND DESIGNATING A DEDICATED REPAYMENT SOURCE FOR THE LOAN, ACDES**

WHEREAS, the County of Ashtabula seeks to upgrade its existing wastewater facilities; and

WHEREAS, the County of Ashtabula intends to apply for Water Pollution Control Loan Fund (WPCLF) for the construction and improvements of the wastewater facilities; and

WHEREAS, the Ohio Water Pollution Control Loan Fund (WPCLF) requires the government authority to pass legislation for application of a loan and the execution of an agreement as well as designating a dedicated repayment source: now

THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of the County of Ashtabula, Ohio, that:

**Section 1.** That Kathryn Whittington, President of Ashtabula County Board of Commissioners be and is hereby authorized to apply for a WPCLF loan, sign all documents for and enter into a Water Pollution Control Loan Fund (WPCLF) with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for the construction and improvements of the wastewater facilities on behalf of the County of Ashtabula, Ohio.

**Section 2.** The estimated loan amount is \$10,026,166.18. The dedicated source of repayment will be from Sewer System Debt Retirement Principal fund 6001.001.150-901 and Sewer System Debt Retirement Interest fund 6001.001.150-910.

**Section 3.** That this resolution shall take effect and be in force from and after the earliest period allowed by law.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS  
CERTIFICATION PAGE**

**Resolution No. 2024-94**

**February 06, 2024**

**RESOLUTION AUTHORIZING ASHTABULA COUNTY BOARD OF COMMISSIONERS AND ACDES TO APPLY FOR, ACCEPT, AND ENTER INTO A WATER POLLUTION CONTROL LOAN FUND (WPCLF) AGREEMENT ON BEHALF OF ASHTABULA COUNTY FOR CONSTRUCTION OF COFFEE CREEK WASTEWATER TREATMENT PLANT IMPROVEMENTS AND DESIGNATING A DEDICATED REPAYMENT SOURCE FOR THE LOAN, ACDES**

**Upon the motion of J.P. Ducro IV, seconded by Kathryn L. Whittington.**

**VOTE:**

**Kathryn L. Whittington  
J.P. Ducro IV  
Casey R. Kozlowski**

**Aye  
Aye  
Absent**

**CERTIFICATE OF CLERK**

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



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Lisa Hawkins, Clerk of the Board  
Board of County Commissioners  
Ashtabula County, Ohio

**1.0 Program Funding Selection**

Please indicate what type of project funding is needed. *A selection must be made for the loan application to be reviewed.*

- Wastewater Water Pollution Control Loan Fund (WPCLF)
- Drinking Water Water Supply Revolving Loan Account (WSRLA)

**2.0 Borrower's Information**

Borrower (County, City, Village, or District): Ashtabula County Department of Environmental Services  
 Borrower's Population: 97,014 County: Ashtabula Date of Application: 2/2/2024

**3.0 Project Name and Description**

Project Name: Coffee Creek WWTP Improvements

*In the box below, please provide a brief description of the project requesting Ohio EPA funding.*

The project scope includes expanding the capacity of the Coffee Creek WWTP with the construction of a new aeration tank, which includes the addition of a diversion chamber, new screening and grit removal components, replacement of the sand filters with new tertiary process, and replacement of the UV System.

**\*\* Will land and/or easement acquisitions be required for this project?**

- Yes, please indicate acquisition commencement date(s).
- No additional land and/or easements are needed for the project.
  - \* *Note:* If the site title opinion letter is not able to be sent with the loan application, it can be sent at a later date. However, this opinion **MUST** be submitted with the bid package for review.
  - \*\* A Site Title Opinion Letter must be submitted and signed by the Borrower's Solicitor/Law Director, to insure legal vested interest in all real property for the project. *(Example see ATTACHMENT B)*

**4.0 Funding Type and Proposed Loan Terms**

Estimated Loan Amount: \$10,026,166.18 *This field autofills from Tab 4*  
*An estimated loan award date must be entered. This date should be the 1st of Month in which the loan would be awarded. This date is dependent on the type of loan that is requested, the estimated loan date will autofill on to TAB 3-Project Schedule.*

Estimated Loan Award Date: 3/1/2024

*Please consider my application for the following interest rate discount (construction loans only):*

**Wastewater Discounts:**

- Green Project Reserve
- Nutrient Reduction
- Septage Facilities
- Water Resource Restoration Sponsor Program (WRRSP)
- Other: (Specify) \_\_\_\_\_

**Water Discounts:**

- Harmful Algal Bloom / Emerging Contaminants
- Lead Service Line Replacement
- Regionalization
- Other: (Specify) \_\_\_\_\_

**\*\* Please select only ONE loan type\*\***

The Borrower's interest rate will be determined based on the current year's Program Management Plan requirements. The first payment date must occur no later than 12 months after the project completion date. If you would like the repayment to begin earlier, please indicate a date. Payments are due semiannually: January 1 and July 1.

- Planning Loan** Planning loans have a maximum 5-year term.  
**First Payment Date:** \_\_\_\_\_
- Design Loan** Design loans have a maximum 5-year term.  
**First Payment Date:** \_\_\_\_\_
- Construction Loan** Minimum 5-year term. Maximum 30-year term.  
*(Previous Incurred project costs for Planning & Design may be included in the construction loan.)*  
**Requested Term:** 30 Years  
**First Payment Date:** 1/1/2027
- Supplemental Loan** Loan Number: \_\_\_\_\_

**\*\* Please complete the appropriate schedule on Tab 3 "Project Schedule" that correlates with the selected loan type.**

## 5.0 Contact Information

The authorized representative listed in Section 5.0 will be required to electronically sign the following documents after loan approval and prior to loan disbursement: Term Sheet and Payment Instruction Form. Signing these documents will require two factor authentication via SMS text message, which requires an accurate cellular phone number for the authorized representative.

\*\*As a courtesy and if possible, please provide accurate cellular phone numbers for all contacts below.

### Authorized Representative to Execute Contracts

Name	Kathryn L. Whittington	Title	President, Ashtabula County Commissioners
Address	25 West Jefferson St., 2nd Floor, Old Courthouse		
City	Jefferson	,Ohio	Zip 44047
Telephone	440-576-3757	Cell	440-994-9101
Email	KLWhittington@ashtabulacounty.us		

### Address to Mail Loan Agreement (If different than Authorized Representative)

Name	Douglas G. Starkey	Title	Director, Department of Environmental Services
Address	ACDES - P.O. Box 520; 36 West Walnut Street		
City	Jefferson	,Ohio	Zip 44047
Telephone	440-576-3622	Cell	440-789-5721
Email	dgstarkey@ashtabulacounty.us		

### Billing Notices

Name	Douglas G. Starkey	Title	Director, Department of Environmental Services
Address	ACDES - P.O. Box 520; 36 West Walnut Street		
City	Jefferson	,Ohio	Zip 44047
Telephone	440-576-3622	Cell	440-789-5721
Email	dgstarkey@ashtabulacounty.us		

### Disbursements - Borrower's representative to contact regarding disbursement

Name	Douglas G. Starkey	Title	Director, Department of Environmental Services
Address	ACDES - P.O. Box 520; 36 West Walnut Street		
City	Jefferson	,Ohio	Zip 44047
Telephone	440-576-3622	Cell	440-789-5721
Email	dgstarkey@ashtabulacounty.us		

### Consulting Engineer

Name	Tom Voldrich	Title	Consulting Engineer
Firm	CT Consultants, Inc.		
Address	8150 Sterling Court		
City	Mentor	State, Zip	44060
Telephone	440-951-9000	Cell	
Email	tvoldrich@ctconsultants.com		

## 6.0 Project Schedules for Planning, Design & Construction

### PLANNING SCHEDULE

1. **Submit complete Loan Application with dedicated source of repayment and draft engineering agreement with scope of planning activities to be funded through this loan (no later than 60 days prior to task 3)**
2. **Sign loan documents and return to DEFA (no later than 15 days prior to task 3)**
3. **We request a Planning Loan by (indicate the 1st of the Month in which Loan is requested)**  
*(Loan awards can be scheduled for January through October and December – no November scheduled awards)*
4. **Project Completion Date (The date funded planning activities will be completed and submitted to Ohio EPA)**
5. **Initial Payment due to Ohio EPA program (January 1 or July 1 - within one year after the Project Completion)**

### DESIGN SCHEDULE

1. **Submit approvable Facilities Planning information, including complete I/I Analysis (generally 120 days prior to task 4)**
2. **Submit a complete Loan Application which should include the borrowers financial information, a certified copy of legislation authorizing the borrower to enter into a Loan Agreement with Ohio EPA and OWDA (Example: see ATTACHMENT A), a copy of the utility's User Charge System & Use ordinance and the engineering agreements. (90 days prior to task 4)**
3. **Sign loan documents and return to DEFA (no later than 15 days prior to task 4)**
4. **We request a Design Loan by (1st of Month in which Loan is Awarded)**
5. **Project Completion Date (The date funded design will be completed and submitted to Ohio EPA)**
6. **Initial Payment due to Ohio EPA program (January 1 or July 1 - within one year after Project Completion)**

### CONSTRUCTION SCHEDULE

- |  |            |
|--|------------|
| 1. <b>Submit approvable Facilities Planning information, including complete I/I Analysis (generally 200 days prior to task 9)</b>  | submitted  |
| 2. <b>Submit complete Permit-to-Install application (if applicable), including application, review fee, detail plans, contract documents, and specifications (170 days prior to task 9)</b>  | completed  |
| 3. <b>Submit a complete Loan Application which should include the borrowers financial information, a certified copy of legislation authorizing the Borrower to enter into a Loan Agreement with Ohio EPA and OWDA (Example: see ATTACHMENT A), a copy of the utility's User Charge System &amp; Use ordinance and the engineering agreements. (150 days prior to task 9)</b> | submitted  |
| 4. <b>Submit Site Title Opinion Letter signed by Solicitor/Law Director (no later than 60 days prior to task 9) (Example: see ATTACHMENT B)</b>  | submitted  |
| 5. <b>Advertise for construction bids (no later than 60 days prior to task 9)</b>  | 1/3/2024   |
| 6. <b>Open construction bids (no later than 30 days prior to task 9) <u>Be sure to allow for a minimum of 60 days to award contracts</u></b>   | 1/18/2024  |
| 7. <b>Submit bid information to DEFA (no later than 21 days prior to task 9)</b>   | 2/1/2024   |
| 8. <b>Sign loan documents and return to DEFA (no later than 7 days prior to task 9)</b>  | 2/23/2024  |
| 9. <b>We request a Construction Loan by (1st of Month in which Loan is Awarded)</b>  | 3/1/2024   |
| 10. <b>Estimated Initiation of Operation date (The date funded facilities will be in full operation as planned and designed)</b>   | 10/30/2026 |
| 11. <b>Estimated Initial payment due to the Ohio EPA loan program (January 1 or July 1 - within one year after the Initiation of Operation)</b>  | 1/1/2027   |



## 9.0 Source of Pledged Revenues

To obtain a loan from Ohio EPA, the Borrower is required to pledge the user revenues derived from the ownership and operation of their system as a security instrument (i.e. collateral) for the repayment of the loan. It can also be used as the dedicated source of repayment. The user revenues, after deductions for the operating and maintenance and previous debt obligations, must be able to support the repayment of the loan. However, unless prohibited by law, the Borrower can also choose any of the following as a dedicated source of loan repayment, with the user rates remaining the collateral. *(Reference Article IV in the WPCLF and the WSRLA Standard Loan Agreement).*

Please indicate the intended source of loan repayment below. More than one source can be used.

Revenue from:

- User Charges
- Assessments - Provide authorizing legislation
- General Taxes
- Other: Indicate source
- Other: Indicate source Contract services at Airport & Plant C; Investment Income & Refu

## 10.0 Revenue Analysis

Current Revenues (Last Audit Year):

			YEAR:	2021
User Classes	Total Revenue	Total Number of Users	Annual Revenue Per User	
Residential	\$2,138,970.24	2,441	\$876.27	
Commercial	\$512,645.76	140	\$3,661.76	
Industry / Gov.	\$291,677.76	2	\$145,838.88	
Other	\$329,883.94			
<b>TOTAL</b>	<b>\$3,273,177.70</b>	<b>2,583</b>		

*Total Revenue should reconcile to the "Revenues to System" column on the Projection of Revenues (TAB 7) for the associated year.*

Current Average Monthly Residential User Rate \$73.02

Projected Revenues for first year following project completion

			YEAR:	2027
User Classes	Projected Total Revenue	Projected Total Number of Users	Projected Annual Revenue Per User	
Residential	\$3,355,646.12	2,441	\$1,374.70	
Commercial	\$804,245.54	140	\$5,744.61	
Industry / Gov.	\$457,587.98	2	\$228,793.99	
Other	\$517,526.35			
<b>TOTAL</b>	<b>\$5,135,005.99</b>	<b>2,583</b>		

*Total Revenue should reconcile to the "Revenues to System" column on the Projection of Revenues (TAB 7) for the associated year.*

Projected Average Monthly Residential User Rate \$114.56

### Ten Largest Users

Customer	% of Revenue
Flying J, Inc.	6.00%
Ashtabula County Nursing Home	2.50%
Pilot Travel 2000	2.00%
Saybrook Landing	2.00%
DNC Parks & Resorts at GSP	1.50%
Austinburg Nursing & Rehab	1.30%
Sav Lot #	1.00%
Engie Insight Services, Inc.	1.00%
Plastpro 2000, Inc.	0.85%
Lake Grov MHP LLC	0.59%

### 3-Year Revenue Allocation

Please provide the revenue allocation for 3 years ending with most recent audit.

Year autofills from TAB 5	2019	2020	2021
<b>Revenue</b>	\$2,920,759.00	\$3,084,948.13	\$3,273,177.70
<b>Expenditures</b>			
Operating Expenses	\$2,705,673.00	\$2,507,430.00	\$2,644,249.12
Debt Service Payments	\$246,633.65	\$214,079.65	\$216,057.22
Other:			\$31,604.32
<b>Total Expenditures</b>	\$2,952,306.65	\$2,721,509.65	\$2,891,910.66
<b>Surplus or Loss</b>	-\$31,547.65	\$363,438.48	\$381,267.04

**Outstanding System Debt** (do not include loan being applied for):

Debt Type	Debt Balance	Annual Payment	Final Payment Date
Ohio EPA Loans	\$236,627.23	\$77,418.71	2031
OWDA	\$8,232.00	\$5,701.04	2023
OPWC	\$440,786.45	\$44,596.58	2039
GO bonds			
Revenue Bonds	\$86,237.55	\$88,340.91	2022
USDA-RD Loans			
Other			
<b>TOTAL</b>	\$771,883.23	\$216,057.24	

**The annual payment total will autofill in the current year debt service column on TAB 7 "Projection of Revenues" sheet.**

### 2.0 Borrowers Credit Rating (If applicable)

	Moody's	S&P
General Obligation		
Water and Sewer Revenues		A+

### 3.0 Rate Schedule

Indicate the year of the last rate increase:

2024

What was the % of the last rate increase?

10.00%

Please describe the planned rate increases for the next 2 years:

2025 - 5%; 2026 - 5%

### 4.0 Capital Improvement Plan

Brief Description of Major Projects:

Coffee Creek WWTP Capacity expansion.

Ten Year Capital Improvement Plan:

Years	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
in 000's	3,000	604	385	390	300	250	250	250	250	250

Borrower: Ashtabula County Department of Environmental Services

Project Name: Coffee Creek WWTP Improvements

Year	Revenues to System Only	Operations, Maintenance & Replacement (O,M & R) Expenses	DEBT SERVICE paid from Revenue to the System (i.e. OPWC, USDA, etc.)	NEW Ohio EPA Loan Repayment	Total Expense to the System	Annual Surplus	Cumulative Surplus
The first year and current year revenues estimate from Section 10.0 on Tab 0. The first year of O, M & R and debt service will estimate from Section 11.0 on Tab 0.				***Indicate previous year carryover surplus in the yellow Cumulative Surplus box***			\$4,242,099.06
2021	\$3,273,177.70	\$2,644,249.12	\$216,057.24		\$2,860,306.36	\$412,871.34	\$4,654,970.40
2022	\$3,828,392.34	\$3,248,163.54	\$183,522.88		\$3,432,686.42	\$195,705.92	\$4,850,676.32
2023	\$3,991,231.57	\$3,574,079.89	\$104,310.19		\$3,678,390.08	\$312,841.49	\$5,163,517.81
2024	\$4,390,354.73	\$3,931,487.88	\$101,459.87		\$4,032,947.55	\$357,407.18	\$5,520,924.99
2025	\$4,609,872.47	\$4,128,062.28	\$101,459.87		\$4,229,521.95	\$380,350.52	\$5,901,275.51
2026	\$4,840,366.09	\$4,334,465.39	\$77,395.67		\$4,411,861.06	\$428,505.03	\$6,329,780.54
2027	\$5,082,384.40	\$4,551,188.66	\$77,395.67	\$334,205.54	\$4,962,789.87	\$119,594.52	\$6,449,375.06
2028	\$5,234,855.93	\$4,778,748.09	\$77,395.67	\$334,205.54	\$5,190,349.30	\$44,506.62	\$6,493,881.69
2029	\$5,381,901.61	\$5,017,685.50	\$77,395.67	\$334,205.54	\$5,429,286.71	-\$37,385.10	\$6,456,496.59
2030	\$5,553,668.65	\$5,168,216.06	\$77,395.67	\$334,205.54	\$5,579,817.27	-\$26,158.82	\$6,430,337.96
2031	\$5,720,268.41	\$5,323,262.55	\$75,938.01	\$334,205.54	\$5,733,406.10	-\$13,137.68	\$6,417,200.28
2032	\$5,891,876.47	\$5,482,960.42	\$84,055.23	\$334,205.54	\$5,881,221.19	\$10,655.27	\$6,427,855.56
2033	\$6,068,632.76	\$5,647,449.23	\$84,055.23	\$334,205.54	\$6,045,710.00	\$22,922.76	\$6,450,778.31
2034	\$6,250,691.74	\$5,816,872.71	\$27,303.82	\$334,205.54	\$6,178,382.07	\$72,309.67	\$6,523,087.98
2035	\$6,438,212.49	\$5,991,378.89	\$27,303.82	\$334,205.54	\$6,352,888.25	\$85,324.24	\$6,608,412.22
2036	\$6,631,358.87	\$6,171,120.26	\$27,303.82	\$334,205.54	\$6,532,629.62	\$98,729.25	\$6,707,141.47
2037	\$6,830,299.64	\$6,356,253.87	\$7,994.48	\$334,205.54	\$6,698,453.89	\$131,845.75	\$6,838,987.22
2038	\$7,035,208.82	\$6,546,941.48	\$7,994.48	\$334,205.54	\$6,889,141.50	\$148,067.12	\$6,985,054.34
2039	\$7,246,264.88	\$6,743,349.73	\$7,994.48	\$334,205.54	\$7,085,549.75	\$160,715.14	\$7,145,769.48
2040	\$7,463,652.83	\$6,945,650.22		\$334,205.54	\$7,279,855.76	\$183,797.07	\$7,329,566.55
2041	\$7,687,562.42	\$7,154,019.73		\$334,205.54	\$7,488,225.27	\$199,337.15	\$7,528,903.70
2042	\$7,918,189.29	\$7,368,640.32		\$334,205.54	\$7,702,845.86	\$215,343.43	\$7,744,247.13
2043	\$8,155,734.97	\$7,589,699.53		\$334,205.54	\$7,923,905.07	\$231,829.90	\$7,976,077.02
2044	\$8,400,407.02	\$7,817,390.51		\$334,205.54	\$8,151,596.05	\$248,810.96	\$8,224,887.99
2045	\$8,652,419.23	\$8,051,912.23		\$334,205.54	\$8,386,117.77	\$266,301.46	\$8,491,189.44
2046	\$8,911,991.80	\$8,293,469.60		\$334,205.54	\$8,627,675.14	\$284,316.67	\$8,775,506.11
2047	\$9,179,351.56	\$8,542,273.68		\$334,205.54	\$8,876,479.22	\$302,872.33	\$9,078,378.44
2048	\$9,454,732.10	\$8,798,541.89		\$334,205.54	\$9,132,747.43	\$321,984.67	\$9,400,363.11
2049	\$9,738,374.07	\$9,062,488.15		\$334,205.54	\$9,396,703.69	\$341,670.37	\$9,742,033.48
2050	\$10,030,525.29	\$9,334,373.10		\$334,205.54	\$9,668,578.64	\$361,946.65	\$10,103,980.14
2051	\$10,331,441.05	\$9,614,404.29		\$334,205.54	\$9,948,609.83	\$382,831.22	\$10,486,811.35
2052	\$10,641,384.28	\$9,902,838.42		\$334,205.54	\$10,237,041.96	\$404,342.32	\$10,891,153.67
2053	\$10,960,825.81	\$10,199,921.51		\$334,205.54	\$10,534,127.05	\$426,498.76	\$11,317,652.43
2054	\$11,289,444.58	\$10,505,919.16		\$334,205.54	\$10,840,124.70	\$449,319.89	\$11,766,972.32
2055	\$11,628,127.92	\$10,821,086.73		\$334,205.54	\$11,155,302.27	\$472,825.85	\$12,239,797.96
2056	\$11,976,971.76	\$11,145,729.63		\$334,205.54	\$11,479,935.17	\$497,036.68	\$12,736,834.55
2057	\$12,336,280.91	\$11,480,101.52		\$334,205.54	\$11,814,307.06	\$521,973.85	\$13,258,808.40
2058							\$13,258,808.40
2059							\$13,258,808.40
2060							\$13,258,808.40
2061							\$13,258,808.40

Preparer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Representative Signature: 

Date: 2-6-24

NOTES:





EPA Project Control Number \_\_\_\_\_

United States Environmental Protection Agency  
Washington, DC 20460

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Kathryn L. Whittington, President, Ashtabula County Board of Commissioners

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

2-6-24

Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)



Division of Environmental & Financial Assistance

50 West Town Street, Suite 700, Columbus, Ohio 43215

Ph: (614) 644-2798 Fx: (614) 644-3687

www.epa.ohio.gov/defa

OHIO WATER POLLUTION CONTROL LOAN FUND COMPLIANCE CERTIFICATION

BORROWER Ashtabula County Department of Environmental Services

PROJECT NAME Coffee Creek WWTP Improvements

I certify that I am the duly authorized representative of the above-named legal entity (Borrower) and that the Borrower agrees to comply with all Federal and State laws, executive orders, regulations, policies and conditions relating to WPCLF assistance. I also certify that the Borrower:

- 1. Has the legal, institutional, managerial and financial capability to ensure adequate construction, operation, maintenance and replacement of the project facilities.
2. Will, if the project includes a new wastewater collection system, require all planned users to connect to the said system no later than one-year after the initiation of operation of the project facilities.
3. Does assure that the mitigative measures stated in the environmental assessment and detailed plans and specifications will be implemented in the construction of the project facilities.
4. Has not and will not violate any Federal, State or local law pertaining to fraud, bribery, graft, collusion or other unlawful or corrupt practices.
5. Will, during the construction of the project facilities, comply with the provisions of:
a. Federal Executive Order 11246 relating to Equal Employment Opportunity.
b. Federal Executive Orders 12432 relating to the use of Women's and Minority Business Enterprises.
c. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition and Policies Act of 1970 (P.L. 91-646).
d. Federal Executive Order 11988 relating to evaluation of potential effects of any actions in a floodplain and Federal Executive Order 11990 relating to minimizing harm to wetlands.
e. The National Historic Preservation Act of 1966 (P.L. 89-665 as amended.)
f. State Executive Order 90-68 relating to construction impacts on wetland areas.
g. The Federal Davis-Bacon Act as codified at 40 U.S.C. 276a-276a-5 unless waived in writing by the State.
6. Will, when disbursements exceed \$750,000 in any year under this agreement, comply with:
a. The Single Audit Act of 1984, (SAA), as amended by the Single Audit Act of 1996. The Borrower will also have an audit of its use of Federal Financial Assistance, keep a copy of the SAA for review for the life of the loan.
7. Will comply with Federal Water Pollution Control Act 602(b)(14) pertaining to the procurement of A/E services.
8. Will comply with Federal Water Pollution Control Act 603(d)(1)(E) pertaining to the development of a Fiscal Sustainability Plan.
9. Will comply with Subpart C of 2 CFR Part 180 and will ensure the same compliance from any and all contractors and subcontractors.
10. Will not retain the services of, solicit offers or bids from, or award contracts to any contractor or subcontractor who is presently debarred, suspended or proposed for debarment.
11. Will take steps to ensure that all contractors and subcontractors are not listed on the System for Award Management (SAM) exclusion list, and will have any and all proposed contractors and subcontractors certify they are not presently debarred, suspended, or otherwise excluded.

I certify that I have read and understand these requirements and agree that WPCLF assistance is conditional upon the above-named Borrower maintaining compliance with these requirements. I understand that a false statement on this certificate may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for 5 years, or both.

Handwritten signature of authorized official

Signature of Authorized Official

February 6, 2024

Date



OHIO WATER POLLUTION CONTROL LOAN FUND
CONSULTANT DEBARMENT CERTIFICATION

CONSULTANT:
BORROWER: Ashtabula County Department of Environmental Services
PROJECT NAME: Coffee Creek WWTP Improvements

I certify that I am the above-named Consultant, and that the Consultant agrees to comply with all Federal and State laws, executive orders, regulations, policies and conditions relating to WPCLF assistance. I also certify that the Consultant and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default;
5. Will comply with Subpart C of 2 CFR Part 180; and
6. Will not utilize or recommend Borrower to utilize any subcontractor who is unable to certify the above provisions (1) - (5).

I certify that I have read and understand these requirements and agree that employment as a consultant on this project is conditional upon maintaining compliance with these requirements. I understand that a false statement on this certificate may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for 5 years, or both.

Consultant's Signature and Title

Date



OHIO WATER POLLUTION CONTROL LOAN FUND
CONSULTANT DEBARMENT CERTIFICATION

CONSULTANT: CT Consultants, Inc.

BORROWER: Ashtabula County Department of Environmental Services

PROJECT NAME: Coffee Creek WWTP Improvements

I certify that I am the above-named Consultant, and that the Consultant agrees to comply with all Federal and State laws, executive orders, regulations, policies and conditions relating to WPCLF assistance. I also certify that the Consultant and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default;
5. Will comply with Subpart C of 2 CFR Part 180; and
6. Will not utilize or recommend Borrower to utilize any subcontractor who is unable to certify the above provisions (1) – (5).

I certify that I have read and understand these requirements and agree that employment as a consultant on this project is conditional upon maintaining compliance with these requirements. I understand that a false statement on this certificate may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for 5 years, or both.

[Handwritten Signature]

, Vice President

February 1, 2024

Consultant's Signature and Title

Date

**17.0 Application Check List**

- Facilities Plan
- A copy of Legislation authorizing current rates/tap in fees
- A copy of Legislation authorizing the borrower to enter into a Loan Agreement with Ohio EPA & OWDA (Example: see **ATTACHMENT A**)
- Planning & Design Loan Only:** Draft or Executed Copy of Engineering Agreement
- Construction Loan Only:** Engineer's Estimate for project costs. Bid tabs are required to be submitted prior to project approval.  
Detailed estimate for Equipment and Force Account  
Draft or Executed Copy of the Engineering Agreement if engineering costs are included in the loan.
- If the borrower is using special assessments to cover any portion of the Ohio EPA loan payments, attach a certified statement from a Solicitor/Law Director stating the status of the assessment proceedings, resolutions or ordinances, and notices.
- Site Title Opinion Letter signed by Solicitor/Law Director (Example: see **ATTACHMENT B**)  
\* **Note:** If the site title opinion letter is not able to be sent with the loan application, it can be sent at a later date. However, this opinion **MUST** be submitted with the bid package for review.
- Intermunicipal Service Agreement (if applicable)
- Documentation of outstanding debt for planning and/or design costs, to be included in the Ohio EPA loan (if applicable)

**\*\*\*ITEMS LISTED BELOW ARE NOT NEEDED WITH THE LOAN APPLICATION.\*\*\***

These are required after the Borrower has reviewed and SIGNED the Ohio EPA Loan Agreement and Exhibits.

- General Certificate (Example: see **ATTACHMENT C**)
- Legal procedural letter signed by the Solicitor/Law Director (Example: see **ATTACHMENT D**)

**18.0 Preparer Information**

This Application Submitted by (Name & Title) : Phyllis A. Dunlap, Funding Specialist, CT Consultants, Inc.

Signature: \_\_\_\_\_

Date: February 6, 2024 Telephone Number: 440-530-2230

**19.0 Authorized Representative Approval**

To the best of my knowledge and belief, the information contained in this application is true and correct. The application has been duly authorized by the governing body of the applicant and the applicant will maintain compliance with all the laws, rules, executive orders and policies pertaining to the Ohio EPA - Water Pollution Control Loan Fund (WPCLF) or the Water Supply Revolving Loan Account (WSRLA) programs.

Authorized Representative Kathryn L. Whittington

Title Board President, Ashtabula County

Signature:  Date: February 6, 2024

**WATER POLLUTION CONTROL LOAN FUND AGREEMENT**

This Agreement made and entered into as of the "Effective Date," by and among 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, the Ohio Water Development Authority<sup>1</sup>, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Ohio Revised Code (the "OWDA," and together with the Director, the "State"), 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 by the legislative authority of the Borrower on the date specified on Exhibit 1 as the "Resolution Date" (the capitalized terms not defined in the recitals being as defined in Article I herein);

**WITNESSETH:**

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the State, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the State for the protection and preservation of the public health, safety, convenience, and welfare, and the improvement of the economic welfare or employment opportunities of and the creation of jobs for the people of the State, or to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Ohio Revised Code ("R.C."); and

WHEREAS, Title 33, Chapter 26, Subchapter VI of the Clean Water Act, as amended (the "CWA"), 33 U.S.C.A. § 1383 authorizes the Administrator of the United States Environmental Protection Agency to make capitalization grants to states which have established a state water pollution control revolving loan fund; and

WHEREAS, pursuant to the CWA, states can provide loans and other types of financial assistance from a water pollution control revolving loan fund to local communities, municipal or intermunicipal and interstate or state agencies for the construction of publicly-owned wastewater treatment facilities as defined in Section 212 of the CWA, 33 U.S.C.A. 1292, 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 a water pollution control loan fund (the "WPCLF") pursuant to R.C. Section 6111.036 to provide loans and other types of financial assistance as set forth in said Section; and

WHEREAS, to assist the Director (whenever the term "Director" is used herein, such term shall also be deemed to include the Director's designated representative(s), if any) 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 R.C. Section 6111.036, the Director has entered into an Interagency Agreement with the OWDA and has annually entered into a renewal of that Agreement; and

---

<sup>1</sup> The approval and execution of this Agreement by the OWDA is required only if this Agreement provides for a loan and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the OWDA.

## Water Pollution Control Loan Fund Agreement

WHEREAS, the Borrower is desirous of obtaining financing for necessary Project Facilities, using funds from the WPCLF; and

WHEREAS, the State is willing to provide financing to the Borrower for such Project Facilities, and the Director has determined that the Borrower has complied with the requirements of R.C. Section 6111.036, and is therefore eligible for financial assistance for its Project Facilities under the CWA and said Section; and

WHEREAS, the Borrower has demonstrated to the satisfaction of the State that it has the capability to pay the Semi-Annual Payment over the Contract Period of Years; and

WHEREAS, the State 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) "Application Fee" means a charge levied and paid by the Borrower at the time of the execution of this Agreement to partially offset administrative costs of the Agreement. This fee is not an Eligible Project Cost and is in addition to the Semi-Annual Payment. The fee is calculated at thirty-five hundredths of one percent (.35%) of the estimated Eligible Project Costs, or four hundred dollars (\$400.00), whichever is the greater.

(b) "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 State, together with any amendments thereto approved by the Borrower and the State after the date of this Agreement.

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

(d) "Capitalized Interest Rate" means the effective rate of interest at which interest accrues on Principal Amounts disbursed during the construction period from the date of such disbursement.

(e) "Contract Interest Rate" means the interest rate per annum shown on Exhibit 1 as "Interest Rate."

(f) "Contract Period" means the period beginning the Effective Date and ending on the date of the conclusion of the Contract Period of Years.

(g) "Contract Period of Years" means the period of calendar years shown on Exhibit 1 as "Term In Years," commencing on the Date of Initial Payment to the WPCLF as set forth on the project schedule on Exhibit 1, provided that it shall commence no later than twelve (12) months following the actual Initiation of Operation of the Project Facilities, as presently determined in the project schedule, but in no event shall the Contract Period of Years exceed 30 years.

(h) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

**Water Pollution Control Loan Fund Agreement**

(i) "Effective Date" means the most recent date of signature of this Agreement by the authorized representative of each of the parties, as indicated herein.

(j) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the proviso below), costs that may be disbursed out of funds from the WPCLF, a description and distribution of which, subject to paragraph 4.1. hereof, is shown on Exhibit 1, which is hereby incorporated into this Agreement, and revision to which Exhibit can occur only with the agreement of the State and Borrower; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the State, the payment of such costs by the State would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation.

(k) "Facilities Plan" means all materials developed by the Borrower and the Director, including the Director's approval and any applicable conditions, in satisfaction of R.C. 6111.036 (K)(7).

(l) "Finding of No Significant Impact" or "FNSI" means all materials developed by the Borrower and the Director in satisfaction of R.C. Sections 6111.036 (K)(5) and (L).

(m) "Initiation of Operation" means the date that all Project Facilities are in full and sustained operation as planned and designed.

(n) "Participation Rate" means the dollar amount per semi-annual period necessary to amortize a principal amount of one dollar over the Contract Period of Years at the Contract Interest Rate.

(o) "Performance Certification" means the certification by the Borrower that the Project Facilities are meeting the agreed upon performance criteria on the date one year after Initiation of Operation of the Project Facilities.

(p) "Performance Criteria" means the standards set forth by the Director and agreed to in writing by the Borrower which the Borrower shall meet for the design life of the Project Facilities.

(q) "Pledged Revenues" means the one or more dedicated sources of revenue for payment of the Semi-Annual Payment, all as described in Exhibit 1, which shall include, unless otherwise indicated on Exhibit 1, Wastewater Service Charges and other revenues derived by the Borrower from the ownership and operation of its wastewater system (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the system and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the Borrower to secure debt obligations heretofore or hereafter issued or incurred by the Borrower for the system. These Pledged Revenues shall constitute a Dedicated Repayment Source, as defined in the CWA.

(r) "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 Director, together with any changes therein made pursuant to Article III hereof, but does not include facilities which are a part of the WRRSP Project.

(s) "Project Participation Principal Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds from the WPCLF, which costs shall in no event exceed the amount specified on Exhibit 1 as the "Principal Amount."

(t) "Project Site" 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, but it does not include the WRRSP Site.

(u) "Semi-Annual Payment" means the amount equal to the Project Participation Principal Amount multiplied by the Participation Rate. An estimate of the Semi-Annual Payment based on the Principal Amount and the Participation Rate is specified on Exhibit 1 beneath the Principal Amount. A portion of Semi-Annual Payment will be deposited into an account to offset Ohio EPA administrative expenses.

If the Contract Period of Years commences prior to the final determination of the Project Participation Principal Amount, the Semi-Annual Payment shall be based upon the best figures available at the time the computation of each semi-annual payment is required to be made. When such final costs are known, the Semi-Annual Payment shall be recomputed and the next following semi-annual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Project Participation Principal Amount been used in computing the Semi-Annual Payment at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(v) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the Borrower to pay all or a portion of the cost of the Project Facilities including repayment of the loan provided for herein. In such cases where assessments are to be levied, Exhibit 1 sets out the Resolution of Necessity adopted by the appropriate legislative authority.

(w) "Wastewater Service Charge" means a charge against the user payable to the Borrower for the collection or collection and treatment of wastewater and for the provision of the facilities therefor.

(x) "WRRSP Project" means the actions and facilities, including the manner of their implementation and maintenance, which have been approved by the Director under the WPCLF's Water Resources Restoration Sponsor Program and identified by the approved WRRSP Restoration / Protection Plan.

(y) "WRRSP Restoration / Protection Plan" means all materials developed by the Borrower, including materials developed by the Implementer and submitted by the Borrower, in satisfaction of the requirements of the Director to approve a WRRSP Project for assistance, including the Director's approval and any applicable conditions.

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

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

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the Borrower.

Section 2.2. The Borrower agrees that the State or its designated representatives shall have the right at all reasonable times to enter upon the Project Site, WRRSP Site, WRRSP Project location, and Project Facilities and to examine and inspect the same. The Borrower further agrees that the State or its designated

representatives shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

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

Section 3.1. Subject to the terms and conditions of this Agreement, the Borrower shall do all things necessary to construct the Project Facilities on the Project Site (which the Borrower hereby represents has been acquired by the Borrower) by means of the construction contract.

Section 3.2. In connection with the construction of the Project Facilities, the Borrower agrees that:

(a) It will proceed expeditiously with, and complete, the Project Facilities in accordance with the specific terms and conditions of each of the following: the approved facilities plan, the Finding of No Significant Impact, the approved project schedule, and the approved project detailed plans and specifications, or amendments thereto as approved by the Director. The Borrower accepts such performance as an essential element of this Agreement.

(b) The construction contract(s) will provide that the designated representatives of the State 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, including the letting of contracts in connection therewith, will conform to applicable requirements of Federal, State and local laws, ordinances, rules and regulations and will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(d) Following construction contract award and prior to the commencement of construction, the Borrower will arrange and conduct a pre-construction conference to include the Borrower, the consulting engineers of the Borrower, and all contractors, and designated representatives of the State as appropriate or necessary.

(e) 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.

(f) The Borrower will not submit requests for disbursement of non-Eligible Project Costs. If, based on a payment request submitted by the Borrower, the State disburses funds from the WPCLF which are subsequently determined to be for non-Eligible Project Costs, the State will be under no obligation to provide WPCLF funding beyond the Eligible Project Costs as shown on Exhibit 1, as amended.

(g) Any change or changes in a construction contract regardless of costs which 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 and then, upon approval, be forwarded to the OWDA. The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(h) Change orders not requiring prior approval of the State will be submitted to the Director within one (1) month of the time at which they are approved by the Borrower. The Borrower shall be precluded from

Water Pollution Control Loan Fund Agreement

submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(i) The Borrower will comply with all certifications and assurances as agreed to in the Application Compliance Certification, signed by the Authorized Representative of the Borrower.

(j) The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs unless the Borrower is in full compliance with the certifications and assurances made in the above referenced Application Compliance Certification.

(k) 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.

(l) In any year in which disbursements to the Borrower under this Agreement exceed \$750,000 the Borrower shall comply with the Single Audit Act (SAA) Amendments of 1996, 31 U.S.C.A. § 7501 and have an audit of its use of Federal financial assistance (see 2 CFR Part 200). 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.

(m) In the event construction costs are to be paid from loan proceeds under this Agreement, the Borrower shall comply with 40 U.S.C.A. § 3141 (known as the Federal Davis-Bacon Act), unless waived in writing by the State.

(n) The Borrower acknowledges and agrees that its obligation under Section 3.2(c) to conform to applicable requirements of Federal laws, rules and regulations, includes, without limitation, the obligation to:

(i) comply with all applicable Federal requirements imposed by the then most recent version of the Consolidated Appropriations Act and/or related State Revolving Fund Policy Guidelines, including, among others, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") and that if applicable, all manufactured products used in the projects are to be produced in the United States as required by the Build America, Buy America Act (BABAA), *eff. May 14, 2022* unless (A) the Borrower has requested and obtained a waiver from the Director pertaining to the Project or (B) the Director has otherwise advised the Borrower in writing that BABAA and/or the American Iron and Steel Requirement is not applicable to the Project; or

(ii) comply with all record keeping and reporting requirements under the CWA, including any reports required by the Federal agency or the Director such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that (A) each contract and subcontract related to the Project is subject to audit by appropriate Federal and State entities and (B) failure to comply with the CWA and this Agreement may be a default hereunder that may result in the required immediate repayment from the Borrower of financial assistance provided under this Agreement and/or other remedial actions.

(o) The Borrower agrees to comply with the requirements of section 603(d)(1)(E)(i) of the CWA, 33 U.S.C.A. 1383, (incorporated into the CWA by the Water Resources Reform and Development Act (WRRDA)), for the development and implementation of a Fiscal Sustainability Plan (FSP). The Borrower agrees to certify, as part of the Performance Certification, a Fiscal Sustainability Plan has been developed and implemented in accordance with the provisions of this Agreement and applicable law.

## Water Pollution Control Loan Fund Agreement

**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, including standards relating to the reporting of infrastructure assets, in accordance with generally accepted accounting principles as issued by the Governmental Accounting Standards Board. The Borrower shall permit the State, 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 R.C. Section 6111.036, and the Borrower shall submit to the State 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, in amounts and on terms satisfactory to the State. 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 OWDA, 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 engineering services; said services covering 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: the approved project facilities plan, the Finding of No Significant Impact, and the approved project detailed plans and specifications, or State approved amendments thereto.

**Section 3.7.** Subject to the terms and conditions of this Agreement, the approval of the Director, and upon compliance by the Borrower with all the requirements of the WPCLF, the R.C. Section 6111.036, and the CWA, which must be met before receiving disbursement of Eligible Project Costs from the OWDA, the Eligible Project Costs shall be disbursed by the OWDA. In the event this Agreement is terminated by the State 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, the Project Participation Principal Amount disbursed shall be due and payable in full no later than thirty (30) calendar days after said termination, or, at the State's option, upon terms mutually agreed to between the State and the Borrower.

**Section 3.8.** Upon being satisfied that the requirements of this Agreement have been met, the OWDA shall 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, and in accordance with the requirements of paragraph (j) of Section 3.2. above, the OWDA shall 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 State of the final Eligible Project Costs.

Section 3.10. The Borrower shall comply with the following requirements in accordance with the time schedule contained in Section 3.11. hereof:

(a) In addition to the legislation required by this Agreement in the preambles, the Borrower, through its legislative body, shall pass legislation, to implement the system of user charges (Operation, Maintenance, and Replacement expenses) and the sewer use ordinance that was contingently approved by the Director prior to the execution of this Agreement. In addition, as appropriate, the Borrower shall execute an approved intermunicipal service agreement, as described in the State of Ohio EPA Guidance for a User Charge System, as amended.

(b) The Borrower shall complete all activities and documents provided in the Operation and Maintenance (O&M) Program Plan as amended.

(c) If deemed necessary by the approved Facilities Plan, the Borrower shall be in compliance with any required sewer system evaluation and rehabilitation schedules, as described in the approved Facilities Plan, accepted in the Approved Application, and incorporated into this Agreement on Exhibit 1 as "Special Terms and Conditions," and made a part hereof.

(d) The Borrower shall comply with applicable "fair share" goals and reporting annually by October 15<sup>th</sup> of each year for utilization of Disadvantaged Business Enterprises.

(e) On the date one year after Initiation of Operation of the Project Facilities, the Borrower shall prepare and submit to the Director the Performance Certification report and Performance Certification. Should the Project Facilities not be in compliance with the Performance Criteria, on the date one year after Initiation of Operation of the Project Facilities, the Borrower will prepare and submit to the Director a corrective action report outlining what tasks are necessary to meet the Performance Criteria, and setting forth a schedule, acceptable to the State, which will allow the Borrower to meet said Performance Criteria.

Section 3.11. The Borrower shall be in conformance with the requirements of Section 3.10. above and in compliance with the following:

(a) By the time 50% of the Eligible Project Costs to be reimbursed by WPCLF moneys have been disbursed by OWDA, the Borrower must demonstrate, to the satisfaction of the State, that it has completed the requirements of paragraph (a) of Section 3.10. above.

(b) No later than one year after Initiation of Operation, the Borrower shall complete all activities and documents provided in the O&M Program Plan and participate in a final evaluation meeting.

(c) At any time during the effective period of this Agreement, the Borrower must demonstrate, to the satisfaction of the State, that it is in compliance with the requirements of paragraphs (c) and (d) of Section 3.10. above, as the compliance relates to construction of the Project Facilities.

Except as related to paragraphs (c) and (d) of Section 3.10. above, upon the failure of the Borrower to comply with the provisions of Section 3.10. and 3.11. herein as determined by the Director, the OWDA shall employ consulting engineers or other qualified personnel to perform any services necessary for the implementation of such requirements. All costs incurred by the OWDA in the employment of said personnel will be included in the Eligible Project Costs of the Project Facilities. Additionally, during the period of non-compliance with any of the requirements, the Borrower shall be precluded from submitting payment requests as noted in paragraph (j) of Section 3.2. above and the State shall not be obligated to approve such requests during such period of non-compliance.

#### **ARTICLE IV - PAYMENTS BY BORROWER**

Section 4.1. Subject to the further provisions hereinafter set forth, the Borrower agrees to and shall pay at the time of the execution of this Agreement the Application Fee and thereafter, semi-annually on January 1, and July 1 of each year of the Contract Period of Years to the WPCLF, the Semi-Annual Payment, solely from the Pledged Revenues.

The obligation of the Borrower to pay the charges set forth in this Section 4.1 shall not be assignable, and the Borrower shall not be discharged therefrom, without the prior written consent of the State. In the event that construction or operation of the Project Facilities shall cease or be suspended for any reason, unless otherwise agreed to in writing by the State, the Borrower shall continue to be obligated to pay such charges pursuant to this Section 4.1. In the event the Borrower defaults in the payment of the Semi-Annual Payment, the amount of such default shall bear interest at the Default Rate from the date of the default until the date of the payment thereof. All costs incurred by the State in curing such default including, but not limited to, court costs and attorney's fees shall be paid by the Borrower upon demand, and shall not be eligible for inclusion in a WPCLF Loan Agreement.

In the event that the Borrower fails to make a full Semi-Annual Payment as provided herein, the amount of any such partial payment first shall be applied as interest on the loan, with the remainder being applied toward the payment of the outstanding principal.

With respect to this Agreement, neither the general resources nor the general credit of the Borrower but only the Pledged Revenues, shall be required to be used, or pledged for the performance of any duty under this Agreement. This Agreement does not represent or constitute a debt or a pledge of the faith and credit of the Borrower. However, if otherwise lawful, nothing herein shall be deemed to prohibit the Borrower from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than the fifteenth day of June, and December, the OWDA shall invoice the Borrower for the sum owing by the Borrower pursuant to Section 4.1. and that payment of each such invoice shall be made by the Borrower to the OWDA not later than the first day of the following July or January. No failure by the OWDA to send any such invoice and no failure by the Borrower to receive any such invoice shall relieve the Borrower from its obligation to pay the amount due hereunder on the applicable due date.

Section 4.3. The Borrower hereby agrees:

(a) That it will at all times prescribe and charge such rates, after meeting: (1) operation and maintenance expenses therefore, and, (2) if required by the Director pursuant to R.C. Section 6111.036, a contribution to the Borrower's Capital Improvements Fund and, (3) the payment of all amounts required by

any Mortgage, Indenture of Mortgage, Trust Indenture or other instrument heretofore or hereafter granted by the Borrower, or contractual obligations between the Borrower and the State, payable solely from Pledged Revenues, as shall result in revenues at least adequate, to provide for the payments required by Section 4.1. hereof minus the amount of such payment provided from other Dedicated Repayment Sources, if any, and

(b) That the Borrower will, for the Contract Period of Years, furnish annually to the State reports of the operation and income of the wastewater system and also an annual report of the accounts and operations of the wastewater system and such other documents as the State may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the Borrower will permit the designated representative of the State to inspect all records, accounts and data of the Project Facilities at all reasonable times, and

(c) That the Borrower will segregate the revenues, funds and properties of the wastewater system from all other funds and properties of the Borrower.

All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the Borrower within the meaning of R.C. Section 2731.01.

Section 4.4. If the Borrower pays all or any portion of the Semi-Annual Payment from Special Assessment Funds, and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the Borrower may elect to apply the amount of such payment to the reduction of the Project Participation Principal Amount by including that amount with its next Semi-Annual Payment pursuant to Section 4.1. hereof, accompanied by a written notice to the State identifying the amount so included and directing the State so to apply that amount. Upon the receipt of such payment and notice, the OWDA shall recompute the remaining Semi-Annual Payments based on the reduced Project Participation Principal Amount, and the OWDA shall notify the Borrower in writing of the reduced amount of the remaining Semi-Annual Payments.

Section 4.5. The Borrower agrees to provide financing for all non-Eligible Project Costs. As a preliminary indication of that commitment, the Borrower has provided evidence that financing is readily available for all non-Eligible Project Costs which will be or may be incurred by the Borrower in connection with construction of the Project Facilities.

Section 4.6. The Borrower agrees that, in the event the Borrower or its contractors receives WPCLF moneys in excess of the Eligible Project Costs, the Borrower shall repay said excess moneys to the WPCLF at the time of the first Semi-Annual Payment, or as otherwise agreed to by the Borrower and the State.

Section 4.7. In order to enable the State to comply with the requirements of federal securities laws (including, without limitation, 17 C.F.R. § 240.10b-5 and 17 C.F.R. § 240.15c2-12 ("Rule 15c2-12") each promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended), the Borrower agrees to prepare and file with the State or, at the direction of the State, to file with the Municipal Securities Rulemaking Board ("MSRB") through the EMMA System (as defined below), any annual financial information or material events disclosures that the State may determine it requires to achieve such compliance. The Borrower consents to the State's incorporation by reference into State official statements or other State filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the Borrower may have filed or may file with the MSRB. In the event the

Borrower fails to prepare any financial statement or other financial information that this Section requires the Borrower to prepare and file with or at the direction of the State, then the State shall have the right (in addition to any other rights it may have to enforce the obligations of the Borrower hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, "EMMA System" shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the following is the website address for EMMA: [emma.msrb.org](http://emma.msrb.org).

#### **ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION**

Section 5.1. The Borrower agrees that during the Contract Period of Years it will:

- (a) Operate the Project Facilities in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and
- (b) Keep the Project Facilities including all appurtenances thereto and the equipment and machinery therein in good repair and good operating condition at its own cost so that the completed Project Facilities will continue to operate with substantially the same efficiency as when first constructed.

The Borrower shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site and the Project Facilities from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the Borrower, and the same shall be the property of the Borrower and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be; and provided further that the Borrower shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site or the Project Facilities, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the State thereto.

Section 5.2. The Borrower agrees that it will initiate operation of the Project Facilities in accordance with the Project Schedule, as amended, and will not discontinue operation of the Project Facilities without the approval of the Director. The Borrower agrees that it will provide adequate operation and maintenance of the Project Facilities to comply with all applicable rules and regulations of the Director. The Borrower agrees that, in accordance with its NPDES permit and the Operation and Maintenance Program sufficient qualified operating personnel certified by the State of Ohio will be retained by the Borrower to operate the Project Facilities, and all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities from the time of Initiation of Operation until the end of the Contract Period of Years or the approval of the discontinuance of the operation of the Project Facilities by the Director. The Project Facilities shall be operated and maintained in accordance with the sewer use ordinance or resolution governing the use of the Project Facilities and any administrative regulations adopted pursuant thereto acceptable to the Director as appropriate.

The Borrower will permit the State or its designated representatives to have access to the records of the Borrower pertaining to the operation and maintenance of the Project Facilities at any reasonable time following completion of construction of the Project Facilities.

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**Section 5.3.** The Borrower agrees to insure, or cause to be insured, the Project Facilities in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

**Section 5.4.** The Borrower agrees that it will provide through self-insurance or obtain public liability insurance with reference to the Project Facilities in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The Director and the OWDA, on behalf of the WPCLF shall be made an additional insured under such policies.

**Section 5.5.** Throughout the Contract Period of Years, the Borrower shall maintain Worker's Compensation Coverage or cause the same to be maintained.

**Section 5.6.** Any insurance policy issued pursuant to Sections 5.3 and 5.4. hereof shall be so written or endorsed as to make losses with respect to the Project Facilities, if any, payable to the State on behalf of the WPCLF, and the Borrower as their respective interests may appear. Each insurance policy provided for in Sections 5.3. and 5.4. hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the State and the Borrower at least ten days in advance of such cancellation. The Borrower shall deliver certificates of insurance evidencing the coverage required herein to the State.

**Section 5.7.** The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3. and 5.4. hereof shall be applied as follows:

(a) The net proceeds of the insurance required in Section 5.3. hereof shall be applied as provided in Section 5.9. hereof, and

(b) The net proceeds of the insurance required in Section 5.4. hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 5.8.** In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project Facilities in good repair and operating condition, or shall fail to operate the Project Facilities in accordance with Section 5.2. hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums of the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2. and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become a separate obligation of the Borrower to the OWDA, which amounts, together with interest thereon at a rate equal to three percent (3%) above the Contract Interest Rate from the date thereof, the Borrower agrees to pay solely out of Pledged Revenues.

**Section 5.9.** If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the Borrower pursuant to Section 4.1. hereof, and the Borrower will:

(a) Promptly repair, rebuild or restore the property damaged or destroyed, and

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(b) Apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the Borrower necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the Borrower.

Section 5.10. In the event that title to or the temporary use of the Project Site or Project Facilities, or any part thereof, shall be taken by any person, firm, or corporation acting under governmental authority, there shall be no abatement or reduction on the amounts payable by the Borrower pursuant to Section 5.1. hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Borrower in a separate condemnation award account and shall be applied by the Borrower in either or both of the following ways as shall be determined by the Borrower:

(a) The restoration of the improvements located on the Project Site to substantially the same condition as they existed prior to the exercise of said power of eminent domain; or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent to the Project Facilities, which real estate and facilities shall be deemed a part of the Project Site and Project Facilities without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the Borrower upon delivery to the OWDA of a certificate signed by an authorized officer of the Borrower that the Borrower has complied with either paragraph (a) or (b), or both, of this Section 5.10. The OWDA shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof. In no event will the Borrower voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof without the written consent of the State.

Section 5.11 This Section 5.11 shall apply if Exhibit 1 hereto indicates that the Contract Interest Rate includes a Water Resource Restoration Sponsor Program (WRRSP) discount.

(a) In accepting the WRRSP discount, the Borrower agrees that to the fullest extent permitted by law it shall assure implementation of the WRRSP Project in accordance with the specific terms and conditions of each of the following as applicable: approved Restoration / Protection Plans, the Finding of No Significant Impact, agreements or other mechanisms to restrict or maintain the identified uses associated with the WRRSP Project, and agreements between the Borrower and an entity responsible for implementing approved Restoration / Protection Plans (hereinafter the "Implementer") which are attached hereto as Exhibit 2 and made a part hereof. The Borrower accepts such performance as an essential element of this Agreement.

(b) Following the award of assistance, the Borrower may request disbursements for completion of a Restoration / Protection Plan and for implementation of an approved Restoration / Protection Plan. All such disbursements will be requested on the "Online Fund Payment Request Form" provided by the Ohio Water Development Authority website. The parties to this Agreement expect that costs directly associated with implementing the Restoration / Protection Plan will be disbursed by the OWDA either to the Borrower, the Implementer, an escrow agent jointly selected by the Borrower and the Implementer, or to contractors supplying materials or performing services in furtherance of this Agreement which have been designated by the Borrower as authorized recipients of such disbursements.

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When WRRSP-eligible costs are incurred on behalf of the Implementer, invoices shall first be submitted to the Implementer which shall approve them to be requested for reimbursement by the Borrower and shall certify such invoices as eligible for assistance prior to forwarding them to the Borrower. The Borrower shall approve and certify all invoices (whether incurred by the Borrower directly or the Implementer) prior to submitting them to the Director with the accompanying disbursement request form. The Director shall review the disbursement request, including accompanying invoices, and if it is approved, shall transmit it to OWDA which then will be responsible for disbursing funds directly, either to the Borrower, escrow agent or to the contractor.

(c) Each interest in property acquired by either the Borrower or the Implementer as part of the WRRSP Project shall be subject to legally enforceable use restrictions which shall run with the property, perpetually limiting the use of the property to natural area uses consistent with the approved Restoration / Protection Plan. All conservation easements acquired either by the Borrower or the Implementer to implement or maintain the WRRSP Project shall be permanent easements and shall limit the uses of the land under easement to natural area uses consistent with the approved Restoration / Protection Plan. Borrower shall submit to the Director copies of documents containing such restrictions within ninety days of acquisition of the property interest.

(d) Borrower's failure to comply with any of the terms of this Section or the terms of any WRRSP-related requirements identified in any of the documents listed above during the time this Agreement is in effect shall be considered a default under this Agreement. If the State provides written notice of such default to the Borrower and the Borrower fails within sixty days of the date of such notice to satisfactorily demonstrate in writing to the Director that the Borrower is taking appropriate actions that will cure the default and will result in compliance with the WRRSP requirements, then from and after the date that is sixty days after the date of such notice the State will increase the Contract Interest Rate to a rate necessary to recover the amount of WRRSP funds disbursed and to eliminate any discount applied for the remainder of the Contract Period of Years, and all subsequent semi-annual payments for the remainder of the Contract Period of Years will be adjusted accordingly. Borrower agrees to submit in a timely manner the amounts required by the revised semi-annual payments for the remainder of the effective period of this Agreement.

The amount that the State recovers through the remedy provided for in this paragraph shall not exceed the total of the WRRSP Project cost financed by the WPCLF and any interest discount applied for the remainder of the Contract Period of Years, and any amount thus recovered by the State shall be credited toward the liquidation of any liability of the Borrower under this Section 5.11.

(e) To the extent that Borrower's failure to comply with WRRSP-related requirements involves a failure on the part of an Implementer to carry out a term or condition of an approved Restoration / Protection Plan for which a remedy exists via a separate enforceable agreement between the Director and the Implementer, the Director shall first attempt to address such non-compliance through the agreement between the Director and the Implementer prior to invoking any remedies under this agreement or otherwise available. If the Director, after exercising its obligation to attempt to address non-compliance through direct action between the Director and the Implementer, provides written notice to the Borrower that noncompliance continues to exist, the Director or the State may undertake any remedies under this agreement or otherwise available.

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

Section 6.1. 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 during the Contract Period of Years, with all applicable federal, state, and local laws, ordinances, rules, regulations, and provisions of this Agreement, including without limitation the CWA and R.C. 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, 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 State, 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.

Section 6.2. Each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The Borrower shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article III hereof.

(b) The Borrower shall fail to observe and perform any other obligations, agreements, or provisions of this Agreement, which failure shall continue for thirty (30) days after receipt of written notice thereof from the Director or the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the Borrower demonstrates both of the following to the satisfaction of the Director and OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the Borrower is taking all reasonably necessary actions to cure such failure with all deliberate speed. Notwithstanding the contents of this paragraph, the notice and cure provisions of paragraph 5.11(d) shall apply to the WRRSP Project portions of the assistance in the event of a failure to comply with the terms of WRRSP-related requirements under this Agreement.

(c) Any representations made by the Borrower in Section 6.1 or 7.1 shall at any time during the Contract Period of Years prove to be false.

(d) The Borrower shall fail to observe any of the covenants contained in Article VII herein.

Section 6.3. The Director may terminate, suspend, or require immediate repayment of financial assistance from the Borrower in the event of a default due to failure to make any required payment, or due to any violation of the terms or conditions of this Agreement, or of the documents referred to in Section 3.2.(a), or of the Plan Approval for the Project Facilities under Section 6111.44 of the Ohio Revised Code. The Director may also 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 6.4. Whenever an Event of Default of payment shall have occurred and be continuing, in addition to any other rights or remedies provided herein, by law or otherwise, the State may:

(a) declare the full amount of the then unpaid Project Participation Principal Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order, or agreement affecting the Borrower, require the Borrower to agree to, and the Borrower hereby agrees to, effect the subordination of the payment of any fine or penalties imposed for the violation of any federal, state, or local environmental law or regulation to the payment of the Eligible Project Costs and the interest due thereon.

Section 6.5. No right or remedy conferred upon the OWDA or the Director under Sections 5.11, 6.3 or 6.4 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 6.6. The Borrower releases the State from, agrees that the State shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the State, its officers, employees and agents harmless against, 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 indemnity under this Section 6.6 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, to indemnify and hold harmless the State, its officers, employees and agents against and from any and all cost, liability, 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.

In case any action or proceeding be brought against the State by reason of any claim described in this Section, the State agrees to cause written notice of such action or proceeding to be given to the Borrower, and the Borrower upon notice from the State covenants to resist or defend such action or proceedings at the Borrower's expense including all legal and other expenses (including reasonable attorneys' fees).

#### **ARTICLE VII - MAINTENANCE OF TAX-EXEMPT STATUS OF BONDS / PRIVATE BUSINESS USE RESTRICTIONS**

Section 7.1. The Borrower acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet the State's obligations with regard to funding the WPCLF and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the Borrower's compliance with the provisions of this Agreement. Accordingly, the Borrower agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund the loan to the borrower (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

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(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

(i) The Borrower shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the State hereunder (the "State Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the State Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the State Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the Borrower agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The Borrower shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the Borrower, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the Borrower hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the Borrower referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the Borrower shall have any question about the application of Section 7.1, in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately

inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

#### **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by any party to this Agreement to any other party 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 personally to the OWDA at:  
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 personally to the Director at:  
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,

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

Section 8.3. Upon request of the OWDA, the Borrower agrees to execute the information report required by 26 U.S.C.A. Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the Borrower. The Borrower hereby agrees that the OWDA may file such information report for and on behalf of the Borrower with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and Counsel to the Director and upon the certification of availability of funds as provided in Section 3.8. hereof.

Section 8.5. 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 which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement

## Water Pollution Control Loan Fund 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 8.6. This Agreement shall become effective as of the "Effective Date" and shall continue in full force and effect until the final day of the Contract Period of Years, based on the Semi-Annual Payment being paid at the rate established in Section 4.1. hereof, or until the day the obligations of the Borrower under this Agreement have been fully satisfied, whichever is later.

Section 8.7. 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 State. The State, at its option, may assign this Agreement without the consent of the Borrower.

Section 8.8. As its record of this Agreement, the Borrower agrees to receive an electronic copy pursuant to R.C. 1306.06(C).

The remainder of this page is intentionally left blank.

## Water Pollution Control Loan Fund

Exhibit 1

**Project Name:** Coffee Creek WWTP Improvements

**Borrower:** Ashtabula County

**Address:** 25 West Jefferson Street

**City & State:** Jefferson, OH

**Borrower's Authorized Representative:** Kathryn Whittington

**Loan Number:** CS390004-0017

**Zip Code:** 44047

**Phone:** (440) 676 3760

### Project Description

This project includes expanding the capacity of the Coffee Creek WWTP with the construction of a new aeration tank, which includes the addition of a diversion chamber, new screening and grit removal components, replacement of the sand filters with new tertiary process, and replacement of the UV system.

### Cost Data

Activities	Eligible	ARC	OPWC	Local Funds	Total Project Cost
<b>Technical Services</b>					
Engineering Services	\$355,000.00				\$355,000.00
<b>Construction</b>					
ABC Piping Company, Inc - General	\$8,454,961.35	\$500,000.00	\$1,030,038.65		\$9,985,000.00
<b>Other Costs</b>					
Contingency	\$990,000.00				\$990,000.00
Design	\$166,044.83		\$140,112.27	\$842.90	\$307,000.00
Other: Design Loan Payoff CS390004-0018 / 8620 / 7424	\$60,160.00				\$60,160.00
<b>Total Estimated Cost</b>	<b>\$10,026,166.18</b>	<b>\$500,000.00</b>	<b>\$1,170,150.92</b>	<b>\$842.90</b>	<b>\$11,697,160.00</b>

### WPCLF Loan Information

Interest Rate: 0.0%  
 Term in Years: 30.0  
 Number of Payments: 60  
 Participation Rate: 0.0166667

Principal Amount: \$10,026,166.18  
 Interest: \$0.00  
 Total Cost of Borrowing: \$10,026,166.20  
 Payment: \$167,102.77

### Project Schedule

Application Date: 02/07/2024  
 Resolution Date: 02/06/2024  
 Performance Certification: 10/30/2027

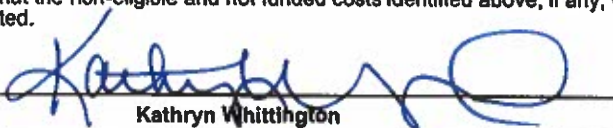
Initiation of Operation: 10/30/2026  
 Date of Initial Payment: 01/01/2027

### Pledged Revenues

Section 603(d)(1)(C) of the Clean Water Act requires one or more dedicated sources of revenue for repayment of the loan. The following information specifies those sources

Revenue Source	
Special Assessments	
General Taxes	
Wastewater Service Charge	\$10,026,166.20
Other:	
<b>Total</b>	<b>\$10,026,166.20</b>

To the best of my knowledge and belief, the information contained on this exhibit represents the actual project costs being requested from the WPCLF. I hereby acknowledge that the non-eligible and not funded costs identified above, if any, will be provided from sources other than the WPCLF as to allow the project to be fully implemented.

  
 Kathryn Whittington

3-19-24

Date

Water Pollution Control Loan Fund Agreement

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

APPROVED AS TO FORM

By \_\_\_\_\_  
Ohio EPA Counsel

Print Name \_\_\_\_\_

OHIO ENVIRONMENTAL PROTECTION AGENCY

By \_\_\_\_\_  
Anne M. Vogel, Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
General Counsel

Print Name \_\_\_\_\_

OHIO WATER DEVELOPMENT AUTHORITY<sup>2</sup>

By \_\_\_\_\_  
Ken J. Heigel, Executive Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By Colleen M. O'Toole  
Borrower's Counsel

Print Name Colleen M. O'Toole

BORROWER

By Kathryn Whittington  
Authorized Representative

Print Name Kathryn Whittington

Title President

Date 3-19-24

<sup>2</sup> If the execution of this Agreement on behalf of the OWDA is not required for the reason stated in note 1 on page 1 hereof, then "N/A" shall be inserted on the signature lines for the OWDA and its General Counsel.