

ORDINANCE NO. 90-60 AC CMS

AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT FOR  
CONSTRUCTION, MAINTENANCE AND OPERATION OF TITLE II  
CONSTRUCTION PROJECT BETWEEN THE CITY OF OBERLIN AND THE  
OHIO WATER DEVELOPMENT AUTHORITY AND DECLARING AN EMERGENCY

WHEREAS, the City of Oberlin is under orders from the Director of Environmental Protection to construct certain waste water treatment and sewage collection facilities as specified in said orders; and

WHEREAS, the City of Oberlin desires to cooperate with the Ohio Water Development Authority (hereinafter referred to as the "OWDA") in the construction, maintenance and operation of such facilities through the OWDA's Local Government Agency Program, instituted pursuant to regulations adopted by the OWDA on December 6, 1979, as amended, under the provisions, terms and conditions set forth in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the OWDA has stated its desire to cooperate in the construction, maintenance and operation of such facilities under the provisions, terms and conditions set forth in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City of Oberlin hereby approves the construction, maintenance and operation of the aforesaid waste water treatment and sewage collection facilities in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for Construction, Maintenance and Operation of Title II Construction Project" as set forth in Exhibit A, and the City Manager and City Auditor of the City of Oberlin are hereby authorized and directed to execute said agreement with the OWDA substantially in the form set forth in Exhibit A.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to insure the immediate construction of the wastewater treatment and sewage collection facilities in order to protect the health of the inhabitants of the City of Oberlin by providing adequate disposition of waste water"

and shall take effect immediately upon passage.

PASSED: 1st Reading - August 20, 1990  
2nd Reading - September 4, 1990 (Emergency)  
3rd Reading -

ATTEST:

  
CLERK OF COUNCIL

  
CHAIRMAN OF COUNCIL

POSTED: September 6, 1990

EFFECTIVE DATE: September 4, 1990

ORDINANCE NO. 90-60 AC CMS  
EXHIBIT A

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE  
AND OPERATION OF STATE SEWER PROJECT

THIS AGREEMENT made and entered into as of the 27th day of September, 1990, by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and CITY OF OBERLIN, a Municipality organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or resolution passed by the legislative authority thereof on Aug. 20, 1990 (hereinafter referred to as the "LCA");

W I T N E S S E T H:

WHEREAS, the OWDA has been created 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 health, safety, convenience, and welfare, and the improvement of the economic welfare and employment opportunities of and the creation of jobs for the people of the state, and 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 Revised Code; and

WHEREAS, the sewerage system (hereinafter referred to as the "Utility") of the LCA will require the supply of services for the collection, and/or treatment and disposal of waste water from the construction, operation and maintenance of the waste water facility defined herein as the Project Facilities (hereinafter referred to as the "Services") to operate the Utility; and

WHEREAS, the LCA is desirous of obtaining the necessary Services for its Utility in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LCA in obtaining such Services and the LCA has given OWDA reasonable assurances that the LCA will make the payment of the charges hereinafter provided for; and

WHEREAS, the OWDA and LCA 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 the mutual covenants herein contained, the parties hereto do hereby agree as follows:

#### ARTICLE I - DEFINITIONS

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:

##### DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) "Approved Application" means the application submitted to the OWDA under date of 8-1-90, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA under date of 8-6-90 together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) "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.

(d) "River Basin" means the waters of \_\_\_\_\_

##### DEFINITIONS RELATING TO COSTS

(e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement, such portion of the following costs as are disbursed out of funds of the OWDA, presently estimated to be \$ 1,500,000.00 but in no event in excess of \$ 1,500,000.00, and the rules and regulations relating thereto: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest (whether or not disbursed) on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil

and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all other Eligible Project Costs, or \$400, whichever is the greater; and any other necessary miscellaneous expenditures.

#### DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Project Participation Principal Amount" means Eligible Project Costs, presently estimated at \$ 1,500,000.00 .

(g) "Participation Rate" means the dollar amount per annum necessary to amortize a principal amount of one dollar over the Contract Period of Years at the Contract Interest Rate.

(h) "Participation Charge" means the amount equal to the Project Participation Principal Amount multiplied by the Participation Rate. (Based on the estimated Project Participation Principal Amount of \$ 1,500,000.00 and the Participation Rate of \$.091845, this amount equals \$ 137,797.50 )

If the Contract Period of Years commences prior to the determination of final costs, the Participation Charge 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 Participation Charge 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 costs been used in computing the Participation Charge at the commencement of the Contract Period of Years. The interest during construction computed at the Capitalized Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(i) "Contract Interest Rate" means the rate of 7.77 % per annum.

(j) "Contract Period of Years" means the period of 25 calendar years commencing on July 1st, 1991, on the January 1 or July 1 next following the completion of construction, or on the January 1 or the July 1 next following the commencement of operation, whichever shall occur first.

(k) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LCA to pay all or a portion of the cost of the Project Facilities. The proceedings for special assessments, in such cases where assessments are to be levied, were commenced by Resolution of Necessity No.        adopted by the legislative authority of the LCA on       , 19  .

**ARTICLE II - PROPERTY INTERESTS 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 LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to accomplish proper operation and maintenance of the Project Facilities pursuant to Section 5.8 hereof in the event of failure by the LGA to perform its obligations under Sections 5.1 or 5.2 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 LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby guarantees has been acquired by the LGA) by means of the construction contract bids received:

See Attached Exhibit B

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Following construction contract awards and prior to the commencement of construction it will arrange and conduct a pre-construction conference to include representatives of the OWDA, the LGA and the consulting engineers of the LGA and all contractors.

(e) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs other than construction contract estimates shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract in excess of one percent (1%) of the contract price or any change or changes regardless of cost which substantially modify the treatment processes proposed will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of Federal, State and local laws, ordinances, rules and regulations.

(j) It will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application, and the surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Ohio EPA.

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

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination and the LGA shall submit to the OWDA such documents and information as they may require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of his contract price as security for the faithful performance of his contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of his contract, Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms satisfactory to the OWDA. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a 100 percent basis (completed value form) on the insurance portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA 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 LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (1) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA. All costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the provisions of this Section shall be repaid in not more than three years after termination with interest on the remaining balances at the Contract Interest Rate.

Section 3.7. Prior to the OWDA delivering any certificates of availability of funds of the Trustee pursuant to Section 3.8 hereof or disbursing any portion of the Eligible Project Costs, the LGA shall demonstrate to the satisfaction of the OWDA the capability of the LGA to pay the Participation Charge over the Contract Period of Years.



Section 3.8. Upon being satisfied that the requirements of Section 3.7 have been met, OWDA shall deliver to the LGA a certificate, signed by the Trustee under the Trust Agreement securing the Water Development Revenue Bonds and Notes issued or to be issued by the OWDA to finance Eligible Project Costs, certifying that monies in the amount necessary to pay the Eligible Project Costs obligated or to be obligated are available or are in the process of collection and have been encumbered 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 LGA, the OWDA shall deliver checks of the Trustee in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs.

Section 3.9. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

#### ARTICLE IV - PARTICIPATION PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, and in consideration for the providing by the OWDA of the Services in the Project Facilities for use in the LGA's Utility, the LGA agrees to and shall pay semi-annually on January 1 and July 1 of each year of the Contract Period of Years to the OWDA solely from the Special Assessment Funds, if any, and from the revenues of the LGA's Utility, one-half of the Participation Charge.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities shall cease or be suspended for any reason, unless otherwise agreed to in writing by the OWDA, the LGA shall continue to be obligated to pay the charges pursuant to this Section 4.1. In the event the LGA defaults in the payment of any of the charges set forth in this Section 4.1, the amount of such default shall bear interest at the Contract Interest Rate or eight per centum (8%) per annum, whichever is greater from the date of the default until the date of the payment thereof, and all the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney's fees shall be paid as a part of the Eligible Project Costs hereunder and shall be repaid by the LGA to the OWDA as a part of the Participation Charge.

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor the general credit of the LGA pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be made only from the revenues of the LGA's Utility and the Special Assessment Funds, if any; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA 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, during the first fifteen days of June and December, the OWDA shall invoice the LGA for the sum owing by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month.

Section 4.3. The LGA hereby agrees: (a) that it will at all times prescribe and charge such rates for the services of the Utility, as shall result in Utility revenues at least adequate, after meeting operation and maintenance expenses therefor and the payment of all amounts required by any Mortgage, Indenture of Mortgage, Trust Indenture or other instrument heretofore or hereafter granted by the LGA to secure bonds and notes heretofore or hereafter issued by the LGA, or contractual obligations between the LGA and the OWDA, payable solely from revenues of the Utility to provide for the payments required by Section 4.1 hereof minus the amount of such payment provided from the Special Assessment Funds, if any; (b) that the LGA will furnish to the OWDA annually reports of the operation and income of the Utility and also an annual report of the accounts and operations of the Utility and will permit the authorized agent of the OWDA to inspect all records, accounts and data of the Utility at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the Utility from all other funds and properties of the LGA. 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 LGA within the meaning of R.C. Section 2731.01.

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

Section 5.1. The LGA 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 LGA shall have the privilege of making additions, modifications and improvements to the Project Site and the Project Facilities from time to time with the approval of the OWDA the cost of which additions, modifications and improvements shall be paid by the LGA and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or Project Facilities, as the case may be.

Section 5.2. The LGA agrees that it will commence operation of the Project Facilities immediately upon the completion of the construction thereof and will not discontinue operation of the Project Facilities without the approval of the OWDA and the Director of Environmental Protection of the State of Ohio. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities to comply with the water quality standards established for the River Basin and with all applicable rules and regulations of the Director of Environmental Protection of the State of Ohio. The LGA agrees that sufficient qualified operating personnel certified by the State of Ohio will be retained 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 commencement 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 OWDA and the Director of Environmental Protection of the State of Ohio. The Utility of which the Project Facilities will be a part shall be operated and maintained in accordance with an ordinance or resolution governing the use of the Utility and any administrative regulations adopted pursuant thereto acceptable to the OWDA.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities at any reasonable time following completion of construction of the Project Facilities.

Section 5.3. The LGA agrees to insure 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. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 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 OWDA and the LGA at least ten days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, 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 OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained.

Section 5.8. In the event the LGA 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 on 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 an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

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 LGA pursuant to Section 4.1 hereof, and the LGA (i) will promptly repair, rebuild or restore the property damaged or destroyed, and (ii) will 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 LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

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 under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(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 LGA upon delivery to the OWDA of a certificate signed by the Chief Executive Officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA 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 LGA

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 OWDA.

**ARTICLE VI - REPRESENTATIONS AND AGREEMENTS OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS; EVENTS OF DEFAULT AND REMEDIES THEREFOR**

**Section 6.1. The LGA hereby represents that:**

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations during the Contract Period of Years;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation except as set forth in the attached; and

(c) No judgment or consent order has been rendered against it nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation that have not been paid in full except as set forth in the attached.

**Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:**

(a) The LGA 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 IV hereof.

(b) The LGA shall fail to observe and perform any obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA.

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

**Section 6.3. Whenever an Event of Default shall have happened and be subsisting, in addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:**

To the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to, and the LGA hereby agrees to, subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation to the payment of the Project Participation Principal Amount and the interest due thereon.

**Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof is intended to be exclusive of any other right or remedy given herein, by law or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law or otherwise.**

## ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. With respect to the financing of Project Facilities by the OWDA as provided herein, the LGA agrees as follows:

(a) At no time will 10% or more of any Project Facility or Project Site to be financed with funds borrowed from the OWDA ("OWDA Funds") be used for any private business use (as hereinafter defined) while at the same time the payment of the principal of, or the interest on, the OWDA Funds is directly or indirectly (i) secured by any interest in (A) property used or to be used for a private business use or (B) payments made with respect to such property or (ii) derived from (A) payments with respect to such property (whether or not made to the OWDA) or (B) borrowed money used or to be used for private business use.

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

Section 7.2. 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 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.

Section 7.3. 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.

Section 7.4. If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided hereinabove.

## ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority  
Suite 1425 LeVeque Tower  
50 West Broad Street  
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the office of the:

City Manager  
City of Oberlin  
85 S. Main St.  
Oberlin, Ohio 44074

or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of 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 LGA agrees to execute the information report required by 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 LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA 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 upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until the final day of the Contract Period of Years, or until the day the obligations of the LGA under Section 4.1 hereof have been fully satisfied, whichever day is later.


Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

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

OHIO WATER DEVELOPMENT AUTHORITY

by   
\_\_\_\_\_  
Executive Director

APPROVED AS TO FORM

  
\_\_\_\_\_

by   
\_\_\_\_\_

by   
\_\_\_\_\_



PROJECT DESCRIPTION

The project includes improvements to the Oberlin Wastewater Treatment Plant, which is a tertiary treatment facility located on the north side of State Route 511 east of the City. Improvements include modifications to the sludge treatment and disposal facilities, construction of a nitrification tower, construction of a storage garage, and the installation of various metering equipment and other system improvements designed to assure compliance with NPDES Permit limitations. Improvements to the Wastewater Collection System include construction of new sewer lines, abandonment of some existing lines, and sealing and/or grouting of other lines as a means of eliminating sources of excessive infiltration/inflow into the system.

## Exhibit B

ESTIMATED COST OF PROJECT

<u>Contract</u>	<u>Estimated Contract Totals</u>	<u>EPA Grant Award</u>
Design, Construction Engineering, & Inspection Services	\$1,050,513	\$ 321,516
Wastewater Treatment Plant Improvements - Section A	\$3,520,000	\$1,950,175
Wastewater Treatment Plant Improvements - Section B	\$ 451,000	\$ 185,858
Wastewater Treatment Plant Improvements - Section C	\$ 164,295	\$ 123,221
Sanitary Sewer Construction - Phase I	\$1,380,000	\$ 140,248
Sanitary Sewer Construction - Phase II	\$1,390,891	\$ 86,135
College Street Sewer Construction	\$ 631,469	\$ 66,619
Contingencies	\$ 206,251	\$ 76,535
<b>TOTALS</b>	<b>\$8,794,419</b>	<b>\$2,950,307</b>
Less Mortgage Revenue Bond Issuance	- \$3,485,000	
Less EPA Grant Award	- \$2,950,307	
Less Interest and Other Income Sources	- \$ 859,112	
<b>OWDA FUNDING REQUEST</b>	<b>\$1,500,000</b>	