

RESOLUTION NO. 2023 - 20

A RESOLUTION AUTHORIZING AND DIRECTING THE ADMINISTRATION TO ENTER INTO A PROJECT AGREEMENT WITH THE NORTHEAST OHIO REGIONAL SEWER DISTRICT (NEORS) TO PROCURE PROFESSIONAL ENGINEERING DESIGN SERVICES TO PREPARE THE PLANS, SPECIFICATIONS, AND COST ESTIMATES FOR THE BLOSSOM AND SUTHERLAND AVENUES SEWER IMPROVEMENT PROJECT, TO RECEIVE AND EXPEND FUNDING FROM A WATER POLLUTION CONTROL LOAN FUND (WPCLF) PRINCIPAL FORGIVENESS LOAN, AND DECLARING AN EMERGENCY

WHEREAS, the Administration has determined that the Blossom and Sutherland Avenues Sewer Improvement Project would benefit from additional engineering services from NEORS; and

WHEREAS, the Administration intends to utilize funds from a Water Pollution Control Loan Fund (WPCLF) Principal Forgiveness loan to fund NEORS's procurement of plans, specifications, and cost estimates of the Project; and

WHEREAS, Council desires NEORS to procure professional engineering design services to prepare the plans, specifications, and cost estimates for such Project improvements, and to file such specifications for bidding documents in the appropriate public office.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1: The Administration is hereby authorized and directed to execute a Project Agreement with NEORS, and to execute any further documents and take any further actions to procure professional engineering design services to prepare the plans, specifications, and cost estimates for the Blossom and Sutherland Avenues Sewer Improvement Project under the provisions, terms, and conditions set forth in Exhibit "A", attached hereto and incorporated by reference.

Section 2: The Administration is further authorized and directed to compensate NEORS for the necessary professional engineering design services from a WPCLF Principal Forgiveness loan, including the authorization to receive and pay funds from such loan up to the maximum loan value, and to execute any further documents and take any further actions as set forth in Exhibit "B", attached hereto and incorporated by reference.

Section 3: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4: This Resolution is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality, and for the further reason that the City must seek funding and commence the Blossom and Sutherland Avenues Sewer Improvement Project in a timely manner; wherefore, this Resolution shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 3-27-2023

Thomas Rounds
PRESIDENT OF COUNCIL

ATTEST: Barbara Quinn
CLERK OF COUNCIL

3-27-2023
APPROVED

FILED WITH
THE MAYOR: 3-27-2023

Marie Gallo
MAYOR MARIE GALLO

EXHIBIT A

PROJECT AGREEMENT

BY AND BETWEEN

NORTHEAST OHIO REGIONAL SEWER DISTRICT

AND

CITY OF PARMA HEIGHTS

FOR

BLOSSOM AND SUTHERLAND AVENUES SEWER IMPROVEMENT PROJECT

This Agreement ("Agreement") is entered into this ____ day of _____, 2023 ("Effective Date") by and between the Northeast Ohio Regional Sewer District ("District") a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, acting pursuant to Resolution No. 274-22, adopted by the Board of Trustees of the District on August 18, 2022 (attached hereto as Exhibit "A"), and the City of Parma Heights ("City"), a Charter Municipality of the State of Ohio, acting pursuant to Ordinance No. ____ passed by its City Council on _____(attached hereto as Exhibit "B").

RECITALS

WHEREAS, the State of Ohio has created the Water Pollution Control Loan Fund (WPCLF) pursuant to O.R.C. 6111.036 to provide financial assistance for water resource protection and improvement actions; and

WHEREAS, 33 U.S.C. §§ 1381-1389 created clean water state revolving funds for the design of clean water projects (Clean Water SRF), which are being distributed in Ohio through the WPCLF; and

WHEREAS, Ohio Environmental Protection Agency's (Ohio EPA) Division of Environmental and Financial Assistance (DEFA), with the support of the Ohio Water Development Authority (OWDA), administer Ohio's Clean Water SRF funds through the WPCLF through the acceptance of nominations for clean water projects; and

WHEREAS, the District assisted the City in nominating the design portion of the City's Blossom and Sutherland Avenues Sewer Improvements Project (the "Project") for WPCLF funding; and

WHEREAS, DEFA is in the process of reviewing the nominations and may award the WPCLF funds to the City via a principal forgiveness loan in an amount up to \$1,4000,000.00 (Loan Amount) for the design portion of the City's Project,

WHEREAS, the District has agreed to procure professional engineering design services for the design of the City's Project (the "District Services"), and to be reimbursed for such District Services from the City's WPCLF funds, all in accordance with the terms and conditions contained in this Agreement; and

WHEREAS, the District is authorized under Ohio Revised Code Section 6119.06 (P) to enter into contracts with any person or any political subdivision to render services to such contracting party for any service the District is authorized to provide; and is further authorized under Ohio Revised Code Section 6119.06 (O) to make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6119 of the Revised Code;

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth herein, the parties agree as follows:

Section 1. District Procurement of Design of the City's Project

- 1.1 District Services. The District shall be responsible for the performance of the District Services, which generally consist of procurement and administration of professional design services for the design of the City's Project. The Project is described in the City's Nomination Form (Exhibit "C").
- 1.2 Procurement Process. The District Services shall be procured by the District in accordance with the District's contracting requirements, including those contained in Ohio Revised Code Chapter 153, and in accordance with the design and performance specifications contained in the nomination for WPCLF funds submitted by the City to the Ohio EPA, subject to modifications agreed upon by the City and the District.
- 1.3 Contracting. The District's standard professional services agreement and other contract forms and documents shall be used by the District relative to performance of the District Services. The City shall be contractually named as a direct third-party beneficiary of all professional services agreements for the District Services and the District shall provide the City fully-executed copies of such agreements.
- 1.4 Project Documentation. The City shall provide the District any documents in its possession related to any design services performed for the Project, including any studies or assessments. The City shall further authorize its engineering and design professionals to fully communicate with and provide to the District any documentation they may have related to the Project.
- 1.5 Application Schedule. The City shall submit a complete DEFA loan application, including the professional services agreements referenced in Section 1.3 above and all other supporting documents and information required by DEFA, by the end of third quarter 2023.
- 1.6 Final Design Documents. The District shall provide the City the final design documents at the completion of the District's Services.

- 1.7 Real Estate Interests. The District and the City shall coordinate with all necessary utility companies and persons or entities in finalizing the plans and specifications.

Section 2. Reviews for Design

- 2.1 The City shall:

- (i) review the Basis of Design Report, 60% design submittal, the 90% design submittal, and the 100% design for final design review;
- (ii) receive up to ten (10) working days for each round of review and comment at the minimum Basis of Design, 60%, 90% and 100% design completion milestones; and
- (iii) attend all monthly progress meetings, for which the City will receive at least five (5) working days advance notice, and receive meeting minutes with five (5) working days for review and comment as necessary.

Section 3. DEFA Funding

- 3.1 Project Costs. The Loan Amount is equivalent to the District's conservative estimate of design costs. In the event the actual cost of the District Services are in excess of the Loan Amount, including, but not limited to, costs for unforeseen conditions, costs for asserting or defending claims arising from the Project design, or the costs for acquiring the real estate interests described in Section 1.7 above, such additional costs shall be borne by the City and the District shall have no responsibility to pay such costs. The District shall provide quarterly progress reports to the City relative to schedule/milestones and cost estimate updates, as well as identify potential costs not covered by WPCLF funds.

In the event that the District incurs consultant or other expenses due to City action or inaction, and such expenses are not covered by the WPCLF funds, then the City shall timely pay all said costs or reimburse the District all said costs.

The City shall pay all OWDA loan administration fees, which are presently estimated to be 0.35% of the total Loan Amount, in the approximate amount of \$4,900.00. The District shall have no obligation to perform the District Services until the City satisfies all OWDA loan administration fees.

For avoidance of doubt, the Loan Amount does not include costs for legal, administrative or project management services performed in-kind by the District.

- 3.2 Payment of Funds. The parties agree that the WPCLF funds shall be paid by the City to the District for the District's performance of the District Services, after District approval of consultant pay requests.
- 3.3 Additional Work. Should the City determine there is potential for performance of additional design work under the Project, the City may request the District add work scope to the Project at the City's cost. The District may accept or deny this request. In such event, the

parties may enter into a modification to memorialize such additional work to be paid for by the City.

Section 4. Public Participation. The City shall take the lead on public participation under the Project. The District shall support the City to develop public participation plans to inform and encourage participation by the public relative to the Project, as well as responding to and resolving any disputes or complaints from the public.

Section 5. Term. The term of this Agreement shall begin as of the date first-above written and shall expire upon completion of all obligations contained herein. This Agreement shall automatically terminate by its own terms in the event that (i) the City does not execute the DEFA loan agreement or fails to complete any necessary steps to secure the WPCLF funds; or (ii) DEFA revokes all or part of the WPCLF funding for any reason; or (iii) the City determines not to proceed with the Project at any point prior to completion of District Services, in which case the City shall reimburse the District for all Project expenses incurred by the District.

Section 6. Dispute Resolution. The parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute. The Parties shall first try to resolve the dispute at the level of the designated representatives, or their successors, as follows:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
Engineering & Construction Program Manager	

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the issue to the following level to resolve the dispute:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
Director of Engineering and Construction	

If the Parties are unable to resolve the dispute at that level within ten (10) working days, the Parties shall escalate the issue to the following level to resolve the dispute:

DISTRICT REPRESENTATIVE	CITY REPRESENTATIVE
Chief Executive Officer	

Section 7. Remedies. The parties agree that, after exhausting the dispute resolution process outlined above, all claims, counter-claims, disputes and other matters in question between the District and City arising out of or relating to this Agreement, or the breach thereof, will be decided at law in Cuyahoga County. This Agreement shall be governed by and interpreted according to the law of the State of Ohio.

Section 8. Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

Section 9. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the City and the District, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Section 10. Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.

Section 11. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

Section 12. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such provision shall be stricken from this Agreement and such provision shall not affect the validity of the remainder of this Agreement.

Section 13. Release of Liability. The City hereby releases the District from all liability for the design services performed by the District's professional design consultant(s).

Section 14. Exhibits. The following exhibits are attached hereto and incorporated herein:

- Exhibit "A" – District Resolution
- Exhibit "B" – City Ordinance
- Exhibit "C" – City's Nomination Form

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties hereto have executed and delivered this Agreement as of the date first above written.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

By: _____
Kyle Dreyfuss-Wells
Chief Executive Officer

and: _____
Darnell Brown, President
Board of Trustees

CITY OF PARMA HEIGHTS

By: _____

Title: _____

The legal form and correctness of this instrument is approved.

City of Parma Heights

By: _____
Assistant/Director of Law

Date: _____

This Instrument Prepared By:

Katarina K. Waag
Assistant General Counsel
Northeast Ohio Regional Sewer District

Each party agrees that this Agreement may be executed and distributed for signatures via email, and that the emailed signatures affixed by both parties to this Agreement shall have the same legal effect as if such signatures were in their originally written format.

AGREEMENT NO.

NORTHEAST OHIO REGIONAL SEWER
DISTRICT

WITH

CITY OF PARMA HEIGHTS

FOR

BLOSSOM AND SUTHERLAND AVENUES
SEWER IMPROVEMENTS PROJECT

Total Approximate Cost: \$1,400,000.00

The legal form and correctness of the within
instrument are hereby approved.

ERIC J. LUCKAGE
CHIEF LEGAL OFFICER

Date

CERTIFICATION

It is hereby certified that the amount
required to meet the contract, agreement,
obligation, payment or expenditure, for
the above, has been lawfully appropriated
or authorized or directed for such purpose
and is in the Treasury or in process of
collection to the credit of the fund free
from any obligation or certification now
outstanding.

KENNETH J. DUPLAY
CHIEF FINANCIAL OFFICER

Date

EXHIBIT B

OWDA 1/30/2020

COOPERATIVE AGREEMENT FOR STATE PLANNING PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," 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 the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date.

W I T N E S S E T H:

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 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 utility system (hereinafter referred to as the "System") of the LGA will require the supply of services from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the construction of the Project Facilities requires the planning of such facilities and construction and the financing of such planning; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing of the planning activities contemplated hereby;

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:

(a) "Approved Application" means the application, dated as of the date specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Consulting Engineer" means the firm identified as such in the Term Sheet, from whom the LGA has received a proposal to perform the engineering services contemplated hereby.

(c) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(d) "Contract Period of Years" means, subject to Section 3.3 hereof, the period commencing on the date specified in the Term Sheet as the "Initial Payment Date" and ending on the earlier of (i) the tenth Payment Date, or (ii) the date on which the LGA obtains long-term financing for the Project Facilities. In the event that the LGA obtains a subsequent loan from the OWDA for planning costs of the Project Facilities, then the Contract Period of Years for such loan shall expire no later than the expiration of the Contract Period of Years hereunder.

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

(f) "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 first proviso below), the following planning costs of the Project Facilities costs incurred in the preparation of preliminary engineering data, cost estimates, and schedules for completion of design and construction, schematic flow diagrams, unit processes, design data regarding detention times, flow rates, sizing of units, descriptions of the selected complete treatment systems of which the proposed facilities are a part, infiltration/inflow documentation, and cost-effectiveness analysis, and preparation of detailed plans, construction drawings and specifications; costs of printing and publishing the notices and legislation required; costs incurred for the acquisition of real property or interests therein, subject to the second proviso set forth below; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses or \$400, whichever is greater; and all other costs and expenses necessary or incident to determining the feasibility or practicability of constructing the proposed Project Facilities or preparatory to the acquisition and construction of the Project Facilities or otherwise described on Exhibit A, minus the amount of any grant applicable to the foregoing costs from the United States of America or any department or agency thereof; 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 OWDA, the payment of such costs by the OWDA 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; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

(j) "Initial Payment Date" means the first January 1 or July 1 that occurs after the first anniversary of the date of this Agreement.

(l) "Payment Date" means the Initial Payment Date and each January 1 and July 1 thereafter during the Contract Period of Years.

(g) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the 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 LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(h) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(i) "Semiannual Payment Obligations" means the amounts payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate, based upon the following requirements: (i) the Semiannual Payment Obligations payable on the Initial Payment Date and on each Payment Date thereafter to and including the ninth Payment Date shall each consist of one-fortieth (1/40) of the Original Loan Amount; and (ii) the Semiannual Payment Obligation payable on the tenth Payment Date shall, subject to Section 3.3 hereof, consist of:

(A) the Original Loan Amount, minus

(B) the portions of the Original Loan Amount paid prior to the tenth Payment Date, plus

(C) interest on each portion of the Original Loan Amount at the Contract Interest Rate from the date of its disbursement by the OWDA to the tenth Payment Date, net of an interest credit at the Contract Interest Rate for each payment of any portion of the Original Loan Amount from the date of such payment to the tenth Payment Date.

An estimate of the Semiannual Payment Obligations based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If any Payment Date occurs prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation payable on that date shall be based upon the best figures available at the time the computation of such Semiannual Payment Obligation is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed, and the next following Semiannual Payment Obligation shall be either increased or decreased by an amount sufficient to correct for any overpayment or underpayment resulting from underestimate or overestimate of the Original Loan Amount (but not from any prepayment of any portion of the Original Loan Amount) 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 Original Loan Amount been used in computing the Semiannual Payment Obligations at the commencement of the Contract Period of Years.

(i) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project Facilities.

ARTICLE II - PERFORMANCE OF PLANNING ACTIVITIES AND RECORD KEEPING AND PAYMENTS RELATING THERETO

Section 2.1. Subject to the terms and conditions of this Agreement, the LGA shall perform or cause to be performed the planning activities set forth in Exhibit A attached hereto and made a part hereof, including the employment of the Consulting Engineer pursuant to its proposal.

Section 2.2. The LGA shall keep accurate records of the Eligible Project Costs. All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized and identified as to grant eligible costs and non-grant eligible 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 2.3. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA.

Section 2.4. The OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the OWDA. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks 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 to pay such obligated Eligible Project Costs.

Section 2.5. The LGA shall promptly notify the OWDA in writing when the planning activities for the Project Facilities have been completed and when no further Eligible Project Costs are to be paid with OWDA disbursements under this Agreement.

Section 2.6. Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire two (2) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

ARTICLE III - PAYMENTS BY LGA

Section 3.1. Subject to the further provisions hereinafter set forth, the LGA agrees to pay, and shall pay, to the OWDA on each Payment Date the Semiannual Payment Obligation, but solely from the Pledged Revenues. In the event that the LGA pays less than the full amount due hereunder on any date, then the amount so paid shall be applied first to interest payable hereunder, then to late charges payable hereunder, and then to the Original Loan Amount payable hereunder.

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 the LGA defaults in the payment of any of the charges set forth in this Section 3.1, 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. Interest at the Default Rate shall be calculated for the actual number of days of default from the due date until payment on the basis of a 360-day year. If the LGA does not pay any of the charges set forth in this Section 3.1 on or before the 30th day after the due date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA for failure to make the payment as provided herein. Thereafter, for each additional 30 days during which the charges remain unpaid, the LGA shall continue to pay an additional late charge of one percent (1%) on the amount of such default until such charges are paid. Late charges shall apply to defaulted Semiannual Payment Obligations, interest and defaulted interest, and prior late charges. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default, including, but not limited to, court costs and attorney fees, shall be paid as part of the Eligible Project Costs hereunder and shall be repaid by the LGA to the OWDA as part of the Original Loan Amount.

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be

pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; 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.

The LGA may at any time and from time to time pay all or any portion of the Original Loan Amount prior to the time such payment is due hereunder, and may do so from the proceeds of long-term financing for the Project Facilities (whether obtained through the OWDA or by other means) or from any other legally available funds. Upon the receipt of any prepayment of all or any portion of the Original Loan Amount, the OWDA shall credit such payment in the same manner that it would credit the payment of a portion of the Original Loan Amount made through the payment of a Semiannual Payment Obligation.

Section 3.2. The LGA hereby agrees that: (a) it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues, at least adequate to provide for the payments required by Section 3.1 hereof; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; (c) the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA; and (d) if and to the extent that the Approved Application indicates that any of the payments to be made by the LGA hereunder are to be made from revenues derived from special assessments, the LGA will take all actions required to be taken under all applicable laws of the State and all applicable charter, ordinance or resolution provisions of the LGA to collect such special assessments to the full extent required to pay all amounts payable to the OWDA hereunder in full when due. 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.

Section 3.3. If, prior to the tenth Payment Date, the LGA submits a written request, duly authorized by its legislative authority, to the OWDA, stating that the LGA does not expect to obtain long-term financing for the Project Facilities prior to the tenth Payment Date, and requesting that the Contract Period of Years be extended to permit the LGA to amortize the Original Loan Amount over a longer period, then OWDA may (but shall be under no obligation to) agree to extend the Contract Period of Years, provided that: (i) on each Payment Date thereafter during the extended Contract Period of Years, the LGA shall be obligated to pay no less than one-fortieth (1/40) of the Original Loan Amount plus all accrued interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate; (ii) in any event, the latest date by which the Original Loan Amount shall be required to be fully repaid with all accrued interest thereon shall be no later than the fortieth (40th) Payment Date; (iii) the OWDA shall not approve any such request unless it determines that the LGA has demonstrated to the OWDA's satisfaction that the LGA's Pledged Revenues are and can reasonably be expected to remain sufficient to meet the LGA's payment obligations during the proposed extension of the Contract Period of Years; and (iv) upon any failure of the LGA to make a full and timely payment of its payment obligations during the proposed extension of the Contract Period of Years, then the full amount of the outstanding balance of the Original Loan Amount and all interest accrued thereon at the Contract Interest Rate shall become immediately due and payable, with interest thereon accruing thereafter at the

Default Rate. If the OWDA agrees to such an extension of the Contract Period of Years, it shall prepare a revised Term Sheet that supersedes the initial Term Sheet, setting forth the length of the extended Contract Period of Years and the Semiannual Payment Obligations of the LGA during that period.

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

Section 4.1. 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 applicable to the System except as set forth in the attached;

(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 applicable to the System that have not been paid in full except as set forth in the attached; and

(d) If and to the extent that the Approved Application indicates that any of the payments to be made by the LGA hereunder are to be made from revenues derived from special assessments, the LGA has taken all actions required to be taken under all applicable laws of the State and all applicable charter, ordinance or resolution provisions of the LGA in order for such assessments to be levied at the times and in the amounts necessary to enable the LGA to pay all amounts payable to the OWDA hereunder in full when due, and has provided to the Authority a certified copy of all ordinances or resolutions authorizing the levy of such special assessments, all of which are in full force and effect.

Section 4.2. 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 III 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 4.1. shall at any time during the Contract Period of Years prove to be false.

Section 4.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. 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 subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Project Participation Principal Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

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

Section 4.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, 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 System, the Project, or the use thereof; provided that such indemnity under this Section shall not be effective for damages that result from negligent or intentional acts of the OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and 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 LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project or arising from any act or negligence of or failure to act by the LGA, 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 or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, 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 OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

ARTICLE V - MISCELLANEOUS PROVISIONS

Section 5.1. 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 prep aid, 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
480 South High Street
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address specified on the Term Sheet as the "LGA Notice Address," 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 5.2. 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 5.3. 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 5.4. 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 2.4 hereof.

Section 5.5. 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 5.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of 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. All references to the Environmental Protection Agency of the United States of America or to the Environmental Protection Agency of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

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

OHIO WATER DEVELOPMENT
AUTHORITY

OWDA General Counsel

by _____
OWDA Executive Director

APPROVED AS TO FORM

LGA: _____

by _____

TERM SHEET

NOTE: The term sheet will be generated by OWDA after the loan is approved at the board meeting.

Exhibit A

DESCRIPTION OF PLANNING ACTIVITIES TO BE PERFORMED BY LGA