

**A Resolution authoring the Mayor and Director of Finance to enter into a Project Grant/Loan Agreement (No. CH 609/CH 611) with the Director of The Ohio Public Works Commission for "Brecksville Road Water Extension-Phase IV" Project and declaring an emergency.**

**BE IT RESOLVED** by the Council of the Village of Richfield, State of Ohio:

**SECTION 1:** That the Mayor and Director of Finance be, and they are hereby authorized & directed to enter into an Agreement with the Director of the Ohio Public Works Commission for "Brecksville Road Water Extension-Phase IV" (No. CH 609/CH 611), a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

**SECTION 2:** The Agreement is to provide \$386,574 for the sole purpose of financing Water Line construction located within the Southern portion of the Village of Richfield. Brecksville Road Water Main extension from Wheatley Rd. East to I-77, from Wheatley Road Southerly to Everett Road, plus Congress Parkway East and West from Brecksville Road, approximately 11,585 lineal feet of water main.

**SECTION 3:** This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason to allow for the commencement of the project and promptly as possible, and provided this Resolution receives the affirmative vote of two-thirds of the members elected or appointed, it shall take effect and be in force from and after its approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest date provided by law.

*Passed: July 6, 1993*

*David W. Howard*  
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**President of Council**  
**David W. Howard**

*Ralph R. Waszak, Sr.*  
\_\_\_\_\_  
**Mayor Ralph R. Waszak, Sr.**

**ATTEST:**

*Peggy Malone*  
\_\_\_\_\_  
**Clerk of Council**  
**May N. (Peggy) Malone**

R 45-1993

OHIO PUBLIC WORKS COMMISSION

PROJECT AGREEMENT

GRANT / LOAN

STATE CAPITAL IMPROVEMENT PROGRAM

Pursuant to Ohio Revised Code 164.05 and Ohio Administrative Code 164-1-21, this Project Agreement is entered into this 28th day of May, 1993 by and between the State of Ohio, acting by and through the Director of the Ohio Public Works Commission (hereinafter variously referred to as the "Director" or the "OPWC"), located at 65 East State Street, Suite 312, Columbus, Ohio 43215, and The Village of Richfield, Summit County (hereinafter referred to as the "Recipient"), located at 4410 W. Streetsboro Road, P.O. Box 387 Richfield, OH 44286-0387, in respect of the project named Brecksville Road Water Extension-Phase IV, and as described in Appendix A of this Agreement, (hereinafter referred to as the "Project") to provide an amount not to exceed Three Hundred Eighty Six Thousand Five Hundred Seventy Four Dollars (\$386,574) for the sole and express purpose of financing or reimbursing costs of the Project as more fully set forth in this Agreement and the Appendices attached hereto.

Subdivision Code : 153-66530

OPWC Grant Project Control No. CH609  
OPWC Loan Project Control No. CH611

WHEREAS, on November 3, 1987, the electors of the State of Ohio adopted Section 2k of Article VIII of the Ohio Constitution which authorized the General Assembly of the State to provide by law for the issuance of bonds and other obligations for the purpose of financing or assisting in the financing of the cost of public infrastructure capital improvements of municipal corporations, counties, townships and other governmental entities as designated by law;

WHEREAS, to implement Section 2k of Article VIII, Ohio Constitution, the General Assembly passed Amended Substitute House Bill No. 704, as amended by House Bill No. 867 and House Bill No. 381, which enacted Sections 164.01 through 164.14 of the Ohio Revised Code (the "Revised Code");

WHEREAS, the State, acting by and through the Treasurer of the State (the "Issuer"), is authorized and empowered by Chapter 164 of the Revised Code to issue and sell obligations (the "Obligations") in an aggregate principal amount not to exceed One Billion Two Hundred Million Dollars (\$1,200,000,000), not more than One Hundred Twenty Million Dollars (\$120,000,000) in principal amount of Obligations to be issued in any calendar year for the purpose of financing the Costs of Capital Improvement Projects (as hereinafter defined);

WHEREAS, pursuant to Section 164.02 of the Revised Code, the General Assembly found that public infrastructure capital improvements were necessary to (i) preserve the public capital infrastructure of Local Subdivisions (as herein after defined); (ii) ensure the public health, safety and welfare; (iii) create and preserve jobs; (iv) enhance employment opportunities; and (v) improve the economic welfare of the people of this State;

WHEREAS, pursuant to an Order of the Issuer adopted on December 2, 1988, the Issuer authorized, issued and sold \$120,000,000 State of Ohio Full Faith and Credit General Obligation Infrastructure Improvement Bonds, Series 1988 (the "Series 1988 Bonds"), and pursuant to an Order of the Issuer adopted on December 6, 1989, the Issuer authorized, issued and sold \$119,999,935.75 State of Ohio Full Faith and Credit General Obligation Infrastructure Improvement Bonds, Series 1989 (the "Series 1989 Bonds")(Series 1988 Bonds, Series 1989 Bonds, and all future Bonds similarly authorized and sold, are collectively referred to as the "Infrastructure Bonds"), the net proceeds of which were or are to be deposited in the State Capital Improvements Fund (as hereinafter defined) for the purpose of paying the Costs of Capital Improvement Projects;

WHEREAS, to implement the policies set forth in Section 2k, Article VIII of the Ohio Constitution, and in Chapter 164 of the Revised Code, the General Assembly, pursuant to Revised Code Section 164.02 , created the Ohio Public Works Commission (the "OPWC");

WHEREAS, pursuant to Section 164.05 of the Revised Code, the Director of the OPWC is empowered to (i) approve requests for financial assistance from District Public Works Integrating Committees (as hereinafter defined); (ii) enter into agreements with one or more Local Subdivisions to provide loans, grants, and local debt support and credit enhancements for Capital Improvement Projects; and (iii) authorize payments to Local Subdivisions or their Contractors (as hereinafter defined) for costs incurred for Capital Improvement Projects which have been approved by the Director;

WHEREAS, Sections 164.05 and 164.06 of the Revised Code permit a grant of funds, or other forms of financial assistance, for such a Capital Improvement Project to be expended or provided only after the District has submitted a request to fund the Project to the Director outlining the Recipient's planned use of the funds, and subsequent approval of the request by the Director;

WHEREAS, the Recipient desires to engage in the acquisition, construction, reconstruction, improvement, planning, or equipping of the Capital Improvement Project (the "Project") described in Appendix A of this Agreement;

WHEREAS, the Project described in Appendix A of this agreement has been duly recommended to the Director pursuant to Section 164.06 of the Revised Code by the District Public Works Integrating Committee of the Recipient; and

WHEREAS, the Director desires to approve the Recipient's request for financial assistance to finance or reimburse certain of the costs of the Project, such moneys being proceeds of the Infrastructure Bonds which are, or are to be, on deposit in the State Capital Improvements Fund;

NOW, THEREFORE, in consideration of the promises and covenants herein contained, the undersigned agree as follows:

SECTION 1. Definitions and General Provisions. The following words and terms as hereinafter used in this Agreement shall have the following meanings unless otherwise herein provided and unless the context or use clearly indicates another or different meaning or intent.

"Act" means Section 2k of Article VIII of the Ohio Constitution, Chapter 164 of the Revised Code, enacted and amended thereunder, together with Chapter 164-1 of the Ohio Administrative Code (the "Administrative Code").

"Bond Counsel" means an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds satisfactory to the Director.

"Business Day" means a day of the year on which banks located in Columbus, Ohio and in New York, New York are not required or authorized by law to remain closed and on which The New York Stock Exchange is not closed.

"Capital Improvement" or "Capital Improvement Project" means the acquisition, construction, reconstruction, improvement, planning and equipping of roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage and treatment facilities of Local Subdivisions, including real property, interests in real property, and facilities and equipment of Local Subdivisions related or incidental thereto.

"Chief Executive Officer" means the Chief Executive Officer of the Recipient and as designated pursuant to Section 6 hereof or his authorized designee as per written notification to the Director.

"Chief Fiscal Officer" means the Chief Fiscal Officer of the Recipient and as designated pursuant to Section 6 hereof or his authorized designee as per written notification to the Director.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations in effect, whether temporary or final, with respect thereto and applicable to the Infrastructure Bonds or the use of the proceeds thereof.

"Contractor" means a person who has a direct contractual relationship with the Recipient and is (i) the manufacturer of all or a portion of the Project, or (ii) the provider of labor, materials or services in connection with the acquisition, construction, reconstruction, expansion, improvement or engineering of the Project, or both.

"Cost of Capital Improvement Projects" means the costs of acquiring, constructing, reconstructing, expanding, improving and engineering Capital Improvement Projects, and, as applicable, related financing costs.

"Disbursement Ratio" means the OPWC's effective percentage share of unpaid Project costs as based upon the OPWC's participation in the Project's financing scheme relative to all other identified financial resources; which may be adjusted from time to time; and which is to be recognized as a tool of administrative convenience to the OPWC and the Recipient so as to allow for the reasonable sharing of Project cost coverage over the Project development period.

"District Committees" means the District Public Works Integrating Committees created pursuant to Section 164.04 of the Revised Code, the Executive Committees created pursuant to Section 164.04 of the Revised Code, and the Small Government Subcommittees created pursuant to Section 164.06 of the Revised Code.

"Governing Body" means the board of county commissioners or a county council if a county; the legislative authority if a municipal corporation; the board of township trustees if a township; the board of directors if a sanitary district; or the board of trustees if a regional water and sewer district.

"Local Subdivision" means any county, municipal corporation, township, sanitary district or regional water and sewer district of the State.

"Participation Percentages" means the percentage of the total actual project costs that will be contributed by the OPWC, not to exceed the maximum dollar contribution of the OPWC identified in this Project Agreement, and the percentage of the total actual project costs that will be contributed by the Recipient. Both of these percentages are identified in Appendix D, Page 1. In the event that the total actual project costs exceed the estimated project costs identified in Appendix D, the Local Subdivision Participation Percentage will increase to reflect the cost overrun, while the OPWC percentage contribution will decrease recognizing that there is a maximum dollar contribution from the OPWC which is identified in this Project Agreement.

"Private Business Use" means use (directly or indirectly) in a trade or business or activity carried on by any Private Person (other than a Tax-Exempt Organization) other than use as a member of, and on the same basis as, the general public.

"Private Person" means any person, firm, entity or individual who or which is other than a "governmental unit" as that term is used in Sections 141 and 148 of the Code.

"Project Manager" means the principal employee or agent of the Recipient having administrative authority over the Project and as designated pursuant to Section 6 hereof, or his authorized designee as per written notification to the Director.

"Reimbursing" means the use of funds disbursed to the Recipient, as part of a loan or grant made to the Recipient pursuant to Revised Code Section 164.05, as reimbursement to the Recipient for costs integral to the completion of the Project that were incurred and paid by it and which did not in any way inflate costs of the Capital Improvement Project.

"State" means the State of Ohio.

"State Capital Improvements Fund" means the State Capital Improvements Fund created pursuant to Section 164.08 of the Revised Code.

"Tax-Exempt Organization" means a "governmental unit," as such term is used in Sections 141 and 148 of the Code.

Any reference herein to public boards, commissions, departments, institutions, agencies, bodies or entities shall include those succeeding to their functions, duties or responsibilities by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Revised Code shall include such section, provision or chapter as from time to time may have been duly amended, modified, supplemented, or superseded. Words of the masculine or feminine gender shall be deemed and construed to include correlative words of the feminine, masculine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement and term "hereafter" means after, and the term "heretofore" means before the effective date of this Agreement.

SECTION 2. OPWC Financial Assistance. Subject to the terms and conditions contained herein, the OPWC hereby provides to the Recipient from the proceeds of the Infrastructure Bonds, which are or are to be on deposit in the State Capital Improvement Fund, financial assistance not to exceed the amount as set forth in Appendix C of this Agreement for the sole and express purpose of paying or reimbursing the costs certified to the OPWC under this Agreement for the completion of the Project described in Appendix A of this Agreement.

**SECTION 3. Local Subdivision Contribution.** The Recipient shall, at a minimum, contribute to the Project (the "Local Subdivision Contribution") the Local Subdivision Participation Percentage as set forth in Appendix D, Page 1 of this Agreement. The Local Subdivision Contribution to the Project shall be for the sole and express purpose of paying or reimbursing the costs certified to the OPWC under this Agreement for the completion of the Project as defined and described in Appendix A of this Agreement.

**SECTION 4. Notice to Proceed.** Work shall not commence on this Project until the Director has issued a written Notice to Proceed to the Recipient. Such Notice will not be issued until the Director is assured that the Recipient has complied with the Recipient's responsibilities concerning the utilization of Certified Minority Business Enterprises and that their contractors and suppliers certify compliance with State Equal Employment Opportunity requirements. A Notice to Proceed shall be required for all project prime contractors or direct procurement initiated by the Recipient following execution of this Agreement.

**Section 5. Project Schedule.** Construction must begin within 30 days of the date set forth in Appendix A, Page 2 for the start of construction, or this Agreement may become null and void, at the sole option of the Director. However, the Recipient may apply to the Director in writing for an extension of the date to initiate construction. The Recipient shall specify the reasons for the delay in the start of construction and provide the Director with a new start of construction date. The Director will review such requests for extensions and may extend the start date, providing that the Project can be completed within a reasonable time frame.

**SECTION 6. Disbursements.** All payments made by the OPWC shall be made directly to the Contractor that performed the work and originated the invoice, unless the OPWC expressly authorizes Recipient to use the reimbursement method specified in Paragraph (A)(4)(b) of Rule 164-1-22 of the Administrative Code.

(a) **Project Administration Designation.** Pursuant to Paragraph (B) of Rule 164-1-21 of the Administrative Code, the Recipient shall designate its Chief Executive Officer, Chief Fiscal Officer and Project Manager as set forth in Appendix B of this Agreement.

(b) **Disbursements to Contractors to Pay Costs of the Project.** The Recipient shall require that as work on the Project and as specified in its contract is performed a Contractor shall promptly submit an invoice to the Project Manager, but no more frequently than once every thirty (30) days. Within three (3) Business Days following receipt of such invoice from a Contractor, the Project Manager shall review the invoice and, if found to be accurate, shall so certify in writing, forwarding said certification together with a copy of the invoice to the Chief Fiscal Officer. Within five (5) Business Days following receipt of such invoice and certification from the Project Manager, the Chief Fiscal Officer shall conduct such reviews as he considers appropriate and, if he approves such invoice, shall submit to the Director a Disbursement Request together with the information and certifications required by this Section 6(b). The dollar amount set forth in the Disbursement Request shall be calculated based on the Disbursement Ratio as set forth originally in Appendix D of this Agreement or as may be adjusted from time to time to account for changed conditions in the project financing scheme. Within five (5) Business Days following receipt of the Disbursement Request and all required information and certifications, the Director shall, if such items are deemed by the Director to be accurate and complete, initiate a voucher in accordance with applicable State requirements for the

payment of the amount set forth in the Disbursement Request. Upon receipt of a warrant from the Auditor of State drawn in connection with a voucher initiated in accordance with the terms of the preceding sentence, the Director shall forward it, by regular, first class, United States mail or electronic funds transfer, to the contractor or other authorized recipient designated in the Disbursement Request.

Prior to any disbursement from the State Capital Improvements Fund, the following documents shall be submitted to the Director by the Recipient:

(1) If the request is for disbursement to a Contractor, an invoice submitted to the Recipient by the Contractor which invoice requests payment of such sums in connection with its performance of the Project;

(2) If the request is for disbursement to the Recipient pursuant to Paragraph (A)(4)(b) of Rule 164-1-22 of the Administrative code, a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of such sums has been made by the Recipient in connection with the portion of the Project for which payment is requested;

(3) The Project Manager's certification pursuant to this Section 6(b) of this Agreement;

(4) The Disbursement Request Form and Certification in the form set forth as Appendix E of this Agreement properly executed by the Chief Fiscal Officer and the Chief Executive Officer; and

(5) Such other certificates, documents and other information as the Director may reasonably require.

If the Director finds that the documents are in compliance with the requirements of this Agreement, the Director is authorized and directed to cause the disbursement of moneys from the Capital Improvements Fund for payment of the identified Project costs. A copy of all such documents submitted to the Director shall be retained by the Director.

In the event that any money is disbursed to the Recipient pursuant to this Section 6(b) of this Agreement to pay a portion of an invoice submitted by a Contractor, the Recipient shall expend such money to pay such Contractor for costs of the Project within twenty-four (24) hours after receipt thereof. Recipient shall hold such moneys uninvested pending payment to the Contractor.

(c) Disbursement Submittal Deadlines. The Recipient shall submit no more than one Disbursement Request per calendar month.

(d) Limitations on Use. No part of the moneys delivered to the Recipient pursuant to Section 2 hereof is being or will be used to refinance, retire, or redeem all or any part of any governmental obligations regardless of whether the interest on such obligations is or was excluded from gross income for federal income tax purposes unless prior approval by the Director is given.

(e) Project Scope. The physical scope of the Project shall be limited to only those capital improvements as described in Appendix A of this Agreement. In the event that circumstances require a change in such physical scope, such changes must be approved through the execution of a formal Amendment to this Agreement.

(f) Excess Moneys. In the event that the Recipient determines that it will no longer require all or any portion of the moneys provided pursuant to Section 2 hereof for authorized Project purposes, such as acceptable construction bids being received in dollar amounts significantly below project budget-related cost estimates, the Recipient shall mail, by first-class mail postage prepaid, a written notice to the Director. Such notice shall state (1) that the Recipient does not intend to use certain moneys made available to it pursuant to Section 2 hereof for authorized Project purposes and (2) the amount of such moneys no longer required. Upon receipt of such notice, the moneys specified therein shall no longer be available to pay costs relating to the Project.

(g) Project Cost Overruns. In the event that the Recipient determines that the moneys provided pursuant to Section 2 hereof, together with the Local Subdivision Contribution, are insufficient to pay in full the costs of the Project, Recipient may, with the approval of its District Public Works Integrating Committee, apply to the Director for supplemental assistance. The Director may approve or recommend such supplemental assistance only if the Recipient demonstrates to the Director's satisfaction that such funding is necessary for the completion of the Project and that the cost overrun was the result of circumstances beyond the Recipient's control, that it could not have been avoided with the exercise of due care, and that such circumstances could not have been anticipated at the time of the Recipient's initial application.

**SECTION 7. Retainage.** Except as provided in the second sentence of this Section 7, Recipient shall comply in all respects with the requirements of Sections 153.12, 153.13, 153.14, and 153.63 of the Revised Code, or other law applicable to it, including, but not limited to, the provisions thereof, to the extent applicable to Recipient, which require the holding of certain amounts from payments to be made to Contractors and the deposit of such amounts into an escrow account established pursuant to Section 153.63 of the Revised Code. Upon written notification to and approval of the Director, Recipient may use its legally applicable construction contract requirements for the project, including, but not limited to, its legally applicable requirements, if any, for the retaining of certain amounts from payments to be made to contractors in lieu of the requirements of Section 153.12, 153.13, 153.14, and 153.63 of the Revised Code. All such amounts deposited into the escrow account established pursuant to Section 153.63 of the Revised Code if applicable or as required by any other applicable law shall be paid by the Recipient from the Local Subdivision Contribution, or other local source of funds, and shall not be paid from the moneys provided to the Recipient pursuant to Section 2 hereof.

**SECTION 8. Conditions to Financial Assistance and its Disbursement.** The OPWC's obligations hereunder, including its obligation to make financial assistance available to the Recipient pursuant to the terms of this Agreement, are contingent upon compliance by the Recipient with the following conditions:

(a) Recipient's acquisition and commitment of the Local Subdivision Contribution necessary for the completion of the Project, its compliance with all other provisions of this Agreement, and its compliance with the provisions of Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code. The

Recipient shall set forth in Appendix D of this Agreement, a description of the manner or mechanisms of providing its local share of Project funds pursuant to division (D) of Section 164.05 of the Revised Code and Rule 164-1-21 (B)(6) of the Administrative Code.

(b) Recipient shall execute any and all other documents and certificates as deemed necessary by the Director, subject to the opinion of counsel to the Director, as well as any required by changes in State or Federal law, on the date hereof or at any time hereafter in connection with the financial assistance and disbursement of moneys pursuant to this Agreement, including any amendments to this Agreement.

**SECTION 9. Representations, Warranties and Covenants of Recipient.** The Recipient represents, warrants and covenants for the benefit of the OPWC as follows:

(a) Recipient is a Local Subdivision of the State with all the requisite power and authority to construct, or provide for the construction of, and operate the Project under the laws of the State and to carry on its activities as now conducted;

(b) Recipient has the power to enter into and perform its obligations under this Agreement and has been duly authorized to execute and deliver this Agreement;

(c) This Agreement is the legal, valid and binding obligation of the Recipient, subject to certain exceptions in the event of bankruptcy and the application of general principles of equity;

(d) Recipient has complied with all procedures, prerequisites, and obligations for Project application and approval under Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code;

(e) Recipient is not the subject of nor has it initiated any claim or cause of action that would give rise to any liability which would in any way inhibit Recipient's ability to carry out its performance of this Agreement according to its terms;

(f) Use of Project.

(i) General. The Recipient shall not use the Project or suffer or permit the Project to be used for any Private Business Use. For purposes of the preceding sentence, use pursuant to a contract that satisfies the criteria of paragraphs (ii) or (iii) of this subsection shall not be regarded as a Private Business Use.

(ii) Management Contracts. The Recipient agrees that from the date hereof until the date on which none of the Infrastructure Bonds, of which the proceeds were used to pay or reimburse the costs of the Project, remain outstanding (the "Agreement Term"):

(1) The Recipient will not contract with any Private Person to manage the Project or any portion thereof unless all of the following conditions are met: (A) at least 50% of the compensation of the Private Person is based on a periodic, fixed fee that contains no incentive adjustments, and no amount

of compensation is based on a share of net profits; (B) the compensation is reasonable in relation to the services performed; (C) the term of the contract does not exceed five (5) years (including any renewal option periods provided for in the contract); (D) if the term of the contract exceeds three (3) years, the Recipient is able to cancel the contract without penalty or cause at the end of each three-year period of the contract; (E) any automatic increases in the periodic, fixed fee may not exceed the percentage increases determined by an external standard set forth in the contract for computing increases; and (F) any new contract with a Private Person which is subject to this subparagraph (f)(ii) will be subject to the requirements of (A) through (F) of this subparagraph (f)(ii)(1); and

(2) If the Recipient is subject to subparagraph (f)(ii)(1) above and it enters into contracts with Private Persons described in subparagraph (f)(ii)(1), and the Governing Body of the Recipient numbers five (5) or more members, no more than one (1) member of the Governing Body of the Recipient may be an employee or member of the Governing Body of the Private Person. If the Governing Body of the Recipient numbers less than five (5), no member of the Governing Body of the Recipient may be an employee or member of the Governing Body of the Private Person. Similarly, if the Governing Body of the Private Person numbers five (5) or more members, no more than one (1) of those members may be an employee or member of the Governing Body of the Recipient. However, in no event may a member or employee of both the Recipient and Private Person be the Chief Executive Officer or its equivalent of the Recipient or the Private Person. Members of the Governing Body of the Recipient may not own a controlling interest in the Private Person.

(iii) Contracts Concerning Use of Project. The Recipient agrees that during the Agreement Term it will not contract with any Private Person for use of the Project or any portion thereof or the facility or facilities of which the Project is a part for any Private Business Use unless all of the conditions of subparagraph (f)(iii)(1), subparagraph (f)(iii) (2) or subparagraph (f)(iii)(3) are met:

(1) If the compensation of the Private Person is based entirely on a periodic, fixed fee that contains no incentive adjustments, all of the following conditions must be met: (A) no amount of compensation is based on a share of net profits; (B) the compensation is reasonable; (C) the term of the contract does not exceed five (5) years (including any renewal option periods provided for in the contract); (D) if the term of the contract exceeds three (3) years, the Recipient is able to cancel the contract without penalty or cause at the end of each three-year period of the contract term; (E) any automatic increases in the periodic, fixed fee may not exceed the percentage increase as determined by an external standard set forth in the standard for computing increases; and (F) any new contract with the Private Person which is subject to subparagraph (f)(iii)(1) will be subject to the requirements of (A) through (F) of this subparagraph; or

(2) Where the compensation of the Private Person is based in whole or in part on a percentage of gross income or other measure, all of the following conditions must be met: (A) no amount of compensation is based on a share of the net profits; (B) the compensation is reasonable; (C) the term of the contract does not exceed two (2) years; (D) the Recipient is able to cancel the contract without penalty or cause by giving the Private Person 90 days notice; (E) any automatic increase in that portion of the compensation that is a periodic, fixed fee may not exceed the percentage increases determined by an external standard set forth in the contract for computing increases; and (F) any new contract with the Private

Person which is subject to subparagraph (f)(iii)(2) will be subject to the requirements of (A) through (F) of this subparagraph; and

(3) If the Recipient is subject to the subparagraphs (f)(iii)(1) or (f)(iii)(2) and it enters into contracts with Private Persons described in those subparagraphs and the Governing Body of the Recipient numbers five (5) or more members, no more than one (1) member of the Governing Body of the Recipient may be the Private Person referred to in subparagraphs (f)(iii)(1) or (f)(iii)(2), a related person (as described in Section 144(a)(3) of the Code), an employee of such Private Person, or a member of the Governing Body of such Private Person, provided such member is not the Chief Executive Officer or its equivalent of the Recipient. If the Governing Body of the Recipient numbers less than five (5) members, no member may be such Private Person or an employee of such Private Person or a member of its Governing Body.

(iv) The Recipient may depart from any of its agreements contained in subparagraphs (f)(i) through (f)(iii) if it delivers to the Director, at the Recipient's expense, an opinion of Bond Counsel that to do so would not adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes and such opinion is accepted by the Director.

(g) Use of Proceeds. With respect to the Project to be financed by moneys provided pursuant to Section 2 hereof:

(i) The total cost of the Project shall not and will not include any cost which does not constitute "Costs of Capital Improvements," as defined in the Act:

(ii) All of the Project is owned, or will be owned, by the Recipient or another Tax-Exempt organization;

(iii) The Recipient shall not use any of the moneys to pay or reimburse the Recipient for the payment of or to refinance costs incurred in connection with the acquisition, construction, improvement and equipping of property that is used or will be used for any Private Business Use; and

(iv) The Recipient may depart from any of its agreements contained in subparagraph (iii) if it delivers to the Director, at the Recipient's expense, an opinion of Bond Counsel that to do so would not adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes and such opinion is accepted by the Director.

(h) General Tax Covenant. The Recipient shall not take any action or fail to take any action which would adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes;

(i) Sufficiency of Moneys. The Recipient has sufficient moneys in addition to those provided to Recipient pursuant to Section 2 of this Agreement to fund the Project to completion;

(j) Ohio Products. The Recipient shall, to the extent practicable, use, and shall cause all of its Contractors and subcontractors to use, Ohio products, materials, services and labor in connection with the Project;

(k) Minority Business Enterprises. Subject to and in accordance with the provisions of Section 164.07(A) of the Revised Code and Rule 164-1-32 of the Administrative Code, Recipient shall participate in and subscribe to an Affirmative Plan of Action incorporating all State Issue 2 and Local Transportation Improvement projects approved by the District Committee and the Director for the funding round in which the Project described herein is being financed. The approved Affirmative Plan of Action complies with the percentage requirements of Division (C)(1) of Section 123.151 and Section 125.081 of the Revised Code in awarding contracts for the Project. In the event that said Affirmative Plan of Action designates this Project to be "set-aside" for purposes of achieving participation of Certified Minority Business Enterprises in OPWC assisted projects, the Recipient shall solicit and accept bids for the performance of the work so set-aside exclusively from such Certified Minority Business Enterprises. Also, the Recipient shall require compliance by each of its Contractors with the requirements of Division (C)(2) of Section 123.151 of the Revised Code in their awarding subcontracts and purchasing services and materials under those contracts.

With respect to the Project, Recipient shall cooperate with the State Equal Employment Opportunity Coordinator, the Minority Business Development Division of the Ohio Department of Development and with any of their agents or designees in identifying, notifying, and assisting minority business enterprises certified under division (B) of Section 123.151 of the Revised Code. Any waiver, reduction, or other modification by the Recipient of the requirements of Section 164.07(A) shall be explained and documented in accordance with the requirements of Rule 164-1-32 of the Administrative Code through a written certification to the Director and the State Equal Employment Opportunity Coordinator.

(l) Equal Employment Opportunity. Recipient shall require that all contractors and subcontractors working on the Project comply with the equal employment opportunity requirements for the utilization of minorities and females pursuant to Chapter 123 of the Administrative Code, the Governor's Executive Order of 1972, and Governor's Executive Order 84-9;

(m) Prevailing Wage. Recipient shall comply, and shall require that all Contractors and subcontractors working on the Project comply, with the prevailing wage requirements contained in Sections 4115.03 to 4115.16 of the Revised Code; and

(n) Construction Bonds, Insurance and Supervision.

(i) The Recipient shall require that each of its construction contractors 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.

(ii) The Recipient shall require that each of its construction contractors and each subcontractor maintain during the life of its contract or subcontract, Workers Compensation Insurance, Public Liability, Property Damage and Vehicle Liability Insurance.

(iii) The Recipient shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OPWC and the Recipient 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 10. Progress Reports.** The Recipient shall submit to the OPWC, at the OPWC's request, summary reports detailing the progress of the Project pursuant to this Agreement and any additional reports containing such information as the OPWC may from time to time reasonably require. The Recipient shall submit to the OPWC a final report on forms prescribed by the OPWC, detailing the results of the Project and the expenditure of funds made pursuant to this Agreement. The Recipient shall submit the final report to the OPWC no later than 90 days after completion of the Project.

**SECTION 11. Audit Rights.** The Recipient shall, at all reasonable times, provide the Director or his representative access to and a right to inspect all sites and facilities involved in the Project and access to and a right to examine or audit any and all books, documents and records, financial or otherwise, relating to the Project or to ensure compliance with the provisions of this Agreement. The Recipient shall maintain all such books, documents and records for a period of three (3) years after the termination of this Agreement, and such shall be kept in a common file to facilitate audits and inspections. All disbursements made pursuant to the terms of this Agreement shall be subject to all audit requirements applicable to State funds. The Recipient shall ensure that a copy of any final report of audit prepared in connection with the Project, regardless of whether the report was prepared during the pendency of the Project or following its completion, is provided to the Director within ten (10) days of the issuance of the report. The Recipient simultaneously shall provide the Director with its detailed responses to each and every negative or adverse finding pertaining to the Project and contained in the report. Such responses shall indicate what steps will be taken by the Recipient in remedying or otherwise satisfactorily resolving each problem identified by any such finding. If the Recipient fails to comply with the requirements of this Section or fails to institute steps designated to remedy or otherwise satisfactorily resolve problems identified by negative audit findings, the Director may bar the Recipient from receiving further financial assistance under Chapter 164 of the Revised Code until the Recipient so complies or until the Recipient satisfactorily resolves such findings.

**SECTION 12. General Assembly Appropriation.** The Recipient hereby acknowledges and agrees that the financial assistance provided under this Agreement is entirely subject to, and contingent upon, the availability of funds appropriated by the General Assembly for the purposes set forth in this Agreement and in Chapter 164 of the Revised Code. The Recipient further acknowledges and agrees that none of the duties and obligations imposed by this Agreement on the Director shall be binding until the Recipient has complied with all applicable provisions of Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code and until the Recipient has acquired and committed all funds necessary for the full payment of the Local Subdivision Contribution applicable to the Project.

**SECTION 13. Indemnification.** Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges,

immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the Project sufficient to impose upon the Director any of the obligations specified in Section 126.30 of the Revised Code. The Recipient shall indemnify, defend, and hold the Director harmless from liability in case of claim or suit arising from the conduct or management of, or any other acts incidental to the Project during the period of Project execution.

**SECTION 14. Termination.** The OPWC's obligations under this Agreement shall immediately terminate upon the failure of Recipient to comply with any of the terms or conditions contained herein. Upon such termination, Recipient shall be obligated to return any moneys delivered to Recipient pursuant to the provisions of this Agreement. In the absence of any such failure, this Agreement shall terminate and the obligations of the parties hereto shall be deemed to be satisfied on the date on which all of the Infrastructure Bonds, of which the proceeds were used to pay or reimburse the costs of the Projects, have been retired.

**SECTION 15. Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State. In the event any disputes related to this Agreement are to be resolved in a Court of Law, said Court shall be located in the State of Ohio.

**SECTION 16. Severability.** If any of the provisions of this Agreement or the application thereof to any person or circumstance shall for any reason or to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of this provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**SECTION 17. Entire Agreement.** This Agreement and its Appendices and Attachments attached hereto contain the entire understanding between the parties and supersedes any prior understandings, agreements, proposals and all other communications between the parties relating to the subject matter of this Agreement, whether such shall be oral or written.

**SECTION 18. Captions.** Captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, instruction or meanings and are in no way intended to be construed as part of this Agreement.

**SECTION 19. Notices.** Except as otherwise provided hereunder, any notices required hereunder shall be in writing and shall be deemed duly given when deposited in the mail, postage prepaid, return receipt requested, by the sending party to the other party at the addresses set forth below or at such other addresses as party may from time to time designate by written notice to the other party.

**SECTION 20. No Waiver.** If either party hereto at any time fails to require performance by the other of any provision of this Agreement, such failure shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach or default under any provision of this Agreement, be construed to be a waiver of any subsequent breach or default under that provision or any other provision of this Agreement.

SECTION 21. Acceptance by Recipient. This Agreement must be signed by the Chief Executive Officer of the Recipient and returned to, and received by, the OPWC within forty-five (45) days of the date written on the first page of this Agreement. Failure of the Recipient to return a fully executed copy of this Agreement to the OPWC within the forty-five (45) day limit described herein will result in this Agreement being declared null and void, and the OPWC funds committed herein will be returned to the District Public Works Integrating Committee for reallocation. However, upon the Recipient presenting the Director with a written explanation of the need to extend this forty-five (45) day limit, the Director, in his sole discretion, may extend the forty-five (45) day limit.

SECTION 22. Assignment. Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Project # CH609/CH611 as of the date first written above.

RECIPIENT

\_\_\_\_\_  
Ralph R. Waszak, Sr., Mayor

\_\_\_\_\_  
City, State & Zip Code

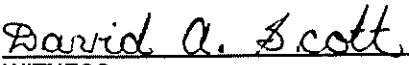
\_\_\_\_\_  
WITNESS

GRANTOR

STATE OF OHIO, OHIO PUBLIC WORKS COMMISSION

By:   
W. Laurence Bicking, Director

Ohio Public Works Commission  
65 East State Street  
Suite 312  
Columbus, OH 43215

  
WITNESS

**APPROVED  
FINANCE & ADMINISTRATION**

  
\_\_\_\_\_

## APPENDIX A

### PROJECT DESCRIPTION AND COMPLETION SCHEDULE

1) PROJECT DESCRIPTION / PHYSICAL SCOPE:

The Project, for which the provision of financial assistance is the subject of this Agreement, is hereby defined and described as follows:

a) **PROJECT NAME: Brecksville Road Water Extension-Phase IV**

b) **SPECIFIC LOCATION: Brecksville Rd. Water Main extension from Wheatley Rd. east to I-77, from Wheatley Road southerly to Everett Road, plus Congress Parkway East and West from Brecksville Road, approximately 11,585 lineal feet of water main.**

(Project Location Zip Code - 44286-)

c) **PROJECT TYPE; MAJOR COMPONENTS: New Water Supply System: 12' and 16' ductile iron water main, fire hydrants, various fittings, necessary valves, surface restoration and appurtenances.**

d) **PHYSICAL DIMENSIONAL CHARACTERISTICS: Construction would consist of approximately 6,320 lineal feet of 16" water main, 5,265 lineal feet of 12" water main, necessary fire hydrants and all required appurtenances and surface restoration.**

PAGE 2 of APPENDIX A

2) PROJECT SCHEDULE:

The Project, for which the provision of financial assistance is the subject of this Agreement, shall be pursued and completed in accordance with the following schedule:

<u>ACTIVITY</u>	<u>START DATE</u>	<u>COMPLETION DATE</u>
a) Final Design	//	//
b) Construction Bidding Process	07/01/93	08/01/93
c) Project Construction	09/15/93	12/15/93

**NOTE:** Construction must begin within 30 days of the date set forth herein for the start of construction, or this Agreement may become null and void, at the sole option of the Director. However, the Recipient may apply to the Director in writing for an extension of the date to initiate construction. The Recipient shall specify the reasons for the delay in the start of construction and provide the Director with a new start of construction date. The Director will review such requests for extensions and may extend the start date, providing that the Project can be completed within a reasonable time frame.

The information detailed in this Appendix A shall serve as the basis for Project monitoring purposes and for determining Project acceptance upon its completion. In the event that circumstances require a change in physical scope, such changes must be approved through the execution of a formal Amendment to this Project Agreement.

## APPENDIX B

### PROJECT ADMINISTRATION DESIGNATION

The Project Administration Designation required by Section 6(a) of this Agreement, and in accordance with the definitions set forth in Section 1 of this Agreement, for the sole purpose of administering the Project, as defined and described in Appendix A of this Agreement, under Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code is hereby established as follows:

The Recipient designates:

- 1.) Ralph R. Waszak, Sr., Mayor to act as the Chief Executive Officer;
- 2.) Eleanor Lukovics, Director of Finance to act as the Chief Fiscal Officer; and
- 3.) Larry Wilson, Service Director to act as the Project Manager.

**NOTE:** Upon any change in such a designation, the Recipient shall immediately provide written notification to the OPWC.

## **APPENDIX C**

### **PROVISION OF FINANCIAL ASSISTANCE**

As authorized by Section 2 of this Agreement for the sole and express purpose of financing the Project defined and described in Appendix A of this Agreement, the estimated costs of which are set forth and described in Appendix D of this Agreement, the OPWC hereby agrees to provide financial assistance, subject to the terms and conditions contained in this Agreement, from the State Capital Improvements Fund which constitutes the proceeds of the Infrastructure Bonds, in an amount not to exceed **One Hundred Ninety Nine Thousand Three Hundred Ninety Nine Dollars (\$199,399)**. This financial assistance shall be provided in the form of a **Grant**. OPWC Grant Control No. **CH609**.

Once this grant amount is fully expended, the loan amount, which is part of this Project Agreement, will be drawn on for disbursing the remaining OPWC obligations contained in this Agreement.

## APPENDIX C-1

### FINANCIAL ASSISTANCE IN THE FORM OF A LOAN

#### ADDITIONAL PROVISIONS

Article 1.1.                    Determinations of Director. Pursuant to the Act and Section 2 of the Agreement and subject to the remaining terms and provisions of the Agreement and all Appendices thereto, the Director hereby determines that the financial assistance to be provided by the OPWC to the Recipient is in compliance with the Act and is provided to the Recipient for the sole and express purpose of financing the Eligible Project Cost and/or reimbursing the Recipient for such Eligible Project Cost.

Article 1.2.                    Definitions. All of the capitalized terms contained in this Appendix C-1 shall have the same meanings as defined in the Agreement unless otherwise defined herein and shall be in addition to any other terms defined herein:

- (a) "Agreement" means the Project Agreement by and between the OPWC and the Recipient and all appendices thereto which are attached to the Agreement and made a part thereof and incorporated by reference in this Appendix C-1.
- (b) "Eligible Project Costs" means such portion of the Project costs disbursed and loaned from the State Capital Improvements Fund by the OPWC to the Recipient for the sole and express purpose of acquiring, constructing, reconstructing, expanding, improving, engineering and equipping the Project, other direct expenses, and related financing costs thereto.
- (c) "Project" means the Capital Improvement Project described in Appendix A of the Agreement.
- (d) "Repayment Amount" means the amount to be paid by the Recipient to the OPWC on each payment date of each year during the Term pursuant to the terms and conditions of the Note.
- (e) "Term" means the period in which the Agreement shall be in full force and effect, commencing on the date hereof and continuing until the next January 1 or July 1 following completion of construction of the Project or until the January 1 or July 1 following the day in which the obligations of the Recipient hereunder have been fully satisfied, whichever date is later.
- (f) "Note" means the promissory note attached hereto and made a part hereof as Appendix C-2.
- (g) "Utility" means the Project if the Project is or upon completion of construction of the Project, will be a facility which generates revenues from fees, charges or taxes associated with the use of the facility.

Article 2.1.            The Loan. On the terms and conditions of the Agreement which are incorporated herein and made a part hereof, the OPWC shall lend to Recipient and Recipient shall borrow from the OPWC an amount not to exceed **One Hundred Eighty Seven Thousand One Hundred Seventy Five Dollars (\$187,175)**, the proceeds of which shall be utilized solely to finance the Eligible Project Costs and/or reimburse the Recipient for its advance payment of such Eligible Project Costs (the "Loan"). The Loan shall be disbursed by the OPWC to the Recipient pursuant to Section 6 of the Agreement. The Loan shall be disbursed only to the extent that funds are available to make the disbursement from money in the State Capital Improvements Fund established by the Act. The terms of repayment of the Loan shall be as set forth in the Note and Recipient shall make all payments required to be made under the Note as and when due.

Article 2.2. In the event the Project to be constructed hereunder is or will be a Utility, the Recipient hereby agrees to the following:

- (a) It shall at all times prescribe and charge such rates, fees, charges or taxes as shall result in revenues at least adequate to meet operation, maintenance and all expenses of the Utility and the payment of all amounts required by the Note;
- (b) It shall furnish to the OPWC annual reports of the operation and income of the Utility together with an annual report of the accounts and operations of the Utility;
- (c) It shall permit any authorized agent of the OPWC to inspect all records, accounts and data of the Utility at any reasonable time; and
- (d) It shall segregate the revenues, funds, properties, costs and expenses of the Utility from all other revenues, funds properties, costs and expenses of the Recipient.

Article 3.1. The Recipient shall pay to the OPWC an amount equal to the Repayment Amount as and when due as provided in the Note from (i) any source of revenues of the Recipient, or (ii) in the event the Project is or will be a Utility, the Recipient shall make such payments from the revenues of such Utility; provided, however, that if otherwise lawful, nothing herein shall be deemed to prohibit the Recipient from using, of its own volition, any of its general revenues or other revenue sources for such payments. The obligation of the Recipient to pay the Repayment Amount shall not be assignable, and the Recipient shall not be discharged therefrom, without the prior written consent of the OPWC. During the first fifteen (15) days of June and December of each year during the Term, the OPWC shall invoice the Recipient for the sum due and owing the OPWC and the payment of each such invoice shall be made by the Recipient to the OPWC not later than the first day of the following month. Any failure of the OPWC to invoice the Recipient shall not otherwise release the Recipient from its obligations to pay the Repayment Amount as and when due or otherwise fulfilling its obligations hereunder.

Article 3.2. The Recipient shall pay the Local Subdivision Contribution as provided in Section 8 of the Agreement and Appendix D. If the Term commences prior to the determination of the final costs of the Project, the Repayment Amount and the Local Subdivision Contribution shall be based upon the best figures available at the time of execution of the Agreement or as amended from time to time. When such final costs of the Project are greater than or less than the estimated costs of the Project as set forth in Appendix D, the amount of the Loan and the Note shall be adjusted in accordance with the terms and conditions of the Note and the Local Subdivision Contribution shall be paid in full by the Recipient as and when due.

Article 3.3. In the event the final costs of the Project are greater than the estimated costs of the Project, the Recipient's Local Subdivision Contribution shall be increased by an amount equal to the difference between the final cost of the Project and the estimated cost of the Project.

Article 4.1. The Recipient hereby further agrees as follows:

(a) The Recipient shall provide in the construction contract that representatives of the OPWC may inspect the Project and shall have access to the work and the Project's site during the construction phase of the Project at any reasonable time and that the contractor shall provide proper facilities for such access and inspection.

(b) The Recipient shall provide to the OPWC written notice of any pre-construction conference involving the Recipient and the contractors of the Project at least ten (10) business days prior to such pre-construction conference. Representatives of the OPWC may attend any such pre-construction conference.

(c) All construction contracts and contractors' estimate forms shall be prepared so that materials and equipment furnished to the Recipient may be readily itemized.

(d) All requests submitted by the Recipient 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.

(e) The Recipient shall submit to the OPWC for prior approval any change or changes in a construction contract in excess of ten percent (10%) of the contract price or any change or changes regardless of cost which substantially modify the scope of the Project.

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

(g) The Recipient shall proceed expeditiously with, and complete the Project in accordance with the Agreement, the surveys, plans, profiles, cross sections and specifications or amendments thereto.

(h) Except as otherwise provided in the Agreement, the Recipient shall have the sole and exclusive responsibility of acquiring, constructing and managing the construction of the Project.

Article 4.2. The Recipient shall keep accurate records of the Eligible Project Costs. The Recipient shall permit the OPWC, acting by and through its Director or his authorized representatives to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of inspection, audit or examination, and the Recipient shall submit to the OPWC such documents and information as it may require in connection therewith pursuant to Section 10 of the Agreement.

Article 4.3. Subject to the terms and conditions of the Agreement, the Eligible Project Costs shall be paid by the OPWC not to exceed the amount established in the Agreement. In the event the Agreement is terminated by the OPWC pursuant to, but not in breach of, the provisions of the Agreement, or by subsequent agreement of the parties, or in the event the Agreement is terminated by the Recipient, whether or not in breach of the Agreement, the Eligible Project Costs incurred in connection with the construction of

the Project shall be paid by the Recipient and the OPWC shall be released from paying the Eligible Project Cost. Any moneys paid to the OPWC by the Recipient under the provisions of this Section shall be repaid in not more than one (1) year after termination with interest on the remaining balances at the Default Interest Rate.

Article 4.4. Prior to the disbursement of the Loan, the Recipient shall demonstrate to the satisfaction of the Director the capability of the Recipient to pay the Repayment Amount and the Local Subdivision Contribution. The Director may withhold any disbursement during the Term if he reasonably believes that the Recipient is unable to pay the Repayment Amount or its Local Subdivision Contribution as and when due.

Article 4.5. Upon completion of the Project, the Recipient shall make a full and complete accounting to the OPWC of the Eligible Project Cost.

Article 5.1. The Recipient agrees that during the Term it will (a) operate the Project in compliance with all applicable Federal, State and local environmental laws and regulations in effect during such period, and (b) keep the Project 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 will continue to operate with substantially the same or greater efficiency as when first constructed.

The Project and any and all additions, modifications and improvements thereon shall be the property of the Recipient. From and after the completion of the Project the Recipient may make additions, modifications and improvements to the Project from time to time subject to the approval of the OPWC, the cost of which additions, modifications and improvements shall be borne solely by the Recipient and shall be included under the terms of the Agreement as part of the Project.

Article 5.2. The Recipient shall commence operation of the Project immediately upon the completion of the construction thereof and shall not discontinue operation of the Project without the prior approval of the OPWC. The Recipient shall permit the OPWC and its agents to have access to the records of the Recipient pertaining to the operation and maintenance of the Project at any reasonable time following completion of construction of the Project.

Article 5.3. The Recipient agrees to insure the Project 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.

Article 5.4. Any insurance policy issued pursuant to Article 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OPWC and the Recipient as their interests may appear. Each insurance policy provided for in Article 5.3 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 OPWC and the Recipient at least ten days in advance of such cancellation.

Article 5.5. If prior to the completion of the Term the Project shall be damaged or partially or total destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction of the Repayment Amount or the Local Subdivision Contribution payable by the Recipient pursuant to Article 3.2 hereof, and the Recipient shall at its cost and expense (i) promptly repair, rebuild or restore the property damaged or destroyed in substantially the same condition before such damage or destruction, and (ii) apply for any proceeds from insurance policies for claims for such losses as well as utilizing any additional moneys of the Recipient to repair, rebuild and restore the Project.

Article 5.6. In the event that title to or the temporary use of the Project, 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 amount of the Repayment Amount or the Local Subdivision Contribution payable by the Recipient, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Recipient in a separate condemnation award account and shall be applied by the Recipient in either or both the following ways as shall be determined by the Recipient:

- (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, which real estate and facilities shall be deemed a part of the Project 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 Recipient upon delivery to the OPWC of a certificate signed by the Chief Executive Officer of the Recipient that the Recipient has complied with either paragraph (a) or (b), or both, of this Section. The OPWC shall cooperate fully with the Recipient in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof. In no event will the Recipient voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the OPWC.

Article 6.1. The Recipient hereby further represents that:

- (a) The Recipient hereby covenants that it shall remain in compliance with all applicable Federal, State and local environmental laws and regulations during the Term.
- (b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the Recipient, alleging a violation of any Federal, State or local environmental law or regulation except as set forth in the attached Appendix C-2; 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 Appendix C-3.

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

- (a) The Recipient shall fail to make any payment to the OPWC of the Repayment Amount required as and when due under the Note and/or the Recipient fails to pay its Local Subdivision Contribution.
- (b) The Recipient shall fail to observe and perform any obligations, agreements or provisions of the Agreement all Appendices thereto, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OPWC.

(c) Any representations made by the Recipient in Section 9.1 shall at any time during the Term prove to be false.

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

(a) The amount of such default, in the event the Recipient defaults on the Repayment Amount, shall bear interest at eight percent (8%) per annum ("Default Interest Rate"), from the date of the default until the date of the payment thereof, and all the costs incurred by the OPWC in curing such default including, but not limited to, court costs all other reasonable costs and expenses (including reasonable attorney's fees) shall be repaid by the Recipient to the OPWC as a part of the Repayment Amount.

(b) The Director may in his sole and complete discretion and in accordance with Section 164.05 of the Revised Code, direct the county treasurer of the county in which the Recipient is located to pay the amount of any default hereunder from the funds which would otherwise be appropriated to the Recipient from such county's undivided local government fund pursuant to Sections 5747.51 to 5747.53 of the Revised Code.

(c) The OPWC shall be released from any and all obligations to Recipient hereunder.

(d) The entire principal amount of the Loan then remaining unpaid, together with all accrued interests and other charges shall, at the OPWC's option, become immediately due and payable.

Article 6.4. No right or remedy conferred upon the OPWC under Article 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.

APPENDIX C-2

PROMISSORY NOTE

\$187,175

The Village of Richfield, Ohio  
CH611

28th day of May, 1993

FOR VALUE RECEIVED, the undersigned (the "Recipient") promises to pay to the order of the Ohio Public Works Commission (hereinafter the "Lender," which term shall include any holder hereof), at its office located at **65 E. State Street, Suite 312, Columbus, OH 43215**, or at such other place as the holder hereof may, from time to time, designate in writing, the principal sum of **One Hundred Eighty Seven Thousand One Hundred Seventy Five Dollars (US\$187,175)**, or so much thereof as shall be advanced by Lender and remain unpaid, together with all costs herein provided and interest from the Interest Accrual Date and thereon until said amounts have been paid in full at a rate equal to **Zero percent (0.00%)** per annum, or the "Default Rate" (as hereinafter defined), as the case may be.

From the Interest Accrual Date, interest shall be calculated on the daily unpaid principal balance hereof based on the actual number of days elapsed in the interest payment period over a year of 360 days. The "Interest Accrual Date" shall be the first day of the second full month following the earlier of (i) the Completion Date set forth on Appendix A of the Project Agreement between the Lender and the Recipient, or (ii) the actual construction completion date of the Project.

Principal and interest due under this Note shall be payable as follows:

The first payment due hereunder shall be made on the next January 1 or July 1 following the Interest Accrual Date, whichever date first occurs, which date shall be referred to herein as the "Initial Payment Date." On the Initial Payment Date, the undersigned shall pay all interest which has accrued from the Interest Accrual Date through the Initial Payment Date; no principal need be paid.

After the Initial Payment Date, principal and interest shall be due and payable in equal consecutive semi-annual installments commencing on the next January 1 or July 1 following the Initial Payment Date (the "Second Payment Date") and continuing on each January 1 and July 1 thereafter until maturity. Subject to adjustment as provided herein, the amount of each such semi-annual installment of principal and interest shall be the amount which would fully amortize the unpaid principal balance of the indebtedness evidenced by this Note as of the Second Payment Date, such amortization to be based upon (i) an amortization period of **Twenty years (20)** commencing on the Second Payment date, and (ii) interest being calculated on the basis of thirty (30) day calendar months in a 360 day year; provided that in the event the Lender makes additional disbursements following the Second Payment Date, the amount of the semi-annual installments of principal and interest required hereunder shall be increased to the amount it would take to fully amortize this Note based upon (i) the new principal balance and (ii) the above-referenced amortization period, less the number of years (or parts thereof) which have elapsed since the Second Payment Date. The unpaid principal sum of this Note and all accrued and unpaid interest and other charges hereunder shall be payable in full on **January 1st, 2014** (hereinafter the "Maturity Date"). The Recipient acknowledges that if the semi-annual payments set forth above do not fully amortize this Note, the payment due on the Maturity Date will be a balloon payment, consisting of (i) all accrued and unpaid interest and other charges and (ii) the entire unpaid principal balance hereof.

If Recipient shall fail to make any payment hereunder when due, and the same is not corrected within thirty (30) days, then the amount of such default shall bear interest thereafter at the rate of eight percent (8%) per annum (the "Default Rate") from the date of the default until the date of the payment thereof, and the entire principal hereof then remaining unpaid, together with all accrued interest and other charges, shall, at the Lender's option, become

immediately due and payable and/or the Lender by and through its Director may, in the Director's sole and complete discretion and in accordance with Section 164.05 of the Ohio Revised Code, direct the county treasurer of the county in which the Recipient is located to pay the amount due hereunder from funds which would otherwise be appropriated to the Recipient from such county's undivided local government fund pursuant to Section 5747.51 to 5747.53 of the Revised Code. The Lender may exercise this option to direct the county treasurer to pay the amount due from the local government fund without any notice or demand during any default by Recipient regardless of any prior forbearance. The lender shall be entitled to collect all costs incurred by the Lender in curing such default, including, but not limited to court costs and reasonable attorney fees from a suit brought to collect this Note. In addition, if the Lender exercises its option to direct the county treasurer to pay the amount due from the local government fund, the Lender shall be entitled to collect all reasonable costs and expenses of any efforts by the Lender to collect the amount due from the local government fund, including but not limited to reasonable attorneys' fees. Lender may, at its option, delay in or refrain from exercising some or all of its rights and remedies without prejudice thereto and regardless of any prior forbearance.

**THE RECIPIENT MAY NOT PREPAY ANY PART OF THE OUTSTANDING PRINCIPAL AMOUNT OF THIS NOTE WITHOUT THE PRIOR WRITTEN CONSENT OF THE LENDER.**

The Recipient and any endorser, guarantor and surety now or hereafter liable for the payment of the principal or interest due on this Note, or any part thereof, does hereby expressly agree that any renewal, extension or modification of the terms of the Project Agreement including the terms or the time for the payment of any part of this Note may be made or extended without notice and without releasing or otherwise affecting liability of said parties on this Note.

The waiver by Lender or failure to enforce any other term, covenant or condition of this Note, or the Project Agreement and all appendices thereto or to declare any default hereunder or thereunder, shall not operate as a waiver of any subsequent default or affect the right of Lender to exercise any right or remedy not expressly waived in writing by Lender.

The unenforceability or invalidity of any one or more provisions of this Note shall not render any other provision herein contained unenforceable or invalid.

This Note and all of the Project Agreement and all Appendices thereto have been executed and delivered in the State of Ohio and shall be governed by and construed in accordance with the laws of the State of Ohio.

Any notice to the Recipient provided for in this Note shall be given by mailing such notice by certified mail, addressed to the Recipient at the following address: **4410 W. Streetsboro Road, P.O. Box 387 Richfield, OH 44286-0387**. Any notice to the Lender shall be given by mailing such notice by certified mail, return receipt requested, to the Lender at the address of the Lender as may have been otherwise designated by notice to the Recipient.

This Note was executed in Summit County, Ohio. The Recipient represents that it has received all of the necessary approvals from its legislative or authorizing body to execute and deliver this Note to the Lender.

Recipient:

\_\_\_\_\_

By: \_\_\_\_\_  
Eleanor Lukovics, Director of Finance

APPENDIX D

LOCAL SUBDIVISION CONTRIBUTION, PROJECT FINANCING AND EXPENSES SCHEME AND DISBURSEMENT RATIO

1) OPWC/LOCAL SUBDIVISION PARTICIPATION PERCENTAGES: For the sole and express purpose of financing/reimbursing costs of the Project defined and described in Appendix A of this Agreement, the estimated costs of which are set forth and described in this Appendix D, the Recipient hereby designates its Local Subdivision Percentage Contribution as amounting to a minimum total value of 53% percent of the total Project Cost. The OPWC participation percentage shall be 47% percent. However, in the event of a cost over-run, the maximum OPWC dollar contribution shall not exceed the amount identified in Appendix C.

2) PROJECT FINANCING AND EXPENSES SCHEME: The Recipient further designates the Project's estimated financial resources and estimated costs certified to the OPWC under this Agreement for the Project as defined and described in Appendix A of this Agreement to consist of the following components:

a) PROJECT FINANCIAL RESOURCES:

i) Local In-kind Contributions	\$0
ii) Local Public Revenues	436,426
iii) Local Private Revenues	0
iv) Other Public Revenues:	
- ODOT	0
- FmHA	0
- OEPA	0
- OWDA	0
- CDBG	0
- Other_____	0

SUBTOTAL 436,426

v) OPWC Funds:

- Grant	199,399
- Loan	187,175
- Loan Assistance	0

SUBTOTAL 386,574

TOTAL FINANCIAL RESOURCES \$823,000

b) PROJECT ESTIMATED COSTS:

i) Project Engineering Costs:	
- Preliminary Engineering	\$0
- Final Design	50,500
- Construction Supervision	0
ii) Acquisition Expenses:	
- Land	0
- Right-of-Way	0
iii) Construction Costs	762,500
iv) Equipment Costs	0
v) Other Direct Expenses	5,000
vi) Contingencies	5,000

TOTAL ESTIMATED COSTS \$823,000

c) **PREPAID ITEMS:** Those Project cost items included in Section 2(b) of this Appendix D that have already been paid for are identified as follows together with the financial resources category from Section 2(a) of this Appendix D from which they were paid:

<u>COST ITEM</u>	<u>RESOURCE CATEGORY</u>	<u>COSTS</u>
i)	\$0	
ii)	0	
iii)	0	
TOTAL PREPAID ITEMS COSTS		\$0

d) **DISBURSEMENT RATIO:** As established in Section 6(b) of this Agreement, the Recipient shall compute the dollar amounts set forth in its Disbursement Requests, and the OPWC shall disburse financial assistance moneys provided under Section 2 and Appendix C of this Agreement, based upon the following Disbursement Ratio:

$$\text{DISBURSEMENT RATIO} = \frac{A}{B - C}$$

**WHERE:**

(A) = Grant/Loan Assistance Moneys as set forth originally at Section 1 of Appendix C and the Promissory Note of Appendix C-2;

(B) = Total Project Estimated Costs as set forth originally at Section 2(b) of Appendix D;

(C) = Total Prepaid Items Costs as set forth originally at Section 2(c) of this Appendix D;

$$\frac{386,574}{823,000 - 0}$$

Disbursement Ratio = 47%

NOTE: The Disbursement Ratio is to be recognized as a tool of administrative convenience to the OPWC and the Recipient so as to allow for the reasonable sharing of Project cost coverage over the Project development period, and, as such, may change from time to time.

**OHIO PUBLIC WORKS COMMISSION  
APPENDIX E DISBURSEMENT REQUEST FORM AND CERTIFICATION**

DISBURSEMENT REQUEST NUMBER: \_\_\_\_\_

STATEMENT REQUESTING THE DISBURSEMENT OF FUNDS FROM THE STATE CAPITAL IMPROVEMENTS FUND PURSUANT TO SECTION 6 OF THE PROJECT AGREEMENT (the "Agreement") EXECUTED BETWEEN THE DIRECTOR OF THE OHIO PUBLIC WORKS COMMISSION (the "Director") AND The Village of Richfield, (153-66530), Summit County (the "Recipient"), DATED May 28th, 1993, FOR THE SOLE AND EXPRESS PURPOSE OF FINANCING THE CAPITAL IMPROVEMENT PROJECT DEFINED AND DESCRIBED IN APPENDIX A OF THE AGREEMENT (the "Project") AND NAMED AND NUMBERED AS Brecksville Road Water Extension-Phase IV, CH609/CH611.

<b>EXPENDITURES PROGRESS:</b>	(1) <u>AS PER AGREEMENT</u>	(2) <u>PAID PRIOR TO THIS DRAW</u>	(3) <u>AS PART OF THIS DRAW</u>	(4) <u>PAID TO DATE (Column 2 + 3)</u>
<b>A) Project Engineering Costs</b>				
1) Preliminary Engineering	\$0	\$ _____	\$ _____	\$ _____
2) Final Design	50,500	\$ _____	\$ _____	\$ _____
3) Construction Supervision	0	\$ _____	\$ _____	\$ _____
<b>B) Acquisition Expenses</b>				
1) Land	0	\$ _____	\$ _____	\$ _____
2) Right-of-Way	0	\$ _____	\$ _____	\$ _____
<b>C) Construction Costs</b>	762,500	\$ _____	\$ _____	\$ _____
<b>D) Equipment Costs</b>	0	\$ _____	\$ _____	\$ _____
<b>E) Other Direct Expenses</b>	5,000	\$ _____	\$ _____	\$ _____
<b>F) Contingencies</b>	5,000	\$ N/A	\$ N/A	\$ N/A
<b>G) Totals</b>	<b>\$823,000</b>	\$ _____	\$ _____	\$ _____

<b>FINANCING PROGRESS:</b>	(1) <u>AS PER AGREEMENT</u>	(2) <u>USED PRIOR TO THIS DRAW</u>	(3) <u>AS PART OF THIS DRAW</u>	(4) <u>USED TO DATE (Column 2 + 3)</u>
<b>H) OPWC Funds</b>	\$386,574	\$ _____	\$ _____	\$ _____
<b>I) Local Share</b>				
1) In-kind Contributions	0	\$ _____	\$ _____	\$ _____
2) Public Revenues	436,426	\$ _____	\$ _____	\$ _____
3) Private Revenues	0	\$ _____	\$ _____	\$ _____
<b>K) Other Public Revenues</b>				
1) ODOT	0	\$ _____	\$ _____	\$ _____
2) FmHA	0	\$ _____	\$ _____	\$ _____
3) OEPA	0	\$ _____	\$ _____	\$ _____
4) OWDA	0	\$ _____	\$ _____	\$ _____
5) CDBG	0	\$ _____	\$ _____	\$ _____
6) Other _____	0	\$ _____	\$ _____	\$ _____
<b>L) Total Local and Other Public Revenues</b>	<b>\$436,426</b>	\$ _____	\$ _____	\$ _____
<b>M) Totals ( H+L for each column )</b>	<b>\$823,000</b>	\$ _____	\$ _____	\$ _____

[NOTE: Column totals for Line M must be equal to the column totals for Line G.]

OPWC FUNDS DISBURSEMENT PROGRE

Is this the final request for disbursement of OPWC funds? YES NO
If the answer is YES, skip to the section entitled 'FINAL DISBURSEMENT REQUEST and PROJECT COMPLETION REPORT'.

N) Total project costs claimed as part of this draw (Total in G(3)) \$
O) Disbursement Ratio %
P) Amount of OPWC funds hereby requested for Disbursement (N x O) (Becomes H(3)) \$

FINAL DISBURSEMENT REQUEST and PROJECT COMPLETION REPORT: Project Completion Date / /
By completing this section the subdivision certifies that the project is completed and no additional invoices will be submitted to the OPWC.
Q) Total project costs (G(2) +G(3)) \$
R) Subdivision Percentage Participation Level 53%
S) Subdivision minimum dollar contribution (QxR) \$
T) Subdivision costs paid to date (Total in L(2)) \$
U) Total still owed toward Local Share (S-T) \$
V) Total project costs claimed as part of this draw(Total in G (3)) \$
W) Total still owed toward Local Share (U) \$
X) Amount of OPWC funds hereby requested for Disbursement (V-W) (Becomes H(3)) \$
Construction funds currently held in escrow by the subdivision and not reported on the previous page \$
[NOTE: Total in H(4) (sum of H(2) + H(3)) may not exceed total in H(1) (refer to instructions).]

PROJECT MANAGER CERTIFICATION:

I hereby certify that the work items invoiced and included herein are exclusively associated with the Project, have been completed in a satisfactory manner, and are otherwise in accord with the terms and conditions of the Agreement. This request reflects project completion at an estimated %.

Larry Willson, Service Director Date Phone

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER CERTIFICATION:

Pursuant to Section 6(b) and 6(c) of the Agreement, the undersigned Chief Executive Officer and Chief Fiscal Officer of the Recipient, as both are designated in Appendix B of the Agreement, hereby request the Director to disburse financial assistance moneys made available to Project in Appendix C of the Agreement (inclusive of any amendment thereto) to the payee as identified below in the amount so indicated which amount equals the product of the Disbursement Ratio and the dollar value of the attached cost documentation which was properly billed to the Recipient in exclusive connection with the performance of the Project, or, in the case of a final disbursement request, the amount entered at Line V of this Appendix E. The undersigned further certify that:

- 1) Each item of project cost documentation attached hereto is properly payable out of the State Capital Improvements Fund in accordance with the terms and conditions of the Agreement, and none of the items for which payment is requested has formed the basis of any payment heretofore made from the State Capital Improvements Fund;
2) Each item for which payment is requested hereunder is or was necessary in connection with the performance of the project;
3) In the event that any of the money disbursed to the Recipient pursuant to this request is to be used to pay Project costs based on an invoice submitted by a contractor of which the Recipient's share is yet to be paid, the Recipient shall expend such money to pay such contractor for the Project costs within twenty-four (24) hours after receipt thereof. Recipient shall hold such money uninvested pending payment to the contractor;
4) This statement and attachments hereto shall be conclusive as evidence of the facts and statements set forth herein and shall constitute full warrant, protection, and authority to the Director for any actions taken pursuant hereto; and
5) This document evidences the approval of the undersigned Chief Executive Officer and Chief Fiscal Officer of each payment hereby requested and authorized.

IN WITNESS WHEREOF, the undersigned have executed this Disbursement Request Form and Certification as of this day of 19. Note: All signatures must be original and in Ink.

Eleanor Lukovics, Director of Finance Phone: Ralph R. Waszak, Sr., Mayor

**CONTRACTOR/VENDOR PAYEE IDENTIFICATION:**

Set forth the appropriate portion(s) of this Disbursement Request amount (all or part of the amount from H(3)) that is to be paid to each of the contractors/vendors (or Subdivision) identified below, and as are supported through accompanying copies of invoices or other evidence of expense.

1) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_

2) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_

3) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_

4) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_

5) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_

OPWC Use Only	Accounting: _____ (initial)	MBE: _____ (initial)
Approval by: _____ (signature)	Auditor: _____ (initial)	Other: _____ (initial)
Date: ____/____/____		