

MODEL CONSTRUCTION CONTRACT

For

HOUSEHOLD SEWAGE TREATMENT SYSTEM

This Contract is between

Defiance County General Health District
Oscar Hernandez, III, RS, REHS, ("LHD Contract Manager")
1300 East Second Street, Suite 100
Defiance, OH 43512
(419) 784-3818
phernandez@defiance-county.com

AND

Local Contractor's Name ("Contractor")
Contractor's Contact Name, Title ("Contractor's Representative")
Contractor's Street Address
City, State Zip Code
Contractor's Telephone Number
Contractor's Email

For the purpose of this Contract, the terms "Party" or "Parties" may be used to refer to both LHD and/or Contractor, individually or collectively. In order to be valid, this Contract must be signed by Contractor and returned along with required attachments (see §3) to LHD within fourteen (14) days of receipt at the above address.

1. **CONTRACT TERM.** Subject to §6 and other terms and conditions specified in this Contract:

1.1. "Contract Beginning Date" shall be defined as the date indicated here, or the date of Contract execution by both Parties, whichever is later:

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1.2. "Contract Ending Date" shall be defined as the date indicated here, the date of Contract termination or the date to which the Contract has been extended:

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1.3. "Contract Period" shall be defined as the time between the "Contract Beginning Date" and "Contract Ending Date."

2. **CONTRACT FUNDING.**

2.1. "Contract Funding Source" shall be defined as:

Water Pollution Control Loan Fund

2.2. Ohio Statute Authorizing Administration of the Program:

Ohio Revised Code ("O.R.C.") 3701.04(A) & 3718

* Indicates that Opening Date (Proposal due date) and Inquiry Period is extended by two weeks.

3. **ATTACHMENTS.** Attachments specified in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. **PLEASE READ CAREFULLY, INITIAL EACH PARAGRAPH BELOW & PROVIDE DOCUMENTS WHERE NECESSARY:**

Contractor affirms that they have read and understand and agree to be bound by the Contract Terms and Conditions in §5 below;

If Contractor is not subject to the statewide bond requirement of Ohio Administrative Code (OAC) 3701-29-03 and does not have a 2015 Registration Bond for Sewage Treatment Systems Installers, Contractor **must submit** with this Contract either (a) a certificate of liability insurance for 100% of the Total Contract Amount or, in the alternative (b) a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the Terms & Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to LHD. The bond shall be for 100 percent (100%) of the contract price. A Payment Bond and Performance Bond are required. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney. Under certain conditions, and within the limits of State and local laws and regulations, LHD may waive the requirement that the Payment and Performance Bond be underwritten by a surety company and may authorize in lieu thereof, a personal bond backed by a letter of credit from a local lending institution for the full value of the Contract;

Contractor **must complete and submit** with this Contract an American Iron and Steel Acknowledgement, attached and made a part hereof;

Contractor **must use** the attached Change Order to propose any changes to the Work. Said Change Order must be approved and in writing on the prescribed Change Order form and following the instructions as provided in the attached.

IN WITNESS WHEREOF, the Parties by signing below indicate their agreement to this Contract.

CONTRACTOR

DEFIANCE COUNTY GENERAL HEALTH DISTRICT

[Signature, Blue Ink Please]

[Signature, Blue Ink Please]

Oscar Hernandez III, RS, REHS – Director of Env. Health

[Print Name & Title]

[Print Name & Title]

Date

Date

Remainder of Page Left Intentionally Blank. Scope of Work, Deliverable & Compensation & General Terms and Conditions Immediately Follow this Page.

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4. DELIVERABLES & COMPENSATION. During the Contract Period, in consideration of their mutual promises contained herein, and for other good and valuable consideration, it is hereby agreed as follows:

	Deliverables (Due Date and Compensation only noted if Applicable or Required)	Due Date	LHD shall pay to Contractor the following Compensation per site project
4.1.	Contractor shall provide paid receipts to LHD evidencing that all materials and supplies used in or provided by Contractor have been paid, and Contractor shall provide waivers of lien in an appropriate form at the conclusion of each site project as requested by LHD. LHD is authorized to withhold from Contractor any and all funds necessary to satisfy any claims brought against LHD by any materialmen or persons performing services under this Contract.	9/16/2016	
4.2.	Contractor shall perform the following services, to-wit: The Contractor shall complete installation or alteration of a new, existing or replacement home sewage treatment system(s) or repair to be in compliance with OAC 3701-29 and local codes at the Sites listed below. Such work shall include all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services and materials testing, obtain all required permits and perform and complete all work required for the service embraced in the project: namely insert list with description(s) specific to each Site.	9/16/2016	List compensation for each site project listed
4.3.	Final bill and required documentation will be due to LHD Contract Manager no later than 10 days following final inspection by LHD and completion of site work. LHD agrees to pay the said assigned funds to Contractor in accordance with the following method: <ul style="list-style-type: none"> a. The contract(s) has been executed by all parties and one original submitted to Ohio Department of Health (ODH); and b. The installation of the Household Sewage Treatment System (HSTS) has been inspected by LHD and a final inspection certification has been issued; and c. An invoice that documents the costs incurred for the individual HSTS improvements are submitted by LHD to ODH (the invoice must be accompanied by LHD's final inspection certification); and d. ODH reviews and approves the submissions and directs Ohio EPA to instruct the Ohio Water Development Authority to disburse approved amounts to LHD. 	9/16/2016	

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4.5.	Contractor shall perform said services in a professional manner to the satisfaction of LHD and having passed a final inspection performed by LHD.		
	TOTAL CONTRACT AMOUNT		\$.00

Remainder of Page Left Intentionally Blank. Terms & Conditions Immediately Follow this Page.

5. CONTRACT TERMS AND CONDITIONS.

- 5.1. Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Contract and intending to be legally bound, Contractor agrees to perform, and LHD agrees to pay Contractor, in accordance with the terms of this Contract.
- 5.2. Purpose of Contract. Contractor will provide LHD services in accordance with the terms of this Contract.
- 5.3. Scope of Work, Deliverables, and Compensation. Contractor shall provide work, services, products and deliverables in the time and manner and for the compensation specified in §4 and any attachment specified or incorporated into this Contract.
- 5.3.1. Compensation. In consideration of the Scope of Work and Deliverables specified in §4, LHD agrees to pay the Compensation as set forth in §4 for a total not to exceed the Total Contract Amount. LHD will compensate Contractor upon the successful completion of each deliverable, in accordance with §4 of this Contract.
- 5.3.2. Total Contract Amount. The Total Contract Amount, as indicated in §4, includes the cost for all services, travel, or any other expenses that Contractor may incur as a result of Contractor's performance of this Contract.
- 5.3.3. Contractor shall monitor the work under this Contract and shall not accept an assignment under this Contract if it will cause or is reasonably likely to cause the Compensation specified in §4 to exceed the Total Contract Amount for the Contract Period.
- 5.3.4. Contractor waives the interest provisions of O.R.C. 126.30.
- 5.3.5. Funds Availability. Contractor understands and agrees that this Contract is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Contract Funding Source. If the Ohio General Assembly or other Contract Funding Source fails at any time to continue funding LHD for the Compensation specified in this Contract, this Contract is terminated as of the date funding expires without further obligation of LHD, State of Ohio, or any other Contract Funding Source.
- 5.3.6. LHD will not compensate Contractor for any work performed prior to receipt of written notification from LHD Contract Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met LHD will not compensate Contractor for any work performed after the Contract Ending Date, as applicable.
- 5.3.7. Invoices. Contractor shall invoice LHD in accordance with §4 for work or services Contractor provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to LHD at the address indicated on the first page of this Contract. LHD will reimburse Contractor within forty-five (45) days of receipt of a valid invoice for the amount of payment due. LHD shall return any invalid or incomplete invoice to Contractor within fifteen (15) days after LHD receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Contract shall be submitted by Contractor no later than thirty (30) days after the end of the Contract Period.
- 5.3.8. Contractor shall furnish its own support staff and services as necessary for the satisfactory performance of this Contract. Unless otherwise specified in this

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Contract, LHD will not provide any staff, services, or material to Contractor for the purpose of assisting Contractor's performance.

- 5.3.9. LHD may, from time to time as it deems appropriate, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice and within ten (10) days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to the satisfaction of LHD. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Contract and are not intended to amend or alter this Contract or any part thereof. LHD Contract Manager will communicate all such instructions and requests to Contractor.
- 5.3.10. Attachments. Attachments and documents referenced in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. In the event of a conflict of terms, the terms and conditions of this Contract shall take precedence over any conflicting terms.
- 5.4. Time of Performance & Amendments.
- 5.4.1. Contract Period; Extension. Upon approval by LHD this Contract shall be effective on the Contract Beginning Date and shall remain in effect until the Contract Ending Date.
- 5.4.2. Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Contract may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Contract, without the necessity for executing written amendments. Any written amendments to this Contract shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.
- 5.4.3. Pursuant to O.R.C. 126.07, this Contract is not valid nor enforceable in any fiscal year unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, in an amount at least equal to the current fiscal year funding specified for each fiscal year that comprises the Total Contract Amount. Contractor shall not perform nor charge LHD for any work performed by Contractor in the time period prior to receiving written notification from LHD that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met. Contractor shall neither perform work nor submit an invoice for payment for any Contract performance after the Contract Ending Date.
- 5.5. Suspension and Termination. LHD may suspend or terminate this Contract for any reason thirty (30) days after delivery of written notice to Contractor. LHD may suspend or terminate this Contract immediately after delivery of written notice to Contractor if LHD discovers any illegal conduct on the part of Contractor; discovers a violation of §5.8 of this Contract regarding Conflict of Interest and Ethics Laws; violation of §6.14 regarding a Drug Free Workplace; is subject to a loss of funding as specified in §5.3.6; or discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Contractor. If at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against Contractor, Contractor shall immediately notify LHD of the filing.
- 5.5.1. Contractor to Cease Work and Other Contract Activities. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate any

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subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this Contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as LHD may require.

- 5.5.2. Determining Compensation after Contract Suspension or Termination. With the exception of a material breach, in the event of suspension or termination under this Contract, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by LHD based on the compensation rate set forth in §4, less any funds previously paid by or on behalf of LHD. In the case of services for which Contractor's compensation is based upon a fixed fee per deliverable, compensation shall be based on a reasonable percentage of the total services performed, as determined by LHD, less any funds previously paid by or on behalf of LHD. LHD shall not be liable for any further claims, and the claims submitted by Contractor shall not exceed the total amount of compensation allowed by this Contract.
- 5.6. Breach or Default.
- 5.6.1. Upon breach or default by Contractor of any of the provisions, obligations or duties provided for in this Contract, LHD may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and LHD retains the right to exercise all remedies provided for in this Contract.
- 5.6.2. If LHD or Contractor fail to perform an obligation or obligations under this Contract and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by LHD shall not be effective unless it is in writing and signed, except that LHD Contract Manager may agree in writing to non-substantial changes to §4, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable. Change Orders must be in writing and Contractor must use the form attached herein.
- 5.7. Independent Contractor. Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee (for purposes of O.R.C. Chapter 145) solely on the basis of this Contract. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract. Inasmuch as LHD is interested in Contractor's end product, LHD does not control the manner in which Contractor performs this Contract. LHD is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Contractor assumes responsibility for tax liabilities that result from compensation paid to Contractor by LHD. LHD will report any payment made under this Contract to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Contract shall be construed as entitling Contractor to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of LHD or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).

5.8. Conflict of Interest and Ethics Laws.

- 5.8.1. Neither Contractor nor any officer, member or employee of Contractor shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.
- 5.8.2. Contractor hereby covenants that Contractor, and any officer, member, or employee of Contractor, have no interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Contract.
- 5.8.3. Contractor shall not promise or give to any LHD employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Contractor shall not solicit an LHD employee to violate any LHD rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.
- 5.8.4. Contractor hereby covenants that Contractor and any officer, member or employee of Contractor are in compliance with O.R.C. 102.04 and that if Contractor is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.
- 5.8.5. Contractor hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.
- 5.8.6. Contractor hereby certifies and affirms that, as applicable to Contractor, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 (One Thousand Dollars) to the Governor or to his campaign committees. If it is determined that Contractor's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Contractor shall return to LHD all monies paid to Contractor under this Contract. The provisions of this section shall survive the expiration or termination of this Contract.

5.9. Nondiscrimination and Equal Employment Opportunity. In carrying out this Contract, Contractor shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination as those laws may be amended from time to time, including but not limited to the following:

- 5.9.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see www.lep.gov), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80.
- 5.9.2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86.
- 5.9.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of

benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85.

- 5.9.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91.
- 5.9.5. If grant funding is from the U.S. Department of Justice (“DOJ”), also comply with the nondiscrimination provision of the Violence Against Women Act of 1994, as amended (42 U.S.C. § 13925(b)(13)), which prohibits discrimination on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability in the provision of services and employment practices; 28 C.F.R. pt. 42, subpt. C (the DOJ regulations implementing Title VI of the Civil Rights Act of 1964); 28 C.F.R. pt. 54 (the DOJ regulations implementing Title IX of the Education Amendments of 1972); 28 C.F.R. pt. 42, subpt. G (the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973); 28 C.F.R. pt. 42, subpt. I (the DOJ regulations implementing the Age Discrimination Act of 1975); 28 C.F.R. pt. 38 (the DOJ regulations on the Equal Treatment for Faith-Based Organizations); Ex. Order No. 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations); and Ex. Order No. 13559 (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations).
- 5.9.6. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.
- 5.10. “Sweatshop Free” Certification. Contractor hereby certifies that all facilities used for the production of supplies or performance of services offered in this Contract is in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Contractor in furnishing the supplies or services pursuant to this Contract. If it is determined that Contractor's certification of this requirement is false or misleading, then Contractor understands that it shall be grounds for the termination of this Contract and may result in the loss of other contracts or grants with the State of Ohio.
- 5.11. Records, Documents and Information. All records, documents, writings or other information produced or used by Contractor in the performance of this Contract shall be treated according to the following terms:
- 5.11.1. All LHD information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Contractor. Where there is a question as to whether information is public or private, LHD shall make the final determination. Contractor shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Contractor agrees to be bound by the same standards of confidentiality that apply to the employees of LHD and the State of Ohio. If at any time during the contract period a proceeding has been filed by or against Contractor which would compel disclosure of private information under this Contract, Contractor shall immediately notify LHD of the filing. The terms of this section shall be included in any subcontracts executed by Contractor for work under this Contract.
- 5.11.2. All proprietary information of Contractor shall be held to be strictly confidential by LHD. Proprietary information is information which, if made public, would put Contractor at a disadvantage in the market place and trade of which Contractor is a part. Contractor is responsible for notifying LHD of the nature of the

information prior to its release to LHD. LHD reserves the right to require reasonable evidence of Contractor's assertion of the proprietary nature of any information to be provided.

- 5.11.3. All records relating to costs, work performed and supporting documentation for invoices submitted to LHD by Contractor shall be retained and made available by Contractor for audit by the State of Ohio (including, but not limited to, LHD, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Contract. If an audit, litigation, or other action is initiated during this time period, Contractor shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.
- 5.12. Assignment. Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of LHD. Any assignment or delegation not consented to may be deemed void by LHD.
- 5.13. Drug Free Workplace. Contractor shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Contractor shall make a good faith effort to ensure that all employees of Contractor do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 5.14. Compliance.
- 5.14.1. Contractor affirmatively represents and warrants to LHD that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Contractor further affirmatively represents and warrants to LHD that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Contractor agrees that if this representation and warranty is deemed false, the Contract will be void *ab initio* as between the Parties to this Contract, and any funds paid by LHD hereunder shall be immediately repaid to LHD, or an action for recovery may be immediately commenced by LHD for the recovery of said funds.
- 5.14.2. Contractor certifies that Contractor is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Contractor is federally debarred from participating in government contracts funded by federal money, for whatever reason, Contractor shall immediately notify LHD of the debarment.
- 5.14.3. Contractor certifies that all approvals, licenses, registrations or other qualifications necessary to conduct business where the services are performed have been obtained and are operative. If at any time during the contractual period Contractor becomes disqualified from conducting business in Ohio, for whatever reason, Contractor shall immediately notify LHD of the disqualification.
- 5.15. Limitation of Liability. Contractor agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any responsibility for professional acts or omissions onto LHD; and LHD agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any such responsibility on the Contractor. LHD's liability for damages, whether in contract or in tort, shall not exceed the Total Contract Amount or the amount of direct damages incurred by Contractor, whichever

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is less, and is the Contractor 's sole and exclusive remedy for LHD's failure to perform its obligations under this Contract. In no event shall LHD be liable for any indirect or consequential damages, including loss of profit, even if LHD knew or should have known of the possibility of such damages. Neither party is responsible to the other party for nonperformance or delay in performance of the terms of this Contract due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.

5.16. Indemnification. Contractor shall indemnify and hold LHD, its officials, employees, and staff harmless from any and all loss, damages, claims, suits, or contingent or direct liabilities that may arise as a result of any and all acts performed or that fail to be performed by Contractor during the term or arising out of this Contract.

5.17. Insurance.

5.17.1. Workers' Compensation Insurance. Contractor shall provide Workers Compensation Insurance for all employees engaged in Work who may come within the protection of the workers compensation law, and, where applicable, employer's General Liability Insurances for employees not so protected and shall require all Subcontractors to provide corresponding insurance. The Contractor shall indemnify LHD against any and all liabilities, cost and expenses due to accidents or other occurrences covered by the workers compensation law.

5.17.2. Builders Risk. In addition to such fire and other physical damage insurance as the Contractor elects to carry for his own protection, he shall also secure and maintain in the name of LHD, the government agency sponsoring the Project, Subcontractors, the Consulting Engineer and any other parties having an interest in the Project, as named insured as their interest may appear; a builders' risk policy for fire, extended coverage, vandalism and malicious mischief in the amount of one hundred (100) percent of the value of the complete parts of the Project and Materials in storage, except that such coverage shall not be required in connection with sewer, water main or paving construction. Pump or lift station construction shall not be considered sewer or water main construction for purposes of this paragraph.

5.17.3. Contractor's Motor Vehicle Bodily Injury and Property Damage Liability Insurance. Insurance to cover liability arising from the use and operation of motor vehicles in connection with the performance of the Contract (as customarily defined in liability insurance policies), whether they be owned, hired or non-owned by the Contractor, as follows:

5.17.3.1. Bodily Injury Liability: \$500,000 for each person; limit of \$1,000,000 for each occurrence.

5.17.3.2. Property Damage Liability: \$500,000 for each occurrence.

5.17.4. Contractor's Public Liability and Property Damage Liability Insurance. Contractor's Public Liability Insurance providing a limit of not less than \$500,000 for all damages arising out of bodily injuries, including accidental death to one person, and a total limit of \$1,000,000 for all damages arising out of bodily injuries, including accidental death, to two or more persons in any one occurrence. Contractor's Property Damage Liability Insurance providing for a limit on not less than \$500,000 for all damages to or destruction of property.

5.17.4.1. Coverage under this policy shall include, to the limits indicated above, the collapse or damage to any structure, building or its contents, public or private utility, or pavement during construction and for two (2) years thereafter.

- 5.17.4.2. Whenever Work under this Contract is to be done in the vicinity of existing underground utilities or structures, coverage under the policy shall also include, to the limits indicated, all damages to said underground utilities or structures during construction and for a period of two (2) years thereafter. Whenever Work under this Contract is to be done by blasting, coverage under the policy shall also include, to the limits indicated above, all damages of any kind whatsoever caused by blasting.
- 5.17.5. Contractor's Protective Public Liability and Property Damage Liability Insurance. Contractor's Protective Public Liability and Property Damage Liability Insurance for operations performed by Subcontractors providing for coverage and limits corresponding to those described in §5.17.4.
- 5.17.6. LHD's Protective Public Liability and Property Damage Liability Insurance. Regular LHD's Protective Public Liability and Property Damage Liability Insurance for operations performed by the Contractor or any Sub-contractor providing for coverage and limits corresponding to those described in paragraph §5.17.4. This policy shall be written in the name of LHD as a separate policy from those specified elsewhere herein.
- 5.17.7. Railroad Protective Liability Insurance. If any Work under this Contract is on railroad R/W, Contractor shall at its sole cost and expense, procure and provide, for and in behalf of each railroad company. Protective Liability Insurance (AARAASHO form) with minimum limits per occurrence of not less than \$2,000,000 for bodily injury, death and/or property damage, subject to an aggregate limit of \$6,000,000 per annum. The policy shall name each railroad company as the insured and be issued to the Contractor. Each railroad company shall be provided with a copy of each policy of insurance prior to commencement of any work.
- 5.17.8. Performance and Payment Bonds. If Contractor is not subject to the statewide bond requirement of Ohio Administrative Code (OAC) 3701-29-03 and does not have a 2015 Registration Bond for Sewage Treatment Systems Installers, Contractor must submit with this Contract either (a) a certificate of liability insurance for 100% of the Total Contract Amount or, in the alternative (b) a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the Terms & Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to LHD. The bond shall be for 100 percent (100%) of the contract price. A Payment Bond and Performance Bond are required. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney. Under certain conditions, and within the limits of State and local laws and regulations, LHD may waive the requirement that the Payment and Performance Bond be underwritten by a surety company and may authorize in lieu thereof, a personal bond backed by a letter of credit from a local lending institution for the full value of the Contract.
- 5.18. Construction. This Contract is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Contract. If any portion of this Contract is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Contract shall not be affected thereby, provided that the absence of the

unenforceable provision does not render impossible the performance of the remainder of this Contract.

- 5.19. Violating Facilities Clause. The Contractor agrees to comply with all applicable standards, orders or requirements under Section 106 of the Clean Air Act, 42 USC 1857 (h), Section 508 of the Clean Water Act, 33 USC 1368, Executive Order 11738, and EPA regulations, 40CFR Part 32, which prohibits the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.
- 5.20. American Iron and Steel Requirements (AIS). Contractor must comply with the AIS requirements (found at http://water.epa.gov/grants_funding/aisrequirement.cfm).

AMERICAN IRON AND STEEL ACKNOWLEDGEMENT

The Contractor acknowledges to and for the benefit of the city or county of _____ (“Purchaser”) and the State of Ohio (the “State”) that it understands the goods and services under this Contract are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Signature

Date

Name and Title of Authorized Signatory, Please Print or Type

Bidder’s Firm

Check here if the WPCLF or WSRLA applicant will be requesting an individual waiver for non- American made iron and steel products. Please note that the waiver box does not need to be marked for nationwide waivers.

State of Ohio
WATER POLLUTION CONTROL LOAN FUND

CONTRACT CHANGE ORDER

RECIPIENT _____	CHANGE ORDER NBR _____
WPCLF/WSRLA LOAN NBR _____	CONTRACT _____
OWDA PROJECT NBR _____	DATE _____

Description of Change: _____

RECOMMENDED BY: _____ DATE: _____
(Engineer)

APPROVED BY: _____ DATE: _____
(Recipient)

ACCEPTED BY: _____ DATE: _____
(Contractor)

 (Contractor Company Name)

OWDA APPROVAL

Original Contract Amt _____ This Change (+ / -) _____ Adjusted Contract Amt _____ _____	The above proposal is hereby accepted and I recommend that it be approved and made a part of the contract covered by OWDA _____ Chief Engineer _____ Date Executive Director _____ _____ Date
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* Indicates that Opening Date (Proposal due date) and Inquiry Period is extended by two weeks.

CHANGE ORDER INSTRUCTIONS:

All Change Orders for this work, regardless of costs and whether Water Pollution Control Loan Fund (WPCLF) funding will be used to finance the changes, must be submitted to Ohio EPA for review.

Changes Requiring Prior Approval

Any change which substantially modifies the Project Facilities as specified in the Ohio EPA approved Facilities Plan and Final Permit to Install or Final Plan Approval (when applicable) or alters the direct or indirect impact of the Project Facilities upon the environment must be incorporated into a Change Order. One copy of the Change Order is to be submitted to Ohio EPA – DEFA for review and confirmation of the acceptability of the change. "Prior to execution" means before the change order is signed by the LHD.

Ohio EPA will review the Change Order and inform the LHD of the technical, environmental and operational acceptability of the change, and give the LHD permission to proceed with the proposed work.

All Other Changes

Change orders not requiring prior approval as described above must be submitted to the Ohio EPA – DEFA within one (1) month of the time at which they are approved by the LHD.

Change Order Approval Process

After the change order is executed, a minimum of three copies are to be sent to Ohio EPA - DEFA for final review. All three copies must have original signatures. Only one copy of the supporting documentation for the change is to be submitted.

After the Change Order is accepted and WPCLF eligible costs determined, Ohio EPA will issue a letter informing the LHD and authorizing OWDA to disburse funds from Project Contingency for the work. Ohio EPA - DEFA will retain one copy of the Change Order plus the supporting documentation and send the remaining two copies to the Ohio Water Development Authority (OWDA) for processing.

OWDA will retain one copy of the Change Order and send the remaining copies, signed by both Ohio EPA - DEFA and OWDA, back to the LHD.

Payments for Change Order Work

The LHD is precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Ohio EPA – DEFA's approval of the change orders has been obtained.

All Change Orders, including Prior Approval requests, should be sent to:

Ohio EPA - Division of Environmental and Financial Assistance
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2828
www.epa.state.oh.us/defa/