

CITY OF OBERLIN, OHIO

ORDINANCE No. 13-55 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO FILE A JOINT APPLICATION WITH THE LORAIN COUNTY COMMISSIONERS TO THE DISTRICT 9 PUBLIC WORKS INTEGRATING COMMITTEE FOR OHIO PUBLIC WORKS COMMISSION ISSUE I FUNDING FOR THE PYLE SOUTH AMHERST ROAD BRIDGE #0014 REPLACEMENT PROJECT AND DECLARING AN EMERGENCY

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

SECTION 1. That the City Manager is hereby authorized and directed to file a joint application with the Lorain County Commissioners to the District 9 Public Works Integrating Committee for Ohio Public Works Commission (OPWC) Issue I Round 28 funding for the following project:

Pyle South Amherst Road Bridge #0014 Replacement Project

SECTION 2. That the City of Oberlin shall be designated "Lead Agency" for the purposes of this OPWC Issue I Round 28 project.

SECTION 3. That the City Manager is hereby authorized and directed to enter into a Co-operation Agreement with the Lorain County Commissioners for the purpose of administering this Issue I Round 28 project only in the form attached hereto as Exhibit A.

SECTION 4. That if said Issue I Round 28 project is funded, the City Manager is hereby authorized to commit local matching funds as designated in the grant application.

SECTION 5. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: in order to allow for the filing of an Issue I grant application in a timely manner", and shall take effect immediately upon passage.

PASSED:

1st Reading: September 3, 2013 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL

POSTED: 09/04/2013



RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

FFECTIVE DATE: 09/03/2013

ORIGINAL
COOPERATION AGREEMENT
BY AND BETWEEN
LORAIN COUNTY
AND
THE CITY OF OBERLIN

This Agreement, by and between Lorain County, State of Ohio (hereinafter referred to as "County") and the City of Oberlin, County of Lorain, State of Ohio (hereinafter referred to as "City"), is hereby entered into on this 18th day of September, 2013.

WITNESSETH:

Whereas, the County and the City intend to file a joint application to the Ohio Public Works Commission (hereinafter referred to as "OPWC") for Issue I Round 28 funding for the project known as "Pyle South Amherst Road Bridge #0014 Replacement"; and

Whereas, the OPWC requires that the parties submitting a joint application for funding enter into a "Cooperation Agreement".

Now, therefore, in consideration of the foregoing the parties hereto do mutually agree as follows:

1. Lead Agency

The County does hereby authorize the City to be the lead applicant and, as such, to sign all necessary documents.

2. Project Financing

a. The County will provide funds totaling 13.00% of the cost of the project. Said funds will come from the Bridge Account # 2580 0000 300-30 04-0100 funds. Furthermore, the County agrees to pay its share of the cost as invoices are due/at the end of the project/as otherwise agreed upon.

b. The City will provide funds totaling 13.00% of the cost of the project. Said funds will come from the Income Tax Capital Improvement Fund. Furthermore, the City agrees to pay its share of the cost as invoices are due/at the end of the project/as otherwise agreed upon.

3. Project Authorization

- a. This project is authorized by Lorain County Resolution Number 13-794
b. This project is authorized by City of Oberlin Ordinance Number 13- AC CMS

4. Term of Agreement

This Agreement shall commence at the latest date set forth below. This Agreement shall be commensurate with the term of the OPWC grant award.

5. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the County and the City. This Agreement and its rights and responsibilities shall not be assigned or transferred without the prior written consent of the County and of the City.

6. Severability

If any section of this Agreement is found to be illegal, unconstitutional, improper or unenforceable, said section shall not affect the enforceability of the remainder of this Agreement.

7. Jurisdiction


This Agreement shall be construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, **Lorain County and the City of Oberlin, by their duly authorized agents**, have executed this Agreement on the dates set forth next to their signatures.

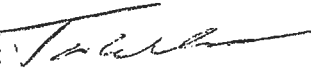
Lorain County:

BY: 
Ted Kalo, Commissioner

DATE: 9-18-13

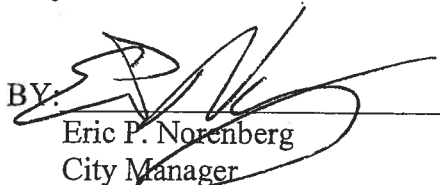
BY: 
Lori Kokoski, Commissioner

DATE: 9-18-13

BY: 
Tom Williams, Commissioner

DATE: 9-18-13

City of Oberlin:

BY: 
Eric P. Norenberg
City Manager

DATE: 10/8/13

Approved as to form:


Jon D. Clark, Law Director

OHIO PUBLIC WORKS COMMISSION

07-09-14A09:05 RCVD

PROJECT GRANT AGREEMENT

LOCAL TRANSPORTATION IMPROVEMENT PROGRAM

Pursuant to Ohio Revised Code 164.05 and Ohio Administrative Code 164-1-21, this Project Grant Agreement (this "Agreement") is entered into **July 1, 2014** 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 **City of Oberlin, Lorain County** (hereinafter referred to as the "Recipient"), located at **85 South Main Street, Oberlin, OH 44074**, in respect of the project named **Pyle South Amherst Road Bridge Replacement**, and as described in Appendix A of this Agreement to provide an amount not to exceed **Two Hundred Seventy-Two Thousand, Three Hundred Twenty Dollars (\$272,320)** 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: **093-57834**

OPWC Project Control No. **CIZ12**

WHEREAS, the Local Transportation Improvement Fund created under Section 164.14 of the Revised Code is to benefit local subdivisions (as hereinafter defined) for the construction, reconstruction, improvement, or planning of transportation infrastructure (as hereinafter defined);

WHEREAS, pursuant to Section 164.05 of the Revised Code, the Director of the OPWC is empowered to (i) enter into agreements with Local Subdivisions to provide loans, grants, and local debt support and credit enhancements for Capital Improvement Projects (as hereinafter defined); and (ii) 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, pursuant to Section 164.14 of the Revised Code, the Director is empowered to review and approve or disapprove requests for financial assistance from the District Public Works Integrating Committees in accordance with the criteria set forth in Divisions C and E of Section 164.14 of the Revised Code;

WHEREAS, Section 164.14 of the Revised Code permits a grant of funds 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, or planning of the Capital Improvement Project (the "Project") described in Appendix A of this Agreement;

WHEREAS, the Project has been duly recommended to the Director pursuant to Section 164.14 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 a grant of financial assistance to finance certain costs of the Project, such moneys being allocated out of the State and Local Government Highway Distribution Fund to the Local Transportation Improvement Fund in the State Treasury;

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 an other or different meaning or intent.

"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 and improvement of roads and bridges 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 single office or official of the Recipient designated in Appendix B pursuant to Section 6 hereof, or his authorized designee as per written notification to the Director.

"Chief Fiscal Officer" means the single office or official of the Recipient designated in Appendix B pursuant to Section 6 hereof, or his authorized designee as per written notification to the Director.

"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 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.

"District Committees" means the District Public Works Integrating Committees and the Executive Committees created pursuant

to Section 164.04 of the Revised Code, and District Subcommittees created pursuant to Section 164.14 of the Revised Code.

"Fund" means the Local Transportation Improvement Fund created pursuant to Section 164.14 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; or the board of township trustees if a township.

"Local Subdivision" means any county, municipal corporation, or township 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 the percentages are identified in Appendix D. 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.

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

"Reimbursing" means the use of funds granted to the Recipient pursuant to Section 164.14 of the Revised Code as reimbursement to the Recipient for funds expended on the Project by the Recipient, and which did not in any way inflate costs of the Capital Improvement Project.

"State" means the State of Ohio.

"Transportation Infrastructure" means any highway, road, street or bridge and the necessary safety appurtenances thereto constructed, reconstructed, expanded, improved, or engineered on authority of funds allocated pursuant to Section 164.14 of the Revised 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 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 "hereunder" means after, and the term "heretofore" means before the effective date of this Agreement.

SECTION 2. Grant of Financial Assistance. Subject to the terms and conditions contained herein, the OPWC hereby grants to the Recipient moneys from the Fund, 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.

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 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. 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 discretion 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 Grantor expressly authorizes the 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 in Appendix B of this Agreement. Changes in these designations must be made in writing.

(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 a detailed project specific invoice to the Project Manager. 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 such 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 Participation Percentage 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 completed, 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 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 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 Fund for payment of the identified Project costs. A copy of all such documents submitted to the Director shall be retained by the Director.

The Recipient represents that the Project was initially constructed, installed or acquired by the Recipient no earlier than the execution date of this Agreement.

(c) 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, redeem, or otherwise pay debt service on all or any part of any part of any governmental obligations.

(d) 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, the change must be approved by the District

Committee, recorded in the District Committee's official meeting minutes, and provided to the OPWC Director for the execution of an amendment to this Agreement.

(f) Project Cost Overruns. In the event that the Recipient determines that the moneys granted pursuant to Section 2 hereof, together with the Local Subdivision Contribution, are insufficient to pay in full the costs of the Project, the Recipient may make a request for supplemental assistance to its District Committee. The Recipient must demonstrate that such funding is necessary for the completion of the Project and 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. Should the District Committee approve such request the action shall be recorded in the District Committee's official meeting minutes and provided to the OPWC Director for the execution of an amendment to this Agreement.

SECTION 7. Retainage. Except as provided in the second sentence of this Section, Recipient shall comply in all aspects 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 the 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. The Recipient may use its legally applicable construction 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 Sections 153.12, 153.13, 153.14 and 153.63 of the Revised Code.

SECTION 8. Conditions to Financial Assistance and its Disbursement. The Grantor'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.

(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. Recipient represents, warrants and covenants for the benefit of the Grantor 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 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; excluding Chapter 164-1-32;

(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 Proceeds. With respect to the Project to be financed or reimbursed by moneys granted pursuant to Section 2 hereof:

(1) 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 Law;

(2) All of the Project is owned, or will be owned, by the Recipient or another eligible local subdivision.

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

(h) Ohio Preference. 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;

(i) Equal Employment Opportunity. Recipient shall, and shall require that all contractors and subcontractors working on the Project, comply with the equal employment opportunity requirements contained in Section 164.07(A) of the Revised Code and rule 164-1-32 of the Administrative Code;

(j) Prevailing Wage. The Recipient shall comply and shall require that all Contractors and subcontractors working on the Project comply with the prevailing wage requirements contained in Revised Code Sections 164.07(B), 4115.03 through 4115.16; and

(l) Construction Bonds, Insurance and Supervision.

(1) The Recipient shall require that each of its Contractors furnish a performance and payment bond in an amount at least equal to 100 percent (100%) of its contract price as security for the faithful performance of its contract.

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

(3) 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 reasonably require.

SECTION 11. Audit Rights. The Recipient shall, at all reasonable times, provide the Director access to 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 and specific to 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 Matching Funds 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, good, or supplies of the Project sufficient to impose upon the Director any of the obligations specified in Revised Code Section 126.30. Provided that the Recipient is not a Local Political Subdivision, the Recipient shall indemnify and hold harmless the Director, the OPWC, the State and their respective officers, directors, members, agents and employees from any and all liability arising out of or pursuant to this Agreement, the Recipient's use or application of the funds being provided by the OPWC hereunder and the Recipient's construction or management of the Project.

SECTION 14. Termination. The OPWC's obligations under this Agreement shall immediately terminate upon the failure of the Recipient to comply with any of the terms or conditions contained herein. Upon such termination, the Recipient shall be obligated to return any moneys delivered to the 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 Project, 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 courts of Franklin County, 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 supersede 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 in no way affects 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 will result in this Agreement being declared null and void. 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 No. CIZ12 as of the date first written above.

RECIPIENT


Eric Norenberg, City Manager

City of Oberlin
85 South Main Street
Oberlin, OH 44074


WITNESS

GRANTOR

STATE OF OHIO, OHIO PUBLIC WORKS' COMMISSION

By: 
Michael Miller, 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: Pyle South Amherst Road Bridge Replacement**

b) **SPECIFIC LOCATION: This project takes place at the Pyle South Amherst Road Bridge over Plum Creek in Oberlin and New Russia Township; project limits extend 100 LF north and south of the center of the bridge.**

(Project Location Zip Code - 44074-)

c) **PROJECT TYPE; MAJOR COMPONENTS: This project consists of bridge replacement, including the following: removal of existing structure; installation of clear span structure using cast-in place concrete footings, abutments, and deck with asphalt wearing course; rock channel stabilization; approach improvements; installation of guardrail; extension of bike lanes; maintenance of traffic; seeding & mulching.**

d) **PHYSICAL DIMENSIONAL CHARACTERISTICS: Replacement structure: length, 26 feet; width, 30 feet; height (channel bed to structure), 6 feet 8 inches.**

APPENDIX A - PAGE 2

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>
Final Design	01/30/2014	05/30/2014
Bidding Process	06/09/2014	07/07/2014
Construction	07/21/2014	11/14/2014

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.) **Eric Norenberg/City Manager** to act as the Chief Executive Officer;
- 2.) **Sal Talarico/Finance Director** to act as the Chief Fiscal Officer; and
- 3.) **Jeff Baumann/Public Works 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 **Two Hundred Seventy-Two Thousand, Three Hundred Twenty Dollars (\$272,320)**. This financial assistance shall be provided in the form of a **Grant**. **The OPWC Grant Control No. is CIZ12.**

Joint Funded Project with the Ohio Department of Transportation

In the event that the Recipient does not have contracting authority over project engineering, construction, or right-of-way, the Recipient and the OPWC hereby assign certain responsibilities to the Ohio Department of Transportation, an authorized representative of the State of Ohio. Notwithstanding Sections 4, 6(a), 6(b), 6(c), and 7 of the Project Agreement, Recipient hereby acknowledges that upon notification by the Ohio Department of Transportation, all payments for eligible project costs will be disbursed by the Grantor directly to the Ohio Department of Transportation. A Memorandum of Funds issued by the Ohio Department of Transportation shall be used to certify the estimated project costs. Upon receipt of a Memorandum of Funds from the Ohio Department of Transportation, the OPWC shall transfer funds directly to the Ohio Department of Transportation via an Intra-State Transfer Voucher. The amount or amounts transferred shall be determined by applying the Participation Percentages defined in Appendix D to those eligible project costs within the Memorandum of Funds. In the event that the Project Scope is for right-of-way only, notwithstanding Appendix D, the OPWC shall pay for 100% of the right-of-way costs not to exceed the total financial assistance provided in Appendix C.

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 **26%** of the total Project Cost. The OPWC participation percentage shall be **74%**. 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) <u>PROJECT FINANCIAL RESOURCES:</u>	
i) Local In-kind Contributions	\$0
ii) Local Public Revenues	\$47,840
iii) Local Private Revenues	\$0
iv) Other Public Revenues:	
- ODOT/FHWA	\$0
- OEPA	\$0
- OWDA	\$0
- CDBG	\$0
- Other _____	<u>\$47,840</u>
 SUBTOTAL	 <u>\$95,680</u>
 v) OPWC Funds:	 <u>\$272,320</u>
 SUBTOTAL	 <u>\$272,320</u>
 TOTAL FINANCIAL RESOURCES	 <u>\$368,000</u>
 b) <u>PROJECT ESTIMATED COSTS:</u>	
i) Project Engineering Costs:	
- Preliminary Engineering	\$3,000
- Final Design	\$15,000
- Construction Administration	\$22,000
ii) Acquisition Expenses:	\$0
iii) Construction Costs	\$317,090
iv) Materials Purchased Directly	\$0
v) Permits, Advertising, Legal	\$0
vi) Construction Contingencies	\$10,910
 TOTAL ESTIMATED COSTS	 <hr/> <u>\$368,000</u>

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

Disbursement Request Number: _____

Statement requesting the disbursement of funds from the Ohio Public Works Commission (OPWC) pursuant to Section 6 of the Project Agreement (the "Agreement") executed between the Director of the OPWC (the "Director") and City of Oberlin (093-57834), Lorain County (the "Recipient"), dated July 1, 2014, for the sole and express purpose of financing the capital improvement project defined and described in Appendix A of the Project Agreement (the "Project") and named and numbered as Pyle South Amherst Road Bridge Replacement, CIZ12.

EXPENDITURES PROGRESS:

	(1) AS PER <u>AGREEMENT</u>	(2) PAID PRIOR <u>TO THIS DRAW</u>	(3) AS PART OF <u>THIS DRAW</u>	(4) PAID TO DATE <u>(Column 2 + 3)</u>
A) Project Engineering Costs				
1) Preliminary Engineering	\$3,000	\$ _____	\$ _____	\$ _____
2) Final Design	\$15,000	\$ _____	\$ _____	\$ _____
3) Construction Administration	\$22,000	\$ _____	\$ _____	\$ _____
B) Right-of-Way	\$0	\$ _____	\$ _____	\$ _____
C) Construction Costs	\$317,090	\$ _____	\$ _____	\$ _____
D) Materials Purchased Directly	\$0	\$ _____	\$ _____	\$ _____
E) Permits, Advertising, Legal	\$0	\$ _____	\$ _____	\$ _____
F) Construction Contingencies	\$10,910	\$ <u> N/A </u>	\$ <u> N/A </u>	\$ <u> N/A </u>
G) Totals	\$368,000	\$ _____	\$ _____	\$ _____

FINANCING PROGRESS:

	(1) AS PER <u>AGREEMENT</u>	(2) USED PRIOR <u>TO THIS DRAW</u>	(3) AS PART OF <u>THIS DRAW</u>	(4) USED TO DATE <u>(Column 2 + 3)</u>
H) OPWC Funds	\$272,320	\$ _____	\$ _____	\$ _____
I) Local Share				
1) In-kind Contributions	\$0	\$ _____	\$ _____	\$ _____
2) Public Revenues	\$47,840	\$ _____	\$ _____	\$ _____
3) Private Revenues	\$0	\$ _____	\$ _____	\$ _____
J) Other Public Revenues				
1) ODOT/FHWA	\$0	\$ _____	\$ _____	\$ _____
2) OEPA	\$0	\$ _____	\$ _____	\$ _____
3) OWDA	\$0	\$ _____	\$ _____	\$ _____
4) CDBG	\$0	\$ _____	\$ _____	\$ _____
5) Other _____	\$47,840	\$ _____	\$ _____	\$ _____
K) Total Local and Other Public Revenues	\$95,680	\$ _____	\$ _____	\$ _____
L) Totals (H+K for each column)	\$368,000	\$ _____	\$ _____	\$ _____

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

Subdivision Name: City of Oberlin
Project Name: Pyle South Amherst Road Bridge Replacement
OPWC Control No.: CIZ12

Disbursement Request # _____

Is this the final request for disbursement of OPWC funds? YES NO

If the answer is YES or if this disbursement uses the remainder of your OPWC assistance, your project file will be closed upon processing this request. As described in Appendix D of the Project Agreement, your minimum Percentage Contribution is 26% of the total project cost.

AUTHORIZED CERTIFICATIONS

**All signatures must be original and in color ink.
(Note: Changes to project officials must be submitted in writing.)**

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 _____%.

Jeff Baumann/Public Works 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. The undersigned further certify that:

- 1) Each item of project cost documentation attached hereto is properly payable by the OPWC 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 OPWC;
- 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 _____, 20_____.

Sal Talarico/Finance Director

CFO Phone: () - _____

Eric Norenberg/City Manager

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 the OPWC \$ _____

PAYEE: _____

Address: _____

Phone: () _____ - _____

Federal Tax ID #: _____

2) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____

PAYEE: _____

Address: _____

Phone: () _____ - _____

Federal Tax ID #: _____

3) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____

PAYEE: _____

Address: _____

Phone: () _____ - _____

Federal Tax ID #: _____

4) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____

PAYEE: _____

Address: _____

Phone: () _____ - _____

Federal Tax ID #: _____

OPWC Use Only

Accounting: _____

(initial)

Approval by: _____

(signature)

Auditor: _____

(initial)

Date: ____ / ____ / ____