

ORDINANCE NO. 22 -90BY: John H. Offenberg

An Ordinance authorizing the Mayor and Auditor to execute a grant agreement with the State of Ohio Public Works Commission for the project known as the Mayfield-Ferndale Street Replacement Project, and to advertise for bids and enter into a contract with the lowest and best bidder for construction of the Mayfield-Ferndale Street Replacement Project; to transfer \$42,600.00 from the unencumbered General Fund to the Street Maintenance and Repair Fund, to appropriate the sum of \$42,600.00 from the Street Maintenance and Repair Fund as the City of Bexley's share in the project and to declare an emergency.

WHEREAS, the City of Bexley applied for a grant from the State of Ohio Public Works Commission for the project known as the Mayfield-Ferndale Street Replacement Project; and,

WHEREAS, the City of Bexley was awarded a grant in the amount of \$130,400.00 which is 75.22 percent of the total project; and,

WHEREAS, the City of Bexley's share is \$42,600.00, which is 24.88 percent of the total project; and,

WHEREAS, it is the City of Bexley's intent to undertake the project in the summer of 1990. NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the Mayor and Auditor be, and they hereby are, directed to enter into a grant agreement with the State of Ohio Public Works Commission for the project known as the Mayfield-Ferndale Street Replacement Project.

Section 2. That the Mayor and Auditor be, and they hereby are, authorized and directed after advertisement according to law, to enter into a contract with the lowest and best bidder for the Mayfield-Ferndale Street Replacement Project.

Section 3. That \$42,600.00 should be, and hereby is, transferred from the unencumbered General Fund to the Street Maintenance and Repair Fund.

Section 4. That the sum of \$42,600.00 should be, and hereby is, appropriated from the unencumbered General Fund and transferred to the Street Maintenance and Repair Fund for the purpose of paying the City of Bexley's share of the project cost.

Section 5. That this Ordinance is an emergency necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to begin engineering drawings to permit bidding for the 1990 construction season, and shall go into effect upon its passage and approval by the Mayor.

Passed: Feb 27, 1990

Art K. Ehrmitz
President of Council

Attest: John. Henz
Clerk of Council

Approved: Feb. 27, 1990

D. Madison
David H. Madison
Mayor

*Feb. 27, 1990 - 1st reading
Susp. & Adopt.*

PROJECT AGREEMENT

OHIO STATE ISSUE 2 PROGRAM

Pursuant to Ohio Revised Code 164.05 and Ohio Administrative Code 164-1-21, this Project Agreement is entered into this 10th day of October, 1989 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 "Grantor"), located at 77 South High Street, Suite 1629, Columbus, Ohio 43266-0303, and City of Bexley (hereinafter referred to as the "Recipient"), located at 2242 E. Main Street Bexley Ohio 43209, in respect of the project named Mayfield/Ferndale Place, and as described in Appendix A of this Agreement, (hereinafter referred to as the "Project") to provide an amount not to exceed One Hundred Thirty Thousand Four Hundred dollars (\$130,400) 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.

OPWC Project Control No. CC114

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Director desires to approve the Recipient's request for a grant of financial assistance to finance or reimburse certain of the costs of the Project, such moneys being proceeds of the Series 1988 Bonds which are on deposit in the State Capital Improvements Fund;

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

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

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

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

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

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

"Chief Executive Officer" means the Chief Executive Officer of the Recipient and as designated pursuant to Section 4 hereof or his authorized designee as per written notification to the Director.

"Chief Fiscal Officer" means the Chief Fiscal Officer of the Recipient and as designated pursuant to Section 4 hereof or his authorized designee as per written notification to the Director.

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

"Contractor" means a person who has a direct contractual relationship with the Recipient and is (i) the manufacturer of all or a portion of the Project, or (ii) the provider of labor, materials or services

in connection with the acquisition, construction, reconstruction, expansion, improvement or engineering of the Project, or both.

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

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

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

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

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

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

"Project Manager" means the principal employee or agent of the Recipient having administrative authority over the Project and as designated pursuant to Section 4 hereof or his authorized designee as per written notification to the Director.

"Reimbursing" means the use of funds granted to the Recipient pursuant to Revised Code Section 164.05 as reimbursement to the recipient for funds which had been committed to the Project by the Recipient in advance of an executed Project Agreement and prior to the issuance of the Series 1989 Bonds and in anticipation of funds granted to Recipient pursuant to Revised Code Section 164.05.

"Reimbursing" also means the use of funds granted to the Recipient pursuant to Revised Code Section 164.05 as reimbursement to the Recipient for funds expended subsequent to the execution of this Agreement and exclusively 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.

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

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

Any reference herein to public boards, commissions, departments, institutions, agencies, bodies or entities shall include those succeeding to their functions, duties or responsibilities by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Constitution

of the State or the Act, or to a section, provision or chapter of the Revised Code shall include such section, provision or chapter as from time to time may have been duly amended, modified, supplemented, or superseded. Words of the masculine or feminine gender shall be deemed and construed to include correlative words of the feminine, masculine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement and term "hereafter" means after, and the term "heretofore" means before the effective date of this Agreement.

Section 2. Grant of Financial Assistance. Subject to the terms and conditions contained herein, the Grantor hereby grants to the Recipient from the proceeds of the Infrastructure Bonds in the State Capital Improvement Fund financial assistance as set forth in Appendix C of this Agreement for the sole and express purpose of paying or reimbursing the costs certified to the Grantor under this Agreement for the completion of the Project described in Appendix A of this Agreement.

Section 3. Local Subdivision Contribution. The Recipient shall contribute to the Project (the "Local Subdivision Contribution") the amounts as set forth in Appendix D of this Agreement. The total value of the Local Subdivision Contribution shall be at least equal in amount to the sum of ten (10) percent of the Project's estimated costs acknowledged and designated in Appendix C of this Agreement to be for repair and/or replacement of the Recipient's existing infrastructure facilities, and fifty (50) percent of the Project's estimated costs acknowledged and designated in Appendix C of this Agreement to be for the expansion of the Recipient's existing infrastructure and/or construction of new infrastructure for the Recipient. The Local Subdivision Contribution to the Project shall be for the sole and express purpose of paying or reimbursing the costs certified to the Grantor under this Agreement for the completion of the Project as defined and described in Appendix A of this Agreement.

Section 4. Disbursements.

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

(b) Disbursements to Contractors to Pay Costs of the Project. The Recipient shall require that as work on the Project and as specified in its contract is performed a Contractor shall promptly submit an invoice to the Project Manager, but no more frequently than once every thirty (30) days. Within three (3) Business Days following receipt of such invoice from a Contractor, the Project Manager shall review the invoice and, if found to be accurate, shall certify in writing a notarized 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 4(b). The dollar amount set forth in the Disbursement Request shall be calculated based on the Disbursement Ratio as set forth in Appendix D of this Agreement. Within five (5) Business Days following receipt of the Disbursement Request and all required information and certifications, the Director shall, if such items are deemed by the Director to be accurate and complete, initiate a voucher in accordance with applicable State requirements for the payment of the amount set forth in the Disbursement Request. Upon receipt of a warrant from the Auditor of State drawn in connection with a voucher initiated in accordance with the terms of the preceding sentence, the Director shall forward it, by regular, first class, United States mail to the contractor or other authorized recipient designated in the Disbursement Request.

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

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

(1) If the request is for disbursement to a Contractor, an original invoice and one copy 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, two copies each of a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of such sums have been made by the Recipient in connection with the portion of the Project for which payment is requested;

(3) The Project Manager's certification pursuant to this Section 4(b) of this Agreement;

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

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

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

In the event that any money is disbursed to the Recipient pursuant to this Section 4(b) of this Agreement to pay a portion of an invoice submitted by a Contractor, the Recipient shall expend such money to pay such Contractor for costs of the Project within twenty-four (24) hours after receipt thereof. Recipient shall hold such moneys uninvested pending payment to the Contractor.

(c) Disbursement to Recipient to Reimburse the Recipient for the Costs of the Project. The Chief Fiscal Officer and the Chief Executive Officer shall submit to the Director a Disbursement Request together with the information and certifications required by this Section (4)c). The dollar amount set forth in the Disbursement Request shall be calculated based on the Disbursement Ratio as set forth in Appendix D of this Agreement. Within five (5) Business Days of the receipt of Disbursement Request and all required information and certifications, the Director shall, if such items are deemed by the Director to be accurate, 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 to the recipient designated in the Disbursement Request.

Prior to any disbursement from the State Capital Improvements Fund for the purpose of reimbursing the costs of the Project, the following documents shall be submitted to the Director by the Recipient:

(1) Two copies each of a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of such sums have been made by the Recipient or other persons on its behalf in connection with the Project;

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

(3) An opinion of counsel for the Recipient as to the release and satisfaction of any outstanding obligation of the Recipient to be provided for by the disbursement;

(4) An opinion of Bond Counsel to the Recipient that the reimbursing of the costs of the Project shall not cause the interest on the Infrastructure Bonds to be includable in gross income for purposes of federal income taxation; and

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

Upon receipt of the documents enumerated above, and finding them to be in compliance with the requirements of this Agreement, the Director is authorized and directed to cause the disbursement of moneys from the State Capital Improvements Fund for payment of the identified Project costs. A copy of all such documents submitted to the Director shall be retained by the Director.

As to any moneys disbursed to the Recipient pursuant to this subsection (c), the Recipient shall expend such money solely (i) for the purpose of reimbursing the costs of the Project, or (ii) for purposes in furtherance of Recipient's operation as a Tax-Exempt Organization, and such moneys shall not be used to pay costs which have been previously paid for or reimbursed from the proceeds of tax-exempt bonds or for purposes which involve a Private Business Use.

The Recipient represents that the Project, the costs of which are to be reimbursed, was initially purchased, constructed, installed or acquired by the Recipient no earlier than July 1, 1988, and for which there are records clearly substantiating the Recipient's intent to reimburse equity advances for such portion of the Project with tax-exempt obligations.

(d) Disbursement Submittal Deadlines. The Recipient shall submit no more than one Disbursement Request per calendar month and in accordance with the following submittal deadlines. For Projects having an OPWC Project Number ending in the numerals 1,2 or 3, Recipient Disbursement Requests are due to be received by the Director no later than the first day of the calendar month. For Projects having an OPWC Project Number ending in the numerals 4,5 or 6, Recipient Disbursement Requests are due to be received by the Director no later than the tenth day of the calendar month. For all other Projects, Recipients Disbursement Requests are due to be received by the Director no later than the twentieth day of the calendar month. In the event that the Recipient submits a Disbursement Request contrary to its prescribed submittal deadline, the Director may choose to wait until the next applicable deadline before commencing the five (5) Business Day period within which a voucher is to be initiated.

(e) 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 governmental obligations regardless of whether the interest on such obligations is or was excluded from gross income for federal income tax purposes unless prior approval by the Director is given.

(f) Excess Moneys. In the event that the Recipient determines that it will no longer require all or any portion of the moneys granted pursuant to Section 2 hereof for authorized Project purposes, it shall mail, by first-class mail postage prepaid, a written notice to the Director. Such notice shall state (1) that the Recipient does not intend to use certain moneys granted to it pursuant to Section 2 hereof for authorized Project purposes and (2) the amount of such moneys no longer required. Upon receipt of such notice, the moneys specified therein shall no longer be available to pay costs relating to the Project.

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

Section 5. Retainage. Except as provided in the second sentence of this Section 5, Recipient shall comply in all respects with the requirements of Sections 153.12, 153.13, 153.14, and 153.63 of the Revised Code, or other law applicable to it, including, but not limited to, the provisions thereof, to the extent applicable to Recipient, which require the holding of certain amounts from payments to be made to Contractors and the deposit of such amounts into an escrow account established pursuant to Section 153.63 of the Revised Code. Upon written notification to and approval of the Director, Recipient may use its legally applicable construction contract requirements for the project, including, but not limited to, its legally applicable requirements, if any, for the retaining of certain amounts from payments to be made to contractors in lieu of the requirements of Section 153.12, 153.13, 153.14, and 153.63 of the Revised Code. All such amounts deposited into the escrow account established pursuant to Section 153.63 of the Revised Code if applicable or as required by any other applicable law shall be paid by the Recipient from the Local Subdivision Contribution and shall not be paid from the moneys granted to the Recipient pursuant to Section 2 hereof.

Section 6. 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 pursuant to division (D) of Section 164.05 of the Revised Code and Rule 164-1-21 (B)(6) of the Administrative Code.

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

Section 7. Representations, Warranties and Covenants of Recipient. The 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 the event of bankruptcy and the application of general principles of equity;

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

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

(f) Use of Project.

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

(ii) Management Contracts. The Recipient agrees that from the date hereof until the date on which none of the Series 1988 Bonds remain outstanding (the "Agreement Term"):

(1) The Recipient will not contract with any Private Person to manage the Project or any portion thereof unless all of the following conditions are met: (A) at least 50% of the compensation of the Private Person is based on a periodic, fixed fee that contains no incentive adjustments, and no amount of compensation is based on a share of net profits; (B) the compensation is reasonable in relation to the services performed; (C) the term of the contract does not exceed five (5) years (including any renewal option periods provided for in the contract); (D) if the term of the contract exceeds three (3) years, the Recipient is able to cancel the contract without penalty or cause at the end of each three-year period of the contract; (E) any automatic increases in the periodic, fixed fee may not exceed the percentage increases determined by an external standard set forth in the contract for computing increases; and (F) any new contract with a Private Person which is subject to this subparagraph (f)(ii) will be subject to the requirements of (A) through (F) of this subparagraph (f)(ii)(1); and

(2) If the Recipient is subject to subparagraph (f)(ii)(1) above and it enters into contracts with Private Persons described in subparagraph (f)(ii)(1), and the Governing Body of the Recipient numbers five (5) or more members, no more than one (1) member of the Governing Body of the Recipient may be an employee or member of the Governing Body of the Private Person. If the Governing Body of the Recipient numbers less than five (5), no member of the Governing Body of the Recipient may be an employee or member of the Governing Body of the Private Person. Similarly, if the Governing Body of the Private Person numbers five (5) or more members, no more than one (1) of those

members may be an employee or member of the Governing Body of the Recipient. However, in no event may a member or employee of both the Recipient and Private Person be the Chief Executive Officer or its equivalent of the Recipient or the Private Person. Members of the Governing Body of the Recipient may not own a controlling interest in the Private Person.

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Minority Business Enterprises. Subject to and in accordance with the provisions of Section 164.07(A) of the Revised Code and Rule 164-1-32 of the Administrative Code, Recipient shall comply with the percentage requirements of Division (C)(1) of Section 123.151 and Section 125.081 of the Revised Code in awarding contracts for the Project and shall require compliance by its Contractors with the requirements of Division (C)(2) of Section 123.151 of the Revised Code in awarding subcontracts and purchasing services and materials under those contracts.

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

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

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

Section 8. Progress Reports. The Recipient shall submit to the Grantor, at the Grantor's request, summary reports detailing the progress of the Project pursuant to this Agreement and any additional reports containing such information as the Grantor may from time to time reasonably require. The Recipient shall submit to the Grantor a final narrative report detailing the results of the Project and the expenditure of funds made pursuant to this Agreement. The Recipient shall complete the Project and submit the final narrative report to the Grantor no later than 90 days after completion of the Project.

Section 9. Audit Rights. The Recipient shall, at all reasonable times, provide the Director or his representative access to and a right to inspect all sites and facilities involved in the Project and access to and a right to examine or audit any and all books, documents and records, financial or otherwise, relating to the Project or to ensure compliance with the provisions of this Agreement. The Recipient shall maintain all such books, documents and records for a period of three (3) years after the termination of this Agreement, and such shall be kept in a common file to facilitate audits and inspections. All disbursements made pursuant to the terms of this Agreement shall be subject to all audit requirements applicable to State funds. The Recipient shall ensure that a copy of any final report of audit prepared in connection with the Project, regardless of whether the report was prepared during the pendency of the Project or following its completion, is provided to the Director within ten (10) days of the issuance of the report. The Recipient simultaneously shall provide the Director with its detailed responses to each and every negative or adverse finding pertaining to the Project and contained in the report. Such responses shall indicate what steps will be taken by the Recipient in remedying or otherwise satisfactorily resolving each problem identified by any such finding. If the Recipient fails to comply with the requirements of this Section or fails to institute steps designated to remedy or otherwise satisfactorily resolve problems identified by negative audit findings, the Director may bar the Recipient from receiving further financial assistance under Chapter 164 of the Revised Code until the Recipient so complies or until the Recipient satisfactorily resolves such findings.

Section 10. 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 local subdivision contribution applicable to the Project.

Section 11. Indemnification. Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the Project sufficient to impose upon the Director any of the obligations specified in Section 126.30 of the Revised Code. The Recipient shall indemnify, defend, and hold the Director harmless from liability in case of claim or suit arising from the conduct or management of, or any other acts incidental to the Project during the period of Project execution.

Section 12. Termination. Grantor's obligations under this Agreement shall immediately terminate upon the failure of Recipient to comply with any of the terms or conditions contained herein. Upon such termination, Recipient shall be obligated to return any moneys delivered to Recipient pursuant

to the provisions of this Agreement. In the absence of any such failure, this Agreement shall terminate and the obligations of the parties hereto shall be deemed to be satisfied on the date on which all of the Series 1989 Bonds have been retired.

Section 13. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State.

Section 14. 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 15. Entire Agreement. This Agreement and its Appendices and Attachments attached hereto contain the entire understanding between the parties and supersedes any prior understandings, agreements, proposals and all other communications between the parties relating to the subject matter of this Agreement, whether such shall be oral or written.

Section 16. 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.

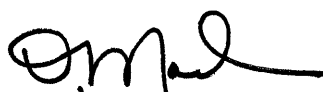
Section 17. Notices. Except as otherwise provided hereunder, any notices required hereunder shall be in writing and shall be deemed duly given when deposited in the mail, postage prepaid, return receipt requested, by the sending party to the other party at the addresses set forth below or at such other addresses as party may from time to time designate by written notice to the other party.

Section 18. No Waiver. If either party hereto at any time fails to require performance by the other of any provision of this Agreement, such failure shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach or default under any provision of this Agreement, be construed to be a waiver of any subsequent breach or default under that provision or any other provision of this Agreement.

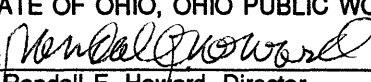
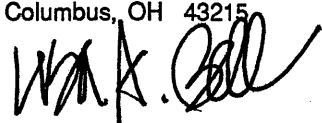
Section 19. Assignment. Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

RECIPIENT


Chief Executive Officer
City of Bexley, Ohio
2242 E. Main Street
Bexley, Ohio 43209
City, State & Zip Code
Deborah E. Foulk
WITNESS

GRANTOR

STATE OF OHIO, OHIO PUBLIC WORKS COMMISSION
By: 
Randall F. Howard, Director
Ohio Public Works Commission
65 East State Street
Suite 312
Columbus, OH 43215

WITNESS

APPENDIX A

PROJECT DESCRIPTION AND COMPLETION SCHEDULE

1) **PROJECT DESCRIPTION:**

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: Mayfield/Ferndale Place**
- b) **SPECIFIC LOCATION: Mayfield and Ferndale Streets City of Bexley (Project Location Zip Code - 43209)**
- c) **PROJECT TYPE; MAJOR COMPONENTS: Rehabilitation of existing curbs and gutters and street wearing surfaces to correct severe cracking and uneven settling .**
- d) **PHYSICAL DIMENSIONAL CHARACTERISTICS: Mayfield Street and Ferndale Place**
- e) **DESIGN SERVICE CAPACITIES:**

2) COMPLETION SCHEDULE:

<u>ACTIVITY</u>	<u>ESTIMATED START</u>	<u>ESTIMATED COMPLETION</u>
a) Final Design	8-1-89	10-1-89
b) Construction Bidding Process	10-22-89	11-15-89
c) Project Construction	1-1-90	7-1-90

NOTE: The information detailed in this Appendix A shall serve as the basis for Project monitoring purposes and for determining Project acceptance upon its completion.

APPENDIX B

PROJECT ADMINISTRATION DESIGNATION

The Project Administration Designation required by Section 4(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.) David H. Madison, Mayor to act as the Chief Executive Officer;
- 2.) John W. Hornberger to act as the Chief Fiscal Officer; and
- 3.) Tom Walker to act as the Project Manager.

Upon any change in such a designation, the Recipient shall immediately provide written notification to the Director.

APPENDIX C

PROVISION OF FINANCIAL ASSISTANCE

As authorized by Section 2 of this Agreement for the sole and express purpose of financing/refinancing 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, financial assistance to the Project is hereby established as follows:

1.) The Grantor hereby grants, subject to the terms and conditions contained in this Agreement, from the State Capital Improvements Fund which constitutes the proceeds of the Infrastructure Bonds, moneys in an amount not to exceed **One Hundred Thirty Thousand Four Hundred** dollars (**\$130,400**).

2.) In determining the amount of Financial Assistance hereby granted to the Recipient, and pursuant to Section 164.05 of the Revised Code, the Grantor also hereby acknowledges and designates that:

a) **One Hundred Seventy Three Thousand** dollars (\$173,000 or **One Hundred (100)** percent of the estimated costs of the Project as set forth and described in Appendix D of this Agreement is for the repair and/or replacement of the Recipient's existing infrastructure facilities; and

b) **No** dollars (**\$0**), or **no (0)** percent of the estimated costs of the Project as set forth and described in Appendix D of this Agreement is for the expansion of the Recipient's existing infrastructure and/or construction of new infrastructure for the Recipient.

APPENDIX D

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

1) LOCAL SUBDIVISION CONTRIBUTION

As required by Section 3 of this Agreement 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 Contribution as amounting to the total value of **Fifty Two Thousand Six Hundred** dollars (**\$42,600**).

2) PROJECT FINANCING AND EXPENSES SCHEME:

The Recipient further designates the Project's financial resources and estimated costs certified to the Grantor under this Agreement for Project as defined and described in Appendix A of this Agreement to consist of the following components:

a) PROJECT FINANCIAL RESOURCES:

i) Local In-kind Contributions	\$
ii) Local Public Revenues	42,600
iii) Local Private Revenues	
iv) Other Public Revenues	
- State of Ohio	
- Federal Programs	
v) OPWC Funds	130,400
TOTAL FINANCIAL RESOURCES	<u>\$173,000</u>

b) PROJECT ESTIMATED COSTS:

i) Project Engineering Costs	
- Preliminary Engineering	\$500
- Final Design	
- Construction Supervision	10,000
ii) Acquisition Expenses	
- Land	
- Right-of-Way	
iii) Construction Costs	162,500
iv) Equipment Costs	
v) Direct Expenses	
vi) Contingencies	
TOTAL ESTIMATED COSTS	<u>\$173,000</u>

c) PREPAID ITEMS:

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

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

d) DISBURSEMENT RATIO:

As established in Section 4(b) of this Agreement, the Recipient shall compute the dollar amounts set forth in its Disbursement Requests, and the Grantor shall disburse financial assistance moneys granted under Section 2 and Appendix C of this Agreement, based upon the following Disbursement Ratio:

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

WHERE:

(A) = Financial Assistance Moneys as set forth at Section 1 of Appendix C;

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

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

$$\frac{130,400}{173,000 - 0}$$

Disbursement Ratio = 75 %