

SUBSTITUTE ORDINANCE NO. 42-99

By: Mark Masser

An Ordinance to appropriate \$48,000.00 from the unencumbered Water Fund for the purpose of constructing the Westland Avenue – Bryden Road water line loop, to authorize the Mayor and Auditor to enter into a contract with the lowest and best bidder for the work, and to declare an emergency.

WHEREAS, Westland Avenue from Bryden Road to Westland Condominiums and Bryden Road from Parkview Avenue to Westland Avenue are not currently issued by the Bexley water distribution system; and,

WHEREAS, it is necessary to install a water main to provide water service and adequate fire protection to that area; NOW THEREFORE,

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

Section 1. That the amount of \$48,000.00 should be and hereby is appropriated from the unencumbered Water Fund for the purpose of constructing the Westland Avenue – Bryden Road water line loop.

Section 2. That the Mayor and Auditor are hereby authorized to enter into a contract with the lowest and best bidder after bidding according to law.

Section 3. That this Ordinance is an emergency measure, necessary for the immediate preservation of the public peace, health and safety, the emergency being the need to provide water to homes under construction, and shall go into effect upon its passage and approval by the Mayor.

Passed: 7/27, 1999

Jeffrey McElroy
President of Council

Attest: *Richard A. Levin*
Clerk of Council

Approved: ~~7/27~~ 7/27, 1999

David H. Madison
David H. Madison, Mayor

7/27/99 42-99 removed from table. Substitute Ord 42-99 third reading passed.

ORDINANCE NO. 42 -99

By: Mark Masser

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WHEREAS, Westland Avenue from Bryden Road to Westland Condominiums and Bryden Road from Parkview Avenue to Westland Avenue are not currently issued by the Bexley water distribution system; and,

WHEREAS, it is necessary to install a water main to provide water service and adequate fire protection to that area; NOW THEREFORE,

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

Section 1. That the amount of \$51,000.00 should be and hereby is appropriated from the unencumbered Water Fund for the purpose of constructing the Westland Avenue – Bryden Road water line loop.

Section 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 1999

President of Council

Attest: _____
Clerk of Council

Approved: _____, 1999

David H. Madison, Mayor

5/24/99 - 1st reading

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street • Post Office Box 1008 • Columbus, Ohio 43216-1008 • Telephone (614) 464-6400 • Facsimile (614) 464-6350 • Cable vorysllp

Arthur I. Vorys
1856-1933
Lowry F. Sater
1917-1918
Augustus T. Seymour
1873-1826
Edward L. Pease
1873-1924

In Washington
1828 L Street, NW
Eleventh Floor
Washington, D.C. 20036-5109

Telephone (202) 467-8800
Facsimile (202) 467-8900

In Cleveland
2100 One Cleveland Center
1375 East Ninth Street
Cleveland, Ohio 44114-1724

Telephone (216) 479-6100
Facsimile (216) 479-6000

In Cincinnati
Suite 2100 • Arlun Two
221 East Fourth Street
Post Office Box 0236
Cincinnati, Ohio 45201-0236

Telephone (513) 723-4000
Facsimile (513) 723-4058

In Alexandria
277 South Washington Street
Suite 310
Alexandria, Virginia 22314

Telephone (703) 549-4282
Facsimile (703) 549-4492

Daniel J. Minor
Direct Dial (614) 464-8260
Facsimile (614) 719-4873
E-Mail - dminor@vssp.com

August 13, 1999

VIA FACSIMILE

Ms. Dorothy Pritchard
Service Director
City of Bexley
2242 East Main Street
Bexley, OH 43209

Re: Water Line Improvements - Westland Avenue and Bryden Road

Dear Dorothy:

Attached is a revised contract (and related documents) between the City of Bexley and Downing Construction Company. As I indicated, these contract documents contemplate a high level of involvement by the consulting engineer. The revisions which I have made have been primarily for the sake of consistency and to specifically reference the plans and specifications (please note blanks in which the date should be inserted). I have also added the contractor's correspondence dated July 21, 1999 to the "Contract Documents." Provided the contractor is willing to sign these documents, they should be adequate for purposes of this project. Should you have any questions, please don't hesitate to call.

Very truly yours,



Daniel J. Minor

DJM/lmh
Enclosures

August 13, 1999

Downing Construction Company
Attn: Timothy Downing
4495 Blacklick East Road
Baltimore, OH 43105

Re: City of Bexley
Westland Avenue and Bryden Road Water Line Improvements

Dear Mr. Downing:

We are pleased to award you the construction project known as the Westland Avenue and Bryden Road Water Line Improvements.

The work consists of the furnishing of all labor, materials and equipment for the construction work required to install a new water main, valves and other appurtenant items within the Westland Avenue and Bryden Road pavement limits in accordance with plans and specifications dated _____.

Enclosed herewith, please find the following:

<u>No. Of Sets</u>	<u>No. Of Sheets</u>	<u>Description</u>
1	3	Water Line Improvement Drawings for Crescent Ridge Homes

The contract shall be completed on the contract forms provided and shall include the Performance Bond, the Affidavits (as applicable), and the Indemnity Agreement.

It is anticipated that the work will begin no later than August 16, 1999. The Contractor shall complete the project within 30 days of such date.

By signing the Contract, the Contractor acknowledges the following as qualifications for and as a basis of acceptance of the contract.

Continued ...

Downing Construction
Westland Avenues and Bryden Road Water Line Improvements

August 13, 1999
Page 2

- ◆ Project work will be constructed on the basis of informal bid.
- ◆ Engineers estimate of quantities is provided for information only. The Contractor shall be solely responsible for determining the required quantities necessary for completion of the work as indicated on the drawings.
- ◆ Compliance with and responsibility for abiding by all OSHA and applicable safety rules, regulations and requirements along with maintenance and supervision thereof.
- ◆ Owner shall be advised of and approve any person, firm or other party to whom it is proposed to award, assign or sublet any part of the work to be done under the contract proposal. Approval by the Owner shall not directly or indirectly release or modify the responsibility of the Contractor for the completion of the work.
- ◆ Failure to inspect the site, to have read and be thoroughly familiar with the plans and contract documents; and failure or omission to examine any form or document shall in no way relieve the Contractor from any obligation with respect to the contract.
- ◆ Compliance with and responsibility for maintenance and protection by reasonable means and method of all work areas, adjacent properties and roadways. Exception: City will provide traffic control.
- ◆ To indemnify and save the Owner harmless from any and all claims for damage to property or injury to any person or persons arising or resulting either directly or indirectly from any and all of the Contractor's and/or his subcontractors' operations in connection with the work herein provided for. The Contractor shall secure and maintain suitable and satisfactory public liability and property damage insurance for him and for all subcontractors. The amount of such public liability or protection insurance shall be in accordance with the Owner's general conditions.
- ◆ To not discriminate against any employee or applicant for employment because of race, color, religion, handicap, age, sex, Vietnam Era and disabled veterans, or national origin.

Continued ...

Downing Construction
Westland Avenues and Bryden Road Water Line Improvements

August 13, 1999
Page 3

Technical, plan or design issues should be directed to David R. Parkinson, P.E.,
of Evans, Mechwart, Hambleton & Tilton, Inc., at (614) 470-9460.

Thank you for your consideration of this Contract.

Sincerely,

CITY OF BEXLEY

Dorothy Pritchard
Service Director

Enclosures: Cover Letter
Contract Documents
General Provisions (20 pages)

CONTRACT

This Contract, made this 19th day of August, 1999, by and between City of Bexley, hereinafter called "Owner" and Downing Construction Company, doing business as (individual, partnership or corporation) hereinafter called "Contractor".

WITNESSETH:

That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the construction of Westland Avenue and Bryden Road Water Line Improvements as further described in the Contract Documents, as hereinafter defined (the "Work").
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work in accordance with the Contract Documents.
3. The Contractor will commence the Work required by the Contract Documents 8-16-99 and will complete the same within 30 calendar days after such date unless the period for completion, if extended otherwise by the Contract Documents, time being of essence to the Owner.
4. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms set forth in the Contract Documents for the sum of \$45,170.00, subject to additions and deductions by Change Order and subject to the direction of the Engineer.
5. The term "Contract Documents" means and includes the following, all of which shall be deemed part of the Contract:
 - (A) The Contract, the Performance Bond, the Affidavit (as to corporate authority), the Affidavit of Personal Property Tax Liability, the Indemnification Agreement, the General Provisions, the Cover Letter, and correspondence from Contractor dated 7/21/99.
 - (B) Final Construction Plans and Specifications dated Aug 19, 1999 and amendments or additions thereto added by the Engineer in accordance with the Contract Documents.
6. The Owner will pay to the Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or cause to be executed by their duly authorized officials, this Agreement in five (number of copies) each of which shall be deemed an original on the date first above written.

CITY OF BEXLEY, OHIO

By: [Signature]
Name: DAVID H. MADISON
Title: MAYOR

(SEAL)

ATTEST:

[Signature]

Name: ANITA S. HUGHES
(Please type) STATE OF OHIO
MY COMMISSION EXPIRES JULY 26, 2003

Title: _____

(Contractor must indicate whether Corporation, Partnership, Company or Individual)

CONTRACTOR:

By: [Signature]

By: [Signature]

THE PERSON SIGNING SHALL, IN HIS OWN HANDWRITING, SIGN THE PRINCIPAL'S NAME, HIS OWN NAME AND TITLE. WHERE THE PERSON SIGNING FOR CORPORATION IS OTHER THAN THE PRESIDENT OR VICE PRESIDENT, HE MUST, BY AFFIDAVIT, SHOW HIS AUTHORITY TO BIND THE CORPORATION.

I, Richard A. Levin, hereby certify that funds for this project, in the amount of \$ 44,510.00, are available, and/or are in the process of collection.

8-19-99
Date

Richard A. Levin
Auditor

DOWNING CONSTRUCTION CO

4495 Blacklick E Rd Baltimore, Ohio 43105

740-862-4292 fax 862-3100

7/21/99

David H Madison
Mayor, City of Bexley
2242 East Main Street
Bexley, Ohio 43209

Re: Water line improvements for Crescent Ridge Homes of Bexley.

Dear Mr. Madison,

Per your request and per meeting held earlier today, we propose the following.

To furnish and install pipe, fittings and gravels, cut pavements, excavate ditch, haul away excavated material, pressure test, chlorinate, and compact granular backfill to top of road all as per the following schedule.

1)	6" Water line	673 ft	\$39,080.00
2)	6" Valves w/ boxes	2 ea.	700.00
3)	3/4" Short services	7 ea.	2,730.00
4)	Fire Hydrant	1 ea.	1,700.00
5)	Abandon Services	1 ea.	<u>300.00</u>

Total for above-----\$44,510.00

Not included are traffic control, pavement replacement nor restoration.

Sincerely,

Timothy Downing
President

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned
Downing Construction Company, as principal, and
Ohio Casualty Insurance Company, as surety, are hereby held and firmly bound
unto the City of Bexley, State of Ohio, in the penal sum of Forty five thousand one hundred sixty
(\$ 45,160.00) Dollars, for the payment of which well and truly to be made, we
hereby jointly and severally bind ourselves, our heirs, executioners, administrators, successors and
assigns.

SIGNED: This 16th day of August, 19 99.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named
principal did on the 16th day of August, 19 99, enter into a Contract
with the City of Bexley Ohio, which said
Contract is made a part of this bond the same as though set forth herein.

NOW, if the said Downing Construction Company shall well and faithfully do and
perform the things agreed by City of Bexley to be done and performed
according to the terms of said Contract, and shall pay all lawful claims of subcontractors, material men,
and laborers for labor performed and materials furnished in the carrying forward, performing or
completing of said Contract, we agreeing and assenting that this undertaking shall be for the benefit of any
material men, or laborer having just claim, as well as the Obligee herein; then this obligation shall be
void; otherwise, the same shall remain in full force and effect, it being expressly understood and agreed
that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount
of this obligation as herein stated.

As the Surety, for value received, hereby stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the Contract or to the work to be performed thereunder or the
specifications accompanying the same shall in any way affect its obligations on this bond, and it does
hereby waive notice of any such change, extension of time, alteration or additions to the terms of the
Contract or to the work or to the Specifications.

The foregoing bond is hereby approved:

August 19, 19 99

I hereby approve the form of the foregoing
contract and bond:

August 19, 19 99

Downing Construction Company

Principal

By:

Ohio Casualty Insurance Company

Surety

By: Dennis E. Adams Attorney-in-fact

1550 Old West Henderson Road

Address of Surety
Columbus, Ohio 43220

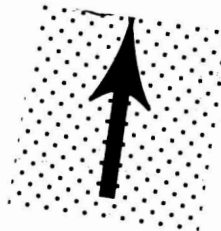
740-862-4292

Telephone Number

[Signature]

Mayor

City Attorney



**SIGN
HERE**

CERTIFIED COPY OF POWER OF ATTORNEY
THE OHIO CASUALTY INSURANCE COMPANY

HOME OFFICE, HAMILTON, OHIO

No. 29-792

Know All Men by These Presents: That THE OHIO CASUALTY INSURANCE COMPANY, in pursuance of authority granted by Article VI, Section 7 of the By-Laws of said Company, does hereby nominate, constitute and appoint:

Clark E. Harmon or Dennis E. Adams or Marilyn F. Davie of **Worthington, Ohio** - - - - - its true and lawful agent and attorney -in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, not exceeding in any single instance

SIX MILLION - - - - - **(\$6,000,000.00** - -) Dollars, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Hamilton, Ohio, in their own proper persons.

The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(s)-in-fact.



In WITNESS WHEREOF, the undersigned officer of the said The Ohio Casualty Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of the said The Ohio Casualty Insurance Company this **22nd** day of **November** 19 **93**.

Lloyd E. Geary
Assistant Secretary

STATE OF OHIO, }
COUNTY OF BUTLER } SS.

On this **22nd** day of **November** A. D. **1993** before

the subscriber, a Notary Public of the State of Ohio, in and for the County of Butler, duly commissioned and qualified, came Lloyd E. Geary, Assistant Secretary of THE OHIO CASUALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposed and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Hamilton, State of Ohio, the day and year first above written.

Cheryl S. Gregory
Notary Public in and for County of Butler, State of Ohio

My Commission expires **August 5, 1997**.

This power of attorney is granted under and by authority of Article VI, Section 7 of the By-Laws of the Company, adopted by its directors on April 2, 1954, extracts from which read:

"ARTICLE VI"

"Section 7. Appointment of Attorney-in-Fact, etc. The chairman of the board, the president, any vice-president, the secretary or any assistant secretary shall be and is hereby vested with full power and authority to appoint attorneys-in-fact for the purpose of signing the name of the Company as surety to, and to execute, attach the corporate seal, acknowledge and deliver any and all bonds, recognizances, stipulations, undertakings or other instruments of suretyship and policies of insurance to be given in favor of any individual, firm, corporation, or the official representative thereof, or to any county or state, or any official board or boards of county or state, or the United States of America, or to any other political subdivision."

This instrument is signed and sealed by facsimile as authorized by the following Resolution adopted by the directors of the Company on May 27, 1970:

"RESOLVED that the signature of any officer of the Company authorized by Article VI Section 7 of the by-laws to appoint attorneys in fact, the signature of the Secretary or any Assistant Secretary certifying to the correctness of any copy of a power of attorney and the seal of the Company may be affixed by facsimile to any power of attorney or copy thereof issued on behalf of the Company. Such signatures and seal are hereby adopted by the Company as original signatures and seal, to be valid and binding upon the Company with the same force and effect as though manually affixed."

CERTIFICATE

I, the undersigned Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing power of attorney, Article VI Section 7 of the by-laws of the Company and the above Resolution of its Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this **16th** day of **Aug** A.D., 19 **99**



Mark J. Schmidt
Assistant Secretary

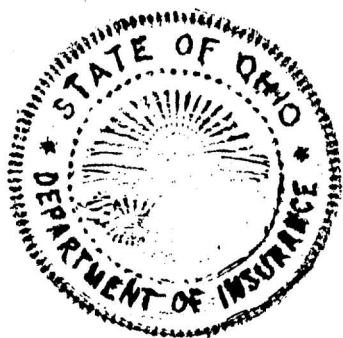
STATE OF OHIO

DEPARTMENT OF INSURANCE

CERTIFICATE OF COMPLIANCE

As DIRECTOR OF INSURANCE OF THE STATE OF OHIO, I do hereby certify the OHIO CASUALTY INSURANCE COMPANY a corporation located at HAMILTON in the State of OHIO has complied in all respects with the laws of this State applicable to it, and is authorized to transact in this State its appropriate business of insurance as described by Section 3929.01 (A), lines:

- (X) 1 Fire
(X) 2 Allied Lines
(X) 3 Farmowners Multiple Peril
(X) 4 Homeowners Multiple Peril
(X) 5 Commercial Multiple Peril
(X) 6 Ocean Marine
(X) 7 Inland Marine
() 8 Financial Guaranty
() 9 Medical Malpractice
(X) 10 Earthquake
(X) 11 Group A & H
() 12 Credit A & H (Group & Individual)
() 13a Collectively Renewable A & H
() 13b Noncancellable A & H
(X) 13c Guaranteed Renewable A & H
() 13d Nonrenewable for Stated Reasons Only
(X) 13e Other Accident Only
(X) 13f All Other A & H
(X) 14 Workers' Compensation (to the extent permitted by law)
(X) 15 Other Liability
() 16a Private Passenger Auto No-Fault (personal injury protection to the extent permitted by law)
(X) 16b Other Private Passenger Auto Liability
() 16c Commercial Auto No-Fault (personal injury protection to the extent permitted by law)
(X) 16d Other Commercial Auto Liability
(X) 17a Private Passenger Auto Physical Damage
(X) 17b Commercial Auto Physical Damage
() 18 Aircraft (all Perils)
(X) 19 Fidelity
(X) 20 Surety
(X) 21 Glass
(X) 22 Burglary & Theft
(X) 23 Boiler & Machinery
() 24 Credit
() 25 Reinsurance Only
() 26 Other (list)



July 1, 1999

J. Lee Covington II
Director of Insurance
State of Ohio
(valid without signature)



The Ohio Casualty Insurance Company

136 North Third Street, Hamilton, Ohio 45025

FINANCIAL STATEMENT — December 31, 1997

ASSETS

1997

Cash	\$ 97,771,818.60
Bonds★	668,102,849.81
Stocks★	1,156,750,724.91
Real Estate (less encumbrances)	22,423,125.21
Premiums in Course of Collection	79,736,534.73
Investment Income Due & Accrued	11,740,514.10
Reinsurance Recoverable	2,575,995.04
Other Assets	\$ 38,298,550.61
Total Assets	\$2,077,400,113.01

LIABILITIES

Reserve for Outstanding Losses	\$ 645,573,676.00
Reserve for Unearned Premiums	228,721,551.04
Reserve for Taxes & Expenses	21,667,804.92
Reserve for Reinsurance	235,111.00
Other Liabilities	129,932,175.26
Total Liabilities	\$1,002,360,795.67
Capital Stock	\$ 4,500,000.00
Net Surplus	\$ 1,070,539,317.34
Policyholders Surplus	\$1,075,039,317.34
Total Liabilities, Capital Stock and Surplus	\$2,077,400,113.01

★ Valuations on basis approved by the National Association of Insurance Commissioners.

STATE OF OHIO

ss:

COUNTY OF BUTLER

Lauren N. Patch, being duly sworn, says: That he is President of The Ohio Casualty Insurance Company of Hamilton, Ohio; that said Company is a corporation duly organized, existing and engaged in business as a Surety by virtue of the laws of the State of Ohio and has duly complied with all the requirements of the laws of said State applicable to said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress of July 30, 1947 (6 U.S.C. 6-13); that to the best of his knowledge and belief and the above statement is a full, true and correct statement of the financial condition of said Company on the 31st day of December, 1997.

Sworn to before me this 1st day of February, 1998.

Barbara Hoffman

Barbara Hoffman, Notary Public
State of Ohio
My Commission Expires September 25, 2002.

Lauren N. Patch

Lauren N. Patch, President

**AFFIRMATION OF CONTRACT
AND BINDING BY OWNER
(City of Bexley, Ohio)**

I hereby approve the form of the foregoing Contract and Bond(s), and execution of same.

CITY OF BEXLEY, OHIO

By: _____

Name

City Attorney

Type of Bond(s) provided:

AFFIDAVIT

(To be filled in and executed if the Contractor is a Corporation)

STATE OF OHIO

ss:

COUNTY OF FRANKLIN

RODERICK TOLIVER, being duly sworn, deposes and says that he or she is Secretary of DOWNING CONST. CO., a corporation organized and existed under and by virtue of the laws of the State of OHIO, and having its principal office at:

4495 BLACKUCK E. RD.
(Number and Street)
FAIRFIELD
(Name of County)
BALTIMORE
(City)
OHIO 43105
(State and Zip Code)

Affiant further says that he is familiar with the records, minute books and by-laws of

DOWNING CONST. CO.
(Name of Corporation)

Affiant further says that TIMOTHY DOWNING PRESIDENT of the corporation is
(Name of Officer) (Title)

duly authorized to sign the Contract for the **Water Line Improvements For Crescent Ridge Homes of Bexley, Westland Avenue & Bryden Road** for said Corporation by virtue of:

BY LAWS
(State whether a provision of by-laws or a resolution of the Board of Directors)

(If by resolution, give date of adoption.)

[Signature]
(Signature)

Sworn to before me and subscribed in my presence this 19 day of August, 1999.

Karen D. Downing
Notary Public

KAREN D. DOWNING
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JAN. 11, 04

Notary Public in and for _____
(County)

AFFIDAVIT OF PERSONAL PROPERTY TAX LIABILITY
(O.R.C. 5719.042)

STATE OF OHIO


SS:

COUNTY OF FRANKLIN

The affiant being first duly sworn states that he or she is the PRESIDENT
(Title)
of Downing Const. Co., and that he or she or Downing Const. Co. (circle one):
(Company Name) (Company Name)

- 1. Was not charged, at the time the bid for the **Water Line Improvements For Crescent Ridge Homes of Bexley, Westland Avenue & Bryden Road** was submitted, with delinquent personal property taxes on the general tax of personal property of any county, in which the taxing district has territory; or
- 2. Was charged, at the time the bid for the **Water Line Improvements For Crescent Ridge Homes Of Bexley, Westland Avenue & Bryden Road** was submitted, with delinquent personal property taxes on the general tax list of personal property of any county, in which the taxing district has territory, and attached hereto is a statement setting forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon.

FURTHER AFFIANT SAYETH NAUGHT.

Downing Const. Co.
Company
By: 
Title: PRESIDENT

Sworn to before and subscribe in my presence this 19 day of August, 1999.

Karen D. Downing
Notary Public

Notary Public in and for _____
(County)

KAREN D. DOWNING
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JAN. 11, 04

INDEMNIFICATION AGREEMENT

WATER LINE IMPROVEMENTS FOR CRESCENT RIDGE HOMES OF BEXLEY

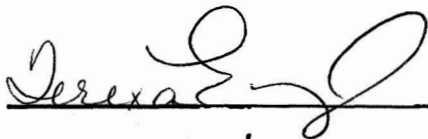
WESTLAND AVENUE & BRYDEN ROAD


To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City of Bexley and its agents, officers and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense:

- (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and
- (2) is caused in whole or in part by any act or omission of the Contractor, or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be constructed to negate, abridge, or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Section.

In any and all claims against the City or any of its officers or agents or employees by any employee of the Contractor, or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

Witnesses:







 Contractor

GENERAL PROVISIONS

GENERAL PROVISIONS

These General Provisions are to be attached to and to be construed as a part of that certain Contract between the City of Bexley, Ohio and Downing Construction Company and relating to the construction of Westland Avenue and Bryden Road Water Line Improvements, as such improvements are further described in the Contract.

Sec. 0.01 DEFINITIONS: Whenever the word "Owner" is used or implied in the Specifications, it shall refer to the City of Bexley, Ohio.

Whenever the word "Council" is used or implied in these Specifications, it shall refer to the Council of the City.

Whenever the word "Director" is used or implied in these Specifications, it shall refer to the Director of Public Service of the City, the Party of the First Part in this Contract.

Whenever the word "Engineer" is used or implied in these Specifications, it shall refer to David R. Parkinson, P.E. of Evans, Mechwart, Hambleton & Tilton, Inc.

Whenever the word "Contractor" is used or implied in these Specifications, it shall refer to Downing Construction Company.

Sec. 0.02 AUTHORITY OF ENGINEER: The Engineer shall have full power and authority to do any or all of the following things:

- (a) Interpret Plans, etc. To interpret the meaning of plans and specifications when necessary and to decide all questions that may arise relative to the fulfillment of this Contract.
- (b) Judge of Quality. To be the sole judge of the quality and fitness of all material and workmanship; to supervise all tests; to inspect all work and material either at the factory, on the grounds or after placing in the ground; and to condemn any work or material which, in his judgment, does not fully conform to the plans and specifications.
- (c) Power to Condemn. He may so condemn faulty work or material at any time prior to the final acceptance of the work, notwithstanding that it may have been previously overlooked or may have become damaged after previous inspections even though it may have been estimated or paid for. Any condemned work shall be promptly taken out and replaced by the Contractor without payment and any condemned material shall be removed from the job by the Contractor and not returned to any part of the work.

- (d) Judge Foundation Material. To judge of the suitability of all foundations and to order unsuitable foundation material excavated to such depth as he considers necessary and the excavation refilled in such manner and with such material as he may deem proper.
- (e) Fix Time and Place of Work. To fix the time and place where work shall be started and carried on, and to order the work carried on simultaneously at two or more points if he deems necessary.
- (f) Length of Trench. To determine the length of trench which shall be kept open at any time.
- (g) Precautions Against Damage. To require additional precautions against damage to the work or any public or private property. This power shall not, however, relieve the Contractor of any responsibility for providing proper safe-guards, or for any such damage or accident.
- (h) Extra Work. To sign and make Change Orders for extra work, when such work is necessary, under the provisions of this Contract.
- (i) Cleaning Up. To order all dirt, rubbish and other material cleaned up immediately after backfilling and to have such cleaning done at the expense of the Contractor in case such order is not complied with within three days.
- (j) Remove Employees. To order the Contractor to remove from the project any employee who is disorderly or disrespectful or who persistently does careless or unsatisfactory work.
- (k) Reject Work. To reject work if any provision of the Contract Documents is being violated.
- (l) Repair After Completion. To notify the Contractor of any break, settlement or failure within one year after the date of the final acceptance of the work, and to repair the same at the expense of the Contractor if not immediately attended to by the Contractor.
- (m) Assistants. To deputize assistants and inspectors to act for him in any of his powers and duties and such assistants and inspectors shall exercise all powers of the Engineer within the limits of the specific authority given by him to each.
- (n) Lay Out Work. To lay out all work, set all stakes both for lines and grade, and locate all structures and appurtenances.

- (o) Amount and Quality. To determine the amount and quality of the several kinds of work which are to be paid for hereunder, including extra work.
- (p) Monthly Estimates. To prepare and sign approximate monthly estimates.
- (q) Final Estimate. To examine the work when notified of its completion and, if fully completed to his satisfaction, to make the necessary measurements and prepare and sign the final estimate.
- (r) Violation of Contract. To notify the Owner in writing of any violation of the Contract.
- (s) Extension of Time. To determine the proper length of any extension of time provided for under this Contract.
- (t) The Engineer, on the basis of on-site observations, shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the Contractor; but does not guarantee the performance of the Contractor and is not responsible for construction means, methods, techniques, sequence or procedures, time of performance, programs, or for any Safety precautions in connection with the construction work. The Engineer is not responsible for the Contractor's failure to execute the work in accordance with the construction contract and shall not be responsible for defects or omissions in the work result of the Contractor's or any Subcontractor's employees or that of any other person and entities responsible for performing any of the work result as contained in the construction contract.

Sec. 0.03 ENGINEER TO GIVE INSTRUCTIONS: It is mutually agreed that wherever in this Contract the words "as directed," "as required," "permitted," "approval" "suitable" "ordered," "proper," "satisfactory," or words of similar import are used, they shall be understood to refer to the instructions and judgment of the Engineer as applied to each particular case.

Sec. 0.04 PLANS AND SPECIFICATIONS: The drawings referred to in the Contract Documents consist of such plans, profiles, details and drawings as may be furnished by the Engineer before or as the work progresses. Work shown on the plans and not mentioned in the specifications, or vice versa, shall be done as if shown on both, and should any actual or apparent conflicts, inconsistencies or errors be found, the Contractor shall notify the Engineer as soon as they are discovered and shall not proceed with any work affected thereby until the matter has been properly clarified or corrected by the Engineer.

Sec. 0.05 WORK TO BE COMPLETE: The intent of the Contract Documents is to provide for the Work to be full and complete in every detail for the purpose designated, and the

Contractor hereby agrees to furnish everything necessary for such construction, notwithstanding any omissions or errors in the Contract Documents.

Sec. 0.06 EXTRA WORK: The Contractor shall do any other work not herein provided for and which may be found necessary in order to carry out and complete more fully the Work when and as ordered in writing by the Engineer. Any such work may be paid for at a price to be mutually agree upon in a Change Order executed by Owner and Contractor.

Sec. 0.07 LINES, GRADES AND ELEVATIONS: Such lines, grades and elevations as may be deemed necessary will be given by the Engineer but this shall not be construed to mean all lines, grades and elevations. The Contractor shall provide all stakes and such other materials and give such assistance as may be required, and the marks shall be carefully preserved. He shall inform the Engineer a reasonable length of time in advance of the time and places at which he intends to work, in order that lines, grades and elevations may be furnished and so that necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer or delay to the Contractor. There shall be no special compensation to the Contractor for the cost of any of the work or delay occasioned by giving lines, grades and elevations or making other necessary measurements or by inspection but such costs shall be considered as having been included in the prices stipulated for doing the work called for in this Contract.

Sec. 0.08 INSPECTION: Whenever any Work is in progress, the Engineer shall inspect the same, and it will be the duty of the Engineer to see that all materials used and work performed shall be strictly in accordance with the Contract Documents.

Sec. 0.09 NOT RELIEVED BY INSPECTION: The inspection of the Work shall not relieve the Contractor from any of his obligations to fulfill his Contract as herein prescribed and defective work shall be made good, and unsuitable materials will be rejected notwithstanding such work and materials have been previously overlooked by the Engineer an accepted or estimated for payment.

Sec. 0.10 ABSENCE OF INSPECTORS: No work shall be done in the absence of an inspection by the Engineer.

Sec. 0.11 COMMENCEMENT AND COMPLETION: The Contractor shall commence work as specified in the "Notice to Contractors". The rate of progress shall be uniform insofar as contiguous work will permit, and such that on or before the time herein specified, the whole work shall have been performed and the restoration completed in accordance with the terms of the Contract.

Sec. 0.12 FAILURE TO COMPLETE ON TIME: In case of default in completing the whole work to be done under this Contract on or before the date herein specified, or on a before a later date to which the time of said completion may have been extended by the Owner the Contractor shall be liable for all expenses incurred by the Owner by reason of such default including all expenses of engineering and inspection after the date set for completion. The

Owner shall have the right to deduct all or any unpaid balance of said expenses from any money due or to become due the Contractor. The amount still owing, if any, after such deduction, shall be paid on demand by the Contractor or his surety. Such payment shall not relieve the Contractor or his surety from any other obligations under this Contract. It is also expressly agreed that the Contractor shall be liable to the Owner for all damages from his failure to complete the work within the time limit fixed.

Sec. 0.13 OLD MATERIAL: All materials removed from old construction and all materials, or articles of value, found in the excavation or on the site of the work shall be brought to the attention of the Engineer; and if he shall so order, shall be the property of the Owner and shall be placed conveniently for removal, if not claimed by the Owner, such material or articles shall be removed and disposed of by the Contractor at his own expense.

Sec. 0.14 PERMITS, LAWS AND REGULATIONS: The Contractor shall keep himself fully informed of all existing and future ordinances or resolutions of the Owner, and of all municipal, state, and national laws in any manner affecting the work herein specified and shall at all times comply with such resolutions or ordinances and laws. The Contractor shall take out all permits legally required at his own expense, and shall pay all fees and charges incident to the prosecution and completion of the work. He shall notify the Chief of the appropriate Fire Department and the Engineer whenever a street or section of a street is about to be closed to traffic; also when it is to be reopened.

Sec. 0.15 NIGHT, HOLIDAY, OR WEEK-END WORK: No work shall be done during the Night or on Week-ends or Holidays, except in case of emergencies and weather related delays encountered during the normal weekly work hours, or when written permission is given.

Sec. 0.16 WRITTEN ORDERS BY THE ENGINEER: The Engineer shall have full authority to reject work when the Contractor refuses to follow written instructions concerning said work when such instructions are not contrary to the Specifications. Any work done subsequent to and contrary to such an order, given in writing by the Engineer, shall be at the Contractor's risk; and the Owner shall be relieved of all claims for payment for same under this Contract.

Sec. 0.17 PUBLIC UTILITIES: The Contractor shall assume complete responsibility for, and make satisfactory arrangements with, the management of all utilities concerned or affected by the construction of the work covered by this Contract. In no case shall the service of any utilities be disrupted or interfered with without the consent of the Owner thereof, and in case any sewer, pipe, conduit, pole line, tract, or other public utility property is damaged or has to be removed, the repair or removal, or removal and reconstruction if required, shall be done by the Owner of the utilities and the Contractor shall pay for the expense thereof, unless herein otherwise provided for.

Sec. 0.18 EXISTING SURFACE, OVERHEAD AND SUB-SURFACE STRUCTURES: An effort has been made to show on the plans such existing sub-surface

structures, except service connections, as may be encountered in connection with the work under this Contract; however, it is understood by both parties hereto that all existing sub-surface, surface and overhead structures are not necessarily shown on the Drawings and those shown are not necessarily correct. The Contractor shall make such investigations as are necessary to determine the extent to which existing sub-surface, surface or overhead structures may interfere with the prosecution of the work contemplated under this Contract.

In order to avoid damages to private sub-surface utility lines and services, as a result of excavating operations, the Contractor shall give advance notice of each line or service crossing to the particular company concerned.

Should the Engineer deem it necessary, during the progress of the work, to move or relocate existing surface, overhead or sub-surface structures because of physical interference with the proposed work or to otherwise facilitate construction, the Contractor shall cause the same to be done at his own cost and expense, unless otherwise ordered or herein provided for. The Owner, however, reserves the right to make minor changes in the location of the proposed structures within the streets, alleys and easements if this is deemed advisable.

Existing surface, overhead or sub-surface structures damaged or destroyed by reason of the Contractor's operations, whether shown on the drawings or not, shall be promptly repaired or replaced in a manner satisfactory to the owners, of the same at the cost and expense of the Contractor.

The Contractor shall not claim, nor shall he be entitled to receive, compensation for damages sustained by reason of the inaccuracy or incompleteness of any of the information given on the drawings or for delays occasioned in moving or relocating any existing surface overhead or sub-surface structure or by reason of his failure to support and maintain such structures as specified.

Sec. 0.19 PROTECTION OF EXISTING STRUCTURES: Special attention is called to the existing structures which are located adjacent to or across the work to be constructed under this Contract. The timbering and the method of excavating shall be such as to prevent any loss of the supporting ground under or around these existing structures or damage to these structures. If directed, the Contractor shall adopt and use such special timbering, methods of excavating or safety precautions as may be necessary or required.

Extreme care shall be taken at all times during construction of the work adjacent to or across the sewers, water mains, gas mains, telephone and electric conduits, and other utilities to the end that they will not be disturbed in any way. Smoking or any kind of open flame shall be prohibited on or about the work during the time any portion of the gas mains are exposed.

The cost of this work shall be included in the price for the various items.

Sec. 0.20 RIGHT-OF-WAY: Where shown on the plans, permanent right-of-way agreements or temporary construction easements, or both, have been obtained or are in the

process of being obtained from the Owner of the property. Any additional temporary construction easements required by the Contractor shall be obtained by him at the Contractor's cost. Whenever work is located in private property, it shall be done in conformity with all agreements between the Owner and the property owner or between the Contractor and the property owner as applicable.

Sec. 0.21 INTERFERENCE WITH TRAFFIC: The Contractor shall so pile up his material as to interfere as little as possible with traffic on the roads, streets, alleys, crossing and sidewalks. When material is piled in gutter or ditches, suitable drains of sufficient size to carry all the storm water flowing in the gutters or ditches shall first be laid. Where the drainage from cross-streets or alleys is interfered with or cut off by reason of the nature of the work, suitable crossings shall be provided for pedestrians. No material shall be piled within 20 feet of any fire hydrant, and a clear way for traffic shall be provided at intersections.

In the event it becomes necessary to close any highway, street, alley or private drive to vehicular traffic, the Contractor shall, at least 24 hours in advance of such closure, notify the occupants of all premises which may be affected thereby.

Sec. 0.22 BARRICADES AND LIGHTING: The Contractor shall place property barricades along and around all excavations and obstructions to traffic where danger exists and shall place and maintain sufficient red lights at night to prevent accidents. If the Engineer is of the opinion that sufficient barricades, warning signs and red lights have not been provided by the Contractor, at or along any of the work, the Engineer may provide such additional barricades, signs and lights as may be deemed necessary and the Contractor shall pay all costs incurred by the Owner in connection therewith. This section and any procedure by the Engineer conforming thereto shall not relieve the Contractor from properly protecting his work or from any of this obligations or responsibilities herein provided.

Sec. 0.23 CONTIGUOUS WORK: The Contractor shall permit the Owner, its agents, contractors for adjoining work, or contractors for additional work on the same site, to construct or install such work as the Owner may desire. Such adjoining or additional work will be constructed or installed with as little hindrance or interference as possible to the Contractor. The Contractor hereby agrees not to interfere with or prevent the performance of any adjoining or additional work by the agent or agents of the Owner. Any dispute which may arise between Contractors in regard to their adjoining work shall be adjusted by the Engineer. Furthermore, no claims for extra payment shall be made as a result of delays which may occur due to work on any contiguous or adjoining work or project.

Sec. 0.24 SANITARY REGULATIONS: Such sanitary regulations as may be prescribed shall be obeyed and followed by the Contractor without extra charge. Suitable sanitary conveniences and plenty of pure water shall be furnished by the Contractor for the use of employees. Offensive or unsanitary conditions will not be permitted and any objectionable matter found or deposited in the trenches or excavations or about the work shall be removed by the Contractor at his own expense.

Sec. 0.25 **OBLIGATION OF CONTRACTOR:** The Contractor shall furnish all the labor, tools, scaffolding, shoring, timbering, bracing, appliances and equipment necessary to properly and safely complete the Work under this Contract; in the manner specified and within the time specified. He shall also provide all necessary machinery and plant for the property and safe execution of the Work under this Contract, and shall cover and protect the Work from damage due to any cause whatsoever.

All necessary day and night watchmen, barricades, lights, warning signs and such other precautions as may be necessary to protect the health and safety of the general public shall be employed, erected and performed by the Contractor who hereby agrees to hold the Owner harmless from any and all claims for damages, costs, expenses, judgments or decrees, resulting from any operations of the Contractor, his sub-contractors, agents or employees. Watchmen, lights, barricades, and warning signs provided or erected by anyone other than the Contractor shall not relieve the Contractor of his responsibility under this section.

The Contractor shall assume the defense of and indemnify the Owner and its officer and agents from all claims relating to labor and material furnished for the work, or to damage to adjacent property or premises, or to the injury of any person or persons by reason of the construction of the work under this contract, or the manner of doing the work, and he shall pay any judgments obtained upon or growing out of any or all such claims.

The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance, including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

Umbrella Excess Liability Insurance to extend existing policies to the required limit will be accepted.

Certificates of Insurance naming the OWNER as additional insured shall be filed with the OWNER prior to commencement of the WORK. These certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least 30 day prior WRITTEN NOTICE has been given to the OWNER.

Sec. 0.26 RESPONSIBILITY OF CONTRACTOR: The Contractor shall assume full responsibility for the Work, shall bear all losses resulting to him on account of the amount or character of the Work, or from any unforeseen delays, obstructions or difficulties which may be encountered, or because the nature of the ground, earth or rock in or on which the Work to be done, is different from what is assumed or was expected, or on account of the weather, floods or other causes: and he shall assume the defense of, and indemnify and save harmless the Owner and its authorized agents from all claims of any kind arising from the performance of this Contract.

Sec. 0.27 REPRESENTATIVE ALWAYS PRESENT: The Contractor shall give his personal supervision to the faithful prosecution of the Work, and shall have a competent representative or foreman on the Work who shall have full authority to act for the Contractor and to supply labor and material immediately and who shall follow without delay all instructions of the Engineer in the prosecution and completion of the Work and every part thereof.

Sec. 0.28 EMPLOY ONLY COMPETENT PERSONNEL: The Contractor shall employ only competent and skillful personnel to do the Work and whenever the Engineer shall inform the Contractor that any person on the Work is, in the Engineer's opinion, incompetent, unfaithful, or disorderly, or is refusing to carry out the provision of the Contract, or who persistently does careless or unsatisfactory work, or uses disrespectful, threatening or abusive language to any official having supervision of the work or to the public, such person shall be removed from the Work, and shall not again be employed on this project without the written consent of the Engineer.

Sec. 0.29 PROPER METHODS OF WORK TO BE USED: If at any time before the commencement of or during the progress of the Work, the materials or appliances used, or to be used, appear to the Engineer to be insufficient or inappropriate for securing the quality of work required, or the required rate of progress, he may order the Contractor to increase their quality and efficiency and improve their character; and the Contractor shall conform to such order; but the failure of the Engineer to demand such increase or improvement shall not release the Contractor from his obligations to secure the quality of work and rate of progress specified. All materials and workmanship where the quantity, dimensions and quality are not shown on the plans, or specified in the specifications, shall be furnished in sufficient dimensions and quantities for the proper executing of the work as directed by the Engineer.

Sec. 0.30 SAFETY REQUIREMENTS AND PRECAUTIONS: The Contractor shall be solely responsible for complying with all federal, state and local safety requirements, together with exercising precautions at all times for the protection of persons (including employees) and property. It is also the sole responsibility of the Contractor to initiate, maintain and supervise all safety requirements, precautions and programs in connections with the Work.

Sec. 0.31 SUSPENSION OF WORK: The Engineer or the Owner reserves the right to suspend the whole or any part of the Work. If such suspension is due to any act or failure on the part of the Contractor, or to any breach of contract on his part, he shall receive no compensation or extension of time.



Should the weather be such that any part of the Work cannot be done in the proper manner with due regard to quality of materials or workmanship, or should such be the case from any other cause, then the Engineer may order such part of the Work to be suspended until a more suitable season, in which case the Contractor shall cover and otherwise sufficiently protect the several parts of the Work so that it will not be injured by the weather or by any other cause or agency. In such case of suspension, the time within which the Contractor is required to complete the Work shall be extended by as many calendar days as the Work was suspended.

Upon any stoppage of the Work for any reason, all material is to be piled up snugly, so as not to impede travel on the sidewalk or traveled way, or the use of fire hydrants, and all rubbish or surplus material is to be removed immediately thereafter from the site of the work by the Contractor. The several parts of the Work are to be covered and otherwise sufficiently protected, so that it will not be injured by the weather or any other cause or agency.

Sec. 0.32 RATE OF PROGRESS: The rate of progress shall be as nearly uniform as practicable and shall be such that all Work under this Contract will be completed within the time herein specified or on or before a later date to which the time of completion may have been extended by the Owner.

If at any time, the Engineer shall be of the opinion that the Work under this Contract is unnecessarily delayed and will not be finished in the prescribed time, he shall so notify the Contractor in writing. If the Contractor fails, within ten (10) days thereafter, to take such measures as will, in the judgment of the Engineer, insure the satisfactory completion of all work under this Contract on or before the date specified, the Owner may then notify the Contractor to discontinue all work under the Contract in accordance with the provisions of the paragraph entitled "Breach of Contract - Surety or Owner to Complete Work," as elsewhere included herein.

Sec. 0.33 EXTENSION OF TIME: If the Contractor is obstructed or delayed in the prosecution or completion of the Work by the neglect, delay, or default of any other contractor for adjoining or contiguous work, or by any damage that may occur to his work by the unusual action of the elements, or by the abandonment of the Work by employees in a general strike, or by any delay on the part of the Owner in doing any Work or furnishing any material which may be herein provided, the Contractor shall have no claim for damages or loss of profits.

If the Contractor is obstructed or delayed as a result of one or more of the reasons mentioned above or for any other reason not herein mentioned and which the Engineer may consider just cause, the Contractor shall be entitled to such extension of the time herein specified, for completion of the Work, as the Owner, upon recommendation of the Engineer, may consider fair and just. The Owner, however, shall be under no obligation to consider any extension of time unless the Contractor has made a request in writing for such extension, within one (1) week immediately following the time when any alleged delays shall have occurred.

Sec. 0.34 STATEMENT OF DAMAGES: If the Contractor claims compensation for any alleged damage, he shall, within one (1) week after the sustaining of such damage, make a written statement to the Engineer of the nature of said damage, and shall on or before the 10th day of the month succeeding that in which such damage shall have been sustained, file with the Engineer an itemized statement of the details and itemized amounts of such claims. Unless such statement is made, his claim for compensation shall be forfeited and invalid, and he shall not be entitled to payment on account of any such damage.

Sec. 0.35 LOSSES: The Contractor shall bear all losses resulting to him on account of the amount or character of the Work, or because any condition encountered is different from what was expected, or on account of the weather, elements or other cause, and, the Contractor hereby waives all claim for damage or loss because of ignorance of conditions on, above or under the ground, or facilities for delivery or handling materials, or any other conditions pertaining to the Work, or on account of any error in the statement of approximate quantities used for comparing bids. It is expressly understood that no attempt has been made to show all underground objects on the plans, and that, if any such are indicated, their location and character is not known to be even approximately correct.

Sec. 0.36 PROTECTION OF PAVED SURFACES: The Contractor shall so conduct his operations as to avoid damages to pavement surfaces. Mechanical equipment with lug or cleat equipped caterpillars will not be permitted on macadam, surface treated, asphalt concrete, or other types of pavement surfaces which may be damaged thereby, unless the lugs or cleats are covered with rubber pads or otherwise protected. Any and all damage resulting from the Contractor's operations shall be satisfactorily repaired and maintained as directed by the Engineer and as herein provided at the expense of the Contractor.

Sec. 0.37 DAMAGE TO PROPERTY: All damage caused by the carrying out of this Contract to any pipes or conduits or other public or private property of any nature whatsoever, whether above or under the ground, including trees and crops, shall be made good to the satisfaction of the owners of the same, at the expense of the Contractor.

Sec. 0.38 ESTIMATED QUANTITIES: The Contractor agrees that the estimated quantities are only for the purpose of comparing, on a uniform basis, the bids offered for the Work under this Contract, and he further agrees that he is satisfied with and will at no time dispute the said estimated quantities as a means of comparing the bids aforesaid; that he will make no claim for anticipated profits or loss of profits or damages because of a difference between the quantities of the various classes of work actually furnished, and the said estimated quantities; and he agrees that the Owner shall not be held responsible if, in the construction of the work, any of the said estimated quantities should be found to be not even approximately correct, and that the Engineer may, without alteration or modification of this Contract, increase, decrease, or omit the amount of any class or portion of the work as may be deemed necessary.

If any error, omission or mis-statement is discovered in the said quantities, the same shall not invalidate this Contract or release the Contractor from any obligations or liabilities herein stipulated or from the execution and completion of the whole or any part of the Work, herein

specified, in accordance with the specifications and plans therefor, and as required by the Engineer at the prices herein agreed upon.

Sec. 0.39 ADDITIONS OR OMISSIONS: The Owner may, without alteration or modification of this Contract, increase, diminish, or omit the Work covered by any item of this Contract. When such item is covered by a unit price the amount actually required will be paid for; if by a lump sum price, the net addition or deduction, representing the actual value of the Work added or dispensed with, shall be agreed upon before the Work is done, and if agreement cannot be reached, the same shall be fixed by arbitration. No claim for loss of anticipated profits or damages shall be made or allowed on account of such changes, and the validity of the Contract or bond shall not be affected thereby.

Sec. 0.40 SUB-CONTRACTORS: The Contractor shall not, without the written permission and approval of the Owner, assign or sub-let any part of the Work to be done under this Contract.

In the event that the Contractor desires to sub-let any part of the Work, he shall first submit to the Owner a statement showing the character of the Work to be sub-let and the party or parties to whom it is proposed to sub-let the same and his or their experience, financial ability, technical and other qualifications for properly carrying out and completing the same and the decision of the Owner as to said qualifications, financial ability, experience and competency shall be final and binding upon both parties hereto.

It is further understood and agreed that such sub-letting, although approved by the Owner, shall not directly or indirectly release or modify the responsibility of the Contractor for the satisfactory and entire completion of the work under this Contract, and each and every part and portion thereof.

In case any party or parties to whom any Work under this Contract shall have been sublet shall disregard the direction of the Engineer or his duly authorized representatives, or shall furnish any unsatisfactory work or shall fail or refuse in any way to conform to any of the conditions of this Contract, then, in that case, upon written order of the Engineer, the Contractor shall require said party or parties in default to discontinue work under this Contract.

Any defective work done by any sub-contractor shall be removed and replaced with work which is satisfactory to the Engineer and without cost to the Owner.

Sec. 0.41 BREACH OF CONTRACT - SURETY OR OWNER TO COMPLETE WORK: If the Contractor fails to commence work under this Contract within the time required, or abandons the Work, or any part thereof, or fails to make such progress as may be required to show reasonable promise of completion within the specified time, or violates any of the conditions of this Contract, or executes the Work in bad faith, or fails to pay in lawful money for labor and material used within a reasonable time, or assigns this Contract or any part thereof without the written consent of the Owner, or if the Contractor becomes bankrupt, or makes a general assignment, or a receiver be appointed for him, the Owner may make a finding to that

effect and so notify the Contractor and the Sureties in writing. The Contractor shall not remove any materials from the work after receiving such notice. If the Contractor fails, within three (3) days thereafter, to correct the conditions set forth in such findings, or fails to continue the Work thereafter in a manner satisfactory to the Owner, the Owner shall notify the Contractor to stop work and shall take possession of the Work and all materials thereon (not including tools, machinery and equipment) and the right of the Contractor to perform, control or supervise the Work and to occupy the ground, shall immediately cease and the Contractor shall receive no further payment except as hereinafter stated. The Contractor shall look after and be responsible for his machinery, tools and equipment.

The Owner shall give notice to the Surety on the Bond of the Contractor that such action has been taken, and the Surety shall thereupon have the right to enter upon and complete the Work and to use all materials found thereon for such purpose. In case said Surety elects to so complete the Work, and, within ten (10) days after receiving notice of the action of the Owner, notify the Owner in writing to that effect, and, within thirty (30) days after receiving such notice, enter upon and proceed with the completion of said Work and carry on the Work with reasonable diligence satisfactory to the Owner and in accordance with this Contract and pay all proper and legal claims for labor and material employed or purchased for the Work, whether by the Contractor prior to the order to stop work or by said Surety subsequent thereto, and all legal obligations of the Contractor under this Contract for which the Surety is liable, then said Surety shall be entitled to receive all further payments due, overdue or to become due for work done by said Contractor or said Surety under this Contract at the prices and under the conditions stated in this Contract, and the Contractor hereby agrees that under such conditions said Surety shall be subrogated to the rights of the Owner in the funds as against any other assignee. Provided, however, that if conditions on any part of the Work are such that immediate work is necessary to protect life or property, or to avoid financial loss, and the Sureties fail to do such work immediately on notice from the Engineer, the Owner may cause such work to be done and charge the same to the Contractor and the Surety.

Should said Surety fail to so notify the Owner that they have elected to complete the Work, or, having so notified the Owner, should said Surety fail to enter upon and proceed with the Work, as hereinbefore stipulated, or to carry out all the obligations of the Contractor under this Contract, the Owner shall notify the Contractor and the Surety in writing to that effect and shall thereupon continue or resume possession of the Work and all materials thereon and all rights of said Surety to possession of the Work or to receive any further payments from the Owner shall cease and the Owner shall complete the Work by Contract or such other method as they deem best and may procure such tools, equipment, labor and material as may be necessary, and charge the cost thereof and all other expenses incident to such completion to the Contractor and the Surety, who shall be credited with the value of the work done at the Contract prices herein stated. On receipt of such notice, the Contractor or the Surety shall remove all tools and equipment from the site of the Work and the Owner shall not in any way be responsible for the same. If such tools and equipment are not removed within ten (10) days after such notice, the Owner shall remove the same and charge the cost of such removal to the Contractor and the Surety. Provided, however, that by written agreement between the Owner the Contractor, and the Surety, the Owner may retain and use the tools and equipment found on the Work or any part

thereof for the purpose of completing the Work, and on such completion and settlement of all obligations by the Contractor and Surety, the Owner shall release such tools and equipment, or the remainder thereof, to the Contractor and the Surety. It is hereby agreed that there shall be no claim against the Owner for any loss or damage of such tools or equipment, whether removed by the Contractor, the Surety, or the Owner, or whether or not used by the Owner.

In case sworn claims for labor performed on the Work are on file or are filed with the Owner or with the Engineer, when or after the Contractor is ordered to stop work and a schedule of such claims furnished to the Contractor and to the Surety, the Owner may pay and charge to the Contractor and to the Surety such claims, or such portions thereof, as are not disputed by the Contractor or the Surety as incorrect or fraudulent within five (5) days after such schedule is furnished to them and such claims or the payment thereof shall not be later contested. The amount of any such claims disputed by the Contractor or the Surety, together with the amount of all other unpaid claims against the Contractor or the Surety filed with the Owner or the Engineer shall be withheld by the Owner from the amount thereafter to be paid to the Contractor and the Surety until such claims are settled by agreement, or litigation. In case the amounts so withheld are not sufficient to pay such claims, the Contractor and the Surety shall protect, defend and save harmless the Owner, its officers and agents, from all loss and damage by reason of such claims.

If, on the completion of the Work, there is a balance due the Contractor, it shall be paid to the Contractor or the Surety, as their interests may appear, under the conditions of this section and as elsewhere herein provided. If the charges against the Contractor exceed the total amount due him, the balance shall be paid to the Owner by the Contractor or his Surety within thirty (30) days after demand is made on them.

Sec. 0.42 PRICES: The Owner agrees to pay, and the Contractor agrees to accept, as full compensation, satisfaction and discharge for all work done and materials furnished, whether mentioned in the Estimated Quantities or not, and also for costs and expenses incurred and loss or damage sustained by reason of the action of the elements or because of the nature of the work or because of any unforeseen obstruction or difficulty encountered in the prosecution of the Work and also for all expenses incurred by, or in consequence of, the suspension of the Work as herein specified, and also for well and faithfully completing the Work and the whole thereof, in accordance with the terms, conditions and provisions of this Contract and the instructions, orders and directions of the Engineer thereunder, and also of maintaining the Work in good condition until the final payment is made and for one (1) year thereafter, except extra work and modifications and supplementary contract which shall be paid for as elsewhere herein provided, a sum of money equal to the amount of the actual work done and material furnished, as determined by the Engineer, under each item listed in the Proposal multiplied by the unit price applicable to each such item as set forth in the Proposal attached hereto.

Sec. 0.43 FINAL ACCEPTANCE AND PAYMENT: The Contractor shall, after all Work has been finished, notify the Engineer, and the Engineer shall, by personal inspection, satisfy himself as to the completion of the work. It is hereby agreed by both parties hereto that the actual date of completion and date of final acceptance for all purposes herein stated, shall be the date of the final estimate. The Engineer shall, as soon as practicable, after all Work has been

finished as required by this Contract and after the inspection by the Engineer specified above, make payment for the Work in the amount of ninety-six percent (96%) of the sum due.

Sec. 0.44 FOUR PERCENT RETENTION: The Contractor hereby further agrees that the Owner is hereby authorized to retain for a period of thirty days subsequent to the date of final acceptance of the Work, out of the money payable to said Contractor under this agreement, the sum of four percent (4%) of the amount of the Contract, and to expend the same in making such repairs of the said Work, or in filling or grading settlements or irregularities of surfaces as may be deemed necessary, in case the same are neglected by the Contractor after reasonable notice, or are a menace to public safety.

Sec. 0.45 MAINTENANCE: The Contractor shall keep the Work in good repair for one (1) year after date of the final acceptance and shall correct and repair promptly during that time, all breaks and failures of whatever description, and all settlement and irregularities of street or ground surfaces, and shall deliver the Work in all respects in good condition at the end of that time; provided, however, that the Contractor shall not be responsible for the maintenance of permanent surfaces replaced by the Owner.

Sec. 0.46 FINAL PAYMENT: Upon expiration of said thirty day period as herein before set forth in Sec. 0.44, the Owner shall, provided all the Work covered by this Contract shall at that time be in good order and all obligations of the Contractor fulfilled, pay the Contractor such part of the four percent (4%) retained as may remain after the expense of making any repairs shall have been deducted therefrom. Provided, that before any final payment shall be made to the Contractor, he may be required to sign a certificate that all claims for material furnished and labor performed have been paid and satisfied in full.

Sec. 0.47 NO WAIVER OF RIGHTS: No inspection, estimate, certificate, payment or acceptance of money, acceptance, possession, extension of time, or any other act except a specific waiver by resolution of the Owner shall operate or be construed as a waiver of any rights of the Owner under this Contract; nor shall any waiver or any breach of any condition of this Contract constitute a waiver of any other breach or condition.

All remedies in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the Owner shall have any and all equitable and legal remedies which it would in any case have.

Sec. 0.48 RELEASE OF LIABILITY: It is hereby agreed that no person or corporation, other than the signer of this Contract as Contractor, or the principals herein named, has any interest hereunder and no claim shall be made or be valid, nor shall the Owner or any official or agent thereof be liable for or be held to pay any money, except as provided herein. The acceptance by the Contractor of the payment of the final estimate shall operate as and shall be a release to the Owner and every officer and agent thereof, from all claims of and liability to the Contractor for anything done or furnished, for or relating to the Work, or for any act or neglect of the Owner, or any person relating to or affecting the work.

Sec. 0.49 DISCRIMINATION BECAUSE OF RACE, ETC.: In connection with the performance of Work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, Vietnam Era and disabled veterans, age, handicap, color or national origin. The aforesaid provision shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or selection for training including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees or applicants for employment, notices to be provided by the contracting office setting forth the provisions of the non-discrimination clause.

The Contractor further agrees to insert the foregoing provisions in all contracts hereunder, except sub-contracts for standard commercial supplies or raw materials.

Sec. 0.50 ALTERATION OF CONTRACT: When, in the opinion of the Owner, it becomes necessary in the prosecution of any Work or improvement under Contract to make alterations or modifications in the Contract, such alterations or modifications shall only be made upon the order of the Owner, but such order shall be of no effect until the price to be paid for the Work and material or both, under the altered or modified Contract, has been agreed upon in writing and signed by the Owner and the Contractor.

No Contractor may recover anything for work or material because of any such alteration or modification unless the Contract is made in such manner, nor shall he be allowed to recover for such work and material, or either, more than the agreed price. The law relating to the requiring of bids and the awarding of contracts for public buildings and improvements so far as it applies, shall remain in full force and effect.

Sec. 0.51 INDEMNIFICATION: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense:

- (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and
- (2) is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

In any and all claims against the Owner or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contract or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned
Downing Construction Company, as principal, and
Ohio Casualty Insurance Company, as surety, are hereby held and firmly bound
unto the City of Bexley, State of Ohio, in the penal sum of Forty five thousand one hundred sixty
(\$ 45,160.00) Dollars, for the payment of which well and truly to be made, we
hereby jointly and severally bind ourselves, our heirs, executioners, administrators, successors and
assigns.

SIGNED: This 16th day of August, 1999.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named
principal did on the 16th day of August, 1999, enter into a Contract
with the City of Bexley Ohio, which said
Contract is made a part of this bond the same as though set forth herein.

NOW, if the said Downing Construction Company shall well and faithfully do and
perform the things agreed by City of Bexley to be done and performed
according to the terms of said Contract, and shall pay all lawful claims of subcontractors, material men,
and laborers for labor performed and materials furnished in the carrying forward, performing or
completing of said Contract, we agreeing and assenting that this undertaking shall be for the benefit of any
material men, or laborer having just claim, as well as the Obligee herein; then this obligation shall be
void; otherwise, the same shall remain in full force and effect, it being expressly understood and agreed
that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount
of this obligation as herein stated.

As the Surety, for value received, hereby stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the Contract or to the work to be performed thereunder or the
specifications accompanying the same shall in any way affect its obligations on this bond, and it does
hereby waive notice of any such change, extension of time, alteration or additions to the terms of the
Contract or to the work or to the Specifications.

The foregoing bond is hereby approved:

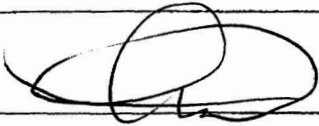
_____, 19____

I hereby approve the form of the foregoing
contract and bond:

_____, 19____

Downing Construction Company

Principal



By:

Ohio Casualty Insurance Company

Surety

740-862-4292

Telephone Number

Mayor

By: *Dennis C. Adams* Attorney-in-fact

1550 Old West Henderson Road

City Attorney

Address of Surety
Columbus, Ohio 43220

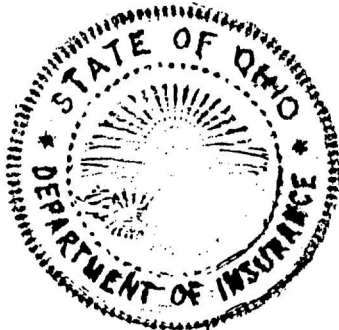
STATE OF OHIO

DEPARTMENT OF INSURANCE

CERTIFICATE OF COMPLIANCE

As DIRECTOR OF INSURANCE OF THE STATE OF OHIO, I do hereby certify the OHIO CASUALTY INSURANCE COMPANY a corporation located at HAMILTON in the State of OHIO has complied in all respects with the laws of this State applicable to it, and is authorized to transact in this State its appropriate business of insurance as described by Section 3929.01 (A), lines:

- (X) 1 Fire
(X) 2 Allied Lines
(X) 3 Farmowners Multiple Peril
(X) 4 Homeowners Multiple Peril
(X) 5 Commercial Multiple Peril
(X) 6 Ocean Marine
(X) 7 Inland Marine
() 8 Financial Guaranty
() 9 Medical Malpractice
(X) 10 Earthquake
(X) 11 Group A & H
() 12 Credit A & H (Group & Individual)
() 13a Collectively Renewable A & H
() 13b Noncancellable A & H
(X) 13c Guaranteed Renewable A & H
() 13d Nonrenewable for Stated Reasons Only
(X) 13e Other Accident Only
(X) 13f All Other A & H
(X) 14 Workers' Compensation (to the extent permitted by law)
(X) 15 Other Liability
() 16a Private Passenger Auto No-Fault (personal injury protection to the extent permitted by law)
(X) 16b Other Private Passenger Auto Liability
() 16c Commercial Auto No-Fault (personal injury protection to the extent permitted by law)
(X) 16d Other Commercial Auto Liability
(X) 17a Private Passenger Auto Physical Damage
(X) 17b Commercial Auto Physical Damage
() 18 Aircraft (all Perils)
(X) 19 Fidelity
(X) 20 Surety
(X) 21 Glass
(X) 22 Burglary & Theft
(X) 23 Boiler & Machinery
() 24 Credit
() 25 Reinsurance Only
() 26 Other (list)



July 1, 1999

J. Lee Covington II
Director of Insurance
State of Ohio
(valid without signature)



The Ohio Casualty Insurance Company

136 North Third Street, Hamilton, Ohio 45025

FINANCIAL STATEMENT — December 31, 1997

ASSETS

1997

Cash	\$ 97,771,818.60
Bonds★	668,102,849.81
Stocks★	1,156,750,724.91
Real Estate (less encumbrances)	22,423,125.21
Premiums in Course of Collection	79,736,534.73
Investment Income Due & Accrued	11,740,514.10
Reinsurance Recoverable	2,575,995.04
Other Assets	\$ 38,298,550.61
Total Assets	\$2,077,400,113.01

LIABILITIES

Reserve for Outstanding Losses	\$ 645,573,676.00
Reserve for Unearned Premiums	228,721,551.04
Reserve for Taxes & Expenses	21,667,804.92
Reserve for Reinsurance	235,111.00
Other Liabilities	129,932,175.26
Total Liabilities	\$1,002,360,795.67
Capital Stock	\$ 4,500,000.00
Net Surplus	\$ 1,070,539,317.34
Policyholders Surplus	\$1,075,039,317.34
Total Liabilities, Capital Stock and Surplus	\$2,077,400,113.01

★ Valuations on basis approved by the National Association of Insurance Commissioners.

STATE OF OHIO

ss:

COUNTY OF BUTLER

Lauren N. Patch, being duly sworn, says: That he is President of The Ohio Casualty Insurance Company of Hamilton, Ohio; that said Company is a corporation duly organized, existing and engaged in business as a Surety by virtue of the laws of the State of Ohio and has duly complied with all the requirements of the laws of said State applicable to said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of Congress of July 30, 1947 (6 U.S.C. 6-13); that to the best of his knowledge and belief and the above statement is a full, true and correct statement of the financial condition of said Company on the 31st day of December, 1997.

Sworn to before me this 1st day of February, 1998.

Barbara Hoffman

Lauren N. Patch

Barbara Hoffman, Notary Public
State of Ohio
My Commission Expires September 25, 2002.

Lauren N. Patch, President