

RESOLUTION NO. 55-89

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Sally Beals ON
THE 18th DAY OF September 1989.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A PROJECT GRANT AGREEMENT BETWEEN THE CITY OF CENTERVILLE AND THE OHIO PUBLIC WORKS COMMISSION FOR ISSUE 2 FUNDING, PROJECT NUMBER CD 114.

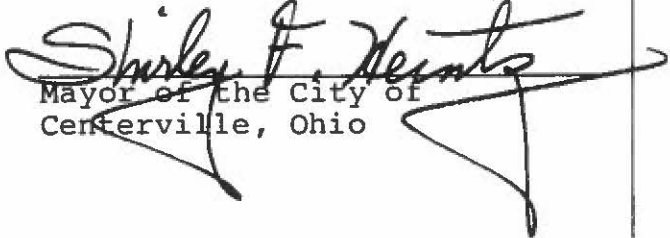
WHEREAS, the City of Centerville has requested issue 2 funding, from the Ohio Public Works Commission, for Wilmington Pike/SR 725 Intersection Improvement, and

WHEREAS, Centerville's request for issue 2 funding has been approved by the Ohio Public Works Commission, Project Number CD 114.

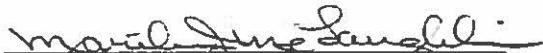
NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES THAT:

SECTION 1. The City Manager is hereby authorized and directed to execute a Project Grant Agreement between the City of Centerville and the Ohio Public Works Commission for Wilmington Pike/SR 725 Intersection Improvement, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

PASSED this 18th day of September, 1989.


Mayor of the City of
Centerville, Ohio

ATTEST:


Clerk of Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 55-89, passed by the Council of the City of Centerville, Ohio, on the 18th day of September, 1989.

Maile J. Laughlin
Clerk of Council

Approved as to form, consistency with existing ordinances, the charter and constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

PROJECT GRANT AGREEMENT

EXHIBIT "A"

INFORMATION

PLEASE READ THE ATTACHED PROJECT GRANT AGREEMENT CAREFULLY. THIS DOCUMENT REPRESENTS THE CONTRACTUAL RELATIONSHIP BETWEEN THE OHIO PUBLIC WORKS COMMISSION AND THE GRANTEE RESPONSIBLE FOR ALL COMPONENTS OF THE DESIGNATED INFRASTRUCTURE PROJECT.

SPECIAL ATTENTION SHOULD BE GIVEN TO EXHIBITS A, B, C AND D LOCATED AT THE END OF THE GRANT AGREEMENT.

2 COPIES OF A FINAL BID AGREEMENT MUST BE SUBMITTED TO THE OHIO PUBLIC WORKS COMMISSION.

THE PROJECT, DOLLAR AMOUNT AND TAX IDENTIFICATION NUMBER FOR EACH VENDOR SHOULD BE CLEARLY STATED.

EXHIBIT A WILL CONTAIN A DETAILED DESCRIPTION OF THE PROJECT AS PROVIDED BY THE GRANTEE. A COPY OF THIS EXHIBIT SHOULD BE RETAINED AS A PERMANENT ATTACHMENT TO THE PROJECT GRANT AGREEMENT.

EXHIBIT B IS TO BE COMPLETED BY THE CHIEF FISCAL OFFICER AND THE CHIEF EXECUTIVE OFFICER FOR THE PROJECT. THIS EXHIBIT IS A DISBURSEMENT REQUEST FORM AND CERTIFICATION STATEMENT. THIS FORM, ATTACHMENT (1), AND THE ORIGINAL INVOICE(S) MUST BE SENT TO THE OHIO PUBLIC WORKS COMMISSION BEFORE PAYMENT CAN BE MADE TO A VENDOR.

EXHIBIT C MUST BE COMPLETED BY THE CHIEF FISCAL OFFICER AND THE CHIEF EXECUTIVE OFFICER FOR THE DISBURSEMENT OF FUNDS FOR THE REFINANCING OR REIMBURSEMENT OF PROJECT COSTS. THIS FORM, ATTACHMENT (2), AND THE ORIGINAL INVOICE(S) MUST BE SENT TO THE OHIO PUBLIC WORKS COMMISSION BEFORE PAYMENT WILL BE MADE TO A VENDOR. EXHIBIT C IS FOR REIMBURSEMENTS ONLY, IN MOST CASES IT WILL NOT BE USED.

EXHIBIT D IS A DESCRIPTION OF THE GRANTEE'S LOCAL SHARE OF THE TOTAL PROJECT COST. THIS EXHIBIT WILL IDENTIFY SOURCES AND USES OF FUNDS FOR IN-KIND CONTRIBUTIONS, OTHER PROJECT FUNDS, AND ENGINEERING COSTS. A COPY OF THIS FORM SHOULD BE RETAINED ALONG WITH THE PROJECT GRANT AGREEMENT.

IF EXHIBIT A OR D IS NOT COMPLETED, PLEASE COMPLETE THEM AND RETURN A COPY OF EACH EXHIBIT TO THE OHIO PUBLIC WORKS COMMISSION.

PLEASE FEEL FREE TO CONTACT THE OHIO PUBLIC WORKS COMMISSION AT (614) 466-0880 WITH ANY QUESTIONS YOU MAY HAVE REGARDING THE USE OF THESE DOCUMENTS. THANK YOU FOR YOUR ASSISTANCE.

PROJECT GRANT AGREEMENT

This Project Grant Agreement is entered into this 18th day of August, 1989 by and between the State of Ohio, acting by and through the Director of Ohio Public Works Commission (hereinafter variously referred to as the "Director" or "Grantor"), located at 77 South High Street, Room 1629, Columbus, Ohio, 43266-0303, and City of Centerville (hereinafter variously referred to as "Grantee"), located at 100 W. Spring Valley Road, Centerville, OH, 45458, in respect of Wilmington Pike/SR 725 Intersection Improvement (hereinafter referred to as the "Project").

WHEREAS, on November 3, 1987, the electors of the State 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, which enacted Sections 164.01 to 164.13 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 the \$120,000,000 State of Ohio Full Faith and Credit General Obligation Infrastructure Improvement Bonds, Series 1988 (the "Series 1988 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, Ohio Constitution, and in Chapter 164, the General Assembly, pursuant to Section 164.02 of the Revised Code, 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, Section 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 Grantee's planned use of the funds, and subsequent approval of the request by the Director;

WHEREAS, as designated in Section 164.03 of the Revised Code, the Grantee is a Local Subdivision located in District 4.

WHEREAS, the Grantee desires to engage in the [acquisition,] [construction,] [reconstruction,] [improvement,] [planning,] [equipping] of the Capital Improvement Project (the "Project") described in Exhibit A attached hereto; and

WHEREAS, the Project described in Exhibit A attached hereto has been duly recommended to the Director pursuant to Section 164.06 of the Revised Code by the District Public Works Integrating Committee located in District 4.

WHEREAS, the Director desires to approve the Grantee's request for a grant of moneys to finance 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, and facilities and equipment of Local Subdivisions related or incidental thereto.

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

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

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations in effect, whether temporary or final, with respect thereto and applicable to the Series 1988 Bonds or the use of the proceeds thereof.

"Contractor" means a person who has a direct contractual relationship with the Grantee 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 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 City Council of the Grantee.

"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 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 Section 141 and 149 of the Code.

"Project Manager" means the Project Manager appointed pursuant to Section 6 hereof or his authorized designee as per written notification to the Director.

"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 149 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 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 the term "hereafter" means after, and the term "heretofore" means before the effective date of this Agreement.

Section 2. Grant of Moneys. Subject to the terms and conditions contained herein, the Grantor hereby grants to the Grantee from the portion of the moneys on deposit in the State Capital Improvements Fund which constitute proceeds of the Series 1988 Bonds, an amount not to exceed Fifty Thousand (\$50,000) for the sole and express purpose of [financing] [refinancing] [reimbursing] the Project as described in Exhibit A attached hereto.

(a) The Grantor hereby designates 81.3 per cent of the estimated project cost to be of repair or replacement of existing infrastructure and further designates 53 per cent, not to exceed ninety per cent, of the repair or replacement cost to be eligible for payments by the Grantor under the grant of funds effected by this Agreement.

(b) The Grantor hereby designates 18.7 per cent of the estimated project cost to be for new or expanded infrastructure and further designates 50 per cent, not to exceed fifty per cent of the new or expanded cost to be eligible for payments by the Grantor under the grant of funds effected by this Agreement.

Section 3. Local Subdivision Contribution. The Grantee shall contribute to the Project (the "Local Subdivision Contribution") (a) at an amount at least equal to Thirty Six Thousand, Three Hundred Sixty (\$36,360) which amount constitutes at least ten per cent (10%) of the costs of the Project approved for repair and replacement of existing infrastructure; and or (b) an amount at least equal to Eight Thousand, Nine Hundred (\$8,900), which amount constitutes at least fifty per cent (50%) of the costs of the Project approved for new or expanded infrastructure.

Section 4. Disbursements.

(a) Disbursements to Pay for the Costs of the Financing of the Project. The Grantee shall require that upon completion of work as specified in its contract a Contractor shall promptly submit an invoice to the Project Manager. Within three (3) Business Days following receipt of such invoice from a Contractor, the Project Manager shall review the invoice and, if found to be accurate, shall certify 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 the invoice, the Project Manager's certification and a Disbursement Request Form and Certification (the "Disbursement Request") in the form of Exhibit B attached hereto and made a part hereof, which Disbursement Request must be signed by both the Chief Fiscal Officer and the Chief Executive Officer. The dollar amount set forth in the Disbursement Request shall be calculated by multiplying the Grant Percentage set forth in Section 2 hereof times the dollar amount set forth in the invoice. Within five (5) Business Days following receipt of the invoice, the certification of the Project Manager and the Disbursement Request, 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 appropriate recipient designated in the Disbursement Request. The Grantee shall not permit its Contractors to submit an invoice of repayment more than once every thirty (30) days or to submit an invoice for work that has not been completed.

All payments made by the Grantor shall be made directly to the Contractor who did the work and originated the invoice, unless the Grantor expressly authorizes Grantee upon presentation of documentation by the Grantee to the Grantor where such a method of disbursement would constitute an unfair hardship to the detriment of the Grantee, 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 Grantee:

(1) If the request is for disbursement to a Contractor, the original invoice and one copy, an invoice for payment submitted to the Grantee by the Contractor which invoice requests payment of such sums in connection with the Project;

(2) If the request is for disbursement to the Grantee, a bill of sale, paid invoice or other evidence satisfactory to the

Director that payment of such sums have been made by the Grantee in connection with the portion of the Project for which payment is requested;

(3) The Project Manager's certification;

(4) A Disbursement Request executed by the Chief Fiscal Officer and the Chief Executive Officer:

(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 State Capital Improvements Fund for payment of the requested costs. All documents submitted to the Director shall be retained by the Director.

As to any money disbursed to the Grantee pursuant to this subsection (a) to pay a portion of an invoice submitted by a Contractor, the Grantee shall expend such money to pay such Contractor for costs of the Project within twenty-four (24) hours after receipt thereof. Grantee shall hold such moneys uninvested pending payment to the Contractor.

(b) Disbursement to Refinance or Reimburse the Grantee for the Costs of the Project. The Chief Fiscal Officer and the Chief Executive Officer shall submit to the Director (i) a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of the sums reflected therein have been made by the Grantee and (ii) a Disbursement Request Form and Certification (the "Disbursement Request") in the form of Exhibit C attached hereto and made a part hereof, which Disbursement Request must be signed by both the Chief Fiscal Officer and the Chief Executive Officer. The dollar amount set forth in the Disbursement Request shall be calculated by multiplying the Grant Percentage set forth in Section 2 hereof times the dollar amount set forth in the bill of sale, paid invoice or other evidence of payment. Within five (5) Business Days of the receipt of the bill of sale, paid invoice or other evidence of payment, and the Disbursement Request, 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 appropriate recipient designated in a Disbursement Request.

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

(1) If the request is for disbursement to the Grantee, a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of such sums have been made by the Grantee or other persons on its behalf in connection with the Project;

(2) A Disbursement Request executed by the Chief Fiscal Officer and Chief Executive Officer;

(3) An opinion of counsel for the Grantee as to the release and satisfaction of the outstanding obligation of the Grantee being refinanced:

(4) A copy of such other certificates, documents and information as the Director may reasonably require, including without limitation, an opinion of counsel to the Grantee stating that the reimbursement or refinancing of the costs of a Project shall not cause the interest on the Series 1988 Bonds to be includable in gross income for purpose of federal income taxation.

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 requested costs. Upon disbursement of such moneys, the documents submitted to the Director shall be retained by the Director.

As to any moneys disbursed to the Grantee pursuant to this subsection (b) the Grantee shall expend such money within

twenty-four (24) hours after receipt to thereof solely (i) for the purpose of reimbursing or refinancing the costs of the Project, or (ii) for purposes in furtherance of Grantee'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.

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

(d) Project Cost Overruns. In the event that the Grantee 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, Grantee 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 Grantee 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 Grantee'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 Grantee's initial application.

Section 5. Retainage. Grantee shall comply in all respects with the requirements of Section 153.12, 153.13, 153.14 and 153.63 of the Revised Code, including, but not limited to, the provisions thereof which require the withholding 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. All such amounts deposited into the escrow account established pursuant to Section 153.63 of the Revised Code shall be paid by the Grantee from the Local

Subdivision Contribution and shall not be paid from the moneys granted to the Grantee pursuant to Section 2 hereof.

Section 6. Project Manager, Chief Fiscal Officer and Chief Executive Officer Designation. The Grantee hereby appoints Norbert Hoffman, City Engineer, to act as the Project Manager. The Grantee hereby appoints William Bettcher, Finance Director, to act as the Chief Fiscal Officer. The Grantee hereby appoints Darryl K. Kenning, City Manager, to act as Chief Executive Officer. Upon any change in such a designation the Grantee shall immediately provide written notification to the Director.

Section 7. Conditions to Grant and Disbursement. The Grantor's obligations hereunder, including its obligation to grant moneys to the Grantee pursuant to the terms of this Agreement, are contingent upon compliance by the Grantee with the following conditions:

(a) The grant of funds herein shall be contingent upon Grantee's acquisition and commitment of the local matching funds 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 Grantee shall provide a description of the manner or mechanisms of its local share of the Project cost pursuant to division (D) of Section 164.05 of the Revised Code and Rule 164-1-21(B) (6) of the Administrative Code in Exhibit D as attached.

(b) Grantee 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 changes in State or Federal law, on the date hereof or at any time hereafter in connection with the grant and disbursement of moneys pursuant to this Agreement, including any amendments to this Agreement.

Section 8. Representations, Warranties and Covenants of Grantee. The Grantee represents, warrants and covenants for the benefit of the Grantor as follows:

(a) Grantee is a Local Subdivision of the State with all the requisite power and authority to operate the

Project under the laws of the State and to carry on its activities as now conducted;

(b) Grantee 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 Grantee, subject to certain exceptions in the event of bankruptcy and the application of general principles of equity:

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

(f) Use of Project.

(i) General. The Grantee 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 Grantee agrees that from the date hereof until the date on which none of the Series 1988 Bonds remain outstanding (the "Agreement Term"):

(1) The Grantee will not contract with any Private Person to manage the Project 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 years (including any renewal option periods provided for in the contract); (D) if the term of the contract exceeds three years, the Grantee 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 Grantee 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 Grantee numbers five or more members, no more than one member of the Governing Body of the Grantee may be an employee or member of the Governing Body of the Private Person. If the Governing Body of the Grantee numbers less than five, no member of the Governing Body of the Grantee 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 or more members, no more than one of those members may be an employee or member of the Governing Body of the Grantee. However, in no event may a member or employee of both the Grantee and Private Person be the Chief Executive Officer or its equivalent of the Grantee or the Private Person. Members of the Governing Body of the Grantee may not own a controlling interest in the Private Person.

(iii) Contracts Concerning Use of Project. The Grantee agrees that during the Agreement Term it will not contract with any Private Person for use of the Project 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 years (including any renewal option periods provided for in a contract); (D) if the term of the contract exceeds three years, the Grantee 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 percentage of the net profits of the Grantee or a division of the Grantee; (B) the compensation is reasonable; (C) the term of the contract does not exceed two years; (D) the Grantee 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 Grantee 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 Grantee numbers five or more members, no more than one member of the Governing Body of the Grantee 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 Grantee. If the Governing Body of the Grantee numbers less than five members, no member may be such Private Person or an employee of such Private Person or a member of its Governing Body.

(iv) The Grantee may depart from any of its agreements contained in subparagraphs (f)(i) through (f)(iii) if it delivers to the Director, at the Grantee's expense, an opinion of Bond Counsel that to do so would not adversely affect the exclusion from gross income for federal income tax purposes of interest in the Series 1988 Bonds.

(g) Use of Proceeds.

(i) The estimated total cost of the Project to be financed, refinanced or reimbursed equals \$95,260 and does not and will not include any cost which does not constitute "Costs of Capital Improvements," as defined in the Act:

(ii) The Grantee represents that the Project, the costs of which are to be reimbursed, was initially purchased, constructed, installed or acquired by the Grantee no earlier than the later of N/A, N/A or except for the portion of the Project purchased, constructed, installed or acquired by the Grantee on N/A for which there are records clearly substantiating the Grantee's intent to reimburse equity advances for such portion of the Project with tax-exempt obligations, and there has been rendered an opinion of Bond Counsel that such refinancing will not adversely affect the exclusion from gross income for federal income tax purposes of Interest on the Series 1988 Bonds;

(iii) No part of the moneys delivered to the Grantee pursuant to Section 2 hereof is being or will be used to refinance any governmental obligations regardless of whether the interest on such obligations is or was excluded from gross income for federal income tax purposes unless there is rendered an opinion of Bond Counsel that such refinancing will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 1988 Bonds;

(iv) All of the Project which is financed by moneys delivered to the Grantee pursuant to Section 2 hereof is owned, or will be owned, by the Grantee or a Tax-Exempt organization;

(v) The Grantee shall not use any of the moneys delivered to it pursuant to Section 2 hereof to pay or reimburse the Grantee 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

(vi) The Grantee may depart from any of its agreements contained in subparagraphs (v) if it delivers to the Director, at the Grantee's expense, an opinion of Bond Counsel that to do so would not adversely affect the

exclusion from gross income for federal income tax purposes of interest on the Series 1988 Bonds.

(h) General Tax Covenant. The Grantee shall not take any action or fail to take any action which would adversely affect the exclusion of interest on the Series 1988 Bonds from gross income for federal income tax purposes.

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

(j) Ohio Products. The Grantee 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 any Capital Improvement Project financed in whole or in part under Chapter 164;

(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, Grantee 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 Capital Improvement Projects to be financed in whole or in part under Chapter 164 and shall require compliance by its Contractors with the requirements of Division (C)(2) of Section 123.151 of the Revised Code in awarding contracts and purchasing services and materials under those contracts.

Grantee 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 123.51 of the Revised Code. Any waiver, reduction, or other modification by the Grantee of the requirements of Section 164.07 shall be explained by a documented written certification to the Grantor and the State Equal Opportunity Employment Coordinator;

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

Section 9. Progress Reports. The Grantee 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 require. The Grantee 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 Grantee shall complete the Project and submit the final narrative report to the Grantor no later than Ninety Days After Completion Date.

Section 10. Audit Rights. The Grantee 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 Grantee shall maintain all such books, documents and records for a period of three (3) years after the end of the Agreement Term, 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 Grantee 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 Grantee 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 Grantee in remedying or otherwise satisfactorily resolving each problem identified by any such finding. If the Grantee 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 Grantee from receiving further financial assistance under Chapter 164 of the Revised Code until the Grantee so complies or until the Grantee satisfactorily resolves such findings.

Section 11. General Assembly Appropriation. The Grantee 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 Grantee further acknowledges and agrees that none of the duties and obligations imposed by this Agreement on the Director shall be binding until the Grantee has complied with all applicable provisions of Chapter 164 of the Revised and Chapter 164-1 of the Administrative Code and until the Grantee has acquired and committed all funds necessary for the local match applicable to the Project.

Section 12. 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 Grantee 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 13. Termination. Grantor's obligations under this Agreement shall immediately terminate upon the failure of Grantee to comply with any of the terms or conditions contained herein. Upon such termination, Grantee shall be obligated to return any moneys delivered to Grantee 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 none of the Series 1988 Bonds remains outstanding.

Section 14. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State.

Section 15. 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 16. Entire Agreement. This Agreement contains 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 17. 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 18. 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:

GRANTOR:

Randall F. Howard, Director
Ohio Public Works Commission
77 South High Street
Room 1629
Columbus, Ohio 43266-0303

GRANTEE:

City of Centerville
100 W. Spring Valley Road
Centerville, OH, 45458

Section 19. 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 20. 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.

GRANTEE

STATE OF OHIO, OHIO PUBLIC
WORKS COMMISSION

Chief Executive Officer

By:



Randall F. Howard
Director

EXHIBIT A

PROJECT DESCRIPTION

A. SPECIFIC LOCATION:

B. PROJECT TYPE; MAJOR COMPONENTS:

C. PHYSICAL DIMENSIONAL CHARACTERISTICS:

D. DESIGN SERVICE CAPACITIES:

NOTE: The requested information shall be of an adequate level of detail to serve as the basis for project monitoring purposes and for determining acceptance upon project completion.

EXHIBIT B

DISBURSEMENT REQUEST FORM AND CERTIFICATION STATEMENT REQUESTING
THE DISBURSEMENT OF FUNDS

STATEMENT REQUESTING THE DISBURSEMENT OF FUNDS FROM THE STATE
CAPITAL IMPROVEMENTS FUND PURSUANT TO SECTION 4(A) OF THE GRANT
AGREEMENT, DATED AS OF _____, 19____, BETWEEN
GRANTEE AND THE GRANTOR

Pursuant to Section 4(a) of the Grant Agreement (the
"Agreement"), between the Director of the Ohio Public
Works Commission (the "Grantor")
and _____ (the "Grantee"), dated as
of _____, 19____, the undersigned Chief
Fiscal Officer (as defined in the Agreement) and the
Chief Executive Officer (as defined in the Agreement) hereby
request the Grantor to pay to the Contractor identified on
Attachment 1 the amount listed on Attachment 1, which amount
equals the product of (i) the cost of the portion of the
Project described on Attachment 1 hereto and (ii) the Grant
Percentage (as defined in the Agreement).

In connection with the foregoing request for disbursements from
said State Capital Improvements Fund, the undersigned hereby
certifies that

(1) The portion of the Project for which payment is requested
is identified in Exhibit A to the Agreement.

(2) Each item is properly payable out of the State
Capital Improvements Funds in accordance with the terms and
conditions of the Agreement and none of the items for which
payment is requested has formed the basis of any payment
heretofore made from the State Capital Improvements Fund.

(3) Each item for which payment is requested hereunder is
or was necessary in connection with the acquisition or
construction of the Project.

(4) The Grantee shall expend any money received by it
pursuant to this Disbursement Request within twenty-four (24)

hours after receipt solely to pay costs that have not previously been paid for or reimbursed from the proceeds of tax-exempt bonds and as to which there is no Private Business Use (as defined in the Agreement).

(5) This statement and attachments hereto shall be conclusive as evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Grantor for its actions taken pursuant hereto.

(6) This document evidences the approval of the undersigned Chief Fiscal Officer and Chief Executive Officer of each payment hereby authorized.

IN WITNESS WHEREOF, the undersigned have executed this Disbursement Request Form and Certification of this _____ day of _____ 19____.

Chief Fiscal Officer

Chief Executive Officer

OPWC Project Control No: CD 114

ATTACHMENT 1

TO STATEMENT REQUESTING DISBURSEMENT FROM STATE CAPITAL
IMPROVEMENTS FUND PURSUANT TO SECTION 4 (a) OF THE GRANT
AGREEMENT

DATED AS OF _____ 19____ BETWEEN THE GRANTOR
AND _____.

OPWC Project Control No: CD 114

DESCRIPTION OF PROJECT

PAYEE

AMOUNT

\$

EXHIBIT C

DISBURSEMENT REQUESTS FORM AND CERTIFICATION STATEMENT
REQUESTING DISBURSEMENT OF FUNDS

FROM THE STATEMENT REQUESTING THE DISBURSEMENT OF FUNDS FROM THE STATE CAPITAL IMPROVEMENTS FUND PURSUANT TO SECTION 4(b) OF THE GRANT AGREEMENT, DATED AS OF _____, 1989, BETWEEN THE GRANTOR AND _____ FOR PURPOSES OF REFINANCING OR REIMBURSING COSTS OF THE PROJECT

Pursuant to Section 4(b) of the Grantee Agreement (the "Agreement"), between the Director the Ohio Public Works Commission (the "Grantor" or "Director") and _____ (the "Grantee"), dated as of _____ 19____, the undersigned Chief Executive Officer (as defined in the Agreement) hereby request the Grantor to pay to the Grantee the amount listed in Attachment 2, which amount equals the product of (i) the cost of the Project described on Attachment 2 hereto being refinanced or for which advances by the Grantee are being reimbursed and (ii) the Grant Percentage (as defined in the Agreement).

In connection with the foregoing requests for disbursements from said State Capital Improvements Fund, the undersigned hereby certifies that:

(1) The portion of the Project for which payment is requested is identified in Exhibit A to the Agreement.

(2) Each item is properly payable out of the State Capital Improvements Fund in accordance with the terms and conditions of the Agreement, and none of the items for which payment is requested has formed the basis for any payment heretofore made from the State Capital Improvements Fund.

(3) Each item for which payment is requested hereunder is or was necessary in connection with the acquisition or construction of the Project.

(4) The Grantee shall expend any moneys received pursuant to this disbursement request within twenty-four

(24) hours after receipt solely (i) for purposes in furtherance of Grantee's operations as a Tax-Exempt Organization (as defined in the Agreement), and (ii) to pay costs that have not previously been paid for or reimbursed from proceeds of tax-exempt bonds, and as to which there is no Private Business Use (as defined in the Agreement).

(5) This statement and all attachments hereto shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Grantor for its actions taken pursuant to hereto.

(6) This document evidences the approval of the undersigned Chief Fiscal Officer and Chief Executive Officer of each payment hereby authorized.

IN WITNESS WHEREOF, the undersigned have executed this Disbursement Request Form and Certification as of the _____ day of _____ 19__.

Chief Fiscal Officer

Chief Executive Officer

OPWC Project Control No: CD 114

ATTACHMENT 2

TO STATEMENT REQUESTING DISBURSEMENT FROM STATE CAPITAL
IMPROVEMENTS FUND PURSUANT TO SECTION 4 (b) OF THE GRANT
AGREEMENT

DATED AS OF _____ 19__ BETWEEN THE GRANTOR
AND _____.

OPWC Project Control No: CD 114

DESCRIPTION OF PROJECT

PAYEE

AMOUNT

\$

EXHIBIT D

PROJECT FINANCING AND EXPENSES SCHEME

A. SOURCES OF FUNDS:

1. Local Public Revenues
2. Local In-Kind Contributions
3. Local Private Funds
4. Other Public Revenues
 - State of Ohio
 - Federal Programs
5. Ohio Public Works Commission

TOTAL SOURCES (A)

B. USES OF FUNDS:

1. Project Engineering Costs
 - Preliminary Engineering
 - Final Engineering
 - Construction Supervision
2. Acquisition Expenses
 - Land
 - Right-of-Way
3. Project Construction Costs
4. Project Equipment Costs
5. Financing Expenses
6. Contingencies

TOTAL USES (B)

C. PREPAID ITEMS:

(Identify those project cost items included in Section B that have already been paid for and with what revenue source from Section A.)

NOTE: Totals for Sections A and B must be exactly equal. Also, these sections shall relate only to the portion of a project's costs that are eligible costs under the State Issue 2 Program's operating definitions. It is very possible that a project will have a much higher actual total cost due to such considerations as local administrative expenses, landscaping, etc. Refer to O.A.C. 164-1-01 and 15, and O.R.C. Section 164.01(F).

In setting forth the detailed information requested, consider this sheet as a format for your actual exhibit D. As submitted, you can take up as many lines as may be needed to provide adequate descriptions for the various items involved.

OPWC Project Control No: CD 114