

**City of Oberlin, Ohio**

**ORDINANCE No. 11-82 AC CMS**

**AN ORDINANCE APPROVING AN AGREEMENT WITH THE OHIO DEPARTMENT  
OF DEVELOPMENT RELATING TO THE ADMINISTRATION OF THE CITY OF  
OBERLIN BUSINESS REVOLVING LOAN FUND PROGRAM  
AND DECLARING AN EMERGENCY**

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

SECTION 1. That the attached proposed agreement between the City of Oberlin and Ohio Department of Development relating to the administration of the City of Oberlin Business Revolving Loan Fund Program is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit:


*“to authorize an agreement within the time constraints provided by the Ohio Department of Development thereby enabling the City to continue to offer a Business Revolving Loan Fund program.”*

and shall take effect immediately upon passage.

PASSED: 1<sup>st</sup> Reading – December 5, 2011(S,E,F)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

ATTEST:

  
BELINDA B. ANDERSON, CMC  
CLERK OF COUNCIL

  
SHARON F. SOUCY  
ACTING PRESIDENT OF COUNCIL

POSTED:12/06/2011

EFFECTIVE DATE: 12/05/2011



December 8, 2011

Michael A. Hiler, Deputy Chief  
Office of Community Development  
Ohio Department of Development  
P.O. Box 1001  
77 South High Street  
Columbus, OH 43216-1001

Re: ***Economic Development Revolving Loan Fund  
Administration Agreement***

Dear Mr. Hiler:

Further to your correspondence dated October 31, 2011 and e-mail correspondence from Office of Community Development staff on November 15, 2011, and November 25, 2011, please be advised that City Council, on December 5, 2011 enacted Ordinance No. 11-82 AC CMS which ordinance authorizes the City Manager to execute the Economic Development Revolving Loan Fund Administration Agreement. In this regard, please find enclosed a copy of the Ordinance No. 11-82 AC CMS and two (2) copies of the Administration Agreement signed by the City. Once those agreements have been signed by your Director, the City would appreciate receiving a fully executed copy of the same for our records.

Should you require anything else on this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Boyle".

Gary Boyle, AICP  
Director of Planning and Development

cc: B. Giffin, OCD  
E. Norenberg, City Manager  
B. Anderson, Clerk of Council  
M. Novakov, OCD

City of Oberlin, Ohio

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ACTING PRESIDENT OF COUNCIL

POSTED:12/06/2011

EFFECTIVE DATE: 12/05/2011

## REVOLVING LOAN FUND ADMINISTRATION AGREEMENT

This Revolving Loan Fund Administration Agreement (the "Agreement") is made and entered into by and between the **State of Ohio, Department of Development**, located at 77 South High Street, P.O. Box 1001, Columbus, Ohio 43216-1001 (the "Grantor"), and the CITY OF CBERLIN, located at 85 S MAIN ST, CBERLIN, OH with F.T.I. Number: FTI 24-60002073 (the "Grantee"), and shall be effective beginning **January 1, 2012** (the "Effective Date") and terminate **December 31, 2014** (the "Termination Date").

### BACKGROUND INFORMATION

A. Grantor, through its Office of Community Development ("OCD"), administers the federal Community Development Block Grant ("CDBG") Program for the State of Ohio.

B. Grantee has been determined to be an eligible recipient of CDBG funds and Grantee has been awarded CDBG funds from the Grantor for use to finance eligible activities that may generate Program Income as defined herein.

C. Grantor has recognized the positive impact on community development initiatives when the use of Program Income is locally determined. Grantor has permitted the establishment of Revolving Loan Funds within local political subdivisions to meet the primary development goals of: 1) encouraging the expansion and stability of the economic base of the designated area of the Revolving Loan Fund; and 2) encouraging increased employment opportunities, particularly for low- and moderate-income persons in designated areas of the Revolving Loan Fund.

D. Grantor desires to have Grantee to administer a Revolving Loan Fund using the CDBG Program Income and Grantee desires to administer a Revolving Loan Fund using the CDBG Program Income for the purposes stated above.

E. Grantee has adopted Resolution (or Ordinance) # 11-82 A. RES on DEC. 5, 2011 (date) authorizing the execution of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### STATEMENT OF THE AGREEMENT

1. Revolving Loan Fund Capitalization. Grantee shall deposit any and all Program Income, as defined herein, derived from CDBG Economic Development Program funds awarded by the Grantor to the Grantee pursuant to the grant awards and/or activities as set forth in this Agreement into a Revolving Loan Fund Account held by the Grantee. For the purposes of this Agreement, Program Income is defined as gross income received by the recipient directly generated from the use of CDBG Economic Development Program funds. Furthermore, the Revolving Loan Fund ("RLF") is defined as a separate fund established for the purpose of accounting for Program Income and of carrying out the specific activities designated in OCD's RLF Policies and Procedures Manual, which, in turn, generate payments to the fund ("RLF Funds") for the continued use in carrying out the same activities.

2. RLF Plan and Use of Funds. Grantee has adopted an RLF Plan that has been previously submitted and approved by the Grantor. Within sixty (60) days after execution of this Agreement Grantee shall update its current RLF Plan and submit the revisions to the Grantor for approval. The updated plan must include the policies and procedures established by Grantor in the OCD RLF Policies and Procedures Manual. The plan must include any designated administrative agent, an established board structure, loan review criteria, and procedures for workouts, delinquencies and defaults. Any changes to the local RLF Plan must be submitted to Grantor for approval. Grantee shall use the RLF Funds solely for the stated purposes set forth in this Agreement, OCD's RLF Policies and Procedures Manual and the Local RLF Plan.

3. Loan Approvals. Grantee shall submit to Grantor a RLF Grant/Loan Review Report Form for each project being considered for RLF assistance. Grantee must receive Grantor's written approval prior to the closing of the Grantee's local RLF economic development loan or infrastructure project.

4. Reporting Requirements. Grantee shall submit semi-annual RLF Reports to Grantor within thirty (30) days after receipt of the June 30 and December 31 semi-annual RLF Report of each year from Grantor. Each RLF Report shall include information for both economic development and housing program income. Grantee shall also file an Annual Other Program Income Report due March 31 of each year in which this Agreement is in effect.

5. Compliance with General CDBG Requirements. Grantee shall comply with all applicable provisions of the statutes, rules, regulations and guidelines as passed by Congress or promulgated by the Secretary of the Department of Housing and Urban Development (HUD).

6. Compliance with Environmental Requirements. Grantee shall comply with the provisions of the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to activities undertaken with CDBG Program Income. Grantee agrees to assume responsibility for preparing Environmental Assessments and Environmental Reviews as required.

7. Prevailing Wage Rates and Labor Standards. Grantee shall comply with Section 570.603; Labor Standards of the Regulations published by HUD for Community Development Block Grants and the labor provisions and apply the federal Davis Bacon Labor Standards where required. In the event that any construction work to be undertaken does not lie within the purview of the Davis-Bacon Act, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in the construction work to be assisted by this Project(s), Grantee will comply with the provisions of Ohio Revised Code Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

8. Acquisition and Relocation. Grantee shall comply with the relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementation regulations set forth in 570.488 and 49 CFR Part 24 as they apply to the activities covered by this Agreement. Grantee shall comply with the process established under the Anti-Displacement and Relocation Plan.

9. National Objective Requirements. Grantee shall ensure that all projects funded as a result of this Agreement meet the national objective of creating or retaining jobs for low-and-moderate income persons. Any projects not meeting this requirement must submit a request for waiver to Grantor. Grantor will review the request to determine if the project meets a CDBG National Objective. Written approval from Grantor must be received prior to the local RLF issuing approval for the project.

10. Suspension and Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other. Grantor reserves the right to suspend the administration of the RLF at any time for failure of the Grantee or its designated administrative agent to administer the local RLF in compliance with the OCD RLF Policies and Procedures Manual which is not attached but incorporated herein by reference. Throughout this Agreement, Grantee and any designated administrative agent must continue to demonstrate administrative capacity in the administration of the RLF. Failure to accurately report on the RLF Funds could result in Grantor placing the RLF Funds on hold or recapturing the RLF Funds. Grantor also reserves the right to request the RLF Funds be returned to the State of Ohio upon failure to comply with the OCD RLF Policies and Procedures Manual.

11. Subrecipient Agreements. Grantee shall not subgrant the Program Income funds to any other local political jurisdiction or non-profit agency. Grantee may contract with a non-profit agency to administer the RLF Funds, but the funds are to remain with the Grantee in the Revolving Loan Fund Account. If there is a change in the designated administrative agent of the RLF Funds, it is the responsibility of the Grantee to notify OCD within fifteen (15) days of any change in status of the designated administrative agent.

12. Term of the Agreement. This Agreement shall begin on the Effective Date and shall terminate on the Termination Date, unless otherwise modified pursuant to Section 20f herein. At least sixty (60) days prior to the Termination Date, Grantor will determine if the Grantee continues to have the capacity to administer the RLF Funds based on the performance of the Grantee and its designated administrative agent. Grantor shall promptly notify Grantee in writing of a determination questioning administrative capacity. Grantor reserves the right to determine if the State of Ohio will renew the

Revolving Loan Fund Administration Agreement to allow the Grantee to administer the RLF, have the Grantee close out the RLF by executing a CDBG Closeout Agreement or recapture the RLF Funds.

13. Records, Access and Maintenance. Grantee shall establish and maintain for at least four (4) years from the expiration of this Agreement, all direct information and such records as are reasonably related to the administration of a RLF as set forth in the OCD RLF Policies and Procedures Manual. Both parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement as provided in Section 10 of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RLF Funds, the Grantee shall, at its own cost and expense, segregate all such records related to the RLF Funds from its other records of operation.

14. Audits and Inspections. Grantee shall, at any time during normal business hours upon written notice and as often as Grantor may deem necessary, make available to Grantor, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Agreement including, but not limited to, records of all contracts, loans and disbursements and shall permit Grantor to audit, examine and make excerpts or transcripts from such records. Grantee shall ensure that the RLF Funds are audited according to the requirements of the ODOD Grant Administration Guidelines-Audits that is not attached hereto, but incorporated by reference.

15. Equal Employment Opportunity. Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. Grantee shall take affirmative action to ensure that applicants are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status or ancestry. Grantee shall, in all solicitations or advertisements or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. Grantee shall incorporate the requirements of this paragraph in all its respective contracts for any of the work prescribed herein (other than subcontractors for standard commercial supplies or raw materials), and the Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

16. Liability. Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of the Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees and agents. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

17. Adherence to State and Federal Laws and Regulations.

a. General. Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement. Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the performance of the work authorized by this Agreement.

b. Ethics. In accordance with Executive Order 2011-03K, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

18. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Grantor of any of its rights hereunder.

19. Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization. If applicable, the Grantee must certify compliance with Ohio Revised Code Section 2909.33.

20. Miscellaneous.

a. Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including, but not limited to matters of validity, construction, effect and performance.

b. Forum and Venue. Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.

c. Entire Agreement. This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.

d. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

1. In the case of the Grantor, to:

Ohio Department of Development  
Office of Community Development  
77 South High Street, P.O. Box 1001  
Columbus, Ohio 43216-1001

2. In the case of the Grantee, to:

Grantee Name: CITY OF CBERLIN

Address: 85 SOUTH MAIN STREET

City, State, Zip: CBERLIN, OHIO 43074

Attention: ERIC NORNBERG

f. Amendments or Modifications. Either party may, at any time during the term of this Agreement, request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for

modification in terms of the regulations and goals relating to the Agreement. Should the parties consent to modification of the Agreement, and then an amendment shall be drawn, approved, and executed in the same manner as the original Agreement.

g. Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h. Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

i. Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned, subcontracted or subgranted by the Grantee without the prior express written consent of the Grantor.

j. Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

k. Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the last day and year set forth below.


GRANTEE:

GRANTOR:

(Name)

State of Ohio  
Department of Development

Christiane Schmenk  
Director  
Ohio Department of Development

By: 

By: \_\_\_\_\_

Printed Name: ERIC R. SEVERS

Printed Name: \_\_\_\_\_

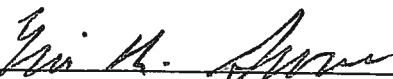
Title: CITY MANAGER

Title: \_\_\_\_\_

Date: 12/7/11

Date: \_\_\_\_\_

Approved as to form:

By: 

Printed Name: Eric R. Severs

Title: Law Director

Date: 12/8/11