

COMMISSIONERS JOURNAL NO. 45 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MAY 27, 2004

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Kristopher W. Jordan, Deborah B. Martin, James D. Ward

**PUBLIC COMMENT**

**RESOLUTION NO. 04-654**

**IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 24, 2004 AS CONTAINED IN THE COUNTY'S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:**

It was moved by Mr. Jordan, seconded by Mr. Ward to approve the resolutions and records of the proceedings from regular meeting held May 24, 2004 as contained in the county's official electronic recordings of the proceedings.

Vote on Motion                Mrs. Martin            Aye     Mr. Jordan            Aye     Mr. Ward            Aye

**RESOLUTION NO. 04-655**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0526 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0526:**

It was moved by Mr. Ward, seconded by Mr. Jordan to approve payment of warrants in batch numbers CMAPR0526, memo transfers in batch numbers MTAPR0526 and Purchase Orders and Vouchers as listed:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
<b>PO's</b>			
Garland Co., Inc.	Courthouse Roof Restoration	40111402-5410	\$ 12,085.00
<b>Increases</b>			
Denise Martin	Public Defender	10011202-5301	\$ 10,000.00
Dispatch Printing Co.	Ad Service	10011108-5312	\$ 10,000.00
Childrens World/Oak Creek	Day Care	22411606-5348	\$ 3,300.00
<b>Vouchers</b>			
Buckeye Ranch	Residential Treatment	22511608-5342	\$ 6,226.00
Kindercare Neverland	Day Care	22411606-5348	\$ 18,959.00
Quality Control Inspection Inc.	Support Services	65111904-5301	\$ 5,104.00

Vote on Motion                Mr. Jordan            Aye     Mrs. Martin            Aye     Mr. Ward            Aye

**RESOLUTION NO. 04-656**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

It was moved by Mr. Jordan, seconded by Mr. Ward to approve the following:

Tim Moore has accepted the Custodian Position with the Maintenance Department; effective date June 2, 2004.

Tonya Bevard has accepted the Social Service Worker III position with the Department of Job and Family Services; effective date June 14, 2004.

Vote on Motion                Mrs. Martin            Aye     Mr. Jordan            Aye     Mr. Ward            Aye

**RESOLUTION NO. 04-657**

**A RESOLUTION RE-AUTHORIZING THE USE OF DELAWARE COUNTY REVOLVING LOAN FUNDS (RLF) TO ASSIST IN FUNDING PRESCRIPTION DRUG PLAN FOR LOW-MODERATE (LMI) RESIDENTS THROUGHOUT THE COUNTY:**

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

WHEREAS, the Ohio Department of Development provides financial assistance to Delaware County under the Community Development Block Grant (CDBG) Program; and

WHEREAS, Delaware County has established a Revolving loan Fund (RLF) capitalized with the payback from CDBG loans to local businesses; and

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WHEREAS, the CDBG/RLF funds may be utilized to assist various projects designed to meet the needs of the community's low and moderate-income households and the National Objectives established for the CDBG Program, and

WHEREAS, Delaware County is in the process of designing a prescription drug benefits program to assist eligible LMI County residents with the increasing cost of prescription drugs; and

WHEREAS, the County desires to initiate the review and approval process for a waiver to utilize RLF funds for such a prescription drugs benefits program from the Ohio Department of Development / Office of Housing & Community Partnerships.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED, by the Board of Commissioners, County of Delaware, State of Ohio as follows:

**Section 1.** That the Delaware County Board of Commissioners hereby authorizes the use of County RLF funds in the amount of up to \$100,000 to fund a proposed Countywide Prescription Drug Benefits Program, conditioned upon the issuance of a waiver from the Ohio Department of Development / Office of Housing & Community Partnerships.

**Section 2.** That the Delaware County Board of Commissioners hereby directs the Director of the County's Economic Development Department to write a Work Plan for a prescription drug benefits program and submit said Work Plan and a waiver request to the Ohio Department of Development / Office of Housing & Community Partnerships requesting approval to utilize the County's RLF to fund a prescription drug benefits plan.

**Section 3.** That this resolution shall take effect and be in force immediately after its passage.

Vote on Motion                      Mr. Jordan              Aye              Mrs. Martin              Aye              Mr. Ward              Aye

**RESOLUTION NO. 04-658**

**IN THE MATTER OF APPROVING THE SANITARY SEWER CAPACITY RETENTION AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND DELAWARE TREATMENT FACILITIES, LLC:**

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

**SANITARY SEWER CAPACITY RETENTION AGREEMENT**

This Agreement executed this 27<sup>th</sup> day of May, 2004, by and between DELAWARE TREATMENT FACILITIES, LLC., an Ohio limited liability company with an address of 140 Olde Worthington Road, Suite 100, Westerville, Ohio 43082 (hereinafter "Developer") and the DELAWARE COUNTY BOARD OF COMMISSIONERS, 101 North Sandusky Street, Delaware, Ohio 43015, a political subdivision duly organized and validly existing under and by virtue of the laws of the State of Ohio (hereinafter the "County").

**RECITALS:**

WHEREAS, the Developer has plans to develop certain areas within Delaware County;  
 WHEREAS, the Developer needs these areas within Delaware County to be served by a centralized wastewater treatment facility;  
 WHEREAS, the Developer is willing to acquire and convey to the County the necessary property for such wastewater treatment facility;  
 WHEREAS; the Developer intends to acquire, improve, lease or sell real property in the County to be served by such wastewater treatment facility;  
 WHEREAS, the Developer is willing to construct such wastewater treatment facility in accordance with the terms and conditions set forth in this Agreement;  
 WHEREAS, the Developer is willing to convey ownership of such wastewater treatment facility, in accordance with the terms and conditions set forth in this Agreement, to the County; and  
 WHEREAS, for good and valuable consideration, the receipt of which are hereby mutually acknowledged, the Developer will retain a certain number of single family equivalent sanitary sewer capacity for the conveyance of such wastewater treatment facility;

NOW THEREFORE, the County and Developer agree to the terms and conditions of the Agreement as follows:

**Section I**

**Scope of Work**

Developer agrees to prepare the drawings, plans, specifications, shop drawings, samples, product submittals and selection of contractors and subcontractors (collectively, the "Design Plans") for a five (5) million gallon per day capacity wastewater treatment facility, or such capacity as mutually agreed upon by the

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Developer and the County in the Design Plans, which capacity is calculated based on 100 gallons per person per day, comprising, without limitation, a sanitary sewer plant, real property, lines, pumps, utility-related fixtures and other related fixtures and appurtenances, (collectively, the "Improvements"). The Design Plans will be incorporated into this Agreement as Addendum A when approved by the County. The Design Plans will reflect that the Improvements will be constructed in three phases, the first of which will be a one and a half (1.5) million gallon capacity, or such capacity as mutually agreed upon by the Developer and the County in the Design Plans, wastewater treatment facility ("Phase One"), including the applicable Improvements thereto. The Improvements will serve the area mutually agreed upon by the parties and described in Addendum B that is attached hereto (the "Service Area").

The Developer shall complete Phase One of the Improvements shown in the Design Plans in accordance with the schedule shown in Addendum A that is attached hereto. Upon completion of Phase One and each successive phase of the Improvements, without breach of the agreements between the County and the Developer, the Developer has a right of first refusal to construct the remaining phases of the Improvements, subject to the County's decision to proceed with such construction and only after the previous phase of the Improvements has reached at least fifty percent (50%) of its capacity. The Parties will amend this Agreement, if necessary, by mutual consent, prior to construction of the remaining phases of the Improvements.

**Section II**

**Commencement and Completion of Work**

A condition precedent to this Agreement is the approval by the County of the design professionals and Design Plans. The Developer may begin construction of Phase One only after acceptance of the Design Plans by the County. The Developer further agrees not to change the Design Plans after acceptance without the prior written approval of the County. If Addendum A is not executed within one year after execution of this Agreement, this Agreement and the Addenda shall become null and void, unless extended by written mutual agreement. If Addendum B is not executed within thirty days after execution of this Agreement, this Agreement and the Addenda shall become null and void, unless extended by written mutual agreement. If the parties are unable to obtain the necessary regulatory approvals and permits for the Improvements, this Agreement and the Addenda shall become null and void, unless extended by mutual written agreement. The Developer waives any and all claims that it may have against the County if the Addenda are not executed or the parties cannot obtain the necessary regulatory approvals and permits.

Except as provided herein, the Developer will complete Phase One within three years from the date of acceptance by the County of the Addendum A to this Agreement. An extension of the time for completion of the work will be given to the Developer by the County, so long as Developer has used its best efforts in completing construction as set forth in this Agreement. The Developer or County will not be in breach of this Agreement in the event of delays caused by Force Majeure, including but not limited to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or circumstances or events not reasonably within the control of the Developer or County.

**Section III**

**Construction Bond**

The Developer will execute a bond, certified check, irrevocable letter of credit or other approved financial warranty in a form acceptable to the County equal to the estimated cost of construction of Phase One to insure faithful performance of this Agreement. Such bond shall expire upon the completion by the Developer, and acceptance by the County, of Phase One. The Developer will execute a similar instrument for each phase thereafter.

**Section IV**

**Location and Easements**

The Developer or the County shall, on behalf of the County, purchase or enter into a mutually agreeable lease or purchase for all land and obtain all easements and rights-of-way necessary to complete construction of the Improvements and shall immediately convey such land, easements and rights-of-way to the County. The County will approve the form of deed of land, easement or right-of-way and will be named grantee therein. If the Developer is unable to obtain such land, easements and rights-of-way, the County may utilize its powers of eminent domain to acquire said land, easements and rights-of-way for the construction of the Improvements including any easements necessary for sanitary line extensions or for the completion of the Improvements. When the deed is recorded after acquisition by the County, the County will grant a license to the Developer so that it may complete the Improvements. The Developer will be responsible for the purchase

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price for any acquisition of land, easements and rights-of-way by the County and for any and all related fees or costs directly related to the Improvements, which are incurred by the County, including transfer and legal fees.

**Section V**

**Service Area**

The County agrees that the Improvements contemplated under this Agreement will be the sole wastewater treatment facility for the Service Area, until the 5 million gallon capacity, or such capacity as mutually agreed upon by the parties, is reached.

**Section VI**

**Compliance With Laws**

Developer shall abide by all legal restrictions and obligations of the locality where the work is located, and any federal, state, county regulation or law applicable to the performance of its obligations under this Agreement, including, but not limited to, any Prevailing Wage Laws. During construction, the Developer shall comply with all rules and regulations of the Sanitary Engineer and shall conform to all procedures established by the County regarding submission of shop drawings, product submittals, construction schedules, inspections and other matters incident hereto.

The Developer shall give all notices and shall solely and without qualification be responsible for all construction methods and results, use of equipment and personnel, safety of employees, officers and other persons, protection of public and private property, and compliance with all federal, state and local laws applicable to the performance of any obligation under this Agreement. The County is not responsible for monitoring the Developer's compliance with any laws and regulations.

**Section VII**

**Utilities**

Developer shall, at its expense, obtain all necessary utility services incident to the construction and continued operation of the Improvements. The County may direct the Developer to purchase any equipment related to the utility services that it deems necessary and appropriate, and that Developer will convey and dedicate such equipment to the County pursuant to Section XI of this Agreement. If the County believes that it can obtain more favorable utility rates than those obtained by the Developer, the County will obtain all necessary utility services and the Developer will reimburse the County for any utility user charges through construction until the County accepts dedication of the Improvements for operation and maintenance. The utility user charges shall be paid by Developer throughout construction until the County accepts dedication of the Improvements for operation and maintenance. Developer shall not be responsible for user charges for such utility services provided after acceptance of the dedication by the County.

**Section VIII**

**Engineer and County Inspections and Quality Control**

The Developer shall have a competent representative, as determined by the County, who is familiar with the project on site during construction. The representative shall be capable of reading the approved Design Plans. The Developer shall give the County timely notice of readiness of the Improvements for inspections, tests or approvals. The County and its representatives have complete access to the construction site at all times prior to dedication and conveyance and may require the Developer to perform any inspections, tests or approvals they deem necessary during construction and at any time prior to dedication and conveyance.

The County shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding the County against work by the Developer that does not conform to the requirements of this Agreement. At any time, if the County determines that construction is not proceeding pursuant to the Design Plans, it may provide verbal or written notice that construction be stopped until the Developer repairs or modifies any portion of the Improvements not acceptable to the County. The County may, within seven day's verbal or written notice to the Contractor, correct and remedy any deficiency in construction. To the extent necessary to complete corrective and remedial action, the County may exclude the Developer and its contractors and subcontractors, from the construction site, take possession of any tools, appliances, construction equipment and machinery at the construction site and incorporate in the work any materials and equipment stored at the site or elsewhere. In the event the County exercises the rights and remedies specified in this section, the County will be entitled to an appropriate decrease in sewer tap credits and unlimited remedies, including any direct, indirect and consequential cost of the County relating to exercising its rights and remedies hereunder.

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**Section IX**

**Fees and Taxes**

The County agrees that it will waive all sanitary sewer inspection fees to be paid by the Developer as required by the Sanitary Engineer for the Improvements. The Developer is responsible for all other inspection fees, construction permits and licenses required to build the Improvements and will pay all other taxes, charges and inspection fees necessary to build the Improvements. After acceptance of the Design Plans, the Developer is not responsible for any unforeseen fees or costs relating to Phase One of the Improvements, except as provided in Section XV of this Agreement.

**Section X**

**Liability and Indemnification**

From the execution of this Agreement until conveyance and dedication of the Improvements to the County, the Developer will properly safeguard against any or all damages or injury to the public and to any contractor, subcontractor, officer, employee or agent of the Developer and shall be responsible for any damage or injury arising from or relating to its performance under this Agreement. Developer shall indemnify and save harmless the County and its officials, employees or agents from all claims, suits, actions and proceedings for damages, including consequential and incidental damages to persons or property, costs, expenses and attorneys' fees that arise from or are sustained during the construction of the Improvements as a consequence of any action or omission of the County or the Developer, or any contractor, subcontractor, officer, employee or agent of Developer or from any material, method or explosives used by Developer in the completion of said construction.

Except for the consideration to be provided to the Developer hereunder, the County will not have any obligation to pay or cause payment to any contractor, subcontractor, supplier or any other persons or organizations furnishing or performing work in connection with the Improvements.

**Section XI**

**Conveyance and Dedication**

Immediately following completion of construction, Developer shall convey and dedicate the Design Plans and Phase One of the Improvements, including all and any real or personal property, rights, easements, privileges, and appurtenances comprised therein, to the County, free of any and all liens, mortgages, claims and encumbrances thereto. The Developer shall similarly convey and dedicate every other phase of the Improvements constructed by the Developer. For each phase, upon certification in writing from Developer and the County that all construction is completed in accordance with the Design Plans, and final inspection by the County, the County shall, by Resolution, accept such dedication and shall thereafter assume all responsibility for the operation and the maintenance of the Improvements. The County shall be responsible for damages to person or property sustained as a consequence of any action or omission of the County, its officers, contractors, employees or agents or as a consequence of the negligence of the County, its officers, contractors, employees or agents in the operation and management of the Improvements following the acceptance of the dedication.

**Section XII**

**Warranty**

Developer, for a period of one (1) year after conveyance and dedication of each phase of the Improvements by the County as set forth in Section XI herein, shall be responsible for defective materials and workmanship. All materials used in construction of the Improvements will be of good quality and new, unless specifically provided in the plans, specifications, shop drawings and product submittals. All warranties for equipment installed as part of the construction shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the dedication. Upon conveyance and dedication, the Developer will assign any warranties that it has received in connection with construction to the County.

**Section XIII**

**Final Cost Statement**

Developer shall, within thirty (30) days following completion of construction of each phase, furnish to the County an itemized statement identifying all expenditures made in constructing the Improvements. Said statement shall also be accompanied by an affidavit from an officer of Developer stating that all material and labor costs have been paid, unless Developer is then disputing some or all of such costs with its contractors or materialmen, in which event Developer will furnish the affidavit promptly after resolution of such dispute. Developer shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements. Developer shall keep, during construction and shall preserve for five

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(5) years after completion of construction, accurate and detailed accounts of all expenditures. Developer will give the County reasonable access to all books, records, accounts, documents and correspondence that pertain to the construction of the Improvements.

**Section XIV**

**Reimbursement through Sewer Capacity Retention**

As reimbursement for Developer's conveyance of the Phase One Improvements to the County, following dedication and conveyance, the County and the Developer agree that (a) the County will receive the first five percent (5%) of single family sewer capacity within the Service Area, with no retention rights on behalf of the Developer; (b) the Developer will retain the next forty-five percent (45%) of single family sewer capacity within the Service Area; and (c) the County will receive the remaining fifty percent (50%) of single family sewer capacity within the Service Area, with no retention rights on behalf of the Developer. Notwithstanding the following, with respect to the County's first five percent (5%) of capacity, the Developer will not be required to purchase any capacity from the County; rather, the Developer will be permitted to deduct capacity for taps used prior to the County receiving the first five percent (5%) of fees from those it retains under this Agreement. Unless mutually agreed upon by the parties, the sewer fee collection policy currently in effect as of the date of this Agreement will govern collection of fees relating to sewer capacity. Any expansion of the Improvements pursuant to the schedule referenced in Section I herein as provided in the Addendum A shall require that the reimbursement arrangement described above be applied to such expansion in the same manner and terms. The sewer tap capacity of the Improvements and such sewer capacity retained by the Developer are to be used for real property to be developed by the Developer or its successors or assigns within the Service Area. If the Developer fails to develop such property, it will have the right to sell at or below current rates or use such sewer capacity within the Service Area; however, such capacity may be sold by the County at current rates on behalf of the Developer with the proceeds distributed in accordance with the retention formula described above.

**Section XV**

**Addendum**

Execution of the Addendum A to this Agreement will obligate the Developer to construct Phase One of the Improvements in accordance with the Design Plans submitted to and approved by the County and as set forth in this Agreement. Except as provided herein, the County and the Developer further agree not to change the Design Plans after the execution of the Addendum A, without the written mutual agreement of the County and the Developer. The County agrees that the Developer will not be responsible for any changes required by the County to the Design Plans that exceed, in the aggregate, five percent (5%) of the total cost of each phase of the Improvements.

**Section XVI**

**Breach**

Developer agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement or any Addenda hereto shall constitute a breach of the contract and the County shall have the right to stop work forthwith and act against the performance bond for the purpose of proper completion of the Improvements, in addition to any other remedy available at law or equity.

County agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of the contract and the Developer shall have the right to act against the County for any and all legal actions available to the Developer under this Agreement and at law.

**Section XVII**

**Binding Effect**

Developer and the County, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants contained in this Agreement. The Developer may not assign this Agreement absent prior written consent of the County.

**Section XVIII**

**Insurance**

Until conveyance of the Improvements to the County, the Developer agrees to maintain insurance with respect to the Improvements and their operation in amounts sufficient to protect the interests of the County and the Developer.

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Section XIX

**Amendment**

This Agreement may be amended by written instrument signed by both parties.

Section XX

**Effect of Partial Invalidity**

The invalidity of any portion of this Agreement or amendment of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Section XXI

**Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio. The venue for any disputes arising under the Agreement will be the Delaware County Common Pleas Court.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

**RESOLUTION NO. 04-659**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn into Executive Session at 9:50AM.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

**RESOLUTION NO. 04-660**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by , seconded by to adjourn out of Executive Session at AM.

Vote on Motion Mr. Jordan Mrs. Martin Mr. Ward

There being no further business the meeting adjourned.

\_\_\_\_\_  
Kristopher W. Jordan

\_\_\_\_\_  
Deborah B. Martin

\_\_\_\_\_  
James D. Ward

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Letha George, Clerk to the Commissioners