

COMMISSIONERS JOURNAL NO. 50 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 24, 2008

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

Present: Glenn A. Evans, Kristopher W. Jordan, James D. Ward

PUBLIC COMMENT

Recognition of the Delaware County Child Support Enforcement Agency receiving 3 awards at the 2008 CSEA Spring Conference.

RESOLUTION NO. 08-461

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 21, 2008 AS CONTAINED IN THE COUNTY’S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the resolutions and records of the proceedings from regular meeting held April 21, 2008 as contained in the county’s official electronic recordings of the proceedings.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-462

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0423 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0423:

It was moved by Mr. Evans, seconded by Mr. Ward to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0423, memo transfers in batch numbers MTAPR0423 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO’s			
Increases			
Sojourner's Care Network	Residential Treatment	22511607-5342	\$ 23,790.00
Christian Children's Home	Residential Treatment	22511607-5342	\$ 23,000.00
Delaware Cab	Job and Family Services	22511607-5355	\$ 10,000.00
Learning Center of Sunbury	Day Care	22511607-5348	\$ 3,000.00
Vouchers			
State of OH Treasurer	Crippled Children BCMH	10011102-5319	\$ 8,700.94
Schmid Mechanical	Fire Protection Willis Remodel	40411412-5410	\$ 29,860.44
Simco Electric	Electric Willis Remodel	40411412-5410	\$ 58,999.60
Siemens	Bioxide/Various Locations	66290310-5290	\$ 8,118.00
Treasurer	Schmid Mech/Willis Retainage	40411412-5410	\$ 2,596.56
Treasurer	Simco Electric/Retainage	40411412-5410	\$ 5,130.40
AEP	Service N. Sandusky	10011105-5338	\$ 15,576.13
Pomegranate Health Systems	Residential Treatment	22511607-5342	\$ 9,984.00
The Village Network	Residential Treatment	22511607-5342	\$ 84,102.21
Sojourners	Residential Treatment	22511607-5342	\$ 6,045.00
Delaware Area Career Center	Jump Start	22411601-5348	\$ 18,068.70
Jobs for OH Grads	Jobs for Graduates	22311611-5348	\$ 16,613.00
Central Ohio Contractors	Sludge Disposal	66290403-5380	\$ 9,525.11

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-463

IN THE MATTER OF APPROVING THE SUBGRANT AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS, DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES :

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

WHEREAS, Amended Substitute House Bill 199 of the 127th General Assembly, the biennial budget bill, makes counties subgrantees of federal human services funding; and

WHEREAS, AM. Sub. H.B. 119 requires counties to enter into subgrant agreements with the Ohio Department of Job and Family Services (“ODJFS”) by July 1, 2008; and

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WHEREAS, In order for the counties to continue to receive human services funding through the state, and continue to provide the vital services needed by Ohio’s most vulnerable population, the counties must sign these subgrant agreements; and

WHEREAS, The subgrant agreement includes language to help ensure counties remain in compliance with federal and state law, such as provisions that require ODJFS to provide technical assistance, training, and monitoring to counties; and

NOW THEEFORE BE IT RESOLVED by the Board of Commissioners of Delaware County will sign the Ohio Department of Job and Family Services subgrant agreement

(A copy of the agreement is available in the Commissioners’ Office until no longer of administrative value).

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Nay

RESOLUTION NO. 08-464

SETTING DATE AND TIME FOR A REQUEST FOR STATEMENT OF QUALIFICATIONS FOR ARCHITECTURAL / ENGINEERING DESIGN CONSULTANTS SERVICES FOR THE HAYES BUILDING SUITE IMPROVEMENTS:

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

**Public Notice
Request for statement of Qualifications
Architectural / Engineering Design Consultants Services
Hayes Building Suite improvements
Delaware County, Ohio**

The Delaware County Board of Commissioners, in accordance with Section 153.67 of the Ohio Revised Code, wishes to receive Statements of Qualifications (SOQ) from experienced architectural/engineering firms to assist the County in the design of a suite additions and improvements to the Rutherford B. Hayes Services Building for Delaware County, Ohio.

The work may involve, but not limited to, review and finalization of project programming and schematic design, detail design development, construction documents, construction administration, and other associated services to relocate the Delaware County Probate Court into the Hayes Building, the expansion of the Delaware County Prosecutors Office, and an employee fitness area. The project will include work in finished and unfinished space within the Hayes Building.

The complete Request for Qualifications may be obtained from Delaware County Facilities Management Office, 1405 US Rte 23 North, Delaware, Ohio during normal business hours, or off the internet at the County’s web page at <http://www.co.delaware.oh.us> under the heading “Current Bids”.

Statements of Qualifications will be received at the Delaware County Commissioners’ Office, Attention: Mr. Jon Melvin, Facilities Supervisor, 101 North Sandusky Street, Delaware, Ohio 43015 until **4:00 PM on Wednesday May 14th, 2008**. Five (5) copies of all submittals are to be included. Submittals pursuant to this invitation will not be received after the hour and date stated above.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-465

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND BENCHMARK LANDSCAPE CONSTRUCTION INC. FOR LANDSCAPE MAINTENANCE FOR 140 NORTH SANDUSKY STREET (HAYES BUILDING):

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

**Delaware County Board of Commissioners

Contract**

This Contract made by and between:

**Benchmark Landscape Construction, Inc.
9600 Industrial Parkway
Plain City, Ohio 43064**

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(the "Contractor") and the Delaware County Board of Commissioners (the "Owner").

In consideration of the mutual promises herein contained, the Delaware County Board of Commissioners and the Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall provide the services as described in the invitation to bid (ITB), which is attached hereto as Exhibit "A" and as necessary to produce the results intended by the Bid Documents for:

**ITB #08-02 – Landscape Maintenance for 140 N Sandusky St.
For Delaware County, Ohio**

ARTICLE 2

2.1 The Delaware County Board of Commissioners shall pay the Contractor for the performance of this Contract, subject to additions and deletions as provided in the bid documents, at an estimated annual value of Nine Thousand Six Hundred Twelve dollars (\$9,612.00), based upon the unit pricing set forth in the proposal, submitted by the Contractor and opened on March 31, 2008.

2.2 The Contract Price shall be paid in current funds by the Owner upon payment requests issued by the Contractor as services are provided and approved by the Delaware County Board of Commissioners as provided in the Bid Documents.

ARTICLE 3

3.1 The original term of this contract shall be for two (2) season, beginning April 28, 2008, and ending December 31, 2009.

3.2 This contract may be renewed at the end of the original period for up to two (2) additional one (1) year periods, if agreed upon in writing by both parties.

3.2 The Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor upon thirty (30) days written notice of its intent to do so. Furthermore, it is understood and agreed that should the contractor fail to provide the quality of good and/or service(s) as specified in the bid instructions, such failure shall constitute a breach of this Contract. Upon a breach of the Contract, the Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor effective immediately upon written notice of its intent to do so.

ARTICLE 4

4.1 This Contract shall embody the entire understanding of the parties and form the basis of the Contract between the Delaware County Board of Commissioners and the Contractor. The Bid Documents shall be considered to be incorporated by reference into this Contract as if fully rewritten herein, and made a part hereof. This Contract, along with all documents incorporated by reference, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio. Any legal action arising pursuant to this Contract shall filed in and heard before the courts of Delaware County, Ohio.

4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.

4.4 To the fullest extent permitted by law, the Contractor shall indemnify, save and hold the Delaware County Board of Commissioners, its officers, agents, servants, and employees free and harmless of all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the Contractor's performance of this Contract. The Contractor shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the Delaware County Board of Commissioners by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees. No employee of the Contractor shall at any time be considered an agent or employee of the Delaware County Board of Commissioners.

4.5 Insurance:

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4.5.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.

4.5.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.

4.5.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.

4.5.4 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Contract in the policies required by Subsection 4.5.

4.5.5 Proof of Insurance: Prior to the commencement of any work under this Contract, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Contract. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Contract.

4.6 No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

4.7 For all services being provided under this Contract, the Delaware County Board of Commissioners shall have the right and Contractor agrees to allow the inspection and examination of any and all books, accounts, invoices, records, writings, or documentation of any type and in any form which it maintains in relation to performing said services

4.8 The Contract shall be binding on the Contractor and the Delaware County Board of Commissioners, their successors and assigns, in respect to all covenants and obligations contained in the Contract, but the Contract may not be assigned by the Contractor without the prior written consent of the Delaware County Board of Commissioners.

4.9 Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." **Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract.** Such certification is attached to this Contract and by this reference made a part thereof.

4.10 Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

4.11 Contractor certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Contractor agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Contract is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Contract and by this reference made a part of this Contract.

ARTICLE 5

5.1 It is expressly understood by the Contractor that none of the rights, duties and obligations described in the Contract shall be valid and enforceable unless the Delaware County Auditor first certifies funds are available.

5.2 The Contract shall become binding and effective upon the completion of 5.1 and execution by the

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Delaware County Board of Commissioners.

ARTICLE 6

6.1 This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-466

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR ENVIRONMENTAL SERVICES:

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

Supplemental Appropriations	Amount
66611904-5450 Alum Creek WRF/Equipment	\$ 50,000.00

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 08-467

IN THE MATTER OF APPROVING THE SANITARY SUBDIVIDER’S AGREEMENT FOR NELSON FARMS SECTION 1 PHASE A:

It was moved by Mr. Ward, seconded by Mr. Evans to accept the following Sanitary Subdivider’s Agreement:

Nelson Farms Section 1 Phase A

SUBDIVIDER’S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

THIS AGREEMENT executed on this 24th day of April 2008, by and between NELSON FARMS ASSOCIATES SUBDIVIDER, as evidenced by the NELSON FARMS SECTION 1 PHASE A Subdivision Plat filed with the Delaware County Recorder, Delaware County, Ohio and the BOARD OF COUNTY COMMISSIONERS of Delaware County, Ohio is governed by the following considerations and conditions, to wit:

The SUBDIVIDER shall upon executing this AGREEMENT pay to the DELAWARE COUNTY SANITARY ENGINEER **\$168,340.80**, representing the payment of fifty percent (50%) of the capacity charges then in effect, plus a Surcharge of **\$4,000.00** (Perry Taggart Sewer) for each single family residential connection, minus an oversizing credit (15” pipe to 18” pipe; \$11.06 per foot x 2320 feet = **\$25,659.20**), for **28** equivalent single family residential connections. The remaining capacity charge shall be fifty percent (50%) of the rate currently in effect at the time connection is made and shall be paid for each single family residential connection upon application to the DELAWARE COUNTY SANITARY ENGINEER for a tap permit to connect the single family residence to the sanitary sewer. Ownership of more than one (1) lot will not cause aggregation of the payments.

Said SUBDIVIDER is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this AGREEMENT; said SUBDIVIDER is to execute Bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$385,552.33**) which is acceptable to the COUNTY COMMISSIONERS to insure faithful performance of this AGREEMENT and the completion of all improvements in accordance with the Subdivision Regulations of Delaware County, Ohio. The SUBDIVIDER shall pay the entire cost and expense of said improvements. The bond, certified check, irrevocable letter of credit, or other approved financial warranty shall remain in effect until released by the COUNTY at the completion of construction.

The SUBDIVIDER shall indemnify and save harmless the County, Townships and/or Villages and all of their officials, employees and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of any contractor or sub-contractor or from any material, method or explosive used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date of the approval of said SUBDIVIDER by the COUNTY COMMISSIONERS, but extension of time may be granted if approved by the COUNTY COMMISSIONERS.

The SUBDIVIDER shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have

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authority to execute the plans and specifications and alterations required by the COUNTY. The representative shall be replaced by the SUBDIVIDER, when in the opinion of the COUNTY, his performance is deemed inadequate.

The SUBDIVIDER further agrees that any violations of or noncompliance with any of the provisions and stipulations of this AGREEMENT shall constitute a breach of contract, and the COUNTY shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this Subdivision.

SANITARY SEWER CONSTRUCTION

It is further agreed that upon execution of this AGREEMENT, the SUBDIVIDER shall deposit, with the DELAWARE COUNTY SANITARY ENGINEER the sum of **\$42,400.00**, estimated to be necessary to pay the cost of plan review and inspection by the DELAWARE COUNTY SANITARY ENGINEER. The DELAWARE COUNTY SANITARY ENGINEER shall subtract from the above sum an amount equal to three and one-half percent (3½%) of the construction cost of the IMPROVEMENTS for plan review. The DELAWARE COUNTY SANITARY ENGINEER shall in his sole discretion inspect, as necessary, the IMPROVEMENTS being installed or constructed by the SUBDIVIDER and shall keep accurate records of the time spent by his employees and agents in such inspections for which the SANITARY ENGINEER shall be reimbursed from charges against said deposit. At such time as said fund, as a result of charges against the same at the rate of:

INSPECTOR \$75.00
CAMERA TRUCK \$150.00

per hour for time spent by said SANITARY ENGINEER or his staff has been depleted, the SUBDIVIDER shall make an additional deposits to said fund. On completion of all IMPROVEMENTS provided herein and acceptance of same by the COUNTY, any unused portions of the inspection fund shall be repaid to the SUBDIVIDER less an amount equal to \$0.75 per foot of sewer which will be deducted to cover a re-inspection.

The SUBDIVIDER, for a period of five (5) years after acceptance of the IMPROVEMENTS by the COUNTY, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the IMPROVEMENTS shall be the same as new equipment warranties and shall be assigned to the COUNTY upon acceptance of the IMPROVEMENTS.

The SUBDIVIDER shall provide to the COUNTY all necessary easements or rights-of-way required to complete the IMPROVEMENTS, all of which shall be obtained at the expense of the SUBDIVIDER.

The COUNTY shall, upon certification in writing from the DELAWARE COUNTY SANITARY ENGINEER that all construction is complete according to the plans and specifications, by Resolution accept the IMPROVEMENTS described herein and accept and assume operations and maintenance of the same.

ALL CONSTRUCTION UNDER COUNTY JURISDICTION:

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to DELAWARE COUNTY as required:

- (1) "as built" drawings on the IMPROVEMENTS which plans shall become the property of the COUNTY and shall remain in the office of the DELAWARE COUNTY SANITARY ENGINEER and DELAWARE COUNTY ENGINEER. The drawings shall be on reproducible MYLAR(full size), two paper copies(one full size & one 11"x17" paper), and a Compact Diskette with the plans in DWG format & PDF format. An excel spreadsheet shall accompany the plan submittal showing the locations of the manholes in State Plan Coordinates (1988 datum).
- (2) an itemized statement showing the cost of IMPROVEMENTS
- (3) a waiver of lien from all Contractors associated with the project that all material and labor costs have been paid. The SUBDIVIDER shall indemnify and hold harmless the COUNTY from expenses or claims for labor or materials incident to said construction of the IMPROVEMENTS.

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the DELAWARE COUNTY SANITARY ENGINEER a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The SUBDIVIDER shall during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the COUNTY regarding submission of shop drawings, construction schedules, operation of facilities and other matters incident hereto.

The SUBDIVIDER shall obtain all other necessary utility services incident to the construction of said IMPROVEMENTS AND FOR THEIR CONTINUED OPERATION. The SUBDIVIDER shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the SUBDIVIDER and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the COUNTY.

Should the SUBDIVIDER become unable to carry out the provisions of this AGREEMENT, the SUBDIVIDER'S heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this AGREEMENT.

IN CONSIDERATION WHEREOF, the DELAWARE COUNTY BOARD OF COMMISSIONERS hereby grants the SUBDIVIDER or his agent the right and privilege to make the IMPROVEMENTS stipulated herein and as shown on the approved plans.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

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IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY
COMMISSIONERS AND SELLERS ELECTRIC CO., INC. FOR ELECTRICAL REPAIRS TO THE
DELAWARE COUNTY SOLID WASTE TRANSFER STATION:

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

WHEREAS, the Solid Waste Transfer Station is owned by Delaware County and currently operated by Central Ohio Contractors, Inc.; and

WHEREAS, electrical repairs need to be performed in conjunction with the structural repairs currently in progress and also to modify wiring and conduits to meet NEC and local codes; and

WHEREAS, the Division of Environmental Services has solicited estimates to complete the required work from several contractors; and

WHEREAS, the Division of Environmental Services has determined that Sellers Electric Co., Inc. of Delaware, Ohio has provided the most thorough and cost effective proposal and is competent in performing the work required;

THEREFORE, be it resolved that the Board of County Commissioners execute the agreement for electrical repairs at the Solid Waste Transfer Station with Sellers Electric Co., Inc. of Delaware, Ohio.

FURTHERMORE, let it be resolved that the Board of County Commissioners approve a Purchase Order to Sellers Electric Co., Inc. of Delaware, Ohio from account number 68011916-5328 in the amount of \$17,750.00.

ELECTRICAL REPAIRS TO THE
DELAWARE COUNTY SOLID WASTE TRANSFER STATION CONTRACT
BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND
SELLERS ELECTRIC OF DELAWARE, OHIO

THIS AGREEMENT is by and between Delaware County Board of Commissioners, Delaware, Ohio
(Owner) and Sellers Electric Co., Inc. Delaware, Ohio
(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
Electrical repairs to Solid Waste Transfer Station located at 888 US 42 North, Delaware, Ohio 43015. Electrical repairs include wiring and conduit, exterior lighting, outlet installation and grounding electrode system improvements as required to meet NEC and local codes. Work is more completely described in the project scope document, attached as Exhibit A.

ARTICLE 2 - THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents is generally described as follows:
Electrical repairs include wiring and conduit, exterior lighting, outlet installation and grounding electrode system improvements as required to meet NEC and local codes. Minor structural repairs include walls, ceiling and roof improvements to the storage building. Work is more completely described in the project scope document, attached as Exhibit A.

ARTICLE 3 - ENGINEER

- 3.01 The Project has been specified by Delaware County Division of Environmental Service, who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

- 4.01 Time of the Essence

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- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Days to Achieve Substantial Completion and Final Payment; Extensions
- A. The Work will be substantially completed within 120 calendar days after contract commencement, and completed and ready for final payment by within 150 calendar days after contract commencement.
- B. Reasonable extensions to the deadlines provided for in Paragraph 4.02.A shall be permitted as follows:
1. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, provided Contractor makes a written Claim to Owner for said extension. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions, or acts of God.
 2. Contractor shall not be entitled to an extension for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- 4.03 Liquidated Damages
- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Paragraph 4.02.B. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$ 500.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.
- 4.04 Termination
- A. The Owner may, at any time, terminate this Contract without cause. Termination pursuant to this Paragraph shall take effect immediately upon receipt of the notice of termination by either party. Such a termination does not bar either party from pursuing a claim for damages for breach of this Contract. In the event of termination, Contractor shall be compensated for all work completed prior to the effective date of termination.
- B. If either party fails to substantially perform in accordance with the provisions of this Contract, the other party shall notify the party failing to perform in writing of the substantial failure of performance. Such written notice shall specifically state the nature of the substantial failure(s) of performance. If the party receiving such notice fails to correct the indicated substantial failure(s) of performance within ten (10) days of receiving such notice, this Contract may be terminated, for cause. Upon such termination, the parties shall be entitled to all such rights and remedies as the law may allow.
- C. Termination of this Contract, either with or without cause, shall not form the basis of any claim for loss of anticipated profits by either party.

ARTICLE 5 - CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined below:
- A. For all Work other than Unit Price Work, a Lump Sum of:

<u>Seventeen Thousand, Seven hundred, fifty dollars</u>	(\$17,750.00)
(words)	(numerals)

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ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation exhibiting the Work completed as of the date of the Application for Payment. Applications for Payment will be processed by Engineer. The Engineer shall make a recommendation to Owner for payment upon approval of the Application for Payment.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment no later than 30 days after receipt of an approved application of payment by the Contractor. Engineer shall provide comments and or corrections on the subject pay application no later 10 days after receipt of application. Owner shall pay application for payment within 30 days of receipt of an approved pay application by the Engineer. All such payments will be measured by the Owner as percent complete of the total scope of work.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages,:
 - a. 92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
 - b. 92 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92 percent of the Work completed, less such amounts as Owner shall determine and less 50 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, the Owner shall pay the remainder of the Contract Price.

6.04 Interest

- A. All monies not paid when due as provided shall bear interest at the rate of one percent (1.0%) per annum.

ARTICLE 7 – LIABILITY

7.01 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Article 7 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such

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Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Article 7 shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.02 Insurance

- A. General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.
- B. Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.
- C. Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.
- D. Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Paragraphs 7.02.A and 7.02.B.
- E. Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Work Change Directive(s).
 - b. Change Order(s).
 - c. Certificate of Substantial Completion
 - d. Contractor's Application for Payment
 - 2. This Agreement (pages 1 to 10, inclusive).
 - 3. Exhibits to this Agreement (enumerated as follows):
 - a. Project Scope document, "Exhibit A".
 - b. Contractor's Estimate
 - c. Non-Collusion Affidavit
 - d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
 - e. Personal Property & Real Estate Tax Affidavit
 - f. Non-Discrimination and Equal Employment Opportunity Affidavit
 - g. Certification / Affidavit in Compliance with O.R.C. Section 3517.13
 - h. DMA Form – Homeland Security
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.
- D. In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.
- E. There are no Contract Documents other than those listed above in this Article 9.
- F. The Contract Documents may only be amended, modified, or supplemented as follows:
 - 1. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
 - 2. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - a. A Field Order;

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- b. Engineer's approval of a Shop Drawing or Sample; or
- c. Engineer's written interpretation or clarification.

ARTICLE 10 - MISCELLANEOUS

10.01 Definition of Terms

- A. Undefined Terms used in this Agreement shall have their common and ordinary meanings, subject to any specific meanings attributed to trade usage.
- B. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
 - 1. *Agreement* - The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 - 2. *Application for Payment* - The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 - 3. *Change Order* - A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 - 4. *Claim* - A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 - 5. *Contract* - The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 - 6. *Contract Documents* - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 - 7. *Contract Price* - The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement.
 - 8. *Contract Times* - The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment.
 - 9. *Field Order* - A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
 - 10. *Specifications* - That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
 - 11. *Substantial Completion* - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer or Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
 - 12. *Work* - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

10.02 Assignment of Contract

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No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Survival of Obligations

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

10.06 Independent Contractor

Contractor agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Contract. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

10.07 Governing Law

This Agreement, and the Entire Contract, shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from the Contract shall be filed in and heard before the courts of Delaware County, Ohio.

10.08 No Waiver

No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

10.09 Findings for Recovery

Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

10.10 Homeland Security

Contractor certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Contractor agrees to make such certification by completing the declaration of material assistance/non-assistance described in R.C. § 2909.33(A) and understands that this Contract is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.

10.11 Campaign Finance – Compliance with O.R.C. § 3517.13

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Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

10.12 Use of Facility during Construction

Contractor understands that the solid waste transfer station must continue to operate during normal posted hours of operation throughout the duration of this Contract. Contractor shall coordinate Work with Owner, other contractors and facility operator to prevent disruption to the function of the facility during normal business hours.

10.13 Contractor agrees to the following:

- A. That, in the hiring of employees for the performance of work under the contract or any subcontract, Contractor, any subcontractor, or any person acting on Contractor's or subcontractor's behalf, by reason of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color, shall not discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;
- B. That Contractor, any subcontractor, or any person on Contractor's or subcontractor's behalf, shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color.
- C. That there shall be deducted from the amount payable to the Contractor by the Owner, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;
- D. That the contract shall be canceled or terminated by the Owner, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.

10.14 Headings

Article and paragraph headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on 24th day of April 2008 (which is the Effective Date of the Agreement).

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-469

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

Recommendation to approve a twenty-four (24) hour unpaid suspension for Paramedic Tom Turnbull for disciplinary purposes.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-470

IN THE MATTER OF APPROVING EXECUTION OF OPTIONS FOR THE LEASE AGREEMENT FOR THE

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DELAWARE COUNTY TITLE AGENCY AT NORTHPOINTE PLAZA SHOPPING CENTER:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the execution of options for the lease agreement for The Delaware County Title Agency At Northpointe Plaza Shopping Center:

5 year option to renew

Base Rent: \$16.68 per square foot
Term: a five year term, from June 1, 2008 to May 31, 2013

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-471

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 10:05AM.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-472

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Evans, seconded by Mr. Ward to adjourn out of Executive Session at 12:05PM.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

There being no further business the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward