

COMMISSIONERS JOURNAL NO. 51 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 2, 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

1:00 PM Prosecutor Session -canceled

5:00 PM Board of Elections

7:00 PM Commissioners Session

RECESS TILL 5:00PM

RESOLUTION NO. 08-646

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PENDING OR IMMINENT LITIGATION:

It was moved by Mr. Jordan, seconded by Mr. Evans to adjourn into Executive Session at 5:10PM.

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

THE BOARD OF ELECTIONS CALLED THEIR MEETING TO ORDER AND PROCEEDED TO ADJOURN INTO EXECUTIVE SESSION

RESOLUTION NO. 08-647

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Ward, seconded by Mr. Evans to adjourn out of Executive Session at 6:02PM.

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

THE BOARD OF ELECTIONS ADJOURNED OUT OF EXECUTIVE SESSION

RECESS TILL 7:00PM FOR REGULAR BUSINESS

PUBLIC COMMENT

RESOLUTION NO. 08-648

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 29, 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 May 29, 2008 as contained in the county’s official electronic recordings of the proceedings.

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

RESOLUTION NO. 08-649

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0530 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0530:

It was moved by Mr. Evans, seconded by Mr. Ward to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0530, memo transfers in batch numbers MTAPR0530 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO’s			
Voucher			
CCAO SC	Gas/ Utility	10011105-5538	\$ 14,870.08
Beems BP	Gasoline	10011106-5228	\$ 13,398.46
Mathews Kennedy Ford	2008 Ford Explorer	10011303-5450	\$ 22,237.45
Central Ohio Contractors	Sludge Disposal	66290403-5380	\$ 14,517.09

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

RESOLUTION NO. 08 -650

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Sheriff’s Office is requesting that Kevin Barbeam attend a Criminal Interview and Interrogations Techniques Training in Summit County June 3-5, 2008, at the cost of \$301.00.

The Auditor’s Office is requesting that Todd Hanks and Mark Potts attend a CAAO Conference in Sandusky, Ohio June 8-12, 2008, at the cost of \$826.80.

The Administrative Services Department is requesting that Gina Fasone attend a World of Workforce Information Conference at the Delaware County JVS June 11, 2008, at no cost.

The Engineer’s Office is requesting that Chris Bauserman attend the 2008 CCAO/CEAO Summer Conference in Lake County, Ohio June 8-10, 2008, at the cost of \$960.00.

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

RESOLUTION NO. 08-651

IN THE MATTER OF ACCEPTING ROADS AND APPROVING RECOMMENDED SPEED LIMITS FOR GLEN OAK SECTION 6:

It was moved by Mr. Evans, seconded by Mr. Ward to release bonds and letters of credit and accept roads within the following:

Glen Oak Section 6

The roadways to be accepted are as follows:

- An addition of 0.38 mile to **Township Road Number 1416, Greenspire Drive**
- An addition of 0.22 mile to **Township Road Number 1431, Tulip Way**
- **Marigold Street**, to be known as **Township road number 1574**

The Engineer also recommends that 25 mile per hour speed limits be established throughout the project.

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

RESOLUTION NO. 08-652

IN THE MATTER OF ESTABLISHING STOP CONDITIONS FOR GLEN OAK SECTION 6:

It was moved by Mr. Evans, seconded by Mr. Ward to establish stop conditions for the following:

Stop Conditions –Glen Oak Section 6

- On Township Road Number 1431, Tulip Way, at its intersection with Township Road Number 1416, Greenspire Drive
- On Township Road Number 1574, Marigold Street, at its intersection with Township Road Number 1431, Tulip Way

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

RESOLUTION NO. 08-653

IN THE MATTER OF APPROVING RIGHT OF WAY WORK PERMIT SUMMARY SHEET:

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

Permit #	Applicant	Location	Type of Work
U08-048	AEP	HANOVER RD	REPLACE POLES, INSTALL NEW POLE & ANCHOR

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U08-041	DEL-CO WATER	FONTANELLE RD	ROAD BORE/BURY WATERLINE IN ROW
U08-042	DEL-CO WATER	OSTRANDER RD	ROAD BORE/BURY WATERLINE IN ROW
U08-044	AT&T	SAWMILL PKWY	TRENCH ROW
U08-047	WOW	MCCAMMON ESTATES	PLACE CABLE IN ROW
U08-046	WOW	VILLAGE OF OAK CREEK	PLACE CABLE IN ROW
U08-045	WOW	SUMMERFIELD VILLAGE	PLACE CABLE IN ROW

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

RESOLUTION NO. 08-654

IN THE MATTER OF APPROVING SPECIFICATIONS, ESTIMATE, PLAN AND SETTING BID OPENING
DATE AND TIME FOR PATRICK ROAD OVER CULVER CREEK REPLACEMENT:

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

Public Notice
Advertisement for Bids

Sealed bids will be received at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until **10:00 AM, Tuesday, June 24, 2008, at which time they will be publicly opened and read aloud, for the project known as DEL-TR 50-3.20 Patrick Road over of Culver Creek**, including replacement of a structurally deficient bridge and approximately 750 feet of roadway approach reconstruction.

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked “Sealed Bid For Patrick Road over Culver Creek Bridge Replacement”. Bids shall be accompanied by a Bid Bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

Copies of the plans and specifications are on file at the **Delaware County Engineer’s Office, 50 Channing Street, Delaware, Ohio 43015**. Cost for each set of plans & specifications are \$20 and the cost is not-refundable.

The Owner requires that all work associated with the project be completed within ninety (90) calendar days of the estimated commencement of work date of July 14, 2008.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to reject any or all bids.

LOCATION

This project is located on Patrick Road just east of the intersection of Fredricks Road in Porter Township. Project is approximately 10 miles east of Delaware, Ohio.

PROJECT SCOPE

The Delaware County Engineer’s Office has prepared plans and specifications to replace the structurally deficient bridge and make improvements to the roadway approaches.

ESTIMATE

\$ 379,000.00

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

RESOLUTION NO. 08-655

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IN THE MATTER OF APPROVAL AND APPROPRIATION OF THE EMERGENCY MANAGEMENT PROGRAM GRANT:

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

WHEREAS, the Emergency Management Program Grant (EMPG) provides Federal funding to the State of Ohio for emergency management operations, and;

WHEREAS, this grant is a 50/50 funding split that will assist the Delaware County Office of Homeland Security and Emergency Management in maintaining the planning, response, recovery and mitigation of large scale incidents or disasters, and

WHEREAS, Delaware County already meets all of the grant requirements for approval;

WHEREAS, these funds will be used for compensation and benefits for personnel and equipment within DCOHSEM;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby approve the acceptance of the Emergency Management Program Grant (EMPG) in an amount of \$80,438 for the Delaware County Office of Homeland Security and Emergency Management (DCOHSEM), and approve the renaming of Account 21511309, titled “FY08 EMPG” within the DCOHSEM 215 Fund and appropriation of the FY08 EMPG grant in the amount of \$40,000 as indicated below:

Appropriation		Amount
21511309-5001	EMA/Compensation	\$29,000.00
- 5101	Hosp Insurance	\$ 5,000.00
- 5102	Workmans Compensation	\$ 1,000.00
- 5120	PERS	\$ 4,000.00
- 5131	Medicare	\$ 580.00
-5315	Internet Card	\$ 300.00
- 5332	Cell Allowance	\$ 120.00
Total		\$40,000.00
Vote on Motion	Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye	

RESOLUTION NO. 08-656

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

Recommendation to hire David Finney as a Staff Engineer with the Sanitary Engineer Department; effective date June 2, 2008.

Vote on Motion	Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye
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RESOLUTION NO. 08-657

IN THE MATTER OF APPROVING A CHANGE ORDER TO THE INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE LOWER SCIOTO WATER RECLAMATION FACILITY:

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

Delaware County
Division of Environmental Services
CHANGE ORDER

Order No.: 3
Date: June 2, 2008
Agreement Date: November 1, 2007

NAME OF PROJECT: Lower Scioto Water Reclamation Facility

Contract: Intergovernmental Cooperation Agreement dated November 1, 2007

The following changes are hereby made to the CONTRACT and as detailed in Exhibit’s A and B:

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- 1. Addition buffering to adjoining properties via landscaping consisting of trees, bushes and seeding as detailed in Exhibit A.
- 2. Landscape planting with 18 month warranty and watering – \$143,614.00
- 3. 4 foot wide asphalt path construction - \$22,074.00
- 4. Seeding (seed mix # 2) for 8.36 acres at \$0.90 per square yard as authorized – \$36,416.16
- 5. Additional watering of landscaping as authorized (3 trips) \$2,430.00 per trip - \$7,290.00

Change to Contract Price:

Original Contract Price: \$ 21,986,625.00

Current Contract Price adjusted by previous Change Order: \$ 22,224,175.00

The Contract Price due to this Change Order will be increased by: \$209,394.16

The new Contract Price including this Change Order will be: \$ 22,433,569.16

Change to Contract Time:

The Contract Time will be (increased/decreased) by zero (0) calendar days.

Approvals Required:
To be effective this Order must be approved as require by the Section II page 5 of the Contract Documents.
Requested by: Concord/Scioto Community Authority
Recommended by: Director of Environmental Services and Concord/Scioto Community Authority

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

RESOLUTION NO. 08-658

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND K&H ENERGY SERVICES FOR REPAIRS AND UPGRADES TO THE OLENTANGY ENVIRONMENTAL CONTROL CENTER NORTH PLANT MOTOR CONTROL CENTERS:

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

WHEREAS the technical staff of the Division of Environmental Services has determined that the repairs and upgrades to the Olentangy Environmental Control Center North Plant Motor Control Centers are required for proper operation of the facility, and

WHEREAS the Division of Environmental Services has determined that consulting engineering services are required to design and specify the repairs and upgrades to the Olentangy Environmental Control Center North Plant Motor Control Centers, and

WHEREAS the Division of Environmental Services has received several proposals by firms for the required services, and

Whereas Division of Environmental Services has evaluated the received proposals for both completeness of scope and overall cost, and

Whereas the Division of Environmental Services has determined that K&H Energy Services of Dublin, Ohio provided the most complete and cost effective scope for the requested engineering services.

THEREFORE be it resolved that the Board of County Commissioners execute the service agreement for engineering services as detailed in Exhibit A with K&H Energy Services of Dublin, Ohio

FURTHERMORE Let it be resolved that the Board of County Commissioner’s approve a purchase order for to K&H Energy Services for \$19,600 from Org Key 66690301 -5301

Agreement
Between
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of June 2, 2008 between the Delaware County Board of Commissioners (“Owner”) and K&H Energy Services, Inc. (“Engineer”). Owner intends to have electrical engineering services provided to design and specify the repair and upgrade of the Olentangy Environmental Control Center North

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Plant Electrical Control Equipment ("Project").

Owner and Engineer agree as follows:

SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit A.
- B. Owner shall pay Engineer the lump sum fee as set forth in Exhibit A.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, maybe adjusted by amendment to this Agreement .
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit B. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, then:
1. Engineer may, after giving fourteen days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services,

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expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold portion so contested, and pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit B.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services as approved by the Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

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- G. The General Conditions for any construction contract documents prepared hereunder are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition) unless both parties mutually agree to use other General Conditions.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor’s work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer’s own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 *Design Without Construction Phase Services*

- A. If Engineer’s Basic Services under this Agreement do not include Project observation, or review of the Contractor’s performance, or any other Construction Phase services, then (1) Engineer’s services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Owner shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Owner) whether or not the Project is completed.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents’ creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner’s sole risk and without liability or legal exposure to Engineer or to Engineer’s Consultants; (

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6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. Engineer shall each deliver certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- D. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- E. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit D will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

- A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving fourteen days written notice to Owner, suspend services under this Agreement.

- B. Termination. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 45 days after the date of receipt of the notice.
 - 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

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D. Payments Upon Termination.

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. The Engineer may not assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the Owner, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under law.

6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and 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, arbitration, or other dispute resolution costs) arising out of or relating to the Project, 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 therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.
- B. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be

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be effective upon the date of receipt.

- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement 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.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

6.11 *Campaign Finance – Compliance with O.R.C. § 3517.13*

- A. 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.

6.12 *Homeland Security*

- A. 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.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
 2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
 3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed

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designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

4. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
5. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
6. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
7. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
8. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
9. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner.
10. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
11. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, "Engineer's Services," and "Owner's Responsibilities" consisting of 6 pages.
- B. Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 pages.
- C. Exhibit C, "Notice of Acceptability of Work," consisting of 2 pages.
- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Amendment to Owner-Engineer Agreement," consisting of 2 pages.

8.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 12 inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit E to this Agreement.

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8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

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

There being no further business the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward

Letha George, Clerk to the Commissioners