

**COMMISSIONERS JOURNAL NO. 52 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 27, 2009**

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

Present: Todd Hanks, Ken O'Brien, Tommy Thompson

RESOLUTION NO. 09-475

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 23, 2009:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 23, 2009; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

PUBLIC COMMENT

Refer to CD minutes for entire record

Joan Bowe:

The Delaware County General Health District Swine Influenza Public Health Advisory

**The Delaware County General Health District
Swine Influenza
Public Health Advisory
April 27, 2009**

The Delaware General Health District is closely monitoring the Swine Influenza situation in concert with the state and federal Public health authorities. As of today, eight cases have been confirmed in the U.S. and a large number of persons in Mexico have been affected.

Symptoms include:

- Fever
- Body aches
- Runny nose and/or sore throat
- nausea, vomiting, and/or diarrhea

Persons with these symptoms who have recently traveled to areas where there have been Swine Flu outbreaks should be seen by a doctor and tested, under guideline developed by the Centers For Disease Control And Prevention.

You can protect yourself against Swine Flu and other diseases by:

- washing your hands frequently with warm water and soap to kill germs.
- covering your coughs and sneezes with your sleeve or a tissue. This keeps germs from flying into the air and infecting others.
- staying home from work or school if you are feeling sick, and keeping sick children home from school and daycare.

The latest updates will be posted regularly on www.delawarehealth.org and recorded on our information line (740-203-2015).

RESOLUTION NO. 09-476

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0424, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0424:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0424, memo transfers in batch numbers MTAPR0424 and Purchase Orders as listed below:

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PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R0903646	M P DORY INC	CONTROL FOR SIGNAL	44211423 - 5420	\$9,577.15	0001
R0903646	M P DORY INC	ADDITIONAL FUNDS FOR CONTROLLER	40811422 - 5420	\$2,922.85	0002
R0904117	J&S CAMPBELL	DAY CARE	22411610 - 5348	\$75,000.00	0001
R0904157	Name Change was Goddard School COUNTY RISK SHARING AUTHORITY	LIABILITY INSURANCE CLAIMANT DEDUCTIBLES	60111901 - 5370	\$10,000.00	0001

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO'S			
Increases			
Health Department	Help Me Grow (line 1)	70161602-5348	\$ 5,748.69
Health Department	Help Me Grow (line 2)	70161606-5348	\$ 6,447.18
Health Department	Help Me Grow (line 3)	70161607-5348	\$ 189,880.77

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-477

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

The Environmental Services Department is requesting that John Feightner attend a Wastewater lab Workshop in Columbus, Ohio May 19, 2009, at the cost of \$155.00 (fund 66290301)

The Environmental Services Department is requesting that Jim Carey attend a Municipal Wastewater Pretreatment in Columbus, Ohio May 18, 2009, at the cost of \$165.00 (Fund 66290301 and 66290401).

The Environmental Services Department is requesting that Mark Chandler attend an Energy Efficiency and Demand Response Programs for AEP Customers in Columbus, Ohio May 14, 2009, at no cost.

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-478

IN THE MATTER OF RECOGNIZING MAY AS OLDER AMERICANS MONTH:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following proclamation:

**Proclamation by the
Delaware County Board of Commissioners
Recognizing May as Older Americans Month**

WHEREAS, Since 1963, every United States president has declared the month of May to be "Older Americans Month" for the purpose of honoring this most significant and rapidly growing segment of our population. We have an opportunity to celebrate the heritage and contribution of our most treasured citizens throughout the month of May as we recognize older Americans who are living longer, healthier and more productive lives. The theme for this year's Older Americans Month is "Reinvent Yourself, Reinvent Aging" to emphasize how older adults are shrugging off traditional aging stereotypes and becoming increasingly engaged in their communities through working, volunteering, mentoring and learning.

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WHEREAS, Delaware County’s older population has played an instrumental role in building this county and its institutions, and continue to make invaluable contributions as workers, leaders, volunteers and caregivers, and;

WHEREAS, nearly 19,000 county residents are age 60 and older and Delaware County’s older population will continue to increase by an estimated 337% over the next 13 years. By the year 2020, 1 out of every 5 county residents are projected to be over the age of 60, and;

WHEREAS, the Council for Older Adults wish to involve all community members in these events and activities, including: May 19th Celebrating Senior Citizens Day; May 20th for the Central Ohio Senior Hall of Fame induction of Delaware County resident Robert Erlandson; May 26th for Caregiver Recognition Day, as we recognize local residents who care for older loved ones in their homes; and May 30th for the 5th Annual Seniors Prom.

THEREFORE, BE IT RESOLVED, that in recognition the month of May as “Older Americans’ Month” the Delaware County Board of Commissioners does hereby honor and congratulate local older adults for the important contributions that they have made and continue to make in Delaware County to our families, communities and society.

FURTHER RESOLVE that the Delaware County Board of Commissioners encourage local citizens to get connected with the Council for Older Adults and its’ partner organizations, and, to become knowledgeable about volunteer opportunities, and local resources to maintain a healthy and active lifestyle.

FURTHER RESOLVE that the Delaware County Board of Commissioners recognize and congratulate local health and social service organizations who provide assistance and services for a growing number of older county residents for helping to make Delaware County a better place to live and to grow older.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-479

IN THE MATTER OF APPROVING TRANSFER OF FUNDS, TRANSFER OF APPROPRIATIONS AND SUPPLEMENTAL APPROPRIATIONS:

It was moved by Mr. O’Brien, seconded by Mr. Hanks to approve the following:

Supplemental Appropriation

24820101-5801	Title Administration/Transfers	\$ 10,000.00
10011102-5801	Commissioners General/Transfers	\$ 50,500.00
43111424-4601	CFOA/Interfund Transfer	\$ 22,000.00
43111424-5410	CFOA/Building & Improvements	\$ 22,000.00

Transfer of Funds

From	To	
24820101-5801	10011102-4601	
Title Administration/Transfers	Commissioners General/Interfund Revenue	\$ 35,000.00
10011102-5801	43111424-4601	
Commissioners General/Transfers	CFOA/Interfund Transfer	\$ 50,500.00

Transfer of Appropriation

From	To	
28129204-5450	28129204-5325	
Common Pleas Data Fund/ Equipment	Common Pleas Data Fund/Maint Contracts	\$ 5,225.00

Further Be it Resolved, that the Commissioners approve the following:

Purchase Order and Voucher to the City of Delaware in the amount of \$50,500.00

Voucher to George Parker in the amount of \$16,491.67

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-480

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

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It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following work permits:

Whereas the below requests to perform work within the right of way have been reviewed and approved by the Delaware County Engineer; now therefore be it resolved that the following permits are hereby approved by the Board Of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U09-028	AT&T	SMOTHERS RD	TRENCH & PLACE CABLE
U09-029	FIBERTECH	HYATTS RD	INSTALL CONDUIT IN ROW
U09-030	TIME WARNER	WINCHCOMBIE DR	INSTALL CABLE IN ROW
U09-031	AEP	TUSSIC STREET RD	PROVIDE SINGLE CUSTOMER SERVICE
U09-032	KDI	E. ORANGE RD	BORE FIBER OPTIC
U09-033	KDI	GRAPHICS WAY	BORE FIBER OPTIC
U09-034	KDI	ORANGE POINT	BORE FIBER OPTIC

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-481

IN THE MATTER OF ACCEPTING AND AWARDING THE BIDS FOR ASPHALT MATERIALS FOR DELAWARE COUNTY:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Asphalt Materials Bid Opening of April 13, 2009

As the result of the referenced bid opening, The Engineer recommends that the following bid awards be made:

MC 30 as per ODOT Spec 702, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

MC 30 as per ODOT Spec 702, FOB Plant:

The Engineer recommend that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

RS-2P, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

RS-2P, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

RS-2, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

RS-2, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

SS-1 or SS-1H as per ODOT Spec 702.13, FOB Jobsite:

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The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

SS-1 or SS-1H as per ODOT Spec 702.13, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Asphalt Technologies, Ltd.

Number 301:

The Engineer recommends that a non-exclusive bid award be made to The Shelly Company; Kokosing Materials, Inc.; The Apple-Smith Corporation; and Shelly & Sands.

Number 402:

The Engineer recommends that a non-exclusive bid award be made to The Shelly Company; Kokosing Materials, Inc.; The Apple-Smith Corporation; and Shelly & Sands.

Number 404:

The Engineer recommends that a non-exclusive bid award be made to The Shelly Company; Kokosing Materials, Inc.; The Apple-Smith Corporation; and Shelly & Sands.

2 Men and a Paver:

The Engineer recommends that a non-exclusive bid award be made to Kokosing Materials, Inc. and Shelly & Sands.

A bid tabulation is available for your information.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-482

IN THE MATTER OF AUTHORIZING TO ISSUE A REQUEST FOR PROPOSALS/REQUEST FOR QUALIFICATIONS FOR A QUALIFIED FIRM TO PROVIDE CDBG FY 2009 FAIR HOUSING CONSULTING SERVICES CONTINGENT THAT DELAWARE COUNTY RECEIVES THE CDBG FY 2009 FUNDS FROM THE OHIO DEPARTMENT OF DEVELOPMENT:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Whereas, the County has authorized issuing a Request for Proposals/Request for Qualifications for qualified firms to submit proposals for the Fair Housing portion of the grant for the County. Said proposals must be submitted to the County by 5:00 p.m. (Eastern Standard time), May 31, 2009.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-483

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR DELAWARE COUNTY FORMULA 2008 VILLAGE OF OSTRANDER STREET IMPROVEMENT:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve specifications and set bid opening date and time for **Thursday, May 14, 2009, at 11:00 a.m.** This bid opening will be held at the Delaware County Commissioners Office located at 101 N. Sandusky Street, Delaware, Ohio 43015.

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-484

IN THE MATTER OF SETTING DATE AND TIME FOR COUNTY'S FY 2009 CDBG PROGRAM PUBLIC HEARING # 2:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Whereas, a public hearing will be held on **Monday, June 15, 2009, at 9:30 a.m.** in the County Commissioners

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Office located at 101 North Sandusky Street in Delaware, Ohio. This hearing is needed to consider the application for the FY 2009 CDBG Program.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-485

IN THE MATTER OF DECLARING THE PURPOSE AND NECESSITY TO MAKE SURVEYS FOR CENTRAL ALUM CREEK SANITARY SERVICE AREA "B":

It was moved by Mr. Hanks, seconded by Mr. O'Brien to approve the following:

Whereas, the Board of County Commissioners owns and operates a Sewer District as provided by Ohio Revised Code 6117, and

Whereas Ohio Revised Code 6117 permits the Board of Commissioners to make the necessary surveys for the construction of sanitary facilities within a Sewer District, and

Whereas the adopted 2005 Sewer Master Plan recommends providing sanitary facility improvements to the Central Alum Creek Service Area "B" in order to promote public health and welfare.

Therefore be it resolved that the Board of County Commissioners declare the necessity to make the required surveys for the for Central Alum Creek Service Area "B" as detailed in the 2005 Sewer Master Plan for purpose of preserving and promoting public health and welfare.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-486

IN THE MATTER OF EXECUTING AN AGREEMENT FOR PROFESSIONAL ENGINEERING AND CONSULTING SERVICES FOR CENTRAL ALUM CREEK "B" SANITARY SEWER IMPROVEMENTS TO EMH&T OF COLUMBUS, OHIO:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Whereas the Board of Commissioners has directed the Sanitary Engineer to perform the necessary surveys to develop sanitary trunk facilities for the service area know as Central Alum Creek "B", and

Whereas it is necessary to retain services for professional engineering and consulting to develop preliminary plans and permitting for the contemplated sanitary trunk facilities, and

Whereas, a Request for Technical Proposal was sent to each of the seven pre-qualified professional engineering firms per Resolution 08-366, and

Whereas, seven (7) Technical Proposals were received and evaluated based the criteria established through Resolution 08-366, and

Whereas, EMH&T, Inc. of Columbus, Ohio provided the best technical proposal for engineering and consulting Services for Central Alum Creek "B" Sanitary Sewer Improvements, and

Whereas, the County Staff recommends EMH&T of Columbus, Ohio for the proposed work, and

Whereas County Staff recommends executing an agreement with EMH&T Inc. of Columbus, Ohio. for the required services with a not to exceed amount of \$226,936.33.

Therefore be it resolved that the Board of County Commissioners execute the agreement for preliminary engineering and permitting services for the Central Alum Creek "B" Sanitary Sewer Improvements to EMH&T of Columbus, Ohio.

Furthermore be it resolved, that the Board of Commissioners approve the following purchase order

EMH&T Inc for \$226,936.33 from 66690414-5415

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL ENGINEERING AND CONSULTING SERVICES
FOR

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THE CENTRAL ALUM CREEK
SANITARY SEWER IMPROVEMENTS
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

This agreement effective as of April 27, 2009 between the Delaware County Board of Commissioners (Owner) and EMH&T (Engineer) Owner intends to Retain professional engineering and consulting services in order to develop the preliminary engineering and permitting of the Central Alum Creek Sanitary Sewer Improvements as detailed in Exhibit A ("Project")

Owner and Engineer agree as follows:

ARTICLE 1-SERVICES OF engineer

1.01 Technical Scope

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

B. Technical scope may be reduced or amended at the discretion of the Sanitary Engineer if provided in writing to the Engineer. Increases to the technical scope that exceed the contract price as detailed in Exhibit B shall only be allowed through a formal contract amendment.

ARTICLE 2– OWNER’S RESPONSIBILITIES

2.01 General

A. Owner shall pay Engineer as set forth in Exhibit B.

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, and the rates and amounts of Engineer’s compensation, 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, shall be adjusted equitably.

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

B. Disputed Invoices. If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

C. 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 – NOT USED

ARTICLE 6– GENERAL CONSIDERATIONS

6.01 Standards of Performance

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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. 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.

B. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services as approved by Owner.

C. 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.

D. 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.

E. 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.

6.02 Design Without Construction Phase Services - Not Used

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and Engineer 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 within the 60-day acceptance period 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;

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit C, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Engineer shall deliver a certificate of insurance evidencing the coverages indicated in Exhibit C. Such certificate shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

C. 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.

D. 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 C. 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 C will be supplemented to incorporate these requirements.

E. Engineer shall also deliver properly executed endorsements evidencing the listing of Owner as an additional insured, pursuant to Paragraph 6.04.A

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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.

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 other, 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 invoking the procedures of Exhibit D or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit D. If Exhibit D is not included, or if no dispute resolution method is specified in Exhibit D, then the parties may exercise their rights under law.

6.09 Environmental Condition of Site – Not Used

6.10 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, , 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

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or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 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 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.

6.12 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 Engineer /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.

6.13 Homeland Security

A. Engineer 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, Engineer 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.

6.14 Findings for Recovery

A. Engineer hereby certifies that it is not subject to any unresolved findings for recovery issued against it by the Auditor of State.

6.15 Non-Discrimination

A. Engineer hereby certifies that it is, and at all times while the Agreement is in effect shall remain, in compliance with all applicable laws concerning or related to non-discrimination and equal opportunity employment.

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.

1. Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.

3. 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.

4. 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.

5. 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.

6. 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.

7. Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

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8. 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.

9. 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 pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, “Engineer’s Services,” consisting of 57 pages.
- B. Exhibit B, “Payments to Engineer for Services and Reimbursable Expenses,” consisting of 2 pages.
- C. Exhibit C, “Insurance,” consisting of 2 pages.
- D. Exhibit D, “Dispute Resolution,” consisting of 2 pages.
- E. Exhibit E, “Amendment to Owner-Engineer Agreement,” consisting of 3 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.

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.

This is EXHIBIT A, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .
Engineer’s Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A.1.01 Preliminary Engineering and Permitting Phase

A. Engineer shall:

1. Consult with Owner to define and clarify requirements for the Project and available data.
2. Perform all necessary work to provide deliverables and services as defined in Appendix 1- Engineer’s technical proposal dated August 22, 2008 with revisions dated April 20, 2009 , and the “Request for Technical Proposals – Professional Engineering Services Central Alum Creek Sanitary Sewer Improvements dated August 1, 2008 as provided in Appendix 2 of Exhibit A.
3. Revise the deliverables in response to Owner’s comments, as appropriate, and furnish 2 copies of the revised documents and any other deliverables to the Owner within 7 calendar days of receipt of Owner’s comments.

B. Engineer’s services under the Preliminary Engineering and Permitting Phase will be considered complete on the date when the documents as defined in the Exhibits of this agreement and all other deliverables have been delivered to and found acceptable to the Owner.

A.1.02 Construction Phase-Not Used

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner’s Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Services resulting from changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer’s control.
2. Services resulting from Owner’s request to evaluate additional alternative solutions beyond those identified Preliminary Engineering and Permitting Phase .
3. Furnishing services of Engineer’s Consultants for other than Basic Services.
4. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner’s Written Authorization – Not Used

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between Owner and

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**Engineer for Professional Services dated , .
Payments to Engineer for Services and Reimbursable Expenses**

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

B2.01 Compensation For Basic Services Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.

1. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit B as Appendix 1.

2. The total compensation for services under Paragraph B2.01 shall not exceed \$226,936.33.

3. The hourly rates as defined in Appendix 2 include all labor, overhead, profit, and Engineer’s Consultant’s charges.

4. The amounts billed for Engineer’s services under Paragraph B2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultant’s charges.

5. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of 1/1/2010) to reflect equitable changes in the compensation payable to Engineer. Rate adjustments have been contemplated in the not to exceed value and will not cause an increase in total fee or decrease in scope of work.

B2.02 Compensation For Reimbursable Expenses

A. Owner shall pay Engineer for all Reimbursable Expenses at the rate set forth in Appendix 1 to this Exhibit B.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0. A not to exceed value for reimbursable expenses is set at \$2,500 for the project and is subordinate to the overall Not to Exceed Value to the Project.

B2.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer’s Consultants, those charges shall be the amounts billed by Engineer’s Consultants to Engineer times a factor of 1.0.

B. Factors. The external Reimbursable Expenses and Engineer’s Consultant’s factors include Engineer’s overhead and profit associated with Engineer’s responsibility for the administration of such services and costs.

C. To the extent necessary to verify Engineer’s charges and upon Owner’s timely request, Engineer shall make copies of such records available to Owner at cost.

**This is Appendix 1 to EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .
Reimbursable Expenses Schedule**

Current agreements for Engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit B. Reimbursable expenses for services performed on the date of the Agreement are not to exceed \$2,500.

**This is Appendix 2 to EXHIBIT B, consisting of 3 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .
Standard Hourly Rates Schedule**

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit B and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates will be adjusted annually (as of 1/1/2010) to reflect equitable changes in the compensation payable to Engineer, and shall not exceed 3%.

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- 3. The Standard Hourly Rates apply only as specified in Article B2.
- B. Schedule
 Hourly rates for services performed on or after the date of the Agreement are as included in this Exhibit:

This is EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

C6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

- 1. By Engineer:
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability --
 - 1) Each Accident: \$1,000,000
 - 2) Disease, Policy Limit: \$1,000,000
 - 3) Disease, Each Employee: \$1,000,000
 - c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
 - d. Excess or Umbrella Liability --
 - 1) Each Occurrence: \$2,000,000
 - 2) General Aggregate: \$2,000,000
 - e. Automobile Liability --
 - 1) Bodily Injury:
 - a) Each Accident \$1,000,000
 - 2) Property Damage:
 - a) Each Accident \$1,000,000
 - 3) Combined Single Limit
 (Bodily Injury and Property Damage):
 Each Accident \$2,000,000
 - f. Professional Liability --
 - 1) Each Claim Made \$2,000,000
 - 2) Annual Aggregate \$2,000,000

- 2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is EXHIBIT D, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.08 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreeable mediator. Notice of any Dispute must be made to the opposing party within 30 days after the Dispute has arisen, otherwise the Dispute shall be deemed waived. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties shall employ Arbitration as detailed below.
- B. Arbitration. All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the American Arbitration Association (AAA) Construction Industry Arbitration Rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any

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other agreement or consent to arbitrate entered into in accordance with this Paragraph D6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the AAA. The demand must be made within 30 days after the termination of mediation pursuant to Paragraph D6.08.A. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
2. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
3. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
4. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this Paragraph D6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is EXHIBIT E, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .
AMENDMENT TO OWNER-ENGINEER AGREEMENT

1. Background Data:
 - a. Effective Date of Owner-Engineer agreement: _____
 - b. Owner: Delaware County Board of Commissioners
 - c. Engineer: EMH&T
 - d. Project: Preliminary Engineering and Permitting for the Central Alum Creek Sanitary Sewer Improvements
2. Nature of Amendment [Check those that are applicable and delete those that are inapplicable.]
 - Additional Services to be performed by Engineer
 - Modifications to Services of Engineer
 - Modifications to Responsibilities of Owner
 - Modifications to Payment to Engineer
 - Modifications to Time(s) for rendering Services
 - Modifications to other terms and conditions of the Agreement
3. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is .

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-487

IN THE MATTER OF EXECUTING AN AGREEMENT WITH BBC&M ENGINEERING, INC. OF DUBLIN, OHIO TO PROVIDE ENVIRONMENTAL CONSULTING SERVICES FOR CHESHIRE ELEMENTARY SCHOOL SANITARY SEWER IMPROVEMENTS:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Whereas the Delaware County Board of Commissioners have committed to providing sanitary sewer service to the new Cheshire Elementary School located on Gregory Road in Berlin Township, and

Whereas the Board of Commissioners have adopted a resolution of necessity and purpose for the surveys required to develop sanitary facilities for Central Alum Creek Service Area B, and

Whereas the contemplated sanitary sewer improvements are within the Central Alum Creek B service area, and

Whereas, the Regional Sewer District staff is working diligently on the design of the sanitary sewer improvements, and

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Whereas, the staff needs environmental consulting services in order to complete the design and permitting of the needed sanitary sewer improvements, and

Whereas, a Request for Proposal was sent to six firms known to perform environmental consulting services, and

Whereas, five (5) Proposals were received and evaluated based on the criteria established through the Request for Proposal, and

Whereas, BBC&M Engineering Inc. of Dublin, Ohio provided the lowest and best proposal for the required environmental consulting services for Cheshire Elementary School Sanitary Sewer Improvements, and

Whereas, the County Staff recommends BBC&M Engineering, Inc. for the proposed work, and

Whereas County Staff recommends executing an agreement with BBC&M Engineering Inc. for the required services with a not to exceed amount of \$8,760.00.

Therefore be it resolved that the Board of County Commissioners execute the contract for environmental consulting services for Cheshire Elementary School Sanitary Sewer Improvements with BBC&M Engineering Inc. of Dublin, Ohio.

Furthermore be it resolved that the Board of County Commissioners approval the following purchase order:

BBC&M Engineering, Inc for \$8,760.00 from 66690415-5415

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENVIRONMENTAL SCIENTIST
FOR
CONSULTING SERVICES
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENVIRONMENTAL SCIENTIST
FOR
CONSULTING SERVICES

This agreement effective as of April 27, 2009 between Delaware County Commissioners (“Owner”) and BBC&M Inc. (“Environmental Scientist”). Owner intends to Retain environmental consulting services in order to develop the final engineering and permitting of the Cheshire Elementary School Sanitary Sewer Improvements as detailed in exhibit A (“Project”)

Owner and Environmental Scientist agree as follows:
SERVICES OF ENVIRONMENTAL SCIENTIST

1.01 *Technical Scope*

- A. Environmental Scientist shall provide, or cause to be provided, the services set forth herein and in Exhibit A including all appendices to Exhibit A.
- B. Technical scope may be reduced or amended at the discretion of the Sanitary Engineer if provided in writing to the Environmental Scientist. Increases to the technical scope that exceed the contract price as detailed in Exhibit B shall only be allowed through a formal contract amendment.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall pay Environmental Scientist as set forth in Exhibit B.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Environmental Scientist shall begin rendering services as of the Effective Date of the Agreement and upon authorization from the Owner.

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3.02 *Time for Completion*

- A. Environmental Scientist 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 Environmental Scientist, such periods of time or dates are changed, or the orderly and continuous progress of Environmental Scientist's services is impaired, or Environmental Scientist's services are delayed or suspended, then the time for completion of Environmental Scientist's services, and the rates and amounts of Environmental Scientist's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Environmental Scientist's services, and the rates and amounts of Environmental Scientist's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Environmental Scientist's performance of its services.
- E. If Environmental Scientist 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.* Environmental Scientist shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit B. Environmental Scientist shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Failure to Pay.* If Owner fails to make any payment due Environmental Scientist for services and expenses within 30 days after receipt of Environmental Scientist's invoice, then:
 - 1. Environmental Scientist 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, expenses, and other related charges. Owner waives any and all claims against Environmental Scientist for any such suspension.
- B. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- C. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Environmental Scientist's services or compensation under this Agreement, then the Environmental Scientist 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 Environmental Scientist is entitled under the terms of Exhibit B.

ARTICLE 5 – OPINIONS OF COST –NOT USED

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all environmental services performed or furnished by Environmental Scientist 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. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Environmental Scientist's services. Environmental Scientist shall correct any such deficiencies

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in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- B. Environmental Scientist may employ such Consultants as Environmental Scientist deems necessary to assist in the performance or furnishing of the services as approved by Owner.
- C. Subject to the standard of care set forth in Paragraph 6.01.A, Environmental Scientist 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.
- D. Environmental Scientist and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Environmental Scientist 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 Environmental Scientist's scope of services, times of performance, and compensation.
- E. Environmental Scientist shall not be required to sign any documents, no matter by whom requested, that would result in the Environmental Scientist having to certify, guarantee, or warrant the existence of conditions whose existence the Environmental Scientist cannot ascertain. Owner agrees not to make resolution of any dispute with the Environmental Scientist or payment of any amount due to the Environmental Scientist in any way contingent upon the Environmental Scientist signing any such documents.

6.02 *Design Without Construction Phase Services- Not Used*

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Environmental Scientist 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 within the 60-day acceptance period 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. Environmental Scientist 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 Environmental Scientist, 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 Environmental Scientist; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Environmental Scientist, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Environmental Scientist or to Environmental Scientist's Consultants.

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6.04 *Insurance*

- A. Environmental Scientist shall procure and maintain insurance as set forth in Exhibit C, "Insurance." Environmental Scientist shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Environmental Scientist.
- B. Environmental Scientist shall deliver a certificate of insurance evidencing the coverages indicated in Exhibit C. Such certificate shall be furnished prior to commencement of Environmental Scientist's services and at renewals thereafter during the life of the Agreement. Environmental Scientist shall also deliver properly executed endorsements evidencing the listing of Owner as an additional insured, pursuant to Paragraph 6.04.A.
- C. All policies of property insurance relating to the Project shall contain provisions to the effect that Environmental Scientist's and Environmental Scientist'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 Environmental Scientist or its Consultants, or any insureds or additional insureds thereunder.
- D. At any time, Owner may request that Environmental Scientist 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 C. If so requested by Owner, and if commercially available, Environmental Scientist 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 C 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 Environmental Scientist.

By Environmental Scientist: If Environmental Scientist's services are substantially delayed through no fault of Environmental Scientist, Environmental Scientist 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 Environmental Scientist'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 Environmental Scientist 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.*

In the event of any termination under Paragraph 6.05, Environmental Scientist 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 Environmental Scientist are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Environmental Scientist (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Environmental Scientist) 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 Environmental Scientist 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 other, 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 Environmental Scientist 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 Environmental Scientist 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 Environmental Scientist agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit D or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit D. If Exhibit D is not included, or if no dispute resolution method is specified in Exhibit D, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site-Not Used*

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Environmental Scientist.* To the fullest extent permitted by law, Environmental Scientist 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 Environmental Scientists, 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 Environmental Scientist or Environmental Scientist's officers, directors, partners, employees, or Consultants.

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- B. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Environmental Scientist 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.

6.11 *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 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 Environmental Scientist, 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.

6.12 *Campaign Finance – Compliance with O.R.C. § 3517.*

- 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 Environmental Scientist /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.

6.13 *Homeland Security*

- A. Environmental Scientist 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, Environmental Scientist 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.

6.14 *Findings for Recovery*

- A. Environmental Scientist hereby certifies that it is not subject to any unresolved findings for recovery issued against it by the Auditor of State.

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6.15 *Non-Discrimination*

- A. Surveyor hereby certifies that it is, and at all times while the Agreement is in effect shall remain, in compliance with all applicable laws concerning or related to non-discrimination and equal opportunity employment.

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 Environmental Scientist in accordance with Exhibit A, Part 2, of this Agreement.
 2. *Basic Services* – The services to be performed for or furnished to Owner by Environmental Scientist in accordance with Exhibit A, Part 1, of this Agreement.
 3. *Consultants* – Individuals or entities having a contract with Environmental Scientist to furnish services with respect to this Project as Environmental Scientist’s independent professional associates, consultants, subcontractors, or vendors.
 4. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Environmental Scientist to Owner pursuant to this Agreement.
 5. *Drawings* – That part of the Contract Documents prepared or approved by Environmental Scientist which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 6. *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.
 7. *Reimbursable Expenses* – The expenses incurred directly by Environmental Scientist in connection with the performing or furnishing of Basic and Additional Services for the Project.
 8. *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.
 9. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Environmental Scientist 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 pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, “Environmental Scientist’s Services,” consisting of 2 pages, plus Appendices 1 & 2
- B. Exhibit B, “Payments to Environmental Scientist for Services and Reimbursable Expenses,” consisting of 4 pages.

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- C. Exhibit C, "Insurance," consisting of 2 pages.
- D. Exhibit D, "Dispute Resolution," consisting of 2 pages.
- E. Exhibit E, "Amendment to Owner-Environmental Scientist 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 Environmental Scientist 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.

8.03 Designated Representatives

- A. With the execution of this Agreement, Environmental Scientist and Owner shall designate specific individuals to act as Environmental Scientist's and Owner's representatives with respect to the services to be performed or furnished by Environmental Scientist 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. IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**This is EXHIBIT A, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.
Environmental Scientist's Services**

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Environmental Scientist shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A.1.01 Phase 1 Environmental Site Assessment (ESA) & Jurisdictional Stream and Wetland Delineation (JSWD) Report Phase

- A. Environmental Scientist shall:
 1. Consult with Owner to define and clarify requirements for the Project and available data.
 2. Perform all necessary work to provide deliverables and services as defined in Appendix 1- Environmental Scientist's Technical Proposal dated January 26, 2009 and Revised 4/14/2009 (Sheets 1-6), and the "Request for Proposal Jurisdictional/Isolated Waters Delineation & Phase 1 Environmental Site Assessment for Cheshire Elementary School Sanitary Sewer Improvements" dated March 27, 2009 as provided in Appendix 2 of Exhibit A.
 3. Submit the Phase 1 ESA within three weeks of authorization to begin rendering services from Owner.
 4. Submit the Jurisdictional Determination Request and the Preliminary JSWD to the United States Army Corps of Engineers (USACE) within four weeks of authorization to begin rendering services from Owner.
 5. Complete preliminary delineation, flagging, and GPS surveying of approximate boundaries of jurisdictional/isolated wetlands and jurisdictional streams within three weeks of authorization to begin rendering services from Owner. Environmental Scientist shall notify Owner of all delineations, flagging, and GPS surveying at such time that these preliminary services are complete.
 6. Revise the deliverables in response to Owner's comments, as appropriate, and furnish 2 copies of the revised deliverables to the Owner within 7 calendar days receipt of the Owner's comments.

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- B. Environmental Scientist's services under the Phase 1 ESA and JSWD Phase will be considered complete on the date when the revised Phase 1 Environmental Site Assessment (ESA) & Jurisdictional Stream and Wetland Delineation (JSWD) have been delivered to Owner.

A.1.02 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Environmental Scientist shall:
1. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- B. If authorized in writing by Owner, Environmental Scientist shall furnish or obtain from others Additional Services of the types listed below.
1. Services resulting from significant changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Environmental Scientist's control.
 2. Services resulting from Owner's request to evaluate additional alternative solutions beyond those identified in the *Phase 1 ESA and JSWD Report Phase*.
 3. Furnishing services of Environmental Scientist's Consultants for other than Basic Services.
 4. Providing surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.01, and providing special field surveys.
 5. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
 6. Other services performed or furnished by Environmental Scientist not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization-Not Used

**This is EXHIBIT B, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____ .
Payments to Environmental Scientist for Services and Reimbursable Expenses**

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

B2.01 Compensation For Basic Services - Standard Hourly Rates Method of Payment

- A. Owner shall pay Environmental Scientist for Basic Services set forth in Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Environmental Scientist's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus and Environmental Scientist's Consultant's charges, if any.
1. Environmental Scientist's Standard Hourly Rates are attached to this Exhibit B as Appendix 2.
 2. The total compensation for services under Paragraph B2.01 shall not exceed \$8,760.
 3. The hourly rates as defined in Appendix 2 include all labor, overhead, profit, Reimbursable Expenses and Environmental Scientist's Consultant's charges.
 4. The amounts billed for Environmental Scientist's services under Paragraph B2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Environmental Scientist's employees times Standard Hourly Rates for each applicable billing class, including Reimbursable Expenses and Environmental Scientist's Consultant's charges.
 5. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of 1/1/2010) to reflect equitable changes in the compensation payable to Environmental Scientist.

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B2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit. The amount of all Reimbursable Expenses shall be included with, and not be payable in addition to, the not to exceed value set forth in Article B2.01A2.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Environmental Scientist, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

B2.03 Other Provisions Concerning Payment

- A. Whenever Environmental Scientist is entitled to compensation for the charges of Environmental Scientist's Consultants, those charges shall be the amounts billed by Environmental Scientist's Consultants to Environmental Scientist times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Environmental Scientist's Consultant's factors include Environmental Scientist's overhead and profit associated with Environmental Scientist's responsibility for the administration of such services and costs.
- C. To the extent necessary to verify Environmental Scientist's charges and upon Owner's timely request, Environmental Scientist shall make copies of such records available to Owner at cost.

This appendix 1 to EXHIBIT B, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.

Reimbursable Expenses Schedule

Current agreements for Environmental services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit B. Reimbursable expenses for services performed on the date of the Agreement are not to be charged to the Owner without review and consent by the Owner.

The amount of all Reimbursable Expenses shall be included with, and not be payable in addition to, the not to exceed value set forth in Article B2.01A2.

Environmental Lien Search	\$204/parcel
Mileage (auto)	0.66/mile
Direct Costs	At cost

This is Appendix 2 to EXHIBIT B, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.

Standard Hourly Rates Schedule

- A. Standard Hourly Rates
 - 1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit B and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
 - 2. The Standard Hourly Rates will be adjusted annually (as of 1/1/2010) to reflect equitable changes in the compensation payable to Environmental Scientist, and the adjustment shall not exceed 3%.
 - 3. The Standard Hourly Rates apply only as specified in Article B2.
- B. Schedule

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Hourly rates for services performed on or after the date of the Agreement are:

Billing Class P4 Senior Engineer/Geologist/Environmental Scientist	\$115/hour
Billing Class P5 Project Engineer/Geologist/Environmental Scientist	\$90/hour
Billing Class P6 Staff Engineer/Geologist/ Environmental Scientist/Design Engineer	\$70/hour
Billing Class P17 Staff CAD Technician	\$45/hour
Billing Class P18 Field Supervisor	\$90/hour
Billing Class P19 Field Coordinator	\$55/hour
Billing Class P22 Materials Administrator	\$50/hour

This is EXHIBIT C, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.
Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

C6.04 Insurance

- A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:
 - 1. By Environmental Scientist:
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability --
 - 1) Each Accident: \$1,000,000
 - 2) Disease, Policy Limit: \$1,000,000
 - 3) Disease, Each Employee: \$1,000,000
 - c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
 - d. Excess or Umbrella Liability --
 - 1) Each Occurrence: \$2,000,000
 - 2) General Aggregate: \$2,000,000
 - e. Automobile Liability --
 - 1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident \$1,000,000
 - f. Professional Liability --
 - 1) Each Claim Made: \$1,000,000
 - 2) Annual Aggregate: \$3,000,000
 - 2. The Owner shall be listed on Environmental Scientist's general liability policy as provided in Paragraph 6.04.A.

This is EXHIBIT D, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.
Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.08 Dispute Resolution

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- A. Mediation. Owner and Environmental Scientist agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreeable mediator. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties shall employ arbitration as detailed below.

- B. Arbitration. All Disputes between Owner and Environmental Scientist shall be settled by arbitration in accordance with the American Arbitration Association (AAA) Construction Industry Arbitration Rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph D6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.
 - 1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and the AAA. . The demand must be made within 30 days after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 - 2. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
 - 3. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
 - 4. If a Dispute in question between Owner and Environmental Scientist involves the work of a Contractor, subcontractor, or consultants to the Owner or Environmental Scientist (each a “Joinable Party”), either Owner or Environmental Scientist may join each Joinable Party as a party to the arbitration between Owner and Environmental Scientist hereunder, and Environmental Scientist or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Environmental Scientist involving the work of such Joinable Party. Nothing in this Paragraph D6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Environmental Scientist that does not otherwise exist.

This is EXHIBIT E, consisting of _____ pages, referred to in and part of the Agreement between Owner and Environmental Scientist for Consulting Services dated _____, _____.

AMENDMENT TO OWNER-ENVIRONMENTAL SCIENTIST AGREEMENT

- 1. Background Data:
 - a. **Effective Date of Owner-Environmental Scientist Agreement:** _____
 - b. **Owner:** Delaware County Board of Commissioners
 - c. **Environmental Scientist:** BBC&M, Inc.
 - d. **Project:** Cheshire Elementary School Sanitary Sewer Improvements

- 2. Nature of Amendment [Check those that are applicable and delete those that are inapplicable.]
 - _____ Additional Services to be performed by Environmental Scientist
 - _____ Modifications to Services of Environmental Scientist
 - _____ Modifications to Responsibilities of Owner

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- _____ Modifications to Payment to Environmental Scientist
- _____ Modifications to Time(s) for rendering Services
- _____ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

Owner and Environmental Scientist hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-488

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Hanks, seconded by Mr. O'Brien to approve the following:

The Director of 911 Communications recommends the promotion of Kelly Stojkov to the position of Communications Officer, TCO III with the Delaware County 911 Center effective April 28, 2009.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioners' Committees Reports- refer to CD minutes for entire record

Commissioner Hanks

-none

Commissioner O'Brien

-The Sheriff has mentioned that he may require additional appropriations if the Swine Flu becomes an issue in Delaware County

Commissioner Thompson

-Introduced a resolution on the Sponsorship Pledge Book Project from the Bi-Centennial Year

RESOLUTION NO. 09-489

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE SPONSORSHIP PLEDGE BOOK PROJECT (BI-CENTENNIAL):

It was moved by Mr. Hanks, seconded by Mr. Thompson to approve the following:

Transfer of Appropriations		Amount
From	To	
10011102-5260	10011102-5601	\$1,000.00
General Funds/Equipment	General Funds/Grants	

Further Be it Resolved, that the Commissioners approve the following:

Purchase Order and Voucher to the Huntington National Bank in the amount of \$1,000.00

Vote on Motion Mr. Thompson Aye Mr. O'Brien Nay Mr. Hanks Aye

RESOLUTION NO. 09-490

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. O'Brien, seconded by Mr. Hanks to adjourn into Executive Session at 6:45PM.

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Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-491

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn out of Executive Session at 8:18PM.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-492

IN THE MATTER OF ADJOURNING THE MEETING:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn the meeting.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

Todd Hanks

Ken O'Brien

Tommy Thompson

Letha George, Clerk to the Commissioners