

COMMISSIONERS JOURNAL NO. 52 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MAY 11, 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

6:30 PM Public Hearing #2 To Consider Using Revolving Loan Funds (Rlf) To Assist The Columbus Zoological Park Association, Inc. In A Feasibility Study For A Lodging/Hotel Component At The Zoo

RESOLUTION NO. 09-533

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 7, 2009:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on May 7, 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 Abstain Mr. Hanks Aye

PUBLIC COMMENT

RESOLUTION NO. 09-534

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0508:

It was moved by Mr. Hanks, seconded by Mr. O'Brien to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0508 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R0904488	GREENWOOD LAKE CAMP	DAY CARE	22411610 - 5348	\$10,000.00	0001
R0904503	LEADS HEAD START	DAY CARE	22411610 - 5348	\$20,000.00	0001

PO'S	Vendor	Description	Account	Amount
<b>Increases</b>				
	Meijer	Program Supplies JFS	22411602-5215	\$ 3,000.00
	Kroll	Lab Testing JFS	22511607-5315	\$ 5,000.00
	Modern Office Methods	Maintenance Contract (line 2)	22411605-5325	\$ 6,700.00
	JFS	EMT Reimbursement	22411601-5348	\$ 5,000.00

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

RESOLUTION NO. 09 -535

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

Juvenile Court is requesting reimbursement for Katie Murray's training for an EMDR Institute Training in Cincinnati, Ohio April 17-19, 2009, at the cost of \$231.60. (Fund number 26526304).

The Environmental Services Department is requesting that Kevin Butchery attend a Wastewater Lab Workshop in Columbus, Ohio May 19, 2009, at the cost of \$155.00 (Fund number 66290401).

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The Environmental Services Department is requesting that Chad Antle attend a County Sanitary Engineers' Association of Ohio Summer Conference in Columbus, Ohio June 1-2, 2009, at the cost of \$75.00. (Fund number 66211902.

The 911 Department is requesting that Patrick Brandt participate in a Narrow Banding Web Seminar June 18, 2009, at the cost of \$50.00. (Fund number 21411306).

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

**RESOLUTION NO. 09-536**

**IN THE MATTER OF PROCLAIMING MAY 11<sup>TH</sup> TO 17<sup>TH</sup>, 2009 SALVATION ARMY WEEK IN DELAWARE COUNTY:**

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

**PROCLAMATION**

Whereas, The Salvation Army's only business in this county of Delaware, Ohio, as everywhere, is still human business, undertaken with joy for the family of humankind to the greater glory of God; and

Whereas, though sound, innovative and professional services, The Salvation Army serves the people of Delaware County, Ohio, with unshakable faith in all, no matter how desperate the situation and views all people as people with possibilities.

Whereas, The Salvation Army acts on behalf of all residents of our community, with neither salvation nor any other condition prerequisite, nor expecting any thanks, yet nonetheless welcoming community support,

Now; therefore, the Delaware County Commissioners do proclaim the period of May 11 to May 17, 2009 Salvation Army Week in Delaware County, Ohio, and do urge all citizens to join us in saluting the steadfast men and women who bind up the broken hearted and renew the heart of our community by their quiet service of compassion.

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

**RESOLUTION NO. 09-537**

**IN THE MATTER OF ACCEPTING THE TREASURER'S REPORT:**

It was moved by Mr. O'Brien, seconded by Mr. Hanks to accept the Treasurer's Report.

(Copy available for review at the Commissioners' Office until no longer of administrative value.)

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

**RESOLUTION NO. 09 -538**

**IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATES FOR THE PROJECT KNOWN AS DEL-CR31-1.11 (PID 80903), RED BANK ROAD OVER HOOVER RESERVOIR BRIDGE REHABILITATION PROJECT:**

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

Whereas Resolution 06-99 initiated the project known as DEL-CR31-1.11, Red Bank Road over Hoover Reservoir, and;

Whereas the County Engineer and the engineering consultant retained by the County has prepared plans, specifications and estimates for the project, and;

Whereas the County Engineer has estimated the construction cost of the project at \$964,664.88, and;

Whereas Federal Local Bridge funding has been provided through the Ohio Department of Transportation to pay one-hundred percent (100%) of the costs of construction for the project, and;

Whereas the Federal Highway Administration has authorized the commencement of bidding and construction on the project;

Now, therefore be it resolved that:

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Section 1: The plans, specifications and estimates for the project known as DEL-CR31-1.11, Red Bank Road over Hoover Reservoir are hereby approved, and;

Section 2: Sealed bids will be received at **the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until 10:00 a.m. on Tuesday, June 9, 2009** at which time they will be publicly opened and read aloud, for the project known as DEL-CR31-1.11, Red Bank Road over Hoover Reservoir.

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked "Sealed Bid For DEL-CR31-1.11". Bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

Copies of the plans and specifications must be obtained by bidders from the **Delaware County Engineer's Office, 50 Channing Street, Delaware, Ohio 43015**. Cost for each set of plans & specifications is \$20 and the cost is non-refundable. Registration with the Delaware County Engineer's Office is required to be a bidder.

The Owner requires that all work associated with the project be completed before November 19, 2009. The estimated commencement of work date is June 22, 2009.

Bidders must be pre-qualified as a Contractor by the Ohio Department of Transportation.

This is a Federal-Aid project and the Federal Equal Employment Opportunity regulations listed in the proposal shall govern. At least eight percent (8%) of contract work shall be performed by ODOT certified Disadvantaged Business Enterprises (DBE's).

This is a prevailing wage contract in accordance with the U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution. Bidders shall comply with all applicable provisions.

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

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

**RESOLUTION NO. 09 -539**

**IN THE MATTER OF APPROVING BID SPECIFICATIONS AND BID OPENING DATE FOR THE BROOKVIEW DITCH IMPROVEMENT PROJECT:**

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

**INVITATION TO BID**

Sealed proposals will be received at the **Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until 10:00 a.m. local time on Monday, June 1, 2009** for furnishing all labor, materials and equipment necessary to complete the project known as **Brookview Ditch Improvement Project**, and bids will be opened and read aloud. Contract documents, bid sheets, plans and specifications can be obtained at the **Office of the Delaware County Engineer**. **Bidder must make arrangements to obtain bid packet; they will not be mailed.**

Each bidder is required to furnish with its proposal a Bid Guaranty and Contract Bond in accordance with **Section 153.54 of the Ohio Revised Code**. Bid security furnished in Bond form shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

Each proposal must contain the full name of the party or parties submitting the proposal and all persons interested herein. Each bidder must submit evidence of its experiences on projects of similar size and complexity, and a complete listing of all subcontractors to be used. **The owner intends that this project be finished no later than August 28, 2009.**

**The engineer's estimate for this project is \$ 73,052.95**

Bids shall be placed in a sealed envelope marked "**SEALED BID FOR BROOKVIEW DITCH IMPROVEMENT PROJECT**".

The Delaware County Commissioners reserve the right to waive irregularities and to reject any and/ or all bids.

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**SCOPE OF WORK**

**Brookview Drainage Improvement Project**

This project will involve the reconstruction of open ditch and surface drain channel, the installation of subsurface drain, the replacement of private drive culverts, the reconstruction of right-of-way ditch, seeding and mulching, and the installation of erosion control material.

This project/improvement is being done pursuant to Ohio Revised Code Sections 6131 and 6137.

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

**Commissioner O'Brien proposed preparing a resolution setting a date for sales and use tax hearing**

**RESOLUTION NO. 09-540**

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

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

Whereas the Delaware County Board of Commissioners executed an agreement with BBC&M Engineering, Inc. of Dublin, Ohio on April 27, 2009 to provide environmental consulting services, and

Whereas Exhibit B of the contract executed on April 27, 2009 specified a reimbursable amount payable to BBC&M Engineering, Inc. for auto mileage at \$0.66/mile, and

Whereas the County's standard mileage reimbursement for automobile use is \$0.40/mile, and

Therefore be it resolved that the Board of County Commissioners execute the contract amendment dated April 27<sup>th</sup> 2009 for environmental consulting services for Cheshire Elementary School Sanitary Sewer Improvements with BBC&M Engineering Inc. of Dublin, Ohio to establish the reimbursable amount for automobile use at \$0.40/mile.

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

**RESOLUTION NO. 09-541**

**IN THE MATTER OF EXECUTING AN AGREEMENT WITH BBC&M OF DUBLIN, OHIO TO PROVIDE GEOTECHNICAL ENGINEERING SERVICES FOR THE 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 Regional Sewer District staff is working diligently on the design of the sanitary sewer improvements, and

Whereas, the staff requires geotechnical engineering services in order to complete the design of the sanitary sewer improvements, and

Whereas, a Request for Proposal was sent to four firms known to perform geotechnical engineering services, and

Whereas, four (4) 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 geotechnical engineering 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 \$20,855.00.

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

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

BBC&M Engineering, Inc for \$20,855.00 from **66690415-5415**

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND GEOTECHNICAL ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of May 11, 2009 "Effective Date") between Delaware County Board of Commissioners ("Owner") and BBC&M, Inc. ("Geotechnical Engineer"). Owner intends to Retain professional geotechnical engineering and consulting services to develop the final engineering and permitting of the Cheshire Elementary School Sanitary Sewer Improvements ("Project"). Owner has engaged N/A ("Engineer") to provide professional services to Owner, and in addition hereby engages Geotechnical Engineer.

Owner and Geotechnical Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF GEOTECHNICAL ENGINEER**

1.01 Scope

- A. Geotechnical Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A and all appendices to Exhibit A.
- B. Depending on field conditions encountered and subsurface conditions discovered, Geotechnical Engineer may modify the specified number and location of borings, the number and type of field and laboratory tests, and other similar items, as deemed necessary by Geotechnical Engineer in the exercise of due care. Geotechnical Engineer shall notify Owner in advance of the necessity for such modifications.
- C. Geotechnical Engineer shall take reasonable precautions to limit damage to the Site, but it is understood by Owner that, in the normal course of Geotechnical Engineer's services, some Site damage will occur and the correction of such damage is the Geotechnical Engineer's duty as stated in Exhibit A.

1.02 Records Retention

- A. Geotechnical Engineer shall retain all boring logs, field data, laboratory test data, calculations, notes, and other records (including cost records) related to the Project in legible form for a period of ten years following the completion or termination of services under this Agreement. Upon Owner's request, Geotechnical Engineer shall provide a copy of any such item to Owner at cost.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Geotechnical Engineer as set forth in Exhibit C.
- C. Geotechnical Engineer has been furnished a copy of available information relevant to the geotechnical aspects of the Project, and Owner will furnish additional relevant information as it becomes available.
- D. Owner shall grant or obtain free, safe access to the Site and adjacent public or private property, as required, for all equipment and personnel necessary for Geotechnical Engineer to perform the services under this Agreement.
- E. Owner shall provide notifications to affected third parties, including but not limited to other consultants and Site tenants, if any, indicating that Owner has granted or obtained free access to the Site for Geotechnical Engineer to perform its services.
- F. Owner shall be responsible for, and Geotechnical Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Geotechnical Engineer pursuant to this Agreement. Geotechnical Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

**ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

3.01 Commencement

- A. Geotechnical Engineer shall begin rendering services as of the Effective Date of the Agreement and authorization of the Owner.

3.02 Time for Completion

- A. Geotechnical 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 Geotechnical Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Geotechnical Engineer's services is impaired, or Geotechnical Engineer's services are delayed or suspended, then Owner shall adjust equitably the time for completion of Geotechnical Engineer's services, and the rates and amounts of Geotechnical Engineer's compensation.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then Owner shall adjust

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equitably the time for completion of Geotechnical Engineer's services, and the rates and amounts of Geotechnical Engineer's compensation.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Geotechnical Engineer's performance of its services.

E. If Geotechnical 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. Geotechnical Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Geotechnical Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

**4.02 Payments**

A. Application to Interest and Principal. Payment will be credited first to any interest owed to Geotechnical Engineer and then to principal.

B. Failure to Pay. If Owner fails to make any payment due Geotechnical Engineer for services and expenses within 30 days after receipt of Geotechnical Engineer's invoice, then:

1. amounts due Geotechnical Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Geotechnical 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 Geotechnical Engineer for any such suspension.

C. Disputed Invoices. If Owner disputes an invoice, then Owner may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraphs 2.01.B and 4.01.

D. Legislative Actions. If after the Effective Date of this Agreement any governmental entity takes a legislative or regulatory action that imposes taxes, fees, or charges on Geotechnical Engineer's services or compensation under this Agreement, then the Geotechnical 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 Geotechnical Engineer is entitled under the terms of Exhibit C.

**ARTICLE 5 – OPINIONS OF COST-NOT USED**

**ARTICLE 6 – GENERAL CONSIDERATIONS**

**6.01 Standards of Performance**

A. The standard of care for all professional, geotechnical, and related services performed or furnished by Geotechnical 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.

Geotechnical Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Geotechnical Engineer's services. Interpretations and recommendations by Geotechnical Engineer will be based on information available to or developed by Geotechnical Engineer. Owner recognizes that subsurface conditions may vary from those observed at specific locations where borings, surveys, sampling, testing, or other Site explorations are made, and that Site conditions may change with time.

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Geotechnical Engineer's services. Geotechnical Engineer shall correct any such deficiencies in technical accuracy without additional compensation. Geotechnical Engineer will not be responsible for (1) inaccuracies, errors, or omissions in data other than its own or its Consultants', or (2) improper interpretations or use by others of any geotechnical data.

C. Geotechnical Engineer shall provide, or cause to be provided, professional geotechnical and related services in all phases of the Project to which this Agreement applies. Geotechnical Engineer may employ such Consultants as Geotechnical Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. Subject to the standard of care set forth in Paragraph 6.01.A, Geotechnical Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Geotechnical Engineer and Owner shall comply with applicable Laws and Regulations. Geotechnical Engineer shall comply with standards mandated by Owner.

F. Geotechnical Engineer shall not be required to sign any document, no matter by whom requested, that would result in Geotechnical Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Geotechnical Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with Geotechnical Engineer or payment of any amount due to Geotechnical Engineer in any way contingent upon Geotechnical Engineer signing any such document.

G. Geotechnical Engineer shall not at any time supervise, direct, or have control over any Contractor's work, nor shall Geotechnical Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, for security or safety at the Site, for safety precautions and programs incident to any Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that contractor's furnishing and

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performing of its work.

H. Geotechnical Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Construction Contract.

I. Geotechnical Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees, or of any other persons (except Geotechnical Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any of the Work; or for any decision based on interpretations or clarifications of the Contract Documents given by Owner or Engineer without consultation and advice of Geotechnical Engineer.

6.02 Geotechnical-Related Construction Phase Services Performed by Others

A. If Owner or a third party provides Construction Phase geotechnical services, then Geotechnical Engineer's Basic Services under this Agreement will be deemed complete upon completion of services as set forth in Exhibit A.

B. It is understood and agreed that if Geotechnical Engineer's Basic Services under this Agreement do not include observation and review of the Work, or any other Construction Phase services, as related to the Project's geotechnical aspects, then (1) Owner assumes all responsibility for interpretation of the Contract Documents, Construction Contract administration, construction observation and review, and all other Construction Phase engineering and professional services. Notwithstanding the above, Geotechnical Engineer shall be responsible for professional opinions and interpretations provided by Geotechnical Engineer during the Construction Phase or Post-Construction Phase.

6.03 Use of Documents

A. Owner may make and retain copies of Documents for information and reference in connection with use on the Project. Geotechnical 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 Geotechnical Engineer.; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Geotechnical Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Geotechnical Engineer or its Consultants;

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, unless otherwise agreed in writing. 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.

6.04 Insurance

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

B. Geotechnical Engineer shall deliver to the Owner certificate of insurance evidencing the coverages indicated in Exhibit G. Such certificate shall be furnished prior to commencement of Geotechnical Engineer's services and at renewals thereafter during the life of the Agreement. Geotechnical Engineer 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 Geotechnical Engineer's and its 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 Geotechnical Engineer or its Consultants, or any insureds or additional insureds thereunder.

D. At any time, Owner may request that Geotechnical 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 G. If so requested by Owner, and if commercially available, Geotechnical 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 G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension.

1. By Owner: Owner may suspend Geotechnical Engineer's services under this Agreement upon seven days written notice to Geotechnical Engineer.

2. By Geotechnical Engineer: If Geotechnical Engineer's services are substantially delayed through no

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fault of Geotechnical Engineer, Geotechnical 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 of this Agreement through no fault of the terminating party.

b. By Geotechnical Engineer:

1) upon 30 days written notice if Geotechnical Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Geotechnical Engineer's control.

2) Geotechnical Engineer shall have no liability to Owner on account of such termination.

c. 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 14 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 14 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 not exceed, 30 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Geotechnical 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 7 days later than otherwise provided to allow Geotechnical 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., Geotechnical 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

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 Geotechnical Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Geotechnical Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Geotechnical 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. Neither Owner nor Geotechnical Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies 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 Geotechnical Engineer to: (a) any Contractor; (b) any subcontractor or supplier; (c) any other third-party individual or entity; or (d) 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 Geotechnical Engineer and not for the benefit of any other party.

6.08 Dispute Resolution

A. Owner and Geotechnical 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 H 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 H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 Environmental Condition of Site

A. Owner has disclosed to Geotechnical Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Geotechnical Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Geotechnical Engineer, exist at the Site.

C. If Geotechnical Engineer encounters an undisclosed Constituent of Concern, then Geotechnical Engineer shall notify Owner; and Geotechnical Engineer may notify appropriate governmental officials if Geotechnical Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Geotechnical Engineer's scope of services does not include any services related to Constituents of Concern. If Geotechnical Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Geotechnical Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on



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the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Geotechnical Engineer's services under this Agreement, then the Geotechnical Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice, in accord with the provisions of Paragraph 6.05.

F. Owner acknowledges that Geotechnical Engineer is performing professional services for Owner and that Geotechnical Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with any activities or services under this Agreement.

**6.10 Indemnification and Mutual Waiver**

A. Indemnification by Geotechnical Engineer. To the fullest extent permitted by law, Geotechnical Engineer shall indemnify and hold harmless Owner, Engineer, and their officers, members, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Geotechnical Engineer or Geotechnical Engineer's officers, members, directors, partners, agents, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Geotechnical Engineer in Paragraph 6.11, and in Exhibit I, "Allocation of Risks," if any.

B. Percentage Share of Negligence. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Geotechnical Engineer, and all other negligent entities and individuals.

**6.11 Limitation of Liability – Not Used**

**6.12 Miscellaneous Provisions**

A. Notices. Any notice required under this Agreement shall 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 this 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 Geotechnical Engineer, which agree that this 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 of the Project.

**6.13 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 Geotechnical 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.

**6.14 Homeland Security**

A. Geotechnical 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, Surveyor 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.

**6.15 Findings for Recovery**

A. Geotechnical Engineer 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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6.16 Non-Discrimination

A. Geotechnical 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) and printed with initial capital letters, the terms listed below have the meanings indicated, and are applicable to both the singular and plural thereof:

1. Addenda – Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Documents.
2. Additional Services – The services to be performed for or furnished to Owner by Geotechnical Engineer in accordance with Exhibit A (Part 2) of this Agreement.
3. Agreement – This “Standard Form of Agreement between Owner and Geotechnical Engineer for Professional Services” including those Exhibits listed in Article 8 hereof.
4. Application for Payment - The form which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. Basic Services. The services to be performed for or furnished to Owner by Geotechnical Engineer in accordance with Exhibit A (Part 1) of this Agreement.
7. Bidding Documents – The advertisement or invitation to bid; instructions to bidders; the bid form and attachments; the bid bond, if any; the proposed Contract Documents; and all Addenda.
8. Change Order – A document recommended by Engineer or Geotechnical Engineer, as the case may be, which is signed by Contractor and Owner, to authorize an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the effective date of the Construction Agreement.
9. Construction Agreement – The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and Contractor concerning the Work.
10. Construction Contract. – The entire and integrated written agreement between the Owner and Contractor concerning the Work.
11. Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer and Geotechnical Engineer and which includes the costs for construction of the geotechnical aspects of the Project. Construction Cost does not include costs or services of Engineer, Geotechnical Engineer or other design professionals and consultants; the cost of land, rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest and financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
12. Consultant – An individual or entity having a contract with Geotechnical Engineer to furnish services with respect to this Project as Geotechnical Engineer’s independent professional associate, consultant, subcontractor, or vendor. The term Geotechnical Engineer includes Geotechnical Engineer’s Consultants.
13. Contract Documents – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between Owner and Contractor; Addenda which pertain to the Contract Documents; Contractor’s bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the notice of award) if attached as an exhibit to the Construction Agreement; the notice to proceed; the performance and payment bonds; appropriate certifications; the General Conditions; the Supplementary Conditions; the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement; together with all written amendments, Change Orders, Work Change Directives, Field Orders and Engineer’s written interpretations and clarifications issued on or after the effective date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
14. Contract Price – The monies payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
15. Contract Times – The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.
16. Contractor – An individual or entity with whom Owner enters into a Construction Agreement. Usage herein refers to single or multiple Contractors.
17. Correction Period – The time after Substantial Completion during which Contractor must correct, at no cost to Owner, any Defective Work. This is normally one year after the date of Substantial Completion, but may be such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
18. Defective – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation of final payment.
19. Documents – Field and laboratory data, reports, and other deliverables, whether in printed or

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electronic media format, provided or furnished in appropriate phases by Geotechnical Engineer to Owner pursuant to this Agreement. Drawings, Specifications, Record Drawings and other deliverables provided or furnished by Engineer to Owner are also referred to herein as Documents.

20. Drawings – The part of the Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
21. Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which this Agreement is signed and delivered by the last of the two parties to sign and deliver.
22. Engineer – The prime professional engaged by Owner for performing or furnishing engineering services for this Project.
23. Field Order – A written order issued by Engineer or Geotechnical Engineer, as the case may be, which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
24. General Conditions – That part of the Contract Documents which sets forth terms, conditions and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.
25. Geotechnical Project Representative (GPR) – The authorized representative of Geotechnical Engineer, assigned to assist Geotechnical Engineer at the Site during the Construction Phase. The GPR will be Geotechnical Engineer's agent or employee and under Geotechnical Engineer's supervision. As used herein, the term GPR includes any assistants of GPR agreed to by Owner. The duties and responsibilities of the GPR are as set forth in Exhibit D.
26. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
27. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
28. PCBs – Polychlorinated biphenyls.
29. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
30. Radioactive Materials – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1945 (42 USC Section 2011 et seq.) as amended from time to time.
31. Record Drawings – The Drawings as issued for construction on which the Geotechnical Engineer, or Engineer, as the case may be, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Geotechnical Engineer or Engineer, considers significant based on record documents furnished by Contractor to Geotechnical Engineer or Engineer, and which were annotated by Contractor to show changes made during construction.
32. Reimbursable Expenses – The expenses incurred directly by Geotechnical Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project for which Owner shall pay Geotechnical Engineer if so indicated in Exhibit C.
33. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
34. Shop Drawings – All drawings, diagrams, illustrations, schedules and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to Engineer or Geotechnical Engineer, as the case may be, to illustrate some portion of the Work.
35. Site – As the context may indicate:
  - a. Lands or areas designated by Owner on which the Geotechnical Engineer is to perform field services and with which Geotechnical Engineer is concerned in providing its services.
  - b. Lands or areas indicated in the Contract Documents as being furnished by Owner, upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Contractor.
36. 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.
37. Substantial Completion – The time at which the Work (or a specified part thereof, such as the geotechnical aspects of the Work) has progressed to the point at which, in the opinion of Engineer (or Geotechnical Engineer as to geotechnical parts of the Work), the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized by Owner for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
38. Supplementary Conditions – That part of the Contract Documents which amends or supplements the General Conditions.
39. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.
40. Work Change Directive – A written directive to Contractor, issued on or after the effective date of the Construction Agreement and signed by Owner upon recommendation of the Engineer or Geotechnical

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Engineer, as the case may be, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

Included? (Yes or No)	Exhibit	Exhibit Title
Yes, required	A	“Geotechnical Engineer’s Services”
Yes, required	B	“Owner’s Responsibilities”
Yes, required	C	“Payments to Geotechnical Engineer for Services”
No	D	“Duties, Responsibilities and Limitations of Authority of Geotechnical Project Representative”
No	E	“Geotechnical Engineer’s Notice of Acceptability of Work”
No	F	Reserved
Yes, required	G	“Insurance”
Yes	H	“Dispute Resolution”
No	I	Reserved
Yes	J	“Special Provisions “
Yes	K	“Amendment to Owner-Geotechnical Engineer Agreement” (Form only – for later use)

8.02 Total Agreement

A. This Agreement together with the incorporated Exhibits identified above constitutes the entire agreement between Owner and Geotechnical 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.

8.03 Designated Representatives

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

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

**RESOLUTION NO. 09-542**

**IN THE APPROVING A CONTRACT WITH HULL AND ASSOCIATES, INC. FOR PROVIDING ARC FLASH ANALYSIS AND TRAINING FOR THE ALUM CREEK WATER RECLAMATION FACILITY:**

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

Whereas the Board of County Commissioner owns and operates a Sewer District for the purposes of promoting public health and welfare, and

Whereas duties of the Sewer District includes the operation of the Alum Creek Water Reclamation Facility, and

Whereas this facility uses electricity to power pumps, motors, and other equipment to assist in treating the wastewater, and

Whereas Delaware County desires to create and maintain a safe work place for its employees, and

Whereas the Sewer District staff recommends implementing an arc flash hazard program to provide additional safety measures and procedures for County employees, and

Whereas National Fire Protection Association (NFPA) Code 70E provides standards to establish electrical safety in the workplace, and

Whereas three proposals were received for the requested services, and

Whereas the proposals were reviewed by both Sewer District staff and the County Safety Officer, and

Whereas upon evaluation of the proposals, Hull and Associates has provided the lowest and best price for the requested services.

Therefore be it resolved, that the Board of County Commissioners execute an agreement with Hull and Associates of Dublin, Ohio to provide arc flash analysis and training for the Alum Creek Water Reclamation

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Facility.

**Furthermore be it resolved** that the Board of Commissioners approve the following Purchase Order:

\$24,800.00 to Hull & Associates from 66290401-5301

**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONSULTANT  
FOR  
CONSULTING SERVICES  
FOR  
ALUM CREEK WATER RECLAMATION NFPA 70E – ARC FLASH HAZARD ANALYSIS**

THIS IS AN AGREEMENT effective as of May 11, 2009 (“Effective Date”) between Delaware County Board of Commissioners (“Owner”) and Hull And Associates, Inc. (“Consultant”). Owner intends to Retain consulting services to provide Arc Flash Hazard Analysis and Training as required by NFPA 70E for the Alum Creek Water Reclamation Facility (ACWRF)

Owner and Consultant agree as follows:

**ARTICLE 1 – SERVICES OF CONSULTANT**

1.01 Technical Scope

- A. Consultant 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 Consultant. Increases to the technical scope that exceed the contract price as detailed in Exhibit A shall only be allowed through a formal contract amendment.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 General

- A. Owner shall pay Consultant as set forth in Exhibits A and B.

**ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

3.01 Commencement

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

3.02 Time for Completion

- A. Consultant 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 Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant’s services is impaired, or Consultant’s services are delayed or suspended, then the time for completion of Consultant’s services, and the rates and amounts of Consultant’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 Consultant’s services, and the rates and amounts of Consultant’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 Consultant’s performance of its services.
- E. If Consultant 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. Consultant shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibits A and B. Consultant 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 Consultant for services and expenses within 30 days after receipt of Consultant’s invoice, then:
1. Consultant 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 Consultant 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 Consultant’s services or compensation under this Agreement, then the Consultant 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

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payment shall be in addition to the compensation to which Consultant 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 professional Consulting and related services performed or furnished by Consultant 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 Consultant's services. Consultant 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. Consultant may employ such Consultants as Consultant 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, Consultant 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. Consultant and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Consultant 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 Consultant's scope of services, times of performance, and compensation.

E. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. Owner agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant 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 Consultant 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. Consultant 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 Consultant, 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 Consultant; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to Consultant's Sub-Consultants.

6.04 Insurance

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

B. Consultant shall deliver a certificate of insurance evidencing the coverages indicated in Exhibit C. Such certificate shall be furnished prior to commencement of Consultant'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 Consultant's and Consultant'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 Consultant or its Consultants, or any insureds or additional insureds thereunder.

D. At any time, Owner may request that Consultant or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those

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specified in Exhibit C. If so requested by Owner, and if commercially available, Consultant 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. Consultant shall also deliver properly executed endorsements evidencing the listing of Owner as an additional insured, pursuant to Paragraph 6.04.A.

6.05 Suspension and Termination

A. Suspension.

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

By Consultant: If Consultant's services are substantially delayed through no fault of Consultant, Consultant 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 Consultant'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 Consultant 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, Consultant 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 Consultant are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Consultant) 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant. To the fullest extent permitted by law, Consultant 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 Consultants, architects,

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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 Consultant or Consultant's officers, directors, partners, employees, or Consultants.

B. Mutual Waiver. To the fullest extent permitted by law, Owner and Consultant 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 Consultant, 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 Consultant /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. Consultant 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, Consultant 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. Consultant 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. Consultant 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 Consultant in accordance with Exhibit A, Part 2, of this Agreement.

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

3. Consultants – Individuals or entities having a contract with Consultant to furnish services with respect to this Project as Consultant'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 Consultant to Owner pursuant to this Agreement.

5. Drawings – That part of the Contract Documents prepared or approved by Consultant which



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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 Consultant 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 Consultant 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, "Consultant's Services," consisting of 2 pages.
  - B. Exhibit A, Appendix 1, "Consultant's Technical Proposal dated April 21, 2009," consisting of 6 pages.
  - C. Exhibit B, "Payments to Consultant for Services and Reimbursable Expenses," consisting of 1 page
  - D. Exhibit B, Appendix 1, "Reimbursable Expenses Schedule," – Not used.
  - E. Exhibit B, Appendix 2, "Billing Rates Schedule," consisting of 1 page.
  - F. Exhibit C, "Insurance," consisting of 2 pages.
  - G. Exhibit D, "Dispute Resolution," consisting of 2 pages.
  - H. Exhibit E, "Amendment to Owner-Consultant Agreement," consisting of 2 pages.
  - I. Attachment 1, Modifications, consisting of 1 page.
- 8.02 Total Agreement
  - A. This Agreement (consisting of pages 1 to 11 inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Consultant 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, Consultant and Owner shall designate specific individuals to act as Consultant's and Owner's representatives with respect to the services to be performed or furnished by Consultant 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 Consultant for Professional Services dated , .

**Consultant's Services**

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

**PART 1 – BASIC SERVICES**

- A.1.01 Arc Hazard Analysis and Training
  - A. Consultant 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- Consultant's technical proposal dated April 21, 2009 .
    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. Consultant's services under BASIC SERVICES 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, Consultant 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 Consultant's control.

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2. Services resulting from Owner's request to evaluate additional alternative solutions beyond those identified Preliminary Consulting and Permitting Phase .
  3. Furnishing services of Consultant'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.
  5. Other services performed or furnished by Consultant 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 1 page, referred to in and part of the Agreement between Owner and Consultant for Professional Services dated , .

**Payments to Consultant 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 Consultant for Basic Services set forth in Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Consultant's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project.

1. The total compensation for services under Paragraph B2.01 shall not exceed \$24,800.00.
2. The hourly rates as defined in Appendix 2 include all labor, overhead, profit, Reimbursable Expenses and Consultant's subconsultant's charges.
3. The amounts billed for Consultant'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 Consultant's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Consultant's Consultant's charges.
4. The Standard Hourly Rates will be adjusted annually (as of 1/1/2010) to reflect equitable changes in the compensation payable to Consultant. 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 – not used.

**B2.03 Other Provisions Concerning Payment**

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

This is Appendix 2 to EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between Owner and Consultant 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 Consultant, and shall not exceed 3%.
  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 Consultant for Professional Services dated , .

**Insurance**

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

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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 Consultant:
  - 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 Consultant'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 Consultant 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 Consultant 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 Consultant 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 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.

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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 Consultant involves the work of a Contractor, subcontractor, or consultants to the Owner or Consultant (each a "Joinable Party"), either Owner or Consultant may join each Joinable Party as a party to the arbitration between Owner and Consultant hereunder, and Consultant 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 Consultant 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 Consultant that does not otherwise exist.

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

AMENDMENT TO OWNER-CONSULTANT AGREEMENT

1. Background Data:
  - a. Effective Date of Owner-Consultant Agreement:
  - b. Owner: Delaware County Board of Commissioners
  - c. Consultant: Hull and Associates, Inc.
  - d. Project: Consulting Services for Alum Creek Water Reclamation NFPA 70E – ARC Flash Hazard Analysis
2. Nature of Amendment [Check those that are applicable and delete those that are inapplicable.]
  - Additional Services to be performed by Consultant
  - Modifications to Services of Consultant
  - Modifications to Responsibilities of Owner
  - Modifications to Payment to Consultant
  - 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 Consultant 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 .

This is Attachment 1, consisting of 1 pages, to Amendment No. , dated , .

**Modifications**

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

1. Consultant shall perform the following Additional Services:
2. The Scope of Services currently authorized to be performed by Consultant in accordance with the Agreement and previous amendments, if any, is modified as follows:
3. The responsibilities of Owner are modified as follows:
4. For the Additional Services or the modifications to services set forth above, Owner shall pay Consultant the following additional or modified compensation:
5. The schedule for rendering services is modified as follows:
6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

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

**RESOLUTION NO. 09- 543**

**IN THE MATTER OF EXECUTING A CERTIFICATE OF PARTIAL UTILIZATION TO PETERSON CONSTRUCTION COMPANY FOR THE USE OF CENTRIFUGE DEWATERING EQUIPMENT:**

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

WHEREAS the Board of County Commissioners has previously executed an agreement with Peterson Construction Company to complete the improvements know as DCRSD 08-1: Centrifuge Dewatering Facility

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Improvements, and

WHEREAS Section 14.05 of the General Conditions of the Contract Documents permits the Owner to request partial utilization of the improvements, and

WHEREAS County staff has determine that portions of the improvements are substantially complete and fit for partial utilization, and

WHEREAS Peterson Construction Company concurs with the County staff's disposition in regards to certain portions of the improvements being ready for utilization, and

WHEREAS partial utilization of the improvements to allow the County to start dewatering biosolids so they may be disposed of at a landfill, and

WHEREAS County staff has previously determined that land filling cake biosolids is currently the most cost effective means for disposal, and

WHEREAS County staff recommends accepting the Certificate of Partial Utilization for the centrifuge dewatering equipment, as detailed in Section 14.05 of the General Conditions of the Contract Documents

THEREFORE be it resolved that the Board of County Commissioners execute a Certificate of Partial Utilization to Peterson Construction Company for the use of the centrifuge dewatering equipment as related to DCRSD 08-01.

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

**RESOLUTION NO. 09-544**

**6:30 PM -IN THE MATTER OF OPENING THE PUBLIC HEARING #2 TO CONSIDER USING REVOLVING LOAN FUNDS (RLF) TO ASSIST THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION, INC. IN A FEASIBILITY STUDY FOR A LODGING/HOTEL COMPONENT AT THE ZOO:**

It was moved by Mr. O'Brien, seconded by Mr. Hanks to open the hearing.

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

**RESOLUTION NO. 09-545**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING # 2 TO CONSIDER USING REVOLVING LOAN FUNDS (RLF) TO ASSIST THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION, INC. IN A FEASIBILITY STUDY FOR A LODGING/HOTEL COMPONENT AT THE ZOO:**

It was moved by Mr. O'Brien, seconded by Mr. Hanks to close the hearing.

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

**RESOLUTION NO. 09-546**

**IN THE MATTER OF APPROVING THE SPECIFICATIONS AND SETTING THE TIME AND DATE TO RECEIVE BIDS FOR DCRSD 09-02: CAKE BIOSOLIDS CONVEYANCE AND LAND INCORPORATION FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:**

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

Whereas the wastewater treatment facilities owned and operated by Delaware County generate cake biosolids as part of the treatment process, and

Whereas the cake biosolids need to be removed from the facilities and disposed of on a consistent basis, and

Whereas Delaware County has determined that it is economically more efficient to secure a contract service for the removal and disposal of cake biosolids, and

Whereas Delaware County desires to purchase the services of a Contractor to haul and dispose of cake biosolids from the wastewater treatment facilities as needed, and

Whereas the Delaware County has estimated that greater than \$25,000 per year of cake biosolids hauling services will be required for use, and

Whereas the Delaware County Regional Sewer District desires to receive bids for public bid **DCRSD 09-02:**

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**Cake Biosolids Conveyance and Land Incorporation** on June 22, 2009, and

Whereas County staff has developed specifications for the needed services, and

Therefore, be it resolved that the Board of County Commissioners will receive bids for **DCRSD 09-02: Cake Biosolids Conveyance and Land Incorporation** biosolids on June 22, 2009 at 4:00 PM at 50 Channing Street, Delaware, Ohio.

Furthermore be it resolved that the Board of County Commissioners approve the bid documents and including the technical specifications as developed by County staff for the proposed public bid.

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

**RESOLUTION NO. 09-547**

**IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATIONS FOR DELAWARE COUNTY 9-1-1 COMMUNICATIONS:**

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

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
21411306-5001 911/Compensation	21411306-5312 911/Advertising	\$ 4,000.00
21411306-5001 911/Compensation	21411306-5380 911/Other Services	\$ 6,000.00

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

**RESOLUTION NO. 09-548**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR PROBATE COURT:**

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

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
10027201-5360 Probate Court/Court Services	10027201-5001 Probate Court/Compensation	\$ 6,750.00
10027201-5360 Probate Court/Court Services	10027201-5102 Probate Court/Workers Comp	\$ 135.00
10027201-5360 Probate Court/Court Services	10027201-5120 Probate Court/PERS	\$ 945.00
10027201-5360 Probate Court/Court Services	10027201-5131 Probate Court/Medicare	\$ 110.00

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

**RESOLUTION NO. 09- 549**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR ADULT COURT SERVICES:**

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

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
25422301-5246 Corrections Grant/Lab Materials	25422301-5348 Corrections Grant/Client Services	\$ 2,250.00

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

**RESOLUTION NO. 09-550**

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**IN THE MATTER OF APPROVING AN AMENDMENT TO THE ENGINEERING SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND THE FLOYD BROWNE GROUP FOR THE PLUMB ROAD/GALENA SECTION OF THE OHIO TO ERIE TRAIL PROJECT:**

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

**AMENDMENT #1  
ENGINEERING SERVICES AGREEMENT**

OHIO TO ERIE TRAIL (North of Plumb Road and south of Galena)  
PRELIMINARY ENGINEERING AND FINAL DESIGN

Article I – Preamble:

This Amendment #1 to the Original Agreement entered into the 20<sup>th</sup> day of October, 2008, by and between the Delaware County Board of Commissioners, Delaware County, Ohio (“County”), and the firm of Floyd Browne Group, 3769 Columbus Pike, P. O. Box 8016, Delaware, OH 43015 (“Consultant”) is hereby approved, effective as of this 11<sup>th</sup> day of May, 2009.

Article II – Amendments to the Agreement

Section 3 (Scope of Services) is hereby amended to include additional services as detailed in the Consultant’s correspondence dated April 23, 2009, consisting exclusively of the following: a Wetland Determination and Delineation, Wetland Permitting, Geotechnical Investigation, and additional Structural Engineering Services. Said additional services are more fully set forth in Exhibit A and accompanying Figure A, both attached hereto and, by this reference, fully incorporated herein.

Section 4 (Compensation) is hereby amended to reflect the cost of the additional services contemplated herein. The cost for the additional services set forth in this Article II shall be a lump sum fee of Fifteen Thousand Four Hundred Dollars (\$15,400). The total maximum fee provided for under the Original Agreement is hereby increased to a total maximum fee not to exceed Eighty-Nine Thousand Eight Hundred Ninety-Eight Dollars (\$89,898).

All other terms and conditions of the Original Agreement not specifically amended herein shall remain in full force and effect.

(Copy of exhibits available for review at the Commissioners’ Office until no longer of administrative value.)

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

**RESOLUTION NO. 09-551**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR COMMON PLEAS DATA:**

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

**Transfer of Appropriation**

From	To		
28129204-5201	28129204-5301		
Common Pleas Data/Office Supplies	Common Pleas Data/Professional Services	\$	38.00

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

**COMMISSIONERS’ COMMITTEES REPORTS**

**Refer to CD minutes for entire record**

**Commissioner O’Brien**

**-Central Ohio Youth Center Joint County Meeting is Thursday in Union County at 4:00pm for all Commissioners**

**Commissioner Hanks**

**-Sunday’s Dispatch article on Job Loss**

**Commissioner Thompson**

- JFS Sub Grant agreement**
- Worker Comp premium**
- Met with Bill Habig on the 36/37/71 interchange**
- letter from company claiming to find county funds for a fee**

**RESOLUTION NO. 09-552**

COMMISSIONERS JOURNAL NO. 52 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MAY 11, 2009

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**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 7:08PM.

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

**RESOLUTION NO. 09-553**

**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 8:27PM.

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

**RESOLUTION NO. 09-554**

**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. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

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Todd Hanks

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Ken O'Brien

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Tommy Thompson