

COMMISSIONERS JOURNAL NO. 52 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 8, 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

9:30 AM Public Hearing # 2 For The Delaware County Housing Improvement Program (DCHIP)

RESOLUTION NO. 09-667

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 4, 2009:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on June 4, 2009; and

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

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

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

PUBLIC COMMENT

RESOLUTION NO. 09-668

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0605:

It was moved by Mr. Hanks, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0605 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R0904560	BENNETT,CARRIE	DAY CARE	22411610 - 5348	\$25,000.00	0001
R0904831	HOUSE OF NEW HOPE INC	RESIDENTIAL TREATMENT	22511607 - 5342	\$35,000.00	0001
R0904832	POMEGRANATE HEALTH SYSTEMS INC	RESIDENTIAL TREATMENT	22511607 - 5342	\$100,000.00	0001
R0904834	KIDS COUNT TOO INC	Residential Treatment	22511607 - 5342	\$12,500.00	0001
R0904859	JOBS FOR OHIO GRADUATES	SUMMER YOUTH PROGRAM	22311611 - 5348	\$50,000.00	0001

Vendor	Description	Account	Amount
PO'S Increases			
Nightingale-Alan Medical	EMS Medical Supplies	10011303-5201	\$ 1,400.00

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

RESOLUTION NO. 09 -669

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The 911 Department is requesting that five 911 Staff Members attend a Digital Video Conference in Grove City, Ohio June 25, 2009, at no cost.

The Economic Development Department is requesting that Gus Comstock attend Monthly Chamber of Commerce Third Thursdays Educational Lunches at the cost of \$105.00 (Fund Number 21011113-5310)

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

RESOLUTION NO. 09-670

IN THE MATTER OF CONGRATULATING THOSE DELAWARE COUNTY STUDENTS WHO WERE SELECTED AS RECIPIENTS OF THE HIRAM LODGE 2009 SCHOLARSHIPS AWARDS:

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

WHEREAS, The Hiram Lodge supports the idea that Education is the building block of a strong community, and

WHEREAS, The Hiram Lodge began a scholarship program for Delaware County Students in 1987, and

WHEREAS, the following students from Delaware County were selected as recipients of the 2009 Scholarships:

Alexandra Betrone-Harpst- Big Walnut High School
Haley Butts -Buckeye Valley High School
Erin Cirincione-Buckeye Valley High School
Kyle Veppert-Buckeye Valley High School
Amber Hughes-Delaware Christian High School
Holly Bradford-Delaware Hayes High School
Kristin Miochi-Delaware Hayes High School

And,

WHEREAS, The Board of Commissioners of Delaware County wishes to express congratulations to these students;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby officially congratulates these students on becoming Recipients Of The Hiram Lodge 2009 Scholarships. Their diligence and hard work have earned them this prestigious honor.

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

RESOLUTION NO. 09-671

IN THE MATTER OF CONGRATULATING THE NATIONAL HONOR SOCIETY STUDENTS FROM OLENTANGY ORANGE HIGH SCHOOL:

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

Whereas, The National Honor Society Students From Olentangy Orange High School held a book drive, and

Whereas, the students collected 165 books, and

Whereas, the books were donated to the Central Ohio Youth Center, and

Whereas, the residents of the Central Ohio Youth Center have appreciated and enjoyed having new material to read, and

WHEREAS, The Board of Commissioners of Delaware County wishes to express congratulations to these students;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby officially congratulates these students on their hard work and dedication to help others.

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

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RESOLUTION NO. 09-672**IN THE MATTER OF APPROVING PLATS FOR GOLF VILLAGE NORTH COMMERCIAL REVISED AND THE SHOPPES AT LIBERTY CROSSING SECTION 1:**

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

Golf Village North Commercial Revised

Situated In The State Of Ohio, County Of Delaware, Township Of Liberty, Lying In Farm Lots 3, 24 And 25, Section 2, Township 3, Range 19, United States Military District, Being A Revision To The Plat Of Golf Village North Commercial, As Shown And Delineated In Official Record 764, Page 2662, Being A Subdivision Of Lots 4969 Through 4985, Conveyed To Golf Village North Llc, By Deed Of Record In Official Record 585, Page 1041 And Being All Of An 8.618 Acre Tract Conveyed To Golf Village North Llc. By Deed Of Record In Official Record 874, Page 2333, All Of A 1.751 Acre Tract And A 4.580 Acre Tract Conveyed To Golf Village North Llc. By Deed Of Record In Official Record 852, Pages 591-592, And All Of Original Lot 4971 Of Said Golf Village North Commercial Conveyed To GV 4971 Llc. By Deed Of Record In Official Record 818, Page 646, All Records Herein Are From The Recorders Office, Delaware County, Ohio A Total Of 35.820 Acres. Cost \$39.00

The Shoppes at Liberty Crossing Section 1

Situated In The State Of Ohio, County Of Delaware, Township Of Liberty, In Farm Lot 11, Quarter Township 3, Township 3 North Range 19 West, United States Military Lands And Being All Of Lot Number Five Thousand One Hundred And Twenty-Six (5126) And Lot Number Five Thousand One Hundred And Twenty-Seven (5127), As Shown Upon The Plat Of Big Bear Farm Section 10, Lot 4615, Division #1 Of Record In Official Record 856, Pages 1086 And 1087 And Recorded In Plat Cabinet 4, Slides 8 And 8a, Said Lots Are A Portion Of An Original 26.887 Acre Tract Of Land Conveyed To Three Rocks And A Boulder, LLC By Deed Of Record In Official Record 644, Page 260, This Is A Re-Subdivision Of Lot 5126 And Lot 5127 Of Said Big Bear Farms Section 10, Lot 4615 Division #1, All References Being To The Recorder's Office, Delaware County, Ohio. Cost \$12.00

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

RESOLUTION NO. 09-673**IN THE MATTER OF APPROVING A DITCH MAINTENANCE PETITION AND THE DITCH MAINTENANCE ASSESSMENTS FOR THE OLENTANGY SCHOOL FACILITIES ON S. 3B'S AND K ROAD:**

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

The Olentangy School Facilities On S. 3b's And K Road

WHEREAS, on June 3, 009 a Ditch Maintenance Petition for **The Olentangy School Facilities On S. 3b's And K Road** was filed with the Board of Commissioners of Delaware County (the "Board"); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within the development area; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for each lot in the subject development area to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delaware County, Ohio:

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as

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follows:

The cost of the drainage improvements being \$148,875.00 for the benefit of a total of 89.137 acres, the basis for calculating the assessment for each lot is, therefore, \$0 per lot. An annual maintenance fee equal to two percent (2%) of this basis (\$2,977.50) shall be collected for each lot. The basis for calculating the maintenance assessment shall be reviewed and subject to revision every six (6) years. The first year's assessment for all of the lots in the amount of \$2,977.50 has been paid to Delaware County, receipt of which is hereby acknowledged.

Section 3. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

RESOLUTION NO. 09-674

IN THE MATTER OF APPROVING A DITCH MAINTENANCE PETITION AND THE DITCH MAINTENANCE ASSESSMENTS FOR OLENTANGY SCHOOL FACILITIES ON BALE KENYON ROAD:

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

Olentangy School Facilities On Bale Kenyon Road

WHEREAS, on June 3, 2009 a Ditch Maintenance Petition for the **Olentangy School Facilities On Bale Kenyon Road** was filed with the Board of Commissioners of Delaware County (the "Board"); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within the developed area; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for each lot in the subject developed area to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delaware County, Ohio:

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements being \$22,500.00 for the benefit of a total of 18 acres, the basis for calculating the assessment for each lot is, therefore, \$0 per lot. An annual maintenance fee equal to two percent (2%) of this basis (\$450.00) shall be collected for each lot. The basis for calculating the maintenance assessment shall be reviewed and subject to revision every six (6) years. The first year's assessment for all of the lots in the amount of \$450.00 has been paid to Delaware County, receipt of which is hereby acknowledged.

Section 3. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

RESOLUTION NO. 09-675

IN THE MATTER OF AWARDED THE BID AND APPROVING THE CONTRACT TO B&K LEHNER

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EXCAVATING FOR THE BROOKVIEW DITCH IMPROVEMENTS PROJECT:

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

**Brookview Ditch Improvements Project
Bid Opening of June 1, 2009**

Whereas, with the results of the above referenced bid opening, The Engineer recommends that an award be made to B&K Lehner Excavating, the low bidder for the project. (A copy of the bid tabulation is available for your information, and

Whereas, the Engineer recommends approval of the following contract with B&K Lehner Excavating;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract with B&K Lehner Excavating:

CONTRACT

AGREEMENT, made and entered into this 8th day of June, by and between the **DELAWARE COUNTY COMMISSIONERS**, Delaware County, Ohio, and hereinafter designated as **FIRST PARTY**, and **B&K LEHNER EXCAVATING**, hereinafter designated as **SECOND PARTY**.

WITNESSETH, that said **SECOND PARTY**, for and in consideration of the sum of **SEVENTY-TWO THOUSAND NINE HUNDRED THIRTY-SIX DOLLARS** (\$72,936.00), based on unit prices on the attached **Bid Blank**, to be paid as hereinafter specified, hereby agrees to furnish unto said **FIRST PARTY**, all the necessary material, labor and equipment required to complete the project known as **Brookview Ditch Improvement Project**, in accordance with plans, drawings, general specifications, Invitation to Bid for same hereto attached; which plans, drawings, general specifications and Invitation to Bid are hereby declared to be a part of this **Contract**.

SAID SECOND PARTY further agrees to furnish said materials and to do the said work and labor promptly, in a good, substantial and workmanship manner, under the direction of the **Delaware County Engineer and Delaware Soil and Water Conservation District**. **The owner intends that this project be finished no later than August 29, 2009.**

THE SECOND PARTY hereby agrees to indemnify and hold the **County** free and harmless from any and all claims for damages, costs, expenses, judgments or decrees, resulting from any operations of said **SECOND PARTY**, his sub-contractors, agents or employees.

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

RESOLUTION NO. 09-676

IN THE MATTER OF APPROVING AN OHIO PUBLIC WORKS COMMISSION COOPERATION AGREEMENT BETWEEN DELAWARE COUNTY AND DELAWARE CITY FOR THE US 36 RESURFACING PROGRAM:

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

Whereas, the Engineer recommends approval of the following Cooperation Agreement between Delaware County and Delaware City for the US 36 resurfacing program;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following Cooperation Agreement between Delaware County and Delaware City for the US 36 resurfacing program.

**“COOPERATION AGREEMENT”
CITY OF DELAWARE & DELAWARE COUNTY
US 36 (William Street) Resurfacing from Franklin Street to Union Street**

DELAWARE CITY RESOLUTION NUMBER 09-25 DATE

DELAWARE COUNTY RESOLUTION NUMBER 09-676 DATE 06/08/09

Delaware City and Delaware County enter into a cooperative agreement to submit an application to the Ohio Public Works Commission for the improvements of the US 36 (William Street) Resurfacing from Franklin Street to Union Street.

Delaware City will provide funds totaling 18.9% of the cost of the improvements of the US 36 (William Street) Resurfacing from Franklin Street to Union Street project. Such funds will come from the General Fund.

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Delaware County through the County Engineer will provide funds totaling 18.9 % of the cost of the improvements of the US 36 (William Street) Resurfacing from Franklin Street to Union Street project. Such funds will come from the Gasoline and Motor Tax Fund.

Delaware County authorizes Delaware City to be the lead applicant and to sign all necessary documents.

Delaware City agrees to pay its \$35,000.00 of the cost as invoices are due.

Delaware County through the Delaware County Engineer's OPWC Grant Enhancement Program agrees to pay its \$35,000.00 of the cost towards construction.

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

RESOLUTION NO. 09-677

IN THE MATTER OF APPROVING AN OHIO PUBLIC WORKS COMMISSION COOPERATION AGREEMENT BETWEEN THE BOARD OF TOWNSHIP TRUSTEES OF ORANGE TOWNSHIP AND THE DELAWARE COUNTY COMMISSIONERS FOR THE EAST ORANGE ROAD IMPROVEMENTS PROJECT:

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

Whereas, the Engineer recommends approval of the following Cooperation Agreement between Delaware County and the Board of Township Trustees of Orange Township for the East Orange Road Improvements Project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following Cooperation Agreement between Delaware County and the Board of Township Trustees of Orange Township for the East Orange Road Improvements Project:

**“COOPERATION AGREEMENT”
ORANGE TOWNSHIP & DELAWARE COUNTY
EAST ORANGE ROAD IMPROVEMENTS PROJECT**

ORANGE TOWNSHIP RESOLUTION NUMBER 09-217 DATE 06/01/09

DELAWARE COUNTY RESOLUTION NUMBER 09-677 DATE _06/08/09__

The Board of Township Trustees of Orange Township (“Orange Township”) and the Delaware County Commissioners (“Delaware County”) hereby enter into a cooperative agreement to submit an application to the Ohio Public Works Commission for the East Orange Road Improvements Project.

Orange Township will provide funds totaling 63.5% of the cost of the East Orange Road Improvements Project. Such funds will come from the Motor Vehicle License Tax – Improvement of Sites Estate Taxes Received Fund.

Delaware County, through the County Engineer, will provide funds totaling 1.0% of the cost of the East Orange Road Improvements Project. Such funds will come from the Road and Bridge Fund.

Delaware County authorizes Orange Township to be the lead applicant and to sign all necessary documents.

Orange Township agrees to pay its \$3,586,947.00 of the cost as invoices are due.

Delaware County, through the Delaware County Engineer's OPWC Grant Enhancement Program, agrees to pay its \$50,000.00 of the cost towards construction and inspection services.

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

RESOLUTION NO. 09-678

IN THE MATTER OF DECLARING THE NECESSITY FOR MAINTENANCE AND IMPROVEMENTS TO VARIOUS COUNTY AND TOWNSHIP ROADS AS PART OF THE DELAWARE COUNTY PORTION OF THE MID-OHIO REGIONAL PLANNING COMMISSION'S ALLOCATION OF FEDERAL STIMULUS (ARRA) FUNDING AND AUTHORIZING THE COUNTY ENGINEER TO PREPARE PLANS FOR THE IMPROVEMENT AND APPROVING AN AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, AND THE DELAWARE COUNTY ENGINEER ACTING BY AND THROUGH THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR DEL-COUNTY ARRA RESURFACING PROJECT:

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

Whereas, Section 5555.022 of the Revised Code provide that a Board of County Commissioners may find that the public convenience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening, or widening such road, and may order the County Engineer to prepare surveys, plans, profiles, cross sections, estimates of cost, and specifications for the improvement;

Whereas the County Engineer has determined that certain county, township and city roads require maintenance or improvement and recommends that the Board proceed with maintenance or improvement to the following roads:

London Road from U.S. Route 42 to approximately 500 feet north in the City of Delaware;
Cheshire Road (County Rod 72) from U.S. Route 23 to Braumiller Road in the City of Delaware;
Bale Kenyon Road (Township Road 107) from East Powell Road to Lewis Center Road;
West Orange Road (Township Road 114) from Perry Road to U.S. Route 23 (no widening);
Liberty Road (County Road 9) from the CSX Railroad to State Route 750 in the City of Powell;
Liberty Road (County Road 9) from Freedom Lane to London Road in the City of Delaware;
Cheshire Road (County Road 72) from the Sunbury Corp. Line to U.S. Route 36 in Sunbury;
Home Road (County Road 124) from State Route 745 to Scioto Parkway
Africa Road (County Road 21) from Worthington Road to Big Walnut Road
Lewis Center Road (County Road 106) from the Olentangy High School Entrance to Woodstone Drive
Harriott Road (County Road 131) from Concord Road to State Route 745)
Concord Road (Township Road 129) from the Dublin Corporation Line to Cook Road;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County:

Section 1: That the public convenience and welfare require the preventative maintenance, resurfacing or reconstruction of pavement on the roads listed above, and that the Project known as DEL-COUNTY RESURFACING (PID 86579) be initiated for said purpose, and;

Section 2: That the County Engineer is hereby authorized to prepare surveys, plans, profiles, cross sections, estimates of cost, and specifications for the improvement, and;

Section 3: That costs for said Project be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay the costs of the Project.

Description

Resurfacing and pavement reconstruction of various county and township roads as part of the Delaware County share of the MORPC allocation of American Recovery and Reinvestment Act (ARRA) funds designated for resurfacing of local roads. \$1.81 million of ARRA funding is provided for funding of roads on the Federal-Aid Highway System, which are roads classified as major collector or arterial roads. Roads must also have a pavement condition rating that is below 75 for resurfacing or below 90 for preventative maintenance such as microsurfacing.

**PRELIMINARY LEGISLATION
RC 5521.01
Resolution Number 09-678
PID Number 86579
DEL-COUNTY ARRA RESURFACING
ODOT Agreement Number 22774**

The following is a Resolution enacted by the Board of Commissioners of Delaware County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the described project.

SECTION I - Project Description

WHEREAS, the COUNTY has identified the need for the described project:

This project proposes to resurface various roadways in Delaware County. This is a MORPC/ODOT ARRA Federal Stimulus project.

NOW THEREFORE, be it resolved by the Board of Commissioners of Delaware County, Ohio;

SECTION II - Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the described project.

SECTION III - Authority to Sign

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The County Engineer is designated as Project Administrator and shall have authority to cooperate with the Director of Transportation on behalf of the LPA to complete the above described project.

**DEL-COUNTY ARRA RESURFACING
PID Number 86579
Agreement Number 22658
CFDA 20.205**

**LPA FEDERAL LOCAL-LET PROJECT AGREEMENT
** ARRA FUNDED PROJECT ****

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **Delaware County Engineer** acting by and through the **Delaware County Board of Commissioners**, hereinafter referred to as the LPA, **50 Channing Street, Delaware, OH 43015**.

PURPOSE

- 1.1** The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2** Section 5501.03 (C) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3** **DEL-COUNTY ARRA RESURFACING, PID Number 86579** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4** The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.
- 1.5** This PROJECT is funded by the American Recovery and Reinvestment Act of 2009 ("ARRA"), and subject to the specific reporting and operational requirements of that law.

2. LEGAL REFERENCES

- 2.1** This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(C) of the Ohio Revised Code;
 - b. ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
 - c. ODOT Locally Administered Transportation Projects, Manual of Procedures;
 - d. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
 - e. ARRA, Public Law 111-5; and
 - f. Audit Requirements of 49 CFR 18 and 2 CFR 225.
- 2.2** The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1** The total cost for the PROJECT is estimated to be **\$1,991,506** as set forth in Attachment 1. ODOT shall provide to the LPA 100% of the eligible costs up to a maximum amount of **\$1,810,460** in federal ARRA funds (the "ARRA Maximum Amount") not to exceed the original low and best bid contract amount plus up to 10% for Construction Engineering.
- 3.2** The LPA shall provide **all other** financial resources necessary to fully complete the project in excess of the ARRA Maximum Amount including but not limited to all cost overruns, contractor claims, Preliminary Engineering, Right of Way, and Construction Engineering.
- 3.3** Any ARRA funds that remain after project award shall revert back to the Department. All requests for reimbursement of funds allocated under the ARRA must be submitted within six months of the close of the project, but in no event shall the request for reimbursement be submitted to ODOT later than August 31, 2015.

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4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (option one: follow its own formally written set of local design standards or option two: make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc.)
- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>.)
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization to Advertise" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.
- 4.7 The LPA acknowledges that it must file its Plans, Estimate and Specifications package, inclusive of ODOT District review and approval, to the Office of Local projects on or before **May 22, 2009 [120 day project]** OR **January 23, 2010 [365 day project]**.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required *from* the Ohio EPA.

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6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1** All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2** If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work can not also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3** If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4** All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.5** The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6** In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7** The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8** The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.

7. ADVERTISING, SALE AND AWARD

- 7.1** The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2** Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3** Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal

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advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5 In accordance with Executive Order 2002-13T, the LPA shall require the contractor to be enrolled in, and in good standing with, the Drug-Free Workplace Program (DFWP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/WhatsNew/FFR/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT. This includes any local legislation that may incorporate "MacBride Principles" or local ordinances such as the "Fanny Lewis Law."
- 7.10 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71.
- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance

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with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.6 Payment or reimbursement to the LPA shall be submitted to:

**Chris Bauserman, P.E., P.S.
Delaware County Engineer
50 Channing Street
Delaware, OH 43015
740-833-2400**

8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.

8.8 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.9 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

8.10 After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

9. CERTIFICATION AND RECAPTURE OF FUNDS

9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

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10. NONDISCRIMINATION

- 10.1** In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- 10.2** The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, or disability. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3** For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The written request must indicate that a good faith effort was made to meet the goal and be sent to ODOT's Office of Contracts with a copy to the ODOT District LPA Coordinator. Central Office will review the submitted documentation and decide the issue within ten (10) business days. There will be no extension of the time for the project granted if the prime Contractor wishes to avail himself of this process. The LPA will be notified as to the decision.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

- 10.4** During the performance of this contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees as follows:
- (1) Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
- In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").
- (2) Nondiscrimination:** The LPA will not discriminate either directly or indirectly on the grounds of race, color, national origin, sex, or disability as prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (3) Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal

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Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(4) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

10.5 The LPA must further comply with the reporting and operational requirements of ARRA as reflected in section 16 below.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.

11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with section 12.3 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any

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remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. **THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS**

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. **NOTICE**

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

**Chris Bauserman, P.E., P.S.
Delaware County Engineer
50 Channing Street
Delaware, OH 43015**

If to ODOT:

**Thomas Wester, P.E., Deputy Director
Attention: Tracy L. Allen
ODOT, District Six
400 East William Street
Delaware, OH 43015**

15. **GENERAL PROVISIONS**

15.1 **Audit Requirements:** The LPA is responsible for compliance with 49 CFR 18, *Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments* and 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*. These federal regulations establish minimally acceptable requirements for financial accounting systems, cost standards, and reporting that must be maintained in order to administer a federally-funded project. The LPA shall further comply with all the audit and operational requirements of ARRA as specified in Section 16 below.

15.2 **Record Retention:** The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

15.3 **Ohio Ethics Laws:** In accordance with Executive Order 2007-01S, the LPA, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands

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the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The LPA understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

- 15.4 [Conditional] State Property Drug-Free Workplace Compliance:** In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.5 Governing Law:** This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.6 Assignment:** Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.7 Merger and Modification:** This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.8 Severability:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.9 Signatures:** Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

COMPLIANCE WITH ARRA

- 16.1 LPA Reporting Requirements:** The LPA shall complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall report the direct, on-the-project jobs for their workforce active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project.

The LPA shall submit the completed form FHWA-1589 by the 10th of each month for the previous month's employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

16.2. LPA Contractor Reporting Requirements:

The LPA shall require its prime Contractor complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. The LPA shall be responsible to make certain its prime Contractor reports their firm **as well as every Subcontractors data for every tier of Subcontractor**. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall require its prime Contractor to report the direct, on-the-project jobs for their workforce and

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the workforce of their Subcontractors active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project. This does not include material suppliers.

The LPA shall require its prime Contractor to submit the completed form FHWA-1589 by the 10th of each month for the previous month's employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

In addition, the Contractor certification requirements of 109.09 will include an attestation to the Contractors submission of these required forms.

16.3 Accessibility to Records and Project Sites:

a. Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the Contractor or any of its Subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) Interview any officer or employee of the Contractor or any of its Subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

b. The Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

c. Section 1515(a) of the American Recovery and Reinvestment Act (ARRA) of 2009 (ARRA) provides authority for any representatives of an inspector general to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

d. Sections b. and c. above shall be included **verbatim** in all of the LPA's agreements with its Contractors, its Contractor's agreements with its Subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded Work.

16.4 Collection of DUNS Numbers:

The LPA shall require its Contractor to submit its unique nine-digit number issued by Dun & Bradstreet followed by the optional digit DUNS Plus number (reported for example as "99999999.9999") along with its signed and executed contract in accordance with Section 103 of the Construction and Material Specifications.

16.5 Additional Notice Requirements Regarding Affirmative Action to Ensure Equal Employment Opportunity.

a. The LPA's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT's website at <http://www.dot.state.oh.us/contract/census.htm>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

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<http://www.dot.state.oh.us/CONTRACT/Census/CountyAvailability-ByTrade.pdf>

The LPA, its Contractor and each subcontractor are required to complete the Employment Utilization Reporting of Work Hour Data tracking report CR-6. This form can be found on ODOT's website at:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

This report will be required on a **MONTHLY** basis for the duration of the Project. The "month" will begin at the start of the actual work on the Project. The Department requires that report CR-6 be completed identifying the hours worked per craft and the number of employees per craft for this Project. Each subcontractor will forward the completed report CR-6 to the Contractor, who in turn will be responsible for forwarding a compiled report for its entire work force and that of all subcontractors to the LPA who shall forward the report to ODOT. The consolidated reports shall include all craft hours and total numbers of employees for all construction work originated by the Contractor for this project.

Within thirty (30) days of the Pre-Construction Conference for this Project, the LPA and its Contractor shall identify to ODOT the estimated TOTAL hours to be worked by each trade and by race and gender on this project. Please submit this information to:

Ohio Department of Transportation
1980 West Broad Street
Attn: Office of Civil Rights
Columbus, Ohio 43223

b. The LPA and its Contractor is required to appoint an EEO/Affirmative Action (EEO/AA) Manager for the Project. The EEO/AA Manager shall have overall responsibility for the monitoring of EEO/AA compliance by the LPA and its Contractor and by all subcontractors working on this project. The above requirements do not have separate pay items. All costs associated with these requirements shall be bid as part of the Contractor's general administration or overhead costs for this project.

c. For the ARRA projects, the Department will set a Statewide goal for the number of OJT participants. This shall be a goal for each LPA and its Contractor to aspire to meet.

16.6 Misc: If LPA, its Contractor or any Subcontractor fails to comply with any of the provisions contained in this section, the Department may terminate this contract, pursue debarment of the Contractor or Subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

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

RESOLUTION NO. 09-679

IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO SOUTH OLD 3C HIGHWAY INCLUDING REHABILITATION OF THE BRIDGE OVER HOOVER RESERVOIR LOCATED NORTH OF DUSTIN ROAD AND AUTHORIZING THE COUNTY ENGINEER TO PREPARE PLANS FOR THE IMPROVEMENT AND APPROVING AN AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, AND THE DELAWARE COUNTY ENGINEER ACTING BY AND THROUGH THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR THE SOUTH OLD 3C HIGHWAY OVER HOOVER RESERVOIR PROJECT:

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

Whereas, Section 5555.022 of the Revised Code provide that a Board of County Commissioners may find that the public convenience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening, or widening such road and constructing or reconstructing any bridges and culverts necessary for such improvement, and may order the County Engineer to prepare surveys, plans, profiles, cross sections, estimates of cost, and specifications for the improvement;

Whereas the County Engineer has determined that the existing bridge is structurally deficient and that the bridge and roadway approaches require improvements and recommends that the Board proceed with said improvements;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County:

Section 1: That the public convenience and welfare require the rehabilitation of South Old 3-C Highway (County Road 24) including the bridge over Hoover Reservoir, beginning about 1/8 mile north of Dustin Road (Township Road 104) and extending a length of approximately 0.12 miles, and that the Project known as South

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Old 3-C Highway over Hoover Reservoir (DEL-CR24-5.02 – PID 86459) be initiated for said purpose, and;

Section 2: That the County Engineer is hereby authorized to prepare surveys, plans, profiles, cross sections, estimates of cost, and specifications for the improvement, and;

Section 3: That costs for said improvement be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay the costs of the Project.

Description

Rehabilitation of an existing structurally deficient 5-span steel beam bridge on South Old 3-C Highway on the southwestern portion of the Village of Galena with minimal roadway approach work. Federal ARRA (stimulus) funding will be provided up to \$1,500,000. The project will be a design-build, and is scheduled for construction in spring-summer 2010.

**PRELIMINARY LEGISLATION
RC 5521.01
Resolution Number 09-679
PID Number 86459
DEL-CR24-5.02
(South Old 3C Highway over Hoover Reservoir)
ODOT Agreement Number 22720**

The following is a Resolution enacted by the Board of Commissioners of Delaware County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the described project.

SECTION I - Project Description

WHEREAS, the COUNTY has identified the need for the described project:

This project proposes to rehabilitate the structure on South Old 3C Highway over the Hoover Reservoir in Berkshire Township. This is a MORPC/ODOT ARRA Federal Stimulus project.

NOW THEREFORE, be it resolved by the Board of Commissioners of Delaware County, Ohio;

SECTION II - Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the described project.

SECTION III - Project Administrator

The County Engineer is designated as Project Administrator and shall have authority to cooperate with the Director of Transportation on behalf of the LPA to complete the above described project.

**DEL-CR24-5.02
(South Old 3C Highway)
PID Number 86459
Agreement Number 22584
CFDA 20.205**

**LPA FEDERAL LOCAL-LET PROJECT AGREEMENT
** ARRA FUNDED PROJECT ****

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **Delaware County Engineer** acting by and through the **Delaware County Board of Commissioners**, hereinafter referred to as the LPA, **50 Channing Street, Delaware, OH 43015**.

1. PURPOSE
- 1.2 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (C) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 **DEL-CR24-5.02, PID Number 86459** (hereinafter referred to as the PROJECT) is a transportation activity

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eligible to receive Federal funding, and which is further defined in the PROJECT scope.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

1.5 This PROJECT is funded by the American Recovery and Reinvestment Act of 2009 (“ARRA”), and subject to the specific reporting and operational requirements of that law.

2. LEGAL REFERENCES

2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:

- ? Section 5501.03(C) of the Ohio Revised Code;
- ? ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
- ? ODOT Locally Administered Transportation Projects, Manual of Procedures;
- ? National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
- ? ARRA, Public Law 111-5; and
- ? Audit Requirements of 49 CFR 18 and 2 CFR 225.

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **\$1,650,000** as set forth in Attachment 1. ODOT shall provide to the LPA 100% of the eligible costs up to a maximum amount of **\$1,500,000** in federal ARRA funds (the “ARRA Maximum Amount”) not to exceed the original low and best bid contract amount plus up to 10% for Construction Engineering.

3.2 The LPA shall provide **all other** financial resources necessary to fully complete the project in excess of the ARRA Maximum Amount including but not limited to all cost overruns, contractor claims, Preliminary Engineering, Right of Way, and Construction Engineering.

3.3 Any ARRA funds that remain after project award shall revert back to the Department. All requests for reimbursement of funds allocated under the ARRA must be submitted within six months of the close of the project, but in no event shall the request for reimbursement be submitted to ODOT later than August 31, 2015.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (**option one**: follow its own formally written set of local design standards **or option two**: make use of ODOT’s Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc.)

4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA’s principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT.>)

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- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization to Advertise" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.
- 4.7 The LPA acknowledges that it must file its Plans, Estimate and Specifications package, inclusive of ODOT District review and approval, to the Office of Local projects on or before **May 22, 2009 [120 day project]** **OR January 23, 2010 [365 day project]**.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required *from* the Ohio EPA.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work can not also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and

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another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

- 6.5** The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6** In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7** The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8** The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 7. ADVERTISING, SALE AND AWARD**
- 7.1** The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2** Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3** Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4** The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5** In accordance with Executive Order 2002-13T, the LPA shall require the contractor to be enrolled in, and in good standing with, the Drug-Free Workplace Program (DFWP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6** Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7** In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8** Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not

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subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/WhatsNew/FFR/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.

7.9 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT. This includes any local legislation that may incorporate "MacBride Principles" or local ordinances such as the "Fanny Lewis Law."

7.10 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71.

8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.

8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.6 Payment or reimbursement to the LPA shall be submitted to:

**Chris Bauserman, P.E., P.S.
Delaware County Engineer
50 Channing Street
Delaware, OH 43015
740-833-2400**

8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.

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- 8.8** If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.
- 8.9** Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.10** After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.
- 9. CERTIFICATION AND RECAPTURE OF FUNDS**
- 9.1** This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2** Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.
- 10. NONDISCRIMINATION**
- 10.1** In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- 10.2** The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, or disability. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3** For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts,

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materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The written request must indicate that a good faith effort was made to meet the goal and be sent to ODOT's Office of Contracts with a copy to the ODOT District LPA Coordinator. Central Office will review the submitted documentation and decide the issue within ten (10) business days. There will be no extension of the time for the project granted if the prime Contractor wishes to avail himself of this process. The LPA will be notified as to the decision.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

- 10.4** During the performance of this contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees as follows:

(1) Compliance with Regulations: The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(2) Nondiscrimination: The LPA will not discriminate either directly or indirectly on the grounds of race, color, national origin, sex, or disability as prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) Information and Reports: The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(4) Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

- 10.5** The LPA must further comply with the reporting and operational requirements of ARRA as reflected in section 16 below.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1** The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.

- 11.2** The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT

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any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

- 11.3** In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1** Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with section 12.3 of this Agreement.

- 12.2** If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

- 12.3** The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

- 12.4** No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1** Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

- 13.2** The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1** Notice under this Agreement shall be directed as follows:

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If to the LPA:

Chris Bauserman, P.E., P.S.
Delaware County Engineer
50 Channing Street
Delaware, OH 43015

If to ODOT:

Thomas Wester, P.E., Deputy Director
Attention: Tracy L. Allen
ODOT, District Six
400 East William Street
Delaware, OH 43015

15. GENERAL PROVISIONS

- 15.1 *Audit Requirements:*** The LPA is responsible for compliance with 49 CFR 18, *Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments* and 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*. These federal regulations establish minimally acceptable requirements for financial accounting systems, cost standards, and reporting that must be maintained in order to administer a federally-funded project. The LPA shall further comply with all the audit and operational requirements of ARRA as specified in Section 16 below.
- 15.2 *Record Retention:*** The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:
- As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.
- Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.
- 15.3 *Ohio Ethics Laws:*** In accordance with Executive Order 2007-01S, the LPA, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The LPA understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.
- 15.4 *[Conditional] State Property Drug-Free Workplace Compliance:*** In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.5 *Governing Law:*** This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.6 *Assignment:*** Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.7 *Merger and Modification:*** This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.8 *Severability:*** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

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- 15.9 **Signatures:** Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

COMPLIANCE WITH ARRA

- 16.1 **LPA Reporting Requirements:** The LPA shall complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall report the direct, on-the-project jobs for their workforce active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project.

The LPA shall submit the completed form FHWA-1589 by the 10th of each month for the previous month's employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

16.2. LPA Contractor Reporting Requirements:

The LPA shall require its prime Contractor complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. The LPA shall be responsible to make certain its prime Contractor reports their firm **as well as every Subcontractors data for every tier of Subcontractor**. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall require its prime Contractor to report the direct, on-the-project jobs for their workforce and the workforce of their Subcontractors active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project. This does not include material suppliers.

The LPA shall require its prime Contractor to submit the completed form FHWA-1589 by the 10th of each month for the previous month's employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

In addition, the Contractor certification requirements of 109.09 will include an attestation to the Contractors submission of these required forms.

16.3 Accessibility to Records and Project Sites:

a. Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the Contractor or any of its Subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

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(2) Interview any officer or employee of the Contractor or any of its Subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

b. The Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

c. Section 1515(a) of the American Recovery and Reinvestment Act (ARRA) of 2009 (ARRA) provides authority for any representatives of an inspector general to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

d. Sections b. and c. above shall be included **verbatim** in all of the LPA's agreements with its Contractors, its Contractor's agreements with its Subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded Work.

16.4 Collection of DUNS Numbers:

The LPA shall require its Contractor to submit its unique nine-digit number issued by Dun & Bradstreet followed by the optional digit DUNS Plus number (reported for example as "99999999.9999") along with its signed and executed contract in accordance with Section 103 of the Construction and Material Specifications.

16.5 Additional Notice Requirements Regarding Affirmative Action to Ensure Equal Employment Opportunity.

a. The LPA's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT's website at <http://www.dot.state.oh.us/contract/census.htm>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

<http://www.dot.state.oh.us/CONTRACT/Census/CountyAvailability-ByTrade.pdf>

The LPA, its Contractor and each subcontractor are required to complete the Employment Utilization Reporting of Work Hour Data tracking report CR-6. This form can be found on ODOT's website at:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

This report will be required on a **MONTHLY** basis for the duration of the Project. The "month" will begin at the start of the actual work on the Project. The Department requires that report CR-6 be completed identifying the hours worked per craft and the number of employees per craft for this Project. Each subcontractor will forward the completed report CR-6 to the Contractor, who in turn will be responsible for forwarding a compiled report for its entire work force and that of all subcontractors to the LPA who shall forward the report to ODOT. The consolidated reports shall include all craft hours and total numbers of employees for all construction work originated by the Contractor for this project.

Within thirty (30) days of the Pre-Construction Conference for this Project, the LPA and its Contractor shall identify to ODOT the estimated TOTAL hours to be worked by each trade and by race and gender on this project. Please submit this information to:

Ohio Department of Transportation
1980 West Broad Street
Attn: Office of Civil Rights
Columbus, Ohio 43223

b. The LPA and its Contractor is required to appoint an EEO/Affirmative Action (EEO/AA) Manager for the Project. The EEO/AA Manager shall have overall responsibility for the monitoring of EEO/AA compliance by the LPA and its Contractor and by all subcontractors working on this project.

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The above requirements do not have separate pay items. All costs associated with these requirements shall be bid as part of the Contractor's general administration or overhead costs for this project.

c. For the ARRA projects, the Department will set a Statewide goal for the number of OJT participants. This shall be a goal for each LPA and its Contractor to aspire to meet.

16.6 Misc: If LPA, its Contractor or any Subcontractor fails to comply with any of the provisions contained in this section, the Department may terminate this contract, pursue debarment of the Contractor or Subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

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

RESOLUTION NO. 09-680

IN THE MATTER OF APPROVING THE CONTRACTS BETWEEN THE DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY COMMISSIONERS AND CHILD CARE PROVIDERS AS LISTED:

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

Whereas, Delaware County contracts with Child Care providers in accordance with state and federal regulations, and

Whereas, the Director of Jobs & Family Services recommends approval of the following contracts

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contracts for Child Care providers:

BASIC RATES

Full-time Week for Licensed Center and Type A Providers: 25 to 60 hours

Hourly: Paid after 60 hours

Part-time Week for Center and Type A Providers: 8 hours to 24.9 hours

Hourly Paid for .1 hour to 7.9 hours

Full-time Week for Certified Type B Home Providers: 25 hours to 50 hours

Hourly: Paid after 50 hours

Part-time Week for Home Providers: 8 hours to 24.9 hours

Hourly Paid for .1 hour to 7.9 hours

**Greenwood Lake Camp
340 Lake St.
Delaware, Ohio 43015**

	Full Time	Part Time	Hourly
Summer School Age	\$ 125.00	\$ 104.31	\$ 6.40

(A copy of each of these contracts is available in the Commissioners' Office until no longer of administrative value).

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

RESOLUTION NO. 09-681

IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND THE CHILD PLACEMENT SERVICE PROVIDERS AS LISTED:

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

Whereas, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations, and

Whereas, the Director of Jobs & Family Services recommends approval of the following contracts;

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Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contracts for Child Care Placement providers:

Child Placement Service	Per diem cost and per diem reimbursement for the following categories
Cornell Abraxas Group, Inc. 2840 Liberty Avenue Suite 300 Pittsburgh, Pennsylvania 15222	A. Maintenance B. Administration C. Case Management D. Transportation E. Other Direct Services (e.g., special diets, clothing, insurance, respite care) F. Behavioral Healthcare G. Other costs - (any other cost the Agency has agreed to participate in)

(A copy of each of these contracts is available in the Commissioners' Office until no longer of administrative value).

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

RESOLUTION NO. 09-682

IN THE MATTER OF ESTABLISHING A NEW ORGANIZATIONAL KEY AND APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE DEPARTMENT OF JOB AND FAMILY SERVICES WORKFORCE INVESTMENT ACT STIMULUS FUNDS:

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

New Organization Key

22311614 WIA-ARRA

Supplemental Appropriations

22311614/5250
WIA-ARRA/ Minor Tools, Equip, Furn \$ 50,000.00

22311614/5348
WIA-ARRA/ Client Services \$ 362,790.00

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

RESOLUTION NO. 09-683

IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND JOBS FOR OHIO'S GRADUATES, INC. FOR CONTRACTED SERVICES FOR PROGRAM PARTICIPANT IN THE SUMMER YOUTH WORK EXPERIENCE PROGRAM:

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

Whereas, the Director of Jobs & Family Services recommends approval of the following contract with Jobs for Ohio's Graduates, Inc;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract with Jobs for Ohio's Graduates, Inc:

**2009 - 2010 CONTRACT
FOR THE PURCHASE OF SERVICES AND PROGRAMS
BETWEEN THE DELAWARE COUNTY
DEPARTMENT OF JOB AND FAMILY SERVICES
AND
JOBS FOR OHIO'S GRADUATES**

This Contract is entered into this 8th day of June, 2009 by and between the Delaware County Department of Job and Family Services (hereinafter, "DCDJFS"), whose address is 140 North Sandusky Street, 2nd Floor, Delaware, Ohio 43015, the Delaware County Board of County Commissioners (hereinafter, "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, and the Jobs for Ohio's Graduates, Inc. or JOG, Inc. (hereinafter, "JOG")

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whose address is 4565 Columbus Pike, Delaware, Ohio 43015 (hereinafter singly "Party," collectively, "Parties").

PRELIMINARY STATEMENTS

WHEREAS, JOG provides alternative education and work readiness training for youth in Delaware County, Ohio; and,

WHEREAS, DCDJFS has accepted federal Workforce Investment Act (WIA) American Recovery and Reinvestment Act of 2009 funds to provide summer work experience opportunities and training to youth as a part of its workforce development duties and needs to provide such services or contract out for services; and,

WHEREAS, JOG is willing to provide such services or contract out for services; and,

WHEREAS, JOG is willing to provide those services at an agreed-upon price.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

1. PURPOSE OF CONTRACT:

The purpose of this Contract is to state the covenants and conditions under which the JOG, for and on behalf of DCDJFS, will provide summer youth work experience programs and opportunities (hereinafter collectively "Services") to youth in Delaware County, Ohio. Eligibility for participation in the services shall be determined by DCDJFS and/or JOG. Services to be provided, the budget, and forms to be used for such Services are respectively described in detail and/or set forth in Appendix I (Statement of Work), Appendix II (Budget), and Appendix III (Forms) all of which are attached hereto and all of which by this reference are fully incorporated into and made a part of this Contract (hereinafter respectively "Appendix I", "Appendix II", and "Appendix III")

2. TERM:

This Agreement shall be effective June 8, 2009 through March 31, 2010.

3. SCOPE OF SERVICES/DELIVERABLES:

The Services to be provided under this Contract to DCDJFS by the JOG are set forth and are more fully described in Appendix I, Appendix II, and Appendix III.

4. FINANCIAL AGREEMENT:

A. PAYMENT PROCEDURES:

The DCDJFS shall reimburse the JOG in accordance with Appendix II for Services actually provided hereunder, as described above and in Appendix I.

To receive such reimbursement, the JOG shall submit to DCDJFS proper monthly invoices for Services actually provided. Such invoices shall be in accordance with Appendix I and shall include documentation, satisfactory to DCDJFS, of Services actually provided. Such reimbursement shall be paid by DCDJFS to the JOG within thirty (30) days of receipt by DCDJFS of proper monthly invoices and accompanying documentation.

B. MAXIMUM PAYMENT

The JOG agrees to accept as full payment for Services rendered in a manner satisfactory to DCDJFS, the lesser of the following: (1) The maximum amount of Two Hundred Forty Three Thousand Six Hundred Thirty-Two Dollars and No Cents (\$ 243,632.00) or (2) the amount of actual expenditures made by the JOG for purposes of providing the Services. It is expressly understood and agreed that in no event shall the total compensation to be reimbursed exceed the maximum of Two Hundred Forty Three Thousand Six Hundred Thirty-Two Dollars and No Cents (\$ 243,632.00). See Appendix II.

5. LIMITATION OF SOURCE OF FUNDS:

The JOG warrants that any costs incurred pursuant to this Contract will not be allowable to or included as a cost of any other federally or state financed program in either the current or a prior period.

6. DUPLICATE BILLING/OVERPAYMENT:

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The JOG warrants that claims made to DCDJFS for payment, shall be for actual Services rendered and do not duplicate claims made by the JOG to other sources of funding for the same Services. In case of overpayments, the JOG agrees to repay the DCDJFS the amount of overpayment and that to which it is entitled.

7. INFORMATION REQUIREMENTS:

The JOG will provide such information to DCDJFS as is necessary to meet the specific fiscal and program requirements contained in this Contract. This shall include regular reports, at intervals to be determined by the Parties, of Services provided and outcomes achieved. Such reports shall be on forms included in Appendix III or as otherwise agreed by the Parties.

8. AVAILABILITY AND RETENTION OF RECORDS:

At any time, during regular business hours, with reasonable notice and as often as the DCDJFS, the Comptroller General of the United States, the State, or other agency or individual authorized by the DCDJFS may deem necessary, the JOG shall make available to any or all the above named parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. The DCDJFS and the above named parties shall be permitted by the JOG to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Contract.

The JOG, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract, agrees to retain and maintain, and assure that all of its subcontractors retain and maintain, all records, documents, writings and/or other information related to performance of this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract, the JOG shall retain and maintain, and assure that all of its subcontractors retain and maintain, such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later.

Prior to the destruction of any records related to performance of this Contract, regardless of who holds such records, the JOG shall contact the DCDJFS in writing to obtain written notification that such records may be destroyed. Such request for destruction of records must specifically identify the records to be destroyed.

9. INDEPENDENT FINANCIAL RECORDS:

The JOG shall maintain independent books, records, payroll, documents, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Such records shall at all reasonable times be subject to inspection, review, and/or audit by duly authorized federal, state, local, or DCDJFS personnel.

10. SERVICE DELIVERY RECORDS:

The JOG shall maintain records of Services provided under this Contract. Such records shall be subject at all reasonable times to inspection, review or audit by duly authorized federal, state, local, and/or DCDJFS personnel.

11. RESPONSIBILITY FOR INDEPENDENT AUDIT:

The JOG agrees, if required by the director of DCDJFS, to have conducted an independent audit of expenditures and records of service delivery associated with this Contract. The JOG is responsible for any and all costs associated with such an independent audit and shall make copies of such independent audit available to DCDJFS without cost to DCDJFS.

12. RESPONSIBILITY OF AUDIT EXCEPTIONS:

The JOG agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority that is in any way associated with this Contract. The JOG agrees to reimburse the DCDJFS and the Board the amount of any such audit exception.

13. INDEPENDENT CONTRACTORS:

The JOG shall act in performance of this Contract as an independent contractor. As an independent contractor, the JOG and/or its officers, employees, representatives, agents, volunteers and/or servants are not entitled to any of the benefits enjoyed by employees of the Board, DCDJFS, and Delaware County.

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14. PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS:

The Board and DCDJFS, as governmental entities, lack authority to indemnify. As such, the Parties, agree to be and shall be responsible for any and all of their own actions, accidents, injuries, illnesses, bodily injuries, including death, or occurrences, intentional or unintentional, known or unknown, foreseen, or unforeseen, negligent or intentional, related in any manner or which may result from the performance of Contract. Therefore, the Parties agree to hold each other harmless and be individually and solely responsible for any and all of their own liabilities, losses, damages, actions, claims, suits, demands, judgments, expenses, and/or related expenses, regardless of type or nature, actual or threatened, that each may incur as a result of their own actions related in any manner or which result from the performance of the Contract.

15. RESPONSIBILITY FOR DCDJFS / COUNTY PROPERTY:

JOG shall assume full responsibility for any damage to or loss of any DCDJFS and/or County property, including but not limited to, buildings, structures, vehicles, fixtures, furnishings, equipment, supplies, accessories and/or parts resulting in whole or part from any acts or omissions, seen or unforeseen, intentional or unintentional, known or unknown, of JOG or any board members, officials, officers, employees, agents, representatives, volunteers, and/or servants of JOG as related to this Contract or Services provided hereunder.

16. TERMINATION:

A. Termination for Convenience:

The Parties may terminate this Contract at any time and for any reason by giving at least seven (7) days advance notice, in writing, to the other Parties. JOG shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date specified on the notice as the effective date for such termination.

B. Breach or Default:

Upon breach or default of any of the provisions, obligations, or duties embodied in this Contract, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a specified reasonable period of time. If the breach or default is not satisfactorily remedied within the specified time period, this Contract may, at the election of the aggrieved Party, be immediately terminated. The Parties may, without limitation, exercise any available administrative, contractual, equitable or legal remedies. In the event of such a breach or default, the JOG shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date of termination.

C. Waiver:

The waiver of any occurrence of breach or default is not and should not be interpreted as a waiver of any such subsequent occurrences. The Parties, without limitation, retain the right to exercise all available administrative, contractual, equitable or legal remedies. If any Party fails to perform an obligation or obligations under this Contract and such failure(s) is (are) waived by the other Parties, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s). Waiver by any Party shall be authorized in writing and signed by an authorized Party representative.

D. Loss of Funding

It is understood by the JOG that availability of funds for this Contract and thus this Contract is contingent on appropriations made by the Local, State and/or Federal governments. In the event that the Local, State and/or Federal reimbursement is no longer available to the DCDJFS, the JOG understands that changes and/or termination of this Contract will be required and necessary. JOG agrees to hold harmless DCDJFS and the Board for any such changes and/or termination. Such changes and/or termination shall be effective on the date that the Local, State and/or Federal reimbursement is no longer available, or later as otherwise stipulated in writing by DCDJFS.

17. SAFEGUARDING OF CLIENT:

The Parties agree that the use or disclosure by any Party of any information concerning any individual eligible for Services provided pursuant to this Contract for any purpose not directly related with the administration of this Contract is strictly prohibited except upon the written consent of the DCDJFS and the individual or, if a minor, his/her responsible parent or guardian.

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18. CIVIL RIGHTS:

DCDJFS and the JOG agree that as a condition of this Contract, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, handicap, sexual orientation, or any other factor as specified in Title VI of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments. It is further agreed that JOG will comply with all appropriate federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this Contract. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

19. ACCESSIBILITY OF PROGRAMS TO THE DISABLED/HANDICAPPED:

The JOG agrees as a condition of this Contract to make all Services provided pursuant to this Contract accessible to the disabled/handicapped. The JOG further agrees as a condition of this Contract to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), all requirements imposed by the applicable HHS regulations (45 CFR 8;4) and all guidelines and interpretations issued pursuant thereto. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

20. FAIR HEARING:

In accordance with state regulations, DCDJFS is charged with fulfilling responsibilities relative to appeals and/or state hearings brought or initiated by those receiving and/or participating in the Services. The JOG, its providers, and their respective officials, officers, employees, agents, representatives, volunteers, and/or servants agree to and shall be under the direction of the DCDJFS relative to any such appeals and/or state hearings. Additionally, the JOG, its providers, and their respective officials, officers, employees, agents, representatives, volunteers, and/or servants agree to assist in the informational gathering and support processes related to the appeals and/or state hearing process and participation in the state hearing and/or appeal itself.

21. DRUG-FREE WORKPLACE:

The JOG agrees to comply and certifies compliance with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. The JOG shall make a good faith effort to ensure that all of its and any of its providers officials, officers, employees, agents, representatives, volunteers, and/or servants will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

22. DMA FORM STATEMENT:

The JOG 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, the JOG agrees make such certification by completing the declaration of material assistance/no 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 Contract and by this reference made a part of this Contract.

23. CAMPAIGN FINANCE – COMPLIANCE WITH ORC § 3517.13

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 said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

24. FINDINGS FOR RECOVERY:

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

25. NOTICES:

All notices which may be required by this Contract or by operation of any rule of law shall be sent via United States certified mail, return receipt requested, and/or personally delivered to the following individuals at the following addresses and shall be effective on the date received:

JOG:

Tish Jenkins
Director
JOG
4565 Columbus Pike
Delaware, Ohio 43015

DCDJFS:

Mona Reilly
Director
DCDJFS
140 N. Sandusky St., 2nd Floor
Delaware, Ohio 43015

26. PUBLICITY:

In any publicity release or other public reference, including media release, information pamphlets, etc. on the Services provided under this Contract, it will be clearly stated that the project is partially funded by ODJFS, through the Delaware County Commissioners and the DCDJFS.

27. GOVERNING LAW:

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

28. SEVERABILITY:

If any item, condition, portion, or section of this Contract or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Contract and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and be complied with.

29. ENTIRE AGREEMENT

This Contract, along with all of its attachments, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

30. SIGNATURES:

Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

31. EFFECT OF SIGNATURE:

The signatures of the Parties below indicate that the signers and the entities that they represent agree to be bound by all the terms and conditions of this Contract.

**Appendix I
Statement of Work
06/08/09 thru 03/31/10**

Background

The American Recovery and Reinvestment Act (ARRA) of 2009 provided states and counties "stimulus" monies for the purpose of providing eligible, at risk youth between the ages of 14 and 24 meaningful summer employment and work experience opportunities. The State of Ohio and Area 7 has directed counties, including Delaware County, to utilize a targeted goal of 75% of ARRA Youth allocation monies between May 1, 2009 and September 30, 2009.

Delaware County, in conjunction with state and community partners, will implement the summer youth

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employment initiative (known as Summer Works) with a multi-pronged strategy to maximize work experience opportunities for youth served and for the benefit of a diverse group of private, non-profit, and public organizations throughout the county.

This program has the goal of serving between fifty (50) and seventy five (75) youth during the 2009 summer season. Targeted youth will meet Workforce Investment Act and ARRA of 2009 eligibility guidelines. Youth are expected to be employed in one of the following work experience program areas:

- ? Ohio Department of Natural Resources (ODNR) Recovery Conservation Corps
- ? Andrews House Summer Lunch Program For Low Income Families
- ? Council For Older Adults (COA) Summer Chore Program
- ? Small Business Development Center Web Site Design For Micro Enterprises
- ? Internships at Private, Non-Profit, and Public Organizations

Narrative

Jobs For Ohio's Graduates-Delaware (JOG) will serve as the Summer Works program manager on behalf of Delaware County.

JOG will perform the following program functions:

- ? Facilitate and sub-contract payroll administration for supervisors, crew leaders, and participating youth.
- ? Manage participant timesheet collection, verification, and web based payroll application data entry.
- ? Facilitate and encourage payroll direct deposit option for youth participants.
- ? Facilitate timely and accurate payroll payments to the selected, sub-contracted payroll services provider.
- ? Assist DCDJFS with maintaining youth participant case files in accordance with Workforce Investment Act and ARRA of 2009 guidelines. Case files to reside with DCDJFS staff.
- ? Assist Delaware County Department of Job and Family Services (DCDJFS) with processing of youth work experience applications and eligibility determination and documentation.

- ? Assist DCDJFS with selection and matching youth participants with work experience opportunities.
- ? Creation and distribution a Summer Works participant Employee Handbook to supplement rules and guidelines that may be present at specific work experience sites.
- ? Provide pre and post work readiness assessments and work readiness training to youth participants.
- ? Demonstrate and document objective, measurable work readiness gains obtained by youth participants.
- ? Act as the primary liaison and point of contact for all participants and summer work experience sites.
- ? Complete Work Site Agreements with work experience sites.
- ? Facilitate and coordinate appropriate transportation for participants to and from work experience sites.
- ? Assist employers and participants in resolving barriers to successful performance and outcomes.
- ? Facilitate and procure supportive services as needed consistent with program objectives
- ? Facilitate and procure supplies and equipment as needed consistent with program objectives.
- ? Provide detailed and transparent accounting and reporting of costs and expenditures.

JOG will work closely with DCDJFS to ensure Delaware County complies with Ohio Department of Job and Family Services Stimulus and Oversight Monitoring Letter Number 1, dated April 24, 2009 which defines the key features for implementation of the ARRA to include:

- ? An emphasis on transparency and accountability;
- ? Expedited and effective use of funds;
- ? Emphasis on training and innovative service delivery;
- ? Emphasis on services for hard-to-serve populations; and
- ? Expansion of youth summer employment opportunities.

Appendix III defines forms that should accompany invoices submitted to DCDJFS.

JOG Delaware will maintain appropriate documentation available for monitoring invoice content and program effectiveness to include but not limited to the following:

- ? Detailed calculations of invoice line item content
- ? Payroll reconciliation documentation
- ? Copies of receipts for all reimbursable costs
- ? Work readiness training program content
- ? Work readiness training attendance sheets
- ? Work readiness pre and post assessments
- ? Participant work experience attendance and performance documentation

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? Work site agreements

Summer Works Program Detail

Ohio Department of Natural Resources (ODNR) Recovery Conservation Corps

This initiative will provide employment sites for the Workforce Investment Boards to hire youth ages 16 to 24 (youth ages 14 and 15 are not eligible) to improve Ohio's state and local parks and natural areas. Focusing on both rural and urban areas, particularly those in economic decline, Corps workers will assist with projects such as building recreation lands, boardwalks, observation areas and trails and curbing the spread of invasive species. The state will provide \$2 million for support services through a partnership with the workforce investment boards on this initiative.

ODNR has identified three (3) worksites within Delaware County – Alum Creek State Park, Delaware State Park, and the Olentangy Scenic River area.

The Summer Works Program plans to provide a work team at each of the three (3) sites comprising of a supervisor and five (5) crew members.

Andrews House Summer Lunch Program For Low Income Families

The Andrews House has received a USDA grant to provide free lunches during the summer for low-income families. The grant provides support for the food purchases, a head cook and support to incorporate volunteer support. The food preparation will be done at the Dempsey Middle School kitchen and meals will be transported to the meal site, which is Woodward Elementary School. This is a first year project (pilot) and will provide valuable food/nutrition to children up to age 18.

The Summer Works Program plans to provide one (1) Food Preparation Assistant and one (1) Meal Site Helper.

Council For Older Adults (COA) Summer Chore Program

This service is in collaboration with Council for Older Adults (COA). COA will conduct awareness/consumer outreach and marketing, will accept all applications and determine those who can be served by this project. Summer chores can range from lawn care/maintenance, painting, exterior/interior cleaning/maintenance that is within the scope of crew members abilities, including Minor Labor Laws, supplies/equipment resources and length of time needed to complete the project. The goal is to serve as many seniors as possible with the limited resources. COA and DCDJFS is committed to providing these services in order to help seniors remain in their homes and completing chores that they are not physically able to do.

The crew will travel throughout the county to serve identified seniors. The supervisor will evaluate the home site and tasks to ensure work is within the scope of the team's abilities. Requests that can not be reasonably accommodated through the Summer Chore services will be returned to COA for referral to other COA providers (ie Weatherization program, etc).

The Summer Work Program plans to provide a supervisor and four (4) crew members.

Small Business Development Center Web Site Design For Micro Enterprises

This pilot project resulted from discussion between DCDJFS and the Small Business Development Centers of Ohio (SBDC) to assist in the entrepreneurship/micro-enterprise development of small businesses and up to \$5000 via the WIA Capital/Equipment grants. Many small businesses struggle to grow their customer bases via the internet due to primarily the following : 1) lack of funds to pay for professional web design services and 2) lack of ability/expertise to self-design. SBDC/Delaware noted that many small businesses need this capability to market/increase customer outreach and access in order to grow and/or strengthen their business. The merit of the project for continuation in the future will be evaluated with actual results, ie actual websites that can be visited by the internet browser identification.

The Summer Works Program will provide viable, real world web design services to Delaware County micro-enterprises at no or low costs.

The Summer Works Program plans to provide a Technical Lead/Supervisor and four (4) youth Website Designers.

Internships at Private, Non-Profit, and Public Organizations

DCDJFS has solicited numerous county businesses and organizations throughout Delaware County interested in sponsoring internships.

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The Summer Works program expects to place between twenty (20) and thirty (30) interns in organizations throughout the county.

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

RESOLUTION NO. 09-684

IN THE MATTER OF AUTHORIZING THE USE OF DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES FUNDS TO ASSIST IN FUNDING THE PURCHASE OF COFFEE, MEALS, REFRESHMENTS AND OTHER AMENITIES FOR THE DKMM MEETING:

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

WHEREAS, The Ohio Attorney General Opinion No. 82-006 addresses the issue Expenditure Of Public Funds For Proper "Public Purpose", and

WHEREAS, The October 20, 2003, State Auditor's ruling on payment of Expenditures Of Public Funds For Proper "Public Purpose" states that for persons who are employees or non-employees of the County, the Commissioners must pre-approve expenditures for the purchase of coffee, meals, refreshments and other amenities.

WHEREAS, the Delaware County Department of Job and Family Services has responsibility for workforce development activities and is party to the DKMM ; and

WHEREAS, such meeting has been scheduled in Delaware County for June 18, 2009 at the Hayes Building; and

WHEREAS, agreement has been made that meetings will rotate among each of the four counties with the hosting county being responsible for food arrangement; and

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

Section 1. That the Delaware County Board of Commissioners hereby authorizes the use of Department of Job and Family Services funds in an amount not to exceed \$234.50, to assist in funding the purchase of coffee, meals, refreshments and other amenities for The DKMM board meeting to be held June 18, 2009.

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

RESOLUTION NO. 09-685

IN THE MATTER OF CONTINUING THE MOU WITH DELAWARE/KNOX/MARION/MORROW ONE STOP SYSTEM WITHIN AREA 7:

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

Whereas, the Area 7 Workforce Development Consortium constitutes a jurisdiction designated by the Governor as a Workforce Investment Area, and

Whereas, the Area 7 Workforce Investment Policy Board has the responsibility for Planning, Policy Development, Monitoring, Audits and Audit Resolution, One Stops, Grant Application, Business Relations, and Youth Council, and

Whereas, Delaware County is a member of the Area 7 Workforce Development Region, and, the Delaware/Knox/Marion/Morrow Sub-Region, and,

Whereas a Memorandum of Understanding is necessary to delineate the cost of operating a One Stop Employment and Training Center and to specify services offered by partner agencies, and

Whereas, The Ohio Department of Job and Family Services is a partner agency at the Delaware Area Career Center South One Stop Employment and Training Center and the Job and Family Services Resource Room, and

Whereas, Delaware County Commissioners approved an MOU with Area 7 for Workforce Investment Stimulus funds on May 18, 2009,

Now, therefore, be it resolved that Delaware County will also continue to participate in the Area 7 One Stop MOU through participation in the Delaware/Knox/Marion/Morrow One Stop System for fiscal year 2010 and 2011.

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

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

RESOLUTION NO. 09-686

9:30 AM - IN THE MATTER OF PUBLIC HEARING # 2 FOR THE DELAWARE COUNTY HOUSING IMPROVEMENT PROGRAM (DCHIP):

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

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

RESOLUTION NO. 09-687

IN THE MATTER OF CLOSING THE PUBLIC HEARING # 2 FOR THE DELAWARE COUNTY HOUSING IMPROVEMENT PROGRAM (DCHIP):

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

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

RESOLUTION NO. 09-688

IN THE MATTER OF APPROVING THE FY 2010 COMMUNITY BASED CORRECTIONS PROGRAM SUBSIDY GRANT FOR ADULT COURT SERVICES :

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

Grant #	FY 2010
Source:	Ohio Department of Rehabilitations and Corrections
Grant Period:	July 1, 2009 to June 30, 2010
Total Grant Amount:	\$133,732

The Grant funds two Intensive Supervision officers as well as programming that has been shown to reduce recidivism. The Intensive Supervision program is designed to supervise individuals that would otherwise be incarcerated. The officers have smaller caseloads and use evidence based interventions.

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION
SUBSIDY GRANT AGREEMENT FOR
COMMUNITY-BASED CORRECTIONS PROGRAMS
407 NON-RESIDENTIAL FELONY**

WHEREAS, the Grantee has made application to the Grantor for funds made available for a Community Correction Act Grant, and has submitted a proposal for the use of these funds, and

WHEREAS, the Grantor is authorized, pursuant to authority in section 5149.30 et seq. of the Ohio Revised Code, to determine and award grants to assist local governments in community-based law enforcement services;

Ohio Ethics: All Contractors who are actively doing business with the state of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relative Division of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractors, by signature on this document, certifies: (1) it has reviewed and understands Executive order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at: WWW.GOVERNOR.OHIO.GOV

NOW THEREFORE this Grant Agreement is made and entered into this _____ day of _____, 2009 by and between the State of Ohio, Department of Rehabilitation and Correction, Division of Parole and Community Services, Bureau of Community Sanctions, (hereinafter referred to as Grantor) and the undersigned representatives of (county) **Delaware** Ohio, (hereinafter referred to as Grantee), pursuant to authority in Section 5149.30 et seq. of the Ohio Revised Code.

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A Terms and Conditions:

- 1) The Grantor awards to the Grantee the sum of **One Hundred Thirty-Three Thousand, Seven Hundred Thirty-Two** dollars, to be paid in four equal installments of **\$33,433** for the period beginning with the effective date of this agreement and ending **June 30, 2010** subject to the terms and conditions of this agreement, unless extended or renewed by written agreement of both parties or otherwise terminated as provided herein, but in no event shall this agreement extend beyond June 30, 2010. Total expenditures for Fiscal Year 2010 (July 1, 2009 to June 30, 2010) will not in any case exceed **\$133,732**.
- 2) The amount specified in paragraph A.1 is subject to legislative appropriation of the Grantor's proposed **Community Non-Residential Programs** subsidy (407) budget amount for Fiscal Year 2010 the parties agree that the Grantor may modify the amount in paragraph A.1 if such appropriation is less than the amount proposed to the Legislature by Grantor. The modified amount shall be determined solely by Grantor Officials within their discretion. The Grantee and the Grantor agree to an interim payment of grant funds if an interim budget is adopted pending the final approval of the State of Ohio Fiscal Year 2010 budget. Furthermore, the obligations of the state under this agreement are subject to the determination by the Grantor that sufficient funds have been appropriated by the General Assembly to the Grantor for the purposes of this grant agreement and to the certification of the availability of such funds by the director of budget and management as required by Section 126.07 of the Ohio Revised Code.
- 3) In the event that the Grantee wishes to terminate the program or its participation in this Agreement, the Grantee may do so upon sending written notice to the Grantor. In such event in compliance with Section 5120:1-5-07 of the Ohio Administrative Code, the Grantee shall refund to the Grantor that amount paid to the Grantee which represents funding for services not yet rendered as determined by a financial audit completed by the Grantor.
- 4) The Grantee agrees to affect the program as outlined in the proposal submitted by the Grantee, and approved herein by reference. The program's positions, salaries, and fringe benefits shall be as stated in the proposal. The type of expenses, other than salaries of persons who will staff and operate the facility and program for which the state financial assistance can be used are those set out in the proposal. Purchases made with state funds shall be in accordance with county/state/municipal competitive bidding requirements. Any significant program change or reduction requires the **prior** written approval of the Grantor. In the event of such change or reduction is approved, the Grantor may make appropriate changes in funding.
- 5) It is agreed that the Bureau of Community Sanctions shall monitor grant activities during the grant period. Changes shall be submitted to and approved by the Bureau of Community Sanctions for the Grantor. The Grantee and the **CHIEF OF THE** Bureau of Community Sanctions will attempt to settle any controversy or a dispute which arises out of or relates to this agreement, or any breach of this agreement. Should this fail, the Grantee can appeal to the Deputy Director of the Division of Parole and Community Services for final resolution.

The fiscal agent designated to act on behalf of the Grantee is **George Kaitsa**. The program's tax identification number is 316400065.
- 6) Quarterly payments will be made by the Grantor **BY WAY OF ELECTRONIC FUND TRANSFER TO THE DESIGNATED PUBLIC ENTITY**. This process will continue until the total grant award has been expended.
- 7) The Grantee agrees to manage and account for grant funds in accordance with the Grantor's "Community Corrections Act Program Grant Manual." These guidelines are incorporated herein by reference.
- 8) The Grantee agrees to provide for services as required by State standards and/or policy and procedure.
- 9) This agreement may not be assigned or transferred by either party.
- 10) The Grantee shall remain responsible for all services performed under this Agreement. The Grantee shall comply with all applicable state and federal laws regarding the purchase of goods and services (including personal service contracts).
- 11) None of the persons who will staff and operate the program, including those who are receiving some or all of their salaries out of funds received by the program as state financial assistance, are employees or to be considered as employees of the Department of Rehabilitation and Correction. Employees who will staff and operate the program are employees of the program.

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12) The program will make a reasonable effort to augment the funding received by the state.

(1) The program will comply with Section 5149.33 of the Ohio Revised Code wherein it states:

No municipal corporation, county, or group of contiguous counties receiving a subsidy under division (A) of section 5149.31 of the Revised Code shall reduce, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections, including, but not limited to, the amount of local, nonfederal funds it expends for the operation of the county, multi-county municipal, county, or multi-county-municipal jail or workhouse and for any county or municipal probation department or for any community correction program. Each subsidy shall be used to make corrections expenditures in excess of those corrections expenditures being made from local, nonfederal funds. No subsidy or portion of a subsidy shall be used to make capital improvements. If a recipient violates this section, the Department of Rehabilitation and Correction shall discontinue subsidy payments to the recipient.

- a. This agreement supersedes any prior Grant Agreement for Community Correction Act Programs executed by the parties, or their authorized representatives. This document represents the sole agreement between the parties.

B) Program Evaluation:

1. The Grantee shall maintain statistical records for the period of the grant in the format and frequency as established by the Grantor.
2. The Grantee shall prepare and submit to the Grantor a report comprised of the statistical data pursuant to the Grantor's instructions. The Grantee shall maintain internet access for data transmission into the Grantor's management information systems.
- 3) The Grantee shall prepare a quarterly financial report to the Grantor. The reports shall be submitted thirty (30) days after the end of each quarter.
- 4) To determine if the local community-based correctional program is achieving its stated goal and objectives, the Grantee agrees to submit intake and **TERMINATION DATA** for each offender placed into its program to the Grantor. The frequency of submitting these forms will be determined by the Grantor and the Grantee shall make available all necessary records for validation and audit.
- 5) It is agreed that the Grantee shall be provided with the results of the Grantor's review of the intake and **TERMINATION DATA** at time intervals determined by the Grantor.
- 6) Failure to comply with Items (B) (1) through (5) of this Grant Agreement may result in delaying subsidy payments to the Grantee.

C) Compliance:

1. The Grantee shall cooperate with and provide any additional information as may be required by the Department of Rehabilitation and Correction in carrying out an ongoing evaluation of subsidy funded community-based corrections programs.
2. All expenditures made by the Grantee with funds received as state financial assistance through this grant shall be governed by laws of the State of Ohio.
3. All contracts by the Grantee for services must be in writing, contain performance criteria, have itemized service costs, indicate responsibilities of parties' involved, state conditions for termination of the agreement and be approved by the appropriate county officials before their implementation. A copy of such agreement(s) shall be forwarded to the Bureau of Community Sanctions.
4. Failure of the Grantee to comply with the rules of Chapter 5120:1-5 of the Ohio Administrative Code which are applicable under this Grant Agreement, may be cause for the Director of the Department of Rehabilitation and Correction to terminate further funding. Furthermore, the grant amount may be reduced or the Grant Agreement terminated by the Department of Rehabilitation and Correction if:
5. The quality and extent of the program services furnished by the Grantee has been significantly reduced from the level proposed in the Grant Agreement.

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6. There is a financial or audit disclosure involving misuse of state funds.
7. The reason(s) for the intent to terminate or reduce funding shall be given in writing to the Grantee. Said notice will be given sixty (60) days prior to the termination of funding. The Grantee shall have thirty (30) days following the receipt of such notice in which to present a petition for reconsideration to the Director of the Department of Rehabilitation and Correction.
8. The Grantee warrants that it is not subject to an "unresolved" finding for recovery under O.R.C 9.24. If the warranty is deemed to be false, the contract is void ab initio and the Grantee must immediately repay to the Attorney General any funds paid under this agreement.

D) Program Continuation:

1. The Grantor will make reasonable efforts to secure continued funding or expansion of the subsidy program.
2. This Agreement shall be governed by the laws of the State of Ohio. It constitutes the entire Agreement between the parties regarding its subject matter. It is subject, however, to modification at any time upon the mutual written notification to the Grantee by the Grantor.
3. If any provision in this Agreement is determined by an appropriate court of law to be invalid and unenforceable, the remaining provisions shall continue in full force and effect to the extent possible.
4. All existing Grant Agreements are now rendered null and void and are superseded as of the executing of this Grant Agreement.

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

RESOLUTION NO. 09-689

IN THE MATTER OF REQUESTING AN AMENDMENT TO THE OHIO DEPARTMENT OF YOUTH SERVICES BUDGET FOR JUVENILE COURT:

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

Grant #	2009 DYS RECLAIM	
Source:	Ohio Department Of Youth Services	
Grant Period:	07-01-08 to 06-30-09	
Original Budget		\$762,224.74
Amendment Increase (Uncommitted Funds)		<u>9,721.50</u>
Revised Budget		\$771,946.24

The budget increase in grant funds will provide for changes from single to family health care insurance premiums. The source of the funding is from Uncommitted Funds.

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

RESOLUTION NO. 09-690

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director of Environmental Services recommends approval of the Operator License Pay Increase for Brian Rammelsberg, an Operator with the Regional Sewer District, effective date May 30, 2009.

The Director of Environmental Services recommends approval of the Operator License Pay Increase for Joshua Phillips, an Operator with the Regional Sewer District, effective date May 30, 2009.

The Director of Environmental Services recommends approval of the Operator License Pay Increase for Mark Hobler, an Operator with the Regional Sewer District, effective date May 30, 2009.

The Director of Environmental Services recommends approval of the Operator License Pay Increase for Todd Ward, an Operator with the Regional Sewer District, effective date May 30, 2009.

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The Director of Environmental Services recommends the promotion and approval pay raise for Leonard Wagner, a Collections Supervisor with the Regional Sewer District, effective date June 15, 2009.

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

RESOLUTION NO. 09-691

IN THE MATTER OF ACCEPTANCE OF THE SANITARY SEWERS FOR NORTH STAR 16" FORCE MAIN, NORTH STAR TRUNK AND THE NORTH STAR SANITARY PUMP STATION:

It was moved by Mr. Hanks, seconded by Mr. Thompson to accept the sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

North Star 16" Force Main	5,854 feet of 16- inch sewer	3 manholes
North Star Trunk	2,234 feet of 8- inch sewer	40manholes
	291 feet of 10- inch sewer	
	2,189 feet of 12- inch sewer	
	2,919feet of 15- inch sewer	
	3,110 feet of 18- inch sewer	
	1,318 feet of 21- inch sewer	

North Star Sanitary Pump Station \$2,021,898.86

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

RESOLUTION NO. 09-692

IN THE MATTER OF REQUESTING APPROVAL TO USE THE DELAWARE REVOLVING LOAN FUND AND DELAWARE PROGRAM INCOME TO FUND THE DELAWARE COUNTY HOUSING IMPROVEMENT PROGRAM (DCHIP) FOR 2009:

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

WHEREAS, Delaware County has established a Revolving Loan Fund (RLF) capitalized with the payback from Community Development Block Grant (CDBG) loans to local businesses and Program Income that was established from recaptured funds from previous CHIP programs; and,

WHEREAS, the RLF and Program Income would provide funding for the rehabilitation of privately owned units for the benefit of eligible Low-Moderate Income (LMI) households throughout the County under the Delaware Community Housing Improvement Program (DCHIP) for the purpose of addressing these needs; and,

WHEREAS, Delaware County is requesting up to \$50,000 in County RLF funds and up to \$25,000 from Program Income to be used for Home Repairs of 7+ units, consulting fees, and administrative costs.

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

SECTION I. The Commissioners hereby approve up to \$50,000 in County RLF funds and up to \$25,000 from Program Income for the following activities:

- 1. Home Repairs \$70,000
- 2. Administrative \$ 5,000

SECTION II. The Commissioners authorize the Economic Development Department to administer the 2009 DCHIP funds, contingent upon approval from the Ohio Department of Development and compliance with CHIP Guidelines and all CDBG requirements.

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

RESOLUTION NO. 09-693

IN THE MATTER OF AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR QUALIFIED FIRMS TO SUBMIT PROPOSALS FOR GRANT CONSULTING SERVICES FOR THE DELAWARE COUNTY COMMUNITY HOUSING IMPROVEMENT PROGRAM (DCHIP) 2009:

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

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To authorize issuing a Request for Proposals/Request for Qualifications for qualified firms to submit proposals for a grant consulting opportunity to assist Delaware County with their DCHIP. Said proposals must be submitted to the County by 5:00 p.m. (Eastern Standard Time) on June 30, 2009.

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

RESOLUTION NO. 09-694

IN THE MATTER OF AUTHORIZING AN AGREEMENT BETWEEN THE OHIO REGIONAL DEVELOPMENT CORPORATION AND THE DELAWARE COUNTY COMMISSIONERS FOR THE PROVISION OF CDBG FORMULA 2009 FAIR HOUSING CONSULTING SERVICES, CONTINGENT THAT DELAWARE COUNTY RECEIVES THE CDBG FORMULA 2009 FUNDS FROM OHIO DEPARTMENT OF DEVELOPMENT:

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

Whereas, the Director of the Economic Development Department recommends approval of the following Fair Housing Agreement;

Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following:

Resolution

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

WHEREAS, participation in the CDBG program requires that efforts be made to affirmatively further fair housing locally, and

WHEREAS, Delaware County is applying for Six Thousand One Hundred Dollars (\$6,100) through the FY09 CDBG Formula Program for Fair Housing activities.

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

Section 1. That the Board of Commissioners authorizes the President of the Board to execute an Agreement for Fair Housing Consulting Services with The Ohio Regional Development Corporation in an amount not to exceed Six Thousand One Hundred Dollars (\$6,100) contingent on Delaware County receiving approval of the FY 2009 Grant from the Ohio Department of Development.

Section 2. That this Resolution shall take effect and be in force immediately after the Ohio Department of Development awards the FY 2009 Grant to Delaware County.

**FAIR HOUSING
AGREEMENT**

The purpose of this agreement is to outline the responsibilities of Delaware County and Ohio Regional Development Corporation (ORDC) in complying with the Fair Housing requirements in conjunction with the Delaware County FY 2009 CDBG Formula Program in a timely and professional manner as follows:

General Information:

ORDC's full time Housing Coordinator and staff will be available to receive and handle fair housing questions and complaints. In this regard an ORDC 1-800 telephone line has been established and published. The 1-800 telephone line will ring into this office and we will take calls five days a week from 8:00 am to 4:00 pm, excluding the lunch hour, daily. The lunch hour is scheduled from 12:00 noon to 1:00 pm. A voice mail system is also in place to receive messages and inquiries during also the lunch hour and after regular business hours. ORDC will spend time with callers to discuss their Fair Housing concerns. A system to record the nature of the calls, the actions taken on each call and the result of the action taken has been established. A tracking system of calls received by area has also been established.

Fair Housing Complaint Intake and Referral:

Complaints that are received that are not fair housing complaints will be referred to the appropriate person or office. If the complaint could be a potential fair housing complaint, the Fair Housing Coordinator will inform the complainant of his/her rights to fair housing, of remedies that are available, offer written literature, offer an appointment to discuss the complaint and to help a complainant file a written complaint

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or offer to mail a complaint form to them to complete the form themselves. If the complainant prefers to deal directly with the Ohio Civil Rights Commission (OCRC), the Fair Housing Coordinator will offer the address and telephone number of the regional Ohio Civil Rights Office. If a complainant requires a "face to face" meeting with a staff person, ORDC will meet them in Delaware County at a convenient place and an acceptable and reasonable time for all parties concerned. ORDC will receive and log all complaints and handle all necessary paper work.

Training:

Seminars will be conducted to fulfill all Fair Housing requirements for your individual program. Each seminar will generally follow ORDC's "Fair Housing Seminar Format", and will be tailored for Delaware County's audience.

Outreach:

At a minimum, the number of copies of current Fair Housing brochures identified in the fair housing program will be distributed in places that will benefit the target area as specified in the program. Additional copies, as requested by agencies, will be provided at no additional charge. ORDC literature identifies the telephone number for the speech/hearing impaired. It also identifies a local contact number. ORDC will take whatever reasonable measures are needed to meet guidelines.

Reports:

A fair housing report will be issued for Delaware County on a semi-annual basis as well as a final report at the end of the grant period. The reports will contain information on the number of meetings, number of complaints and their outcomes (if known or available), number of brochures and posters distributed and the locations, and general information on the progress of the activities. All required forms will be maintained within the records and made available as needed, as they relate to the Fair Housing Program. All pertaining State and Federal guidelines will be followed.

Time of Performance

The services of the ORDC coincide with the grant period of September 1, 2009 until August 31, 2009.

Cost and Method of Payment

The cost including all overhead, travel and other expenses will be \$6,100. ORDC will invoice for work completed according to an agreed upon schedule.

Termination of Contract

If, through any cause, ORDC shall fail to fulfill in a timely and proper manner his obligations under this contract, or if ORDC shall violate any of the covenants, agreements or stipulations of this contract, the agency shall thereupon have the right to terminate this contract by giving written notice to the ORDC of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by ORDC under this contract shall, at the option of the Agency, become its property and ORDC shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, ORDC shall not be relieved of liability to the Agency for damages sustained by the Agency, by virtue of any breach of the contract by ORDC, and the Agency may withhold any payments to ORDC, for the purpose of set-off until such time as the exact amount of the damages due the Agency from ORDC is determined.

Either party may terminate the Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In the event, all finished or unfinished documents and other materials shall, at the option of the Agency, become its property. If the Agreement is terminated by the Agency as provided herein, ORDC will be paid an amount based on the time and expenses incurred by ORDC prior to the effective date of such termination.

General Conditions

- A) **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- B) **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be

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affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

- C) Findings for Recovery: ORDC certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- D) Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no agency or department of this state or any political subdivision shall enter into any contract for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars with a corporation, 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 contract includes a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part of this Contract.

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

RESOLUTION NO. 09-695

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO PROCEED WITH NAMING NATIONAL CITY BANK/PNC BANK AS A MORTGAGE LOSS PAYEE FOR THE PARCEL #51931401038000 FOR THE DELAWARE COUNTY AGRICULTURAL SOCIETY:

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

Whereas, the Delaware County Agricultural Society is in the process of refinancing a loan through National City Bank/PNC Bank; and

Whereas, the Delaware County Agricultural Society has pledged real property owned by the Society as collateral for the loan; and

Whereas, by state statute the County is responsible for the property and casualty insurance on buildings located on the county fairgrounds; and

Whereas, the National City Bank/PNC Bank has requested to be named as a mortgage loss payee on the buildings located on parcel #51931401038000; and

Whereas, the loan comes due at National City Bank/PNC Bank in 5 years; and

Whereas, the County must agree to name National City Bank/PNC Bank as a mortgage loss payee on the county's insurance coverage.

Now therefore be it resolved that the Delaware County Board of County Commissioners authorize the County Administrator to proceed with naming National City Bank/PNC Bank as a mortgage loss payee on parcel #51931401038000 for a maximum period of period of 5 years when the loan matures or is paid in full.

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

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien

-COYC Utilization of facility report

-attended Community Action Organization Meeting; since it is mostly grants sometimes have cash flow issues

Commissioner Hanks –none

Commissioner Thompson- will not be here for session on June 15, 2009

RESOLUTION NO. 09-696

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:

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It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn into Executive Session at 10:03AM.

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

RESOLUTION NO. 09-697

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 10:20AM.

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

RESOLUTION NO. 09-698

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

Todd Hanks

Ken O'Brien

Tommy Thompson

Letha George, Clerk to the Commissioners