

**COMMISSIONERS JOURNAL NO. 52 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 25, 2009**

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

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

RESOLUTION NO. 09-761

IN THE MATTER OF RESCINDING RESOLUTION NUMBER 09-759:

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

WHEREAS, the Board of County Commissioners of Delaware County, Ohio (the "Board") adopted Resolution Number 09-759, on Monday, June 22, 2009, to: 1. Execute an agreement with ST eGe, LLC and 2. Approving and authorizing the actions necessary and appropriate to perform such agreement and 3. Giving the resolution full force and effect upon adoption; and

WHEREAS, the Board desires to rescind such resolution; and

WHEREAS, the agreement contemplated within such resolution has not been executed by any of the parties thereto; and

WHEREAS, the minutes of the session conducted June 22, 2009, have not been adopted by the Board of Commissioners; and

WHEREAS, the Delaware County Auditor's Certification, pursuant to Ohio Revised Code Section 5705.41, contained within such agreement has not been executed; and

WHEREAS, any agreement or contract which does not contain the executed Delaware County Auditor's Certification, pursuant to Ohio Revised Code Section 5705.41, is void and unenforceable as a matter of law;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

The Board hereby rescinds Resolution 09-759

BE IT FURTHER RESOLVED that this Resolution shall become part of the permanent record of the Board of Commissioners of Delaware County, Ohio.

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

RESOLUTION NO. 09-762

IN THE MATTER OF AMENDING THE MINUTES OF THE MONDAY JUNE 22, 2009 MEETING TO REFLECT THE ACTION IN RESOLUTION NO. 09-761:

It was moved by Mr. Thompson, seconded by Mr. Hanks to amend the minutes of the Monday June 22, 2009 meeting to reflect the action in Resolution NO. 09-761.

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

RESOLUTION NO. 09-763

IN THE MATTER OF RECONSIDERING RESOLUTION NO. 09-762 (AMENDING THE MINUTES OF THE MONDAY JUNE 22, 2009 MEETING TO REFLECT THE ACTION IN RESOLUTION NUMBER 09-761):

It was moved by Mr. Hanks, seconded by Mr. Thompson to reconsidering Resolution NO. 09-762 (amending the minutes of the Monday June 22, 2009 meeting to reflect the action in Resolution NO. 09-761):

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

RESOLUTION NO. 09-764

IN THE MATTER OF AMENDING THE MINUTES OF THE MONDAY JUNE 22, 2009 MEETING TO REFLECT THE ACTION IN RESOLUTION NO. 09-761:

It was moved By Mr. Hanks, seconded by Mr. Thompson to approve amending the minutes of the Monday June 22, 2009 meeting to reflect the action in resolution no. 09-761.

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

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RESOLUTION NO. 09-765

IN THE MATTER OF APPROVING, AS AMENDED WITH RESOLUTION NO. 09-764, THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 22, 2009:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on June 22, 2009; and

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

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

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

PUBLIC COMMENT

**DAVID ISON WITH ST eGe Delaware llc. –
REFER TO CD MINUTES FOR ENTIRE RECORD**

RESOLUTION NO. 09-766

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0624, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0625:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0624, memo transfers in batch numbers MTAPR0625 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R0905119	TRANSITION PRODUCTS INC	MOBILE CONNECTIVITY SOLUTION	10011303 - 5260	\$9,118.75	0001
R0905145	DELAWARE AREA CAREER CENTER	WORK READINESS/CAREER ASSESSMENTS	22311611 - 5348	\$20,000.00	0001
R0905145	DELAWARE AREA CAREER CENTER	WORK READINESS/CAREER ASSESSMENT	22311614 - 5348	\$20,000.00	0002
Purchase Order and Voucher		Law Library	10011201-5319	\$ 124,176.30	0001

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

RESOLUTION NO. 09 -767

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Administrative Services Department is requesting that Lisa Iannotta attend a CORSA Regional Information Seminar in Findlay, Ohio July 15, 2009 at no cost.

The Engineer's Office is requesting that Nate Meyer and Mike Seiter attend a Traffic Engineering and Highway Safety Conference in Columbus, Ohio July 23-24, 2009, at the cost of \$315.00 (Fund Number 29214005).

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The Engineer's Office is requesting that Kevin Kramer, Bill Raeuchle and Josh Hall attend Air Conditioning Training in Mansfield, Ohio July 8, 2009, at no cost.

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

RESOLUTION NO. 09-768

SETTING DATE, TIME AND PLACE FOR PUBLIC HEARING BY THE COMMISSIONERS FOR THE REQUEST TO CHANGE WAYNEBROWN DRIVE TO WAYNE BROWN DRIVE:

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

Whereas, on June 7, 2009 the Delaware County Commissioners received a petition request from Joel Kallman:

"My name is Joel Kallman. I live at 9529 Wayne Brown Drive in Powell, Ohio (really, Liberty Township). I am the original owner of my house and have lived there since 1997. I live in the Big Bear Farms subdivision. The US Postal Service and the Delaware County Auditor have my street name listed as WAYNEBROWN DRIVE. I believe this street name is incorrect and should be corrected. Wayne Brown is the name of the man who was the original founder of Big Bear. In 1934 Wayne Brown opened the first modern supermarket in the nation on Lane Avenue across from St. John's Arena and called it "Big Bear". Wayne Brown is a formal name. The street name should be listed as WAYNE BROWN DRIVE."

And,

Whereas, Section 5541.04 of the Ohio Revised Code states the following: "The board of county commissioners of any county, on its own motion or on petition by a person owning a lot in the unincorporated area of said county praying that the name of a county or township road in the immediate vicinity of such lot be changed, upon hearing, and upon being satisfied that there is good cause for such a change of name, that it will not be detrimental to the general interest, and that it should be made, may, by resolution declare the change of the name of such road. The board may include in one resolution the change of name of more than one road. A copy of such resolution shall be certified to the county engineer, the county recorder, and the county auditor, who shall all change their records accordingly, but still retain in some manner the old name of the road;

Therefore be it Resolved, the Board of County Commissioners of The County of Delaware have fixed **Monday the 24th day of August, 2009, at 9:30 AM** at the Commissioners Hearing Room 101 North Sandusky Street Delaware, Ohio as the time and place of the hearing by the Commissioners to consider said road name change.

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

**ROBERT HORROCKS, EXECUTIVE DIRECTOR COUNCIL FOR OLDER ADULTS:
Discussion Of Agreement With Older Adults For The Council For Older Adults Facilities At 800
Cheshire Road**

RESOLUTION NO. 09-769

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND BID OPENING DATE FOR THE REPLACEMENT OF THE CARTER'S CORNER OVER LITTLE WALNUT CREEK BRIDGE:

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

**Public Notice
Advertisement for Bids**

Sealed bids will be received at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until **10:00am on Tuesday July 21, 2009**, at which time they will be publicly opened and read aloud, for the project known as DEL-CR-33-06.30, Carter's Corner Road over Little Walnut Creek.

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked "Sealed Bid For DEL-CR-33-06.30". Bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

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

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The Owner requires that all work associated with the project be completed before November 20, 2009. The estimated commencement of work date is August 3, 2009.

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

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

GENERAL INFORMATION

LOCATION

This project is located on Carter's Corner Road, approximately 4 miles north of Sunbury, Ohio in Kingston Township, in northeastern Delaware County.

PROJECT SCOPE

This project includes the replacement of a steel beam bridge on Delaware County Road 33 (Carter's Corner Road) over the west branch of Little Walnut Creek with a single span concrete slab bridge. The road will be closed to all traffic during the construction period.

Whereas, the Delaware County Engineer recommends the Specifications And Bid Opening Date For The Replacement Of The Carter's Corner Over Little Walnut Creek Bridge;

Therefore Be it resolved, the Delaware County Commissioners approve the Specifications And Bid Opening Date of 10:00 AM on Tuesday July 21, 2009 at 50 Channing Street Delaware, Ohio 43015 For The Replacement Of The Carter's Corner Over Little Walnut Creek Bridge.

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

RESOLUTION NO. 09-770

IN THE MATTER OF APPROVING THE OWNER'S AGREEMENT AND ESCROW AGREEMENT WITH JLP-ORANGE FOR THE ORANGE CENTRE DRIVE PHASE 2 PROJECT ALONG WITH THE RELEASE OF THE LETTER OF CREDIT POSTED BY THE GLIMCHER COMPANY FOR THE ORANGE CENTER DRIVE PHASE 2:

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

In October, 2007, The Glimcher Company posted a letter of credit as surety for the project known as Orange Centre Drive Phase 2. As this part of the project was a part of the plat for the project known as Orange Centre Phase 1 but was not to be constructed until a later date from Phase 1, this letter of credit was required. However, this part of the project was recently purchased by a company known as JLP-Orange LLC. The Engineer, therefore, recommends and requesting that you approve the Owner's Agreement and Escrow Agreement with JLP-Orange for this project along with the release of the letter of credit posted by The Glimcher Company.

PROJECT AGREEMENT

THIS AGREEMENT made and entered into this 25th day of June, 2009, by and between the COUNTY OF DELAWARE (acting by and through its BOARD OF COUNTY COMMISSIONERS), hereinafter called the COUNTY, and JLP-ORANGE LLC, an Ohio limited liability company, hereinafter called the OWNER.

1. The OWNER is to construct, install or otherwise make all of the improvements as shown and set forth to be performed and completed in accordance with the Engineering and Construction Plan entitled "ORANGE CENTRE DRIVE PHASE 2 (also called Reserve B)" which was approved by the County Engineer, hereinafter called the PLAN, which is hereby made a part of this AGREEMENT, commencing 390 feet south of Hidden Ravines Drive (the northern point) and continuing southerly to the OWNER'S property line. The improvement length from the northern point to the OWNER'S property line (approximately 190 feet in length including the culvert costing \$137,104) is now the responsibility of OWNER and no longer the responsibility of The Glimcher Company who had bonded it as a part of construction of the Orange Centre development herein called the Plan.
2. The OWNER shall pay the entire cost and expenses of said improvements.
3. The OWNER is to provide a cash escrow with CLEAN TITLE, INC. d/b/a HUMMEL TITLE AGENCY in the amount of ONE HUNDRED THIRTY-SEVEN THOUSAND ONE HUNDRED FOUR DOLLARS (\$137,104) pursuant to an escrow agreement in favor of the BOARD OF

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- COUNTY COMMISSIONERS to insure the faithful performance of this AGREEMENT and the completion of all of the said improvements in accordance with the current "Delaware County Engineering and Surveying Standards for Subdivision Development" and the current "Subdivision Regulations of Delaware County, Ohio".
4. Upon execution of the Agreement, the OWNER shall deposit ELEVEN THOUSAND DOLLARS (\$11,000), payable to the Delaware County Engineer, estimated to be necessary to pay the cost of inspection by the Delaware County Engineer. When the fund has been depleted to ten percent (10%) of the original amount deposited, the OWNER shall replenish the account upon notice by the Delaware County Engineer. Upon the acceptance of the improvements by the Delaware County Commissioners, the remaining amount in the fund shall be returned to the OWNER.
 5. The OWNER is to complete all construction to the satisfaction of the COUNTY as evidenced by an approval letter from the Delaware County Engineer. Upon issuance of the approval letter, a copy shall be forwarded to the CLEAN TITLE, INC. by the Delaware County Engineer which shall constitute the authority of the escrow agent to return the cash escrow and any interest which may have been earned thereon during the period of the escrow to OWNER.
 6. The OWNER shall indemnify and hold the COUNTY free and harmless from any and all claims for damages of every nature arising or growing out of OWNER'S construction of the said improvements.
 7. The OWNER will at all times during the construction of said improvements maintain through traffic on the public roadway (Orange Centre Drive to the north) and keep the same free of unreasonable hazards to the public. Said roadway shall not be closed to traffic on account of said construction except as approved by the Delaware County Engineer. Construction signs, barricades and lights shall be placed as needed on the job site in accordance with the Ohio Department of Transportation "Uniform Traffic Control Devices" and "Traffic Control for Construction and Maintenance".
 8. The OWNER further agrees that any violation of or noncompliance with any of the provisions and stipulations of this AGREEMENT which are not cured promptly after notice thereof shall constitute a breach of contract, and the Delaware County Engineer shall have the right to stop work forthwith and use the surety for the completion of the improvement.
 9. If the OWNER should become unable to carry out the provisions of this AGREEMENT, the OWNER'S heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this AGREEMENT.
 10. Upon approval and acceptance of the improvements, the original copy of the PLAN shall become the property of the COUNTY and shall be filed in the office of the Delaware County Engineer.
 11. In consideration whereof, the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO hereby grants to the OWNER or his agent the right and privilege to make the said improvements stipulated herein.

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into at Delaware, Ohio this 25th day of June, 2009, by and between JLP-ORANGE LLC, an Ohio limited liability company, (hereinafter referred to as "Subdivider"), Clean Title, Inc. (hereinafter referred to as "Escrow Agent"), and the Delaware County Board of Commissioners (hereinafter referred to as "County").

W I T N E S S E T H :

WHEREAS, Subdivider and County have entered into a Project Agreement, attached hereto as Exhibit A, providing for the construction of certain improvements to the southerly 190 feet of Orange Centre Drive Phase 2 (hereinafter referred to as "the Road") in the Orange Centre Subdivision which improvements shall be owned by County or Orange Township; and

WHEREAS, Subdivider desires to insure the County that funds will be available to provide for the construction of the Road according to the terms of the Project Agreement ; and

WHEREAS, the estimated construction costs of the Road as contemplated by the Project Agreement are One Hundred Thirty Seven Thousand One Hundred Four Dollars (\$137,104) (hereinafter referred to as "Escrow Funds"); and

WHEREAS, Subdivider has agreed to place in escrow with Escrow Agent the Escrow Funds; and

WHEREAS, Escrow Agent has agreed to hold as escrow agent said Escrow Funds according to the terms set forth here; and

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WHEREAS, Subdivider has agreed to pay all fees or charges to Escrow Agent for services rendered.

IT IS, THEREFORE, agreed by and between the parties as follows:

1. Creation of Escrow. Upon execution of this Agreement by all parties, Subdivider shall deposit with Escrow Agent as escrow agent pursuant to the terms and conditions of this Escrow Agreement the Escrow Funds. All amounts deposited and held pursuant to this Agreement shall be held by Escrow Agent in a separate escrow trust account established by the Escrow Agent for the sole purposes of this agreement.
2. Disbursements by Escrow Agent. Escrow Agent shall hold said funds until it receives an approval letter from the County Engineer which constitutes authorization of the Escrow Agent to deliver the Escrow Funds as set forth in the Project Agreement.
3. Duration of Escrow. This Agreement and the escrow created herewith shall continue for a minimum period of nine (9) months and shall continue thereafter until such amounts are released pursuant to the approval letter from the County Engineer as specified in Section 2 above, but no later than thirty (30) days after the County or Township have accepted the Road as complete as evidenced by acceptance of the final plat therefore.
4. Closing of Escrow. At such time as Escrow Agent delivers all of the funds as specified in Section 2 above, this Agreement shall terminate.
5. Liability of Escrow Agent. Escrow Agent shall not be liable for any action it may take or fail to take as escrow agent hereunder while its conduct is in good faith based upon this Agreement.
6. Notices. Any notices required or desired to be given by any party may be given by mailing it to the party to be notified, postage prepaid, certified United States mail, return receipt requested, as follows:

As to County: Delaware County Commissioners
 Attn: County Engineer
 101 North Sandusky Street
 Delaware, Ohio 43015

As to Subdivider: JLP-ORANGE LLC
 1800 Moler Road
 Columbus, Ohio 43207
 Attn: Dirk Greene, Director of Leasing

As to Escrow Agent: Clean Title, Inc.
 d/b/a Hummel Title Agency
 2154 East Main Street, Suite 301
 Columbus, Ohio 43209
 Attn: Murray A. Davis, CEO

7. Successors. This Agreement shall be binding and inure to the benefit of the successors and assigns of the parties hereto; however, this Agreement is not assignable to any party without the prior written consent of all the other parties.

8. Modification. This Agreement contains the entire understanding among the parties and supersedes all prior understanding or agreements between them regarding the subject matter. No changes, alterations, modifications, additions, or qualifications to the terms of this Agreement shall be made or be binding unless in writing and signed by each of the parties.

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

RESOLUTION NO. 09-771

IN THE MATTER OF ACCEPTANCE OF THE SANITARY SEWERS FOR WOODLAND HALL SECTION 2 A&B:

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

Woodland Hall Section 2 (A&B)	3,168 feet of 8-inch sewer	18 manholes
	502 feet of 12-inch sewer	

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

RESOLUTION NO. 09-772

IN THE MATTER OF EXECUTING A CONTRACT WITH BBC&M ENGINEERING, INC. FOR

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PROFESSIONAL ENGINEERING SERVICES FOR THE SOLID WASTE TRANSFER STATION:

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

Whereas the Solid Waste Transfer Station tip floor is approximately 26 years old, and

Whereas the tip floor experiences consistent heavy loading from daily use, and

Whereas both age and use have caused for the deterioration of the tip floor, and

Whereas staff recommends rehabilitation of the tip floor to insure uninterrupted service to customers of the facility, and

Whereas staff recommends to proceed with the analysis and design for repairs to the tip floor, and

Whereas both geotechnical and structural engineering services are required for the tip floor rehabilitation analysis and design, and

Whereas three (3) engineering firms reviewed the project site and submitted proposals for the desired services, and

Whereas all of the submitted proposals were evaluated using the project technical requirements, the scope of services provided, and cost, and

Whereas based on the evaluations by County staff, BBC&M Engineering, Inc. of Dublin, Ohio provided the lowest and best proposal at a not to exceed amount of \$19,600.

Therefore be it resolved that the Board of County Commissioners execute the AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES with BBC&M Engineering, Inc. of Dublin, Ohio to provide professional engineering services for the Solid Waste Transfer Station tip floor rehabilitation.

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

TO: BBC&M Engineering, Inc for \$19,600.00 from 68011916-5410

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR THE
SOLID WASTE TRANSFER STATION
TIP FLOOR REHABILITATION**

This is an agreement effective as of June 25, 2009 (“Effective Date”) between Delaware County Board of Commissioners (“Owner”) and BCC&M Engineering INC. (“Enginner”). Owner intends to Retain professional engineering services to develop the final engineering plans and specifications for the Delaware County Solid Waste Transfer Station tip floor rehabilitation as detailed in Exhibit A

Owner and Engineer agree as follows:

SERVICES OF ENGINEER

1.01 *Technical Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A including all Appendices to Exhibit A.
- B. Technical scope may be amended at the recommendation of the Director of Environmental Services with the approval of the County Administrator, if provided in writing to the Engineer and the revision to the contract is less than or equal to \$5,000. Increases to the technical scope that exceed the contract price as detailed in Exhibit B by more than \$5,000 shall only be allowed through a formal contract amendment approved by the Owner.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

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

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ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

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

3.02 *Time for Completion*

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

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

4.02 *Payments*

- A. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. Engineer may, after giving fourteen days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- C. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit B.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions,

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Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

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

6.02 *Design Without Construction Phase Services- Not Used*

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Owner) whether or not the Project is completed.
- B. A party may relay that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting

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from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants;

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit C, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Engineer shall deliver a certificate of insurance evidencing the coverages indicated in Exhibit C. Such certificate shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement. Engineer shall also deliver properly executed endorsements evidencing the listing of Owner as an additional insured, pursuant to Paragraph 6.04.A.
- C. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- D. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit C. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit C will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

- A. Suspension.

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

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

- B. Termination. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 45 days after the date of receipt of the notice.
2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.

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C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

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

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. The Engineer may not assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit D or other provisions of this Agreement, or exercising their rights under law.

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

6.09 *Environmental Condition of Site – Not Used*

6.10 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

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- B. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

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

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

6.13 *Homeland Security*

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

6.14 *Findings for Recovery*

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

6.15 *Non-Discrimination*

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

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ARTICLE 7 – DEFINITIONS7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits.
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
 2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
 3. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
 4. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
 5. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 6. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 7. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
 8. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
 9. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS8.01 *Exhibits Included*

- A. Exhibit A, “Engineer’s Services,” consisting of 12 pages.
- B. Exhibit B, “Work Schedule and Fee,” consisting of 1 pages.
- C. Exhibit C, “Insurance,” consisting of 2 pages.
- D. Exhibit D, “Dispute Resolution,” consisting of 2 pages.
- E. Exhibit E, “Amendment to Owner-Engineer Agreement,” consisting of 2 pages.

8.02 *Total Agreement*

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

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8.03 *Designated Representatives*

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

This is EXHIBIT A, consisting of 12 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .
Engineer's Services

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

WORK SCHEDULE AND FEE

The services proposed herein will be billed on a **unit rate basis** for a not to exceed without prior authorization amount of \$19,600. The soil borings will be performed within 1 to 2 weeks from receiving written authorization and the repair plans can be submitted within 5 weeks after completion of drilling. Preliminary findings will be available shortly after completion of the field work.

The construction observation portion of the work will be performed on full-time basis. BBCM will be on-site as scheduled by Delaware County.

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

SCHEDULE OF WORK AND COST ESTIMATE - PAVEMENT INVESTIGATION AND REPAIR DESIGN
001-12070-F00
Delaware County Solid Waste Transfer Station
Delaware County, Ohio

Investigation and Design Services

	Quantity	Unit	Rate	Cost
	Sub Total			
FIELD WORK				
Project Engineer - layout/recon/measurements	6	hrs @	\$110.00	\$660.00
Staff Engineering Technician - assist with measurements	6	hrs @	\$50.00	\$300.00
Field Engineer - Pavement Cores	5	hrs @	\$60.00	\$300.00
Engineering Technician - assist with pavement cores	5	hrs @	\$40.00	\$200.00
Coring Machine Rental/Bit Charge	1	day@	\$200.00	\$200.00
1/2 Day Rate- Truck Rig	1	ea	\$850.00	\$850.00
Mileage (40 miles RT)	160	mi. @	\$0.40	\$64.00
				Sub-Total
				<u>\$2,574.00</u>
LABORATORY				
Visual Identification and Classification only	8	each @	\$7.00	\$56.00
Visual ID, Classification & Natural Moisture	4	each @	\$12.00	\$48.00
Liquid and Plastic Limits	2	each @	\$58.00	\$116.00
Sieve and Short Hydrometer	2	each @	\$68.00	\$136.00
Concrete Compression Test	2	each @	\$50.00	\$100.00
				Sub-Total
				<u>\$456.00</u>
ANALYSIS/DESIGN				
Materials Administrator	6	hrs @	\$45.00	\$270.00
Designer	30	hrs @	\$65.00	\$1,950.00
Project Engineer	32	hrs @	\$90.00	\$2,880.00
Senior Project Engineer	18	hrs @	\$110.00	\$1,980.00
				Sub-Total
				<u>\$7,080.00</u>

Construction Observations and Testing Services

Senior Engineering Tech. – ST	40	hrs @	\$50.00	\$2,000.00
Senior Engineering Tech. - OT (possible night/weekend work)	24	hrs @	\$75.00	\$1,800.00
Materials Administrator	4	hrs @	\$45.00	\$180.00
Project Engineer	12	hrs @	\$90.00	\$1,080.00
Senior Engineer	2	hrs @	\$110.00	\$220.00
Mileage	320	each @	\$0.40	\$128.00
Compressive Strength Concrete Cylinder	25	each @	\$14.00	\$350.00
				Sub-Total
				<u>\$5,758.00</u>

Meetings

Senior Project Engineer	4	hrs @	\$110.00	\$440.00
Project Engineer	4	hrs @	\$90.00	\$360.00

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Mileage	40	each @	\$0.40	\$16.00
				<i>Sub-Total</i>
				<u>\$816.00</u>
<u>Subconsultant</u>				
M2 Design Group	1	each @	\$2,600.00	\$2,600.00
(plus 10%)	0.1	each @	\$2,600.00	\$260.00
				<i>Sub-Total</i> <u>\$2,860.00</u>
				ESTIMATED
				TOTAL <u>\$19,544.00</u>

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

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

C6.04 Insurance

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

1. By Engineer:

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

[or]

- 3) Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$2,000,000

- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$3,000,000

\$

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

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

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

D6.08 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreeable mediator. Notice of any Dispute must be made to the opposing party within 30 days after the Dispute has arisen, otherwise the Dispute shall be deemed waived. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties shall employ Arbitration as detailed below.
- B. Arbitration. All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the American Arbitration Association (AAA) Construction Industry Arbitration Rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph D6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the AAA. The demand must be made within 30 days after the termination of mediation pursuant to Paragraph D6.08.A.. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$150,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$150,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$150,000 (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.
 3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
 4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
 5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a “Joinable Party”), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this Paragraph D6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: Delaware County Board of Commissioners
- c. Engineer: BBC&M Engineering, Inc.
- d. Project: Delaware County Solid Waste Transfer Station Tip Floor Rehabilitation

2. Nature of Amendment [Check those that are applicable and delete those that are inapplicable.]

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- _____ Additional Services to be performed by Engineer
- _____ Modifications to Services of Engineer
- _____ Modifications to Responsibilities of Owner
- _____ Modifications to Payment to Engineer
- _____ Modifications to Time(s) for rendering Services
- _____ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

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

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

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

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

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

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

RESOLUTION NO. 09-773

IN THE MATTER OF EXECUTING AN AGREEMENT FOR APPRAISAL SERVICES FOR CHESHIRE ELEMENTARY SCHOOL SANITARY SEWER IMPROVEMENTS TO THE ROBERT WEILER COMPANY OF COLUMBUS, OHIO:

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

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

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

Whereas, the staff needs appraisal services in order to establish the value of the needed permanent sanitary sewer and temporary construction easements, and

Whereas, a Request for Proposal was sent to four appraisers, and

Whereas, four (4) Proposals were received and evaluated based on the criteria established through the Request for Proposal, and

Whereas, the Robert Weiler Company of Columbus, Ohio provided the lowest and best proposal for the Appraisal Services for Cheshire Elementary School Sanitary Sewer Improvements, and

Whereas, the staff recommends The Robert Weiler Company for the proposed work, and

Whereas staff recommends executing an agreement with the Robert Weiler Company, for the required services with a not to exceed amount of \$20,850.

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Therefore be it resolved that the Board of County Commissioners execute the contract for Appraisal Services for the Cheshire Elementary School Sanitary Sewer Improvements with The Robert Weiler Company of Columbus, Ohio.

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

To: The Robert Weiler Company for \$20,850 from 66611915-5415

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND APPRAISER
FOR
APPRAISAL SERVICES**

This is an agreement effective as of June 25, 2009 ("Effective Date") between Delaware County Board of Commissioners ("Owner") and The Robert Weiler Company ("Appraiser"). Owner intends to Retain appraisal services to appraise both permanent sanitary sewer and temporary construction easements for the project known as Cheshire Elementary School Sanitary Sewer Improvements as detailed in Exhibit A ("Project").

OWNER AND APPRAISER AGREE AS FOLLOWS:

ARTICLE 9 – SERVICES OF APPRAISER

9.01 *Technical Scope*

- A. Appraiser shall provide, or cause to be provided, the services set forth herein and in Exhibit A, and all appendices to Exhibit A.
- B. Technical scope may be amended at the recommendation of the Director of Environmental Services with the approval of the County Administrator, if provided in writing to the Engineer and the revision to the contract is less than or equal to \$5,000. Increases to the technical scope that exceed the contract price as detailed in Exhibit B by more than \$5,000 shall only be allowed through a formal contract amendment approved by the Owner.

ARTICLE 10 – OWNER'S RESPONSIBILITIES

10.01 *General*

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

ARTICLE 11 – SCHEDULE FOR RENDERING SERVICES

11.01 *Commencement*

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

11.02 *Time for Completion*

- A. Appraiser shall complete its obligations within the specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Appraiser, such periods of time or dates are changed, or the orderly and continuous progress of Appraiser's services is impaired, or Appraiser's services are delayed or suspended, then the time for completion of Appraiser's services, and the rates and amounts of Appraiser's compensation, shall be adjusted equitably.
- C. If Owner or the Owner's Representative (with the appropriate Owner's and or County Administrator's approvals) authorizes changes in the scope, extent, or character of the Project, then the time for completion of Appraiser's services and amounts of Appraiser's compensation, shall be adjusted to an equitable level agreed upon by both the Owner and the Appraiser.
- D. Owner's Representative shall make decisions and carry out the Owner's other responsibilities in a timely manner so as not to delay the Appraiser's performance of its services.

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- E. If Appraiser fails, through delay or inaction without justifiable cause for delay or inaction, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 12 – INVOICES AND PAYMENTS

12.01 *Invoices*

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

12.02 *Payments*

- A. *Failure to Pay.* If Owner fails to make any payment due Appraiser for services and expenses within 30 days after receipt of Appraiser's invoice, then
1. Appraiser may, after giving fourteen days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Appraiser for any such suspension.
- B. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- C. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Appraiser's services or compensation under this Agreement, then the Appraiser may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Appraiser is entitled under the terms of Exhibit B.

ARTICLE 13 – GENERAL CONSIDERATIONS

13.01 *Standards of Performance*

- A. The standard of care for all appraisal services performed or furnished by Appraiser under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Appraiser's services. Appraiser shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- B. Appraiser may employ such Consultants as Appraiser deems necessary to assist in the performance or furnishing of the services as approved by Owner.
- C. Subject to the standard of care set forth in Paragraph 5.01.A, Appraiser and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- D. Appraiser and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Appraiser in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Appraiser's scope of services, times of performance, and compensation.
- E. Appraiser shall not be required to sign any documents, no matter by whom requested, that would result in the Appraiser having to certify, guarantee, or warrant the existence of conditions whose existence the Appraiser cannot ascertain. Owner agrees not to make resolution of any dispute with the Appraiser or payment of any amount due to the Appraiser in any way contingent upon the Appraiser signing any such documents.

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13.02 *Use of Documents*

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

13.03 *Insurance*

- A. Appraiser shall procure and maintain insurance as set forth in Exhibit C, "Insurance." Appraiser shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Appraiser. Appraiser shall also deliver properly executed endorsements evidencing the listing of Owner as an additional insured, pursuant to Paragraph 5.03.A.
- B. Appraiser shall deliver a certificate of insurance evidencing the coverages indicated in Exhibit C. Such certificate shall be furnished prior to commencement of Appraiser's services and at renewals thereafter during the life of the Agreement.
- C. All policies of property insurance relating to the Project shall contain provisions to the effect that Appraiser's and Appraiser's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Appraiser or its Consultants, or any insureds or additional insureds thereunder.
- D. At any time, Owner may request that Appraiser or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit C. If so requested by Owner, and if commercially available, Appraiser shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit C will be supplemented to incorporate these requirements.

13.04 *Suspension and Termination*

- A. Suspension.

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

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

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B. Termination. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 45 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Appraiser's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 5.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Appraiser to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination.*

In the event of any termination under Paragraph 5.04, Appraiser will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

13.05 *Controlling Law*

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

13.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Appraiser are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Appraiser (and to the extent permitted by Paragraph 5.06.B the assigns of Owner and Appraiser) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. The Appraiser may not assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

- 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Appraiser to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
- 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Appraiser and not for the benefit of any other party.

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13.07 *Dispute Resolution*

- A. Owner and Appraiser agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit D or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 5.07.A, then either or both may invoke the procedures of Exhibit D. If Exhibit D is not included, or if no dispute resolution method is specified in Exhibit D, then the parties may exercise their rights under law.

13.08 *Indemnification and Mutual Waiver*

- A. *Indemnification by Appraiser.* To the fullest extent permitted by law, Appraiser shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Appraisers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Appraiser or Appraiser's officers, directors, partners, employees, or Consultants.
- B. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Appraiser waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

13.09 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Appraiser, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

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

- A. Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Appraiser /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.

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13.11 *Homeland Security.*

- A. Appraiser 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, Appraiser agrees to make such certification by completing the declaration of material assistance/non-assistance described in R.C. § 2909.33(A) and understands that this Contract is contingent upon full completion of such certificate and “No” being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.

13.12 *Findings for Recovery*

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

13.13 *Non-Discrimination*

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

ARTICLE 14 – DEFINITIONS

14.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Appraiser in accordance with Exhibit A, Part 2, of this Agreement.
 2. *Basic Services* – The services to be performed for or furnished to Owner by Appraiser in accordance with Exhibit A, Part 1, of this Agreement.
 3. *Consultants* – Individuals or entities having a contract with Appraiser to furnish services with respect to this Project as Appraiser’s independent professional associates, consultants, subcontractors, or vendors.
 4. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Appraiser to Owner pursuant to this Agreement.
 5. *Drawings* – That part of the Contract Documents prepared or approved by Appraiser which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 6. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 7. *Reimbursable Expenses* – The expenses incurred directly by Appraiser in connection with the performing or furnishing of Basic and Additional Services for the Project.
 8. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
 9. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Appraiser or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

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ARTICLE 15 – EXHIBITS AND SPECIAL PROVISIONS

15.01 *Exhibits Included*

- A. Exhibit A, “Appraiser’s Services,” consisting of 2 pages, plus Appendices 1 & 2 for Exhibit A.
- B. Exhibit B, “Payments to Appraiser for Services and Reimbursable Expenses,” consisting of 1 page.
- C. Exhibit C, “Insurance,” consisting of 2 pages.
- D. Exhibit D, “Dispute Resolution,” consisting of 2 pages.
- E. Exhibit E, “Amendment to Owner-Appraiser Agreement,” consisting of 2 pages.

15.02 *Total Agreement*

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

15.03 *Designated Representatives*

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

This is EXHIBIT A, consisting of _____ pages, referred to in and part of the Agreement between Owner and Appraiser for Professional Services dated _____, _____.

Appraiser’s Services

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

PART 1 – BASIC SERVICES

A2.01 Appraisal Report Phase

- C. Appraiser shall:
 1. Consult with Owner to define and clarify requirements for the Project and available data.
 2. Perform all necessary work to provide deliverables and services as defined in Appendix 1-Fee Proposal Appraisal Services Cheshire Elementary School Sanitary Sewer Improvements dated June 10, 2009 and the “Request for Proposal Appraisal Services-Cheshire Elementary School Sanitary Sewer Improvements” dated June 4, 2009 as provided in Appendix 2 of Exhibit A.
 3. Provide all Appraisal Reports as defined in Appendix 1-Fee Proposal Appraisal Services Cheshire Elementary School Sanitary Sewer Improvements. Provide the following specific appraisal reports as defined in Appendix 1-Fee Proposal Appraisal Services within the time frames listed in the schedule below, following the effective date of the agreement and written authorization from the Owner.
 - a. Week 1: begin Strayer, Mattison, and Leskoske
 - b. Week 2: continue with Strayer and Mattison, complete Leskoske
 - c. Week 3: complete Strayer and Mattison, begin Holbrook
 - d. Week 4: begin and complete Grandominico Land and Residence, begin Ross properties; complete Holbrook
 - e. Week 5: complete Ross, begin & complete Schanck

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- f. Week 6: begin Dominion Homes, *Will, *Heid, *Haverkos
- g. Week 7: complete Dominion Homes, *Will, *Heid, *Haverkos
- h. *If authorized by Owner or Owner's Representative

Provide title reports for all properties which will be appraised as defined in Appendix 1-Fee Proposal Appraisal Services within 21 days calendar days of the effective date of the Agreement and written authorization from Owner.

- 4. Provide individual appraisal reports and other deliverables immediately as they are completed to Owner for Owner's review within and prior to the associated week and calendar day deadlines under paragraphs A2.01A3 and A2.01A4.
 - 5. Revise the deliverables in response to Owner's comments, as appropriate, and furnish 3 copies of the revised deliverables to the Owner within 7 calendar days receipt of the Owner's comments.
- D. Appraiser's services under the Appraisal Report Phase will be considered complete on the date when the revised appraisal reports and any other deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- E. If authorized in writing by Owner, Appraiser shall furnish or obtain from others Additional Services of the types listed below.
 - 1. Services resulting from significant changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Appraiser's control.
 - 2. Services resulting from Owner's request to evaluate additional alternative solutions beyond those identified in the *Appraisal Report Phase*.
 - 3. Furnishing services of Appraiser's Consultants for other than Basic Services.
 - 4. Upgrades of Value Analysis Reports or Value Finding Reports to Summary Reports.
 - 5. Updating Summary Appraisal Reports for trial testimony.
 - 6. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
 - 7. Other services performed or furnished by Appraiser not otherwise provided for in this Agreement.

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

**This is EXHIBIT B, consisting of 1 page, referred to in and part of the Agreement between Owner and Appraiser for Professional Services dated _____, _____.
Payments to Engineer for Services and Reimbursable Expenses**

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

B2.01 Compensation For Basic Services– Not to Exceed Method of Payment

- A. Owner shall pay Appraiser for Basic Services set forth in Exhibit A as follows:
 - 1. The total compensation for services under paragraph B2.01 shall not exceed \$20,850. Additional fees for trial seminars shall be included "If Authorized" and shall be in accordance with the fee proposal as detailed in Appendix 1 for Exhibit A.
 - 2. Total compensation for services shall be reduced when applicable if a report type as defined in Appendix 1 for exhibit A is downgraded to a Value Analysis or Value Finding report. Total compensation for services shall also be reduced if it is determined by the Owner's representative that an appraisal report or title report will not be required for any individual property as listed in Appendix 1 for Exhibit A.

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3. The Not to Exceed amount includes compensation for Appraiser’s services and services of Appraiser’s Consultants, if any. Appropriate amounts have been incorporated in the Not to Exceed amount to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Not to Exceed amount billed for Appraiser’s services will be based upon Appraiser’s estimate of the proportion of the total services actually completed during the billing period to the Not to Exceed amount.

**This is EXHIBIT C, consisting of _____ pages, referred to in and part of the Agreement between Owner and Appraiser for Professional Services dated _____, _____.
Insurance**

Paragraph 5.03 of the Agreement is amended and supplemented to include the following agreement of the parties.

C5.034 Insurance

A. The limits of liability for the insurance required by Paragraph 5.03.A and 5.03.B of the Agreement are as follows:

1. By Appraiser:
 - a. Workers’ Compensation: Statutory
 - b. Employer’s Liability --
 - 1) Each Accident: \$1,000,000
 - 2) Disease, Policy Limit: \$1,000,000
 - 3) Disease, Each Employee: \$1,000,000
 - c. General Liability --ach Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 1) General Aggregate: \$1,000,000
 - d. Excess or Umbrella Liability --
 - 1) Each Occurrence: \$2,000,000
 - 2) General Aggregate: \$2,000,000
 - e. Automobile Liability --
 - 1) Bodily Injury:
 - a) Each Accident \$500,000
 - 2) Property Damage:
 - a) Each Accident \$500,000
- [or]
- 3) Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$500,000
- f. Professional Liability –
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$1,000,000

The Owner shall be listed on Appraiser’s general liability policy as provided in Paragraph 5.03.A.

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

Paragraph 5.07 of the Agreement is amended and supplemented to include the following agreement of the parties:

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D5.07 Dispute Resolution

Mediation. Owner and Appraiser agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreeable mediator. The parties shall evenly split the costs of mediation. If such mediation is unsuccessful in resolving a Dispute, then the parties may pursue litigation before a court of competent jurisdiction, provided however that any and all Disputes shall be filed in and heard before the courts of Delaware County, Ohio.

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

AMENDMENT TO OWNER-APPRAISER AGREEMENT

1. Background Data:
 - a. Effective Date of Owner-Appraiser Agreement: _____
 - b. Owner: Delaware County Board of Commissioners
 - c. Appraiser: The Robert Weiler Group
 - d. Project: Cheshire Elementary School Sanitary Sewer Improvements

2. Nature of Amendment [Check those that are applicable and delete those that are inapplicable.]
 - _____ Additional Services to be performed by Appraiser
 - _____ Modifications to Services of Appraiser
 - _____ Modifications to Responsibilities of Owner
 - _____ Modifications to Payment to Appraiser
 - _____ Modifications to Time(s) for rendering Services
 - _____ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

Attachment 1, “Modifications”
[List other Attachments, if any]

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

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

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

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

RESOLUTION NO. 09-774

IN THE MATTER OF AMENDING THE CHILD CARE PROVIDER CONTRACTS BETWEEN THE DELAWARE COUNTY 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:

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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 contract amendments;

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

Child Care Unlimited-Sunbury

AMENDMENT TO PURCHASE OF CHILD CARE SERVICES CONTRACT
AMENDMENT NO. 1

This amendment, effective January 1, 2009, is to amend the Purchase of Child Care Services Contract between the Delaware County Department of Job and Family Services and Child Care Unlimited-Sunbury, entered into on the 1st day of January, 2009.

Article 4. Cost and Delivery of Purchased Services:
Increase amount of contract from \$55,000 to \$65,000.

Nancy Lucas

AMENDMENT TO PURCHASE OF CHILD CARE SERVICES CONTRACT
AMENDMENT NO. 1

This amendment, effective January 1, 2009, is to amend the Purchase of Child Care Services Contract between the Delaware County Department of Job and Family Services and Nancy Lucas entered into on the 1st day of January 2009.

Article 4. Cost and Delivery of Purchased Services:

(A) Payment Rates: The total amount of services to be reimbursed under this contract is increased from \$55,000 to \$75,000

Journey Christian Academy

AMENDMENT TO PURCHASE OF CHILD CARE SERVICES CONTRACT
AMENDMENT NO. 2

This amendment, effective January 1, 2009, is to amend the Purchase of Child Care Services Contract between the Delaware County Department of Job and Family Services and Journey Christian Academy entered into on the 1st day of January 2009.

Article 4. Cost and Delivery of Purchased Services:

Payment Rates:
Increases amount of contract from \$55,000 to \$75,000

Noah's Ark/Tippett Ct

AMENDMENT TO PURCHASE OF CHILD CARE SERVICES CONTRACT
AMENDMENT NO. 2

This amendment, effective January 1, 2009, is to amend the Purchase of Child Care Services Contract between the Delaware County Department of Job and Family Services and Noah's Ark/Tippett Ct. entered into on the 1st day of January 2009.

Article 4. Cost and Delivery of Purchased Services:

(A) Payment Rates: The total amount of services to be reimbursed under this contract is increased from \$75,000 to \$150,000.

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

RESOLUTION NO. 09-775

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

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The Director of Job and Family Services recommends to end the probationary period and approval of the end-of-probationary pay raise for Stephanie Acker, an Income Maintenance Worker III with the Department of Job and Family Services; effective date June 13, 2009.

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

RESOLUTION NO. 09-776

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director of The Child Support Enforcement Agency recommends to end the probationary period and approval of the end-of-probationary pay raise for Andreas Macaluso, effective date June 27, 2009.

The Director of The Child Support Enforcement Agency recommends to end the probationary period and approval of the end-of-probationary pay raise for Tonia Wilson, effective date June 27, 2009.

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

RESOLUTION NO. 09-777

IN THE MATTER OF AUTHORIZING THE SUBMITTING OF AN APPLICATION FOR A WAL-MART COMMUNITY GRANT FOR THE JUVENILE COURT MOMS PROGRAM:

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

Grant #	2009
Source:	Wal-Mart
Grant Period:	August 1 2009 thru July 31 2010
Grant Amount:	\$ 5,000.00
Local Match:	<u>0.00</u>
Total Grant Amount:	\$ 5,000.00

The Grant is for funding of supplies ie. baby cribs, diapers, baby food etc, for the MOMs program. The MOMs program is a mentoring program for expectant mothers and mothers who are involved with juvenile court.

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

RESOLUTION NO. 09-778

IN THE MATTER OF AUTHORIZING THE SUBMITTING OF AN APPLICATION FOR A WAL-MART COMMUNITY GRANT FOR THE JUVENILE COURT MOMS PROGRAM:

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

Grant #	2009
Source:	Wal-Mart
Grant Period:	August 1 2009 thru July 31 2010
Grant Amount:	\$ 5,000.00
Local Match:	<u>0.00</u>
Total Grant Amount:	\$ 5,000.00

The Grant is for partial funding of the MOMS coordinator position. The MOMs program is a mentoring program for expectant mothers and mothers who are involved with juvenile court.

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

RESOLUTION NO. 09-779

IN THE MATTER OF DECLARING THE ALLOCATION OF REVENUES FROM THE HOUSING OF FEDERAL PRISONERS:

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

Whereas, the Delaware County Board of County Commissioners approved an agreement with the United States Marshall's Service for the confinement of federal prisoners, and

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Whereas, resolution 09-290 which approved the agreement did not allocate how the revenues from the contract were to be allocated, and

Whereas, the Delaware County Board of County Commissioners desires to allocate the funds from the housing of federal prisoners

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

1. The first \$15,000 of revenues derived under resolution 09-290 from the housing of federal prisoners is allocated to the County Sheriff to fund salaries for current employees of the jail.
2. The remaining revenues generated from 09-290 be allocated into a capital projects fund for the purpose of paying for improvements and renovations to the county jail, until such time as new personnel are hired for the expansion.
3. At such time as new personnel are hired to staff the jail expansion, the revenues generated from the agreement in 09-290 are to be deposited in the General Fund to the credit of the County Sheriff to pay for the salaries and benefits of new employees necessary to staff the jail expansion.
4. Any such revenues generated from the agreement in 09-290 in excess to fully cover the salaries and benefits of the new personnel hired to staff the expansion of the county jail, will deposited in the capital projects fund or bond retirement fund to pay off bonds or other indebtedness of expanding the facility.
5. The Board establishes 41211434, Jail Expansion Fund, as a new Capital Projects Fund to deposit funds in accordance with the terms of this resolution.

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

RESOLUTION NO. 09-780

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR PERMANENT IMPROVEMENT:

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

Transfer of Appropriation

From	To		
40111402-5410	40111402-5301		
Permanent Improv/Build Improv	Permanent Improv/Professional Services	\$	2,500.00

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

COMMISSIONERS' COMMITTEES REPORTS

Refer To Cd Minutes For Entire Record

Commissioner Hanks
-Remember to take a pro-active approach to economic development

Commissioner O'Brien
-Agrees with the pro-active approach but a stable budget is also important
-attended ODOT Meeting on 36/37/71 interchange
-city is close to planning phase of the point intersection

Commissioner Thompson
-Attended Alpha Industry meeting-they are working on a project,
-the organization has had several members pass on this past year.
-also organization will have a 40 year anniversary next year)

Commissioner Hanks Motion To Adjourning Into Executive Session For Consideration Of Appointment, Employment, Dismissal, Discipline, Promotion, Demotion Or Compensation Of A Public Employee Or Public Official Died For Lack Of A Second.

**Discussion Of Commissioners' Representatives To The Delaware County Law Library Resources Board -4 applications and 2 openings
Refer To Cd Minutes For Entire Record**

RESOLUTION NO. 09-781

IN THE MATTER OF ADJOURNING THE MEETING:

It was moved by Mr. Hanks, seconded by Mr. Thompson to adjourn the meeting.

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

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RESOLUTION NO. 09-782

IN THE MATTER OF reconsidering resolution no. 09-781:

It was moved by Mr. Hanks, seconded by Mr. Thompson to reconsider resolution no.09-781.

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

RESOLUTION NO. 09-783

IN THE MATTER OF ADJOURNING THE MEETING:

It was moved by Mr. Hanks, seconded by Mr. Thompson to adjourn the meeting.

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

Todd Hanks

Ken O'Brien

Tommy Thompson