

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 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. 09-1452

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 19, 2009:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on November 19, 2009; and

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

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

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

PUBLIC COMMENT

(Refer To Cd Minutes For Entire Record)

Jerry Tinianow, Director Center for Energy and Environment-Mid-Ohio Regional Planning Commission; Request support for MORPCs Olentangy Watershed Planning Partnership application (funding is from the Lake Erie Commission)

Jim Keefer, County Employee, Comments On Health Insurance Resolution And Discussion From Last Week

RESOLUTION NO. 09-1453

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1120, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1120 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PC1120:

It was moved by Mr. Hanks, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1120, memo transfers in batch numbers MTAPR1120, Procurement Card Payments in batch number PC1120 and Purchase Orders as listed below:

Vendor	Description	Account	Amount
PO Increase			
Building Trades Institute	Tuition/ Books	22311611-5348	\$ 6,000.00
Project Management	Membership	22311611-5348	\$ 6,000.00
Project Management	Client Services	22311614-5348	\$ 4,000.00
American Electric Power	Electric Services	10011105-5338	\$ 24,500.00
Decrease			
Pitney Bowes	Mail	10011105-5331	\$ 19,000.00
Nextel	Phone Service	10011105-5330	\$ 2,000.00
Voucher			
Delaware County Bank	Lewis Center Principal	50411121-5725	\$ 1,661.47
Delaware County Bank	Lewis Center Interest	50411121-5720	\$ 1,181.33
Delaware County Bank	Sawmill Principal	50811125-5725	\$ 1,538.53
Delaware County Bank	Sawmill Interest	50811125-5720	\$ 1,093.92
Delaware County Bank	Basinger Principal	51311130-5725	\$ 17,200.00
Delaware County Bank	Basinger Interest	51311130-5720	\$ 3,627.00
Delaware County Bank	Jones Timms Principal	51411131-5725	\$ 26,600.00
Delaware County Bank	Jones Timms Interest	51411131-5720	\$ 5,164.63
Delaware County Bank	Tartan Principal	51311120-5725	\$ 120,000.00
Delaware County Bank	Tartan Interest	51311120-5720	\$ 2,940.00
Huntington	Primmer Principal	50511122-5725	\$ 7,300.00
Huntington	Primmer Interest	50511122-5720	\$ 1,158.00
Huntington	Gwinner Principal	51011127-5725	\$ 4,500.00
Huntington	Gwinner Interest	51011127-5720	\$ 714.00
Huntington	Commer Principal	51211129-5725	\$ 14,100.00

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

Huntington	Commer Interest	51211129-5720	\$ 2,228.00
Huntington	Old Kingston Principal	51111128-5725	\$ 6,200.00
Huntington	Old Kingston Interest	51111128-5720	\$ 980.00
Huntington	Smith Principal	50611123-5725	\$ 4,000.00
Huntington	Smith Interest	50611123-5720	\$ 624.00
Huntington	Sackett Principal	50711124-5725	\$ 700.00
Huntington	Sackett Interest	50711124-5720	\$ 108.00
Huntington	Sawmill Principal	50811125-5725	\$ 78,600.00
Huntington	Sawmill Interest	50811125-5720	\$ 48,782.50
Huntington	Lewis Center Principal	50411121-5725	\$ 83,400.00
Huntington	Lewis Center Interest	50411121-5720	\$ 52,617.50
Huntington	Olentangy TIF Principal	50911126-5725	\$ 51,200.00
Huntington	Olentangy TIF Interest	50911126-5720	\$ 31,800.50
US Bank	Revenue Bonds Principal	66311901-5725	\$ 210,000.00
US Bank	Revenue Interest	66311901-5720	\$ 676,487.50
The Bank of New York Mellon	Alum Creek Principal	50111117-5725	\$2,395,000.00
The Bank of New York Mellon	Alum Creek Interest	50111117-5720	\$ 52,091.25
The Bank of New York Mellon	Jail Principal	50111117-5725	\$ 445,000.00
The Bank of New York Mellon	Jail Interest	50111117-5720	\$ 55,498.13
The Bank of New York Mellon	Hayes Principal	50111117-5725	\$ 585,000.00
The Bank of New York Mellon	Hayes Interest	50111117-5720	\$ 320,996.87
The Bank of New York Mellon	Radios Principal	50111117-5725	\$1,195,000.00
The Bank of New York Mellon	Radios Interest	50111117-5720	\$ 109,396.87
The Bank of New York Mellon	1995 Sewer Principal	50111117-5725	\$1,015,000.00
The Bank of New York Mellon	1995 Sewer Interest	50111117-5720	\$ 14,590.63
The Bank of New York Mellon	Perry Taggart Principal	50111117-5725	\$ 600,000.00
The Bank of New York Mellon	Perry Taggart Interest	50111117-5720	\$ 54,691.25
The Bank of New York Mellon	1997 Refund Principal	50111117-5725	\$ 305,000.00
The Bank of New York Mellon	1997 Refund Interest	50111117-5720	\$ 61,162.50
The Bank of New York Mellon	CFOA Principal	50111119-5725	\$ 460,000.00
The Bank of New York Mellon	CFOA Interest	50211119-5720	\$ 226,237.50

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

RESOLUTION NO. 09-1454

IN THE MATTER OF THE COMMISSIONERS APPROVING AND ENDORSING THE DELAWARE COUNTY DEVELOPMENTAL DISABILITIES' GRANT APPLICATION PROPOSAL TO THE OHIO DEPARTMENT OF DEVELOPMENT FOR THE OHIO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM FOR THE PROJECT AT 7991 COLUMBUS PIKE, LEWIS CENTER:

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

RE: Ohio Energy Efficiency and Conservation Block Grant Program: Local Governments

Whereas, Delaware County Developmental Disabilities has submitted in initial grant proposal to the Ohio Department of Development for an Energy Efficiency grant for the project at 7991 Columbus Pike, Lewis Center. The initial proposal is attached as is a request for proposal summary. This is a very complex application process and it is still not clear what parts of our project might be eligible, and

Whereas, the deadline is November 30, 2009, and

Whereas, an endorsement form the Delaware County Commissioners would be a benefit to the application for Delaware County Developmental Disabilities, and

Whereas, here is a list of key considerations:

- If awarded this grant could provide between \$150,000 to 1,401,500 toward energy enhancement already planned as alternates for our project.
- It was anticipated that we would apply for an energy loan to pay for the enhance energy alternates for this project. This grant could replace part of the funds we would have to borrow.
- No general funds from the county are being requested or required for this project.
- Priority consideration for these grant funds is "shovel ready" projects. We are ready to go to bid in early December 2009, construction to begin in February 2010 and completion in September 2010.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

And ,

Whereas, Delaware County Developmental Disabilities request that the Delaware County Commissioners approve and endorse the grant application to the Ohio Department of Development for Ohio Energy Efficiency and Conservation Block Grant Program.

And,

Whereas, here the proposal summary,

The Delaware County Developmental Disabilities has purchased and will renovate at 40 year-old building located at 7991 Columbus Pike, Lewis Center, Ohio 43035. This 72,000 sq. ft. building Will house the Board's operations as well as community center for use of local and state-wide organizations.

Mechanical engineering estimates indicate that if we used the existing HVAC systems our annual operating costs would be \$248,254 per year or \$3.45 per sq. ft. A basic upgrade of the HVAC system would reduce the annual operating cost to \$11,210 or \$1.54 per sq. ft. We have a proposal for a heat pump system-geothermal system. The annual operating cost of the enhanced geothermal system will be \$57,874 or \$.80 per square foot. This will result in operating costs of 23% of the current system.

The total cost of the energy improvements for the project is \$2,096,500 and we are asking for \$1,401,500 of EECBG funding and will commit \$695,000 of local match (33.2%). Funding for this project has been approved by the Delaware County Commissioner from operating funds of the Delaware County Developmental Disabilities. The project will be ready for bid in early December 2009 and bids will be accepted on January 21, 2010. The enhanced geothermal is being bid as an alternate and will be accepted if feasible with funds available. The project will be completed by September 2010.

Building Project Schedule

Completion of Drawings and Specifications - November 30, 2009

Advertise for bids - Friday, December 4, 2009, and publish to DCBDD and county websites

Mandatory Pre-Bid Meeting - Tuesday, December 15, 2009, 1:30 at 7991 Columbus Pike

Bids due - Tuesday, January 5, 2010, 3:00 PM at 106 Stover DR., Board Room.

Contract Recommendations to DCBDD - Thursday, January 14, 2010

Board Action on Contracts - Evening of Thursday, January 21, 2010

Notice of Award/Notice to Proceed Issued - Friday, January 22, 2010

Begin Construction - Monday, February 1, 2010

Temporary Occupancy of North and West Wings - Friday, August 6, 2010

Final Occupancy Entire Building - Friday, September 3, 2010

Now Therefore Be It Resolved, That The Delaware County Commissioners Approve And Endorse The Delaware County Developmental Disabilities' Grant Application Proposal To The Ohio Department Of Development For The Ohio Energy Efficiency And Conservation Block Grant Program For The Project At 7991 Columbus Pike, Lewis Center

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

RESOLUTION NO. 09-1455

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND B & L PACKRAT LLC FOR ITB #09-05 SNOW REMOVAL SERVICES FOR DELAWARE COUNTY:

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

Whereas, the Facilities Supervisor recommends approval of the following contract;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following contract with B & L Packrat Llc For Itb #09-05 Snow Removal Services For Delaware County

**Delaware County Board of Commissioners
Contract**

This Contract made by and between:

**B & L Packrat LLC
1721 Buttermilk Hill Road
Delaware, OH 43015**

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

(the "Contractor") and the Delaware County Board of Commissioners (the "Owner").

In consideration of the mutual promises herein contained, the Delaware County Board of Commissioners and the Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall provide the services as described in the invitation to bid (ITB), which is attached hereto as Exhibit "A", and as necessary to produce the results intended by the Bid Documents for:

**ITB #09-05 Snow Removal Services
For Delaware County, Ohio
All Locations**

ARTICLE 2

2.1 The Delaware County Board of Commissioners shall pay the Contractor for the performance of this Contract, subject to additions and deletions as provided in the bid documents, an estimated annual value of Eighty Thousand dollars (\$80,000.00), based upon the unit pricing set forth in the proposal, submitted by the Contractor and opened on October 12, 2009.

2.2 The Contract Price shall be paid in current funds by the Owner upon payment requests issued by the Contractor as services are provided and approved by the Delaware County Board of Commissioners as provided in the Bid Documents.

ARTICLE 3

3.1 The original term of this contract shall be for Two (2) years, beginning November 1, 2009, and ending October 31, 2011.

3.2 The Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor upon thirty (30) days written notice of its intent to do so. Furthermore, it is understood and agreed that should the contractor fail to provide the quality of good and/or service(s) as specified in the bid instructions, such failure shall constitute a breach of this Contract. Upon a breach of the Contract, the Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor effective immediately upon written notice of its intent to do so.

ARTICLE 4

4.1 This Contract shall embody the entire understanding of the parties and form the basis of the Contract between the Delaware County Board of Commissioners and the Contractor. The Bid Documents shall be considered to be incorporated by reference into this Contract as if fully rewritten herein, and made a part hereof. This Contract, along with all documents incorporated by reference, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio. Any legal action arising pursuant to this Contract shall be filed in and heard before the courts of Delaware County, Ohio.

4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.

4.4 To the fullest extent permitted by law, the Contractor shall indemnify, save and hold the Delaware County Board of Commissioners, its officers, agents, servants, and employees free and harmless of all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the Contractor's performance of this Contract. The Contractor shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the Delaware County Board of Commissioners by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees. No employee of the Contractor shall at any time be considered an agent or employee of the Delaware County Board of Commissioners.

4.5 Insurance:

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

4.5.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.

4.5.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.

4.5.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.

4.5.4 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Contract in the policies required by Subsection 4.5.

4.5.5 Proof of Insurance: Prior to the commencement of any work under this Contract, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Contract. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Contract.

4.6 No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

4.7 For all services being provided under this Contract, the Delaware County Board of Commissioners shall have the right and Contractor agrees to allow the inspection and examination of any and all books, accounts, invoices, records, writings, or documentation of any type and in any form which it maintains in relation to performing said services

4.8 The Contract shall be binding on the Contractor and the Delaware County Board of Commissioners, their successors and assigns, in respect to all covenants and obligations contained in the Contract, but the Contract may not be assigned by the Contractor without the prior written consent of the Delaware County Board of Commissioners.

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

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

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

ARTICLE 5

5.1 It is expressly understood by the Contractor that none of the rights, duties and obligations described in the Contract shall be valid and enforceable unless the Delaware County Auditor first certifies funds are available.

5.2 The Contract shall become binding and effective upon the completion of 5.1 and execution by the Delaware County Board of Commissioners.

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

ARTICLE 6

6.1 This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

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

RESOLUTION NO. 09-1456

SETTING BID OPENING DATE AND TIME FOR THE GENERAL TRADES CONTRACT; FIRE PROTECTION; PLUMBING CONTRACT; HVAC CONTRACT AND ELECTRICAL CONTRACT FOR THE DELAWARE COUNTY JAIL REMODEL AND ADDITIONS:

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

Whereas, Contract Documents have been prepared by: Shremshock Architects, Inc. (Architect) for the Delaware County Jail Remodel and Additions, and

Whereas, the following is the advertisement for bids

SECTION 00 11 13 — ADVERTISEMENT FOR BIDS

Sealed bids will be received by:
 Delaware County Board of Commissioners (Owner)
 101 North Sandusky Street
 Delaware, Ohio 43015

For the following Project:
 Delaware County Jail Remodel and Additions
 844 U.S. Route 42 North
 Delaware, Ohio 43015

In accordance with the Contract Documents prepared by:
 Shremshock Architects, Inc. (Architect)
 6130 Sunbury Road
 Westerville, Ohio 43081
 Phone: 614.545.4550
 Fax: 614.545.4555

Separate bids will be received for:

<u>Trade</u>	<u>Estimate</u>
General Trades Contract	\$1,456,562.00
Fire Protection	\$54,825.00
Plumbing Contract	\$ 124,904.00
HVAC Contract	\$ 168,823.00
Electrical Contract	\$ 891,552.00

Until Friday, December 18, 2009 at 10:00AM, local time

Bids received after this time will not be accepted. Bids will be opened publicly and read immediately thereafter. Subject to the right of the Owner to reject any or all bids, the Owner will award contracts to the lowest and best bidder (s).

A pre-bid conference will be held on Thursday, December 10, 2009 at 9:30AM, local time, at the following location:

Delaware County Jail
 844 U.S. Route 42 North
 Delaware, Ohio 43015

Contract Documents may be obtained from:

Franklin Imaging
 500 Schrock Road
 Columbus, Ohio 43229
 Phone: 614-855-6894
 Fax 614-855-2823

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

Website: www.franklinimaging.com

For a cost of \$100.00/set, plus shipping costs

All bids must be accompanied by a Bid Guaranty in the form of either a Bid Guaranty and Contract Bond for the full amount of the bid (including all add alternates or a certified check, cashier's check, or an irrevocable letter or credit in an amount equal to 10% of the bid (including all add alternates), as described in the Instructions to Bidders.

This is a prevailing wage project.

No Bidder may withdraw its bid within sixty (60) days after the bid opening. The Owner reserves the right to waive irregularities in bids, to reject any or all bids, and to conduct such investigation as necessary to determine the lowest and best bidder for each contract.

The Contract Documents may be reviewed for bidding purposes without charge during business hours at the office of the Architect and the following, locations:

McGraw-Hill Construction / Dodge at the Builder's Exchange of Central Ohio

1175 Dublin Road
Columbus, Ohio 43215
Phone: (614) 486-6575
Fax: (614) 486-0544
Contact: Puna Johnson [PDF]
E-mail: [Dodge.ReocMW\(d\)mcgraw-hill.com](mailto:Dodge.ReocMW(d)mcgraw-hill.com)
Web site: www.dodge.construction.com

Reed Construction Data

30 Technology Parkway South — Suite 500
Norcross, Georgia 30092
Phone: (877) 891-0601
Fax: (800) 508-5370
Contact: Jen Thorn [PDF]
E-mail: rcdcentralnews@reedbusiness.com
Secondary E-mail: jen.thorn@reedbusiness.com
Web site: www.reedconstructiondata.com

The Owner or the Architect, in making the Contract Documents available on the above terms, does so only for the purpose of obtaining bids on the Work and does not confer a license or grant for any other use.

Now Therefore Be It Resolved, that the Delaware County Commissioners approve the Bid Opening date of **10:00 AM on Friday December 18, 2009 at 101 North Sandusky Street, Delaware, Ohio 43015**, for the for The General Trades Contract; Fire Protection; Plumbing Contract; HVAC Contract and Electrical Contract for the Delaware County Jail Remodel And Additions.

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

RESOLUTION NO. 09-1457

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director of Job and Family Services recommends to hire Scott Rickel as a Social Services Worker III; with the Department of Job and Family Services; effective date December 2, 2009.

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

RESOLUTION NO. 09-1458

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND SMITH AND ASSOCIATES FOR 2009 PUMP STATION BY-PASS UPGRADES:

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

WHEREAS, The Delaware County Regional Sewer District operates and maintains twenty-six (26) pump stations throughout the County, and

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

WHEREAS all of the pump stations are operated by electricity, and

Whereas it is necessary for the County to keep those pump stations in service; even when electrical failures take place, and

Whereas the purpose of this project is to upgrade the piping at three of the County operated pump stations (East Alum Creek, Cheshire, & Quail Meadows) to allow by-pass pumping of those pump stations with a portable pump under safe conditions to the employees and the general public, and

Whereas estimates to complete the required work were solicited from several contractors, and

Whereas the quotes to perform the work were evaluated by the Sewer District Staff using a lowest and best approach against the contract documents, and

Whereas Sewer District staff has determined that Smith and Associates of Sunbury, Ohio has submitted the lowest and best quote for the work at a lump sum price of \$19,932.00.

Whereas Sewer District staff recommends that the work be awarded to Smith and Associates of Sunbury, Ohio at a lump sum price of \$19,932.00.

THEREFORE, be it resolved that the Board of County Commissioners execute the agreement for 2009 Pump Station Upgrades with Smith and Associates of Sunbury, Ohio.

FURTHERMORE, let it be resolved that the Board of County Commissioners approves a Purchase Order to Smith and Associates from the following accounts:

<u>Pump Station</u>	<u>Account Number</u>	<u>Amount</u>
East Alum Creek	66290409-5268	\$6,644.00
Cheshire	66290408-5268	\$6,644.00
Quail Meadows	66290312-5268	\$6,644.00

**CONTRACT FOR
 2009 PUMP STATION BY-PASS UPGRADES**

THIS AGREEMENT is by and between The Delaware County Board of County Commissioners, Delaware, Ohio, (herein referred to as Owner) and Smith & Associates, (herein referred to as Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
Pump Station by-pass upgrades to the East Alum Creek, Cheshire, and Quail Meadows Pump Stations. Work is more completely described in the contractor’s proposal, attached as Exhibit A and piping plans attached as Exhibits B, C, & D.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents is generally described as follows:
Adding interior and exterior piping and fittings to allow by-pass pumping of pump stations. Work is more completely described in the contractor’s proposal, attached as Exhibit A and piping plan attached as Exhibits B, C, & D.

ARTICLE 3 - ENGINEER

3.01 The Project has been specified by Delaware County Division of Environmental Service, who is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment; Extensions

- A. The Work will be substantially completed within 30 calendar days after contract commencement, and completed and ready for final payment by within 45 calendar days after contract commencement.
- B. Reasonable extensions to the deadlines provided for in Paragraph 4.02.A shall be permitted as follows:
 1. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, provided Contractor makes a written Claim to Owner for said extension. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions, or acts of God.
 2. Contractor shall not be entitled to an extension for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Paragraph 4.02.B. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$50.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 Termination

- A. The Owner may, at any time, terminate this Contract without cause. Termination pursuant to this Paragraph shall take effect immediately upon receipt of the notice of termination by either party. Such a termination does not bar either party from pursuing a claim for damages for breach of this Contract. In the event of termination, Contractor shall be compensated for all work completed prior to the effective date of termination.
- B. If either party fails to substantially perform in accordance with the provisions of this Contract, the other party shall notify the party failing to perform in writing of the substantial failure of performance. Such written notice shall specifically state the nature of the substantial failure(s) of performance. If the party receiving such notice fails to correct the indicated substantial failure(s) of performance within ten (10) days of receiving such notice, this Contract may be terminated, for cause. Upon such termination, the parties shall be entitled to all such rights and remedies as the law may allow.
- C. Termination of this Contract, either with or without cause, shall not form the basis of any claim for loss of anticipated profits by either party.

ARTICLE 5 - CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined below:

- A. For all Work other than Unit Price Work, a Lump Sum of:

Nineteen Thousand Nine Hundred Thirty-Two Dollars	\$19,932.00
(words)	(numerals)

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation exhibiting the Work completed as of the date of the Application for Payment. Applications for Payment will be processed by Engineer. The Engineer shall make a recommendation to Owner for payment upon approval of the Application for Payment.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment no later than 30 days after receipt of an approved application of payment by the Contractor. Engineer shall provide comments and or corrections on the subject pay application no later 10 days after receipt of application. Owner shall pay application for payment within 30 days of receipt of an approved pay application by the Engineer. All such payments will be measured by the Owner as percent complete of the total scope of work.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages:

- a. 92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

- b. 92 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92 percent of the Work completed, less such amounts as Owner shall determine and less 50 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, the Owner shall pay the remainder of the Contract Price.

6.04 Interest

- A. All monies not paid when due as provided shall bear interest at the rate of one percent (1.0%) per annum.

ARTICLE 7 – LIABILITY

7.01 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, 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 there from but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

them may be liable, the indemnification obligation under Article 7 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Article 7 shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.02 Insurance

- A. General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.
- B. Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.
- C. Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.
- D. Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Work Change Directive(s).
 - b. Change Order(s).
 - c. Certificate of Substantial Completion
 - d. Contractor's Application for Payment
 - 2. This Agreement (pages 1 to 10, inclusive).
 - 3. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Estimate, "Exhibit A".
 - b. Piping Plan, "Exhibits B, C, & D"
 - c. Non-Collusion Affidavit
 - d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
 - e. Personal Property & Real Estate Tax Affidavit
 - f. Non-Discrimination and Equal Employment Opportunity Affidavit
 - g. Certification / Affidavit in Compliance with O.R.C. Section 3517.13
 - h. DMA Form – Homeland Security
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.
- D. In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.
- E. There are no Contract Documents other than those listed above in this Article 9.
- F. The Contract Documents may only be amended, modified, or supplemented as follows:
 - 1. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
 - 2. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - a. A Field Order;

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

- b. Engineer's approval of a Shop Drawing or Sample; or
- c. Engineer's written interpretation or clarification.

ARTICLE 10 - MISCELLANEOUS

10.01 Definition of Terms

- A. Undefined Terms used in this Agreement shall have their common and ordinary meanings, subject to any specific meanings attributed to trade usage.
- B. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
 - 1. Agreement - The written instrument, which is evidence of the agreement between Owner and Contractor covering the Work.
 - 2. Application for Payment - The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 - 3. Change Order - A document recommended by Engineer, which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 - 4. Claim - A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 - 5. Contract - The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 - 6. Contract Documents - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 - 7. Contract Price - The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement.
 - 8. Contract Times - The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment.
 - 9. Field Order - A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
 - 10. Specifications - That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
 - 11. Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer or Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
 - 12. Work - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

10.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

10.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents 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.

10.05 Survival of Obligations

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

10.06 Independent Contractor

Contractor agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Contract. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

10.07 Governing Law

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

10.08 No Waiver

No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

10.09 Findings for Recovery

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

10.10 Homeland Security

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

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

10.11 Campaign Finance – Compliance with O.R.C. § 3517.13

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

10.12 Use of Facility during Construction

Contractor understands that the solid waste transfer station must continue to operate during normal posted hours of operation throughout the duration of this Contract. Contractor shall coordinate Work with Owner, other contractors and facility operator to prevent disruption to the function of the facility during normal business hours.

10.13 Contractor agrees to the following:

- A. That, in the hiring of employees for the performance of work under the contract or any subcontract, Contractor, any subcontractor, or any person acting on Contractor’s or subcontractor’s behalf, by reason of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color, shall not discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;
- B. That Contractor, any subcontractor, or any person on Contractor’s or subcontractor’s behalf, shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color.
- C. That there shall be deducted from the amount payable to the Contractor by the Owner, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;
- D. That the contract shall be canceled or terminated by the Owner, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.

10.14 Headings

Article and paragraph headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary. (Copies of exhibits available in the Sanitary Engineer’s Department).

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

RESOLUTION NO. 09-1459

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND ZIMMERMAN AND COMPANY FOR 2009 DEER RUN DRIVEWAY PAVING:

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

WHEREAS, The Delaware County Regional Sewer District operates and maintains the Deer Run Pump Station, and

WHEREAS it is necessary to access this pump station on a regular basis, and

Whereas the current stone surface driveway is badly rutted due to surface drainage and the slope of the driveway, and

Whereas the purpose of this project is to install drainage improvements, replace the stone driveway surface

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

with asphalt, and install exterior by-pass pump piping, and

Whereas estimates to complete the required work were solicited from several contractors, and

Whereas the quotes to perform the work were evaluated by the Sewer District Staff using a lowest and best approach against the contract documents, and

Whereas Sewer District staff has determined that Zimmerman and Company of Delaware, Ohio submitted the lowest and best quote for the work at a lump sum price of \$20,925.00.

Whereas Sewer District staff recommends that the work be awarded to Zimmerman and Company of Delaware, Ohio at a lump sum price of \$20,925.00.

THEREFORE, be it resolved that the Board of County Commissioners execute the agreement for 2009 Deer Run Paving with Zimmerman and Company of Delaware, Ohio.

FURTHERMORE, let it be resolved that the Board of County Commissioners approves a Purchase Order to Zimmerman and Company from the following accounts:

<u>Pump Station</u>	<u>Account Number</u>	<u>Amount</u>
Deer Run	66690301-5410	\$20,925.00

**CONTRACT FOR
 2009 DEER RUN PAVING**

THIS AGREEMENT is by and between The Delaware County Board of County Commissioners, Delaware, Ohio, (herein referred to as Owner) and Zimmerman & Company (herein referred to as Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.02 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
Paving the Deer Run Pump Station Driveway

ARTICLE 2 - THE PROJECT

2.02 The Project for which the Work under the Contract Documents is generally described as follows:
Re-grading and drainage improvements to the existing driveway, installation of four inches of asphalt pavement, and by-pass pumping piping improvements.

ARTICLE 3 - ENGINEER

3.02 The Project has been specified by Delaware County Division of Environmental Service, who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.03 Time of the Essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.04 Days to Achieve Substantial Completion and Final Payment; Extensions

The Work will be substantially completed within 30 calendar days after contract commencement, and completed and ready for final payment by within 45 calendar days after contract commencement.

Reasonable extensions to the deadlines provided for in Paragraph 4.02.A shall be permitted as follows:

Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, provided Contractor makes a written Claim to Owner for said extension. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

by Owner, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions, or acts of God.

Contractor shall not be entitled to an extension for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

4.03 Termination

The Owner may, at any time, terminate this Contract without cause. Termination pursuant to this Paragraph shall take effect immediately upon receipt of the notice of termination by either party. Such a termination does not bar either party from pursuing a claim for damages for breach of this Contract. In the event of termination, Contractor shall be compensated for all work completed prior to the effective date of termination.

If either party fails to substantially perform in accordance with the provisions of this Contract, the other party shall notify the party failing to perform in writing of the substantial failure of performance. Such written notice shall specifically state the nature of the substantial failure(s) of performance. If the party receiving such notice fails to correct the indicated substantial failure(s) of performance within ten (10) days of receiving such notice, this Contract may be terminated, for cause. Upon such termination, the parties shall be entitled to all such rights and remedies as the law may allow.

Termination of this Contract, either with or without cause, shall not form the basis of any claim for loss of anticipated profits by either party.

ARTICLE 5 - CONTRACT PRICE

5.02 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined below:

For all Work other than Unit Price Work, a Lump Sum of:

<u>Twenty Thousand Nine Hundred Twenty-Five dollars</u>	\$20,925
(words)	(numerals)

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation exhibiting the Work completed as of the date of the Application for Payment. Applications for Payment will be processed by Engineer. The Engineer shall make a recommendation to Owner for payment upon approval of the Application for Payment.

6.02 Progress Payments; Retainage

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment no later than 30 days after receipt of an approved application of payment by the Contractor. Engineer shall provide comments and or corrections on the subject pay application no later 10 days after receipt of application. Owner shall pay application for payment within 30 days of receipt of an approved pay application by the Engineer. All such payments will be measured by the Owner as percent complete of the total scope of work.

Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages:

92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

92 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

Contractor to 92 percent of the Work completed, less such amounts as Owner shall determine and less 50 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

Upon final completion and acceptance of the Work, the Owner shall pay the remainder of the Contract Price.

6.04 Interest

All monies not paid when due as provided shall bear interest at the rate of one percent (1.0%) per annum.

ARTICLE 7 – LIABILITY

7.01 Indemnification

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, 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 there from but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Article 7 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

The indemnification obligations of Contractor under Article 7 shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

the preparation or approval of, or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.02 Insurance

General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.

Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.

Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.

Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

Contractor has examined and carefully studied the Contract Documents and the other related data.

Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and safety precautions and programs incident thereto.

Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

The Contract Documents consist of the following:

The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

Work Change Directive(s).

Change Order(s).

Certificate of Substantial Completion

Contractor’s Application for Payment

This Agreement (pages 1 to 10, inclusive).

Exhibits to this Agreement (enumerated as follows):

Contractor’s Estimate, “Exhibit A”.

Paving Plan, “Exhibit B”

Piping Plan, “Exhibit C”

Non-Collusion Affidavit

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Personal Property & Real Estate Tax Affidavit

Non-Discrimination and Equal Employment Opportunity Affidavit

Certification / Affidavit in Compliance with O.R.C. Section 3517.13

DMA Form – Homeland Security

The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.

In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.

There are no Contract Documents other than those listed above in this Article 9.

The Contract Documents may only be amended, modified, or supplemented as follows:

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

A Field Order;

Engineer's approval of a Shop Drawing or Sample; or

Engineer's written interpretation or clarification.

ARTICLE 10 - MISCELLANEOUS

10.01 Definition of Terms

Undefined Terms used in this Agreement shall have their common and ordinary meanings, subject to any specific meanings attributed to trade usage.

Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

Agreement - The written instrument, which is evidence of the agreement between Owner and Contractor covering the Work.

Application for Payment - The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Change Order - A document recommended by Engineer, which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

Claim - A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

Contract - The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

Contract Documents - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

Contract Price - The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement.

Contract Times - The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment.

Field Order - A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

Specifications - That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer or Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Work - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

10.02 Assignment of Contract

No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

10.03 Successors and Assigns

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents 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.

10.05 Survival of Obligations

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

10.06 Independent Contractor

Contractor agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Contract. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

10.07 Governing Law

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

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

10.08 No Waiver

No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

10.09 Findings for Recovery

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

10.10 Homeland Security

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

10.11 Campaign Finance – Compliance with O.R.C. § 3517.13

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

10.12 Use of Facility during Construction

Contractor understands that the solid waste transfer station must continue to operate during normal posted hours of operation throughout the duration of this Contract. Contractor shall coordinate Work with Owner, other contractors and facility operator to prevent disruption to the function of the facility during normal business hours.

10.13 Contractor agrees to the following:

That, in the hiring of employees for the performance of work under the contract or any subcontract, Contractor, any subcontractor, or any person acting on Contractor's or subcontractor's behalf, by reason of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color, shall not discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;

That Contractor, any subcontractor, or any person on Contractor's or subcontractor's behalf, shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color.

That there shall be deducted from the amount payable to the Contractor by the Owner, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

That the contract shall be canceled or terminated by the Owner, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.

10.14 Headings

Article and paragraph headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

RESOLUTION NO. 09-1460

IN THE MATTER OF REJECTING BIDS AND RE-SETTING THE TIME AND DATE TO RECEIVE BIDS FOR DCRSD 09-03: REPAIR AND UPGRADE OF FLYGT AND ABS SUBMERSIBLE MIXERS FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:

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

Whereas the Board of County Commissioners had previously set the time and date to receive bids for DCRSD 09-03 on October 30th at 4:00 pm, and

Whereas one bid was received by the County, and

Whereas the bid was evaluated by the Sewer District staff and has been determined to be non-responsive, and

Whereas Sewer District staff recommends to reject all bids received for DCRSD 09-03, and

Whereas Sewer District staff has revised the bid documents and technical specifications, and

Whereas Sewer District staff recommends the re-bidding **DCRSD 09-03: Repair and Upgrade of Flygt and ABS Submersible Mixers, and**

Whereas the Delaware County Regional Sewer District desires to receive bids for public bid **DCRSD 09-03: Repair and Upgrade of Flygt and ABS Submersible Mixers** on December 10, 2009, and

Therefore, be it resolved that the Board of County Commissioners will receive bids for **DCRSD 09-03: Repair and Upgrade of Flygt and ABS Submersible Mixers** biosolids on December 10, 2009 at 3:00 PM at 50 Channing Street, Delaware, Ohio.

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

RESOLUTION NO. 09-1461

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director Of Environmental Services Recommends to approve Leave-With-Out-Pay for Dave Wisner; through 11/19/09 with a return to work on 11/20/09.

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

RESOLUTION NO. 09-1462

IN THE MATTER OF APPROVING SUPPLEMENTAL DENTAL COVERAGE:

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

Whereas, Delaware County Board of County Commissioners makes available optional dental coverage for interested employees; and

Whereas, the Department of Administrative Services administers the voluntary dental benefits plan for Delaware County; and

Whereas, The Delaware County Chamber of Commerce announced a dental plan available for any Chamber members through Superior Dental Care Alliance; and

Whereas, Superior will offer us two plans to choose from-a core plan and an enhanced plan; they matched our

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

current plan design, offer a much larger network of providers and there are no waiting periods for new hires or for late enrollees;

Whereas coverage through Superior Dental Care Alliance is equal to or better than our current coverage with Ameritas for less cost to the employees;

Currently the cost for Ameritas' coverage is as follows:

Single: \$11.30 per pay
Single + 1: \$22.60 per pay
Family: \$38.50 per pay

Superior's Core Plan rates are:

Single: \$ 08.75 per pay
Single + 1: \$17.50 per pay
Family: \$29.87 per pay

Superior's Enhanced Plan also includes orthodontics (\$1,000 maximum per person):
(even for members midway through services)

Single: \$10.77 per pay
Single + 1: \$21.52 per pay
Family: \$36.71 per pay

Whereas, Superior provided references (Richland, Clark and Miami County) and excellent feedback was obtained.

Whereas, this change would go into effect 01/01/2010 and would be processed along with the other open enrollment changes;

Therefore, be it resolved that the Board of County Commissioners of Delaware County Ohio hereby accepts the recommendation of the Department of Administrative Services to offer Superior Dental Care Alliance as the County's dental coverage;

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

**COMMISSIONERS' COMMITTEES REPORTS
(Refer To Cd Minutes For Entire Record)**

Commissioner O'Brien

- Participated In A COYC Meeting On Thursday
- Participated In A Community Action Organization Meeting Thursday
- Participated In A RPC Meeting Thursday; MORPC Survey
- Clarify Article In Gazette From 11/19/09

Commissioner Hanks

- Attended A Thursday Meeting With Delaware Historical Society
- Information From Treasurer Peterson On Tax Collection
- Columbus Zoo Names New Director, Dale Schmidt
- Dispatch Article On Job And Family Service Cuts And Sacrifices

Commissioner Thompson

- Commissioners Need To Complete Evaluation Forms Weights And Ratings For Personnel

RESOLUTION NO. 09-1463

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

It was moved by Mr. Hanks, seconded by Mr. Thompson to adjourn into Executive Session at 9:55AM.

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

RESOLUTION NO. 09-1464

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009**

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn out of Executive Session at 10:20AM.

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

RESOLUTION NO. 09-1465

IN THE MATTER OF RETAINING AND FIXING COMPENSATION OF THOMAS AND CO., LPA TO REPRESENT DELAWARE COUNTY IN FRANKLIN COUNTY COMMON PLEAS COURT CASE 09-CV-11-16429:

MOTION: by Mr. Hanks, Seconded by Mr. Thompson, to approve and execute Resolution No. 09-1465, retaining and fixing compensation of Thomas and Co., LPA.

WHEREAS, Commissioner Ken O'Brien requested that the Delaware County Prosecuting Attorney withdraw from his statutory duty to represent the Delaware County Board of Commissioners in Franklin County Common Pleas Court Case #09-CV-11-16429, and

WHEREAS, the Delaware County Prosecuting Attorney, solely at the request of Commissioner Ken O'Brien, has advised it will refer the matter for representation, to legal counsel of the Board's choice, and

WHEREAS, the Delaware County Board of Commissioners may employ legal counsel to represent the Board in defense of any action in which it is a party, pursuant to Ohio Revised Code Sections 305.14(B) and 309.09(A) respectively, and

WHEREAS, the Delaware County Board of Commissioners is a party defendant in Franklin County Common Pleas Court Case #09-CV-11-16429, and

WHEREAS, the Board of Commissioners wishes to retain the law firm of Thomas and Co., LPA, to act as legal counsel for Delaware County in the abovementioned case, and

WHEREAS, the Board of Commissioners wishes to establish the rate of compensation of such counsel, and

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

1. The Board of Commissioners retains the law firm of Thomas and Co., LPA, to represent Delaware County in Franklin County Common Pleas Court Case #09-CV-11-16429, and has executed an engagement letter to that effect, reflected in Exhibit A, attached hereto and incorporated herein.
2. The Board of Commissioners approves the rate of compensation reflected in Exhibit A, attached hereto and incorporated herein.

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

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

RESOLUTION NO. 09-1466

IN THE MATTER OF ADJOURNING THE MEETING:

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

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

Todd Hanks

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 23, 2009

Ken O'Brien

Tommy Thompson

Letha George, Clerk to the Commissioners