

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD FEBRUARY 1, 2010**

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**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**

**7:30 PM Public Hearing For Consideration Of The Gorsuch Road Watershed Area Ditch Petition Filed By Steven Chucta And Others**

**RESOLUTION NO. 10-138**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JANUARY 28, 2010:**

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on January 28, 2010; 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. Hanks Aye Mr. O'Brien Aye

**RESOLUTION NO. 10-133 ( on January 28, 2010, this resolution was tabled to Monday February 1, 2010)**

**IN THE MATTER OF AMENDING THE ALLOCATION OF REVENUES FROM THE HOUSING OF FEDERAL PRISONERS:**

It was moved by Mr. Hanks, seconded by Mr. Thompson 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

Whereas, Resolution No. 09-779 which approved the allocation of revenues for the housing of federal prisoners is in need of amending to direct revenues to the General Fund, and

Whereas, the Delaware County Board of County Commissioners desires to amend the allocate of revenues 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. As the Sheriff is ready to begin hiring the new personnel for the jail expansion, all such revenues from the housing of federal prisoners shall be deposited in the General Fund for the purpose of paying personnel costs, other costs associated with the jail expansion, equipment and bond service payments associated with the jail expansion beginning January 29, 2010. All revenues in excess of those described above shall be used for funding existing personnel and costs associated with the operations of the county jail.

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

**PUBLIC COMMENT  
(Refer To CD Minutes For Entire Record)**

**Mitch DaDante From Building Trades Institute questions about payment process working with DJFS**

**RESOLUTION NO. 10-139**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0129:**

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It was moved by Mr. Hanks, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0129 and Purchase Orders as listed below:

<b>PR Number</b>	<b>Vendor Name</b>	<b>Line Desc</b>	<b>Line Account</b>	<b>Line Amount</b>	<b>Line</b>
R1002158	CRAUN LIEBING CO	IMPELLERS(5)TO BE REPLACED ON RAW PUMPS	66211903 - 5270	\$7,796.00	0001
R1002373	HONDROS COLLEGE	TUITION/FEES	22311611 - 5348	\$10,000.00	0001
R1002407	PNC BANK	BWC SELF INSURANCE TRANSACTIONS	61311923 - 5370	\$18,000.00	0001
R1002409	B & C COMMUNICATIONS INC	MAINTENANCE AND REPAIR OF EQUIPMENT	21411306 - 5328	\$4,500.00	0001
R1002409	B & C COMMUNICATIONS	EQUIPMENT PARTS	21411306 - 5270	\$600.00	0002
R1002423	GUDENKAUF CORP	FIBER OPTICS FROM CITY TO COUNTY FOR CONSOLIDATION	21411306 - 5450	\$24,700.00	0001
R1002431	CEBCO	MEDICAL CLAIMS	60211902 - 5370	\$11,000,000.00	0001
R1002433	PRUDENTIAL GROUP LIFE	MONTHLY LIFE INSURANCE	60211902 - 5370	\$30,000.00	0001
R1002435	CERIDIAN	FSA FEES	60211902 - 5301	\$10,000.00	0001
R1002450	HEALTH DEPARTMENT	SFY10 CONTRACT BALANCE	22811609 - 5301	\$7,612.00	0001
R1002434	HEALTH DEPARTMENT	HELP ME GROW FCFC	70161602-5348	\$51,494.69	0001
R1002434	HEALTH DEPARTMENT	HELP ME GROW FCFC	70161604-5348	\$73,866.00	0002
R1002434	HEALTH DEPARTMENT	HELP ME GROW FCFC	70161606-5348	\$208,308.44	0003
R1002451	SUNBURY COMMUNITY LIBRARY	SFY10 BALANCE OF CONTRACT	22811609 - 5301	\$11,000.00	0001
R1002459	LIBERTY TWP FIRE DEPT	2010 EMS RUNS	10011303 - 5345	\$189,000.00	0001
R1002478	COUNTY RISK SHARING AUTHORITY	LIABILITY INSURANCE CLAIMANT DEDUCTIBLES	60111901 - 5370	\$10,000.00	0001

<b>Vendor</b>	<b>Description</b>	<b>Account</b>	<b>Amount</b>
<b>VOUCHER</b>			
Clerk of Courts	Appropriation of Property/Strayer	66711905-5401	\$ 34,620.00

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

**RESOLUTION NO. 10-140**

**IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:**

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

The 911 Department is requesting that Jeanette Adair attend a CALEA Conference in Dallas, Texas March 23-28, 2010 at the cost of \$1,770.00 (Fund Number 21411306).

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

**RESOLUTION NO. 10-141**

**IN THE MATTER OF ACCEPTING THE TREASURER'S REPORT FOR THE MONTH OF DECEMBER 2009:**

It was moved by Mr. Hanks, seconded by Mr. O'Brien to accept the Treasurer's Report for the month of December 2009.

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

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

**RESOLUTION NO. 10-142**

**IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY TREASURER; DANA & PARISER CO., LPA AND CARDUCCI & ASSOCIATES, LLC. FOR COLLECTION OF PERSONAL PROPERTY TAXES:**

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

Whereas, the Treasurer recommends approval of the contract between the Delaware County Commissioners; The Delaware County Treasurer; Dana & Pariser Co., LPA and Carducci & Associates, LLC. for collection of personal property taxes.

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract between The Delaware County Commissioners; The Delaware County Treasurer; Dana & Pariser Co., LPA and Carducci & Associates, LLC. for collection of personal property taxes.

**CONTRACT FOR COLLECTION OF PERSONAL PROPERTY TAXES**

This Contract is entered into this 1<sup>st</sup> day of February, 2010 by and between the Delaware County Treasurer (hereinafter "Treasurer"), whose principal place of business is located, at 140 North Sandusky Street, 1st Floor, Delaware, Ohio 43015, the Delaware County Board of Commissioners (hereinafter "Board"), whose principal place of business is located at 101 North Sandusky Street, Delaware, Ohio 43015 (hereinafter Treasurer and Board collectively "County") and Dana & Pariser Co., LPA (hereinafter "D&P"), whose principal place of business is located at 150 East Mound Street, Suite 308, Columbus, Ohio 43215, Carducci & Associates, LLC, (hereinafter "Carducci") whose principal place of business is located at \_\_\_\_\_ (hereinafter D&P and Carducci collectively "Collector").

**PREAMBLE**

WHEREAS, Delaware County, Ohio is owed delinquent personal property taxes; and,

WHEREAS, In accordance with R. C. § 5719.051, the Board, pursuant to Resolution No.06-36 has deemed it necessary and has authorized the Treasurer to employ collectors to collect such delinquent personal property taxes, fix the compensation of such collectors, and provide for the reasonable and necessary expenses of such collectors; and,

WHEREAS, the Collector is experienced private legal counsel and is willing and able to provide collection services to the County to collect delinquent personal property taxes; and,

WHEREAS, the Collector is willing to provide such services at a fixed rate of compensation.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**PURPOSE OF CONTRACT**

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The purpose of this Contract is to state the covenants and conditions under which the Collector will provide collection services to the County to collect delinquent personal property taxes assigned to the Collector for collection by the Treasurer.

**TERM**

The term of this Contract shall be one (1) year beginning on February 1, 2010 and continuing through January 31, 2011.

**RENEWAL**

Unless otherwise terminated as provided herein, this Contract shall renew automatically on an annual basis for successive one (1) year periods subject to the same terms and conditions provided herein and upon any modified, additional, and/or supplemental terms and conditions as may be specifically agreed upon in writing by the Parties.

**SCOPE OF SERVICES**

Pursuant to R.C. § 5719.051 and consistent with the authority provided therein for the Treasurer to employ collectors to collect delinquent personal property taxes, the Collector shall provide collection services to the County to collect delinquent personal property taxes assigned to the Collector for collection by the Treasurer (collectively "Collection Services").

The Collector shall not retain any monies collected on behalf of Delaware County, Ohio. Each month the Collector shall remit to the Treasurer ALL monies recovered and/or collected on behalf of Delaware County, Ohio. The Collector shall not deduct any fees or expenses from the funds it collects and remits to the Treasurer.

In providing Collection Services, the Collector shall not contact or communicate with any taxpayer, including, but not limited to, any individual, person, group, group of persons, company, corporation, partnership, business, or other association, by any means or method where contact or communication by a debt collector is prohibited by any state or federal law or court order.

**COMPENSATION**

In exchange for the Collector providing Collection Services, the County shall compensate the Collector in accordance with the following:

1. The Collector shall be paid on a contingent basis.
2. In order to receive compensation, the Collector shall provide a detailed written invoice to the Treasurer.
3. The amount of Compensation to be paid to the Collector, regardless of how many different tax years are covered by such collection and regardless of the collection methods used (settlement, mediation, arbitration, or litigation), shall be fixed as follows:
  - a. On the first \$35,000 of funds collected on each taxpayer, the Collector shall be paid one third (1/3) of the gross amount of all collections (less court costs).
  - b. On funds collected above \$35,000, but less than \$100,000.00, on the same taxpayer, the Collector shall be paid as follows:
    - i. The fee shall remain as in (3)(a) above as to the first \$35,000 collected.
    - ii. Above \$35,000, the fee shall be reduced to 20% of the amounts collected;
  - c. On funds collected above \$100,000.00 on the same taxpayer, the Collector shall be paid as follows:
    - i. The fee shall remain as in (3)(b) above as to the first \$100,000 collected.
    - ii. Above \$100,000, the fee shall be reduced to 15% of the amounts collected.
4. Upon presentation to the Treasurer of an invoice, the County shall have sixty (60) days within which to pay such invoice.

**REIMBURSED EXPENSES**

The Collector shall be reimbursed for reasonable and necessary advanced expenses as follows:

1. The County shall be responsible for reimbursement of all court costs and other reasonable litigation expenses (i.e. filing fees, deposition transcript costs, etc.).
2. The Collector shall not charge or seek reimbursement for ordinary office expenses consisting of, but not limited to, postage, envelopes, paper, copies, faxes, telephone, and mileage.
3. In order to receive reimbursement:
  - a. The Collector shall provide a detailed written invoice to the Treasurer for the expense(s) to be reimbursed.
  - b. The Collector shall attach to or submit with any written invoice for an expense to be

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reimbursed receipts and/or other sufficient proof of an advanced expense.

- c. An expense must have been incurred as a part of or in connection with the work performed pursuant to this Contract.
- d. The expense to be reimbursed must be an allowable expense (i.e. alcohol is not an allowable expense.)

4. Upon presentation to the Treasurer of an invoice and receipts and/or other sufficient proof of an advanced expense, the County shall have sixty (60) days within which to reimburse the Collector for such expense.

5. Expenses are only reimbursed based on the aggregate of funds collected. Therefore, if funds in a given period are not sufficient to reimburse expenses, such reimbursement shall not be due until sixty (60) days after recovered funds enable such reimbursement.

#### MAXIMUM AMOUNT OF COMPENSATION/REIMBURSEMENT

It is expressly understood and agreed by the Parties that in no event shall the total combined aggregate amount of compensation and reimbursements to be paid to the Collector during the term of the Contract exceed the maximum of Fifty Thousand Dollars and No Cents (\$50,000.00).

#### INDEPENDENT CONTRACTOR

The Collector shall act in performance of this Contract as an independent contractor. As an independent contractor the Collector and/or its boards, officers, officials, employees, representatives, agents, volunteers and/or servants shall at no time be considered employees of the Treasurer, the Board, or Delaware County and are not entitled to any of the benefits of employment enjoyed by employees of the Treasurer, the Board, or Delaware County.

#### INDEMNITY

The Collector shall provide indemnification as follows:

A. To the fullest extent of the law and without limitation, the Collector agrees to indemnify and hold free and harmless the Treasurer, the Board, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives (collectively "Indemnified Parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the Collector's, any subcontractor's, or any sub-subcontractor's performance of this Contract, including, but not limited to the performance or actions of the Collector's; any subcontractor's, or any sub-subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives (collectively "Contracted Parties".) The Collector agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that the Collector shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. The Collector further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that the Collector shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees.

B. The Collector shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from any acts or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.

#### INSURANCE

The Collector shall carry and maintain throughout the life of the Contract such bodily injury and property damage liability insurance as required by law and/or as will protect the Collector and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Contract or from the use of any vehicle(s) in connection therewith, and shall include coverage for indemnification as described above.

#### PROFESSIONAL INSURANCE

Throughout the life of the Contract, the Collector shall carry and maintain current and without lapse professional liability insurance in an amount as required by law and/or adequate to protect the Collector and the Indemnified Parties against any and all liability arising from the professional services provided under the

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Contract. At any time throughout the life of the Contract Delaware County may request proof of such insurance. Proof of such insurance shall be promptly provided upon request.

**LICENSES**

The Collector certifies and warrants that the Collector has obtained and maintains current all approvals, licenses, certifications, and/or other qualifications (collectively "Licenses") necessary to be an attorney and practice law in the state of Ohio, perform all the services required of the Collector by this Contract, and to conduct business in the state of Ohio. The Collector further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason.

**ASSIGNMENT**

This Contract shall not be assigned without the prior written consent of the County. **TERMINATION**

**A. Termination for the Convenience**

Either Party may terminate this Contract at any time and for any reason by giving at least thirty (30) days advance notice, in writing, to the other Party.

**B. Breach or Default:**

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

**C. Effect of Waiver of any Occurrence of Breach or Default:**

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

**D. Collection Accounts and Fees upon Termination**

The Collector shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date specified on the notice as the effective date for such termination.

Unless terminated as a result of a breach of this Contract by the Collector, the Collector shall continue to service and be paid its fee on any accounts which are at such time under a payment plan established by or through the Collector. The Collector shall continue to administer and collect payments under such plans and be paid pursuant to the terms of this Contract until the accounts are terminated or paid-in-full, at which time the accounts shall be immediately assigned to the Treasurer.

In the event of a breach of this Contract by the Collector, any accounts which are at such time under a payment plan established by or through the Collector shall be immediately assigned to the Treasurer for collection or re-assignment to another collector. Upon such assignment, the Collector shall cease all collection activities for such accounts and cease to collect any fees from such accounts.

Upon termination for any reason, no new accounts shall be assigned to the Collector.

**ACCESS TO AND RETENTION OF RECORDS**

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

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

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

**EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION**

In fulfilling the obligations and duties of this Contract, the Collector shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, creed, gender, sexual orientation, age, Vietnam-era Veteran status, or disability, as defined in the Americans with Disabilities Act.

The Collector shall ensure that applicants are hired and that employees are treated during employment without regard to any of the listed factors. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The Collector agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that the Collector complies with all applicable federal and state non-discrimination laws. The Collector shall incorporate the foregoing requirements of this section in all of its Contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

**DRUG FREE WORKPLACE**

The Collector agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. The Collector shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**DMA FORM STATEMENT**

The Collector certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list, which list may be found on the Ohio Homeland Security web site at: <http://www.homelandsecurity.ohio.gov/>. Pursuant to R.C. § 2909.33, the Collector agrees to make such certification by completing the declaration of material assistance/no assistance described in R.C. § 2909.33(A) and understands that this Contract is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Contract and by this reference made a part of this Contract.

**CAMPAIGN FINANCE - COMPLIANCE WITH ORC § 3517.13,**

Ohio Revised Code Section 3517.13 1(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code.. The Collector, 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 with, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

**FINDINGS FOR RECOVERY**

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

**NOTICES**

All notices which may be required by this Contract or by operation of any rule of law shall be hand delivered, sent via certified United States Mail, return receipt requested, sent via a nationally recognized and reputable overnight courier, return receipt requested, or via facsimile, to the following individuals at the following addresses

COUNTY:  
Jon Peterson  
Delaware County Treasurer  
140 North Sandusky Street, 1ST Floor Delaware, Ohio 43015

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Fax: (740) 833-2479

COLLECTOR:

Mary Spahia-Carducci  
Dana & Pariser Co., LPA  
150 East Mound Street, Suite 308 Columbus, Ohio 43215  
Fax: (614) 253-3310

SEVERABILITY

If any provision of this Contract is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of the Contract. All provisions of this Contract shall be deemed severable.

ENTIRE AGREEMENT

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

SIGNATURES

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

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

RESOLUTION NO. 10-143

**SETTING DATE AND TIME FOR A PUBLIC HEARING #2 TO CONSIDER USING CDBG REVOLVING LOAN FUNDS (RLF) FOR A COLUMBUS ZOO HOTEL ECONOMIC IMPACT STUDY TO EVALUATE THE ECONOMIC IMPACT ON DELAWARE COUNTY AND THE SURROUNDING AREA FOR A NEW HOTEL AT THE COLUMBUS ZOO. THIS STUDY WILL FURTHER EVALUATE THE RECOMMENDATIONS MADE IN THE "COLUMBUS ZOO FEASIBILITY STUDY" FUNDED WITH CDBG RLF FUNDS:**

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

Whereas, a public hearing will be held on **Tuesday, February 16, 2010, at 9:30 a.m.** in the County Commissioners Office located at 101 North Sandusky Street in Delaware, Ohio. This hearing is to consider an Impact Study to evaluate the economic impact on Delaware County and the surrounding area for a new hotel at the Columbus Zoo.

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

RESOLUTION NO. 10-144

**IN THE MATTER OF ORGANIZING AND APPOINTING REPRESENTATIVES FOR THE VARIOUS DELAWARE COUNTY TAX INCENTIVE REVIEW COUNCILS FOR 2010:**

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

WHEREAS, the Board of County Commissioners, Delaware County, is responsible to make appointments to various boards, councils, and committees; and

WHEREAS, the Commissioners are to appoint individuals to the various Tax Incentive Review Councils (TIRCs) for an unspecified term.

NOW THEREFORE BE IT RESOLVED by the Delaware County Commissioners, State of Ohio, to appoint the following to the various TIRCs:

Delaware County / City of Delaware Enterprise Zone TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? Mayor, City of Delaware
- ? City Manager, City of Delaware
- ? Dean Stelzer, Finance Director, City of Delaware or Designee
- ? Superintendent or Designee, Delaware City School District
- ? Superintendent or Designee, Delaware Area Career Center
- ? Superintendent or Designee, Olentangy Local School District



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- ? Carl E. Johnson, PPG Industries
- ? Frank Reinhard, Delaware County Bank
- ? Dave Cannon, Delaware County Administrator, or Designee
- ? Dan Bennington, City Attorney, City of Delaware

Delaware County / Orange Township Enterprise Zone & TIF TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? Dave Cannon, Delaware County Administrator, or Designee
- ? John M. Cassady, Orange Township Trustees or Designee
- ? Superintendent or Designee, Olentangy Local School District
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent or Designee, Delaware Area Career Center
- ? Shawn Stevens - Chase
- ? Nelson Katz, Orange Township or Designee

Delaware County / Berlin Township Enterprise Zone & Community Reinvestment Area TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? Dave Cannon, Delaware County Administrator, or Designee
- ? Phil Panzarella, Berlin Township Representative or Designee
- ? Superintendent or Designee, Olentangy Local School District
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent, Treasurer or Designee, Delaware Area Career Center
- ? Shawn Stevens, Chase
- ? Mike Dickey, Berlin Township Representative or Designee

Delaware County / Village of Sunbury Enterprise Zone / Community Reinvestment Area /TIF TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? David Cannon, Delaware County Administrator, or Designee
- ? Dave Martin, Village of Sunbury Administrator or Designee
- ? David Brehm, Village Attorney, Village of Sunbury or Designee
- ? Superintendent or Designee, Big Walnut Local School District
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent or Designee, Delaware Area Career Center
- ? Shawn Stevens – Chase

Delaware County / Village of Ashley Community Reinvestment Area TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? David Cannon, Delaware County Administrator, or Designee
- ? Jim Nelson, Village Council, Village of Ashley or Designee
- ? Cheryl Friend, Village Council, Village of Ashley or Designee
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent or Designee, Delaware Area Career Center
- ? Superintendent or Designee, Buckeye Valley Local School District
- ? Jane Rutan, Delaware County Bank & Trust

Delaware County / City of Westerville Enterprise Zone TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? David Cannon, Delaware County Administrator, or Designee
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent, Treasurer or Designee, Delaware Area Career Center
- ? Economic Development Coordinator or Designee, City of Westerville
- ? Superintendent or Designee, Westerville City School District
- ? Shawn Stevens - Chase
- ? City of Westerville Representative or Designee

Delaware County/Liberty Township Enterprise Zone & Community Reinvestment Area TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? David Cannon, Delaware County Administrator, or Designee
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent, Treasurer or Designee, Delaware Area Career Center
- ? Superintendent or Designee, Olentangy Local School District
- ? Curt Sybert, Liberty Township Representative or Designee
- ? Dave Anderson, Liberty Township Representative or Designee

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? Shawn Stevens – Chase

Delaware County/Liberty –Berlin Township Community Reinvestment Area TIRC:

- ? Delaware County Auditor or Designee – TIRC Chairman
- ? David Cannon, Delaware County Administrator, or Designee
- ? Frank Reinhard, Delaware County Bank & Trust
- ? Superintendent, Treasurer or Designee, Delaware Area Career Center
- ? Superintendent or Designee, Olentangy Local School District
- ? Curt Sybert, Liberty Township Representative or Designee
- ? Dave Anderson, Liberty Township Representative or Designee
- ? Shawn Stevens – Chase
- ? Phil Panzarella, Berlin Township Representative or Designee
- ? Mike Dickey, Berlin Township Representative or Designee

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

**RESOLUTION NO. 10-145**

**7:30 PM - PUBLIC HEARING FOR CONSIDERATION OF THE GORSUCH ROAD WATERSHED AREA DITCH PETITION FILED BY STEVEN CHUCTA AND OTHERS:**

It was moved by Mr. Hanks, seconded by Mr. O'Brien to open the hearing at 7:30PM.

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

**RESOLUTION NO. 10-146**

**IN THE MATTER OF APPROVING, FOR A SPECIFIC OCCURRENCE, A SUSPENSION OF RULE 3-SPEAKER REGISTRATION; RULE 4-LIMITATIONS AND RULE 7-PUBLIC COMMENT PROCEDURE FROM THE RULES GOVERNING PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:**

It was moved by Mr. Hanks, seconded by Mr. O'Brien to approve, for a specific occurrence, a suspension of Rule 3-Speaker Registration; Rule 4-Limitations; Rule 7-Public Comment Procedure from the Rules Governing Public Comment Before The Board Of County Commissioners Of Delaware County, Ohio

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

**RESOLUTION NO. 10-147**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF THE GORSUCH ROAD WATERSHED AREA DITCH PETITION FILED BY STEVEN CHUCTA AND OTHERS:**

It was moved by Mr. Hanks, seconded by Mr. O'Brien to close the hearing at 9:08PM.

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

**RESOLUTION NO. 10-148**

**IN THE MATTER OF THE COMMISSIONERS' DISMISSING THE GORSUCH ROAD WATERSHED AREA DITCH PETITION FILED BY STEVEN CHUCTA AND OTHERS DUE TO THE COST EXCEEDS THE BENEFITS OF THE PROJECT:**

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

Whereas, on August 21, 2009, a Ditch Petition to The Gorsuch Road Watershed Area Ditch was filed with the Board of Commissioners of Delaware County (the "Board"); and

Whereas, the Board on Monday the 16<sup>th</sup> day of November, 2009, conducted a view of the proposed improvements; and

Whereas, the Board on Monday the 1<sup>st</sup> day of February, 2010, held a public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for The Gorsuch Road Watershed Area Ditch Petition; and

Whereas, after hearing testimony from property owners and the preliminary report of County Engineer, Chris Bauserman, the Board is prepared to issue its findings on the proposed improvements.

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Therefore, Be It Resolved, by the Board of Commissioners of Delaware County, Ohio as follows:

Section 1. The Board hereby finds that the estimated cost of the proposed improvement will exceed the benefits derived if it is constructed. Accordingly, the Board hereby dismisses the Petition.

Section 2. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

Section 3. This Resolution shall take immediate effect upon passage.

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

**RESOLUTION NO. 10-149**

**IN THE MATTER OF APPROVING A CONTRACT BETWEEN DELAWARE COUNTY COMMISSIONERS, DELAWARE COUNTY EMERGENCY SERVICES 9-1-1 CENTER AND WINDSTREAM CORPORATION FOR A NEW 911 PHONE SYSTEM:**

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

Whereas, the 911 Communications Director recommends approval of the contract with Windstream Corporation For A New 911 Phone System;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approves the contract with Windstream Corporation For A New 911 Phone System.

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

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

**RESOLUTION NO. 10-150**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR JOB AND FAMILY SERVICES:**

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

**Supplemental Appropriations**

22311611-5250	WIA /Furniture & Equipment	\$ 50,000.00
22311611-5301	WIA /Contracted Prof. Services	\$ 20,000.00
22311614-5348	WIA ARRA/Client Services	\$ 500,000.00
22411601-5348	JFS Income Maintenance/Client Services	\$ 60,000.00
22511613-5215	Children Service Local Funds/Program Supplies	\$ 8,000.00
22511613-5348	Children Service Local Funds/Client Services	\$ 2,000.00

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

**RESOLUTION NO. 10-151**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

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

Due to lack of work and lack of funds the Code Compliance Director recommends the Layoff of Daniel Lemke with the Code Compliance Department; effective date February 5, 2010.

Due to lack of work and lack of funds the Code Compliance Director recommends the Layoff of Mark Howard with the Code Compliance Department; effective date February 5, 2010.

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

**RESOLUTION NO. 10-152**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

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

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The Interim Sanitary Engineer recommends hiring Mark Howard as a Wastewater Treatment Operator, effective February 8, 2010.

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

**RESOLUTION NO. 10-153**

**IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND KEMIRA WATER SOLUTIONS, INC. FOR THE SUPPLY OF FERRIC CHLORIDE TO THE DIVISION OF ENVIRONMENTAL SERVICES:**

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

WHEREAS, on November 3, 2009, the Division of Environmental Services received bids (DCRSD 09-04, Bid Item No. 2) for the purchase of Ferric Chloride solution on an as-needed basis at treatment facilities throughout the County for a contract period of 24 months, and

WHEREAS, Kemira Water Solutions Inc. of Lawrence, Kansas has been identified as the lowest and best bid at \$0.2125/lb, and

WHEREAS, the staff from the Division of Environmental Services evaluated the bid package for its conformance to the specifications, and

WHEREAS, the Division of Environmental Services has determined that the bid package conforms to the specifications, and

WHEREAS, the Division of Environmental Services recommends the purchase of Ferric Chloride solution from Kemira Water Solutions Inc. of Lawrence, Kansas.

THEREFORE be it resolved that the Board of County Commissioners execute the agreement with Kemira Water Solutions Inc. of Lawrence, Kansas for the supply of Ferric Chloride solution.

FURTHERMORE let it be resolved that the Board of County Commissioners approve a purchase order in the amount of \$20,000 for Ferric Chloride solution from Kemira Water Solutions, Inc. of Lawrence, Kansas from Org Key 66211903.

**CONTRACT FOR  
DCRSD 09-04: SUPPLY OF VARIOUS CHEMICALS AND POLYMERS  
FERRIC CHLORIDE**

THIS AGREEMENT is by and between The Delaware County Board of County Commissioners, Delaware, Ohio, (herein referred to as Owner) and Kemira Water Solutions (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: Supply Ferric Chloride to Delaware County for 24 months

**ARTICLE 2 - THE PROJECT**

2.01 The Project for which the Work under the Contract Documents is generally described as follows:  
DCRSD 09-04: Supply of Various Chemicals and Polymers

**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

A. The contract shall be for 24 months with two (2) optional one year extensions from the date

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of contract execution.

4.02 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 Unit Price Work:

ITEM NO.	ITEM	UNIT PRICE
2	Ferric Chloride	\$0.2125/lb

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Partial payments may be made 30 days after presentation of a properly executed claim voucher to the Delaware County Division of Environmental Services. All invoices must show the properly assigned Delaware County Purchase Order Number.

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 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.

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. Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as

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required by the laws of the State of Ohio.

C. 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 at or contiguous to the Sites 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.

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. Change Order(s)

2. This Agreement

3. Exhibits to this Agreement (enumerated as follows):

a. Bid

b. Performance Bond

c. Bidders Qualification Statement

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- d. Non-Collusion Affidavit
  - e. Personal Property & Real Estate Tax Affidavit
  - f. Certification / Affidavit in Compliance with O.R.C. Section 3517.13
  - g. 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.

**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 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.

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9. 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.

10. Work - Work includes and is the result of performing or providing all services 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 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.

10.06 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.

10.07 Findings for Recovery

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

10.08 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.

10.09 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



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“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.

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

**RESOLUTION NO. 10-154**

**IN THE MATTER OF AWARDING THE BID FOR INSPECTION SERVICES FOR SANITARY IMPROVEMENTS FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:**

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

Whereas, the Sewer District received sealed bids for Inspection Services for Sanitary Improvements for 2010 and 2011 (Bid # DCRSD 09-05) at 3:00 PM local time on January 7, 2010; and

Whereas, seven (7) bids were received from separate bidders; and

Whereas, the Sewer District has evaluated the bid packages for the lowest and best bids; and

Whereas, the Sewer District recommends awarding the bid to ME Companies at a price of \$30.75 per hour for inspection services.

Therefore be it resolved that the Board of County Commissioners award the bid for Inspection Services for Sanitary Improvements for the Delaware County Regional Sewer District for the 2010 and 2011 calendar years to ME Companies as the best and lowest bid.

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

**RESOLUTION NO. 10-155**

**IN THE MATTER OF AWARDING THE BID FOR THE REPAIR AND UPGRADE OF FLYGT AND ABS SUBMERSIBLE MIXERS FOR THE DELAWARE COUNTY DIVISION OF ENVIRONMENTAL SERVICES:**

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

Whereas, sealed bids for Repair and Upgrade of Flygt and ABS Submersible Mixers (Bid # DCRSD 09-03) were received by the County of Delaware, Ohio at the Division of Environmental Services at 3:00 PM local time December 10, 2009; and

Whereas, two (2) bids were received from ITT Water & Wastewater, USA and Michael Bradley Apparatus, LLC; and

Whereas, the Division has evaluated the bid packages for the lowest and best bids; and

Whereas, the two bids addressed different bid items within the bid package; and

Whereas, the Division recommends that bid items 1-21 (Flygt mixers) be awarded to ITT Water & Wastewater, USA and bid items 22-33 (ABS mixers) be awarded to Michael Bradley Apparatus, LLC.

Therefore be it resolved that the Board of County Commissioners award bid items 1-21 to ITT Water & Wastewater, USA; and award bid items 22-33 to Michael Bradley Apparatus, LLC as the lowest and best bids for Repair and Upgrade of Flygt and ABS Submersible Mixers.

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

**RESOLUTION NO. 10-156**

**IN THE MATTER OF APPROVING AN EASEMENT AGREEMENT WITH THE DORAS M. ROSS REVOCABLE TRUST FOR THE CHESHIRE ELEMENTARY SCHOOL SANITARY SEWER IMPROVEMENTS PROJECT:**

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

Whereas the Board of County Commissioners have previously executed a resolution of necessity for the Cheshire Elementary School Sanitary Sewer Improvements Project, and

Whereas both temporary and permanent easements from Doras M. Ross and Brooke Ann Martin, Trustees, under the Doras M. Ross revocable trust agreement dated April 28, 1992, are needed on their property on Cheshire Road in Berlin Township, Ohio for the proposed improvements, and

Whereas the required easements are detailed in Exhibits 1 and 2, and

Whereas County Sewer District Staff negotiated a value of Twelve thousand, five hundred dollars (\$12,500) for the required easements, and,

Whereas County Sewer District Staff recommends this negotiated value for the proposed easements,

Therefore be it resolved that the Board of County Commissioners execute the easement agreement with Doras M. Ross and Brooke Ann Martin, Trustees, under the Doras M. Ross revocable trust agreement dated April 28, 1992, for the purchase of the easements as described in Exhibits 1 and 2.

Furthermore be it resolved that the Board of County Commissioners approve a voucher for payment in the amount of \$12,500 to Doras M. Ross Revocable Trust from 66711905-5401.

(Copies of Exhibits 1 and 2 are available in the Sanitary Engineer's Department until no longer of administrative value.)

**EASEMENT AGREEMENT**

THIS AGREEMENT made at Delaware, Ohio, this 1<sup>st</sup> day of February, 2010, by and between Doras M. Ross and Brooke Ann Martin, Trustees, Under the Doras M. Ross Revocable Trust Agreement Dated April 28, 1992, SELLER, and the Delaware County Commissioners, BUYER;

WITNESSETH:

In consideration of the promises and covenants herein after contained, the SELLER agrees to sell and convey and the BUYER agrees to purchase and to pay for an Easement across the real estate described on attached Exhibit 1.

The purchase price of said Easement is Twelve thousand, five hundred dollars (\$12,500) upon the execution of the Deed of Easement.

This transaction is to be closed at the SELLERS convenience, on or before February 5, 2010 at which time the SELLER will execute and deliver to the BUYER the attached Deed of Easement for the above-described real estate.

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

**RESOLUTION NO. 10-157**

**IN THE MATTER OF APPROVING AN EASEMENT AGREEMENT WITH THE HOLBROOK FAMILY TRUST FOR THE CHESHIRE ELEMENTARY SCHOOL SANITARY SEWER IMPROVEMENTS PROJECT:**

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

Whereas the Board of County Commissioners have previously executed a resolution of necessity for the Cheshire Elementary School Sanitary Sewer Improvements Project, and

Whereas both temporary and permanent easements from Jeffrey M. Holbrook, Trustee under the Holbrook Family Trust Agreement dated May 22, 1996 on his property on Cheshire Road in Berlin Township, Ohio are needed for the proposed improvements, and

Whereas the required easements are detailed in Exhibit 1, and

Whereas County Sewer District Staff negotiated a value of Twenty seven thousand, eight hundred dollars (\$27,800) for the required easements, and,

Whereas County Sewer District Staff recommends this negotiated value for the proposed easements,

Therefore be it resolved that the Board of County Commissioners execute the easement agreement with Jeffrey

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M. Holbrook, Trustee under the Holbrook Family Trust Agreement dated May 22, 1996 for the purchase of the easements as described in Exhibit 1.

Furthermore be it resolved that the Board of County Commissioners approve a voucher for payment in the amount of \$27,800 to Holbrook Family Trust from 66711905-5401.

(Copy of Exhibit 1 available in the Sanitary Engineer's Department until no longer of administrative value.)

**EASEMENT AGREEMENT**

THIS AGREEMENT made at Delaware, Ohio, this 1st day of February, 2010, by and between Jeffrey M. Holbrook, Trustee under the Holbrook Family Trust Agreement dated May 22, 1996, SELLER, and the Delaware County Commissioners, BUYER;

WITNESSETH:

In consideration of the promises and covenants herein after contained, the SELLER agrees to sell and convey and the BUYER agrees to purchase and to pay for an Easement across the real estate described on attached Exhibit 1.

The purchase price of said Easement is Twenty seven thousand one hundred dollars (\$27,800) upon the execution of the Deed of Easement.

The temporary construction easement as described on Exhibit 1 shall be effective for a nine-month period, with an effective date that shall be determined by Delaware County following execution of the construction contract. Delaware County will provide written notice of the effective date of the temporary construction easement via certified mail to the SELLER.

This transaction is to be closed at the SELLERS convenience, on or before March 5, 2010 at which time the SELLER will execute and deliver to the BUYER the attached Deed of Easement for the above-described real estate.

The BUYER agrees to include in the "Cheshire Elementary School Sanitary Sewer Improvements" project's plans and/or specifications the provisions as noted and depicted on Exhibits 2 and 3.

IN WITNESS WHEREOF, the parties hereto have set their hands to duplicates hereof the day and year first above written and this AGREEMENT is to be binding upon the heirs, executors, administrators and assigns of the parties.

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

**RESOLUTION NO. 10-158**

**IN THE MATTER OF APPROVING AN ESCROW AGREEMENT BETWEEN GRAND COMMUNITIES, LTD, VICTORY COMMUNITY BANK AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS:**

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

Whereas, the Delaware County Board of Commissioners and Grand Communities, LTD, entered into a Subdivider's Agreement for Sheffield Park Section 3 Phase B Part 1 on August 17, 2009; and

Whereas, per the Subdivider's Agreement, Grand Communities, LTD shall provide the Delaware County Sanitary Engineer a five year maintenance bond, or other approved financial warranties, equal to ten percent of the construction cost; and

Whereas, it has been determined that ten percent of the construction cost equals \$4066.02; and

Whereas, the Interim Sanitary Engineer recommends accepting the escrow account as an approved financial warranty and recommends that the Board of Commissioners enter into the escrow agreement for Sheffield Park Section 3 Phase B Part 1.

Therefore be it resolved that the Board of County Commissioners approve the escrow agreement with Grand Communities, LTD, and Victory Community Bank in the amount of \$4066.02 for Sheffield Park Section 3 Phase B Part 1.

**ESCROW AGREEMENT**

This Agreement is entered into at Delaware County, Ohio this 1<sup>st</sup> day of February, 2010, by and between Grand Communities, Ltd, a Kentucky limited partnership (herein referred to as "GCL"), Victory

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Community Bank (herein after referred to as "VCB"), and the Delaware County Board of Commissioners, (herein referred to as "County"), witnesseth:

WHEREAS, GCL and County have entered into a Subdivider's Agreement providing for the construction of certain improvements instant to the construction of sanitary sewers in the Sheffield Park Section 3 Phase B Part I.

WHEREAS, GCL desires to insure the County that funds will be available to provide for the maintenance of said improvements according to the terms of the Subdivider's Agreement, and

WHEREAS, the estimated costs of the maintenance of those improvements by such Subdivider's Agreement are Four Thousand Sixty Six and two cent (\$4,066.02)

WHEREAS, GCL has agreed to place in escrow with VCB in the form of a Certificate of Deposit as described in Exhibit "A", attached hereto and incorporated herein by reference, and

WHEREAS, VCB has agreed to hold as Escrow Agent said Certificate of Deposit according to the terms set forth herein, and

WHEREAS, GCL has agreed to pay all fees or charges to VCB 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, GCL shall deposit with VCB as Escrow Agent pursuant to the terms and conditions of this Agreement the Certificate of Deposit as described in Exhibit "A" having a market value on the date of this Agreement of no less than Four Thousand Sixty- Six Dollars and two cent (\$4,066.02). Such Certificate of Deposit shall have attached thereto a duly executed irrevocable power authorizing the subsequent transfer of said securities pursuant to the terms of this Agreement. All amounts deposited and held pursuant to this Agreement shall be held by VCB in account # 10161021302.
2. **DISBURSEMENTS BY ESCROW AGENT:** VCB shall hold the Certificate of Deposit for five years from the date of this Escrow Agreement or until it receives a resolution from the County to deliver said Certificate of Deposit securities to the person or persons named in such resolution of the escrow account is terminated as described in Section 3 below.
3. **DURATION OF ESCROW:** This Agreement and the escrow created herewith shall continue for five years from the initial date of this agreement. At that date, any funds still within the escrow account shall be released to GCL.
5. **CLOSING OF ESCROW:** At such time as VCB delivers all of the securities and funds contained within the escrow pursuant to the resolution from the County as specified in Section 2 above, this Escrow Agreement will terminate.
6. **LIABILITY OF ESCROW AGENT:** VCB 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.
7. **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 101 North Sandusky Street Delaware, OH 43015
As to GCL:	Grand Communities, Ltd 2670 Chancellor Drive, Ste. 300 Crestview Hills, KY 41017 Attn: Todd E. Huss
As to VCB:	Victory Community Bank 2500 Chamber Center Drive Ft. Mitchell, KY 41017
8. **SUCCESSORS:** This Agreement shall be binding and inure to the benefit of the successors and assigns of the parties hereto, however this Agreement is assignable by any party with the prior written consent of all the other parties.
9. **MODIFICATION:** This Agreement contains the entire understanding among the parties and supersedes all prior understand or agreements between them regarding the subject matter. No changes,

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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.

ESCROW AGREEMENT  
Exhibit A

Schedule of the a Certificate of Deposit to Be Deposited

Cash..... \$4,066.02

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

RESOLUTION NO. 10-159

IN THE MATTER OF ACCEPTING A L.E.A.P. GRANT FROM THE OFFICE OF CRIMINAL JUSTICE SERVICES FOR THE SHERIFF'S OFFICE:

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

Grant #	N/A
Source:	Ohio Criminal Justice Services
Grant Period:	January 1, 2010 thru December 31, 2010
OCJS Funds:	\$ 89,400.00
Cash Match	\$ 29,800.00
In Kind Match:	<u>0.00</u>
Total Budget:	\$119,200.00

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

RESOLUTION NO. 10-160

IN THE MATTER OF APPROVING AN AMENDMENT TO THE PROJECT AGREEMENT FOR THE CLEAN OHIO TRAILS FUND GRANT AGREEMENT:

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

Whereas, the Clean Ohio Trails Grant project is in need of a legal description, and

Whereas, an amendment to the original agreement is available for approval;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following amendment

Subject: Ohio to Erie Trail - Plumb Road/Galena Road

Per correspondence with Matt Simpson on January 19, 2010, please find here Amendment No. 3 to the Agreement between Client (Delaware County Commissioners) and Floyd Browne Group dated 10/20/08.

The following item is the change made to the referenced agreement:

Provide an exhibit and legal description of a 20-foot wide strip of land for easement purposes.

The above change will be made for a lump sum fee of \$1,200. Therefore, the total contract amount will be adjusted from a lump sum of \$108,273.00 to a total lump sum of \$109,473.00.

All previously agreed-upon terms and conditions still apply.

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

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

Commissioner O'Brien  
-911 Board Meeting On Tuesday

Commissioner Hanks  
-Ohio Wesley History Project Article In Gazette

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Commissioner Thompson  
-Ohio Department Of Agricultural Notice On Moth Spraying  
-Central Ohio Area On Aging Recognition Forms

**RESOLUTION NO. 10-161**

**IN THE MATTER OF ADJOURNING THE MEETING:**

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

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

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Todd Hanks

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Ken O'Brien

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Tommy Thompson

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Letha George, Clerk to the Commissioners