

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD FEBRUARY 22, 2010

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

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

9:30 AM 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

1:30 PM Viewing For Consideration Of The Nuckles #20 Watershed Ditch Maintenance Petition (2010) Filed By Charles And Betty Sheets

PUBLIC COMMENT

RESOLUTION NO. 10-227

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0219 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR0219:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0219, Procurement Card Payments in batch number PCAPR0219 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R1002844	HARRIS CORPORATION	ANNUAL MAINTENANCE FEE	21411306 - 5325	\$39,452.00	0001
R1002871	MOTOROLA INC	2010 MAINTENANCE AGREEMENT	21411306 - 5325	\$540,607.92	0001

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Columbia Gas	Service OECC	66211903-5338	\$ 5,000.00
McWherter's	Gasoline	10011106-5228	\$20,000.00
Nextel	Phone	10011105-5330	\$ 2,500.00
GoodYear	Auto Service (line 2)	10011106-5328	\$ 200.00

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

RESOLUTION NO. 10-228

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

Whereas, The County Administrator recommends this measure for adoption by the Board,

The Emergency Medical Services Department is requesting that Eric Burgess attend an Ohio Instructors Update Training at ODOT April 27, 2010, at no cost.

The Emergency Medical Services Department is requesting that Michael Schuiling attend a Prevention and Response to Suicide Bombing Training in Columbus, Ohio February 23, 2010, at no cost.

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

RESOLUTION NO. 10-229

IN THE MATTER OF REJECTING THE PETITION FROM THE BOARD OF HARLEM TOWNSHIP TRUSTEES, PURSUANT TO OHIO REVISED CODE SECTION 5553.045, FOR THE VACATION OF WEST STREET IN THE COMMUNITY OF HARLEM DELAWARE COUNTY, OHIO, BECAUSE SUCH PETITION DOES NOT INCLUDE A GENERAL DESCRIPTION OF THE ROUTE AND TERMINI OF THE ROAD OR PORTION THEREOF TO BE VACATED:

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

Whereas, the Delaware County Commissioners received a petition from the Harlem Township pursuant to Ohio Revised Code Section 5553.045, for the vacation of West Street in Harlem, and

Whereas, The Harlem Township Trustees' request does not include a general description of the route and termini of the road or portion thereof proposed for vacation,

Whereas, The County Administrator recommends this measure for adoption by the Board,

Therefore Be It Resolved, The Delaware County Commissioners deny the petition from the Board Of Harlem Township Trustees for The Delaware County Board Of Commissioners to vacate West Street In The Community Of Harlem Delaware County, Ohio.

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

RESOLUTION NO. 10-230

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND POLYDYNE, INC. FOR THE SUPPLY OF POLYMER EMULSION TO THE DIVISION OF ENVIRONMENTAL SERVICES:

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

WHEREAS, on November 3, 2009, the Division of Environmental Services received bids for the purchase of Polymer Emulsion for the Alum Creek Water Reclamation Facility Belt Press Filter (DCRSD 09-04, Bid Item No. 14) and for the Olentangy Environmental Control Center centrifuge thickner (DCRSD 09-04, Bid Item No. 16), both on an as-needed basis for a contract period of 24 months, and

WHEREAS, Polydyne, Inc. of Riceboro, Georgia has been identified as the lowest and best bid at \$0.950/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 Polymer Emulsion from Polydyne, Inc. of Riceboro, Georgia.

Whereas, The County Administrator recommends this measure for adoption by the Board,

THEREFORE be it resolved that the Board of County Commissioners approve the agreement with Polydyne, Inc. of Riceboro, Georgia for the supply of Polymer Emulsion.

CONTRACT FOR
DCRSD 09-04: SUPPLY OF VARIOUS CHEMICALS AND POLYMERS
POLYMER EMULSION

THIS AGREEMENT is by and between The Delaware County Board of County Commissioners, Delaware, Ohio, (herein referred to as Owner) and Polydyne Inc. (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 Polymer Emulsion for the ACWRF Belt Filter Press and OECC Centrifuge Thickner to Delaware County.

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

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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 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
4	Polymer Emulsion - ACWRF	\$0.950/lb
16	Polymer Emulsion – OECC	\$0.950/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,

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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 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)

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2. This Agreement
3. Exhibits to this Agreement (enumerated as follows):
 - a. Bid
 - b. Performance Bond
 - c. Bidders Qualification Statement
 - 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 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

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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. 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

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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.

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

RESOLUTION NO. 10-231

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ME COMPANIES, INC. FOR INSPECTION SERVICES FOR SANITARY IMPROVEMENTS FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:

It was moved by Mr. O'Brien, seconded by Mr. Thompson 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) on January 7, 2010; and

Whereas, ME Companies, Inc. of Westerville, Ohio has been identified as the lowest and best bid at a rate of \$30.75 per hour per inspector; and

Whereas, the staff from the Sewer District evaluated the bid package and has determined that it conforms to the specifications, and

Whereas, the Sewer District recommends executing the agreement with ME Companies for inspection services.

Whereas, The County Administrator recommends this measure for adoption by the Board,

Therefore be it resolved that the Board of County Commissioners approve the agreement with ME Companies, Inc. of Westerville, Ohio for Inspection Services for Sanitary Improvements for the Delaware County Regional Sewer District for the 2010 and 2011 calendar years.

AGREEMENT

DCRSD 09-05: INSPECTION SERVICES FOR SANITARY IMPROVEMENTS FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT 2010-2011

Section 1 – Parties to the Agreement:

Agreement made and entered into this 1st day of February, 2010 by and between the Delaware County Board of Commissioners, Delaware County, Ohio ("County"), and ME Companies, Inc., whose current address is 635 Brooksedge Boulevard, Westerville, Ohio 43081 ("Contractor").

Section 2 – Contract Representative:

The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer as Representative of the Board in performance of Services performed under this Agreement. The Representative shall have general supervision of the Services and authority to order commencement or suspension of Services.

Section 3 – Scope of Services:

Contractor agrees to furnish, unto the County, sanitary sewer inspection services as described in the Contract Documents. Contractor further agrees to perform the Services in a skillfully competent manner under the direction of the Representative and in accordance with the Contract Documents and generally accepted industry standards. This Agreement shall not be construed to provide for the exclusive use of the Contractor or to guarantee utilization of the above stated Services.

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Section 4 – Compensation:

Contractor shall be compensated at the rate of \$30.75 per hour per inspector, but not to exceed a total contract aggregate of \$100,000. Payment shall be in accordance with Section 5 of this Agreement.

Section 5 – Payment:

Compensation shall be paid based on invoices from the Contractor, issued no more than once per month. Invoices shall be submitted to the Representative by the Contractor on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. The County may request additional documentation substantiating said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices. The County shall pay approved invoices within 30 days of receipt.

Section 6 – Term:

This Agreement shall become effective on the date of the Notice to Proceed and remain in effect through December 31, 2011.

Section 7 – Insurance:

- 7.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000.
- 7.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.
- 7.3 Workers’ Compensation Coverage: Contractor shall maintain workers’ compensation coverage as required by the laws of the State of Ohio.
- 7.4 Additional Insured’s: The County, its elected officials and employees, shall be named as additional insured’s with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2.
- 7.5 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.

Section 8 – Indemnification:

The Contractor shall indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting there from, to the extent caused in whole or part by any negligent acts, errors or omissions of the Contractor, its employees, agents, subcontractors, and their employees and agents’ subcontractors and their employees or any other person for whose acts any of them may be liable.

Section 9 – Termination of Agreement:

In the event the County or the Contractor desires to terminate this Agreement, either party may terminate this Agreement upon thirty (30) days written notice to the other party, said notice stating the date termination shall take effect. The Contractor shall immediately terminate Services upon the date of termination and submit a final invoice within thirty (30) days of the date of termination for Services completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Contract Documents:

The “Contract Documents” includes the following: (A) Notice of Award; (B) Notice to Proceed; (C) Change Orders or Amendments; (D) Addenda to the Bid Package; (E) this Agreement; (F) Specifications; (G) Bid; (H) Exhibits to this Bid and Agreement; (I) Advertisement for Bids; and (J) Information for Bidders.

Section 11 – 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 Agreement. 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.

Section 12 – Licenses:

Contractor certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio and provide the Services contemplated in this Agreement have been obtained and are operative. In addition to the requirements of Section 8, Contractor specifically agrees to indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities related to or arising from Contractor’s failure to obtain and maintain all necessary approvals, licenses or other qualifications as required herein.

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Section 13 – Miscellaneous Terms & Conditions:

- 13.1 Prohibited Interests: Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.
- 13.2 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, 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.
- 13.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement 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.
- 13.6 Severability: If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.
- 13.7 Findings for Recovery: Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.8 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 Agreement is contingent upon full completion of such certificate and “No” being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.
- 13.9 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Contractor certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 13.10 Campaign Finance – Compliance with R.C. 3517.13: The Contractor hereby certifies that all applicable persons listed in R.C. 3517.13(J)(3) or R.C. 3517.13(I)(3), whichever is applicable, are in compliance with the campaign finance contribution limitations in R.C. 3517.13(J)(1) or R.C. 3517.13(I)(1), whichever is applicable, as evidenced by the execution of the attached Certification/Affidavit, which by this reference is fully incorporated herein.

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

RESOLUTION NO. 10-232

IN THE MATTER OF ENTERING INTO AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND MALCOLM PIRNIE, INC. FOR CONSULTING SERVICES:

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

Whereas, the Sanitary Engineer's office needs consulting services for the Perry Taggart Sanitary Sewer Improvements project; and

Whereas, the Sanitary Engineer's office is negotiating with Malcolm Pirnie to provide an acceptable scope and cost summary for the necessary consulting services; and

Whereas, the Interim Sanitary Engineer recommends entering into an agreement with Malcolm Pirnie, Inc. to provide the needed consulting services once the terms of the contract are acceptable to both parties; and

Whereas, The County Administrator recommends this measure for adoption by the Board;

Therefore, let it be resolved that the Board of County Commissioners authorize the County Administrator to execute the agreement for consulting services with Malcolm Pirnie, Inc. of Columbus, Ohio.

FURTHERMORE let it be resolved that the Board of County Commissioners approve a purchase order in the amount of \$25,000 for consulting services with Malcolm Pirnie, Inc. from Org Key 66711903-5301.

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

RESOLUTION NO. 10-233

IN THE MATTER OF RENEWING THE CONTRACT FOR LANDSCAPE MAINTENANCE SERVICES FOR THE DELAWARE COUNTY RUTHERFORD B. HAYES SERVICES BUILDING:

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

WHEREAS, Delaware County entered into a contract with Benchmark Landscape Construction, Inc. on March 24, 2008, and

WHEREAS, per the terms of the contract it may be renewed if agreed upon by both parties for two (2) additional one (1) year periods, and

WHEREAS, per the bid specification the contractor must notify the County of any cost increase for a renewal period and

WHEREAS, The Facilities Management Office find the increase for the time for landscape bed maintenance from \$910 to \$1,030 to be within reason and recommends renewing the contract.

WHEREAS, The County Administrator recommends this measure for adoption by the Board

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of Delaware County, State of Ohio, authorize the renewal of the contract for landscape maintenance services for the Delaware County Rutherford B. Hayes Services Building at the adjusted rates for the first one (1) year period.

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

RESOLUTION NO. 10-234

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

Whereas, The County Administrator recommends this measure for adoption by the Board,

The Director of Emergency Medical Services is recommending to accept the resignation of Amber Murphy as a full-time paramedic with the EMS Department; effective date February 18, 2010. She will remain in a part-time capacity.

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

RESOLUTION NO. 10-235

A RESOLUTION AUTHORIZING THE DELAWARE COUNTY COMMISSIONERS TO ENTER INTO AN AGREEMENT WITH LEIGHTY & SNIDER FOR CONSULTING SERVICES FOR COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG) AND REVOLVING LOAN FUND (RLF) PROJECTS:

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

**AGREEMENT
FOR
COMMUNITY AND ECONOMIC DEVELOPMENT
CONSULTING SERVICES**

THIS AGREEMENT, made and entered into on the 22nd day of February, 2010 by and between the **DELAWARE COUNTY COMMISSIONERS, doing business at 101 N. Sandusky St. Delaware, OH** (hereinafter called the "**County**"), and **LEIGHTY AND SNIDER, INC.**, an Ohio corporation engaged in community economic development and planning, located in the Village of Yellow Springs, State of Ohio (hereinafter called the ("**CONSULTANT**")):

WHEREAS, the County desires assistance with economic development projects, especially those involving CDBG RLF monies; and

WHEREAS, the County wishes to proceed with obtaining this assistance;

NOW, THEREFORE, BE IT RESOLVED THAT the County and the Consultant, for the consideration hereinafter set forth, agree that the Consultant shall provide the following professional and technical services in connection with the economic development projects:

I. SCOPE OF SERVICES

The Consultant shall provide, at the direction of the County Economic Development Director, professional assistance with economic development projects, and related activities, especially projects involving the use of CDBG RLF monies.

II. ACTIONS BY THE COUNTY

- A. The County shall make available to the Consultant:
 - 1. Access to County staff, officials and other local (County or regional) officials and consultants at appropriate and convenient times.
 - 2. All data, studies, plans and other available information concerning any project being assisted by this Consultant.
- B. The County shall provide the Consultant with timely policy decisions as they are necessary to complete the Environmental Review Record. The Consultant shall not be held responsible for delays resulting from the failure of the County to provide timely and appropriate decisions on matters affecting projects being assisted by the Consultant.

III. TERM

The term of this Agreement shall be for a period commencing on the date of execution of all parties hereto, and ending December 31, 2010 subject, however, to prior termination as hereinafter provided.

IV. COMPENSATION

Compensation for the specified services in Section I, will be computed on the basis of the following schedule of hourly rates for employees engaged in the work:

Francis X. Leighty	\$105.00
Christopher M. Leighty	\$55.00
Office Staff	\$40.00

In addition, the Consultant will be compensated for reimbursable expenses away from its office in connection with work specified in this Agreement. These expenses shall be limited to the following maximums:

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Meals and Lodging	\$200.00 per person per day
Vehicle Mileage	at IRS approved rate
Common Carrier	Actual cost per person
Rental Car	Actual cost
Postage	Actual cost

The Consultant shall also be reimbursed, at cost, for all charges, such as telephone calls, fax, and reproduction of documents and/or drawings.

The Consultant shall maintain records of all expenses for which consultant seeks reimbursement and shall provide such to the County.

Reimbursement for expenses shall be made only after receipt of original documentation of all such expenses. These shall be attached to the monthly invoices, which shall be itemized to document such expenses (in the manner prescribed in Section V).

The maximum compensation for services Agreement rendered shall be **One Thousand Dollars (\$1,000.00)**.

V. METHOD OF PAYMENT

Payment for services shall be made on a monthly basis. The Consultant shall invoice the County monthly for the services rendered during the previous month. Invoices shall be itemized, distinguishing payment for services and expenses. Invoices shall be due and payable upon receipt by the County. The Consultant may, seven (7) days after giving written notice to the County, suspend services under this Agreement until the Consultant has been paid in full all amounts for services and expenses more than sixty (60) days past due.

VI. GOVERNING LAW

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

VII. EQUAL OPPORTUNITY

Consultant agrees (a) That, in the hiring of employees for the performance of work under this agreement no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the agreement relates; and; (b) That no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the agreement on account of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

VIII. TERMINATION OF AGREEMENT FOR CAUSE

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

IX. TERMINATION OF AGREEMENT FOR CONVENIENCE

Either party may terminate this Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of the County, become its property. If the Agreement is

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terminated by the County as provided herein, the Consultant will be paid an amount based on the time and expenses incurred by the Consultant prior to the effective date of such termination.

X. SUCCESSORS, ASSIGNS, AND BENEFICIARIES

County and Consultant are hereby bound and the partners, successors, executors, administrators and legal representatives of County and Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

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

XI. INSURANCE

General Liability Coverage:

Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

Automobile Liability Coverage:

Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

Workers' Compensation Coverage:

Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

Additional Insureds:

The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required herein. Consultant shall require all of its subcontractors to provide like endorsements.

Proof of Insurance:

Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, 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. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

XII. INDEMNIFICATION AND MUTUAL WAIVER

Indemnification by Consultant:

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

Mutual Waiver:

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

XIII. MISCELLANEOUS PROVISIONS

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Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

Survival.

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Severability.

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Accrual of Claims.

To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the end of the term under Section III.

XIV. 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 Consultant, 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.

XV. HOMELAND SECURITY

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

XVI. FINDINGS FOR RECOVERY

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

XVII. TOTAL AGREEMENT

This Agreement constitutes the entire agreement between County and Consultant and supersedes all prior written or oral understandings.

XVIII. DESIGNATED REPRESENTATIVES

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

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ATTACHMENT A

I. EQUAL OPPORTUNITY

Consultant agrees (a) That, in the hiring of employees for the performance of work under this agreement no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the agreement relates; and; (b) That no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the agreement on account of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

II. EQUAL EMPLOYMENT OPPORTUNITY, E.O. 11246

"During the performance of this Contract, the Contractor (Consultant) agrees as follows:

"(1) The Contractor (Consultant) will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race, color, religion, sex or national origin. 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 Contractor (Consultant) agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

"(2) The Contractor (Consultant) will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor (Consultant), state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The Contractor (Consultant) will send to each Labor Union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the Labor Union or Worker's representative of the Contractor's (Consultant's) commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The Contractor (Consultant) will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and by the rules, regulations and relevant orders of the Secretary of Labor.

"(5) The Contractor (Consultant) will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 and by the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

"(6) In the event of the Contractor's (Consultant's) non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the Contractor (Consultant) may be declared ineligible for further Government Contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The Contractor (Consultant) will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor (Consultant) will take such action with respect to any subcontractor or purchase order as the Contracting Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor (Consultant) becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Contracting Agency, the Contractor (Consultant) may request the United States to enter into such litigation to protect the interest of the United States."

III. SEGREGATED FACILITIES

The Contractor (Consultant) will not maintain any facility which is provided for their employees in a

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segregated manner or permit their employees to perform their services at any location under their control where segregated facilities are maintained except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

IV. CONFLICT OF INTEREST

The Contractor (Consultant) will abide by the provision that no member, officer or employee of the grantee, or its designers or agents, no member of the governing body of the locality or localities, who exercises any functions or responsibilities with respect to the program during the tenure or for one year thereafter, shall have any direct or indirect interest in any contractor, subcontractor or the proceeds thereof, financed in whole or in part with Title I grants.

V. COPELAND "ANTI-KICK BACK ACT" (18 U.S.C. 874)

The Contractor (Consultant) agrees to comply with the Copeland "Anti-Kick Back Act" (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). The Contractor (Consultant) shall not induce, by any means, any person employed in the construction, completion or in repair of public work, to give up any part of the compensation to which he is otherwise entitled.

VI. INTEREST OF CERTAIN FEDERAL OFFICIALS

The Contractor (Consultant) agrees that no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of Title I assistance provided under the Grant Agreement or to any benefit to arise from the same.

VII. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The Contractor (Consultant) certifies that remuneration under this Contract shall not be requested for the payment of any bonus or commission for the purpose of obtaining HUD approval of applications for additional assistance or any other approval or concurrence of HUD required under the Agreement, Title I of the Housing and Community Development Act of 1974 or HUD regulation with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services other than actual solicitation are now hereby prohibited as remuneration for the professional and technical services described in this Contract are eligible as program costs.

VIII. "SECTION 3" CLAUSE FOR THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

"During the performance of this Contract, the Consultant agrees as follows:

"(1) The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts of work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project

"(2) The parties of this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department of issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

"(3) The Contractor (Consultant) will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"(4) The Contractor (Consultant) will include this Section 3 in every subcontract for work in connection with the project and will, at the direction of the applicant or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulation issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor (Consultant) will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirement of these regulations.

"(5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135

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and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement on contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135."

IX. CIVIL RIGHTS ACT OF 1964, AS AMENDED

Under the Title I of the Civil Rights Act of 1964, as amended, no person shall, on the grounds of age, race, color, creed, sex, disability, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

X. "SECTION 109" OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

XI. "SECTION 504" HANDICAPPED AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(1) The Contractor (Consultant) will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor (Consultant) agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor (Consultant) agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(3) In the event of the Contractor's (Consultant's) non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of labor issued pursuant to the Act.

(4) The Contractor (Consultant) agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's (Consultant's) obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor (Consultant) will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor (Consultant) is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(6) The Contractor (Consultant) will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

XII. ACCESS TO BOOKS

All negotiated contracts awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, paper, and records of the Contractor (Consultant) which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

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RESOLUTION NO. 10-236

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE DRUG USE PREVENTION GRANT:

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

Whereas, The County Administrator recommends this measure for adoption by the Board,

Supplemental Appropriation

10031322-4520	Sheriff SRO/State Grant	\$	13,685.96
10031322-5201	Sheriff SRO/General Supplies	\$	125.00

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

**Commissioners' Committees Reports
(Refer To Cd Minutes For Entire Record)**

Commissioner Hanks
-Absent

Commissioner O'Brien
-Attended And Participated In The Community Action Organizational Meeting

Commissioner Thompson
-Retirement Party For Dave Staley, Board Of Elections Board, Member Since 1973 February 23, 2010
-Develop A Severe Weather Policy

RESOLUTION NO. 10-237

9:30 AM - IN THE MATTER OF 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. O'Brien, seconded by Mr. Thompson to open the hearing

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

RESOLUTION NO. 10-238

IN THE MATTER OF CLOSING THE 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. O'Brien, seconded by Mr. Thompson to close the hearing.

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

RESOLUTION NO. 10-239

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn into Executive Session at 9:38AM.

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

RESOLUTION NO. 10-240

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 9:47AM.

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

RECESS TILL 1:30PM FOR VIEWING FOR CONSIDERATION OF THE NUCKLES #20 WATERSHED DITCH MAINTENANCE PETITION (2010)

**IN THE FIELD:
1:30PM VIEWING FOR CONSIDERATION OF THE NUCKLES #20 WATERSHED DITCH MAINTENANCE PETITION (2010)**

On Monday the 22nd day of February, 2010, at 1:30PM near the following “on Shoemaker Rd. 1300 feet west of Dulin Rd.” The Delaware County Commissioners viewed the watershed area with staff members from the Delaware County Engineer’s Office and Delaware County Soil and Water Conservation

**Commissioners Ken O’Brien and Tommy Thompson were present.
Commissioner Todd Hanks was absent.**

On the 25th day of November, 2009, a petition For Consideration Of The Nuckles #20 Watershed Ditch Maintenance Petition (2010) was filed with the board of Delaware County Commissioners to 1. Place project on Ditch Maintenance Program. 2. Propose improvement commencing in Delaware County, Oxford Township within The Nuckles #20 Watershed commencing at Shoemaker Road on property owned by Charles H. and Betty J. Sheets for approximately 1000 feet to the Horseshoe Run Ditch. 3. The old tile has been removed and an open ditch has been made with the technical assistance of Delaware Soil and Water.

- The ditch channel has been built to the specifications of the Soil And Water Conservation District; Water was following in the channel; towards the Horseshoe Road area
- The gas line visible in the channel will be buried at a later date by Columbia Gas

The following is a PDF copy of the Commissioners’ Office sign-in sheet of the people present at the viewing who chose to sign the sign-in sheet.

SIGN-IN SHEET FOR FEBRUARY 22, 2010

1:30 PM Viewing For Consideration Of The Nuckles #20 Watershed Ditch Maintenance Petition (2010) Filed By Charles And Betty Sheets

NAME	ADDRESS
1 Tommy Thompson	25 Timmons Woods Dr.
2 Gary Yeffinger	557-A Sunbury Rd, Del. Off
3 Jeff O'Warren	assistant clerk comm
4 Gary Skinner	2514 Skinner Rd Del.
5 Ed Stephens	557-A SUNBURY RD.
6 Brett Bergfeld	DCEO 30 CHANNING ST
7 Ken O'Brien	County
8 Barry Tully	5606 S PEARMAN RD

(A copy of the sign-in sheet is available in the Commissioners’ Office until no longer of administrative value.)

RESOLUTION NO. 10-241

IN THE MATTER OF ADJOURNING THE MEETING:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to adjourn the meeting.

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

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Todd Hanks

Ken O'Brien

Tommy Thompson

Letha George, Clerk to the Commissioners