

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

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

Present:
Dennis Stapleton, President
Ken O'Brien, Vice President
Tommy Thompson, Commissioner

RESOLUTION NO. 12-917

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 10, 2012:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on September 10, 2012; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 12-918

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM WORK SESSION HELD SEPTEMBER 10, 2012:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in a work session on September 10, 2012; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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 work session meeting.

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

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

DON DESHAZO, EXECUTIVE DIRECTOR VETERANS SERVICES, PRESENTATION/REPORT

RESOLUTION NO. 12-919

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0912:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0912 and Purchase Orders as listed below:

	<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>	
PO' Increase					
	C&C Electric	OECC Centrifuge	66211903-5201	\$ 5,681.00	
PR Number	Vendor Name	Line Desc	Line Account	Amount	Line
R1205515	ALADTEC INC	ANNUAL SUBSCRIPTION (OCTOBER 2012 THROUGH OCTOBER	10011303 - 5320	\$6,495.00	0001
R1205560	OHIO REGIONAL DEVELOPMENT CORP	FORWARD OHIO GRANT	22911716 - 5365	\$20,000.00	0001

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

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

RESOLUTION NO. 12-920

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The 911 Department is requesting an amendment to a previously approved training from August 16, 2012 (for Delcomm Employees to attend a Hostage Negotiations Training in Dublin, Ohio on September 6, 2012); at a revised cost of \$507.00 to now include 3 employees (fund number 24111306).

The 911 Department is requesting that 5 Delcomm Employees participate in An Emergency Medical Dispatching (EMD) Training in the Delcomm Training Room August 29-31, 2012; at the cost of \$1,225.00 (fund number 24111306).

The 911 Department is requesting that 4 Delcomm Employees attend an Alerts Responder Training (CAD) in Columbus, Ohio August 2-3, 2012; at the cost of \$2,000.00 (fund number 24111306).

The 911 Department is requesting that 7 Delcomm Employees participate in An Emergency Fire Dispatching (EFD) Training in the Delcomm Training Room August 27-28, 2012; at the cost of \$1,715.00 (fund number 24111306).

The Administrative Services Department is requesting that Christine Shaw attend a Social Media: The Records Management Challenge Workshop in Columbus, Ohio October 24, 2012; at the cost of \$24.00 (fund number 10011103).

The Child Support Enforcement Agency is requesting that Joyce Bowens attend a Fiscal Quarterly Meeting in Columbus, Ohio September 17, 2012, at no cost.

The Child Support Enforcement Agency is requesting that Sherry Fleury, Aaron Howard, Brandy Davenport, Adeana Gray, Sharon Cole and Pat Church attend The Ohio CSEA Directors' Association Fall Training in Dublin, Ohio at various times October 1-2, 2012; at the cost of \$963.00 (fund number 23711630).

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

RESOLUTION NO. 12-921

IN THE MATTER OF ACCEPTING THE TREASURER'S REPORT FOR THE MONTH OF AUGUST 2012:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to accept the Treasurer's Report for the month of August 2012.

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

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

RESOLUTION NO. 12-922

IN THE MATTER OF ESTABLISHING DELAWARE COUNTY COMMITMENT TO FAIR HOUSING IN DELAWARE COUNTY:

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

LET IT BE KNOWN TO ALL PERSONS OF Delaware County that discrimination in the sale, rental, leasing, financing of housing or land to be used for construction of housing, or in the provision of brokerage services because of race, color, religion, ancestry, military status, sex, national origin, handicap or disability is prohibited by Title VIII of the Civil Rights Act of 1968 (Federal Fair Housing Law) and the Ohio Civil Rights Commission. Delaware County supports equal opportunity in housing for all persons regardless of race, color, religion, ancestry, military status, sex, national origin, handicap or disability, or familial status (families with children).

THEREFORE, the Delaware County Commissioners do hereby pass the following resolution:

BE IT RESOLVED, Delaware County will assist all persons who feel they have been discriminated against because of race, color, religion, ancestry, military status, sex, national origin, handicap or disability or familial status (families with children) to seek equity under federal and state laws by directing them to the County's Fair Housing Administrator, Ohio Civil Rights Commission, or the U.S. Department of Housing and Urban Development.

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

BE IT FURTHER RESOLVED, that Delaware County shall distribute this Resolution and, through this distribution, shall cause owners of real estate, developers, and builders to become aware of their respective responsibilities and rights, under the Federal Fair Housing Law, the Ohio Civil Rights Commission, and any local laws or ordinances. Publicity will, at a minimum, include, but not be limited to:

- 1) the publication of this resolution or other applicable fair housing information through local media and community contacts;
- 2) distribution of posters, flyers, and any other available means which will bring to the attention of those affected, the knowledge of their respective responsibilities and rights concerning equal opportunity in housing.

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

RESOLUTION NO. 12-923

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

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

Supplemental Appropriations	Explanation
22411601/5301 Income Maintenance/Contracted Prof Services	\$ 100,000.00 TANF Summer Youth Program
22411605/5301 Administration/Contract Prof Services	\$ 30,000.00 VoIP Phones/ODJFS Collabor8
22411605/5325 Administration/Maint Contracts & Agreements	\$ 100,000.00 Northwoods Maintenance Contracts, Repairs
22411605/5331 Administration/Postage	\$ 10,000.00 Increase in postage due to Call Center

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

RESOLUTION NO. 12-924

IN THE MATTER OF APPROVING A MEDIATION AND ARBITRATION AGREEMENT BY AND BETWEEN KOKOSING CONSTRUCTION COMPANY, INC., DELAWARE COUNTY, OHIO, CONCORD/SCIOTO DEVELOPMENT LLC AND THE CONCORD/SCIOTO COMMUNITY DEVELOPMENT AUTHORITY:

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

**MEDIATION
AND
ARBITRATION AGREEMENT**

This Agreement made this 13th day of September, 2012, by and between Kokosing Construction Company, Inc. ("KCC"), Delaware County, Ohio ("County"), Concord/Scioto Development LLC ("Developer") and the Concord/Scioto Community Development Authority ("Authority").

WHEREAS, on November 1, 2007, the County entered into a contract with the Authority (the "Intergovernmental Agreement") pursuant to which the Authority agreed to have a waste water treatment plant constructed (the "Project"); and

WHEREAS, on November 1, 2007, the Authority entered into a contract (the "Infrastructure Agreement") with the Developer pursuant to which the Developer agreed to have the Project constructed; and,

WHEREAS, on November 1, 2007, the Developer entered into a contract with KCC (the "Design-Build Agreement") pursuant to which KCC agreed to design and construct the Project; and,

WHEREAS, pursuant to the terms of the Infrastructure Agreement, the Intergovernmental Agreement and the Design-Build Agreement the County, the Authority and KCC each had certain rights, obligations and responsibilities as set forth therein with respect to the design and construction of the Project; and,

WHEREAS, certain claims by KCC and the County (the "Claims") have arisen with respect to the design and/or the construction of the Project, the character and nature of which make the County and KCC the real parties in interest with respect thereto (the "Pass Through Claims"); and,

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

WHEREAS, the parties hereto have, without success, attempted to reach agreement upon the resolution of the Claims and accordingly a dispute with respect thereto has arisen (the "Dispute"); and,

WHEREAS, pursuant to Section 12.1.1 of the Design-Build Agreement the parties agreed that KCC had the right to assert and prosecute claims against the Authority and/or the County; and,

WHEREAS, the parties have agreed that the Claims of the County relating to the design and/or construction of the Project and for which Kokosing would be responsible to the Developer under the Design-Build Agreement, may be "passed through" by the County to Kokosing for the purpose of a resolution thereof; and,

WHEREAS, the parties, and each of them, wish to herein establish a procedure for the resolution of the Dispute through mediation and arbitration;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. The parties agree that the Dispute shall be submitted to Mediation as hereinafter described:
 - a. The parties agree that Don Gregory shall act as the mediator. The costs and expenses of the mediator and the mediation shall be shared equally by the County and KCC.
 - b. The mediation shall be conducted within Forty-five (45) days of the execution of this Agreement and in accordance with the rules and procedures established by the Mediator.
 - c. The County and KCC shall each submit to the other, as well as to the Authority and the Developer, a complete Statement of Claim which identifies with reasonable particularity the factual basis of each claim asserted by that party and the quantum thereof, or such other relief sought. This Statement of Claim shall be exchanged by the parties within thirty (30) days of the execution of this Agreement.
 - d. The Authority and the Developer shall be entitled to attend and participate in the mediation.
2. In the event that the Disputes are not finally resolved through the Mediation the parties agree to submit them to binding arbitration before a panel of three (3) arbitrators as hereinafter set forth:
 - a. Arbitration Rules. The parties agree that the arbitration shall be conducted in general conformity with the Construction Industry Arbitration Rules of the American Arbitration Association, but shall not be administered by, or be filed with, the American Arbitration Association. The parties also agree to be subject to, and conduct the arbitration in accordance with, any rules prescribed by the arbitration panel. KCC shall be the Claimant in any arbitration and the County shall be the Respondent. The award of the panel shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction.
 - b. Party Appointed Arbitrators. The parties agree that one arbitrator shall be selected by the County and one arbitrator shall be selected by KCC. The County and KCC shall identify to the other the identity of their party appointed arbitrator within fourteen (14) days of the execution of this Agreement. The party appointed arbitrators shall act in a neutral capacity as opposed to being party advocates. The County and KCC shall, subject to the final award of the panel, be responsible for the compensation and expenses of their respective party appointed arbitrator. The party appointed arbitrators shall be subject to challenge for good cause, including but not limited to the current or past representation of parties, or other business dealings, in matters adverse to the other party or their respective counsel. The party appointed arbitrators shall disclose any matter or relationship which may give rise to a challenge for cause. Prior service of a party appointed arbitrator as a mediator or arbitrator in a matter involving the County or KCC or their respective counsel, shall not be grounds for a challenge for cause.
 - c. Third Arbitrator. The County and KCC shall attempt to agree upon the third arbitrator, who will serve as the chair of the arbitration panel. In the event that the parties are unable to agree upon the identity of the third arbitrator within fourteen (14) days of the selection of the two party appointed arbitrators they shall so notify the two party appointed arbitrators, who shall then select the third arbitrator. The third arbitrator selected by the two party appointed arbitrators shall be an attorney that is a member of the American Arbitration Association Large Complex Case Panel or be an engineer with experience in the design and construction of waste water treatment plants. The County and KCC shall, subject to the award of the panel, share equally the compensation and expenses of the third arbitrator.

COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012

- d. Form of Award. The arbitration panel shall decide each of the claims asserted by the County and KCC, however, a reasoned award shall not be required.

- e. Money Damages. Money damages shall be awarded to only the County and/or KCC. Only the County and/or KCC shall be deemed liable for money damages, the Authority and the Developer being only nominal parties. However, if required to effectuate the purposes of the Intergovernmental Agreement and the Infrastructure Agreement, the Developer and the County agree to pass through any payments made in connection with any award made by the arbitration panel. Nothing in this paragraph 2e or this Agreement shall constitute or be deemed a waiver or release of any claim that either the County or KCC may have against the Authority or the Developer with respect to the Project.

- f. Other Potential Resolution. If the issue of determining the date of substantial completion of the Project is presented to the arbitration panel, and if the arbitration panel determines that substantial completion has not been achieved, then the arbitration panel shall identify which work items need to be completed to achieve substantial completion, the arbitration panel shall direct KCC to substantially complete the Project, and the arbitration panel shall maintain jurisdiction over the issue for purposes of determining when substantial completion is achieved. Also if the issue of determining the date of substantial completion of the Project is presented to the arbitration panel, the date of substantial completion determined by the arbitration panel shall be the date of substantial completion for purposes of enforcing the Intergovernmental Agreement.

- g. Arbitration Attendance. The Authority and the Developer shall be entitled to be represented at the arbitration but shall not otherwise participate in the arbitration.

- h. Claims Against the Authority and/or the Developer. Except in the form of the Pass Through Claims, neither the County, nor KCC, shall present claims against the Authority or the Developer in this arbitration. Similarly, neither the Authority nor the Developer, shall present claims against the County or KCC in this arbitration. In the event that after the conclusion of the arbitration between the County and KCC contemplated by this agreement, either the County or KCC should have claims against the Authority and/or the Developer relating to the alleged breach of the Intergovernmental Agreement or the Infrastructure Agreement, the parties hereto agree that such claims shall be submitted to arbitration pursuant to, and in a manner consistent with, this Agreement, i.e. utilizing the same Arbitrators and rules of procedure.

- i. Other Claims. The parties hereby further agree that any and all other claims which may arise relating to the Design-Build Agreement, Intergovernmental Agreement or Infrastructure Agreement, which claims relate to the design and/or construction of the project, shall be subject to arbitration as set forth herein, including, but not limited to future claims based upon warranty, workmanship or latent defects, to the extent any such claims are not extinguished as a result of the Arbitration contemplated above.

3. The execution of this Agreement shall not be deemed to be a discharge or release of any kind with respect to any claim which any party hereto may now have, or which may arise in the future, with respect to the Project or arising under the Infrastructure Agreement, the Intergovernmental Agreement or the Design-Build Agreement.

4. Each of the parties hereto represents and warrants that it has the authority under its organizational documents, the statutes that govern its affairs and pursuant to the voting authority of its respective Board to enter into this Agreement.

5. Except as is otherwise provided in or as altered by this Agreement, all rights and obligations created by or under the Infrastructure Agreement, the Intergovernmental Agreement or the Design-Build Agreement, and the terms and conditions thereof, remain in full force and effect.

6. It is understood and agreed by the parties that the terms of this Agreement are subject to specific performance pursuant to Chapter 2711 of the Ohio Revised Code.

This Agreement shall be deemed to have been entered into the date first written above.

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

RESOLUTION NO. 12-925

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

The Director of Job and Family Services recommends hiring Laura Heber as an Employment Counselor with the JFS Department; effective September 24, 2012;

Therefore Be It Resolved, that the Board Of Commissioners approve hiring Laura Heber as an Employment Counselor with the JFS Department; effective September 24, 2012.

The Director of The Child Support Enforcement Agency recommends the promotion of Sharon Cole to an Enforcement Supervisor with the CSEA Department; effective October 1, 2012;

Therefore Be It Resolved, that the Board of Commissioners approve the promotion of Sharon Cole to an Enforcement Supervisor with the CSEA Department; effective October 1, 2012;

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

RESOLUTION NO. 12-926

IN THE MATTER OF ACCEPTING AN ALLOTMENT OF TICKETS TO THE DELAWARE COUNTY FAIR FROM THE DELAWARE COUNTY AGRICULTURAL SOCIETY:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has a long history of cooperation with and support of the Delaware County Agricultural Society (the "Society") and the Delaware County Fair; and

WHEREAS, the Society, in the spirit of continued cooperation and appreciation and in order to promote the Delaware County Fair and Delaware County as a whole, has presented Delaware County with a donated allotment of tickets to the Delaware County Fair; and

WHEREAS, the Board wishes to use the allotment of tickets for the purpose of promoting the Delaware County Fair and Delaware County as a whole by fostering county employee attendance at the Delaware County Fair, encouraging economic development within Delaware County, and promoting tourism to and within Delaware County;

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

Section 1. The Board hereby accepts this allotment of tickets to the Delaware County Fair from the Delaware County Agricultural Society.

Section 2. The Board hereby declares that the allotment of tickets is accepted for the purpose of promoting the Delaware County Fair and Delaware County as a whole by fostering county employee attendance at the Delaware County Fair, encouraging economic development within Delaware County, and promoting tourism to and within Delaware County.

Section 3. The Board hereby authorizes the Delaware County Administrator to cause distribution of said tickets to visiting dignitaries, in order to further the purposes stated in Section 2 herein, and to cause the distribution of any remaining tickets to county employees via raffle.

Section 4. This Resolution shall take effect immediately upon adoption.

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

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien

-Attended And Participated In A Family Children's First Council Meeting

Commissioner Thompson

-Delaware County Fair

Commissioner Stapleton

-Session on Monday is at the Fair Grounds

-Will be attending a MORPC Meeting

RESOLUTION NO. 12-927

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSE AND FOR PENDING OR IMMINENT LITIGATION:

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2012**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn into Executive Session at 10:22AM.

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

RESOLUTION NO. 12-928

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn out of Executive Session at 11:08AM.

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

There being no further business, the meeting adjourned.

Ken O'Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners