

COMMISSIONERS JOURNAL NO. 59 - DELAWARE COUNTY  
 MINUTES FROM REGULAR MEETING HELD SEPTEMBER 30, 2013

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

Present:  
 Ken O'Brien, President  
 Dennis Stapleton, Vice President  
 Gary Merrell, Commissioner

10:30 AM Public Hearing For Consideration Of A Petition Requesting The Alteration And Vacation Of North Hampton Drive, In Liberty Township, Pursuant To Ohio Revised Code Section 5553.04

**RESOLUTION NO. 13-990**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 26, 2013:**

It was moved by Mr. Merrell, 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 26, 2013; and

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

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

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

**PUBLIC COMMENT**

**ELECTED OFFICIAL COMMENT**

**PRESENTATION:  
 DELAWARE COUNTY HUNGER ALLIANCE  
 NANCY SHAPIRO AND BRANDON FELLER**

**RESOLUTION NO. 13-991**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0927, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0927:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0927, memo transfers in batch numbers MTAPR0927.

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

**RESOLUTION NO. 13-992**

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

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

The Administrative Services Department is requesting that Brad Euans, Dawn Huston, and Mindy Owens attend an OHPELRA fall conference meeting at the Police Training Academy on October 25, 2013 at the cost of \$525.00 (fund number 10011108).

The Emergency Medical Services Department is requesting that Joe Farmer attend the 2013 Comprehensive Update: Stroke and Neuro-Critical Care class at the Hilton Columbus from October 10-11, 2013 at no cost.

The Engineer's Office is requesting that Brian Dilley attend various Technical Training and Conferences at various times in 2013; at the cost of \$1,525.00 (fund number 29214001)

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

**RESOLUTION NO. 13-993**

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**IN THE MATTER OF APPROVING THE CHILD PLACEMENT SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND CHILD PLACEMENT PROVIDER AS LISTED:**

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

Whereas, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations, and

Whereas, the Director of Jobs & Family Services recommends approval of the following contract;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contracts for Child Care Placement provider:

<b>Child Placement Service</b>	<b>Per diem cost and per diem reimbursement for the following categories</b>
Children’s Hospital Medical Center 3333 Burnet Avenue Cincinnati, OH 45229	A. Maintenance B. Administration C. Case Management D. Transportation E. Other Direct Services (e.g., special diets, clothing, insurance, respite care) F. Behavioral Healthcare G. Other costs - (any other cost the Agency has agreed to participate in)

(A copy of this contract is available in the Commissioners’ Office until no longer of administrative value).

Vote on Motion Mr. Merrell Aye Mr. O’Brien Aye Mr. Stapleton Aye

**RESOLUTION NO. 13-994**

**IN THE MATTER OF AMENDING CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND CALLOS FOR STAFFING SERVICES FOR JOB AND FAMILY SERVICE PROGRAMS:**

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

Whereas, the Director of Job & Family Services recommends approval of the following contract amendment;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following contract amendment with Callos for Staffing Services for Job and Family Service Programs:

AMENDMENT TO CALLOS AGREEMENT  
AMENDMENT NO. 3

This is to amend the Agreement between the Delaware County Department of Job and Family Services and The Callos Companies entered into on the 25th day of April, 2013.

Amendment will DECREASE the amount of \$25,000.00 for a total amount of \$113,975.

Vote on Motion Mr. Stapleton Aye Mr. O’Brien Aye Mr. Merrell Aye

**RESOLUTION NO. 13-995**

**IN THE MATTER OF AMENDING THE CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ATRIUM PERSONNEL & CONSULTING SERVICES FOR STAFFING SERVICES FOR JOB AND FAMILY SERVICE PROGRAMS:**

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

Whereas, the Director of Job & Family Services recommends approval of the following contract amendment;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following contract amendment with Atrium Personnel & Consulting Services for staffing services for job and family service

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programs:

AMENDMENT TO CONTRACT  
For  
Purchased Professional Services

AMENDMENT NO. 2

This Amendment is to amend the Contract for Purchased Professional Services between the Delaware County Department of Job and Family Services, a department of the Delaware County Commissioners, and Atrium Personnel & Consulting Services, entered into on the 1st day of January, 2013.

Article III. Payment of fees: Changes the amount reimbursable under the contract from \$25,000 to \$30,000.

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

**RESOLUTION NO. 13-996**

**IN THE MATTER OF RENAMING AN ORGANIZATIONAL KEY AND APPROVING TRANSFER OF APPROPRIATIONS FOR JOB AND FAMILY SERVICES:**

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

<b>Rename ORG Key</b>	<b>Description</b>		<b>Amount</b>
22311614	TANF OWIP		
<b>Transfer of Appropriations</b>			
<b>From:</b>	<b>To:</b>		
22311611-5348	22311614-5348	\$	5,000.00
WIA-Client Services	TANF OWIP-Client Services		

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

**RESOLUTION NO. 13-997**

**IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND DELAWARE AREA CAREER CENTER FOR EDUCATIONAL CLASSES:**

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

Whereas, the Director of Jobs & Family Services recommends approval of the following contract;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract:

**2013-2014 CONTRACT  
FOR THE PURCHASE OF SERVICES AND PROGRAMS (ABLE PROGRAM)  
BETWEEN THE DELAWARE COUNTY  
DEPARTMENT OF JOB AND FAMILY SERVICES  
AND  
DELAWARE AREA CAREER CENTER**

This Contract is entered into this 30<sup>th</sup> day of September, 2013 by and between the Delaware County Department of Job and Family Services (hereinafter, "DCDJFS"), whose address is 140 North Sandusky Street, 2<sup>nd</sup> Floor, Delaware, Ohio 43015, the Delaware County Board of County Commissioners (hereinafter, "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, and the Delaware Area Career Center Board of Education (hereinafter, "DACC") whose South Campus address is 4565 Columbus Pike, Delaware, Ohio 43015 (hereinafter singly "Party," collectively, "Parties").

**PRELIMINARY STATEMENTS**

**WHEREAS**, the DACC operates the Adult Basic Literacy Education Program ("ABLE") which provides various educational programs, classes, and services to adults in Delaware County, Ohio

**WHEREAS**, DCDJFS has accepted federal Temporary Assistance For needy Families (TANF) funds for state fiscal year 2014 ("SFY 2014") to provide educational programs, classes, and services to adults as a part of its workforce development duties and needs to provide such services or contract out for services; and,

**WHEREAS**, DCDJFS has accepted federal Supplemental Nutrition Assistance Program (SNAP) funds for state fiscal year 2014 ("SFY 2014") to provide educational programs, classes, and services to adults as a part of its

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workforce development duties and needs to provide such services or contract out for services; and,

**WHEREAS**, DCDJFS has accepted federal Workforce Investment Act (WIA) Program funds for state fiscal year 2014 (“SFY 2014”) to provide educational programs, classes, and services to adults as a part of its workforce development duties and needs to provide such services or contract out for services; and,

**WHEREAS**, the DACC is willing to provide such services or contract out for services; and,

**WHEREAS**, the DACC is willing to provide those services at an agreed-upon price.

**STATEMENT OF THE AGREEMENT**

**NOW, THEREFORE**, the Parties mutually agree as follows:

**1. PURPOSE OF CONTRACT:**

The purpose of this Contract is to state the covenants and conditions under which the DACC, for and on behalf of DCDJFS, will provide educational programs, classes, and services (hereinafter collectively “Services”) to adults in Delaware County, Ohio through ABLE. The DACC shall provide Services to adults referred to such Services by DCDJFS. Services to be provided through ABLE, the budget for such Services, and forms to be used in providing the Services are respectively described in detail and/or set forth in Appendix I (Statement of Work), and Appendix II (Budget) all of which are attached hereto and all of which by this reference are fully incorporated into and made a part of this Contract (hereinafter respectively “Appendix I,” and “Appendix II”).

**2. TERM:**

This Agreement shall be effective October 1, 2013, through June 30, 2014.

DCDJFS shall have the option, upon thirty (30) days' written notice, to renew this agreement through June 30, 2015, based on successful performance outcomes from the initial agreement period, proposed program priorities, and the availability of funds for the projected year. The total amount to be paid for the renewal period July 01, 2014 through June 30, 2015 may allow for either an increase based upon the consumer price index or three percent (3%), whichever is less.

**3. SCOPE OF SERVICES/DELIVERABLES:**

The Services to be provided under this Contract to DCDJFS by the DACC are set forth and are more fully described in Appendix I.

**4. FINANCIAL AGREEMENT:**

**A. PAYMENT PROCEDURES:**

1. The DCDJFS shall reimburse the DACC in accordance with Appendix II for Services actually provided hereunder, as described above and in Appendix I.

2. To receive such reimbursement, the DACC shall submit to DCDJFS proper monthly invoices for Services actually provided. Such invoices shall be in accordance with Appendix I and shall include documentation, satisfactory to DCDJFS, of Services actually provided. Such reimbursement shall be paid by DCDJFS to the DACC within thirty (30) days of receipt by DCDJFS of proper monthly invoices and accompanying documentation.

**B. MAXIMUM PAYMENT**

3. The DACC agrees to accept as full payment for Services rendered in a manner satisfactory to DCDJFS, the lesser of the following: (1) The maximum amount of Thirty Five Thousand Four Hundred Sixty Dollars and No Cents (\$ 35,460.00) or (2) the amount of actual expenditures made by the DACC for purposes of providing the Services. It is expressly understood and agreed that in no event shall the total compensation to be reimbursed exceed the maximum of Thirty Five Thousand Four Hundred Sixty Dollars and No Cents (\$ 35,460.00). See Appendix II.

**5. LIMITATION OF SOURCE OF FUNDS:**

The DACC warrants that any costs submitted pursuant to this Contract will not be submitted as a cost of any other federally or state financed program.

**6. DUPLICATE BILLING/OVERPAYMENT:**

The DACC warrants that claims made to DCDJFS for payment, shall be for actual Services rendered and do not duplicate claims made by the DACC to other sources of funding for the same Services. In case of overpayments, the DACC agrees to repay the DCDJFS the amount of overpayment and that to which it is entitled.

**7. INFORMATION REQUIREMENTS:**

The DACC will provide such information to DCDJFS as is necessary to meet the specific fiscal and program requirements contained in this Contract. This shall include regular reports, at intervals to be determined by the Parties, of Services provided and outcomes achieved.

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**8. AVAILABILITY AND RETENTION OF RECORDS:**

At any time, during regular business hours, with reasonable notice and as often as the DCDJFS, the Comptroller General of the United States, the State, or other agency or individual authorized by the DCDJFS may deem necessary, the DACC shall make available to any or all the above named parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract unless disclosure of the information is not permitted under state and/or federal law. The DCDJFS and the above named parties shall be permitted by the DACC to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Contract.

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

Notwithstanding the minimum 3-year retention period, DACC may thereafter destroy all records pursuant to its public records retention policy.

**9. INDEPENDENT FINANCIAL RECORDS:**

The DACC shall maintain independent books, records, payroll, documents, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Such records shall at all reasonable times be subject to inspection, review, and/or audit by duly authorized federal, state, local, or DCDJFS personnel.

**10. SERVICE DELIVERY RECORDS:**

The DACC shall maintain records of Services provided under this Contract. Such records shall be subject at all reasonable times to inspection, review or audit by duly authorized federal, state, local, and/or DCDJFS personnel.

**11. RESPONSIBILITY FOR INDEPENDENT AUDIT:**

DACC agrees, if requested by the Director of DCDJFS, to provide at no cost to the Department, a copy of the report for the most recent Independent Audit performed on the DACC and/or ABLE.

**12. RESPONSIBILITY OF AUDIT EXCEPTIONS:**

The DACC agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority that is in any way associated with the provision of services by DACC under this Contract. The DACC shall reimburse DCDJFS for any funds determined by the audit to be improperly collected.

**13. INDEPENDENT CONTRACTORS:**

The DACC shall act in performance of this Contract as an independent contractor. As an independent contractor, the DACC and/or its officers, employees, representatives, agents, volunteers and/or servants are not entitled to any of the benefits enjoyed by employees of the Board, DCDJFS, and Delaware County.

**14. PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS:**

DCDJFS, the Board, and the DACC, as a governmental entities/political subdivisions, lack authority to indemnify. As such, the Parties, agree to be and shall be responsible for their own actions and/or the actions of their respective board members, officials, officers, employees, agents, representatives, volunteers, and/or servants resulting from the performance of and/or provision of services or programs under and/or pursuant to this Contract. Therefore, the Parties agree to be individually and solely responsible for any and all claims, lawsuits, liability, losses, damages, injuries (including death), and/or related expenses that each may incur as a result of their own actions and/or the actions of their respective board members, officials, officers, employees, agents, representatives, volunteers, and/or servants, in the performance of and/or provision of services or programs under and/or pursuant to this Contract.

**15. RESPONSIBILITY FOR DCDJFS / COUNTY PROPERTY:**

DACC shall assume full responsibility for any damage to or loss of any DCDJFS and/or County property, including but not limited to, buildings, structures, vehicles, fixtures, furnishings, equipment, supplies, accessories and/or parts resulting in whole or part from any acts or omissions, seen or unforeseen, intentional or unintentional, known or unknown, of DACC or any board members, officials, officers, employees, agents, representatives, volunteers, and/or servants of DACC as related to this Contract or Services provided thereunder.

**16. TERMINATION:**

**A. Termination At-Will:**

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The Parties may terminate this Contract at any time and for any reason by giving at least seven (7) days advance notice, in writing, to the other Parties. The DACC shall be entitled to receive compensation for any services satisfactorily performed hereunder through the effective date of such termination.

**B. Breach or Default:**

Upon breach or default of any of the provisions, obligations, or duties embodied in this Contract, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a specified period of time, not to exceed 45 days. If the breach or default is not satisfactorily remedied within the specified time period, this Contract may, at the election of the aggrieved Party, be immediately terminated. The Parties may, without limitation, exercise any available administrative, contractual, equitable or legal remedies. In the event of such a breach or default, the DACC shall be entitled to receive compensation for any services satisfactorily performed hereunder through the effective date of termination.

**C. Waiver:**

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

**D. Loss of Funding**

It is understood by the DACC that availability of funds for this Contract and thus this Contract is contingent on appropriations made by the Local, State and/or Federal governments. In the event that the Local, State and/or Federal reimbursement is no longer available to the DCDJFS, the DACC understands that changes and/or termination of this Contract will be required and necessary. To the extent permitted by law, the DACC agrees to hold harmless DCDJFS and the Board for any such changes and/or termination. In the event that DCDJFS learns that funding may be, or will be, withheld or cancelled, DCDJFS shall act to reduce requests for services and/or refrain from requesting additional services to be performed by DACC, as necessary to mitigate unnecessary expenditures by DACC. Such changes and/or termination shall be effective on the date that the Local, State and/or Federal reimbursement is no longer available, or later as otherwise stipulated in writing by DCDJFS.

**17. SAFEGUARDING OF CLIENT:**

The Parties agree that the use or disclosure by any Party of any information concerning any individual eligible for Services provided pursuant to this Contract for any purpose not directly related with the administration of this Contract is strictly prohibited except upon the written consent of the DCDJFS and the individual or, if a minor, his/her responsible parent or guardian.

**18. CIVIL RIGHTS:**

DCDJFS and the DACC agree that as a condition of this Contract, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, handicap, sexual orientation, or any other factor as specified in Title VI of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments. It is further agreed that DACC will comply with all appropriate federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this Contract. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

**19. ACCESSIBILITY OF PROGRAMS TO THE DISABLED/HANDICAPPED:**

The DACC agrees as a condition of this Contract to make all Services provided pursuant to this Contract accessible to the disabled/handicapped. The DACC further agrees as a condition of this Contract to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), all requirements imposed by the applicable HHS regulations (45 CFR 8;4) and all guidelines and interpretations issued pursuant thereto. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

**20. FAIR HEARING:**

In accordance with state regulations, DCDJFS is charged with fulfilling responsibilities relative to appeals and/or state hearings brought or initiated by those receiving and/or participating in the Services. The DACC, its providers, and their respective officials, officers, employees, agents, representatives, volunteers, and/or servants agree to and shall be subject to DCDJFS rules relative to any such appeals and/or state hearings. Additionally, the DACC, its providers, and their respective officials, officers,

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employees, agents, representatives, volunteers, and/or servants agree to assist in the informational gathering and support processes related to the appeals and/or state hearing process and participation in the state hearing and/or appeal itself.

**21. DRUG-FREE WORKPLACE:**

The DACC agrees to comply and certifies compliance with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. The DACC shall make a good faith effort to ensure that all of its and any of its providers officials, officers, employees, agents, representatives, volunteers, and/or servants will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**22. FINDINGS FOR RECOVERY:**

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

**23. NOTICES:**

All notices which may be required by this Contract or by operation of any rule of law shall be sent via United States certified mail, return receipt requested, and/or personally delivered to the following individuals at the following addresses and shall be effective on the date received:

**DACC:**

Scott Palmer  
Director of Adult Operations  
DACC  
4565 Columbus Pike  
Delaware, Ohio 43015  
Delaware, Ohio 43015

**DCDJFS:**

Shancie Jenkins  
Director  
DCDJFS  
140 N. Sandusky St., 2<sup>nd</sup> Floor

**24. PUBLICITY:**

In any publicity release or other public reference, including media release, information pamphlets, etc. on the Services provided under this Contract, it will be clearly stated that the project is partially funded by ODJFS, through the Delaware County Commissioners and the DCDJFS.

**25. GOVERNING LAW:**

This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Contract shall be filed in and heard before the courts of Delaware County, Ohio, to the extent that such courts retain jurisdiction over the dispute.

**26. SEVERABILITY:**

If any item, condition, portion, or section of this Contract or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Contract and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and be complied with.

**27. ENTIRE AGREEMENT:**

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

**28. SIGNATURES:**

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

**29. EFFECT OF SIGNATURE:**

The signatures of the Parties below indicate that the signers and the entities that they represent agree to be bound by all the terms and conditions of this Contract.

**Appendix I  
Statement of Work  
October 1, 2013 through June 30, 2014**

**Services Narrative**

The Delaware Area Career Center will provide adult basic and literacy education (ABLE) services as well as life skills coaching and advocacy to participants referred by Delaware County Department of Job and Family Services. These services are geared toward helping participants transition to self-sufficiency, improve work-readiness skills, and ultimately reduce their dependency on government benefits.

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**ABLE/GED Classes** The Delaware Area Career Center will provide ABLE all classes off-site at The Delaware City Vineyard or another mutually agreed upon location four mornings per week through this contract. DACC and DCDJFS will mutually agree upon any changes to class frequency and/or location to accommodate need.

DACC will provide all assessment and instructional materials for these off-site classes.

**Service Availability:** ABLE classes will begin October 1, 2013 and end June 30, 2014. DACC will not provide classes the week of July 4; during the scheduled Winter Break of DACC; or during DACC Spring Break. Classes will be offered Monday thru Thursday, 9:30am to 12 noon.

Estimated numbers to be Served: More than 100 adults are expected to enroll and receive a minimum of 12 hours of service.

As an additional service to DCDJFS, DACC will administer the TABE (Test of Adult Basic Education) Assessment to those individuals who are referred by DCDJFS employment counselors for assessment only, and will provide employment counselors with the scores, so that a determination concerning readiness for additional schooling can be made. Over 40 assessment-only participants may be referred to DACC each year.

Individuals to be served in the ABLE classes will be those adults who need to improve basic skills to prepare for the Work Keys (employment tests), the GED Test, post- secondary education, or to be better prepared to help children with homework or simply to function more optimally in society.

**Scope of Work, Measurable Objectives**

All students will have a pre and post assessment to determine academic progress, as suggested by ABLE guidelines. The TABE Assessment is the standardized test required for use by ABLE Programs by the Ohio Board of Regents (OBR). All students will be required to sign-in at the beginning of class, so that attendance can be tracked. DCDJFS employment counselors will have access to ABLE attendance records and with monthly invoice documentation upon request, so that determinations concerning client compliance can be made in a timely manner.

An on-going monthly cumulative status report will be provided to DCDJFS. Progress will be noted by: the reporting of TABE scores, names of students passing the Official GED Practice Test, and the Official GED Test. Student goals will be tracked along with class attendance records.

DACC will provide an instructor and an intake/orientation/assessment person for the AM on-site class, Monday through Thursday.

**Maximum Instructional Costs**

2 teachers x 12 hours per week, Monday through Thursday, from 9:30-noon, plus ½ hour of preparation time for each instructor per class = 24 hours per week x \$35.00 per hour x 38 weeks equals **\$31,920.00.**

**Total Maximum Instructional Costs** under this Contract shall not exceed **\$ 31,920.00.**

**Provision of Incentives**

DACC shall provide TANF eligible ABLE learners with a voucher of \$30.00, redeemable at a local merchant, upon enrollment in an ABLE Class (12 hours of class attendance), 2 vouchers (worth \$60.00) for passing the Official GED Practice Test, and 4 vouchers worth \$120.00, for passing the actual GED Test.

ABLE learners with a high school diploma, but low basic skills, shall earn a voucher after progressing 2 or more grade levels on the TABE Assessment. A full accounting of vouchers earned each month will be included as part of the monthly DCDJFS Contract Report.

**Cost of Educational Incentives**

Based on the number of vouchers earned to date, DACC will need to award approximately 100 @ \$ 30.00 each. Total = **3,000.00.**

**Should DACC** aware all available vouchers prior to the expiration of the initial term of this contract, the parties shall jointly determine whether no additional vouchers will be provided or whether DCDJFS will make additional funding available for the extra vouchers. In no case shall DACC be obligated to provide unfunded vouchers

**Appendix II  
Budget  
October 1, 2013 through June 30, 2014**

Instructional Costs	
AM ABLE/GED Classes Monday through Thursday	\$ 31,920.00
ABLE Off-site copier costs	
\$60 per month x 9 months	\$ 540.00
Education Incentives	\$ 3000.00
Total Budget =	<u>\$ 35,460.00</u>

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

**RESOLUTION NO. 13-998**

**SETTING DATE AND TIME FOR REQUEST FOR PROPOSALS FOR WORKFORCE INVESTMENT ACT YOUTH SERVICES FOR DELAWARE COUNTY:**

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

**PUBLIC NOTICE**



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**REQUEST FOR PROPOSALS  
Workforce Investment Act (WIA) Services and Programs  
For  
Comprehensive academic, training, and employment services designed to prepare targeted youth for a  
successful career  
Delaware County Department of Job and Family Services**

The complete WIA Request for Proposals is posted on the internet and may be viewed on Delaware County’s web page at <http://www.co.delaware.oh.us> under the heading “Current Bids.”

Delaware County wishes to receive sealed proposals from providers of comprehensive academic, training, and employment services designed to prepare targeted youth for a successful career .

Any proposals submitted to Delaware County are to be prepared at the submitter’s expense. Delaware County reserves the right to reject any and all proposals in whole or in part. Acceptance of a proposal shall not constitute an agreement between the submitter and Delaware County. Delaware County shall not have any liability whatsoever to any submitter whose proposal is not accepted.

A Public Information Session regarding proposal interest or questions will be held on October 17, 2013 at 10:00am in Room 222, The Hayes Administration Building, 140 North Sandusky Street, Delaware, Ohio , 43015

Request For Proposal packets can be obtained via email request to [mydelawarejobnet@gmail.com](mailto:mydelawarejobnet@gmail.com) or may be viewed and downloaded from Delaware County’s web page at <http://www.co.delaware.oh.us> under the heading “Current Bids.”

Proposals will be received at Delaware County Department of Job and Family Services, Attention Mr. Steve Ehrle , Contracts Administrator, 140 North Sandusky Street, Delaware, Ohio 43015. The outside of the sealed package should also include the title of this Request For Proposals. All proposals must be received by the addressee no later than 4:00 pm, local time, November 12, 2013. NO EXCEPTIONS.

Submittals must include (1) one printed original, 5 (five) printed photocopies, and one (1) electronic copy (MS Word Format) on a CD. Submittals pursuant to this invitation will not be accepted after the hour and date stated above.

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

**RESOLUTION NO. 13-999**

**IN THE MATTER OF DECLARING PERSONAL PROPERTY OBSOLETE, UNFIT, OR NOT NEEDED FOR PUBLIC USE AND THE INTENT OF SELLING SUCH PROPERTY VIA INTERNET AUCTION:**

MOTION: by Mr. Merrell, Seconded by Mr. Stapleton to approve and execute Resolution No. 13-999 declaring Personal Property obsolete, unfit, or not needed for public use and the intent of selling such property via internet auction.

WHEREAS, Delaware County has personal property not needed for public use, obsolete, or unfit for the use for which it was acquired; and

WHEREAS, Ohio Revised Code Section 307.12 (E) allows the sale of such property by internet auction; and

WHEREAS, the Delaware County Board of Commissioners passed Resolution 12-79 on January 23, 2012 declaring its intent to sell such property by internet auction; and

WHEREAS, Delaware County has personal property not needed for public use, obsolete, or unfit for the use for which it was acquired, currently in the possession of the Delaware County Sheriff’s Office;

WHEREAS, certain of such property may require a signature to transfer such property from the county to a buyer;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners, Delaware County, State of Ohio, that the property listed in “Addendum A” be sold in the manner prescribed in Resolution 12-79. The President of the Board of Commissioners is hereby authorized to sign any documents needed to transfer such property on behalf of the Board.

**ADDENDUM “A”**

This document identifies the property referred to in the above Resolution.  
DCSO Auction 2013 #2

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Item #	Make	Model	Serial #	Description
1	7	John Deere	737	zero turn mower, 23hp twin engine, HAVE KEY, low tires, green, Hours = Unknown
2	8	Baja	90	LE8SGFLC451002535 05 Baja recreational vehicle, blue, low tires, NO KEY
3	9	Totao		L5NATMLT0AT260218 10 Totao recreational vehicle, red, low tires, NO KEY
4	10	Chevrolet	Impala Lt	2G1WT55N079396734 07 Chev Impala, White, HAVE KEY, Miles = 109,054 - see info sheet
5	11	Pontiac	Grand Prix	1G2WJ12M4SF316342 95 Pont Grand Prix, White, NO KEY, Miles = , SALVAGE TITLE
6	12	Ford	Explorer Xlt	1FMDU73W62UB68487 02 Ford Explorer, Silver, NO IGNITION, Miles = UNKNOWN - see info sheet, SALVAGE TITLE
7	13	Cadillac	Escalade	1GYEK63N92R169517 02 Cadillac Escalade, Champagne, HAVE KEYS, Miles = 233,704 - see info sheet, REBULIT SALVAGE TITLE
8	14	Pontiac	Grand Prix	1G2WK52J33F148320 03 Pont Gr Prix, White, HAVE KEY, Miles = 109,787 - see info sheet, SALVAGE TITLE
9	15	Honda	Accord	1HGCM82625A011683 05 Honda Accord, Black, HAVE KEY, Miles = 132,603 - see info sheet, SALVAGE TITLE
10	16	Dodge	Grand Caravan	1D4GP24R04B506908 04 Dodge Gr Caravan, White, HAVE KEYS, Miles = 161,329 - see info sheet, SALVAGE TITLE
11	17	Ford	Ranger	1FTYR14U52PA62922 02 Ford Ranger, White, HAVE KEYS, Miles = 114,244 - see info sheet
12	18			Mechanical Bull - see pictures
13	19	Ford	Windstar GL	2FMZA5148WBD02545 98 Ford Windstar, Gold, NO KEY, IGNITION PUNCHED, Miles = 158,603 - see info sheet, SALVAGE TITLE
14	20	Ford	Windstar SEL	2FMDA5348YBB60952 00 Ford Windstar, White/Gold, HAVE KEY, Miles= 154,686 - see info sheet, SALVAGE TITLE
15	21	Jaguar	S	SAJEA01T64FN10143 04 Jaguar S, Silver, HAVE KEYS, Miles = 120,443 - see info sheet
16	22	Mercedes Benz	CLS	WDDDJ75X76A007808 06 Mercedes Benz Cls, Silver, HAVE KEYS, Miles = 91,859 - see info sheet
17	23	Dodge	Grand Caravan	1B4GP24332B630660 02 Dodge Gr Caravan, Maroon, HAVE KEYS, Miles = 133,541 - see info sheet, SALVAGE TITLE
18	24			Executive Desk Chair

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

**RESOLUTION NO. 13-1000**

**IN THE MATTER OF AWARDING A CONTRACT TO WB REPUBLIC BUILDERS, LLC, FOR PARTIAL RENOVATION OF GALENA VILLAGE HALL WITH FUNDING FROM THE FY12 COMMUNITY DEVELOPMENT BLOCK GRANT:**

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

WHEREAS, the Delaware County Board of Commissioners approved bidding per Resolution 13-861; and

WHEREAS, bids were opened on September 10, 2013, from and in the amount of:

WB Republic Builders	\$47,000.00
Integrated Construction Services	\$54,500.00; and

WHEREAS, the Economic Development Director, Miller/Watson Architects (project architect), and the Ohio Regional Development Corporation reviewed the bids and recommend the bid submitted by WB Republic Builders as the lowest and best bid;

NOW, THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. The Board of Commissioners approves the contract with WB Republic Builders in the amount of \$47,000.00.

Section 2. That this resolution shall take effect and be in force immediately after its passage.

**CONTRACT**

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THIS AGREEMENT made this 30th day of September, 2013, by and between WB Republic Builders, LLC hereinafter called the "Contractor" and Delaware County hereinafter called the "Owner".

WITNESSETH, that the Contractor and the owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work.

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services including utility and transportation services, and perform and complete all work required for the construction of the Improvements embraced in the project; namely, the Galena Village Hall Improvements<sup>2</sup>, and required supplemental work, all in strict accordance with the Contract Documents including all addenda thereto, all as prepared by Miller/Watson Architects acting and in these Contract documents preparation, referred to as the "Engineer".

ARTICLE 2. The Contract Price.

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed \$47,000 (Dollars) subject to additions and deductions as provided in Section 109 hereof.

<sup>1</sup>Choose term most applicable: a corporation organized and existing under the laws of the State of Ohio; a partnership consisting of \_\_\_\_\_; an individual trading as \_\_\_\_\_.

<sup>2</sup>Supply principal items of Contract such as Grading, Paving, Water Mains, Sewers, etc.

ARTICLE 3. Contract.

The executed contract documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation for Bids
- d. instructions to Bidders
- e. Signed copy of Bid
- f. General Conditions, Parts I and II
- g. Special Conditions
- h. Technical Specifications
- i. Drawings (as listed in the Schedule of Drawings)

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

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

**RESOLUTION NO. 13-1001**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT; EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES AND PENDING OR IMMINENT LITIGATION:**

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

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

**RESOLUTION NO. 13-1002**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to adjourn out of Executive Session at 10:40AM.

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

**RESOLUTION NO. 13-1003**

**10:30AM PUBLIC HEARING FOR CONSIDERATION OF A PETITION REQUESTING THE ALTERATION AND VACATION OF NORTH HAMPTON DRIVE, IN LIBERTY TOWNSHIP,**

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**PURSUANT TO OHIO REVISED CODE SECTION 5553.04:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to open the hearing at 10:41AM.

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

**With Out Objection,  
Board Waved Limitations Rule From Their Public Comment Rules For The Hearing**

**RESOLUTION NO. 13-1004**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF A PETITION REQUESTING THE ALTERATION AND VACATION OF NORTH HAMPTON DRIVE, IN LIBERTY TOWNSHIP, PURSUANT TO OHIO REVISED CODE SECTION 5553.04:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to close the Hearing at 12:10PM.

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

**RESOLUTION NO. 13-1005**

**IN THE MATTER OF DENYING THE PETITION FOR THE ALTERATION AND VACATION OF NORTH HAMPTON DRIVE, IN LIBERTY TOWNSHIP, PURSUANT TO OHIO REVISED CODE SECTION 5553.04:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adopt the following:

WHEREAS, on April 22, 2013, the Delaware County Board of Commissioners received a petition, filed by Peggy S. Guzzo, and signed by at least twelve freeholders of Delaware County residing in Liberty Township, requesting the alteration and vacation of North Hampton Drive, in Liberty Township, pursuant to section 5553.04 of the Revised Code; and

WHEREAS, the petition states generally as follows:

General Description:

- 1) North Hampton Drive, in Liberty Township, in the vicinity of Wedgewood Commerce Center, Lot 2069
- 2) 3 proposed alternates
- 3) Alternate 1, Alternate 2 and Alternate 3 show the following:
  - North Hampton Drive proposed general route and termini (into Wedgewood Commerce Center, Lot 2069)
  - Portion of current North Hampton Drive vacated and turned into green space with landscaping added
  - Potential private service drive for Wedgewood Commerce Center, Lot 2069; and

WHEREAS, on Monday August 19, 2013, at 1:30PM the Board viewed the proposed alteration and vacation of North Hampton Drive, in the vicinity of Wedgewood Commerce Center Lot 2069, in Liberty Township; and

WHEREAS, on Monday September 30, 2013 at 10:30AM the Board held a Public Hearing on the Petition, at the Office of the Board of County Commissioners, 101 North Sandusky Street Delaware, Ohio; and

WHEREAS, notice by publication of the above dates occurred for the two consecutive weeks of July 19 and July 26, 2013; and

WHEREAS, the Delaware County Engineer has provided a written report, with recommendations, regarding the Petition;

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

Section 1. The Board hereby determines that the vacation requested in the Petition would neither serve the public convenience nor further the public welfare and is not of sufficient public importance. Accordingly, the Petition is hereby denied.

Section 2. The Board hereby directs the Clerk of the Board to certify a copy of this Resolution to the Liberty Township Board of Trustees and the Delaware County Engineer.

Section 3. The Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Abstain Mr. Stapleton Aye

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RECESS/RECONVENE 12:42PM

RESOLUTION NO. 13-1006

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS, TRANSFER OF FUNDS, PURCHASE ORDER:

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

**Supplemental Appropriations**

66211901-5801	Sewer Revenue Fund/Miscellaneous Cash Transfers	\$10,000,000.00
66611905-5380	URF LSWRF/Other Services	\$14,200,000.00

**Transfer of Funds**

<b>From</b>	<b>To</b>	
66211901-5801	66611905-4601	\$10,000,000.00
Sewer Revenue Fund/Miscellaneous Cash Transfers	URF LSWRF/Interfund Revenues	

**Purchase Order To Concord/Scioto Community Authority, (Org Key 66611905-5380) In The Amount Of \$14,200,000.00**

Vote on Motion: Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Aye

RESOLUTION NO. 13-1007

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Manager of the Facilities Department recommends accepting the retirement of Anna Adkins; effective November 12, 2013.

Therefore Be it Resolved the Board of Commissioners accept the retirement of Anna Adkins from the Facilities Department; effective November 12, 2013.

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

RESOLUTION NO. 13-1008

IN THE MATTER OF APPROVING THE 2014 HEALTH INSURANCE RENEWAL RATES FROM THE COUNTY EMPLOYEE BENEFITS CONSORTIUM OF OHIO:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has, pursuant to sections 9.833 and 305.171 of the Revised Code, provided certain group insurance coverage for county officers and employees; and

WHEREAS, the Board wishes to continue the group health insurance coverage for Delaware County employees for 2014; and

WHEREAS, in order to provide the most comprehensive and cost effective health insurance and prescription drug coverage within the available budget to the employees of Delaware County, the Board authorized continued participation in the County Employee Benefits Consortium of Ohio (CEBCO) for 2014; and

WHEREAS, the Assistant County Administrator / Director of Administrative Services and the Insurance & Risk Technician, recommend accepting the renewal rates for 2014 from CEBCO;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following renewal rates for 2014 from CEBCO:

**DELAWARE COUNTY RENEWAL FOR 2014**

Delaware County will provide the Medical PPO Plan 2 plan design for 2014 for eligible employees. The employer contribution rates are:

<b>2014 Renewal Rate</b>	<b>PPO Plan 2</b>	<b>RX Plan</b>
Employee	\$ 450.42	\$ 117.22
Employee + Family	\$1182.80	\$ 309.00

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Rates for the Employee Contribution for Medical PPO Plan 2:

Employee Contribution (SINGLE): \$29.50/mth  
 Employee Contribution (FAMILY): \$77.20/mth

The plan change for the benefit year 2014 includes a rate adjustment for the employee copayment for emergency room visits from \$75.00 to \$200.00 and the updated prescription drug program from CVS / Caremark to RxOC/ESI ~ Express Scripts. All other plan benefits and eligibility requirements remain consistent with the prior years plan.

An outline of the services and coverage is attached to this resolution.  
 (Documents available in the Administrative Services Department until no longer of administrative value).

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

**RESOLUTION NO. 13-1009**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS AND TRANSFER OF FUNDS FOR 911 EQUIPMENT UPGRADE:**

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

**Supplemental Appropriations**

10011102-5801	Commissioners General/Miscellaneous Cash Transfers	5,900,000.00
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41711436-5450	Capital Acquisition & Project/Capital Equipment	5,900,000.00
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**Transfer of Funds**

<b>From</b>	<b>To</b>	
10011102-5801	41711436-4601	5,900,000.00
Commissioners General/Miscellaneous Cash Transfers	Capital Acquisition & Project/Interfund Revenues	

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

**RESOLUTION NO. 13-1010**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT; EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES AND PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. Merrell, seconded by Mr. Stapleton to adjourn into Executive Session at 12:50PM.

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

**RESOLUTION NO. 13-1011**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by \_\_\_\_\_, seconded by \_\_\_\_\_ to adjourn out of Executive Session at \_\_\_\_\_ PM.

Vote on Motion Mr. O'Brien Mr. Merrell Mr. Stapleton

**RESOLUTION NO. 13-1012**

**IN THE MATTER OF APPROVING AN ASSET PURCHASE AND BOND MODIFICATION AND REDEMPTION AGREEMENT WITH THE CONCORD/SCIOTO COMMUNITY AUTHORITY AND OTHERS; APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CONCORD/SCIOTO COMMUNITY AUTHORITY; APPROVING AN AMENDED AND RESTATED SUBDIVIDER'S AGREEMENT WITH DONALD R. KENNEY FOR THE SCIOTO RESERVE GOLF CLUB COMMUNITY SUBDIVISION:**

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has previously entered into an Intergovernmental Cooperation Agreement with the Concord/Scioto Community Authority for the financing and construction of the Lower Scioto Water Reclamation Facility ("LSWRF"); and

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WHEREAS, various disputes arose during the construction of the LSWRF, culminating in a mediated settlement with the design-builder for the LSWRF; and

WHEREAS, under the terms of the existing Intergovernmental Cooperation Agreement, the Concord/Scioto Community Authority is prepared to dedicate the LSWRF to Delaware County; and

WHEREAS, in order to provide for the most expeditious and efficient utilization of the LSWRF, as well as to provide for the most flexible and economical planning for the future of the Delaware County Regional Sewer District as a whole, the Board deems it to be in the best interests of Delaware County to, in addition to acceptance of the LSWRF, acquire all remaining tap credits granted to the Concord/Scioto Community Authority; and

WHEREAS, the termination of the trust established in connection with the financing of the LSWRF is a necessary step to accomplish this acquisition; and

WHEREAS, upon termination of the trust and the Board's acquisition of the Concord/Scioto Community Authority's assets, an amended and restated Intergovernmental Cooperation Agreement is necessary to reorganize the relationship between the parties; and

WHEREAS, the Board has also previously entered into a Subdivider's Agreement with Donald R. Kenney for the Scioto Reserve Golf Club Community Subdivision; and

WHEREAS, amendment of the Subdivider's Agreement, in conjunction with the other agreements approved herein, will further the goals stated herein to provide for the most expeditious and efficient utilization of the LSWRF, as well as to provide for the most flexible and economical planning for the future of the Delaware County Regional Sewer District as a whole;

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

Section 1. The Board hereby approves the Asset Purchase and Bond Modification and Redemption Agreement with the Concord/Scioto Community Authority, Concord/Scioto Development, LLC, Huntington National Bank, Huntington Municipal Fund II, Cheryl A. Kenney, R. Andrew Johnson, Charles A. Vince, and John W. Zeiger.

Section 2. The Board hereby approves the Amended and Restated Intergovernmental Cooperation Agreement with the Concord/Scioto Community Authority.

Section 3. The Board hereby approves the Amended and Restated Subdivider's Agreement with Donald R. Kenney for the Scioto Reserve Golf Club Community Subdivision.

Section 4. The President of the Board is specifically authorized to execute any and all of the agreements approved herein on behalf of the Board and to execute any and all ancillary documents necessary to accomplish the transfers set forth therein.

Section 5. The Board hereby approves the following voucher:

Voucher To Concord/Scioto Community Authority, (Org Key 66611905-5380) In The Amount Of \$14,062,374.65.

Section 6. It is hereby found and determined that all formal actions of this Board concerning or related to the adoption of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and any of its committees that resulted in such formal actions were conducted in compliance with all applicable requirements of the Ohio Revised Code.

**ASSET PURCHASE AND BOND MODIFICATION AND REDEMPTION AGREEMENT**

by and among

**COUNTY OF DELAWARE, OHIO**

**CONCORD/SCIOTO COMMUNITY AUTHORITY  
CONCORD/SCIOTO DEVELOPMENT, LLC,  
as Developer**

**THE HUNTINGTON NATIONAL BANK,  
as Trustee**

**HUNTINGTON MUNICIPAL FUND II, INC.,  
as Bondholder**

**KENNEY ASSET MANAGEMENT, LLC,**

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as Bondholder

**R. ANDREW JOHNSON,**  
 as Bondholder

**CHARLES A. VINCE,**  
 as Bondholder

and

**JOHN W. ZEIGER,**  
 as Bondholder

Dated as of October 1, 2013

Regarding the Modification, Redemption, and Purchase of \$14,600,000 Concord/Scioto Community Authority  
 Community Facilities Bonds, Series 2007A

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**ASSET PURCHASE AND BOND MODIFICATION AND REDEMPTION AGREEMENT**

This Bond Modification, Redemption, and Purchase Agreement, dated as of October 1, 2013 (the “Agreement”) is made by and among THE COUNTY OF DELAWARE, OHIO (the “County”), an Ohio county duly organized under the laws of the State of Ohio; the CONCORD/SCIOTO COMMUNITY AUTHORITY (the “Authority”), a body both corporate and politic and performing essential functions of the State, duly created and existing under and by virtue of Ohio Revised Code Chapter 349; CONCORD/SCIOTO DEVELOPMENT, LLC (the “Developer”), a limited liability company duly organized and validly existing under and by virtue of the laws of the State of Ohio and is the developer of the Authority; THE HUNTINGTON NATIONAL BANK, a national banking association organized and existing under and by virtue of the laws of the United States of America and authorized to exercise corporate trust powers in the State of Ohio, with its principal place of business located in Columbus, Ohio (the “Trustee”), as Trustee for the Concord/Scioto Community Authority Community Facilities Bonds, Series 2007A (the “Series 2007A Bonds”); HUNTINGTON MUNICIPAL FUND II, INC., an Ohio corporation, as Bondholder of the Series 2007A Bond designated RA-1; KENNEY ASSET MANAGEMENT, LLC, an Ohio limited liability company, as Bondholder of the Series 2007A Bond designated RA-6; R. ANDREW JOHNSON, a natural person, as Bondholder of the Series 2007A Bond designated RA-3; CHARLES A. VINCE, a natural person, as Bondholder of the Series 2007A Bond designated RA-4; and JOHN W. ZEIGER, a natural person, as Bondholder of the Series 2007A Bond designated RA-5 (Huntington Municipal Fund II, Inc., Kenney Asset Management, LLC, R. Andrew Johnson, Charles A. Vince, and John W. Zeiger shall be referred to herein collectively as the “Bondholders”).

**WITNESSETH:**

WHEREAS, pursuant to Ohio Revised Code Chapter 349 (“Chapter 349”), the Developer organized the Authority as a new community authority to govern the Concord/Scioto Community District (the “District”); and

WHEREAS, the orderly development of the District required that the District be served by a 1.4 million (1,400,000) gallon per day capacity sanitary wastewater treatment facility known as the Lower Scioto Water Reclamation Facility, a treated sewage effluent line, a sanitary sewage lift station, a force main capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, centralized potable water distribution infrastructure capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, including a 16-in. diameter ductile iron water line and associated hydrants, valves and other appurtenances, acquiring certain interests in land, including but not limited to a site for a water storage tank capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, and related improvements, including, without limitation, the necessary real property, sewers, pipelines, pumps, utility-related fixtures and other related fixtures and appurtenances thereto (collectively, the “Series 2007A Project”); and

WHEREAS, pursuant to Resolution No. 2007-05 adopted on September 19, 2007, the Authority entered into the Master Trust Agreement, dated as of November 1, 2007 (the “Master Trust Agreement”), between the Authority and the Trustee, which Master Trust Agreement provided for the issuance from time to time of Community Facilities Bonds; and

WHEREAS, pursuant to Resolution No. 2007-08 adopted on November 5, 2007, the Authority entered into the First Supplemental Trust Agreement, dated as of November 1, 2007 (the “First Supplement”), between the Authority and the Trustee, which First Supplement provided for the issuance of the Series 2007A Bonds and the Series 2007B Bonds, and pursuant to Resolution No. 2007-07 adopted on September 19, 2007, the Authority entered into a Second Supplemental Trust Agreement, dated as of November 1, 2007 (the “Second Supplement”), between the Authority and the Trustee, which Second Supplement provided for the issuance of the Series 2007C Bonds; and

WHEREAS, on November 15, 2007, the Authority issued \$14,600,000 of its Series 2007A Bonds to pay a portion of the costs of the Series 2007A Project; and

WHEREAS, the Authority’s operations and the Authority’s activities to acquire, construct, and install the Series 2007A Project and convey the same to the County have been conducted in compliance with the terms and conditions set forth in the Intergovernmental Cooperation Agreement, dated as of November 1, 2007, as amended by the First Amendment to the Intergovernmental Cooperation Agreement, dated as of September 11, 2008 and the Second Amendment to the Intergovernmental Cooperation Agreement, dated as of December 29, 2008 (collectively, the “Intergovernmental Cooperation Agreement”); and

WHEREAS, the Authority contracted with the Developer to serve as its construction agent for the construction of the Series 2007A Project in exchange for a construction management fee (the “Construction

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Management Fee”) in compliance with the terms and conditions set forth in the Infrastructure Construction and Acquisition Agreement, dated as of November 1, 2007, as amended by the First Amendment to the Infrastructure Construction and Acquisition Agreement, dated as of September 15, 2008 and the Second Amendment to the Infrastructure Construction and Acquisition Agreement, dated as of March 20, 2009 (collectively, the “Infrastructure Agreement”); and

WHEREAS, pursuant to the Intergovernmental Cooperation Agreement, the Authority received an allotment of sewer taps from the County, with each sewer tap representing the right of the sewer tap owner to tap into the County’s sewer system (collectively, the “Sewer Taps”), and the Authority was authorized to sell Sewer Taps allotted to it by the County and to use Sewer Tap revenues to pay debt service on the Series 2007A Bonds when due; and

WHEREAS, the Authority was unable to sell sufficient Sewer Taps to pay all debt service on the Series 2007A Bonds when due, and the Series 2007A Bonds have been in default; and

WHEREAS, pursuant to Resolution No. 2008-06 adopted on December 19, 2008, the Authority entered into the Amendment to the First Supplemental Trust Agreement, dated as of March 1, 2009 (the “Amendment to the First Supplement”) with the Trustee, which Amendment to the First Supplement provided for the County’s payment of certain debt service on the Series 2007A Bonds and revisions to the uses to which Sewer Tap revenues could be applied; and

WHEREAS, the Authority has found and determined in Resolution No. 2013-01 adopted by the Board of Trustees of the Authority on June 18, 2013 that the Series 2007A Project is final and complete and, in accordance with the Intergovernmental Cooperation Agreement, shall be dedicated and conveyed to the County; and

WHEREAS, the County has found and determined in Resolution No. 13-1012 adopted by the Board of County Commissioners of the County on September 30, 2013 that it is in the best interests of the County to acquire the Series 2007A Project and all Sewer Taps that are owned by the Authority and remain unsold by the Authority (collectively, the “Unsold Sewer Taps”); and

WHEREAS, the County, the Authority, the Developer, the Trustee, and the Bondholders have agreed that (i) the County will acquire the Series 2007A Project and all Unsold Sewer Taps upon payment of the purchase price identified herein (the “Purchase Price”), (ii) the Authority will convey to the County all right, title, and interest in and to the Series 2007A Project and all Unsold Sewer Taps, and (iii) the Authority will use a portion of the Purchase Price to redeem the Series 2007A Bonds at the redemption price identified herein (the “Redemption Price”); and

WHEREAS, the orderly development of the District may require that the District be served by centralized wastewater collection, conveyance, and treatment infrastructure and other improvements qualifying as “Community Facilities”, “Land Acquisition”, and “Land Development” under Chapter 349, all to be constructed in accordance with the Intergovernmental Cooperation Agreement (collectively, the “Improvements”), and the County is desirous of having future Improvements acquired, constructed and installed to serve the District and of financing future Improvements with a minimal outlay of County funds; and

WHEREAS, the County and the Authority intend to amend and restate the Intergovernmental Cooperation Agreement by the Amended and Restated Intergovernmental Cooperation Agreement, dated as of October 1, 2013 (the “Amended and Restated Intergovernmental Cooperation Agreement”) to authorize the Authority’s operations and the Authority’s activities to acquire, construct, and install future Improvements; and

WHEREAS, the County, the Authority, the Developer, the Trustee, and the Bondholders desire in this Agreement to: (i) authorize the purchase of the Series 2007A Project and all Unsold Sewer Taps at the Purchase Price; (ii) provide for the redemption of the Series 2007A Bonds; (iii) consent to modifications of the terms of the Series 2007A Bonds; (iv) convey the Series 2007A Project from the Authority to the County; (v) convey all Unsold Sewer Taps from the Authority to the County; (vi) provide for the County to satisfy the Authority’s obligation to pay the Construction Management Fee for the Series 2007A Project to the Developer; (vii) terminate the lien of the Trust Agreement; (viii) consent to amendments to certain Authority documents, including the Amended and Restated Intergovernmental Cooperation Agreement; and (ix) authorize certain other actions in connection with the foregoing.

NOW, THEREFORE, in consideration of the foregoing and the promises of the parties hereto to be bound by the terms hereof and for other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the County, the Authority, the Developer, the Trustee, and the Bondholders agree to the foregoing and as follows:

**ARTICLE I**

**INTERPRETATION**

1.01 **Defined Terms.** All words and terms not otherwise defined herein shall have the respective meanings assigned to them in this Section 1.01, unless the context or use clearly indicates another or different meaning or intent.

The following terms shall have the meanings set forth below:

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“Administrative Expense Fund” means the Concord/Scioto Community Authority Administrative Expense Fund established pursuant to the Trust Agreement.

“Administrator” means Argus Growth Consultants, Ltd.

“Agreement” means this Asset Purchase and Bond Modification and Redemption Agreement by and the Authority; the County; the Developer; the Trustee; and Huntington Municipal Fund II, Inc., Kenney Asset Management, LLC, R. Andrew Johnson, Charles A. Vince, and John W. Zeiger, as Bondholders, dated as of October 1, 2013.

“Amendment to the First Supplement” means the Amendment to the First Supplemental Trust Agreement, dated as of March 1, 2009, between the Authority and the Trustee.

“Authority” means the Concord/Scioto Community Authority, a new community authority under Ohio Revised Code Chapter 349 established by the Board of County Commissioners of Delaware County, Ohio pursuant to Resolution No. 07-331 adopted on March 22, 2007.

“Bondholders” means, collectively, Huntington Municipal Fund II, Inc., an Ohio corporation, as Bondholder of the Series 2007A Bond designated RA-1; Kenney Asset Management, LLC, an Ohio limited liability company, as Bondholder of the Series 2007A Bond designated RA-6; R. Andrew Johnson, a natural person, as Bondholder of the Series 2007A Bond designated RA-3; Charles A. Vince, a natural person, as Bondholder of the Series 2007A Bond designated RA-4; and John W. Zeiger, a natural person, as Bondholder of the Series 2007A Bond designated RA-5.

“County” means Delaware County, Ohio, a county organized under the laws of the State of Ohio.

“Debt Service Fund” means the Concord/Scioto Community Authority Debt Service Fund established pursuant to the Trust Agreement.

“Developer” means Concord/Scioto Development, LLC, a limited liability company duly organized and validly existing under and by virtue of the laws of the State of Ohio and the developer of the Authority.

“First Supplement” means the First Supplemental Trust Agreement, dated as of November 1, 2007, between the Authority and the Trustee, which First Supplement provided for the issuance of the Series 2007A Bonds and the Series 2007B Bonds.

“Infrastructure Agreement” means the Infrastructure Construction and Acquisition Agreement, dated as of November 1, 2007, between the Authority and the Developer, as amended by the First Amendment to the Infrastructure Construction and Acquisition Agreement, dated as of September 15, 2008, as amended by the Second Amendment to the Infrastructure Construction and Acquisition Agreement, dated as of March 20, 2009.

“Intergovernmental Cooperation Agreement” means the Intergovernmental Cooperation Agreement (Lower Scioto Water Reclamation Facility), dated as of November 1, 2007, between the Authority and the County, as amended by the First Amendment to the Intergovernmental Cooperation Agreement, dated as of September 11, 2008, as amended by the Second Amendment to the Intergovernmental Cooperation Agreement, dated as of December 29, 2008.

“Master Trust Agreement” means the Master Trust Agreement, dated as of November 1, 2007, between the Authority and the Trustee.

“Outstanding” or “outstanding” as applied to particular obligations, to obligations of any series or to all obligations issued by the Authority pursuant to the Trust Agreement, means, as of any date, the obligations to which the reference applies and which have been authenticated and delivered, or are then being authenticated and delivered, by the Trustee under the Trust Agreement except:

(i) obligations canceled or retained in safekeeping upon surrender, exchange or transfer, or cancelled by reason of payment or redemption on or prior to that date;

(ii) obligations, or the portion of obligations, for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to that date with the Trustee or paying agents (whether upon or prior to the maturity or redemption date of those Obligations), or which are deemed to have been paid or caused to be paid, as provided in Article IX of the Trust Agreement; provided (a) that if those obligations are to be redeemed prior to their stated maturity, notice of that redemption has been given or arrangements satisfactory to the Trustee have been made for giving that notice, or waiver of that notice satisfactory in form to the Trustee has been filed with the Trustee, and (b) that if those obligations are to be purchased for cancellation, a firm offer for sale stating the price has been received and accepted; and

(iii) lost, stolen, mutilated or destroyed obligations in lieu of which others have been authenticated (or payment when due of which is made without replacement) under the Trust Agreement.

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“Project Fund” means the Concord/Scioto Community Authority Project Fund created pursuant to the Trust Agreement.

“Purchase Price” means that amount payable pursuant to this Agreement by the County in consideration of the acquisition by the County from the Authority of the Series 2007A Project and the Unsold Sewer Taps, as provided more fully in Section 3.10 hereof.

“Redemption Price” means Fourteen Million Five Hundred Eighty-Seven Thousand Nine Hundred and Forty-Eight Dollars and Seventy-Four Cents (\$14,587,948.74), being the outstanding principal amount of the Series 2007A Bonds of Thirteen Million Nine Hundred Ninety Thousand Dollars (\$13,990,000.00), plus accrued and unpaid interest on the Series 2007A Bonds through the date of redemption of Five Hundred Ninety Seven Thousand Nine Hundred and Forty-Eight Dollars and Seventy-Four Cents (\$597,948.74).

“Second Supplement” means the Second Supplemental Trust agreement, dated as of November 1, 2007, between the Authority and the Trustee, which Second Supplement provided for the issuance of the Series 2007C Bonds.

“Series 2007A Bonds” means the \$14,600,000 Concord/Scioto Community Authority Community Facilities Bonds, Series 2007A, dated November 15, 2007.

“Series 2007A Project” means the property financed, directly or indirectly, with the proceeds of the Series 2007A Bonds, namely a 1.4 million (1,400,000) gallon per day capacity sanitary wastewater treatment facility known as the Lower Scioto Water Reclamation Facility, a treated sewage effluent line, a sanitary sewage lift station, a force main capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, centralized potable water distribution infrastructure capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, including a 16-in. diameter ductile iron water line and associated hydrants, valves and other appurtenances, acquiring certain interests in land, including but not limited to a site for a water storage tank capable of providing services to the area served by the Lower Scioto Water Reclamation Facility, and related improvements, including, without limitation, the necessary real property, sewers, pipelines, pumps, utility-related fixtures and other related fixtures and appurtenances thereto.

“Sewer Taps” means the allotment of sewer taps that the County provided to the Authority pursuant to the Intergovernmental Cooperation Agreement, each of which sewer taps represents the right of the sewer tap owner to tap into the County’s sewer system.

“Tap Fee Expense Fund” means the Tap Fee Expense Fund created pursuant to the Trust Agreement.

“Transaction Documents” means this Agreement and the Amended and Restated Intergovernmental Cooperation Agreement, dated as of even date herewith, between the Authority and the County.

“Trust Agreement” means, collectively, the Master Trust Agreement, as supplemented by the First Supplement, as amended by the Amendment to the First Supplement, as supplemented by the Second Supplement, each between the Authority and the Trustee.

“Unsold Sewer Taps” means those Sewer Taps held by the Authority which remain unsold as of the date on which this Agreement is executed.

**1.02 Interpretation.** Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Revised Code, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Authority.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder”, “hereinafter” and similar terms refer to this Agreement. Words of any gender include the correlative worth of the other genders, unless the sense indicates otherwise.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

## ARTICLE II

### **REPRESENTATIONS AND WARRANTIES**

**2.01 Certain Representations and Warranties of County.** The County represents and warrants as of the date of delivery of this Agreement that:

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- (i) It is a county duly organized and validly existing under the Constitution and laws of the State.
- (ii) It has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of the Transaction Documents and to constitute such Transaction Documents as valid and binding instruments enforceable in accordance with their respective terms.
- (iii) It is not in violation of or in conflict with any provision of the laws of the State, which would impair its ability to observe and perform its covenants, agreements and obligations under the Transaction Documents, and the performance of the Transaction Documents will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any statute, resolution, agreement, or other instrument to which the County is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over County or any of its activities or properties.
- (iv) It has full power and authority (i) to execute, deliver, observe and perform the Transaction Documents and all other instruments and documents executed and delivered by the County in connection therewith and (ii) to enter into, observe and perform the transactions contemplated in the Transaction Documents and those other instruments and documents.
- (v) It has duly authorized the execution, delivery, observance and performance of the Transaction Documents.

2.02 **Certain Representations and Warranties of Authority.** The Authority represents and warrants as of the date of delivery of this Agreement that:

- (i) It is a new community authority duly organized and validly existing under the Constitution and laws of the State.
- (ii) It has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of the Transaction Documents and to constitute such Transaction Documents as valid and binding instruments enforceable in accordance with their respective terms.
- (iii) It is not in violation of or in conflict with any provision of the laws of the State, which would impair its ability to observe and perform its covenants, agreements and obligations under the Transaction Documents, and the performance of the Transaction Documents will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any statute, resolution, agreement, or other instrument to which the Authority is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Authority or any of its activities or properties.
- (iv) It has full power and authority (i) to execute, deliver, observe and perform the Transaction Documents and all other instruments and documents executed and delivered by the Authority in connection therewith and (ii) to enter into, observe and perform the transactions contemplated in the Transaction Documents and those other instruments and documents.
- (v) It has duly authorized the execution, delivery, observance and performance of the Transaction Documents.

2.03 **Certain Representations and Warranties of Developer.** Developer represents and warrants as of the date of delivery of this Agreement that:

- (i) Developer (i) is an Ohio limited liability company duly organized, validly existing and in good standing under the laws of the State and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.
- (ii) The execution and delivery by Developer of the Agreement and the compliance and performance by Developer with all of the provisions hereof (i) are within the authority and powers of Developer, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, articles of organization, operating agreement or other instrument to which Developer is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Developer or any of its

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activities or properties, and (iii) have been duly authorized by all necessary action on the part of Developer.

- (iii) All acts and conditions required to happen, exist, and be performed by the Developer precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement.

2.04 **Certain Representations and Warranties of Trustee.** The Trustee represents and warrants as of the date of delivery of this Agreement that:

- (i) The Trustee (i) is a national banking association organized and existing under and by virtue of the laws of the United States of America and authorized to exercise corporate trust powers in the State of Ohio and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.
- (ii) The execution and delivery by Trustee of the Agreement and the compliance and performance by Trustee with all of the provisions hereof (i) are within the authority and powers of Trustee, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, articles of organization, operating agreement or other instrument to which Trustee is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Trustee or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of Trustee.
- (iii) All acts and conditions required to happen, exist, and be performed by the Trustee precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement.

2.05 **Certain Representations and Warranties of the Bondholders.**

- (i) Huntington Municipal Fund II, Inc., as Bondholder of the Series 2007A Bond designated RA-1 in the original principal amount of Eleven Million Seven Hundred Thousand Dollars (\$11,700,000) hereby represents and warrants that (a) it is an Ohio corporation duly organized, validly existing and in good standing under the laws of the State, (b) it has full power and authority to execute, deliver, observe and perform the Agreement, and all acts and conditions required to happen, exist, and be performed by it precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement, (c) it has full power and authority to give the consents and waivers contained in the Agreement, and (d) the consents and waivers it gives in the Agreement will not violate, conflict with or result in the breach of or a default under any terms or provisions of the Trust Agreement or the Series 2007A Bonds.
- (ii) Kenney Asset Management, LLC, as Bondholder of the Series 2007A Bond designated RA-6 in the original principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000) hereby represents and warrants that (a) she is a natural person, (b) she has full power to execute, deliver, observe and perform the Agreement, and all acts and conditions required to happen, exist, and be performed by her precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement, (c) she has full power to give the consents and waivers contained in the Agreement, and (d) the consents and waivers she gives in the Agreement will not violate, conflict with or result in the breach of or a default under any terms or provisions of the Trust Agreement or the Series 2007A Bonds.
- (iii) R. Andrew Johnson, as Bondholder of the Series 2007A Bond designated RA-3 in the original principal amount of One Million Dollars (\$1,000,000) hereby represents and warrants that (a) he is a natural person, (b) he has full power to execute, deliver, observe and perform the Agreement, and all acts and conditions required to happen, exist, and be performed by him precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement, (c) he has full power to give the consents and waivers contained in the Agreement, and (d) the consents and waivers he gives in the Agreement will not violate, conflict with or result in the breach of or a default under any terms or provisions of the Trust Agreement or the Series 2007A Bonds.

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- (iv) Charles A. Vince, as Bondholder of the Series 2007A Bond designated RA-4 in the original principal amount of Three Hundred Thousand Dollars (\$300,000) hereby represents and warrants that (a) he is a natural person, (b) he has full power to execute, deliver, observe and perform the Agreement, and all acts and conditions required to happen, exist, and be performed by him precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement, (c) he has full power to give the consents and waivers contained in the Agreement, and (d) the consents and waivers he gives in the Agreement will not violate, conflict with or result in the breach of or a default under any terms or provisions of the Trust Agreement or the Series 2007A Bonds.
- (v) John W. Zeiger, as Bondholder of the Series 2007A Bond designated RA-5 in the original principal amount of Two Hundred Thousand Dollars (\$200,000) hereby represents and warrants that (a) he is a natural person, (b) he has full power to execute, deliver, observe and perform the Agreement, and all acts and conditions required to happen, exist, and be performed by him precedent to the execution and delivery of this Agreement have happened, exist, and have been performed to make this Agreement a valid, binding, legal, and enforceable Agreement, (c) he has full power to give the consents and waivers contained in the Agreement, and (d) the consents and waivers he gives in the Agreement will not violate, conflict with or result in the breach of or a default under any terms or provisions of the Trust Agreement or the Series 2007A Bonds.

**ARTICLE III**

**ACQUISITION OF SERIES 2007A PROJECT; ACQUISITION OF UNSOLD SEWER TAPS;  
PURCHASE PRICE**

3.01 **Determination of Completion of Series 2007A Project.** The Authority hereby finds and determines that the Series 2007A Project is final and complete.

3.02 **Dedication of Series 2007A Project.** The Authority hereby dedicates, bargains, sells, grants, conveys and assigns to the County any and all interests that the Authority has in the Series 2007A Project including, without limitation, the following property:

- (i) The Lower Scioto Water Reclamation Facility located at Concord Township, VMS 1441 in lots 1 and 2 of Subdivision of Lot No. 5, including but not limited to all furniture, fixtures, and equipment located therein, including the site of the Lower Scioto Water Reclamation Facility, namely, the following Delaware County, Ohio Auditor's parcel number: 60021002022000; and
- (ii) All sewer, pipeline, or other infrastructure constructed to deliver untreated or treated wastewater to or from the Lower Scioto Water Reclamation Facility, along with the easements and rights-of-way within which such infrastructure is or will be constructed.

3.03 **Acceptance.** The County hereby irrevocably accepts the dedication from the Authority of the Series 2007A Project and assumes all legal responsibility for the same. The County agrees that the Series 2007A Project, including construction of the Lower Scioto Water Reclamation Facility, is final and complete and as such, as set forth in Section X of the Intergovernmental Cooperation Agreement, the County hereby accepts dedication of all improvements which comprise or connect to the Lower Scioto Water Reclamation Facility and all associated interests in real estate.

3.04 **Acquisition of Series 2007A Project and Documents.** The County shall execute the instrument of conveyance attached hereto as Exhibit A, being the "Assignment of Utility Easement Recorded at Deed Book 818, Page 2521, Delaware County Recorder's Office," and shall cause it to be recorded in the records of the Delaware County, Ohio Recorder's office. The County shall execute the instrument of conveyance attached hereto as Exhibit B, being the "Bill of Sale for Lower Scioto Water Reclamation Facility." The County shall accept the Limited Warranty Deed for the Series 2007A Project, which includes the Lower Scioto Water Reclamation Facility, attached hereto as Exhibit C, and shall cause it to be recorded in the records of the Delaware County, Ohio Recorder's office. The transfer of the Series 2007A Project shall occur regardless of the state of title within sixty (60) days after the execution of this Agreement.

3.05 **Transfer and Acquisition of Unsold Sewer Taps.** The Authority hereby conveys to the County Three Thousand Four Hundred Ninety-Three and Fifty-Two Hundredths (3,493.52) Unsold Sewer Taps, representing rights to tap into the County's sanitary sewer collection and treatment system originally conveyed to the Authority by the County pursuant to Section XI of the Intergovernmental Cooperation Agreement, and the County accepts such conveyance. The Authority makes no representations or warranties as to its right, title, and interest in and to the Unsold Sewer Taps hereby conveyed to the County. Notwithstanding anything in this Agreement to the contrary, all rights to Sewer Taps that were actually sold by the Authority before the date on which this Agreement is executed shall continue to benefit the owners thereof, and the County shall not take any action to amend, revoke, or terminate the rights of any owners of any Sewer Taps that were actually sold by the Authority before the date on which this Agreement is executed.

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3.06 **Transfer and Acquisition of Fund Balances.** The Authority hereby transfers to the County, and the County hereby accepts the transfer, of any and all moneys, investments, and funds on deposit with the Trustee, including any and all moneys, investments, and funds held in the Administrative Expense Fund, the Tap Fee Expense Fund, the Project Fund, and the Debt Service Fund upon execution of this Agreement in the amount of One Million Four Hundred Forty-Five Thousand Five Hundred Seventy-Four Dollars and Nine Cents (\$1,445,574.09).

3.07 **Title Insurance.** The Authority has obtained a current commitment for a Policy for Owner's Title Insurance in the amount of the Purchase Price issued by Chicago Title Insurance Company (the "Title Company"). The Commitment is an agreement to insure in the County, and the Commitment shows in the Authority, marketable title in fee simple, free and clear of all liens and encumbrances except: (a) those created by or assumed by the County; (b) general real estate taxes and special assessments which are a lien, but not then payable or delinquent; and (c) utility and other easements of record which, in the County's opinion, do not affect the suitability of the Series 2007A Project for the County's proposed use thereof (herein, the "Permitted Encumbrances"). The Policy does not contain a survey exception or an exception for unfiled mechanics' liens. The County agrees not to mortgage, pledge or subject the Series 2007A Project or any part thereof to a lien or other encumbrance prior to the transfer of the Series 2007A Project except as may be approved by the County upon prior written notice to the Authority. Upon transfer of the Series 2007A Project in accordance with Section 3.04 hereof, the Authority shall pay the Title Company for the costs of the Commitment and the Policy (including reasonable search fees), and the Authority shall execute and deliver to the County and the Title Company a Non-Foreign Affidavit, a section 1099 reporting form, and an affidavit with respect to off-record title matters, including mechanics liens, in accordance with the community custom.

3.08 **Rebate Obligation.** The County and the Authority agree that the Authority shall retain from the Purchase Price sufficient funds to pay any rebate liability due to the United States of America. The Authority shall cause the Administrator to compute any rebate liability on the Series 2007A Bonds within thirty (30) days after the date on which this Agreement is executed. If a rebate liability is owed to the United States of America, the Authority shall pay to the United States of America one hundred percent (100%) of the rebate liability from any Authority funds available for such purpose. The Authority shall retain all records with respect to any rebate calculations and payments of rebate obligations until six (6) years after the Series 2007A Bonds are no longer Outstanding.

3.09 **Purchase Price; Settlement.** The County hereby agrees to purchase from the Authority, and the Authority hereby agrees to sell to the County, the Series 2007A Project pursuant to Section 3.04 hereof, the Unsold Sewer Taps pursuant to Section 3.05 hereof, and the fund balances pursuant to Section 3.06 hereof. In consideration for the acquisition of the Series 2007A Project pursuant to Section 3.04 hereof, the Unsold Sewer Taps pursuant to Section 3.05 hereof, and the fund balances pursuant to Section 3.06 hereof, the County shall pay to the Trustee, for the account of the Authority, the Purchase Price.

The Purchase Price shall equal Fourteen Million Sixty-Two Thousand Three Hundred Seventy-Four Dollars and Sixty-Five Cents (\$14,062,374.65), being the outstanding principal amount of the Series 2007A Bonds of Thirteen Million Nine Hundred Ninety Thousand Dollars (\$13,990,000.00), plus accrued and unpaid interest on the Series 2007A Bonds through the date of redemption of Five Hundred Ninty Seven Thousand Nine Hundred and Forty-Eight Dollars and Seventy-Four Cents (\$597,948.74), plus the amount of Three Hundred and Seventy Thousand Dollars (\$370,000.00) representing Authority administrative expenses to be applied in accordance with Section 5.05 hereof, plus the amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) equal to the Construction Management Fee to be applied in accordance with Section 5.06 hereof, less One Million Four Hundred Forty-Five Thousand Five Hundred Seventy-Four Dollars and Nine Cents (\$1,445,574.09) equal to the fund balances held in the Administrative Expense Fund, the Tap Fee Expense Fund, the Project Fund, and the Debt Service Fund acquired by the County in accordance with Section 3.06 hereof. The Trustee shall apply the Purchase Price in accordance with Article V hereof.

The Purchase Price shall be paid by the County to the Trustee, for the account of the Authority, in immediately available funds upon execution of this Agreement.

#### **ARTICLE IV**

##### **BOND Modification and Redemption**

4.01 **Modification By Unanimous Consent.** The Authority, the Trustee, and the Bondholders each acknowledge and agree that pursuant to Section 8.05 of the Master Trust Agreement the rights and obligations of the Authority and the Bondholders, and the terms and provisions of the Series 2007A Bonds and the Trust Agreement, may be modified or altered in any respect with the consents of the Authority and the holders of one hundred percent (100%) of the Outstanding Series 2007A Bonds affected by the modification or alteration.

4.02 **Bondholder Consents.** Each Bondholder consents to:

- (i) **the execution and delivery of this Agreement;**
- (ii) **the modification of the terms of their respective Series 2007A Bonds as provided by this Agreement;**



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- (iii) **the redemption of their respective Series 2007A Bonds as provided by this Agreement at the Redemption Price authorized by this Agreement;**
- (iv) **the variation of the redemption provisions of the Trust Agreement;**
- (v) **the termination of the Trust Agreement, and the release of the lien of the Trust Agreement as provided by this Agreement;**
- (vi) **the amendment and restatement of the Intergovernmental Cooperation Agreement by the Amended and Restated Intergovernmental Cooperation Agreement;**
- (vii) **the termination of the Infrastructure Agreement;**
- (viii) **the sale by the Authority of Sewer Taps at a price equal to \$5,800 per Sewer Tap during the period of time during which the Bondholders, the Authority, the Developer, and the County conducted good faith negotiations to authorize this Agreement;**

**4.03 Bondholder Waivers.** Each Bondholder waives:

- (i) all right to receive written notice of the redemption authorized by this Agreement pursuant to Article III of the Master Trust Agreement;
- (ii) the requirements of Article III of the Master Trust Agreement with respect to the redemption authorized by this Agreement;
- (iii) any and all Events of Default under the Trust Agreement;
- (iv) the right to enforce the covenants of the Authority and the Trustee to provide the Bondholders with notice or a copy of the this Agreement in accordance with Article VIII of the Master Trust Agreement; and
- (v) the right to enforce the Authority's covenant in Article 4, subsection (b) of the First Supplement, as amended by the Amendment to the First Supplement, that the Authority will not modify the Infrastructure Agreement, the Intergovernmental Cooperation Agreement, or otherwise take any action in a way that would materially adversely affect the Authority's ability to collect Sewer Tap revenues;
- (vi) the right to enforce the Authority's covenant in Article 4, subsection (e) of the First Supplement, as amended by the Amendment to the First Supplement, that the Authority will use commercially reasonable efforts to sell all Sewer Taps;

**4.04 Bondholder Acknowledgments and Agreements.** Each Bondholder acknowledges and agrees that:

- (i) pursuant to Section 8.05 of the Master Trust Agreement, the consents and waivers provided for in this Article IV are effective only upon obtaining the consent and waiver of one hundred percent (100%) of the Bondholders and the Authority; and
- (ii) pursuant to Section 8.05 of the Master Trust Agreement, one hundred percent (100%) of the Bondholders and the Authority have executed this Agreement to provide such consents and waivers.

**4.05 Redemption of the Bonds.** The Authority hereby directs the Trustee to take all actions necessary to redeem the Series 2007A Bonds at the Redemption Price authorized by this Agreement upon execution of this Agreement, all in accordance with this Agreement. The redemption hereby directed by the Authority shall be made without written notice required by Article III of the Master Trust Agreement. The Trustee shall not be required to provide notice of redemption required by Section 3.04 of the Master Trust Agreement and the Bondholders hereby waive any right to receive notice under Section 3.04 of the Master Trust Agreement. The Trustee shall cause the Registrar to reflect the redemption of the Series 2007A Bonds at the Redemption Price authorized by this Agreement, and the termination of the rights of the Bondholders as registered owners of the Series 2007A Bonds, on the Register.

**ARTICLE V**

**TERMINATION OF THE TRUST ESTATE; APPLICATION OF PURCHASE PRICE**

**5.01 Termination of the Trust Estate.** The Authority, the Bondholders, and the Trustee each acknowledge and agree that (i) all consents, waivers, acknowledgements, and agreements required of the Bondholders necessary to consummate the transactions authorized by this Agreement have been made by this Agreement; (ii) as a

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result of this Agreement, including receipt of the Purchase Price and payment of the Redemption Price, all Debt Service Charges on all Outstanding obligations of the Authority issued pursuant to the Trust Agreement have been paid to the Bondholders; and (iii) as a result of this Agreement, including receipt of the Purchase Price and payment of the Redemption Price, all moneys due and payable by the Authority to the Trustee, the Registrar, the Authenticating Agent, the Paying Agent in accordance with the Trust Agreement have been paid. Upon redemption of the Series 2007A Bonds in accordance with this Agreement, and pursuant to Section 10.01 of the Master Trust Agreement, the Trust Agreement, the rights granted by the Trust Agreement, and the lien of the Trust Agreement upon the Pledged Revenues of the Authority have ceased, are void, and are of no further force and effect, and the covenants, agreements, and other obligations of the Authority under the Trust Agreement are discharged and are now and forever satisfied.

5.02 **Application of Existing Trust Funds.** The Trustee shall assign and deliver to the Authority any moneys, investments, and funds held in the Administrative Expense Fund, the Tap Fee Expense Fund, the Project Fund, and the Debt Service Fund on deposit with the Trustee free and clear of the lien of the Trust Agreement, and the Authority shall assign and deliver to the County such funds pursuant to Section 3.06 hereof; provided, that the Authority and the County agree that the Purchase Price to be paid by the County in consideration for the County's acquisition of the funds of the Authority pursuant to Section 3.06 hereof has been reduced by the amount of One Million Four Hundred Forty-Five Thousand Five Hundred Seventy-Four Dollars and Nine Cents (\$1,445,574.09) equal to the moneys, investments, and funds held in the Administrative Expense Fund, the Tap Fee Expense Fund, the Project Fund, and the Debt Service Fund.

5.03 **Receipt of Purchase Price.** The Trustee and the Authority each hereby acknowledge receipt from the County of the Purchase Price.

5.04 **Application of Portion of Purchase Price to Redemption of Series 2007A Bonds.** The Authority hereby directs the Trustee to apply a portion of the Purchase Price in an amount equal to the Redemption Price to redeem the Series 2007A Bonds as follows:

(i) The Trustee shall pay Eleven Million Six Hundred Eighty-Nine Thousand One Hundred Twenty-Eight Dollars and Thirty-Four Cents (\$11,689,128.34) to Huntington Municipal Fund II, Inc., as Bondholder of Series 2007A Bond designated RA-1, representing the Outstanding principal amount of Series 2007A Bond designated RA-1 equal to Eleven Million Two Hundred Ten Thousand Dollars (\$11,210,000.00) plus all accrued and unpaid interest on Series 2007A Bond designated RA-1 through the date of redemption equal to Four Hundred Seventy-Nine Thousand One Hundred Twenty-Eight Dollars and Thirty-Four Cents (\$479,128.34);

(ii) The Trustee shall pay One Million Three Hundred Ninety-Seven Thousand Two Hundred Seventy-Three Dollars and Fourteen Cents (\$1,397,273.14) to Kenney Asset Management, LLC, as Bondholder of Series 2007A Bond designated RA-6, representing the Outstanding principal amount of Series 2007A Bond designated RA-6 equal to One Million Three Hundred Forty Thousand Dollars (\$1,340,000.00) plus all accrued and unpaid interest on Series 2007A Bond designated RA-6 through the date of redemption equal to Fifty-Seven Thousand Two Hundred Seventy-Three Dollars and Fourteen Cents (\$57,273.14).

(iii) The Trustee shall pay Nine Hundred Ninety-Five Thousand Eight Hundred Seventeen Dollars and Eighty Cents (\$995,817.80) to R. Andrew Johnson, as Bondholder of Series 2007A Bond designated RA-3, representing the Outstanding principal amount of Series 2007A Bond designated RA-3 equal to Nine Hundred Fifty-Five Thousand Dollars (\$955,000.00) plus all accrued and unpaid interest on Series 2007A Bond designated RA-3 through the date of redemption equal to Forty Thousand Eight Hundred Seventeen Dollars and Eighty Cents (\$40,817.80).

(iv) The Trustee shall pay Three Hundred and Two Thousand Three Hundred Ninety Four Dollars and Ninety-Three Cents (\$302,394.93) to Charles A. Vince, as Bondholder of Series 2007A Bond designated RA-4, representing the Outstanding principal amount of Series 2007A Bond designated RA-4 equal to Two Hundred Ninety Thousand Dollars (\$290,000.00) plus all accrued and unpaid interest on Series 2007A Bond designated RA-4 through the date of redemption equal to Twelve Thousand Three Hundred Ninety Four Dollars and Ninety-Three Cents (\$12,394.93).

(v) The Trustee shall pay Two Hundred and Three Thousand Three Hundred Thirty-Four Dollars and Fifty-Two Cents (\$203,334.52) to John W. Zeiger, as Bondholder of Series 2007A Bond designated RA-5, representing the Outstanding principal amount of Series 2007A Bond designated RA-5 equal to One Hundred Ninety-Five Thousand Dollars (\$195,000.00) plus all accrued and unpaid interest on Series 2007A Bond designated RA-5 through the date of redemption equal to Eight Thousand Three Hundred Thirty-Four Dollars and Fifty-Two Cents (\$8,334.52).

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**All payments required by this Section 5.03 shall be made to the person in whose name the Series 2007A Bond is registered on the Register by wire transfer of federal funds or as authorized by the transferee within five (5) business days of the date on which the Purchase Price is received by the Trustee from the County.**

**5.05 Application of Portion of Purchase Price to Authority** The Authority hereby directs the Trustee to transfer a portion of the Purchase Price in an amount equal to Three Hundred Seventy Thousand Dollars (\$370,000.00) to Account Number #01893067961 of the Authority held at The Huntington National Bank from funds held by the Trustee and credited to the payment by the County of the Purchase Price pursuant to Section 5.02 hereof. Such transfer shall occur within five (5) business days of the date on which this Agreement is executed. The Authority shall use its funds for any lawful purpose, including, without limitation, payment of Authority administrative expenses, legal counsel fees, title commitment fees, and any rebate payments due the United States of America as determined pursuant to Section 3.08 hereof.

**5.06 Application of Portion of Purchase Price to Construction Management Fee**. The Authority hereby directs the Trustee to transfer a portion of the Purchase Price in an amount equal to Five Hundred Fifty Thousand Dollars (\$550,000.00) to the Developer as payment by the Authority for the Developer's Construction Management Fee pursuant to Section 6.01 hereof. Such transfer shall occur within five (5) business days of the date on which the Purchase Price is received by the Trustee from the County.

**ARTICLE VI**

**CONSTRUCTION MANAGEMENT FEE; RELEASES; TERMINATION AND AMENDMENT OF DOCUMENTS; OTHER COVENANTS**

**6.01 Construction Management Fee**. The County, the Authority, and the Developer agree that Developer is entitled to a payment of Five Hundred Fifty Thousand Dollars (\$550,000.00) for the unpaid balance of the Construction Management Fee for serving as construction Manager for the Series 2007A Project as set forth in Section 15 of the Infrastructure Agreement. Included in the Purchase Price paid by the County as provided in this Agreement is the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) for the unpaid balance of the Construction Management Fee, which the Trustee shall pay to the Developer within five (5) business days of the date on which the Purchase Price is received by the Trustee from the County. Upon receipt of the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) for the unpaid balance of the Construction Management Fee in accordance with this Agreement, the Construction Management Fee shall be paid in full and the Authority shall have no further liability to the Developer with respect to the construction of the Series 2007A Project.

**6.02 Releases**. In exchange for the releases, payments, and other good and valuable consideration set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged:

- (i) the County and the Developer hereby release and forever discharge each other from any and all past, present or future claims, demands, obligations, actions, causes of action, attorneys' fees and costs, of any nature whatsoever, in law or in equity, whether presently known or unknown, arising out of or relating directly or indirectly to construction of the Lower Scioto Water Reclamation Facility and all other Improvements identified in the Intergovernmental Cooperation Agreement and the Infrastructure Agreement, including without limitation, any claims which could have been raised prior to this date;
- (ii) the County and the Authority hereby release and forever discharge each other from any and all past, present or future claims, demands, obligations, actions, causes of action, attorneys' fees and costs, of any nature whatsoever, in law or in equity, whether presently known or unknown, arising out of or relating directly or indirectly to construction of the Lower Scioto Water Reclamation Facility and all other Improvements identified in the Intergovernmental Cooperation Agreement and the Infrastructure Agreement, including without limitation, any claims which could have been raised prior to this date; and
- (iii) the Authority and Developer hereby release and forever discharge each other from any and all past, present or future claims, demands, obligations, actions, causes of action, attorneys' fees and costs, of any nature whatsoever, in law or in equity, whether presently known or unknown, arising out of or relating directly or indirectly to construction of the Lower Scioto Water Reclamation Facility and all other Improvements identified in the Intergovernmental Cooperation Agreement and the Infrastructure Agreement including without limitation, any claims which could have been raised prior to this date.

**6.03 Termination and Amendment of Documents**. The County, the Authority, the Developer, the Trustee, and the Bondholders each acknowledge and agree that:

- (i) upon redemption of the Series 2007A Bonds, the Trust Agreement is terminated and is of no further force or effect;

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- (ii) the Intergovernmental Cooperation Agreement has been amended and restated by the Amended and Restated Intergovernmental Cooperation Agreement;
- (iii) the Infrastructure Agreement is terminated as is of no further force or effect; and
- (iv) as a result of the Settlement Agreement, dated April 24, 2013, between the County and Kokosing Construction Company, Inc., and the releases contained in Sections 6.02, 6.03, and 6.04 hereof, all claims of Kokosing Construction Company, Inc., the County, the Authority, and the Developer related to the construction of the Series 2007A Project, including the Lower Scioto Water Reclamation Facility, have been settled, and the Design-Build Agreement, dated as of November 1, 2007 between the Developer and Kokosing Construction Company, Inc. is terminated and is of no further force or effect.

6.04 **Assignment of Infrastructure Agreement.** The Authority hereby assigns all rights owed to it under the Infrastructure Agreement, without recourse, to the County, and the County hereby accepts such assignment and assumes the obligations of the Authority thereunder.

6.05 **Commercial General Liability Insurance.** The Authority and the County agree that the Authority has obtained a commercial general liability insurance policy for the operation of the Lower Scioto Water Reclamation Facility which provides insurance for a period beyond the date on which this Agreement is executed. The Authority and the County agree that if the Authority obtains a rebate of premium paid on its commercial general liability insurance policy as a result of the County obtaining a new commercial general liability insurance policy for the operation of the Lower Scioto Water Reclamation Facility, the Authority agrees to pay the rebated amount to the County.

**ARTICLE VII**

**MISCELLANEOUS**

7.01 **Notices.** It shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first-class mail, or delivered.

As to the County: The County of Delaware, Ohio  
101 North Sandusky St.  
Delaware, Ohio 43015  
Attention: County Administrator

As to the Authority: Concord/Scioto Community Authority  
470 Olde Worthington Road, Suite 100  
Westerville, Ohio 43082  
Attention: Secretary

As to Developer: Concord/Scioto Development, LLC  
470 Olde Worthington Road, Suite 100  
Westerville, Ohio 43082  
Attention: President

As to the Trustee: The Huntington National Bank  
7 Easton Oval – EA4E63  
Columbus, Ohio 43219  
Attention: James Schultz, Vice President

7.02 **Limitation of Rights.** With the exception of rights expressly conferred in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the parties hereto, the Registrar, the Authenticating Agents, the Paying Agents or the Holders of the Series 2007A Bonds and any other Person specifically mentioned herein, any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions contained in herein. This Agreement and all of its covenants, conditions and provisions are intended to be and being for the sole and exclusive benefit of the parties herein described and of the Holders of the Series 2007A Bonds as provided herein.

7.03 **Extent of Covenants; No Personal Liability.** All covenants, obligations, and agreements of the County and the Authority contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the County or the Authority in other than his official capacity; and none of the members of the Board of Trustees of the Authority or the Board of County Commissioners of the County, nor any official executing this Agreement, shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the Authority or the County contained in this Agreement. No covenant, obligation, or agreement of the Developer under this Agreement shall be deemed to be a covenant, obligation, or agreement of any present or future officer or employee of the

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Developer and none of the foregoing shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the Developer herein.

7.04 **Amendments and Supplements.** Except as otherwise expressly provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered or terminated except by unanimous agreement among the County, the Authority, the Developer, the Trustee, and the Bondholders.

7.05 **Governing Law.** This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of Ohio.

7.06 **Counterparts; Entire Agreement.** This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties, including, specifically, the Trustee Agreement and the Series 2007A Bonds.

**IN WITNESS WHEREOF**, the County, the Authority, the Developer, the Trustee, and the Bondholders have each caused this Agreement to be executed by their duly authorized officers all as of the day and year first written above.

**Delaware County, Ohio has caused this Agreement to be executed by its duly authorized officers all as of the day and year first written above.**

**DELAWARE COUNTY, OHIO**

**By: Ken O'Brien, Commissioner**

**By: Dennis Stapleton, Commissioner**

**By: Gary Merrell, Commissioner**

**The Concord/Scioto Community Authority has caused this Agreement to be executed by its duly authorized officers all as of the day and year first written above.**

**CONCORD/SCIOTO COMMUNITY AUTHORITY**

**By: Chairperson**

**By: Vice-Chairperson**

Concord/Scioto Development, LLC, as Developer, has caused this Agreement to be executed by its duly authorized officers all as of the day and year first written above.

**CONCORD/SCIOTO DEVELOPMENT, LLC, as Developer**

**By: Concord/Scioto Development 2, LLC, as Co-Manager**

**By: Donald R. Kenney, Manager**

**By: CAV, LLC, as Co-Manager**

**By: Charles A. Vince, Sole Member**

The Huntington National Bank, Columbus, Ohio, as Trustee, has caused this Agreement to be executed by its duly authorized officers all as of the day and year first written above.

**THE HUNTINGTON NATIONAL BANK, as Trustee**

**By:**

**Title:**

The Huntington Municipal Fund II, Inc., as Bondholder of the Series 2007A Bond designated RA-1 in the original principal amount of Eleven Million Seven Hundred Thousand Dollars (\$11,700,000), has caused this Agreement to be executed by its duly authorized officers all as of the day and year first written above.

**HUNTINGTON MUNICIPAL FUND II, INC.**

**By:**

**Title:**

Kenney Asset Management, LLC, as Bondholder of the Series 2007A Bond designated RA-6 in the original principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000) has executed this

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Agreement all as of the day and year first written above.

**KENNEY ASSET MANAGEMENT, LLC**

**Signature:**

R. Andrew Johnson, as Original Purchaser of the Series 2007A Bond designated RA-3 in the original principal amount of One Million Dollars (\$1,000,000) has executed this Agreement all as of the day and year first written above.

**R. ANDREW JOHNSON**

**Signature:**

Charles A. Vince, as Original Purchaser of the Series 2007A Bond designated RA-4 in the original principal amount of Three Hundred Thousand Dollars (\$300,000) has executed this Agreement all as of the day and year first written above.

**CHARLES A. VINCE**

Signature:

John W. Zeiger, as Original Purchaser of the Series 2007A Bond designated RA-5 in the original principal amount of Two Hundred Thousand Dollars (\$200,000) has executed this Agreement all as of the day and year first written above.

**JOHN W. ZEIGER**

**Signature:**

**AUTHORITY’S FISCAL OFFICER’S CERTIFICATE**

The undersigned, fiscal officer of the Authority, hereby certifies that the moneys required to meet the obligations of the Authority under the Asset Purchase and Bond Modification and Redemption Agreement have been lawfully appropriated by the Board of Trustees of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

By:

Treasurer of the Board of Trustees  
Concord/Scioto Community Authority

**COUNTY AUDITOR’S CERTIFICATE**

The undersigned, County Auditor of Delaware County, Ohio (the “County”) hereby certifies that the monies required to meet the obligations of the County under the Asset Purchase and Bond Modification and Redemption Agreement have been lawfully appropriated by the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

By:

County Auditor  
County of Delaware, Ohio

**EXHIBIT A**

**ASSIGNMENT OF EASEMENT**

THIS ASSIGNMENT OF EASEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between **CONCORD/SCIOTO COMMUNITY AUTHORITY**, a new community authority formed pursuant to Chapter 349 of the Ohio Revised Code (“Grantor”) and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** (“Grantee”). For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby grant and assign unto Grantee, its successors and assigns, and Grantee hereby accepts the grant and assignment of, all of Grantor’s right, title, and interest in and to that easement providing for a right to lay sanitary sewer lines, sewer effluent outlets and water lines over and through the easement described in Schedule A attached hereto and made a part hereof, and to operate and maintain the same without restriction or limitation, and to repair, replace, or change the size of pipes without interruption to service, and to remove the same, together with other necessary appurtenances, the foregoing being intended to include and convey all of Grantor’s right, title, and interest in and to that easement (the “Assigned Easement”) specifically referred to on Schedule A. The foregoing grant and assignment to Grantee includes any and all right, title, and interest of Grantor in and to all improvements located within the easement area in the Assigned Easement, Grantee hereby assumes all covenants and obligations of the “Grantee” under the Assigned Easement.

IN WITNESS WHEREOF, the authorized representative of each party has executed this Assignment of Easements as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CONCORD/SCIOTO COMMUNITY AUTHORITY**

**BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO**

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**SCHEDULE A  
EASEMENT**

Sanitary Sewer and Water Easement, granted by Constance S. Augenstein, individually and as Trustee of the Constance S. Augenstein Trust dated February 23, 2000, and by Donald W. Thomas, as recorded at Deed Book 818, Page 2499, Delaware County Recorder's Office, and as transferred and assigned to the Concord/Scioto Community Authority under a General Warranty Deed recorded at Deed Book 818, Page 2521, Delaware County Recorder's Office.

**EXHIBIT B**

**BILL OF SALE**

This BILL OF SALE ("Bill of Sale") is executed as of \_\_\_\_\_, 2013 by **CONCORD/SCIOTO COMMUNITY AUTHORITY**, a new community authority formed pursuant to Chapter 349 of the Ohio Revised Code ("Seller"), and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** ("Buyer"). This Bill of Sale is delivered in connection with Buyer's acquisition from Seller of certain real estate located in the Township of Concord, County of Delaware, and State of Ohio, being all of tax parcel number 60021002022000 (together with the buildings and other improvements located thereon, referred to herein as the "Real Estate"). The Real Estate is commonly known as Lower Scioto Water Reclamation Facility, located at 6670 Dublin Road, Delaware, Ohio 43015.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby sell, transfer, deliver, and assign unto Buyer all of the Seller's right, title, and interest in and to all of the those improvements, fixtures, equipment, supplies, and other real and personal property owned by Seller, which are located on and used in connection with the maintenance and operation of the Real Estate, along with all improvements, fixtures, equipment, supplies, and other real and personal property owned by Seller and located within easements appurtenant to the Real Estate (collectively, the "FF&E"), provided, however, that Seller is not hereby purporting to convey an interest in any property owned by any third party.

**SELLER IS CONVEYING THE FF&E TO BUYER ON AN "AS IS, WHERE IS" BASIS.**

All of the terms, covenants, and conditions herein contained shall inure to the benefit of and shall bind the respective parties hereto and their successors and assigns.

IN WITNESS WHEREOF, Buyer and Seller have executed this Bill of Sale as of the date first written above.

**Seller:**

CONCORD/SCIOTO COMMUNITY AUTHORITY

**Buyer:**

BOARD OF COUNTY COMMISSIONERS OF  
DELAWARE COUNTY, OHIO

**EXHIBIT C  
LIMITED WARRANTY DEED**

**CONCORD/SCIOTO COMMUNITY AUTHORITY**, a new community authority formed pursuant to Chapter 349 of the Ohio Revised Code ("Grantor"), hereby grants, with limited warranty covenants, to the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** ("Grantee"), whose tax mailing address is 101 N. Sandusky Street, Delaware, OH 43015, the real property described in **Exhibit A** attached hereto (the "Property").

This conveyance is made subject to rights-of-way, zoning ordinances, and legal highways; real estate taxes and assessments which are a lien but not yet payable or delinquent; and all covenants, conditions, restrictions, easements, and other matters of record.

This conveyance includes all easements and other rights appurtenant to the Property, any and all obligations in connection therewith, and any and all ownership interests of the Grantor with respect to infrastructure and other improvements located within any such appurtenant easements.

Prior instrument reference: Volume 818, Page 2521, Recorder's Office, Delaware County, Ohio.  
Executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR:**

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CONCORD/SCIOTO COMMUNITY AUTHORITY,  
a new community authority formed pursuant to Chapter 349 of the Ohio Revised Code

**Exhibit A**  
**Tax parcel number 6002100**

**AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT**

This Amended and Restated Intergovernmental Cooperation Agreement (“Agreement”) dated as of October 1, 2013 is by and between the CONCORD/SCIOTO COMMUNITY AUTHORITY, 470 Olde Worthington Road, Suite 100, Westerville, Ohio 43082, a new community authority organized and existing under Chapter 349 of the Ohio Revised Code (the “Authority”), and the COUNTY OF DELAWARE, OHIO, 101 North Sandusky Street, Delaware, Ohio 43015, a political subdivision duly organized and validly existing under and by virtue of the laws of the State of Ohio (the “County”), and this Agreement supersedes in its entirety the Intergovernmental Cooperation Agreement between the Authority and the County dated November 1, 2007, as amended (the “Original Agreement”).

**RECITALS:**

WHEREAS, pursuant to Chapter 349 of the Ohio Revised Code (“Chapter 349”), Concord/Scioto Development, LLC (the “Developer”) organized the Authority as a new community authority to govern the Concord/Scioto Community District (the “District”); and

WHEREAS, the orderly development of the District requires that the District be served by certain improvements, including, without limitation: (i) a centralized wastewater treatment facility called the Lower Scioto Water Reclamation Facility capable of providing services to the service area defined herein (the “Treatment Facility”), and any expansion to the Treatment Facility capable of providing services to the service area defined herein which may be undertaken pursuant to this Agreement (the “Treatment Facility Expansion”); (ii) treated and untreated sewage lines, sanitary sewage lift stations, force mains and waterlines capable of providing services to the service area defined herein including, without limitation, the necessary real property, sewers, pipelines, pumps, utility-related fixtures and other related fixtures and appurtenances thereto (collectively, the “Supportive Improvements”); and (iii) additional improvements to benefit the District including, without limitation, “Community Facilities,” “Land Acquisition,” and “Land Development” and the acquisition of other improvements in furtherance of “Community Activities,” all as defined in Chapter 349 (collectively, the “Community Improvements”); and

WHEREAS, the Authority has constructed the Treatment Facility and conveyed the same to the County, and the Authority may, from time to time, undertake the construction of the Treatment Facility Expansion, the Supportive Improvements, and the Community Improvements (collectively, the “Improvements”) in accordance with this Agreement; and

WHEREAS, the County is desirous of having Improvements acquired, constructed and installed to serve the District and of financing Improvements with a minimal current outlay of funds; and

WHEREAS, the Authority is willing to acquire, construct and install Improvements and convey the same to the County or to another political subdivision or governmental entity, as appropriate, in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Authority shall contract with the Developer or a third party approved by the Authority and the Developer (the “Construction Manager”) to serve as construction manager to build the Treatment Facility Expansion and any Supportive Improvements (collectively, the “Sewer Improvements”) in one or more phases, each pursuant to an Infrastructure Construction and Acquisition Agreement (the “Infrastructure Construction Agreement”), in substantially the same form as the agreement attached hereto as Exhibit A, and the Construction Manager will subcontract the construction of the Sewer Improvements in one or more phases to one or more qualified contractors or other entities (collectively, the “Contractor”), each pursuant to an agreement with each such Contractor (the “Construction Agreement”), in a form to be agreed upon by the Authority and the County, which form may stipulate delivery of a particular Sewer Improvement using different contracting methods such as but not limited to design/build, construction manager at risk, or general contracting; and

WHEREAS, the Authority may contract with a Construction Manager to serve as construction manager to build any Community Improvements in one or more phases pursuant to an Infrastructure Construction Agreement, in substantially the same form as the agreement attached hereto as Exhibit A, and the construction manager will subcontract the construction of the Community Improvements in one or more phases to one or more Contractors pursuant to a Construction Agreement in a form to be agreed upon by the Authority and the Construction Manager, which form may stipulate delivery of a particular Community Improvement using different contracting methods such as but not limited to design/build, construction manager at risk, or general contracting; and

WHEREAS, the Authority and the County desire by this Agreement to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the foregoing and the promises of the parties hereto to be bound by the terms hereof and for other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the County and the Authority agree to the foregoing and as follows:



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**Section I**

**Interpretation; Definitions**

The Authority and the County acknowledge and agree that the Original Agreement is properly amended in writing by this Agreement. The Original Agreement is hereby amended and replaced in its entirety and this Agreement shall replace all agreements of the Authority and the County contained within the Original Agreement. This Agreement constitutes the entire agreement between the Authority and the County with respect to the matters covered herein and supersedes all prior agreements and understandings between the Authority and the County.

Where used in this Agreement, the following terms shall have the following meanings:

“Administrative Expenses” has the meaning set forth in the Declaration.

“Application for Payment” has the meaning set forth in the Construction Agreement.

“Approving Official” means (i) as to any Sewer Improvements, the County’s Director of Environmental Services or other officer of the County specified by the County to the Authority in writing, and (ii) as to any Community Improvements, the officer of the County or the Other Government, as applicable, specified to the Authority in writing.

“Authority” means the Concord/Scioto Community Authority, a new community authority organized under Chapter 349.

“Authority Contribution” means with respect to the Improvements, the Authority’s contribution toward the Costs of the Improvements and any Costs of Issuance, which will be set forth in an addendum to this Agreement for any particular Improvement.

“Chapter 349” means Ohio Revised Code Chapter 349 and any successor provisions of the Ohio Revised Code, as the same may be amended from time to time.

“Community Development Charge” means the annual community development charge of 10.25 mills to be paid by owners of property within the District in accordance with the Declaration.

“Community Improvements” means improvements to benefit the District including, without limitation, “Community Facilities,” “Land Acquisition,” and “Land Development” and the acquisition of other improvements in furtherance of “Community Activities,” all as defined in Chapter 349.

“Construction Agreement” means an agreement among the Construction Manager, as construction manager for the Authority, on the one hand, and a Contractor, on the other hand, for the construction of Improvements.

“Construction Management Fee” means the construction management fee paid to the Construction Manager under the Infrastructure Construction Agreement.

“Construction Manager” means the Developer or any third party approved by the Authority and the Developer acting as the Authority’s construction manager for an Improvement.

“Contractor” means one more qualified contractors or other entities constructing Improvements pursuant to a Construction Agreement.

“Costs of Issuance” means the costs associated with the issuance of any bonds, or other obligations, of the Authority issued to finance any Authority Contribution plus other costs required by and related to the bond issuance (not to exceed 2.5% of the principal amount of the bonds or other obligations issued).

“Costs of the Improvements” means all direct and indirect hard and soft costs of construction, plans, associated specifications, land and interests in land acquired for or necessary to serve the Improvements, any soil testing, other engineering investigation or design work, a Construction Management Fee (not to exceed 10% of the Costs of the Improvements, exclusive of such Construction Management Fee), legal fees, and all other preliminary costs incurred in connection with planning for, designing and constructing the Improvements.

“Costs of the Treatment Facility Expansion” means all direct and indirect hard and soft costs of construction, plans, associated specifications, land and interests in land acquired for or necessary to serve the Treatment Facility Expansion, any soil testing, other engineering investigation or design work, a Construction Management Fee (not to exceed 10% of the Costs of the Treatment Facility Expansion, exclusive of such Construction Management Fee), legal fees, and all other preliminary costs incurred in connection with planning for, designing and constructing the Treatment Facility Expansion.

“County” means the County of Delaware, Ohio.

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“Declaration” means the Declaration of Covenants and Restrictions for the Authority, filed in the office of the County Recorder of the County on August 29, 2007, as instrument number 200700028136.

“Design Plans” means, collectively, any architectural or engineering plans for constructing any particular Improvement in whole or in part.

“Developer” means Concord/Scioto Development, LLC, an Ohio limited liability company.

“District” means the Concord/Scioto Community District, being the territory of the Authority, as the same may be amended or expanded from time to time in accordance with Chapter 349.

“Improvements” means, collectively, the Treatment Facility Expansion, the Supportive Improvements, and the Community Improvements.

“Infrastructure Construction Agreement” means an Infrastructure Construction and Acquisition Agreement in substantially the same form as the agreement attached hereto as Exhibit A, between the Authority and a Construction Manager related to the construction of Improvements.

“Original Agreement” means the Intergovernmental Cooperation Agreement between the Authority and the County dated November 1, 2007, as amended.

“Original Service Area” means the area described as the “Service Area” in the Original Agreement.

“O’Shaughnessy Pump Station” means a pump station designed to cover the drainage area to the east of the O’Shaughnessy Reservoir and to send flow to the Lower Scioto Water Reclamation Facility, which pump station shall constitute a Supportive Improvement for all purposes of this Agreement.

“Other Government” means any political subdivision, governmental entity, or other unit of government that intends to accept a Community Improvement for dedication for public use, which may include the County or the Authority.

“Punchlist” means a list of work items prepared by or on behalf of the Construction Manager, the County, or the Other Government, as applicable, after Substantial Completion is achieved such that when completed will make the Improvements final and complete and will make the Contractor eligible for final payments.

“Residual Property” means approximately 37.604 acres remaining from a 77.645 acre site after the split of the Treatment Facility Site, plus an approximately 14.991 acre site, both of which are identified on Exhibit B attached hereto.

“Service Area” means the area, described in Exhibit C attached hereto, that will be served by the Improvements, being specifically the Lower Scioto Service Area identified in the County’s Sewer Master Plan, dated October 1, 2005, as such area may be expanded pursuant to Section V of this Agreement.

“Sewer Improvements” means, collectively, the Treatment Facility Expansion and any Supportive Improvements.

“Substantial Completion” means the stage where any Improvement is sufficiently complete to serve the purpose for which it is intended.

“Supportive Improvements” means the treated and untreated sewage lines, sanitary sewage lift stations, force mains and waterlines capable of providing services to the Service Area including, without limitation, the necessary real property, sewers, pipelines, pumps, utility-related fixtures and other related fixtures and appurtenances thereto.

“Treatment Facility” means a 1.4 million (1,400,000) gallon per day capacity sanitary wastewater treatment facility, which capacity is calculated based on one hundred (100) gallons per person per day, also referred to as the Lower Scioto Water Reclamation Facility.

“Treatment Facility Expansion” means a 1.4 million (1,400,000) gallon per day capacity expansion of the Treatment Facility.

***“Treatment Facility Site” means approximately 40.041 acres of land, as identified on Exhibit B attached hereto, which is currently part of a certain 77.645 acre site, upon which has been constructed the Treatment Facility.***

## Section II

### Scope of Work

For any Sewer Improvements authorized by the County and agreed to be undertaken by the Authority, within six (6) months after receiving all necessary government approvals, not including those approvals required by the County, the Authority shall deliver final Design Plans to the Approving Official for review and approval. Within sixty (60) days of the receipt of the Design Plans the Approving Official shall deliver to the Authority either (i) written approval of the Design Plans or (ii) written requests for changes to the Design Plans that, if made along with any other subsequent

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changes required by the Approving Official and necessitated by those changes, will result in the approval of the Design Plans by the Approving Official. If the Approving Official requests changes to the Design Plans, the Authority shall make such changes or other changes acceptable to the Approving Official and deliver to the Approving Official revised final Design Plans for review and comment. Within thirty (30) days of each subsequent delivery of revised final Design Plans, the Approving Official shall deliver to the Authority either (i) written approval by the Approving Official of the Design Plans, or (ii) written requests for changes to the Design Plans that, if made along with any other subsequent changes required by the Approving Official and necessitated by those changes, will result in the approval of the Design Plans by the Approving Official.

Subject to approval of the Design Plans by the County, the Authority agrees to have the Sewer Improvements constructed on its behalf, for the benefit of the County, in order to provide necessary or desired services to the Service Area. The Authority shall cause the completion of the Sewer Improvements within the timeframe specified in the Construction Agreement setting forth the details for any particular Sewer Improvement.

All change orders to any Construction Agreement for the construction of the Sewer Improvements are subject to approval in writing by the County, and the costs of any approved change orders shall be the sole financial responsibility of the County except for costs of change orders necessitated by the negligence or misconduct of the Authority, Construction Manager or Contractor, which costs shall be paid by the party responsible for such negligence or misconduct.

Within five (5) days of the timely receipt of an Application for Payment from the Contractor for any Sewer Improvement, the Authority shall deliver written notice to the County stating by what amount, if any, the Application for Payment exceeds the remaining balance of the Authority Contribution not previously spent (or set off as provided hereinabove) for the Cost of the Improvements and requesting payment by the County of such excess amount upon approval of the Application for Payment. The County shall pay to the Authority in immediately available funds, an amount equal to the amount of the approved Application for Payment, plus a Construction Management Fee equal to ten percent (10%) of the amount in such Application for Payment (less the applicable retainage and the remaining balance of the Authority Contribution), by the 20th day of the month following the timely receipt of an Application for Payment. The Authority shall then immediately pay, or cause to be paid, that amount to the Construction Manager and/or the Contractor pursuant to the Application for Payment.

For any Community Improvements authorized by the Authority, within six (6) months after receiving all necessary government approvals, not including those approvals required by the Other Government, the Authority shall deliver final Design Plans to the Approving Official for review and approval. Within sixty (60) days of the receipt of the Design Plans the Approving Official shall deliver to the Authority either (i) written approval of the Design Plans or (ii) written requests for changes to the Design Plans that, if made along with any other subsequent changes required by the Approving Official and necessitated by those changes, will result in the approval of the Design Plans by the Approving Official. If the Approving Official requests changes to the Design Plans, the Authority shall make such changes or other changes acceptable to the Approving Official and deliver to the Approving Official revised final Design Plans for review and comment. Within thirty (30) days of each subsequent delivery of revised final Design Plans, the Approving Official shall deliver to the Authority either (i) written approval by the Approving Official of the Design Plans, or (ii) written requests for changes to the Design Plans that, if made along with any other subsequent changes required by the Approving Official and necessitated by those changes, will result in the approval of the Design Plans by the Approving Official.

Subject to approval of the Design Plans by the Other Government, the Authority agrees to have the Community Improvements constructed on its behalf, for the benefit of the District and the Other Government, in order to provide necessary or desired services to the District. The Authority shall cause the completion of the Community Improvements within the timeframe specified in the Construction Agreement setting forth the details for any particular Community Improvement.

### Section III

#### **Commencement and Completion of Work**

Construction of any portion of any particular Improvement shall not commence until the County has accepted the respective portion of the Design Plans by resolution of the Board of County Commissioners or the Other Government has accepted the respective portion of the Design Plans by appropriate resolution, ordinance, or other approval.

Except as provided herein, no change or modification to the Design Plans for any Sewer Improvement shall be of any force or effect without the prior written agreement of both the County and the Authority.

Except as provided herein, the Authority shall cause the completion of the Improvements pursuant to the schedule in the Construction Agreement for each particular Improvement.

### Section IV

#### **Location and Easements**

The Authority shall negotiate to obtain and shall purchase or enter into one or more mutually agreeable acquisition agreements, lease agreements, or real property dedications for all easements and rights-of-way necessary to

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complete construction of the Improvements and shall convey such lands, easements and rights-of-way to the County or to the Other Government, as applicable, in accordance with Section X hereof.

The County will be named grantee in the form of deed, easement or rights-of-way for any Sewer Improvements. If the Authority is unable to obtain any such easements or rights-of-way for any Sewer Improvements, the County shall use its best efforts to acquire said easements and rights-of-way. The County shall provide, with respect to real property or interests in real property within the Service Area any and all easements, rights of way or other necessary interests in that real property to the Authority that are necessary for the construction and maintenance of the Sewer Improvements.

If not already purchased by the County, the Residual Property shall be purchased by the County and used as the County sees fit.

**Section V**

**Service Area**

The County intends that the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, will be the sole and exclusive wastewater treatment facility for the Service Area, and the County covenants that it shall not acquire, construct or install any other wastewater treatment facility, real property, lines, pumps, utility-related fixtures or other related fixtures and appurtenances serving the Service Area. The County may expand the Service Area. The County and the Authority agree that the County shall expand the Service Area to cover any areas east of Steitz Road and within the Original Service Area at the election of any property owner owning property outside of the Service Area but within the Original Service Area that desires to develop such property within such area and to receive sewer services from the Treatment Facility. If the County expands the Service Area the County shall certify to the Authority an expanded Service Area map to replace the map attached hereto as Exhibit C.

The County shall not concede any rights it now has to provide sanitary sewer service to the Service Area to any other sewer service provider without the express written consent of the Authority and the Developer. Other than the O'Shaughnessy Pump Station and other pump stations intended solely to serve the Treatment Facility and approved by the Authority, the County shall not permit the existence of treatment plants or pump stations within the Service Area to provide wastewater treatment services by or on behalf of the County in addition to those treatment plants or pump stations that existed at the time at which the Original Agreement was executed, and the County shall not expand the service area of any treatment plant or pump station beyond its service area in existence at the time at which the Original Agreement was executed. The treatment plants and pump stations that existed at the time at which the Original Agreement was executed, and the service areas for those treatment plants and pump stations in existence at the time at which the Original Agreement was executed, are identified in Exhibit D attached hereto. In addition, the County shall not reduce the Service Area or consent to the provision of wastewater treatment services in the Service Area by entities other than the County without the express written consent of the Authority and the Developer. This paragraph shall not bind the County with respect to territory within the Service Area annexed under Ohio Revised Code Section 709.023 (commonly referred to as "Expedited Type II Annexation").

There shall be two methods for properties within the Service Area to receive and be assessed for the cost of sewer services, with the method to be chosen by the property owner.

The first method shall be for a property to join the District, which is governed by the Authority, and pay the Community Development Charge (as defined in Section XII herein), which Community Development Charge shall be in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement. Amounts received by the Authority under this first method shall be distributed in accordance with Section XII hereof. The Authority and the County agree that the Developer shall have the same rights to approve of the addition of territory to the District as are granted to the Developer under the Declaration and Ohio Revised Code Chapter 349. The Authority and the County agree that no amendments shall be made to the Authority's new community development program without the consent of the Developer. The County shall not authorize the creation of any new community authority within the Service Area other than the Authority, and if any property owner within the Service Area petitions to form a new community authority other than the Authority, the County shall require the petition to satisfy the conditions for a petition to amend the territory of the Authority before accepting the petition.

The second method shall be for a property owner to pay to the County, for each single family residential equivalent unit (as determined by the County pursuant to the applicable sewer rate and/or charge resolution then in effect) to be developed and at the time that a Subdivider's Agreement is approved for the site within which such single family residential equivalent unit is to be developed, in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement, the present value of a 2.0 millage charge assuming that such charge were imposed over a thirty-year period against the projected assessed value of such unit (the "Improvement Fee"), which Improvement Fee shall be in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement. For purposes of applying the second method, the present value of the Improvement Fee per single family residential equivalent unit shall be determined in each year according to the following table:

Year	Improvement Fee
2013	\$6,397.73
2014	\$6,589.66
2015	\$6,787.35

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2016	\$6,990.97
2017	\$7,200.70
2018	\$7,416.73
2019	\$7,639.23
2020	\$7,868.40
2021	\$8,104.46
2022	\$8,347.59
2023	\$8,598.02
2024	\$8,855.96
2025	\$9,121.64
2026	\$9,395.29

For the year 2027 and each year thereafter, the present value of the Improvement Fee is equal to the present value of the charge for the preceding year multiplied by 1.03. The amount received by the County under this second method shall be used to reimburse the County for costs it incurs in funding the costs of the Improvements and will no longer be collected once all such costs (including interest on all unreimbursed costs at an annual rate of 5.0%, compounding annually) are reimbursed by amounts received by the County under this second method, pursuant to the surcharge described in Section XIII or paid to the County pursuant to Section XII.

Any single-family homes in the Service Area existing as of the date of the Original Agreement shall pay a sewertap fee and surcharge, if applicable, pursuant to the County's sewer tap collection fee policy then in effect as of the date of the tap and shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee; provided, that any single-family homes in the Service Area served by treatment plants or pump stations that existed at the time at which the Original Agreement was executed within the service areas for those treatment plants or pump stations in existence at the time at which the Original Agreement was executed, all as identified in Exhibit D attached hereto, may receive sewer services from the County and shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee; provided, further, that any single-family homes in the area identified in Authority Resolution No. 2013-05, adopted by the Board of Trustees of the Authority on August 30, 2013 and attached hereto as Exhibit E, and excluded from the Service Area by the Authority shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee but shall pay (i) a sewer tap fee to the subdivider of the Scioto Reserve development identified in the Amended and Restated Subdivider's Agreement, between the subdivider and the County, dated as of October 1, 2013, and (ii) a surcharge to the County pursuant to Section XIII hereof.

#### Section VI

##### **Compliance with Laws**

The Authority shall give all notices and shall solely and without qualification be responsible for safety of employees, officers and other persons; protection of public and private property; and compliance with all federal, state and local laws applicable to the performance of any obligation under this Agreement. The County is not responsible for monitoring the Authority's compliance with any laws and regulations.

#### Section VII

##### **Utilities**

The Authority shall obtain all necessary utility services incident to the construction of the Improvements. The utility user charges shall be paid by the Authority as part of the Costs of the Improvements throughout construction of the Improvements until the County or the Other Government, as applicable, accepts dedication of the Improvements pursuant to Section X of this Agreement. The Authority shall not be responsible for user charges for such utility services provided after the acceptance of the dedication of the Improvements made pursuant to Section X of this Agreement by the County or the Other Government, as applicable.

#### Section VIII

##### **Engineer and County Inspections and Quality Control; Construction Agreement**

The County shall have a competent representative, who is familiar with a particular Sewer Improvement, on site regularly during construction. The representative shall be capable of reading, understanding and interpreting the Design Plans. The County and its representatives shall have complete access to the construction site at all times and may perform any inspections, or tests they reasonably deem necessary during construction and at any time prior to acceptance. The Infrastructure Construction Agreement, in the form attached hereto as Exhibit A, is hereby approved by the County, and the Authority shall enter into an Infrastructure Construction Agreement in substantially that form for the Sewer Improvements. The County agrees to its role as the "Inspector," as provided in the Infrastructure Construction Agreement.

The County shall furnish to the Authority a person to act as the Prevailing Wage Coordinator for the Authority and who will assume all duties for such under Chapter 4115 of the Ohio Revised Code for all Sewer Improvements. The Authority acknowledges that such person will be acting as agent of the Authority and not as employee or agent of the County for such purposes.

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The Authority agrees to the following and agrees to incorporate provisions into the Infrastructure Construction Agreement for any Sewer Improvements whereby:

- a. The County may direct the Authority to direct the Construction Manager to initiate any Change Orders;
- b. The County may direct the Authority to direct the Construction Manager to exercise any right the Construction Manager has under the Construction Agreement;
- c. The Construction Manager will promptly deliver to the Authority, and upon receipt the Authority will promptly deliver to the County, a copy of all written communications received by it from the Contractor or sent to the Contractor by it under the Construction Agreement;
- d. The Construction Manager will promptly pay to the Authority all amounts received pursuant to any liquidated damages-for-delay provisions in the Construction Agreement whereupon the Authority will then pay to the County one-half of such amount received, with receipt from the Construction Manager being a condition precedent to the Authority paying the County;
- e. The Construction Manager shall not amend the Construction Agreement, approve any Change Orders (as defined in the Construction Agreement) or settle any Claim (as defined in the Construction Agreement) without the prior written consent of the County; and
- f. The Construction Manager and the County shall do, and agree to, the following:
  - (i) The Construction Manager shall notify the County of the Construction Manager's intent to approve the surety providing the Performance and Payment Bond as shall be set forth in the Construction Agreement and the County shall have ten (10) days following its receipt of such notification to provide its written consent to the Construction Manager's approval and the Construction Manager shall not give any such approval without the County's prior written consent;
  - (ii) The Construction Manager shall provide the County a list of contractors selected by the Construction Manager for constructing the Sewer Improvements and County shall have ten (10) days following its receipt of such list to provide its written approval or disapproval of those contractors and the Construction Manager shall not consent to the use of those contractors for the Sewer Improvements without the County's prior written approval, which shall not be unreasonably withheld;
  - (iii) The Construction Manager shall send to the County (with a copy to the Authority) any Application for Payment received by the Construction Manager in accordance with the Construction Agreement within five (5) days of receipt, and the County shall have fifteen (15) days following its receipt of such notification to provide its written approval or disapproval to the Construction Manager's approval of an Application for Payment and the Construction Manager shall not give any such approval without the County's prior written approval;
  - (iv) The Construction Manager shall notify the County of the Construction Manager's intent to exercise any of the suspensions or terminations that shall be provided in the Construction Agreement, and the County shall have fifteen (15) days following its receipt of such notification to provide its written approval or disapproval to the Construction Manager's exercise of any such suspensions or terminations and the Construction Manager shall not exercise any suspensions or terminations without the County's prior written approval;
  - (v) The Construction Manager shall deliver the Punchlist, received by the Construction Manager as shall be set forth in the Construction Agreement, to the County within five (5) days of the receipt of the same by the Construction Manager; and
  - (vi) The County shall have fifteen (15) days following its receipt of the Punchlist to provide its written approval to the Construction Manager's confirmation of the Punchlist or provide a list of additional Punchlist items.
  - (vii) Minor changes required by the County in accordance with the Construction Agreement may be approved by the County without the consent of the Construction Manager.
  - (viii) The County shall accept any particular Sewer Improvement provided that the Contractor satisfactorily completes all Punchlist items specified by the Construction Manager and the County.
- g. The Construction Manager shall not enter into any agreement for the construction of the Sewer Improvements that is not agreed to by the County, which concurrence shall not be unreasonably withheld.

The Authority shall enter into one or more Infrastructure Construction Agreements with a Construction Manager to act as the Authority's construction manager for any Community Improvements. The Authority shall identify for each Community Improvement which Other Government shall ultimately accept dedication of the Community Improvement upon completion. The Authority shall make such changes to the form of Infrastructure Construction Agreement as it shall require in its sole discretion, and shall authorize its construction manager to enter into such Construction Agreements as it shall require in its sole discretion, as may be necessary to acquire, construct, and improve any Community Improvements for the benefit of the District.

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**Section IX**

**Fees and Taxes**

The County agrees that it will waive all inspection fees to be paid by the Authority as required by the County for the Improvements.

**Section X**

**Final Completion**

The Authority shall notify the County in writing upon Substantial Completion of the Sewer Improvements (defined as when a particular Sewer Improvement is able to be used for its primary purpose).

Upon achievement of Substantial Completion and satisfactory completion of all Punchlist items specified by the Construction Manager and possibly the County, the Sewer Improvements shall be deemed final and complete and the Authority shall dedicate to the County the Sewer Improvements and any easements, right-of-ways or other interests in real estate associated therewith. The County will thereafter accept such dedication of the Sewer Improvements free and clear of all liens, mortgages, claims and encumbrances thereto. Upon acceptance of the Sewer Improvements, (a) all rights owed to the Authority under the Infrastructure Construction Agreement and the Construction Manager under the Construction Agreement (including but not limited to all warranties and performance bond obligations and the Design Plans) shall be assigned by the Authority and the Construction Manager without recourse to the County and neither the Authority nor the Construction Manager shall have any further liability to the County arising out of or related to the Sewer Improvements, and (b) the County shall operate the Sewer Improvements in a proper manner.

The Authority shall notify the Other Government in writing upon Substantial Completion of the Community Improvements (defined as when a particular Community Improvement is able to be used for its primary purpose).

Upon achievement of Substantial Completion and satisfactory completion of all Punchlist items specified by the construction manager and possibly the Other Government, the Community Improvements shall be deemed final and complete and the Authority shall dedicate to the Other Government the Community Improvements and any easements, right-of-ways or other interests in real estate associated therewith. The Authority shall cause the Other Government to thereafter accept such dedication of the Community Improvements free and clear of all liens, mortgages, claims and encumbrances thereto. Upon acceptance of the Community Improvements, all rights owed to the Authority under the Infrastructure Construction Agreement and the construction manager under the Construction Agreement (including but not limited to all warranties and performance bond obligations and the Design Plans) shall be assigned by the Authority and the construction manager without recourse to the Other Government and neither the Authority nor the construction manager shall have any further liability to the Other Government arising out of or related to the Community Improvements. The Authority may make any additional agreements with the Other Government accepting the Community Improvements as may be necessary to ensure the proper acceptance and operation by the Other Government of the Community Improvements.

**Section XI**

**Authority Operations**

In accordance with Chapter 349 and the Declaration, the Authority shall establish a budget each fiscal year and shall appropriate funds sufficient to pay the costs of the Authority's operations. The Authority and the County each acknowledge and agree that the County has deposited Three Hundred Seventy Thousand Dollars (\$370,000.00) with the Authority pursuant to the Asset Purchase and Bond Modification and Redemption Agreement, dated as of October 1, 2013, by and among the County, the Authority, the Developer, The Huntington National Bank, as trustee, Huntington Municipal Fund II, Inc., Cheryl A. Kenney, R. Andrew Johnson, Charles A. Vince, and John W. Zeiger.

The Authority and the County agree that any funds deposited by the County with the Authority pursuant to the Asset Purchase and Bond Modification and Redemption Agreement shall be used at the direction of the Authority Board of Trustees to pay the Authority's Administrative Expenses. If the Authority shall have expended all funds deposited by the County with the Authority pursuant to the Asset Purchase and Bond Modification and Redemption Agreement and there shall not be sufficient Community Development Charge revenues paid by owners of property within the District to pay the Authority's Administrative Expenses, then the Authority, the County, and the Developer shall, in good faith, meet to discuss the ongoing operation of the Authority and to determine the reasonable equitable contributions to be made by the County and the Developer to pay the Authority's Administrative Expenses; provided, further, that in the absence of an agreement by the County and the Developer as to their respective contributions to the Authority's Administrative Expenses, the question of the Authority's Administrative Expenses shall be adjudicated by the Court of Common Pleas of Delaware County, Ohio.

**Section XII**

**Community Development Charge**

All parcels of real property located within the District shall be subject to an annual Community Development Charge of 10.25 mills according to the Declaration. Parcels in the District become subject to the Community Development

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Charge as (i) a parcel of real property ties into the public sanitary sewer treatment system or the Delco water system (or any successor thereto) and (ii) the applicable zoning jurisdiction for such property approves a final development plan for the property. Parcels may be added to the District as provided in Chapter 349, the Declaration, or Section V of this Agreement. The Authority agrees to levy and collect the Community Development Charge annually for each parcel in the District once that parcel meets the conditions for levying the Community Development Charge specified in this Section XII and in the Declaration. Two (2.0) mills of the Community Development Charge collected by the Authority shall be paid to the County to reimburse it for any of the costs that it incurs in funding the Costs of the Improvements. Such payment shall be made by the Authority to the County within 45 days of the semi-annual settlement, in connection with the Community Development Charge, made by the County Auditor to the Authority; provided, that the Authority and the County may enter into an agreement directing the County Auditor to settle accounts with the County directly with respect to the two (2.0) mill portion of the Community Development Charge to be paid by the Authority to the County.

**Section XIII**

**Surcharge**

In addition to applicable sewer tap fees and in addition to the costs assessed in accordance with Section V hereof, the County and the Authority agree that the County may, but is not required to, levy a surcharge (the "Surcharge") of up to One Thousand Five Hundred Dollars (\$1,500) on all properties within the Service Area in order to reimburse it for any of the expenses that it incurs in funding the Costs of the Improvements. The Surcharge may only be charged once for each unit to be developed and at the time that a subdivider's agreement is approved for the site within which such unit is to be developed, or at the time a tap into the County's sewer system is requested if no plat is filed for the property, and it must be applied equally and uniformly to all properties located within the Service Area. The County shall not increase the amount of the Surcharge to an amount greater than One Thousand Five Hundred Dollars (\$1,500) without the express written consent of the Authority.

**Section XIV**

**O'Shaughnessy Pump Station; Treatment Facility Expansion**

All provisions in this Agreement pertaining to construction of Supportive Improvements shall apply to the O'Shaughnessy Pump Station except those provisions expressly contradicted by this Section XIV.

The County and the Authority agree that the Authority shall construct the O'Shaughnessy Pump Station. The financing of the design and construction of the O'Shaughnessy Pump Station shall be solely the responsibility of the County. The Authority shall contract with the Developer to design and construct, or cause to be designed and constructed, the O'Shaughnessy Pump Station by way of an Infrastructure Construction Agreement with the Developer which substantially conforms to the form of the Infrastructure Construction Agreement attached hereto as Exhibit A. The Construction Management Fee for the O'Shaughnessy Pump Station improvement shall be three percent (3%). The O'Shaughnessy Pump Station shall constitute a Supportive Improvement for all purposes of this Agreement.

The County and the Authority agree that the Authority shall cause construction of the O'Shaughnessy Pump Station to commence not later than April 1, 2014 and shall cause Substantial Completion of the O'Shaughnessy Pump Station to occur not later than October 1, 2014; provided, that the Authority shall be relieved of its obligation to cause Substantial Completion of the O'Shaughnessy Pump Station by October 1, 2014 to the extent that delays are outside of the control of the Authority and the Developer or are caused by third parties other than the Authority and the Developer. The County and the Authority acknowledge and agree that the plans and specifications for the construction of the O'Shaughnessy Pump Station are on file with the County. The County shall provide the Authority with approval for the necessary plans and specifications for the construction of the O'Shaughnessy Pump Station within sixty (60) days of the date on which this Agreement is executed. The Authority shall be relieved of its obligation to construct the O'Shaughnessy Pump Station if the County fails to provide the Authority with approval of the necessary plans and specifications for construction of the O'Shaughnessy Pump Station within sixty (60) days of the date on which this Agreement is executed; provided, however, that the County shall be permitted additional time in the event of delays not within the control of the County, including, but not limited to, delays caused by the Authority, the Developer, or any consultant of the Authority or Developer.

The County shall be solely responsible for inspection of construction of all aspects of the O'Shaughnessy Pump Station, as well as approval of all pay applications submitted by the contractor for the O'Shaughnessy Pump Station. The County acknowledges and agrees that the Authority and the Developer may also approve pay applications approved by the County. The County's approval of a pay application shall be an affirmative representation that it accepts all work associated with that pay application and the County shall thereafter be foreclosed from making any claim against the Authority or Developer for defective or incomplete work associated with that pay application, except for warranty claims made under the Construction Agreement for the O'Shaughnessy Pump Station, after completion of construction or claims for latent construction defects that could not have reasonably been discovered through ordinarily prudent inspection by the County.

The County and the Authority agree that only once the Treatment Facility has reached at least fifty percent (50%) of its capacity as measured by average daily flow across the prior twelve months compared to design average daily flow, the County may determine to initiate the construction of the Treatment Facility Expansion. In such event, the Authority shall have, as long as it is not in default under the terms hereof, the option to cause the design and construction of the Treatment Facility Expansion. Unless otherwise agreed, the financing of the Treatment Facility Expansion shall be solely the responsibility of the County. The Authority shall contract with the Developer to construct, or cause to be constructed, the Treatment Facility Expansion.



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The County shall indicate its intent to proceed with the Treatment Facility Expansion by delivering notice to the Authority. Upon the receipt of such notice, the Authority shall have forty-five (45) days to determine whether to undertake the design and construction of the Treatment Facility Expansion and, if the Authority determines to exercise its option, the Authority shall deliver written notice to the County.

The County shall be solely responsible for inspection of construction of all aspects of the Treatment Facility Expansion, as well as approval of all pay applications submitted by the contractor for the Treatment Facility Expansion. The County acknowledges and agrees that the Authority and the Developer may also approve pay applications approved by the County. The County's approval of a pay application shall be an affirmative representation that it accepts all work associated with that pay application and the County shall thereafter be foreclosed from making any claim against the Authority or Developer for defective or incomplete work associated with that pay application, except for warranty claims made under the Construction Agreement for the Treatment Facility Expansion, after completion of construction or claims for latent construction defects that could not have reasonably been discovered through ordinarily prudent inspection by the County.

**Section XV**

**Breach**

The Authority agrees that any material violations of or noncompliance with any of the provisions and stipulations of this Agreement by the Authority or by the Construction Manager under the Infrastructure Construction Agreement, shall constitute a breach of contract on the part of the Authority, and the County shall have the right, in addition to any other remedy available at law or equity or specified in this Agreement, to stop work forthwith for the purpose of proper completion of the Improvements and/or assume the rights of the Authority under the Infrastructure Construction Agreement, after providing written notice and 30 days for an opportunity for the Authority to commence a cure of the alleged breach, or in the case of breach by the Construction Manager, pursue its remedies against the Construction Manager under the Infrastructure Construction Agreement. Any work stoppage ordered by the County or any assumption of the Authority's rights under the Infrastructure Construction Agreement does not relieve the Authority of its obligations to timely pay approved Applications for Payment for costs of Improvements. The Authority agrees that, notwithstanding any provision of this Agreement to the contrary and upon delivery of notice of such breach to the Authority and the Construction Manager, the County may suspend payment under this Agreement if the Authority has breached its obligations under this Agreement or the Construction Manager has breached its obligations under the Infrastructure Construction Agreement until such time as the breach has been cured.

The County agrees that any material violations of or noncompliance with any of the provisions and stipulations of this Agreement by the County shall constitute a breach of contract on the part of the County, and the Authority shall have the right to act against the County for any and all remedies available to the Authority under this Agreement and at law, after providing written notice and 30 days for an opportunity for the County to commence a cure of the alleged breach.

In the event that the Board of County Commissioners does not accept the Design Plans for any Sewer Improvements within ninety (90) days of the date that the Design Plans are approved by the Approving Official, which approval shall not be unreasonably withheld or delayed, then the County shall pay to the Authority, an amount equal to the cost of the Design Plans, plus other reasonable out-of-pocket costs and expenses of the Authority associated with the Design Plans, including legal and other fees (and the County shall own the Design Plans).

The Authority or County will not be in breach of this Agreement in the event of delays caused by force majeure, including but not limited to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State of Ohio or any of their departments, agencies, political subdivisions or officials, or of any other civil or military authority; insurrections, civil disturbances or riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or any other circumstances or events not reasonably within the control of the Authority or the County.

**Section XVI**

**Binding Effect; Assignment**

The Authority and the County, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants contained in this Agreement. The Authority may not assign this Agreement absent prior written consent of the County.

**Section XVII**

**Insurance**

Until conveyance of any particular Improvement to the County or the Other Government, as applicable, the Authority agrees to maintain or cause to be maintained insurance with respect to the Improvements and their operation in the types and amounts as set forth in the agreement for the construction for each particular Improvement. The County or the Other Government, as applicable, shall be named as an additional insured on such insurance policies.

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**Section XVIII**

**Amendment; Consent**

This Agreement may be amended by written instrument signed by both parties; provided, however, that no amendment shall be effective without the written consent of the Developer. Unless otherwise specified herein, any consent or approval to be given by the County under this Agreement may only be given by the Board of County Commissioners or the duly authorized County Administrator, and must be given in writing.

**Section XIX**

**Severability**

The invalidity of any portion or amendment of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

**Section XX**

**Governing Law**

This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of Ohio. The venue for any disputes arising under the Agreement will be the Delaware County Common Pleas Court.

**Section XXI**

**Extent of Covenants; No Personal Liability**

All covenants, obligations and agreements of the County and the Authority contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the County or the Authority, or the legislative authority of the County or the Authority in other than his or her official capacity, and neither the members of those legislative authorities nor any official executing this Agreement shall be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the County or the Authority contained in this Agreement.

**Section XXII**

**Notices**

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate address as provided herein. The County or the Authority, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the County or the Authority shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

All communications hereunder, except as herein otherwise specifically provided, shall be in writing and mailed or delivered:

To the County:	Delaware County 101 North Sandusky Street Delaware, Ohio 43015 Attention: County Administrator
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To the Authority:	Concord/Scioto Community Authority 470 Olde Worthington Road, Suite 100 Westerville, Ohio 43082 Attention: Secretary of the Board of Trustees of the Concord/Scioto Community Authority
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**Section XXIII**

**Representations and Warranties**

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The County and the Authority each represents and warrants as of the date of delivery of this Agreement that:

(a) It is a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio.

(b) It (i) has the power to execute and deliver this Agreement and perform its obligations hereunder, (ii) has taken or caused to be taken all necessary actions to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder, and (iii) has duly executed and delivered this Agreement.

(c) The execution and delivery by it of this Agreement do not, and the performance by it of its obligations hereunder will not, (i) violate Ohio law, (ii) violate any court order, judgment or decree applicable to it, or (iii) result in a breach of, constitute a default under, or result in the creation of a lien or right of acceleration under any agreement or instrument to which it is a party.

(d) There is no pending litigation naming it as a defendant and no litigation overtly threatened in writing against it that challenges its existence or the validity or enforceability of this Agreement or seeks to enjoin its performance of its obligations hereunder.

(e) No consent, approval, license or exemption by, order or authorization of, or filing, recording or registration with, any governmental authority, other than those already obtained, is required to be obtained or made by it in connection with its execution and delivery of this Agreement or the performance by it of its obligations hereunder.

**Section XXIV**

**Miscellaneous**

Except as otherwise set forth in this Section, nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities or imposing any legal duties or obligations, on any person or persons other than the County and the Authority, whether such rights, privileges, immunities, duties, or obligations are regarded as contractual, equitable or beneficial in nature as to such person or persons. The County and the Authority acknowledge and agree that this Agreement confers vested contractual rights upon the Developer to give or withhold consent as provided in this Agreement.

This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties.

The County and the Authority have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**COUNTY OF DELAWARE, OHIO**

**CONCORD/SCIOTO COMMUNITY AUTHORITY**

**DEVELOPER'S CONSENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL  
COOPERATION AGREEMENT**

The Developer, as required under the Original Agreement and in consideration of the terms of the Amended and Restated Intergovernmental Cooperation Agreement, hereby consents to the terms and conditions agreed upon by the County and the Authority in the Amended and Restated Intergovernmental Cooperation Agreement.

Dated: October 1, 2013

CONCORD/SCIOTO DEVELOPMENT, LLC

By: Concord/Scioto Development 2, LLC, as Co-Manager

By: Donald R. Kenney, Manager

By: CAV, LLC, as Co-Manager

By: Charles A. Vince, Sole Member

**AUTHORITY'S FISCAL OFFICER'S CERTIFICATE**

The undersigned, fiscal officer of the Authority, hereby certifies that the moneys required to meet the obligations of the Authority under the Amended and Restated Intergovernmental Cooperation Agreement have been lawfully appropriated by the Board of Trustees of the Authority for such purposes and are in the treasury of the Authority or in the process of

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collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

By:

Treasurer of the Board of Trustees  
Concord/Scioto Community Authority

**COUNTY AUDITOR'S CERTIFICATE**

The undersigned, County Auditor of Delaware County, Ohio (the "County") hereby certifies that the monies required to meet the obligations of the County under the Amended and Restated Intergovernmental Cooperation Agreement have been lawfully appropriated by the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

By:

County Auditor  
County of Delaware, Ohio

**EXHIBIT A**

**FORM INFRASTRUCTURE CONSTRUCTION AGREEMENT**

**EXHIBIT B**

**MAP SHOWING RESIDUAL PROPERTY AND TREATMENT FACILITY SITE**

**EXHIBIT C**

**SERVICE AREA MAP**

**EXHIBIT D**

**EXISTING TREATMENT PLANTS AND TREATMENT PLANT SERVICE AREAS**

The treatment plants that existed at the time at which the Original Agreement was executed are depicted with green icons on the attached map, the pump stations that existed at the time at which the Original Agreement was executed are depicted with yellow icons on the attached map, and the service areas for those treatment plants and pump stations in existence at the time at which the Original Agreement was executed are depicted in yellow on the attached map.

**EXHIBIT E**

**AUTHORITY RESOLUTION NO. 2013-05**

**AMENDED AND RESTATED SUBDIVIDER'S AGREEMENT**

**THIS AMENDED AND RESTATED SUBDIVIDER'S AGREEMENT** (the "Agreement") executed on October 1, 2013, by and between **DONALD R. KENNEY**, an individual (the "Subdivider") and the **BOARD OF COMMISSIONERS** of Delaware County, Ohio (the "County") is governed by the following considerations and conditions, to wit:

**WHEREAS**, the Subdivider is the developer of the Scioto Reserve Golf Club Community Subdivision in the County (the "Subdivision"), which Subdivision consists of single family residences, a golf course, a golf course clubhouse, and related facilities.

**WHEREAS**, the Subdivider and the County entered into a Subdivider's Agreement governing their mutual commitments and obligations with respect to public infrastructure improvements necessary to provide sewer service for said Subdivision as of July 26, 1999 (the "Initial Subdivider's Agreement").

**WHEREAS**, the Subdivider and the County wish to amend and restate the Initial Subdivider's Agreement in its entirety to accommodate and support anticipated growth in the Subdivision, namely the addition of 195 single-family homes bordering the eastern edge of existing Subdivision boundaries to be developed in the area shown on Exhibit A attached hereto as the "Proposed 119 Units," the "Proposed 38 Units," and the "Proposed 38 Units" (collectively, the "Subdivision Addition").

**WHEREAS**, the Subdivider and the County wish to also accommodate and support additional future growth in the Subdivision, namely the addition of the remaining properties bordering the eastern edge of existing Subdivision boundaries also shown on Exhibit A and identified thereon as "Upstream Tributary Area" (hereinafter collectively, the "Upstream Tributary Area").

**NOW, THEREFORE**, in consideration of the mutual covenants here expressed, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

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**GENERAL TERMS OF AGREEMENT**

The Subdivider and the County acknowledge and agree that the Initial Subdivider's Agreement is properly amended in writing by this Agreement. The Initial Subdivider's Agreement is hereby amended and replaced in its entirety and this Agreement shall replace the agreements of the Subdivider and the County contained within the Initial Subdivider's Agreement. This Agreement constitutes the entire agreement between the Subdivider and the County with respect to the matters covered herein and supersedes all prior agreements and understandings between the Subdivider and the County.

In connection with the development of the Subdivision, the Subdivider constructed and installed certain public infrastructure improvements consisting of a waste water reclamation and reuse system and treatment facility (the "Plant"), certain service lines, and other sewer system improvements necessary to serve the Subdivision (collectively, the "Improvements"), all pursuant to approved engineering drawings and specifications for the Improvements, which drawings and specifications are on file in the office of the County Sanitary Engineer. The Improvements and the Plant were designed to serve the Subdivision with a capacity sufficient to serve all of the lots in the Subdivision, the adjoining golf course, and the adjacent school, all in accordance with permits issued by the applicable governmental authorities. The Improvements necessary to serve the Subdivision, the Subdivision Addition, and the Upstream Tributary Area are referred to herein collectively as the "Sewer System."

The County shall own and operate the Improvements, the Plant, and the Sewer System. The Improvements, the Plant, and the Sewer System have been, or will be, publicly dedicated to the County, and the County has accepted, or will accept, the Improvements, the Plant, and the Sewer System and has assumed, or will assume, responsibility for the maintenance, use and operation of the Improvements, the Plant, and the Sewer System, all in accordance with the terms of this Agreement.

The County acknowledges and agrees that the Subdivider shall have the right to use the Improvements for the benefit of the Subdivision, the Subdivision Addition, and any future uses Subdivider may desire to connect to the Improvements up to the maximum capacity of the Plant as well as any future expansion done pursuant to this Agreement. The Subdivider and the County agree that the Plant shall be permitted to serve the Subdivision Addition and that the Subdivision Addition flow is within the maximum capacity of the Plant. The Subdivider and the County agree that the Subdivider may identify future uses for connection to the Plant up to the maximum capacity of the Plant as well as any future expansion done pursuant to this Agreement. The Subdivider and the County agree that the maximum capacity of the Plant as it exists on the date this Agreement is executed is 423,400 gallons per day. The Subdivider and the County agree that the County may, in its sole discretion, elect to convert the Plant to a pump station and redirect the flow to the Plant to the Lower Scioto Water Reclamation Facility. In the event that the County so converts the Plant and constructs a force main, the County may, with the Subdivider's written consent, which shall not be unreasonably withheld, connect future uses to the Improvements or to the Plant, provided that such connections will not cause an excess of the maximum capacity of the Improvements or the Plant.

The Subdivider and the County agree that, at its option, the Subdivider may expand the capacity of the Sewer System beyond its initial capacity. Such expansion of the Improvements, the Plant, and the Sewer System shall be at the sole cost of the Subdivider and its construction shall be subject to the approval of the County Sanitary Engineer as well as other regulatory agencies. Furthermore, any future expansion of the Plant will be subject to the terms and conditions of this Agreement.

The Subdivider has been approved for 1,678 sanitary sewer connections for single-family residences, golf course facilities, and schools (the "Taps") by the County Sanitary Engineer to connect with and use the Improvements. The Subdivider shall be issued sufficient Taps for the golf course clubhouse and school site located in the Subdivision by the County Sanitary Engineer. The Subdivider shall be issued an additional 195 single family residential Taps by the County Sanitary Engineer for the Subdivision Addition to connect with and use the Improvements, and the Subdivider shall not otherwise be required to pay to the County any surcharge, improvement charge, or community development charge with respect to the 195 lots in the Subdivision Addition to support additional County public infrastructure, except in the event the Subdivider is the builder or owner that requests a Tap into the Sewer System, whereupon the Subdivider may be charged the Surcharge as set forth in this Agreement..

The Subdivider shall have the right to charge third parties for Taps within the Subdivision and Subdivision Addition and to retain all fees charged by Subdivider to third parties for Taps within the Subdivision and Subdivision Addition in order to reimburse Subdivider for the construction costs for the Improvements. The County shall have the right to charge third parties for capacity fees and surcharges within the Upstream Tributary Area and to retain all fees charged by the County to third parties within the Upstream Tributary Area. Until such time as the County accepts the public dedication of the Improvements, the Subdivider shall have the right to charge and collect usage fees for any Improvements not accepted in order to cover the operational costs thereof. After acceptance of the public dedication of the Improvements, the County Sanitary Engineer shall retain usage fees and any inspection fees charged to third parties for operation and maintenance expenses of the Improvements.

The Subdivider and the County agree that the County may, but is not required to, levy and collect a surcharge (the "Surcharge") of up to One Thousand Five Hundred Dollars (\$1,500) on the owners of lots in the Subdivision Addition in order to reimburse the County for any of the expenses that the County incurs in funding additional County public infrastructure, which levy may be made at the time a Tap into the Sewer System is requested for a lot by its builder or owner; provided, further, that the Surcharge may only be charged to the owner of a lot once for each lot to

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be developed and it must be applied equally and uniformly to all lots in the Subdivision Addition.

**CONSTRUCTION OF THE IMPROVEMENTS**

The Subdivider shall construct, install or otherwise make Improvements for the benefit of the Subdivision in accordance with the existing plans and specifications for such Improvements currently on file with the County. The Subdivider and the County agree that an affiliate of the Subdivider, Metro Development, LLC ("Metro") will develop the area shown on Exhibit A attached hereto as the "Proposed 119 Units" south of Home Road and west of Steitz Road (the "Metro Area"). The Subdivider may construct, install or otherwise make any additional Improvements necessary to serve the Metro Area and the Upstream Tributary Area south of Home Road. The additional Improvements necessary to serve the Metro Area and the Upstream Tributary Area south of Home Road shall constitute "Improvements" for purposes of this Agreement.

The Subdivider shall not be required to construct, install or otherwise make any additional infrastructure improvements to serve the Subdivision Addition areas to be developed by Rockford Homes shown on Exhibit A attached hereto as the two areas of "Proposed 38 Units" north of Home Road and west of Steitz Road (the "Rockford Areas") or the Upstream Tributary Area north of Home Road. Rockford Homes shall be responsible for all costs of additional infrastructure improvements necessary to serve the Rockford Areas, and the County shall make provision for the construction, dedication, acceptance, inspection, surety bonds, and other requirements for such additional infrastructure improvements in a separate agreement with Rockford Homes.

The Subdivider shall make the Improvements to the Sewer System listed below and depicted in Exhibit A attached hereto:

- (i) The Subdivider shall replace the pumps in the existing Scioto Reserve Section 1 pump station shown on Exhibit A attached hereto and complete all other necessary improvements or upgrades in order to provide pumping capacity sufficient to serve the Metro Area and the Upstream Tributary Area south of Home Road, and Subdivider shall not be obligated to make additional upgrades to the Scioto Reserve Section 1 pump station without an additional reasonable equitable contribution from the County to pay the costs of such additional upgrades.
- (ii) The Subdivider shall make upgrades to the existing service lines shown on Exhibit A attached hereto necessary to ensure adequate flow to serve the Metro Area and the Upstream Tributary Area south of Home Road per engineering design and construction plans approved by the County Sanitary Engineer.
- (iii) The Subdivider shall construct additional service lines within the Metro Area necessary to serve the Metro Area and the Upstream Tributary Area south of Home Road.

The Subdivider shall be required to provide the Improvements listed above only to the extent that the Improvements are necessary to make the Sewer System have a capacity sufficient to serve the Metro Area and the Upstream Tributary Area south of Home Road. The Subdivider shall file any plans and specifications or amendments or supplements thereto with the County in connection with additional Improvements that serve the Metro Area and the Upstream Tributary Area south of Home Road.

All Improvement construction shall be performed within five (5) years from the date of the approval of said Improvements by the County, but extension of time may be granted if approved by the County.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the reasonable opinion of the County, his performance is deemed inadequate.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements.

The Subdivider shall execute a bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the approved engineering drawings and the Rules, Regulations, Procedures and General Specifications Governing Sanitary Sewerage in Delaware County, Ohio. The Subdivider shall pay the entire cost and expense of said Improvements; provided, that Subdivider shall be entitled to use all fees charged by Subdivider to third parties for Taps and usage fees paid with respect to undedicated Improvements to reimburse Subdivider for such expenses.

It is acknowledged and agreed by the County and the Subdivider that the Subdivider has previously deposited with the County Sanitary Engineer the sum of \$10,000.00 that was previously estimated to be necessary to pay the cost of inspections already undertaken by the County Sanitary Engineer. The County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep

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accurate records of the time spent by his or her employees and agents in such inspections for which the County Sanitary Engineer shall be reimbursed from charges against said deposit. At such time as said fund, as a result of charges against the same at the rate of \$75.00 per hour for time spent by said County Sanitary Engineer or his or her staff has been depleted to a level of less than \$1,000.00, the Subdivider shall make an additional deposit of \$1,000.00 to said fund. On completion of all Improvements provided herein and acceptance of same by the County any unused portions of the inspection fund shall be repaid to the Subdivider.

**COMPLETION, DEDICATION, AND ACCEPTANCE OF THE IMPROVEMENTS**

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements, which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer. The drawings shall be on reproducible MYLAR (full size), two paper copies (one full size & one 11x17), and a Compact Diskette with the plans in DWG format & PDF format;
- (2) An excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data; and
- (3) Documentation showing the required sanitary sewer easements.

The Subdividers shall be responsible for defective materials and/or workmanship for a period of five (5) years after acceptance of Improvements by the County. The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the County Sanitary Engineer a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost. The Subdivider shall within thirty (30) days of completion of construction, and prior to final acceptance, furnish to the County an itemized statement showing the cost of Improvements and an Affidavit that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to said construction of the Improvements. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements.

The County shall, upon certification in writing from the County Sanitary Engineer that all construction is complete according to the plans and specifications then on file with the County, by Resolution accept the Improvements described herein and accept and assume operations and maintenance of the same.

The Subdivider shall during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities and other matters incident hereto.

The Subdivider and the County shall perform monitoring of the Improvements pursuant to Exhibit B attached hereto, in compliance with the Land Application Management Plan ("LAMP") issued by the Ohio Environmental Protection Agency on January 8, 2013, and applicable laws, rules, and regulations, as they may be amended from time to time.

**MISCELLANEOUS**

It is acknowledged and agreed by the County and the Subdivider that the Subdivider has previously granted the County watering easements or rights over the entire golf course ground for the purpose of using clean effluent from the Sewer System to irrigate such areas. Said watering easements have been recorded as an encumbrance on the Scioto Reserve Golf Course. Such easements shall provide that the County Sanitary Engineer can control the amount and time of irrigation application to the golf course, subject to the Land Application Management Plan (LAMP). Until the Plant is offline and the Sewer System is connected with the Lower Scioto Water Reclamation Facility, the County agrees to provide Subdivider with the maximum quantity of effluent water from the Plant at times and in amounts necessary to maintain the golf course in Subdivider's sole discretion. After the Plant is offline and the Sewer System is connected with the Lower Scioto Water Reclamation Facility, the County agrees to provide Subdivider with the quantity of effluent water from the Lower Scioto Water Reclamation Facility at times and in amounts necessary to maintain the golf course in Subdivider's sole discretion based on the EPA permits. Subdivider shall install a device to monitor water levels in the irrigation impoundment. In the event that the water levels in the irrigation impoundment are insufficient to provide the necessary irrigation for the golf course, Subdivider shall notify the County, and the County shall increase the flow of water to the irrigation impoundment as needed to replenish water levels in the irrigation impoundment. The County agrees to provide an effluent return line for the purposes of providing effluent water to the golf course.

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete, maintain and repair the Improvements on the golf course property, all of which shall be obtained at the expense of the Subdivider. The Subdivider shall not be responsible for providing to the County any easements or rights-of-way

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necessary to connect the Sewer System to the O’Shaughnessy Reservoir Regional Pump Station or the Lower Scioto Water Reclamation Facility. The Subdivider and the County shall cooperate in good faith to obtain any easements or rights-of-way from other political subdivisions that are not in the County’s possession at the time this Agreement is executed and that are agreed upon by the Subdivider and the County as necessary to complete, maintain or repair the Improvements.

The Subdivider shall obtain all other necessary utility services incident to the construction of said Improvements and for their continued operation. The Subdivider shall be responsible for all utility installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County, and thereafter utility user charges shall be the responsibility of the County.

The Subdivider and the County agree that the Subdivider shall design any Improvements necessary to connect the Plant with the O’Shaughnessy Reservoir Regional Pump Station, including converting the Plant to a pump station, and any necessary forcemains, including but not limited to effluent return and raw sewage, between the Plant and the O’Shaughnessy Reservoir Regional Pump Station (the “Design Work”). The County, or an entity under contract with the County, shall commence construction on the O’Shaughnessy Reservoir Regional Pump Station not later than April 1, 2014. Subdivider acknowledges that time is of the essence with respect to the Design Work and agrees work in conjunction with the County to complete the Design Work within a reasonable period of time so as to not delay the completion of the Improvements. Subdivider also agrees to assist the County in negotiations for the acquisition of any easements from the City of Columbus.

The Subdivider shall indemnify and save harmless the County and all of its officials, employees and agents from all claims, suits, actions and proceeding which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of any contractor or subcontractor, or from any material, method or explosive used in said work, or by or on account of any accident caused by negligence or any other act or omission of any contractor of Subdivider, or his agents or employees, in connection with the construction of the Improvements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider’s heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this Agreement.

IN CONSIDERATION WHEREOF, the County hereby grants the Subdivider and its contractors, employees, agents, successors and assigns, the right and privilege to make the Improvements stipulated herein, all pursuant to this Agreement.

**SUBDIVIDER Donald R. Kenney  
BOARD OF COMMISSIONERS DELAWARE COUNTY, OHIO**

EXHIBIT A  
MAP OF SUBDIVISION ADDITION, PUMP STATION, AND SEWER LINE UPGRADES  
[See Attached Map]

EXHIBIT B  
MONITORING REQUIREMENTS  
[See Attached LAMP Permit]

(All exhibits are on file with and available for review at the Commissioners' Office until no longer of administrative value.)

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

**RESOLUTION NO. 13-1013**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS:**

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

**Supplemental Appropriations**  
50211119-5375 CFOA Bond Retirement/settlement services \$125.00

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

There being no further business, the meeting adjourned.



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Gary Merrell

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Ken O'Brien

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Dennis Stapleton

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Jennifer Walraven, Clerk to the Commissioners