

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 28, 2015

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

Present:
Gary Merrell, President
Barb Lewis, Vice President

Absent:
Ken O'Brien, Commissioner

9:40 AM Public Hearing #2 for 2015 CDBG funding

RESOLUTION NO. 15-623

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 21, 2015:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on May 21, 2015; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Absent

PUBLIC COMMENT
Joyce Daugherty- Voicing her concern over the fire exits at the SourcePoint building for their limited mobility clients

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 15-624

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0627, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0527:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0527, memo transfers in batch numbers MTAPR0527 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>		
PO' Increase					
Beems BP	Fuel for Environmental Services Generators	66211904-5228	\$ 15,000.00		
Various Day Care	Job and Family Program	22511607-5348	\$ 10,000.00		
ENA/NECCO	Job and Family Residential Treatment	22511607-5342	\$ 35,000.00		
PR	Vendor Name	Line Desc	Line Account	Amount	Line
R1503633	NORTHWESTERN OHIO SECURITY SYS INC	SHERIFF DD - SECURITY CAMERAS	41711436 - 5450	\$ 7,100.00	0001
R1503633	NORTHWESTERN OHIO SECURITY SYS INC	LIGHTNING STRIKE - SECURITY CAMERA DIFFERENCE	41711436 - 5450	\$ 2,800.00	0002
R1503634	BENCHMARK LANDSCAPE	137 N SANDUSKY - RETAINING WALL REPAIR	40111402 - 5328	\$ 5,098.97	0001
R1503615	MI HOMES OF CENTRAL OHIO LLC	RETURN OF UNUSED INSPECTION FEES; WOODS AT WEEPING ROCK	66211902-5319	\$5,054.25	0001
R1503642	XYLEM WATER SOLUTIONS USA INC	FLYGT PUMP FOR LEATHERLIPS	66211903-5450	\$31,126.00	0001
R1503656	XENTRY SYSTEMS INTEGRATION LLC	LIGHTNING STRIKE 04.09.15	60111901-5370	\$11,752.27	0001

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RESOLUTION NO. 15-626

IN THE MATTER OF APPROVING A CONTRACT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND APCO INTERNATIONAL FOR THE 911 ADVISOR SOFTWARE, TRAINING, AND TECHNICAL SUPPORT FOR EMERGENCY MEDICAL DISPATCHING:

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

Whereas, the Interim 911 Emergency Communications Director recommend approval of the contract with APCO International for 911 Advisor Software, Training, And Technical Support For Emergency Medical Dispatching;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract with APCO International for 911 Advisor Software, Training, And Technical Support for Emergency Medical Dispatching:

SERVICES CONTRACT

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 28TH day of May, 2015 by and between Delaware County, Ohio, by and through the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and APCO International, 351 N. Williamson Blvd. Dayton Beach, FL 32114 (“Contractor”) (hereinafter collectively referred to as the “Parties”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Emergency Communications Director as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

The materials and services provided under this Agreement are set forth in the attached Quote and Proposal, dated April 17, 2015, which are fully incorporated herein.

Section 4 – Compensation

The County shall pay the Contractor for the materials and services provided in the total sum of forty-nine thousand eight hundred and seventy nine Dollars and seventy-seven Cents (\$49,879.77).

Section 5 – Payment

Compensation shall be paid based on invoices submitted to the Administrator by the Contractor on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Term

This Agreement shall be in effect upon execution of this Agreement until December 31, 2015 or until the services have been completed, whichever occurs first.

Section 7 – Insurance

- 7.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 Workers’ Compensation Coverage: Contractor shall maintain workers’ compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 7.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 7.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

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Section 8 – Liability and Warranties

To the fullest extent permitted by law, neither party shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Work or this Agreement. This mutual waiver shall include, but not be limited to, loss of profit, loss of business or income, or any other consequential damages that either party may have incurred from any cause of action whatsoever.

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

Section 9 – Suspension or Termination of Agreement

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Contractor ordering termination of Work. The Contractor shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 Prohibited Interests: Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 11.2 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 11.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 11.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 Severability: If any item, condition, portion, or section of this Agreement 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 Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 Findings for Recovery: Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 11.8 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

11.10 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.

Section 12 – Medical Director; Guidecard Modifications

The County also specifically acknowledges its responsibility to engage a local medical director to assist the County in customization of the County guidecards. Contractor will not perform any edits to any guidecards unless the edits have been specifically approved by the County’s medical director. County agrees that it shall notify the Contractor immediately if its medical director changes during the term of this Agreement. County further acknowledges and agrees that only the Contractor can make edits to the guidecards and that the County will not make any edits to its guidecards.

Section 13 – Compliance Audit

County agrees that Contractor may audit the County at any time during the term of the Agreement, or any time thereafter if Contractor reasonably believes that the EMD Program is still being utilized beyond the term of the Agreement, to ensure County’s compliance with the Implementation Guide and any amendments thereto. Contractor may audit County no more than twice a year and the audits must be performed during normal business hours. County agrees to make all records and personnel available for this purpose, so long as Contractor provides no less than ten (10) business days’ notice of its intent to audit County. County agrees to fill out and return any compliance audit forms requested by Contractor within thirty (30) days of receipt thereof.

Section 14 - Disclaimer of Warranties

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Further Be It Resolved, that the Board of Commissioners approve the following purchase order request; R1503451 to APCO AFC INC for \$49,879.77 (21411306-5320)

Vote on Motion Mr. Merrell Aye Mr. O'Brien Absent Mrs. Lewis Aye

RESOLUTION NO. 15-627

IN THE MATTER OF APPROVING THE FIRST AMENDMENT FOR MONITORING AND ASSOCIATED SERVICES BETWEEN THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY; DELAWARE COUNTY JUVENILE COURT AND THEMIS TRACKING SERVICES,

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LLC., A DISTRIBUTOR FOR SECURE ALERT, INC. :

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

Whereas, The Juvenile Court Judge and Staff recommend approval of an amendment to the agreement with Themis Tracking Services, LLC.;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve an amendment to the agreement with Themis Tracking Services, LLC.:

FIRST AMENDMENT TO AGREEMENT FOR MONITORING AND ASSOCIATED SERVICES

This First Amendment of the Agreement for Monitoring and Associated Services (“First Amendment”) is entered into this 28th day of May, 2015 by and between the Board of Commissioners, Delaware County, Ohio (“Board”), whose principal place of business is located at 101 North Sandusky Street, Delaware, Ohio 43015, the Delaware County, Ohio Juvenile Court (“Court”), whose principal place of business is located at 140 North Sandusky Street, Ground Floor, Delaware, Ohio 43015 (Board and Court collectively “Customer”), and Themis Tracking Services, LLC (“Provider”), a certified distributor for Secure Alert, Inc., a Utah corporation, whose principal place of business is located at 2703 Vestry Avenue, Cleveland, Ohio 44113, (individually “Party,” collectively, “Parties”).

WHEREAS, the Parties entered into an Agreement for Monitoring and Associated Services dated June 23, 2014 (hereinafter “Agreement”); and,

WHEREAS, the term of the Agreement will expire on June 30, 2015; and,

WHEREAS, the Agreement permits, upon written agreement of the Parties, that the Agreement may be renewed for successive one (1) year periods subject to the same terms and conditions provided in the Agreement and upon any such terms and conditions as may be specifically agreed upon, added and/or amended in writing by the Parties; and,

WHEREAS, the Parties now desire to renew the Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **RENEWAL.** The term of the Agreement is extended for an additional one (1) year (July 1, 2015 through June 30, 2016).
2. **CONTRACT MAXIMUM.** The maximum amount payable pursuant to this First Amendment (provided that all Equipment, Monitoring, and Other Services are rendered in a manner satisfactory to the Court) is Thirty-Five Thousand Dollars and No Cents (\$35,000.00). It is understood by the Parties that the actual amount paid may be less, based upon actual Equipment, Monitoring, and Other Services provided.
3. **EXHIBIT A.** Exhibit A attached to this First Amendment shall replace Exhibit 3 attached to the Agreement (Campaign Finance – Certification/Affidavit in Compliance with R.C. § 3517.13). By this reference, Exhibit A is incorporated into and made a part of this First Amendment.
4. **SIGNATURES.** Any person executing this First Amendment in a representative capacity hereby warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal’s behalf and is authorized to bind such principal.
5. **CONFLICTS.** In the event of a conflict between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall prevail.
6. **TERMS OF AGREEMENT UNCHANGED.** All terms and conditions of the Agreement not changed by this First Amendment remain the same, unchanged, and in full force and effect.

Vote on Motion Mrs. Lewis Aye Mr. O'Brien Absent Mr. Merrell Aye

RESOLUTION NO. 15-628

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR JUVENILE COURT:

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

Supplemental Appropriations

27826327-5201	Juvenile Court Casa Program/General Supplies	2,000.00
27826327-5294	Juvenile Court Casa Program/Food Supplies	3,000.00
27826327-5301	Juvenile Court Casa Program/Professional Services	8,300.00

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27826327-5305	Juvenile Court Casa Program/Training & Staff Development	10,000.00
27826327-5308	Juvenile Court Casa Program/Membership and Dues	1,700.00

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-629

IN THE MATTER OF AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE OHIO DEPARTMENT OF YOUTH SERVICES FOR THE DELAWARE COUNTY PROBATE AND JUVENILE COURT:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following

Grant: HB153 Training
Source: ODYS
Grant Period: 7-1-15 thru 6-30-16

Grant Amount: \$13,625.00
Local Match: \$ 3,000.00
Total \$16,625.00

Proceeds from the grant will be spent to provide training for Parent Project, Motivational Interviewing, and Family Functional Therapy.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Absent

RESOLUTION NO. 15-630

9:40 AM PUBLIC HEARING #2 FOR 2015 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to open the hearing public hearing #2 for 2015 Community Development Block Grant Funding.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. O'Brien Absent

RESOLUTION NO. 15-631

IN THE MATTER OF CLOSING PUBLIC HEARING #2 FOR 2015 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to close public hearing #2 for 2015 Community Development Block Grant Funding.

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-632

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS:

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

Supplemental Appropriations		
66211902-5319	Reimbursement/Refunds	\$30,000.00

Vote on Motion Mrs. Lewis Aye Mr. O'Brien Absent Mr. Merrell Aye

RESOLUTION NO. 15-633

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATIONS:

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

Transfer of Appropriations	
From	To
66711907-5410	66711907-5301
ACWRF Filter /Building Improvements	ACWRF Filter Improvements /Contracted Professional Services
	\$5,000.00

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Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-634

IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND HAZEN SAWYER FOR THE ALUM CREEK WATER RECLAMATION FACILITY RAPID SAND FILTER UPGRADE PROJECT:

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

Whereas, the Board of Commissioners entered into a contract with Hazen & Sawyer P.C. for the Alum Creek Water Reclamation Facility Rapid Sand Filter Upgrade Project; and

Whereas, additional services are requested by the County associated with regulatory negotiations and a capital improvement cost analysis that will increase the original lump sum cost of the contract; and

Whereas, the Director of Environmental Services recommends approval of Amendment No. 1.

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve Amendment No. 1 to Professional Services Contract.

**AMENDMENT NO. 1
ALUM CREEK WATER RECLEMATION FACILITY RAPID SAND FILTER UPGRADE**

This Amendment No. 1 to the Original Agreement dated September 8, 2014 is made and entered into this 28th day of May, 2015, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 ("County"), and Hazen & Sawyer P.C., 150 E. Campus View Blvd Suite 133, Columbus, Ohio 43235 ("Consultant") (hereinafter collectively referred to as the "Parties").

ARTICLE 1 – AMENDMENT

Pursuant to Section 13.3 of the Original Agreement, the Parties mutually agree to amend the Original Agreement by approving additional design services as set forth in Exhibit A and Attachment B attached to and, by this reference, fully incorporated into this Amendment No. 1.

ARTICLE 2 – REMAINING PROVISIONS

All other terms and conditions of the Original Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1.

FURTHERMORE, Be It Resolved that the Board of County Commissioners approve an increase to purchase order P1501158 with Hazen & Sawyer PC in the amount of \$36,000.00.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Absent

RESOLUTION NO. 15-635

IN THE MATTER OF ISSUING SUBSTANTIAL COMPLETION TO ADENA CORPORATION FOR THE CONSTRUCTION OF THE ALUM CREEK WATER RECLAMATION FACILITY DIGESTER DIFFUSER UPGRADE:

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

Whereas, Adena Corporation has completed the diffuser upgrade, including testing, to the point where the County may start using the new improvements. Restoration of the area is all that remains to be completed.

THEREFORE BE IT RESOLVED that the Delaware County Board of Commissioners issues a Certificate of Substantial Completion to Adena Corporation for the ACWRF Digester Diffuser Upgrade Project.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. O'Brien Absent

RESOLUTION NO. 15-636

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLAN FOR ENCLAVE AT THE LAKES:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following sanitary sewer construction plans

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for Enclave at the Lakes for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer plans for Enclave at the Lakes for submittal to the Ohio EPA for their approval.

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer plans for Enclave at the Lakes for submittal to the Ohio EPA for their approval.

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-637

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLAN FOR NORTH FARMS SECTION 6 & 11:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following sanitary sewer construction plans for North Farms Section 6 & 11 for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer plans for North Farms Section 6 & 11 for submittal to the Ohio EPA for their approval.

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer plans for North Farms Section 6 & 11 for submittal to the Ohio EPA for their approval.

Vote on Motion Mr. Merrell Aye Mr. O'Brien Absent Mrs. Lewis Aye

RESOLUTION NO. 15-638

IN THE MATTER OF ACCEPTING SANITARY EASEMENTS FROM J.D. PARTNERSHIP AND T&R PROPERTIES, LLC:

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

WHEREAS, Sanitary Easements are required for the Ravines at Alum Creek development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby accepts the sanitary easements granted by J.D. Partnership and T&R Properties.

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

Vote on Motion Mrs. Lewis Aye Mr. O'Brien Absent Mr. Merrell Aye

RESOLUTION NO. 15-639

IN THE MATTER OF ACCEPTING A UTILITY EASEMENT FROM J.D. PARTNERSHIP AND T&R PROPERTIES, LLC:

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

WHEREAS, a Utility Easement is required for the Ravines at Alum Creek development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby accepts the utility easement granted by J.D. Partnership and T&R Properties.

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

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-640

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT AGREEMENT FOR THE RAVINES OF ALUM CREEK:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to accept the following Sanitary Sewer Improvement Agreement:

Whereas, the Director of Environmental Services recommends approval of the Sanitary Sewer Improvement agreement:

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Therefore, Be It Resolved the Board of Commissioners approve the Sanitary Sewer Improvement Agreement for The Ravines of Alum Creek.

SANITARY SEWER IMPROVEMENTS AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 28th day of May 2015, by and between **J.D. Partnership and T&R Properties Inc.**, 3895 Stoneridge Lane, Dublin, OH 43017 (hereinafter called "Developer"), and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County"), as evidenced by **The Ravines of Alum Creek Sanitary Sewer Improvements plan (with 2015 revisions)**, shall amend by substitution the Developer's prior Subdivider's Agreement dated April 19, 2004, approved via Resolution No. 04-496, and is governed by the following considerations and conditions, to wit:

The Developer is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **The Ravines of Alum Creek Sanitary Sewer Improvements (with 2015 revisions)**, approved by the County on May 11, 2015, all of which are a part of this Agreement (Developer's "Work"). The Developer shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **67** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing.

SECTION III: FINANCIAL WARRANTY

The Developer shall, prior to the start of construction of the Improvements, execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction **(\$236,184.00)**, which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Regulations of Delaware County, Ohio.

The Developer shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Developer 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.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Developer shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **The Ravines of Alum Creek (with 2015 Revisions) (\$8,266.44)**. The Developer shall also deposit with the Delaware County Sanitary Engineer the sum of **(\$20,100.00)** estimated to be necessary to pay the cost of inspection for **The Ravines of Alum Creek (with 2015 Revisions)** by the Delaware County Sanitary Engineer. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Developer and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$1,200.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour
CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer, his or her agents, or staff, the Developer shall make an additional deposit of \$1,200.00 to the fund. Upon completion of all Improvements provided herein and acceptance of the Improvements by the County, any unused portions of the inspection fund shall be repaid to the Developer, less an amount equal to \$0.75 per foot of sewer, which will be deducted to cover re-inspection.

In addition to the charges above, the Developer shall pay the cost of any third party inspection services as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the

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approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Developer shall indemnify and save harmless the County, Townships, Villages, and/or Cities, and all of their officials, employees and agents from all claims, suits, actions and proceedings 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 the Developer, and any of its contractors or sub-contractors, or from any material, method or explosive used in the Work or by or on account of any accident caused by negligence or any other act or omission of Developer, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Developer 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 Developer when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Developer must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Developer shall request a revision to the construction plans, and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Developer shall provide and record revised permanent, exclusive sanitary easements prior to the County's acceptance of the sewer. The language and dimensions of the revised permanent exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Developer 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 to the construction and operation of the Improvements.

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

SECTION VI: EASEMENTS

The Developer shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Developer. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. Easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

The Developer agrees to provide additional sanitary easements on various lots within The Ravines of Alum Creek development as depicted on the attached Exhibit "A", and to also provide new sanitary easements on top of portions of the existing platted utility easements (as recorded under Plat Cabinet 3, Pages 520 & 520 A at the office of the Delaware County Recorder) as depicted on the attached Exhibit "B". The Developer further agrees that no utility will be laid within 10' horizontally (outside edge to outside edge) of the sanitary sewer with the exception of utility crossings between 80-90 degrees and the utility crossings which are shown on the signed construction plans.

Developer also agrees to prepare and record an affidavit to the existing plat for the Ravines of Alum Creek, recorded under Plat Cabinet 3, Pages 520 and 520A at the office of the Delaware County Recorder identifying the additional and new sanitary easements as described above.

SECTION VII: COMPLETION OF CONSTRUCTION

The Developer acknowledges that the proposed sanitary sewer improvements for The Ravines of Alum Creek will connect to downstream sewers from the Brookview Manor Section 1 development to the south. The downstream sewers to be constructed from Brookview Manor Section 1 have not been completed as of the date of this agreement. The Developer acknowledges and agrees that the Brookview Manor Section 1 Sanitary Sewer Improvements must be completed and accepted by the County prior to the County's acceptance of any of the Ravines of Alum Creek sanitary sewer improvements. The Developer agrees that any construction of the sanitary sewer improvements for The Ravines of Alum Creek performed by the Developer prior to completion of the Brookview Manor Section 1 Sanitary Sewer Improvements shall be at the Developer's own risk.

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

The Developer shall, within thirty (30) days following completion of construction of the Improvements, 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 11"x17"), 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.
- (3) An itemized statement showing the cost of the Improvements
- (4) An affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Developer shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Developer become unable to carry out the provisions of this Agreement, the Developer's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

The Developer, for a period of five (5) years after acceptance of the Improvements by the County, shall be responsible for defective materials and/or workmanship. 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.

After acceptance, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer.

SECTION VII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Developer or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Absent

RESOLUTION NO. 15-641

IN THE MATTER OF EXTENDING A MORATORIUM ON THE DELAWARE COUNTY POLICY FOR PAYMENT OF CAPACITY FEES FOR NEW SEWERS INSTALLED BY DEVELOPERS:

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

WHEREAS, on May 24, 2012, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 12-520, instituting a moratorium on the Delaware County Policy for Payment of Capacity Fees for New Sewers Installed by Developers (the "Moratorium"); and

WHEREAS, the Moratorium expires on May 31, 2015; and

WHEREAS, the Director of Environmental Services recommends extending the Moratorium;

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

Section 1. The Board hereby extends the Moratorium through May 31, 2016.

Section 2. All other provisions of Resolution No. 12-520 shall continue in full force and effect.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. O'Brien Absent

RESOLUTION NO. 15-642

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATIONS:

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

Transfer of Appropriations

From	To	
66711908-5415	66711901-5415	\$2,500,000.00
Liberty-Sawmill Sewer Extension /Sewer Construction	Construction Fund /Sewer Construction	

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-643

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Interim Director of Job and Family Services recommends accepting the voluntary resignation of Anthony Smith from JFS; effective June 2, 2015;

Therefore Be it Resolved, the Board of Commissioners accept the voluntary resignation of Anthony Smith from JFS; effective June 2, 2015.

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-644

RESOLUTION OF NECESSITY FOR THE PURCHASE OF AN AUTOMOBILE FOR THE USE OF THE DELAWARE COUNTY DOG WARDEN AND ASSISTANTS:

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

WHEREAS, pursuant to section 307.41 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may find, by resolution, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, the Board has before it a request from the Dog Warden to expend county monies for the purchase a new vehicle for the Dog Warden's Office; and

WHEREAS, the Assistant County Administrator / Director of Administrative Services and the Dog Warden recommend the purchase of a new vehicle for the Dog Warden's Office;

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

Section 1. The Board hereby declares that a necessity exists to purchase a new vehicle for use by the Dog Warden's Office for the replacement of a current vehicle.

Section 2. The Board hereby declares that the make and model of the vehicle is a 2015 Ford F250 at a cost not to exceed \$28,975.00.

Section 3. The Board hereby approves a purchase order request for a total of \$28,975.00 to Mathews Ford of Marion, Inc., Marion, Ohio for one Ford F250 Pickup being from fund number 20411305 – 5450 and \$4,563.00 to purchase the animal control box from Wolverine Coach Inc. from fund 20411305-5450.

Section 4. The Board hereby approves a supplemental appropriation for org key 20411305-5450 in the amount of \$33,538.00.

Section 5. This Resolution shall take immediate effect upon passage.

Vote on Motion Mr. Merrell Aye Mr. O'Brien Absent Mrs. Lewis Aye

ADMINISTRATOR REPORTS

Tim Hansley

-A reminder that there will be a joint meeting on Monday, June 1, 2015 at 7:00 PM with the City of Delaware to give updates on the Sawmill Road Project, an EMS agreement between the City and County, the search for our Economic Development Coordinator, a transportation plan and the Solid Waste Transfer Station

COMMISSIONERS' COMMITTEES REPORTS

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Commissioner Merrell

-Discussion on an email he was sent this morning from Bob Morgan concerning a building

Commissioner Lewis

-Met with Community Action last night in Marysville. It was mentioned that they have lost some funding from United Way. The Director asked for a date to come and give an update to the commissioners

RESOLUTION NO. 15-645

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn into Executive Session at 10:18 AM.

Vote on Motion Mrs. Lewis Aye Mr. O'Brien Absent Mr. Merrell Aye

RESOLUTION NO. 15-646

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn out of Executive Session at 10:37AM.

Vote on Motion Mr. O'Brien Absent Mr. Merrell Aye Mrs. Lewis Aye

RECESS 10:40AM/RECONVENE 11:30AM

DISCUSSION:

-AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CONCORD/SCIOTO COMMUNITY AUTHORITY

-SECOND AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT WITH DONALD R. KENNEY FOR THE SCIOTO RESERVE GOLF CLUB COMMUNITY SUBDIVISION

-SANITARY SEWER PLATTING PROCESS FOR NORTHSTAR

RECESS 11:35 AM/RECONVENE 5:00PM

RESOLUTION NO. 15-647

APPROVING THE SECOND AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CONCORD/SCIOTO COMMUNITY AUTHORITY:

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

SECOND AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT

This Second Amendment to the Amended and Restated Intergovernmental Cooperation Agreement (the “Second Amendment”) dated as of May 28 , 2015, 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 amends the Amended and Restated Intergovernmental Cooperation Agreement (the “Agreement”) between the Authority and the County dated October 1, 2013.

RECITALS:

WHEREAS, the Authority and the County have previously entered into the Agreement dated as of October 1, 2013, whereby the Authority has agreed, among other things, to design and construct, or cause to be designed and constructed, the O’Shaughnessy Pump Station; and

WHEREAS, the Authority and the County amended the Agreement by the First Amendment, dated December 2, 2013, to extend the timelines associated with the design and construction of the O’Shaughnessy Pump Station for the benefit of both the Authority and the County; and

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WHEREAS, the Authority and the County desire in this Second Amendment to amend the Agreement in order to:

- (i) plan, design, and construct additional sanitary sewer improvements, including (a) the construction of a new Scioto Reserve pump station, (b) the connection and alignment of the newly constructed Scioto Reserve pump station to a forcemain, (c) the construction of the forcemain that will run north along South Section Line Road, (d) the connection and alignment of the forcemain to a gravity sanitary sewer line constructed to run north along South Section Line Road and west along Butts Road to its terminus at the O'Shaughnessy Pump Station, and (e) the construction of an effluent line to serve the irrigation system of the Scioto Reserve Golf Course (collectively, clauses (a) through (e) are referred to herein as "Project #1");
- (ii) plan, design, and construct additional sanitary sewer improvements consisting of the construction of a gravity sanitary sewer line to connect the Clark Shaw Sanitary Tributary Boundary Area defined herein, which gravity sanitary sewer line pipes consist of varying diameters along the expansion route (collectively, "Project 2"), and
- (iii) adjust the timelines associated with the construction of the O'Shaughnessy Pump Station, all as set forth in the Term Sheet agreed to by the County, the Authority, the Developer, and Donald R. Kenney, attached hereto as Second Amendment – Exhibit A (the "Term Sheet").

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 Authority and the County agree to the foregoing and as follows:

Section I

Amendments to Section I.

Section I of the Agreement is hereby amended by deleting the definition of "Original Service Area" and deleting the definition of "Service Area" and substituting the following language in its place:

"Service Area" means the area, described in Exhibit C attached hereto, that will be served by the Improvements, as such area may be expanded pursuant to Section V of this Agreement.

The revised Exhibit C is attached hereto as Second Amendment – Exhibit B.

Section II

Amendments to Section V.

Section V of the Agreement is hereby amended by deleting the first and second paragraphs of Section V in their entirety and substituting the following language in their place:

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 preceding sentence shall remain in full force and effect until such time as the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, has reached its full capacity, whereupon the County may acquire, construct or install other wastewater treatment facilities, real property, lines, pumps, utility-related fixtures or other related fixtures and appurtenances to serve the Service Area. Notwithstanding any other provision of this Agreement (except those provisions of this Agreement imposing requirements on property owners within the Service Area or regarding the ability of parcels to join or remain within the District), after obtaining the prior written consent of the Authority and without reducing the Service Area the County may (i) redirect wastewater flow from pump stations, sanitary sewers, or force mains within the Service Area to be treated at County facilities other than the Treatment Facility and the Treatment Facility Expansion, if such redirection is reasonably necessary to reserve capacity in the Treatment Facility (as expanded by the Treatment Facility Expansion), and (ii) expand the Service Area to include additional properties and redirect wastewater flow from pump stations, sanitary sewers, or force mains outside of the Service Area serving such additional properties to be treated at the Treatment Facility and the Treatment Facility Expansion. 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 within the area depicted as "Owner's Choice" on Exhibit C at the election of any property owner owning property outside of the Service Area but within the "Owner's Choice" area that desires to develop such property within such area and to receive sewer services from the Treatment Facility; provided, that any property owner so electing to receive sewer services from the Lower Scioto Water Reclamation Facility shall be subject to and shall pay both (i) the Surcharge for the Service Area in accordance with Section XIII hereof, and (ii) an additional surcharge in the amount of \$1,350 or such other amount as may be determined by the County from time to time. If the County expands the Service Area the County shall certify to the Authority an expanded Service Area map to replace the map attached

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hereto as Exhibit C.

Except as otherwise expressly set forth in this Agreement, the County agrees to oppose any attempt by any entity to provide sanitary sewer service within the Service Area as defined in this Agreement in such a manner as the County shall determine. Moreover, 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 convey wastewater to the Treatment Facility and approved by the Authority, the County shall not permit the construction 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, until such time as the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, has reached its full capacity, 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 if such expansion includes a portion of the Service Area. Notwithstanding the preceding sentence, after obtaining the prior written consent of the Authority and without reducing the Service Area the County may (i) redirect wastewater flow from pump stations, sanitary sewers, or force mains within the Service Area to be treated at County facilities other than the Treatment Facility and the Treatment Facility Expansion, if such redirection is reasonably necessary to reserve capacity in the Treatment Facility (as expanded by the Treatment Facility Expansion), and (ii) expand the Service Area to include additional properties and redirect wastewater flow from pump stations, sanitary sewers, or force mains outside of the Service Area serving such additional properties to be treated at the Treatment Facility and the Treatment Facility Expansion. 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 pursuant to any procedure set forth in Chapter 709 of the Ohio Revised Code in which the County is not vested with the discretion to deny the petition for annexation.

Section V of the Agreement is further amended by deleting the seventh paragraph of Section V in its entirety and substituting the following language in its place:

Any buildings within the Service Area already connected to County sanitary sewer, any single-family homes in the Service Area existing as of the date of the Original Agreement, and any platted lots served by pump stations or treatment plants that existed at the time at which the Original Agreement was executed shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee. Any single-family homes in the Service Area existing as of the date of the Original Agreement and not connected to sewer shall pay a sewer tap 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; provided, that:

- (i) any single-family homes in the Scioto Reserve development that have been added to the Service Area as a result of the Second Amendment shall pay a sewer tap fee and surcharge, if applicable, pursuant to the Amended and Restated Subdivider's Agreement between the Scioto Reserve subdivider and the County; and
- (ii) 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, shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee but shall pay (A) a sewer tap fee to the subdivider of the Scioto Reserve development identified in the Amended and Restated Subdivider's Agreement between the Scioto Reserve subdivider and the County, and (B) a surcharge to the County in the amount of \$1,500.

Section V of the Agreement is further amended by adding the following paragraph after the existing seventh paragraph of Section V:

Notwithstanding anything in this Agreement to the contrary, the County shall fix at \$5,900 all sanitary sewer tap fees applicable within the following areas: (i) all properties owned or controlled by the Developer or its affiliates identified on the map for Project #1 attached hereto as Second Amendment – Exhibit C, (ii) the area identified as "Scioto Springs" on the map for Project #2 attached hereto as Second Amendment – Exhibit D, and (iii) the area consisting of an approximately 50 acre property to the west of and abutting the "Scioto Springs" property, and such sanitary sewer tap fees shall remain fixed for a period of fifteen (15) years from the date of the Second Amendment, whereupon the County may set sanitary sewer tap fees pursuant to the County's sewer tap collection fee policy then in effect as of the date of the tap.

Section III

Amendment to Section XIII.

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Section XIII of the Agreement is hereby amended by substituting the value of “\$2,500” for “\$1,500” in all instances.

Section XIII of the Agreement is further amended by adding the following paragraph after the existing paragraph:

The County shall charge and collect the Surcharge on all properties within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D. The County shall remit the proceeds of the Surcharge collected on properties within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D to the Authority to pay the actual construction costs of Project #2 improvements not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000), provided, that said amount shall be reduced by the amount of any County Contribution made available to pay the costs of Project #2. Such proceeds shall be paid to the Authority on a quarterly basis within fifteen (15) business days of the end of each calendar quarter. After the lesser of the actual costs of Project #2 or the amount set forth in the preceding sentence have been paid, the County may continue charging the Surcharge on properties within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D and may use the proceeds of the Surcharge so collected for any lawful County purpose. For purposes of this Section XIII, “actual construction costs of Project #2 improvements” shall be limited to the actual amount paid to the contractor or contractors that construct the Project #2 improvements, the actual construction management fee for Project #2 identified in Section XIV-B, and any costs of acquiring easements for Project #2 improvements in accordance with Section XIV-B (other than easements to be provided by the Developer in accordance with Section XIV-B), but “actual construction costs of Project #2 improvements” shall not include any other costs of the Authority or Developer in administering the Project #2 improvements or any costs of financing the Project #2 improvements.

Section IV

Amendment to Section XIV.

Section XIV of the Agreement is hereby amended by deleting the third paragraph of Section XIV of the Agreement, as amended by the First Amendment, in its entirety and substituting the following language in its place:

The County and the Authority agree that the Authority shall cause Substantial Completion of the O’Shaughnessy Pump Station to occur not later than November 9, 2015; provided, that the Authority shall be relieved of its obligation to cause Substantial Completion of the O’Shaughnessy Pump Station by November 9, 2015 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.

Section V

Creation of New Agreement Section XIV-B.

The Agreement is hereby amended by adding the new Section XIV-B as follows:

The Term Sheet agreed to by the County, the Authority, the Developer, and Donald R. Kenney, attached hereto as Second Amendment – Exhibit A, is hereby incorporated into the Agreement as if fully restated herein. The County and the Authority agree that should the Agreement conflict with any term or provision contained in the Term Sheet that the Agreement shall control. The County and the Authority agree that the descriptions of Project #1 and Project #2 contained in the Term Sheet are sufficient descriptions to incorporate each of Project #1 and Project #2 as Sewer Improvements and Supportive Improvements for all purposes of the Agreement. A map depicting Project #1 is attached hereto as Second Amendment – Exhibit C and is hereby incorporated into the Agreement as if fully restated herein. A map depicting Project #2 is attached hereto as Second Amendment – Exhibit D and is hereby incorporated into the Agreement as if fully restated herein. The Clark Shaw Sanitary Tributary Boundary Area is depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D. Without reducing the parcels within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D, the County and the Authority may agree to add parcels to the Clark Shaw Sanitary Tributary Boundary Area, which additional parcels may also be provided sewer service in accordance with the Agreement. The County and the Authority shall replace the map of Project #2 attached hereto as Second Amendment – Exhibit D if the Clark Shaw Sanitary Tributary Boundary Area is enlarged by agreement. The County and the Authority agree to be bound to each other as set forth by the provisions of the Term Sheet that apply to the County and the Authority. The County and the Authority agree to provide reasonable cooperation with the

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other parties to the Term Sheet as may be requested from time to time to aid those parties in performing their obligations under the Term Sheet. The County and the Authority agree that any approval or consent to be given by either party with respect to Project #1 and Project #2 shall not be unreasonably withheld from the other party.

All provisions in the Agreement pertaining to construction of Supportive Improvements shall apply to Project #1 and Project #2 except those provisions expressly contradicted by this Section XIV-B.

The County shall make the total sum of not to exceed Four Million Dollars (\$4,000,000) (the "County Contribution") available upon demand of the Authority and in accordance with the terms and conditions of the Agreement to pay the Authority's costs of Project #1 approved for payment by the County ("Project #1 Costs"); provided, that if the County requests that the final design work include upsizing the gravity sewer line to be constructed on Butts Road as part of Project #1 and has approved the final design work in accordance with this Section XIV-B, the County will make an additional contribution (the "County Upsizing Contribution") to the Authority to pay the costs to upsize the gravity sanitary sewer line to be constructed on Butts Road as part of Project #1 ("Upsizing Costs"), subject to prior appropriation of any additional amount by the Board of County Commissioners. The parties agree that, while upsizing the gravity sanitary sewer line is part of the Project #1 improvements being constructed by the Authority, the amount of the "Project #1 Costs" does not include the amount of any "Upsizing Costs." If the County has approved the final design work in accordance with this Section XIV-B and the final approved Project #1 Costs are less than Four Million Dollars (\$4,000,000), the County will make the remaining amount of the County Contribution in excess of the Project #1 Costs available to the Authority to pay the Authority's costs of Project #2 improvements approved for payment by the County regardless of whether the County has made any County Upsizing Contribution to pay for any Upsizing Costs. All costs of Project #1 and Project #2 in excess of the amounts made available by the County to the Authority pursuant to this paragraph shall be costs of the Authority and shall be paid by the Authority from any lawful source including, without limitation, the proceeds of any Surcharge charged by the County on the properties within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D.

The County will provide the Authority with all right-of-way or property easements necessary for the construction of Project #1 improvements other than those provided by the Developer in accordance with the Term Sheet. If the County and the Authority are unable to obtain the necessary property easements within forty-five (45) days of execution of the Second Amendment, the County agrees to permit the easements to be located in the right-of-way, provided however the County shall first consult the Delaware County Engineer to minimize interference with existing road improvements and the use thereof by the traveling public.

The Authority shall be responsible for the design for Project #1 improvements and for Project #2 improvements; provided, that the Authority's responsibility to design Project #1 improvements and Project #2 improvements shall be limited to the design work provided to the Authority by the Developer. The County and the Authority agree that the Developer may hire design professionals to complete the design of all Project #1 improvements and Project #2 improvements, it being the intention of the Authority and the County that as design work progresses the Developer will be responsible for payment of the costs of any design work for the Project #1 improvements and the Project #2 improvements. The Authority, through the Developer, will submit design work for the Project #1 improvements and the Project #2 improvements to the County within forty-five (45) calendar days of receiving all easements necessary for Project #1. The County agrees to review the design work for the Project #1 improvements and the Project #2 improvements within thirty (30) calendar days of receiving the design work, and the County agrees to determine whether or not to upsize the gravity sanitary sewer line to be constructed on Butts Road as part of Project #1 during its review of the design of Project #1. The County and the Authority, through the Developer, agree to have sequential review sessions each not more than fifteen (15) business days following the previous review session in order to review the design work and to obtain the County's approval for the design work. The County will reasonably cooperate with the Authority, the Developer, and their respective design professionals to resolve any comments to the design work in order to approve the design work without undue delay. Once the design work for the Project #1 improvements and the Project #2 improvements has been approved by the Authority, the County, and any other regulatory agencies with jurisdiction to approve the Project #1 improvements and the Project #2 improvements, (i) the Authority will enter into one or more fixed price or lump sum contracts for Project #1, and (ii) the Authority will enter into one or more fixed price or lump sum contracts for Project #2. The Authority shall commence, or cause commencement of, construction of Project #1 within thirty (30) days of final approval of the design work and the issuance of a permit to install, and construction of Project #1 shall be completed within one (1) year of commencement, which completion shall be subject to reasonable accommodations for delays caused by weather or force majeure.

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The Authority shall be responsible for the construction of all Project improvements. The Authority will enter into one or more Infrastructure Construction and Acquisition Agreements with the Developer in substantially the same form as the agreement attached hereto as Exhibit A, and will cause the Developer to undertake the construction of Project #1 and Project #2 through contractors hired by the Developer. The Developer may enter into individual construction contracts with contractors for Project #1 improvements and Project #2. The Developer will earn a Construction Management Fee equal to five percent (5%) of the costs of construction of Project #1 and Project #2 as Project #1 and Project #2 improvements are certified for payment. The County agrees to consider concurrent review of any Permit To Install approvals in order to expedite the construction of the Project #1 improvements and the Project #2 improvements, and the County agrees to expedite to the extent reasonably possible the preparation and submission of any Permit to Install for review by the Ohio Environmental Protection Agency. Pursuant to Section XIV hereof, the County shall be responsible for inspection of the construction of all Project #1 improvements and all Project #2 improvements. Pursuant to Section XIV of the Agreement, the County is solely responsible for inspection of any contractor's work and verifying that the work conforms to the contract documents and information certified in each payment application for Project #1 or for Project #2. The Authority and the County agree that the Developer may hire an independent inspector other than the County to inspect the construction of any Project #1 improvements or Project #2 improvements, and the costs of such inspector shall be borne solely by the Developer and shall not be included in the costs of the Project #1 improvements or the Project #2 improvements being paid by the County pursuant to the Second Amendment.

As construction work for Project #1 and Project #2 progresses, the Authority will forward contractor payment applications to the County for the County's approval and payment. The parties hereto mutually agree that the County's obligation to pay approved amounts is limited to the total amount of the County Contribution plus any County Upsizing Contribution. The payment application process shall be as set forth in Section XIV hereof as well as each Infrastructure Construction and Acquisition Agreement to be entered into between the Authority and the Developer for Project #1 and Project #2. Within fifteen (15) calendar days of receiving each payment application, the County shall approve or deny, in whole or in part, the certified application and issue payment to the Authority, subject only to the limit of the County Contribution plus any County Upsizing Contribution. If the County determines to deny a payment application in whole or in part, the Authority may hire a third-party engineer to evaluate the denial and to provide recommendations to the Authority and the County regarding the payment application. Upon approval and any required payment by the County, the Authority shall pay to the Developer the amount approved by the County; provided, that (i) the Authority's obligation to pay approved amounts for the construction of Project #1 improvements is limited to the County Contribution to pay for Project #1 Costs plus any County Upsizing Contribution to pay for any Upsizing Costs, and (ii) the Authority's obligation to pay approved amounts for the construction of Project #2 improvements is limited to (a) any portion of the County Contribution to the Authority remaining after Project #1 Costs are paid in full, and (b) the proceeds of any Surcharge charged and collected by the County on the properties within the Clark Shaw Sanitary Tributary Boundary Area as depicted on the map of Project #2 attached hereto as Second Amendment – Exhibit D and paid by the County to the Authority in accordance with Section XIII hereof.

Upon completion, all Project #1 improvements and Project #2 improvements will be dedicated to and accepted by the County, and the County agrees to accept the maintenance responsibility for any Project #1 improvements and Project #2 improvements so dedicated and accepted. The County agrees to accept, manage, and assume responsibility for treating or disposing of any wastewater flow that is collected by the Project #1 improvements, the Project #2 improvements, and the O'Shaughnessy Pump Station immediately upon dedication to and acceptance by the County. Furthermore, the County agrees to operate the Treatment Facility and to accept wastewater flow into the Treatment Facility for processing at such time as the County shall determine that the Treatment Facility is functionally capable of such operation and processing.

Section VI

Full Force and Effect of the Agreement

The Authority and the County agree that the Agreement remains in full force and effect, except as amended by the First Amendment and this Second Amendment.

Section VII

Binding Effect; Assignment

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

Section VIII

Amendment; Consent

This Second Amendment 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 so long as the Developer is not in default under any Infrastructure Construction Agreement then in effect.

Section IX

Remaining Provisions

This Second Amendment shall be subject to all other provisions of the Agreement, which shall remain in full force and effect, unless specifically amended herein.

SECOND AMENDMENT – EXHIBIT A
TERM SHEET

SECOND AMENDMENT – EXHIBIT B
SERVICE AREA MAP

SECOND AMENDMENT – EXHIBIT C
PROJECT #1

SECOND AMENDMENT – EXHIBIT D
PROJECT #2

(Copy Of Exhibits Available In The Commissioners’ Office Until No Longer Of Administrative Value)

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Absent

RESOLUTION NO. 15-648

APPROVING THE SECOND AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT WITH DONALD R. KENNEY FOR THE SCIOTO RESERVE GOLF CLUB COMMUNITY SUBDIVISION

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

SECOND AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT

THIS SECOND AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT (the “Agreement”) executed on May 28, 2015, 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 as of July 26, 1999 (the “Initial Subdivider’s Agreement”) governing their mutual commitments and obligations with respect to public infrastructure improvements necessary to provide sewer service for said Subdivision.

WHEREAS, the Subdivider and the County entered into an Amended and Restated Subdivider’s Agreement as of October 1, 2013 (the “First Amended and Restated Subdivider’s Agreement”) amending and restating the Initial Subdivider’s Agreement in its entirety to accommodate and support anticipated growth in the Subdivision, namely the addition of 195 single-family home lots 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” (hereinafter collectively, the “First Subdivision Addition”) and 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”).

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WHEREAS, the Subdivider and the County wish to amend and restate the First Amended and Restated Subdivider's Agreement at this time in its entirety to accommodate and support anticipated growth in the Subdivision, namely the addition of 66 single-family home lots bordering the western edge of existing Subdivision boundaries to be developed in the area shown on Exhibit B attached hereto (hereinafter collectively the "Second Subdivision Addition"), and to clarify the responsibilities of the County and the Subdivider with respect to additional public infrastructure improvements necessary to provide sewer service for said Subdivision.

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:

GENERAL TERMS OF AGREEMENT

The Subdivider and the County acknowledge and agree that the First Amended and Restated Subdivider's Agreement is properly amended in writing by this Agreement. The First Amended and Restated 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 and the First Amended and Restated 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 "Original Improvements"), all pursuant to approved engineering drawings and specifications for the Original Improvements, which drawings and specifications are on file in the office of the County Sanitary Engineer. The Original 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.

In connection with the development of the First Subdivision Addition, the Subdivider is responsible for constructing and installing certain public infrastructure improvements consisting of certain service lines, and other sewer system improvements necessary to serve the First Subdivision Addition (the "First Subdivision Addition Improvements"), all pursuant to approved engineering drawings and specifications for the Original Improvements and the First Subdivision Addition Improvements, which drawings and specifications are on file in the office of the County Sanitary Engineer. It has been determined that the Plant has capacity sufficient to serve the First Subdivision Addition without improvements.

In connection with the development of the Second Subdivision Addition, the County intends to cause the Concord/Scioto Community Authority (the "Authority"), a new community authority, to construct and install certain public infrastructure improvements consisting of certain force mains, certain gravity lines, certain service lines, and other sewer system improvements necessary to serve the Subdivision, the First Subdivision Addition, the Second Subdivision Addition and the Upstream Tributary Area, including, without limitation, to construct a new pump station to replace the Plant (which new pump station will have a pumping capacity of 500 gallons per minute, based on average daily flow, and will have a well size sufficient to serve the associated tributary area identified by the County Sanitary Engineer in the map attached hereto as Exhibit D); provided that the County shall be responsible for the costs of any increases in the capacity of the pumps beyond 500 gallons per minute or any increases in the capacity of the pump station or the pumps after completion of the improvements contemplated herein), connecting the newly constructed pump station to a force main, constructing a force main that will run north along South Section Line Road, connecting the force main with a gravity sanitary sewer line constructed to run north along South Section Line Road and west along Butts Road to its terminus at the O'Shaughnessy Reservoir Pump Station and ultimately connecting with the Lower Scioto Water Reclamation Facility, and constructing an effluent line to serve the irrigation system of the Subdivision's golf course (collectively, the "New Improvements").

The Original Improvements, the First Subdivision Addition Improvements, and the New Improvements are referred to herein collectively as the "Improvements." The Improvements necessary to serve the Subdivision, the First Subdivision Addition, the Second Subdivision Addition, and the Upstream Tributary Area are referred to herein collectively as the "Sewer System," but the private lift station and force main within The Pointe at Scioto Reserve is excluded from 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 may utilize its easements to access the Sewer System for upgrades and work deemed necessary by the County Sanitary Engineer to provide proper maintenance, upgrade or repair of service or conveyance lines.

The County acknowledges and agrees that the Subdivider shall have the right to use the Improvements for the

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benefit of the Subdivision, the First Subdivision Addition, the Second Subdivision Addition, the Upstream Tributary Area, and any future uses Subdivider may desire to connect to the Improvements (i) before a new pump station is constructed to replace the Plant, up to the maximum capacity of the Plant, and (ii) after a new pump station is constructed to replace the Plant, subject to the approval of the County Sanitary Engineer. The Subdivider and the County agree that the Plant shall be permitted to serve the Subdivision, the First Subdivision Addition, the Second Subdivision Addition, and the Upstream Tributary Area, and that the flow from the Subdivision, the First Subdivision Addition, the Second Subdivision Addition, and the Upstream Tributary Area is within the maximum capacity of the Plant. The Subdivider and the County agree that, in the event that a new pump station is constructed to replace the Plant as a New Improvement, the County may connect future uses to the Improvements at its sole discretion as long as such connections will not cause an excess of the maximum capacity of the Improvements. The Subdivider and the County agree that, at its option, the Subdivider may expand the capacity of the Sewer System beyond its initial capacity, and that such expansion of the Improvements 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.

The Subdivider has been approved for 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 First 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 First 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 be issued an additional 66 single family residential Taps by the County Sanitary Engineer for the Second 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 66 lots in the Second 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 base capacity fee and the Surcharge as set forth in this Agreement. Notwithstanding the issuance by the County of single family residential Taps for the First Subdivision Addition and the Second Subdivision Addition, the Subdivider shall be limited to not more than the aggregate total of 231 Taps for the First Subdivision Addition and the Second Subdivision Addition to connect with and use the Improvements until the earlier to occur of (i) the completion of the conversion of the Plant to a pump station or the construction of a new pump station to replace the Plant, or (ii) November 13, 2016, and on the earlier to occur of clause (i) or clause (ii) of this sentence the Subdivider shall be entitled to use all 261 Taps for the First Subdivision Addition and the Second Subdivision Addition to connect with and use the Improvements.

The Subdivider shall have the right to charge third parties for Taps within the Subdivision and First Subdivision Addition and to retain all fees charged by Subdivider to third parties for Taps within the Subdivision and First Subdivision Addition in order to reimburse Subdivider for the construction costs for the Original Improvements and the Sewer System. The County shall have the right to charge third parties for capacity fees and surcharges within the Upstream Tributary Area and the Second Subdivision Addition and to retain all fees charged by the County to third parties within the Upstream Tributary Area and the Second Subdivision Addition. 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 "First Subdivision Addition Surcharge") of up to One Thousand Five Hundred Dollars (\$1,500) on the owners of lots in the First 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 First Subdivision Addition Surcharge may only be charged to the owner of a lot once for each lot to be developed and it must be applied equally and uniformly to all lots in the First Subdivision Addition.

The Subdivider and the County agree that the County may, but is not required to, levy and collect a surcharge (the "Second Subdivision Addition Surcharge") of up to Two Thousand Five Hundred Dollars (\$2,500) on the owners of lots in the Second 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 Second Subdivision Addition Surcharge may only be charged to the owner of a lot once for each lot to be developed and it must be applied equally and uniformly to all lots in the Second Subdivision Addition.

CONSTRUCTION OF CERTAIN FIRST SUBDIVISION ADDITION IMPROVEMENTS

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 public infrastructure improvements necessary to serve the Metro Area and the Upstream Tributary Area south of Home Road (collectively, the "Metro Improvements"). The Metro Improvements necessary to serve the Metro Area and the

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Upstream Tributary Area south of Home Road shall constitute "First Subdivision Addition Improvements" for purposes of this Agreement and shall not constitute "New 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 First 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 Metro Improvements to the Sewer System listed below and depicted in Exhibit A attached hereto:

- (i) As required by the Delaware County Sanitary Engineer, 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 actual 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 Metro Improvements listed above only to the extent that the Metro 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 Metro Improvements that serve the Metro Area and the Upstream Tributary Area south of Home Road.

All Metro Improvement construction for which Subdivider is responsible shall be performed within five (5) years from the date of the approval of said Metro 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 for all Metro Improvements for which Subdivider is responsible. 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 for any Metro Improvements for which Subdivider is responsible 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 Metro Improvements.

The Subdivider shall execute a bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction for any Metro Improvements for which Subdivider is responsible which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Metro Improvements for which Subdivider is responsible 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 Metro Improvements for which Subdivider is responsible.

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 Metro Improvements being installed or constructed by the Subdivider and shall keep 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 Metro Improvements for which Subdivider is responsible as provided herein and acceptance of same by the County any unused portions of the inspection fund shall be repaid to the Subdivider.

Notwithstanding any provision of this Agreement, the Metro Improvements are subject to approval by the County of a separate subdivider agreement specific to the Metro Improvements. The County and Metro have entered

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into a separate subdivider agreement specific to the Metro Improvements.

COMPLETION, DEDICATION, AND ACCEPTANCE OF THE METRO IMPROVEMENTS

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the County for any Metro Improvements for which Subdivider is responsible as required:

- (1) "As built" drawings of the Metro 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 verifying that all required sanitary sewer easements have been recorded.

The Subdivider shall be responsible for defective materials and/or workmanship for a period of five (5) years after acceptance of the Metro Improvements for which the Subdivider is responsible 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 the Metro Improvements for which the Subdivider is responsible 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 Metro Improvements for which the Subdivider is responsible. All warranties for equipment installed as a part of the Metro Improvements for which the Subdivider is responsible shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Metro 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 Metro Improvements for which the Subdivider is responsible described herein and accept and assume operations and maintenance of the same.

The Subdivider shall during the construction and maintenance periods for Metro Improvements for which the Subdivider is responsible, 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.

CONSTRUCTION OF THE NEW IMPROVEMENTS

The Subdivider shall not be responsible for the construction, installation, or otherwise making of any New Improvements. The County shall cause the Authority to construct and install the New Improvements pursuant to a Second Amendment to the Amended and Restated Intergovernmental Cooperation Agreement dated as of May 28, 2015 between the County and the Authority. The Subdivider shall reasonably cooperate with the County and the Authority in connection with the construction and installation of the New Improvements.

The County will provide the Authority with all right-of-way or property easements necessary for the construction of New Improvements other than those provided by the Subdivider. The Subdivider shall provide to the County easements or rights-of-way necessary to connect the Sewer System to the O'Shaughnessy Reservoir Regional Pump Station or the Lower Scioto Water Reclamation Facility over the properties along South Section Line Road and Butts Road owned or controlled by the Subdivider. The properties owned or controlled by the Subdivider are shown on Exhibit B attached hereto. The Subdivider will, upon request by the County, assist the County with easement negotiations. If the County is unable to obtain the necessary property easements within forty-five (45) days of the date of this Agreement, the County agrees to permit any easements necessary for the construction of New Improvements to be located in the right-of-way; provided, however the County shall first consult the Delaware County Engineer to minimize interference with existing road improvements and the use thereof by the traveling public. 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 Authority has commenced construction on the O'Shaughnessy Reservoir Regional Pump Station. The Subdivider and the County agree that the Authority shall design, or cause to be designed, any New Improvements necessary to connect the Plant with the O'Shaughnessy Reservoir Regional Pump Station, including constructing a new pump station to replace the Plant, and any necessary force mains, including but not limited to the effluent return line, between the Plant and the O'Shaughnessy Reservoir Regional Pump Station (the "Design Work"). Subdivider acknowledges that time is of the essence with respect to the Design Work. Subdivider agrees to provide reasonable cooperation with the County and the Authority so that the Design Work may be completed within a reasonable period

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of time without undue delay to the completion of such New Improvements.

The Subdivider and the County agree that Epcon Communities, Inc. or a related entity or Metro Development LLC or a related entity ("Price Developer") will develop the Second Subdivision Addition area shown on Exhibit B attached hereto west of the Subdivision and east of South Section Line Road pursuant to agreements between the Subdivider and the Price Developer. The Subdivider shall reasonably cooperate with the County and the Authority in connection with the construction and installation of the New Improvements to be located on the Second Subdivision Addition and otherwise in support of the Second Subdivision Addition. The Subdivider shall not be required to construct, install or otherwise make any New Improvements to serve the Second Subdivision Addition area to be developed by the Price Developer shown on Exhibit B attached hereto. The Price Developer shall be responsible for all costs of any additional infrastructure improvements necessary to serve the Second Subdivision Addition; provided, that if the County requires the Price Developer to construct any additional regional infrastructure improvements to serve the associated regional tributary area outside of the boundaries of the Second Subdivision Addition, as shown on Exhibit E attached hereto, then the County agrees to negotiate in good faith with the Price Developer regarding tap fee credits, surcharge credits, or other consideration to be granted by the County to the Price Developer for the construction thereof. 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 the Price Developer.

MISCELLANEOUS

The Subdivider and the County shall perform monitoring of the Original Improvements pursuant to Exhibit C 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. The County and the Subdivider agree that any and all watering easements that have been granted by the Subdivider to the County in connection with the LAMP, or any modification or replacement thereof, will be terminated upon notification from the Ohio EPA that the terms and conditions of the LAMP, or any modification or replacement thereof, that require watering over the golf course have been terminated.

Until the construction of a new pump station to replace the Plant and the connection of Sewer System 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. Upon (i) completion of the conversion of the Plant into a pump station or the construction of a new pump station to replace the Plant, (ii) the connection of Sewer System with the Lower Scioto Water Reclamation Facility, (iii) the construction of the effluent line between the Lower Scioto Water Reclamation Facility and the golf course, and (iv) Ohio EPA approval of such conversion, construction, and connection, 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. Subdivider shall install a remote electronic monitoring 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 or decrease the flow of water to the irrigation impoundment as needed to correct the water levels in the irrigation impoundment.

The Subdivider shall provide to the County all necessary easements or rights-of-way required for the County to complete, maintain and repair the New Improvements on the golf course property, which easements or rights-of-way shall be obtained at the expense of the Subdivider. The County agrees, as a part of the New Improvements, to cause construction of and to maintain an effluent return line for the purposes of providing effluent water to the golf course in easements or rights-of-way provided by the Subdivider for such purposes, with the intention that the County will locate the effluent return line within existing easements to the maximum extent possible and with minimal impact on adjacent residential properties or the commercial operation of the golf course.

The Subdivider shall develop a maintenance plan for the irrigation impoundment, which maintenance plan is subject to approval by the Ohio EPA. The Subdivider shall perform any and all maintenance of the irrigation impoundment as required by the Ohio EPA pursuant to the maintenance plan. If the Subdivider fails to maintain the irrigation impoundment in accordance with Ohio EPA requirements and the Ohio EPA issues a written violation notice to the Subdivider, the Subdivider shall correct the maintenance failure within the time limit set forth in the EPA compliance schedule or, if no such schedule applies, 120 days from the date of the written violation notice (subject to reasonable adjustments to the work schedule depending on the time of year in which the written violation notice was given with the intent that no work should be required or expected during the three months of the winter season).

The Subdivider shall indemnify and hold 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 any Improvements for which Subdivider is responsible.

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.

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IN CONSIDERATION WHEREOF, the County and the Subdivider hereby agree to the terms and conditions contained in this Agreement.

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

EXHIBIT B
MAP OF SECOND SUBDIVISION ADDITION
[See Attached Map]

EXHIBIT C
MONITORING REQUIREMENTS
[See Attached LAMP Permit]

EXHIBIT D
ASSOCIATED TRIBUTARY AREA FOR NEW PUMP STATION TO REPLACE PLANT
[See Attached Map]

EXHIBIT E
SECOND SUBDIVISION ADDITION ADDITIONAL REGIONAL INFRASTRUCTURE IMPROVEMENTS AND ASSOCIATED REGIONAL TRIBUTARY AREA
[See Attached Map]

(Copy Of Exhibits Available In The Commissioners' Office Until No Longer Of Administrative Value)

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. O'Brien Absent

RESOLUTION NO. 15-649

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND HDR ENGINEERING INC. FOR THE SEWER MASTER PLAN UPDATE:

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

Whereas, the Director of Environmental Services recommends approval of the following Professional Services Contract;

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve the following Professional Services Contract with HDR Engineering, Inc. for the Sewer Master Plan Update.

PROFESSIONAL SERVICES CONTRACT

Sewer Master Plan Update

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 28th day of May, 2015, by and between Delaware County, Ohio, by and through the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and HDR Engineering, Inc., 2800 Corporate Exchange Drive, Columbus, Ohio 43231 (“Consultant”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

Consultant agrees to furnish, unto the County, professional services in accordance with the Scope of Services dated 3/6/15, by this reference hereby made part of this Agreement. The Consultant shall complete all Base Tasks, as well as all Supplemental Tasks as described in the Scope of Services. Consultant further agrees to perform the Work promptly and in a skillful and competent manner under the direction of the Administrator and in accordance with accepted professional standards.

Section 4 – Compensation

Compensation for Work performed under this Agreement shall generally be in accordance with the fees outlined in the Scope of Services dated 3/6/15. The total value of this Agreement shall not exceed Four Hundred Sixty-Eight Thousand Seven Hundred Dollars (\$468,700) in billable services to the County. The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

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Section 5 – Payment

Compensation shall be paid periodically, but no more than once per month, and shall be based on the calculated percentage of work performed to date in accordance with the Consultant's fees outlined in the Scope of Services dated 3/6/15. Invoices shall be submitted to the Administrator by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Authorization to Proceed, Completion of Work, Delays and Extensions

The Consultant shall commence Work upon written authorization of the Administrator and shall complete the work in a timely manner. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

Section 7 – Insurance

- 7.1 **General Liability Coverage:** Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.3 **Workers' Compensation Coverage:** Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.4 **Professional Liability Insurance:** Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subconsultants and subcontractors to provide like endorsements.
- 7.6 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Consultant, and all of its subconsultants and subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured required by Subsection 7.5. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Indemnification

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

Section 9 – Suspension or Termination of Agreement

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Consultant ordering termination of Work. The Consultant shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties. Additional services shall be compensated per the attached labor rates document titled "Delaware County Sanitary Sewer Master Plan, HDR Project Personnel".

Section 11 – Ownership of Engineering Documents

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Upon completion or termination of the Agreement, the Consultant shall provide copies, if requested, to the County of all documents or electronic files produced under this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement. This section does not require unauthorized duplication of copyrighted materials.

Section 12 – Change of Key Consultant Staff

The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Work as contemplated at the time of executing this Agreement.

Section 13 – Miscellaneous Terms & Conditions

13.1 **Prohibited Interests:** Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

13.2 **Independent Contractor:** The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

Consultant, acting as an independent contractor, hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.

13.3 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

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

13.5 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

13.7 **Severability:** If any item, condition, portion, or section of this Agreement 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 Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

13.8 **Findings for Recovery:** Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

13.9 **Non-Discrimination/Equal Opportunity:** Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

Vote on Motion Mr. Merrell Aye Mr. O'Brien Absent Mrs. Lewis Aye

There being no further business, the meeting adjourned.

Gary Merrell

Ken O'Brien

Barb Lewis

Jennifer Walraven, Clerk to the Commissioners