

St. Clairsville, Ohio

September 1, 2010

The Board of Commissioners of Belmont County, Ohio, met this day in regular session. Present: Ginny Favede, Matt Coffland and Charles R. Probst, Jr., Commissioners and Jayne Long, Clerk of the Board.

**MEETINGS ARE NOW BEING RECORDED**  
**ALL DISCUSSIONS ARE SUMMARIZED. FOR COMPLETE PROCEEDINGS**  
**PLEASE SEE CORRESPONDING CD FOR THIS MEETING DAY.**

**IN THE MATTER OF ALLOWANCE OF BILLS**  
**AS CERTIFIED IN THE AUDITOR'S OFFICE**

**"BILLS ALLOWED"**

The following bills having been certified in the Auditor's office, on motion by Mrs. Favede, seconded by Mr. Coffland, all members present voting YES, each bill was considered and it is hereby ordered that the County Auditor issue his warrant on the County Treasurer in payment of bills allowed.

<u>Claim of</u>	<u>Purposes</u>	<u>Amount</u>
A-Group Star.com	Memory Module-Engineer/General Fund	63.00
A-J.P. Cooke	Judge stamps/General Fund	168.95
A-Ohio AFSCME Care Plan	Dental & Drug Coverage/General Fund	552.00
A-Treasurer of State	Auditing Services/General Fund	24,140.21
A-Verizon Wireless	Cell plan/General Fund	223.20
B-American Electric Power	August Service/Dog and Kennel Fund	564.31
D-Lash Paving, Inc.	Asphalt/Road and Bridges Fund	7,695.28
D-Mar-Zane, Inc.	Asphalt/Road and Bridges Fund	8,388.03
K-Staples Credit Plan	Supplies-Equip./Engineer MVGT	113.11
N-Hammontree & Associates	Contract Projects/Mt. Victory Waterline Ext. Construction Fund	9,649.00
N-Street Engineering & Surveying	Contact Services/Neffs Sanitary Sewer Project Fund	59,050.00
P-American Electric Power	Service-Angelo Road/WWS#1 Revenue Fund	15.15
P-American Electric Power	Misc. Service/Oakview Administration Bldg. Fund	2,329.97
P-Ohio Rural Water Association	Membership Renewal/WWS#3 Revenue Fund	800.00
P-Roto-Rooter	Service, WIC/Oakview Administration Bldg. Fund	149.00
P-Totterdale Bros. Supply Co.	MaterialsWWS#3 Revenue Fund	636.00
P-Verizon Wireless	Services/BCSSD Funds	165.51
S-AT&T	July invoice/Port Authority	178.11
S-Micro Maid	Supplies/Clerk of Courts Computer Fund	180.00
S-Wheeling Office Supply	Supplies/Certificate of Title Admn. Fund	170.16
W-Print n' Copy	Supplies/DRETAC Treasurer	580.00

**IN THE MATTER OF APPROVING RECAPITULATION**  
**OF VOUCHERS FOR THE VARIOUS FUNDS**

Motion made by Mrs. Favede, seconded by Mr. Coffland to approve the Recapitulation of Vouchers dated for September 1, 2010 as follow:

<b>FUND</b>	<b>AMOUNT</b>
A-GENERAL	\$26,654.95; \$898.49
A-GENERAL/AUDITOR	\$462.78
A-GENERAL/EMA	\$1,150.38
A-GENERAL/JUVENILE	\$59.96
A-GENERAL/911	\$2,862.91
E-911	\$500.00
H-Job & Family, CSEA	\$9,096.50
H-Job & Family Services, Public Assistance	\$250.00
H-Job & Family, WIA	\$9,825.33; \$22,216.56
K-Engineer MVGT	\$26,488.20; \$193.74
M-Juvenile Ct. – Care & Custody	\$521.50
M-Juvenile Ct. – Placement Services	\$38,014.00
M-Juvenile Ct. – Placement II	\$226.50
M-Juvenile Ct. – Title IV-E Reimb.	\$1,120.97
P-Sanitary Sewer District	\$7,803.78; \$822.27; \$23,502.49
S-District Detention Home	\$3,374.12
S-Juvenile Ct. Gen. Special Projects	\$199.00
S-Oakview Juvenile Residential Center	\$5,975.50
S-Western Div. Ct. Computer Fund	\$1,861.49; \$1,341.87

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF TRANSFER WITHIN FUND FOR**  
**THE BCDJFS WORKFORCE DEVELOPMENT FUND**

Motion made by Mr. Probst, seconded by Mr. Coffland to approve the following transfer within fund for the BCDJFS Workforce Development Fund.

<b>FROM</b>	<b>TO</b>	<b>AMOUNT</b>
E-2600-H005-H07.000 One-Stop Admn.	E-2600-H005-H01.000 Salaries	\$ 5,000.00

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF TRANSFER WITHIN FUND FOR TRUANT OFFICER GRANT FUND/JUVENILE COURT**

Motion made by Mr. Coffland, seconded by Mr. Probst to approve the following transfer within fund for the Truant Officer Grant Fund.

<b>FROM</b>	<b>TO</b>	<b>AMOUNT</b>
E-0400-M079-M04.000 Other Expenses	E-0400-M079.M01.002 Salaries	\$ 2,000.00

Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mr. Probst	Yes
Mrs. Favede	Yes

**IN THE MATTER OF TRANSFER OF FUNDS FOR THE VISION INSURANCE CHARGEBACKS FOR THE MONTHS OF AUGUST AND SEPTEMBER, 2010**

Motion made by Mr. Coffland, seconded by Mrs. Favede to make the following transfer of funds for

the Vision Insurance Chargebacks for the months of August and September, 2010.

<b>FROM</b>	<b>TO</b>	<b>AMOUNT</b>
E-0256-A014-A11.006 GENERAL	R-9891-Y091-Y06.500	4,240.35
E-0054-A006-F08.006 DISASTER SERVICES	R-9891-Y091-Y06.500	0.00
E-0056-A006-E11.006 9-1-1	R-9891-Y091-Y06.500	0.00
E-0170-A006-G11.000 PUBLIC DEFENDER	R-9891-Y091-Y06.500	122.94
E-0181-A003-A11.000 BD. OF ELECTIONS	R-9891-Y091-Y06.500	162.72
E-0400-M067-M05.008 ALTERNATIVE SCHOOL	R-9891-Y091-Y06.500	27.72
E-0400-M060-M64.008 CARE & CUSTODY REST.	R-9891-Y091-Y06.500	6.03
E-0400-M060-M29.008 CARE & CUSTODY CCAP	R-9891-Y091-Y06.500	39.78
E-0400-M060-M75.008 CARE & CUSTODY Sub A	R-9891-Y091-Y06.500	55.44
E-0400-M074-M01.008 TITLE II	R-9891-Y091-Y06.500	0.00
E-0400-M077-M02.008 SUPREME COURT	R-9891-Y091-Y06.500	0.00
E-0400-M078-M02.008 TITLE IV-E	R-9891-Y091-Y06.500	27.72
E-0910-S033-S47.006 DIST. DET. HOME	R-9891-Y091-Y06.500	459.27
E-1210-S078-S14.006 RECORDER	R-9891-Y091-Y06.500	27.72
E-1310-J000-J06.000 REAL ESTATE ASSES.	R-9891-Y091-Y06.500	103.68
E-1410-W082-T07.006 DRETAC-TREAS.	R-9891-Y091-Y06.500	0.00
E-1520-S077-S04.006 CORRECTIONS ACT GRANT	R-9891-Y091-Y06.500	27.72
E-1511-W080-P07.006 PROS. VICTIM	R-9891-Y091-Y06.500	27.72
E-1551-S088-S03.006 WESTERN SPEC PROJECTS	R-9891-Y091-Y06.500	55.44
E-1561-S086-S03.006 NORTHERN SPEC PROJECTS	R-9891-Y091-Y06.500	12.06
E-1571-S087-S03.006 EASTERN SPEC PROJECTS	R-9891-Y091-Y06.500	27.72
E-1600-B000-B13-006 DOG & KENNEL	R-9891-Y091-Y06.500	55.44
E-1611-B000-B01.002 AUDITORS CLERK HIRE & SUPP	R-9891-Y091-Y06.500	0.00
E-1810-L001-L14.000 SOIL CONSERVATION	R-9891-Y091-Y06.500	39.78
E-1815-L005-L15.006 WATERSHED COORD.	R-9891-Y091-Y06.500	13.86
E-2210-E001-E15.006 COUNTY HEALTH	R-9891-Y091-Y06.500	50.56
E-2223-T077-T01.002 IAP	R-9891-Y091-Y06.500	5.00
E-2226-T079-T01.002 WELCOME HOME	R-9891-Y091-Y06.500	0.00
E-2217-F079-F01.002 WOMENS HEALTH	R-9891-Y091-Y06.500	13.00
E-2216-F078-F02.002 TOBACCO	R-9891-Y091-Y06.500	150.00
E-2215-F077-F01.002 FAMILY PLANNING	R-9891-Y091-Y06.500	25.00
E-2214-F076-F01.002 PH INFRASTRUCTURE	R-9891-Y091-Y06.500	50.00
E-2218-G000-G01.002 FOOD SERVICE	R-9891-Y091-Y06.500	50.00
E-2213-F075-F01.002 VITAL STATS	R-9891-Y091-	0.00

	Y06.500	
E-2227-F074-F03.002 HOME SEWAGE TREAT. SYSTEM	R-9891-Y091-Y06.500	0.00
E-2229-F081-F01.001 PUBLIC HEALTH READINESS	R-9891-Y091-Y06.500	0.00
E-0300-A008-B01.002 CHEST CLINIC	R-9891-Y091-Y06.500	0.00
E-2228-F080-F01.002 CDC LEAD	R-9891-Y091-Y06.500	15.00
E-2310-S049-S63.000 MENTAL HEALTH	R-9891-Y091-Y06.500	122.94
E-2510-H000-H16.006 HUMAN SERVICES	R-9891-Y091-Y06.500	412.20
E-2760-H010-H12.006 CHILD SUPPORT	R-9891-Y091-Y06.500	27.72
E-2811-K200-K10.006 MVGT K-1	R-9891-Y091-Y06.500	27.72
E-2811-K200-K10.006 MVGT K-2	R-9891-Y091-Y06.500	63.90
E-2812-K000-K20.006 MVGT K-11	R-9891-Y091-Y06.500	555.66
E-2813-K000-K39.006 MVGT K-25	R-9891-Y091-Y06.500	233.82
E-3701-P003-P31.000 WWS #2 WATER/SEWER	R-9891-Y091-Y06.500	124.62
E-3702-P005-P31.000 WWS #3 WATER/SEWER	R-9891-Y091-Y06.500	350.60
E-3704-P051-P15.000 SSD #1 WATER/SEWER	R-9891-Y091-Y06.500	52.06
E-3705-P053-P15.000 SSD #2 WATER/SEWER	R-9891-Y091-Y06.500	83.00
E-3706-P055-P15.000 SSD #3A WATER/SEWER	R-9891-Y091-Y06.500	9.84
E-3707-P056-P15.000 SSD #3B WATER/SEWER	R-9891-Y091-Y06.500	3.04
E-4110-T075-T52.008 WIC	R-9891-Y091-Y06.500	138.60
E-6010-S079-S07.006 CLERK CRTS. TITLE	R-9891-Y091-Y06.500	150.66
E-8010-S030-S68.006 OAKVIEW JUVENILE	R-9891-Y091-Y06.500	365.22
E-1510-W081.P07.006 PROSECUTOR DRETAC	R-9891-Y091-Y06.500	0.00
E-9799-S012-S02.006 PORT AUTHORITY	R-9891-Y091-Y06.500	<u>0.00</u>
<b>TOTAL</b>		<b>8,613.27</b>

Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mrs. Favede	Yes
Mr. Probst	Yes

**IN THE MATTER OF TRANSFER OF FUNDS FOR  
THE DELTA DENTAL CHARGEBACKS FOR  
THE MONTHS OF AUGUST AND SEPTEMBER, 2010**

Motion made by Mr. Coffland, seconded by Mrs. Favede to make the following transfer of funds for the Delta Dental Chargebacks for the months of August and September, 2010.

<b>FROM</b>	<b>TO</b>	<b>AMOUNT</b>
E-0256-A014-A12.006 GENERAL	R-9891-Y091-Y07.500	15,305.73
E-0054-A006-F08.006 DISASTER SERVICES	R-9891-Y091-Y07.500	0.00
E-0056-A006-E11.006 9-1-1	R-9891-Y091-Y07.500	0.00
E-0170-A006-G11.000 PUBLIC DEFENDER	R-9891-Y091-Y07.500	449.22
E-0181-A003-A11.000 BD. OF ELECTIONS	R-9891-Y091-Y07.500	589.80
E-0400-M067-M05.008 ALTERNATIVE SCHOOL	R-9891-Y091-Y07.500	102.88
E-0400-M060-M64.008 CARE & CUSTODY REST.	R-9891-Y091-Y07.500	18.85
E-0400-M060-M29.008 CARE & CUSTODY CCAP	R-9891-Y091-Y07.500	140.58
E-0400-M060-M75.008 CARE & CUSTODY Sub Abu	R-9891-Y091-Y07.500	205.76
E-0400-M074-M01.008 TITLE II	R-9891-Y091-Y07.500	0.00
E-0400-M077-M02.008 SUPREME COURT	R-9891-Y091-Y07.500	0.00
E-0400-M078-M02.008 TITLE IV-E	R-9891-Y091-Y07.500	102.88

E-0910-S033-S47.006 DIST. DET. HOME	R-9891-Y091-Y07.500	1,630.41
E-1210-S078-S14.006 RECORDER	R-9891-Y091-Y07.500	102.88
E-1310-J000-J06.000 REAL ESTATE ASSES.	R-9891-Y091-Y07.500	356.56
E-1410-W082-T07.006 DRETAC-TREAS.	R-9891-Y091-Y07.500	0.00
E-1520-S077-S04.006 CORRECTIONS ACT GRANT	R-9891-Y091-Y07.500	102.88
E-1511-W080-P07.006 PROS. VICTIM	R-9891-Y091-Y07.500	205.76
E-1551-S088-S03.006 WESTERN SPEC PROJECTS	R-9891-Y091-Y07.500	205.76
E-1561-S086-S03.006 NORTHERN SPEC PROJECTS	R-9891-Y091-Y07.500	37.70
E-1571-S087-S03.006 EASTERN SPECIAL PROJECTS	R-9891-Y091-Y07.500	102.88
E-1600-B000-B13-006 DOG & KENNEL	R-9891-Y091-Y07.500	205.76
E-1611-B000-B01.002 AUDITOR CLERK HIRE & SUPP	R-9891-Y091-Y07.500	0.00
E-1810-L001-L14.000 SOIL CONSERVATION	R-9891-Y091-Y07.500	140.58
E-1815-L005-L15.006 WATERSHED COORD.	R-9891-Y091-Y07.500	51.44
E-2210-E001-E15.006 COUNTY HEALTH	R-9891-Y091-Y07.500	638.70
E-2223-T077-T01.002 IAP	R-9891-Y091-Y07.500	10.00
E-2226-T079-T01.002 WELCOME HOME	R-9891-Y091-Y07.500	0.00
E-2217-F079-F01.002 WOMENS HEALTH	R-9891-Y091-Y07.500	50.00
E-2216-F078-F02.002 TOBACCO	R-9891-Y091-Y07.500	100.00
E-2215-F077-F01.002 FAMILY PLANNING	R-9891-Y091-Y07.500	60.00
E-2214-F076-F01.002 PH INFRASTRUCTURE	R-9891-Y091-Y07.500	200.00
E-2229-F081-F01.001 Public Health Readiness	R-9891-Y091-Y07.500	0.00
E-2218--G000-G01.002 FOOD SERVICE	R-9891-Y091-Y07.500	250.00
E-2213-F075-F01.002 VITAL STATS	R-9891-Y091-Y07.500	0.00
E-2227-F074-F03.002 HOME SEWAGE TREAT. SYSTEM	R-9891-Y091-Y07.500	0.00
E-0300-A008-B01.002 CHEST CLINIC	R-9891-Y091-Y07.500	0.00
E-2228-F080-F01.002 CDC Lead	R-9891-Y091-Y07.500	15.00
E-2310-S049-S63.000 MENTAL HEALTH	R-9891-Y091-Y07.500	449.22
E-2510-H000-H16.006 HUMAN SERVICES	R-9891-Y091-Y07.500	1,515.72
E-2760-H010-H12.006 CHILD SUPPORT	R-9891-Y091-Y07.500	102.88
E-2811-K200-K10.006 MVGT K-1	R-9891-Y091-Y07.500	102.88
E-2811-K200-K10.006 MVGT K-2	R-9891-Y091-Y07.500	215.98
E-2812-K000-K20.006 MVGT K-11	R-9891-Y091-Y07.500	205.76
E-2813-K000-K39.006 MVGT K-25	R-9891-Y091-Y07.500	102.88
E-3701-P003-P31.000 WWS #2 WATER/SEWER	R-9891-Y091-Y07.500	454.92
E-3702-P005-P31.000 WWS #3 WATER/SEWER	R-9891-Y091-Y07.500	1,271.08
E-3704-P051-P15.000 SSD #1 WATER/SEWER	R-9891-Y091-Y07.500	291.44
E-3705-P053-P15.000 SSD #2 WATER/SEWER	R-9891-Y091-Y07.500	193.62
E-3706-P055-P15.000 SSD #3A WATER/SEWER	R-9891-Y091-Y07.500	34.40
E-3707-P056-P15.000 SSD #3B WATER/SEWER	R-9891-Y091-Y07.500	10.86
E-4110-T075-T52.008 WIC	R-9891-Y091-Y07.500	514.40
E-6010-S079-S07.006 CLERK CRTS. TITLE	R-9891-Y091-Y07.500	552.10
E-8010-S030-S68.006 OAKVIEW JUVENILE	R-9891-Y091-Y07.500	1,320.18
E-1510-W081.P07.006 PROSECUTOR DRETAC	R-9891-Y091-Y07.500	0.00

E-9799-S012-S02.006 PORT AUTHORITY	R-9891-Y091-Y07.500	0.00
<b>TOTAL</b>		<b>28,720.33</b>

Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mrs. Favede	Yes
Mr. Probst	Yes

**IN THE MATTER OF TRANSFER OF FUNDS FOR  
THE EXPRESS SCRIPTS CHARGEBACKS  
FOR THE MONTHS OF AUGUST AND SEPTEMBER, 2010**

Motion made by Mr. Coffland, seconded by Mrs. Favede to make the following transfer of funds for the Express Scripts Chargebacks for the months of August and September, 2010.

<b>FROM</b>	<b>TO</b>	<b>AMOUNT</b>
E-0256-A014-A13.006 GENERAL	R-9891-Y091-Y08.500	26,499.52
E-0054-A006-F08.006 DISASTER SERVICES	R-9891-Y091-Y08.500	0.00
E-0056-A006-E11.006 9-1-1	R-9891-Y091-Y08.500	0.00
E-0170-A006-G11.000 PUBLIC DEFENDER	R-9891-Y091-Y08.500	863.74
E-0181-A003-A11.000 BD. OF ELECTIONS	R-9891-Y091-Y08.500	1,604.42
E-0400-M067-M05.008 ALTERNATIVE SCHOOL	R-9891-Y091-Y08.500	197.36
E-0400-M060-M64.008 CARE & CUSTODY REST.	R-9891-Y091-Y08.500	37.15
E-0400-M060-M29.008 CARE & CUSTODY CCAP	R-9891-Y091-Y08.500	271.66
E-0400-M060-M75.008 CARE & CUSTODY Sub Abu	R-9891-Y091-Y08.500	394.72
E-0400-M074-M01.008 TITLE II	R-9891-Y091-Y08.500	0.00
E-0400-M077-M02.008 SUPREME COURT	R-9891-Y091-Y08.500	0.00
E-0400-M078-M02.008 TITLE IV-E	R-9891-Y091-Y08.500	197.36
E-0910-S033-S47.006 DIST. DET. HOME	R-9891-Y091-Y08.500	2,753.75
E-1210-S078-S14.006 RECORDER	R-9891-Y091-Y08.500	197.36
E-1310-J000-J06.000 REAL ESTATE ASSES.	R-9891-Y091-Y08.500	691.92
E-1520-S077-S04.006 CORRECTIONS ACT GRANT	R-9891-Y091-Y08.500	197.36
E-1511-W080-P07.006 PROS. VICTIM	R-9891-Y091-Y08.500	271.66
E-1551-S088-S03.006 WESTERN SPEC PROJECTS	R-9891-Y091-Y08.500	394.72
E-1561-S086-S03.006 NORTHERN SPEC PROJECTS	R-9891-Y091-Y08.500	74.30
E-1571-S087-S03.006 EASTERN SPECIAL PROJECTS	R-9891-Y091-Y08.500	197.36
E-1600-B000-B13-006 DOG & KENNEL	R-9891-Y091-Y08.500	394.72
E-1611-B000-B01.002 AUDITORS CLERK HIRE & SUPP	R-9891-Y091-Y08.500	0.00
E-1810-L001-L14.000 SOIL CONSERVATION	R-9891-Y091-Y08.500	271.66
E-1815-L005-L15.006 WATERSHED COORD.	R-9891-Y091-Y08.500	98.68
E-2210-E001-E15.006 COUNTY HEALTH	R-9891-Y091-Y08.500	732.56
E-2223-T077-T01.002 IAP	R-9891-Y091-Y08.500	10.00
E-2226-T079-T01.002 WELCOME HOME	R-9891-Y091-Y08.500	0.00
E-2217-F079-F01.002 WOMENS HEALTH	R-9891-Y091-Y08.500	35.00
E-2216-F078-F02.002 TOBACCO	R-9891-Y091-Y08.500	200.00
E-2215-F077-F01.002 FAMILY PLANNING	R-9891-Y091-Y08.500	50.00
E-2214-F076-F01.002 PH INFRASTRUCTURE	R-9891-Y091-Y08.500	300.00
E-2218-G000-G01.002 FOOD SERVICE	R-9891-Y091-Y08.500	550.00
E-2213-F075-F01.002 VITAL STATS	R-9891-Y091-Y08.500	0.00
E-2227-F074-F03.002 HOME SEWAGE TREAT. SYSTEM	R-9891-Y091-Y08.500	0.00
E-0300-A008-B01.002 CHEST CLINIC	R-9891-Y091-Y08.500	0.00
E-2228-F080-F01.002 CDC LEAD	R-9891-Y091-Y08.500	15.00
E-2229-F081-F01.001 Public Health Readiness	R-9891-Y091-Y08.500	0.00
E-2310-S049-S63.000 MENTAL HEALTH	R-9891-Y091-Y08.500	74.30
E-2410-S066-S80.000 BD. OF DD	R-9891-Y091-Y08.500	8,737.24
E-2510-H000-H16.006 HUMAN SERVICES	R-9891-Y091-Y08.500	3,573.54
E-2760-H010-H12.006 CHILD SUPPORT	R-9891-Y091-Y08.500	302.94
E-2811-K200-K10.006 MVGT K-1	R-9891-Y091-Y08.500	197.36
E-2811-K200-K10.006 MVGT K-2	R-9891-Y091-Y08.500	439.82
E-2812-K000-K20.006 MVGT K-11	R-9891-Y091-Y08.500	284.30
E-2813-K000-K39.006 MVGT K-25	R-9891-Y091-Y08.500	206.54
E-3701-P003-P31.000 WWS #2 WATER/SEWER	R-9891-Y091-Y08.500	760.34
E-3702-P005-P31.000 WWS #3 WATER/SEWER	R-9891-Y091-Y08.500	2,085.48
E-3704-P051-P15.000 SSD #1 WATER/SEWER	R-9891-Y091-Y08.500	446.50
E-3705-P053-P15.000 SSD #2 WATER/SEWER	R-9891-Y091-Y08.500	427.16
E-3706-P055-P15.000 SSD #3A WATER/SEWER	R-9891-Y091-Y08.500	80.66
E-3707-P056-P15.000 SSD #3B WATER/SEWER	R-9891-Y091-Y08.500	26.32
E-4110-T075-T52.008 WIC	R-9891-Y091-Y08.500	789.44
E-6010-S079-S07.006 CLERK CRTS. TITLE	R-9891-Y091-Y08.500	617.62
E-8010-S030-S68.006 OAKVIEW JUVENILE	R-9891-Y091-Y08.500	2,345.10

E-1510-W081.P07.006 PROSECUTOR DRETAC	R-9891-Y091-Y08.500	0.00
E-1410-W082-T07.006 DRETAC-TREAS.	R-9891-Y091-Y08.500	0.00
E-9799-S012-S02.006 PORT AUTHORITY	R-9891-Y091-Y08.500	<u>0.00</u>
<b>TOTAL</b>		<b>58,896.64</b>

Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mrs. Favede	Yes
Mr. Probst	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATION  
FOR THE GENERAL FUND/SHERIFF**

Motion made by Mr. Probst, seconded by Mr. Coffland to make the following additional appropriation, in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

E-0131-A006-A03.010	Supplies	\$ 603.25
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*Note: Reimbursement from Sam's Club for purchases made in 2006.*

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATIONS  
FOR THE SHERIFF'S DEPARTMENT VARIOUS FUNDS**

Motion made by Mr. Probst, seconded by Mr. Coffland to make the following additional appropriations, in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

**General**

E-0131-A006-A07.000	Training	0.00
E-0131-A006-A09.000	Medical	587.00
E-0131-A006-A17.012	Cruiser Repairs	0.00
E-0131-A006-A20.000	False Alarm	0.00
E-0131-A006-A21.000	Sheriff's Towing	0.00
E-0131-A006-A23.000	Background	738.00
E-0131-A006-A24.000	E-SORN	390.00
E-0131-A006-A28.000	Shop W/Cop	0.00
E-0131-A000-A30.000	Lifesaver	40.00

**Enforcement Education**

E-1652-B016-B02.000	Education Expenses	0.00
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**Commissary Fund**

E-5100-S000-S01.010	Supplies	9,927.22
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**Concealed Handgun License**

E-5101-S001-S06.000	License Issuance	1,403.00
E-5101-S001-S07.012	Equipment	642.00

**Sheriff Reserve Account**

E-9710-U010-U06.000	Other Expenses	95.00
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Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATION  
FOR THE JUVENILE COURT PLACEMENT SERVICES FUND**

Motion made by Mr. Coffland, seconded by Mr. Probst to make the following additional appropriation, in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

**M-64 PLACEMENT SERVICES**

E-0400-M064-M05.000	Placement Costs	\$ 38,014.00
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Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mr. Probst	Yes
Mrs. Favede	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATIONS  
FOR N.S.L.A. OAKVIEW JUVENILE S031 FUND**

Motion made by Mr. Probst, seconded by Mr. Coffland to make the following additional appropriation, in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

**N.S.L.A. OAKVIEW JUVENILE S031**

E-8011-S031-S02.000	Food (Meal Tickets)	120.00
E-8011-S031-S02.000	Food (July NSLA)	1,916.60

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATIONS**

**FOR THE BEL-HARRISON JUVENILE DISTRICT DETENTION HOME-SARGUS FUND**

Motion made by Mr. Probst, seconded by Mr. Coffland to make the following additional appropriations, in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

**Bel-Harrison Juvenile District Detention Home-Sargus Fund S033**

E-0910-S033-S33.002	Salaries	10,516.32
E-0910-S033-S44.003	OPERS/STRS	5,000.00
E-0910-S033-S50.005	Medicare	<u>470.00</u>
<b>TOTAL</b>		<b>15,986.32</b>

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF ADDITIONAL APPROPRIATION FOR THE BELMONT COUNTY PROSECUTOR'S OFFICE VICTIM-WITNESS ASSISTANCE PROGRAM FUND**

Motion made by Mr. Probst, seconded by Mr. Coffland to make the following additional appropriation in accordance with the Amended Official Certificate of Estimated Resources as revised by the Budget Commission, under the date of September 1, 2010.

E-1511-W080-P01.002	Salaries	\$ 255.00
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Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF APPROVING THEN AND NOW CERTIFICATE/AUDITOR'S**

Motion made by Mr. Probst, seconded by Mr. Coffland to execute payment of Then and Now Certification dated September 1, 2010, presented by the County Auditor pursuant to O.R.C. 5705.41(d) 1, and authorizing the drawing of warrant(s) in payment of amounts due upon contract or order.

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF GRANTING PERMISSION FOR COUNTY EMPLOYEES TO TRAVEL**

Motion made by Mr. Probst, seconded by Mr. Coffland granting permission for county employees to travel as follows: **JUVENILE COURT** – Jennifer Shunk, Court Administrator, to travel to Columbus, OH, on Sept. 1, 2010, to attend an OYAS Advisory Committee meeting.

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Yes

**IN THE MATTER OF APPROVING MINUTES OF REGULAR BOARD OF COMMISSIONERS MEETING**

Motion made by Mrs. Favede, seconded by Mr. Coffland to approve the minutes of the Belmont County Board of Commissioners regular meeting of July 28, 2010.

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF HOLDING A 'TOWN HALL' MEETING AT MORRISTOWN'S OLD TOWN HALL**

Motion made by Mrs. Favede, seconded by Mr. Coffland to hold a "Town Hall" meeting on Monday, September 13, 2010 at 6:00 p.m. at Morristown 's Old Town Hall located at the corner of W. Cross St. and Memory Lane, (next to the firehouse) and to notify the media of the same. Public input is welcome and citizens are encouraged to attend.

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF ADOPTING A RESOLUTION ACCEPTING AMOUNTS AND RATES AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR**

Motion made by Mrs. Favede, seconded by Mr. Coffland to adopt the Resolution pursuant to Ohio Revised Code 5705.34, accepting the amounts and rates as determined by the Belmont County Budget Commission and authorizing the necessary tax levies and certifying them to the County Auditor.

*Note: This action is necessary annually as part of the budgetary process. The board is accepting the County Auditors estimates of revenues to be generated by the tax levies for fiscal year 2011.*

**RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR (BOARD OF COUNTY COMMISSIONERS)**

**Rev. Code, Secs. 5705.34, .35**

*The Board of County Commissioners of Belmont County, Ohio, met in regular session on the 1st day of September, 2010, at the office of the Belmont County Commissioners with the following members present:*

Charles R. Probst, Jr. /s/  
Matt Coffland /s/  
Ginny Favede /s/

Mrs. Favede moved the adoption of the following Resolution:

*WHEREAS, this Board of County Commissioners in accordance with the provisions of law has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1<sup>st</sup>, 2011; and*

*WHEREAS, the Budget Commission of Belmont County, Ohio, has certified its action thereon to this Board together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Board, and what part thereof is without, and what part within, the ten mill tax limitation; therefore be it*

*RESOLVED, By the Board of County Commissioners of Belmont County, Ohio, that the amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted; and be it further*

*RESOLVED, That there be and is hereby levied on the tax duplicate of said County the rate of each tax necessary to be levied within and without the ten mill limitation as follows:*

SCHEDULE A

SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET COMMISSION, AND COUNTY AUDITOR'S ESTIMATED TAX RATES

FUND	Amount Approved by Budget Commission Inside 10 M. Limitation	Amount to be Derived From Levies Outside 10 M. Limitation	County Auditor's Estimate of Tax Rate to be Levied	
			Inside 10 M. Limit	Outside 10 M. Limit
A. General Fund	\$2,200,000.00		2.30	
D. Children Service Fund		210,000.00		.65
E. Children Service Fund		110,000.00		.35
O. Mental Health Fund		750,500.00		1.50
Q. Developmental Disabilities (MRDD)		550,000.00		1.00
Q. Developmental Disabilities (MRDD)		1,200,000.00		2.00
Q. Developmental Disabilities (MRDD)		900,000.00		1.50
Q. Developmental Disabilities (MRDD)		1,830,000.00		2.50
Q. Senior Services		430,000.00		.50
Q. Senior Services		1,000,000.00		1.00
Q. Senior Services		1,500,000.00		1.50
Q. Road Construction Funds				
Q. Other-Misc Construction Funds				
S. Relief/Welfare Special Levy Funds				
S. Child Welfare Services Special Levy Funds				
S. Health, Mental Health & Clinic Special Levy Funds				
S. Airports and Commerce Special Levy Funds				
S. Parks and Recreation Special Levy Funds				
S. Other-Miscellaneous Special Levy Funds				
<b>Total</b>	<b>\$2,200,000.00</b>	<b>\$8,480,500.00</b>	<b>2.30</b>	<b>12.50</b>

SCHEDULE B

LEVIES OUTSIDE 10 MILL LIMITATION, EXCLUSIVE OF DEBT LEVIES

FUND	Maximum Rate Authorized To Be Levied	County Auditor's Estimate of Yield of Levy (Carry to Schedule A, Column II)
<b>GENERAL FUND:</b>	<b>YEAR</b>	
Current expense levy authorized by voters on Not to exceed _____ Years.		
Current expense levy authorized by voters on Not to exceed _____ Years		
Current expense levy authorized by voters on Not to exceed _____ Years		
Current expense levy authorized by voters on Not to exceed _____ Years		
<b>TOTAL GENERAL FUND OUTSIDE 10 M. LIMITATION</b>		
<b>SPECIAL LEVY FUNDS:</b>		
Levy authorized by voters on <b>Children Services</b> 11/02/04 not to exceed <b>10</b> Years	.65	210,000.00
Levy authorized by voters on <b>Children Services</b> 05/02/06 not to exceed <b>10</b> Years	.35	110,000.00
Levy authorized by voters on <b>Mental Health</b> 11/08/05 not to exceed <b>10</b> Years	1.50	750,500.00
Levy authorized by voters on <b>Mental Retardation</b>	1.00	550,000.00

11/04/80 not to exceed <b>Continuous</b> Years		
Levy authorized by voters on <b>Mental Retardation</b> 05/07/85 not to exceed <b>Continuous</b> Years	2.00	1,200,000.00
Levy authorized by voters on <b>Mental Retardation</b> 11/04/86 not to exceed <b>Continuous</b> Years	1.50	900,000.00
Levy authorized by voters on <b>Mental Retardation</b> 05/04/99 not to exceed <b>Continuous</b> Years	2.50	1,830,000.00
Levy authorized by voters on <b>Senior Citizens</b> 11/08/05 not to exceed <b>5</b> Years	.50	430,000.00
Levy authorized by voters on <b>Senior Citizens</b> 11/07/06 not to exceed <b>5</b> Years	1.00	1,000,000.00
Levy authorized by voters on <b>Senior Citizens</b> 11/04/08 not to exceed <b>5</b> Years	1.50	1,500,000.00
Levy authorized by voters on not to exceed Years		
Levy authorized by voters on not to exceed Years		

And be it further

**RESOLVED**, That the Clerk of this Board be and she is hereby directed to certify a copy of this Resolution to the County Auditor of said County.

Mr. Coffland seconded the Resolution and the roll being called upon its adoption, the vote resulted as follows:

Mrs. Ginny Favede, Yes

Mr. Charles R. Probst, Jr., Yes

Mr. Matt Coffland, Yes

Adopted the 1<sup>st</sup> day of September, 2010

Year

Jayne Long /s/

Clerk of the Board of County Commissioners of  
Belmont County, Ohio.

**IN THE MATTER OF APPROVING THE ALLOCATION TO THE BELMONT COUNTY DOD/CIC FOR 4th QUARTER 2010**

Motion made by Mrs. Favede, seconded by Mr. Coffland to approve the allocation of \$ 18,750.00 to the Belmont County Department of Development/Community Improvement Corporation for program operations for the 4th quarter of 2010.

Upon roll call the vote was as follows:

Mrs. Favede Yes  
Mr. Coffland Yes  
Mr. Probst Yes

**IN THE MATTER OF ENTERING INTO CONTRACT WITH SHELLY & SANDS, INC./ENGINEER PROJECT 10-5 CATS RUN RESURFACING**

Motion made by Mrs. Favede, seconded by Mr. Coffland to enter into contract with Shelly & Sands, Inc. on behalf of the Belmont County Engineer, in the amount of \$ 269,941.10, for Project 10-5 Cats Run Resurfacing, based upon the recommendation of Fred Bennett, County Engineer.

**CONTRACT WITH BELMONT COUNTY COMMISSIONERS  
PROJECT 10-5 CATS RUN RESURFACING PROJECT  
COUNTY HIGHWAY 56 CATS RUN ROAD**

Auditor's Office, Belmont County, Ohio

This contract made and entered into this 1st day of September, 2010 between **SHELLY & SANDS, INC.**, P.O. Box 66, Rayland, OH 43943 and Matt Coffland, Charles Probst, Jr., and Ginny Favede, Commissioners of Belmont County, WITNESSETH that said **SHELLY & SANDS, INC.** hereby agrees to furnish all service, labor, material and equipment and do all work requisite necessary for the resurfacing of County Highway 56 in accordance with plans and specifications.

Methods of Construction, Composition and Preparation of Materials shall conform to the latest applicable Sections of the State of Ohio Department of Transportation, Construction and Material Specifications and Supplemental Specifications and shall govern this project. All work shall be under the direction of the County Engineer.

APPROX. QUAN.	ITEM	DESCRIPTION	ITEMIZED PROPOSAL	
			UNIT PRICE BID	TOTAL AMOUNT BID
3295 GAL	407	TACK COAT	\$2.00	\$6,590.00
915 CUBIC YARDS	448	ASPHALT CONCRETE INTERMEDIATE COURSE TYPE 1	\$126.85	\$116,067.75
915 CUBIC YARDS	448	ASPHALT CONCRETE SURFACE COURSE TYPE 1	\$126.85	\$116,067.75
204 CUBIC YARDS	617	COMPACTED AGGREGATE	\$65.00	\$13,260.00
3.12 MILES	614	WORK ZONE CENTERLINE, CLASS II	\$1,775.00	\$5,538.00
3.12 MILES	642	CENTERLINE, TYPE 1 OR TYPE 2	\$1,980.00	\$6,177.60
6.24 MILES	642	EDGELINE, TYPE 1 OR TYPE 2	\$1,000.00	\$6,240.00
		TOTAL		\$269,941.10



**IN THE MATTER OF ENTERING INTO CONTRACT WITH  
STREET ENGINEERING & SURVEYING, LLC/NEFFS SEWER PROJECT**

Motion made by Mrs. Favede, seconded by Mr. Coffland to enter into contract with Street Engineering & Surveying, LLC, for engineering services for the Neffs Sewer Project including the West Neffs and St. Joes area; engineering fees will be paid from the N27 Neffs Sanitary Sewer Phase I Project Fund.

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of Sept. 1, 2010 ("Effective Date") between Belmont County Commissioners ("Owner") and Street Engineering & Surveying, LLC ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Provide new 8" Gravity Sanitary Sewers for West Neffs Area, St. Joes, and Village of Neffs also provide new Sanitary Lift Station to force sewage from West Neffs and Village of Neffs to and existing 8" force main that conducts the sewage to the Eastern Ohio Regional Waste Water Authority treatment facility. ("Project").

Engineer's services under this Agreement are generally identified as follows:

1. Provide Engineering Services to develop and submit engineering plans to the OEPA to receive Permit To Install (PTI). For the above describe three project
2. Provide Contract Documents and Contract Administrative Services.
3. Provide full time inspection services for Neffs Project, and also for West Neffs and/or St. Joes projects depending on available funding once the Neffs Project is bid.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

**ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

3.01 *Commencement*

- A. A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

**ARTICLE 4 – INVOICES AND PAYMENTS**

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

**ARTICLE 5 – OPINIONS OF COST**

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

**ARTICLE 6 – GENERAL CONSIDERATIONS**

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and regulations.
2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other

use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 Suspension and Termination

- A. *Suspension:*
1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
  2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience,
    - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 Controlling Law

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

#### 6.07 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

#### 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- C. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### **ARTICLE 7-DEFINITIONS**

#### **7.01 *Defined terms***

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
  1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or

- the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
  9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
  10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
  11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
  12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
  13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
  14. *Engineer* – The individual or entity named as such in this Agreement.
  15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
  16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
  17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
  18. *PCBs* – Polychlorinated biphenyls.
  19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
  20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
  21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
  23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
  24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
  25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
  26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
  27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
  28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
  29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
  30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
  31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
  32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
  33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and

documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

**ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS**

*8.01 Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- ~~E. Exhibit E, Notice of Acceptability of Work.~~
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- ~~I. Exhibit I, Limitations of Liability.~~
- ~~J. Exhibit J, Special Provisions.~~
- ~~K. Exhibit K, Amendment to Owner-Engineer Agreement.~~

**[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]**

*8.02 Total Agreement:*

A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

*8.03 Designated Representatives:*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

*8.04 Engineer's Certifications:*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:	Engineer:
<u>Belmont County Commissioners</u>	<u>Street Engineering &amp; Surveying, LLC</u>

By: <u>Ginny Favede, Matt Coffland, Charles R. Probst, Jr.</u>	By: <u>William Street</u>
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Title: _____	Title: <u>Owner</u>
Date: <u>Ginny Favede, Matt Coffland,</u>	Date: <u>August 26, 2010</u>
Signed: <u>Charles R. Probst, Jr. /s/</u>	Signed: <u>William Street /s/</u>

Engineer License or Firm's Certificate No. 30778  
 State of: Ohio

Address for giving notices:	Address for giving notices:
<u>Courthouse</u>	<u>Street Engineering &amp; Surveying, LLC</u>
<u>101 W. Main St.</u>	<u>67660 Warnock-St. Clairsville Road</u>
<u>St. Clairsville, Ohio 43950</u>	<u>St. Clairsville, Ohio 43950</u>

Designated Representative (Paragraph 8.03.A):	Designated Representative (Paragraph 8.03.A):
<u>Mark Esposito</u>	<u>William Street</u>

Title: <u>Director, BCSSD</u>	Title: <u>Owner</u>
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Phone Number: <u>740-695-3144</u>	Phone Number: <u>1-740-695-6481</u>
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Facsimile Number: <u>740-695-3411</u>	Facsimile Number: <u>1-740-695-6481</u>
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E-Mail Address: <u>mbcssdesposito@yahoo.com</u>	E-Mail Address: <u>streeteng@comcast.net</u>
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APPROVED AS TO FORM:  
David K. Liberati /s/ (Assistant)  
PROSECUTING ATTORNEY

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF ACCEPTING THE RESIGNATION OF DANIELLE NEAVIN, DEPUTY CLERK, NORTHERN DIVISION COURT**

Motion made by Mrs. Favede, seconded by Mr. Coffland to accept the resignation of Danielle Neavin, Deputy Clerk of Northern Division Court, effective Friday, September 3, 2010.

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF APPROVING APPOINTMENT AND REAPPOINTMENTS TO THE GOVERNING BOARD FOR THE COMMUNITY ACTION COMMISSION**

Motion made by Mrs. Favede, seconded by Mr. Probst to approve the following appointment and reappointments to the Governing Board for the Community Action Commission for a one year term commencing August 1, 2010 through July 31, 2011, based upon the recommendation of Gary Obloy, Belmont County CAC Executive Director:

**REAPPOINTMENTS**

**Stanley Stein**

Bellaire, OH 43906

**Ms. Jody Geese**

Belmont Metropolitan Housing Authority

Martins Ferry, OH 43935

**Ms. Margaret Miller**

St. Clairsville, OH 43935

**Mrs. Martha Giffen**

Barnesville, OH 43713

**NEW APPOINTMENT**

**Robert Quirk**

St. Clairsville, OH 43950

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Probst	Yes
Mr. Coffland	Yes

**OPEN PUBLIC FORUM** – Richard Hord asked if the board was going to hire a grant writer. Mrs. Favede advised the county would love to hire a grant writer, but cannot afford to do so. She said to fill that need, we have started a six week, six course grant writing seminar program in conjunction with Congressman Charlie Wilson’s office. Kathy Gagin, who is an experienced grant writer, is training people throughout Belmont County. The first seminar was very well attended. The second one is scheduled for the end of September.

**DISCUSSION HELD RE: AUDITOR ANDY SUTAK – GAS/OIL TAX UPDATE**

Auditor Andy Sutak noted a lot of new wells are being drilled in Belmont County. He said he has retained Jack Ralston to act as a liaison to check on the gas wells since they will be taxed as real estate as per statute. Jack will check the leases and the new companies that are coming in and will work with ODNR. Mr. Sutak wants to make sure all proper permits are filed. This will bring in more tax dollars for the county and political subdivisions. He is also checking on wells that are not gas, nor oil, but wells they are putting brine in from other states. If allowed by law, those wells will be taxed also. Mrs. Favede commended Andy for being in front of this issue. She noted that the Soil & Water Conservation Office had a public forum last month on this issue and will be holding another one. Bev Riddle can be contacted for more information.

**IN THE MATTER OF ENTERING EXECUTIVE SESSION AT 10:30 A.M.**

Motion made by Mrs. Favede, seconded by Mr. Coffland to enter into executive session with Dwayne Pielech, Director and Lori O’Grady, HR Director, Belmont County Department of Job & Family Services, pursuant to Ohio Revised Code 121.22(G)(1) Personnel Exception to consider the employment of a public employee.

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Coffland	Yes
Mr. Probst	Yes

**IN THE MATTER OF ADJOURNING EXECUTIVE SESSION AT 11:28 A.M.**

Motion made by Mrs. Favede, seconded by Mr. Probst to adjourn executive session with Dwayne Pielech, Director and Lori O’Grady, HR Director, Belmont County Department of Job & Family Services, pursuant to Ohio Revised Code 121.22(G)(1) Personnel Exception to consider the employment of a public employee.

Upon roll call the vote was as follows:

Mrs. Favede	Yes
Mr. Probst	Yes
Mr. Coffland	Yes

**AS A RESULT OF EXECUTIVE SESSION, NO ACTION TAKEN.**

**IN THE MATTER OF VACATION OF  
A PORTION OF TOWNSHIP ROAD 131  
(BRICE BAKER RD.) YORK TWP.  
SEC. 11, T-4, R-3/RD IMP 1105**

Office of County Commissioners  
Belmont County, Ohio

The Board of County Commissioners of Belmont County, Ohio, met in Regular session on the 1st day of September, 2010, at the office of the Commissioners with the following members present:

- Mrs. Favede
- Mr. Probst
- Mr. Coffland

Mrs. Favede moved the adoption of the following Resolution:

**RESOLUTION – ORDER TO CLOSE ROAD**  
Sec. 5563.01 R.C.

WHEREAS, At least ten days have elapsed since the final order of the board in the matter of this improvement, and  
WHEREAS, No person, firm or corporation interested, has effected an appeal from our orders in the matter of the above named improvement, therefore, be it

RESOLVED, That it is hereby ordered that the proceedings be recorded as provided by law, and that said road be vacated, as ordered heretofore, made on journal of the date of September 1, 2010, and a copy of this resolution be forwarded to the York Township Trustees.

Mr. Probst seconded the Resolution and the roll being called upon its adoption the vote was as follows:

- |                           |            |
|---------------------------|------------|
| Mrs. <u>Favede</u> _____  | <u>Yes</u> |
| Mr. <u>Probst</u> _____   | <u>Yes</u> |
| Mr. <u>Coffland</u> _____ | <u>Yes</u> |

Adopted the 1st day of September, 2010.

Jayne Long /s/  
Clerk, Board of County Commissioners  
Belmont County, Ohio

**BREAK – NOTE: COMMISSIONER FAVEDE LEFT AT THIS TIME.**

**IN THE MATTER OF DISCUSSION HELD  
RE: ATM MACHINE/CLERK OF COURTS**

Randy Marple, Belmont County Clerk of Courts, advised the board of the benefit of placing an ATM machine in the courthouse. He said a percentage of the fees charged to those using the machine would come back to the county. These have been used in other county courts throughout the State of Ohio. Mr. Probst stated any fees or costs associated in setting this up would need to be discussed by the board and also with Jack Regis, Facilities Manager. Mr. Marple will get a copy of a contract for it to be reviewed.

**IN THE MATTER OF ENTERING INTO CONTRACTS  
FOR DEMOLITION OF PROPERTY IN MARTINS FERRY/CDBG**

Motion made by Mr. Probst, seconded by Mr. Coffland to enter into the following contracts for demolition of property located in Martins Ferry; these projects are funded by CDBG Formula funds:

CONTRACTOR	PROPERTY LOCATION	AMOUNT
1. Raze International, Inc.	1421 Terrace St.	\$5,000.00
2. Raze International, Inc.	537 5 <sup>th</sup> St.	\$5,000.00
3. Raze International, Inc.	508 Kuckuck Lane.	\$4,950.00
4. Raze International, Inc.	608 Hickory St.	\$6,500.00
5. Raze International, Inc.	816 Catawba St.	\$4,200.00
6. Raze International, Inc.	601 Zane Hwy.	\$5,000.00
7. Raze International, Inc.	829 6 <sup>th</sup> St.	\$5,200.00
8. Raze International, Inc.	821 6 <sup>th</sup> St.	\$4,200.00
9. Edgco, Inc.	210 3 <sup>rd</sup> St.	\$15,800.00
10. Tom's Construction	1025 Vine St.	3,200.00

**DEMOLITION CONTRACT**

This Agreement, made this 25th day of August, 2010 by and between Raze International, Inc/Edgco, Inc and Tom's Construction hereinafter called the "Contractor" and the Belmont County Commissioners hereinafter called the "Local Public Agency" for the consideration stated herein mutually as follows:

1. **STATEMENT OF WORK**  
The Contractor shall furnish all supervision, labor, materials, machinery, tools, equipment and services and perform and complete all work in an efficient and workmanlike manner, as follows:  
**Description of Work**  
Demolish, remove debris and backfill with selected materials from the property located at (see above); all in strict accordance with the technical specifications which are attached to and form a part of this Contract as fully as if they were herein repeated. Work is only permitted to take place during the regular business hours of the Local Public Agency unless other hours of operation are permitted by approved change order.
2. **THE CONTRACT PRICE**  
The Local Public Agency will pay the Contractor for performance of the Contract, in current funds, the sum of \$ (see above) with no salvage value. The Local Public Agency before making payment, may require the Contractor performing the work to furnish releases of liens and/or receipts from any or all persons performing work and supplying material or services to the Contractor, for work under supplying material or services to the Contractor, for work under this Contract, if this is necessary to protect its interests.
3. **SUBCONTRACTING/ASSIGNMENT**  
The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this Contract with the exception of rodent/pest extermination and/or asbestos abatement as required in the technical specifications. Likewise, **assignment of this contract in whole or part is prohibited.**
4. **COMPLIANCE WITH "DAVIS-BACON ACT"**  
In the event the scope of work under this Contract involves the demolition and clearance of 8 or more residential housing units, or involves non-residential property of any kind with a contract value of more than \$2,000, compliance with Davis-Bacon Act shall be required and payment of prevailing wages and benefits must be made by the Contractor and any subcontractors to employees working under this Contract. In the event Davis-Bacon Act compliance is required, the Local Public Agency will provide the contractor/bidder with a copy of the General Wage Decision as a part of the bid packet. Wage Posters, a copy of the publication "Making Davis Bacon Work - A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects", and other additional information will be provided to the selected Contractor after the contract is awarded. The Local Public Agency will require the submission of certain reports/documents/certifications prior to payment in the event this provision applies.
5. **PERMITS AND CODES**

The Contractor shall give all notices required by, and comply with, all applicable laws, ordinances and codes of the Federal, State and Local Government and shall at his/her own expense, secure and pay the fees or charges for all permits required for the performance of the Contracted Work.

6. **CARE OF WORK**

The Contractor shall be responsible for all damages to persons or property as a result of his fault or negligence in connection with the performance of the work and shall be responsible for the proper care and protection of all work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Local Public Agency. In the event damages are alleged to have occurred to adjacent property as a result of the Contractor's work and the Contractor cannot settle the matter informally with the adjacent property owner, the Local Public Agency reserves the right to either delay payment to the Contractor until the dispute is resolved or deduct from the amount owed under this contract, the amount necessary to correct such damages.

7. **RISK OF LOSS**

The Contractor shall accept the site in its present condition and shall inspect the site for its character, condition and the type of structures to be demolished. The Local Public Agency assumes no responsibility for the condition of existing buildings or structures, and other property on the demolition site, or the condition of property before or after the solicitation for bids. No adjustment of the bid price or allowance for any change in conditions that occur after acceptance of bids will be allowed.

8. **VACATING OF BUILDINGS**

The structure(s) identified in the contract documents were vacant at the time of bidding. In the event the Contractor finds that any structure is not vacant, the Contractor shall immediately notify the Local Public Agency and shall not begin demolition or clearance work until further directed by the Local Public Agency. No claim of extension of time or increased price will be considered because of occupancy of buildings. In case such occupancy is prolonged, the Local Public Agency reserves the right to terminate the contract. The Contractor shall inspect all buildings and structures to determine they are vacant prior to beginning demolition work.

9. **CHANGES IN WORK**

- a. The Local Public Agency may make changes in the work required to be performed by the Contractor by making additions thereto, by omitting work there from, or by changing requirements from those specified without invalidating this Contract and without relieving or releasing the Contractor from any of his/her obligations under this Contract. All such work shall be executed under the terms of the original contract unless it is expressly provided for otherwise by change order.
- b. Except for the purpose of affording protection against an emergency endangering life or property, the Contractor shall make no change in scope of work, provide any extra or additional work, or supply additional labor, services or materials beyond that actually required for the execution of this Contract unless in pursuance of a written change order from the County authorizing the change. No claims for an adjustment of the contract price will be valid unless so ordered.
- c. Each change order shall include in its final form, a description of the change in the work, the Contractor's definite statement as to the resulting change in the Contract price and/or time, and the statement that all work involved in the change shall be performed in accordance with the contract requirements except as modified by the change order.
- d. Any request for a change order, either by the Local Public Agency or Contractor, regardless of whether it involves an increase or decrease in work to be done, cost and/or time must be approved by the Local Public Agency, and signed by the Local Public Agency and Contractor. All change orders shall be made using forms provided by the Local Public Agency. Any agreements not signed as heretofore indicated shall be considered null and void. Unless otherwise specified, any change order resulting in an increase in cost shall be the responsibility of the Local Public Agency.

10. **GENERAL GUARANTEE AND WARRANTY**

The Contractor warrants that all work completed by the Contractor and any subcontractor shall be of good quality and done in a neat and workmanlike manner. The Contractor shall promptly remedy any defect in the work for a period of 1 year from the date of final acceptance by the Local Public Agency unless a longer period is specified. The Local Public Agency will give notice of observed defects with reasonable promptness.

11. **ACCIDENT PREVENTION**

- a. The Contractor shall exercise proper precaution at all times for the protection of persons or property, either on or off the site, which occur as a result of his performance of work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Local Public Agency may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention for Construction" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws.
- b. The Contractor shall maintain an accurate record of all cases of deaths, occupational disease and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment or work under the Contract. The Contractor shall promptly furnish the Local Public Agency with reports concerning these matters.

12. **INDEMNIFICATION OF LOCAL PUBLIC AGENCY**

The Contractor shall indemnify and save harmless the Local Public Agency from liability for any injury or damages to persons or property resulting from his performance of work under the contract.

13. **INSURANCE**

- a. The Contractor shall carry **Worker's Compensation Insurance** for all his/her employees in accordance with State Worker's Compensation Laws.
- b. The Contractor shall carry **Liability Insurance** with limits of not less the **\$300,000.00** coverage for personal liability to protect the Contractor against claims for injury to or death to one or more than one person due to accidents which may occur or result from operations under the Contract. Such insurance shall cover the use of all equipment, hoists, and motor vehicles on the site or hauling materials or debris from the site.
- c. The Contractor shall carry at least **\$100,000.00 Property Liability Insurance**. The insurance policy must specify that the Contractor is covered for "Demolition and Collapse".

14. **BOND REQUIREMENTS**

The Contractor shall post a labor and material payment (performance) bond with the County for one hundred (100) percent of the contract amount to assure faithful performance of the contract entered into.

15. **REMOVAL AND SALVAGE OF EXISTING BUILDINGS**

- a. The Contractor shall demolish the buildings and structures as specified in the technical specifications, and unless otherwise specified, no dwelling structure shall be removed from the premises in a whole or substantially whole condition, but all such buildings shall be demolished on the premises.
- b. Upon the demolition of a building or structure in accordance with this Contract, **such building or structure or the remains thereof shall become the property of the Contractor**, except that personal property of third persons or the occupants of such buildings shall not become the property of the Contractor.
- c. Storage of salvage materials and equipment on the project area will be permitted only for the duration of the Contract and such storage shall at no time interfere with the activities of the Local Public Agency or of other contractors.

16. **REGULATIONS PURSUANT TO "COPELAND ANTI-KICKBACK ACT"**

The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the "Copeland Anti-Kickback Act" (48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874; and Title 40 U.S.C.; Section 276(c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontracts subject thereto, and shall be responsible for the submission of statements required of subcontractors there under, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

- a. If the contract or subcontract amount is \$10,000 or less, the following conditions apply:  
During the performance of this contract, the contractor agrees as follows:
  1. The Contractor will not discriminate against any employee or applicant for employment because of race, sex, creed, color, or national origin.- The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, sex, creed, color, or national origin. Such action shall include, not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth the provisions of this nondiscrimination clause.

2. The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, sex, creed, color, or national origin.
3. The Contractor will send to each labor union or representatives or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or worker's representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.
5. The Contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and by the rules, regulations, and orders of the said Committee or by the U.S. Department of Housing and Urban Development pursuant thereto and will permit access to his books, records, and accounts by the owner and the United States Government for the purposes of investigation to ascertain compliance with such rules, regulations, and order.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 10924 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and such other sanctions as may be imposed and remedies invoked as provided in the Said Executive Order or by rule, regulations, or order of the President's Committee on Equal Employment Opportunity or as otherwise provided by law.
7. The Contractor will include the provisions of the paragraphs 1 through 6 above, in every subcontract or purchase order unless exempted by rules, regulations, or order of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 or Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or order as the owner may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the owner, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. If the contract or subcontract is greater than \$10,000, the following conditions apply:

During the performance of this contract, the contractor agrees as follows:

1. The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority participation	Goals for Female participation
6.9%	6.9%

These goals are applicable to all the Contractor's work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR, 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Belmont County, Ohio.
5. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246, as amended).
- A. As used in these specifications:
  1. "Covered area," means the geographical area described in the solicitation from which this contract resulted.
  2. "Director" means Director, Office of the Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
  3. "Employer Identification Number" means the Federal Identification Number or Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  4. AMinority@ includes:
    - (i) "American Indian or Alaska Native" means a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;
    - (ii) "Asian" means a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;
    - (iii) "Black or African American" means a person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American";
    - (iv) "Hispanic or Latino" means a person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino"; and
    - (v) "Native Hawaiian or Other Pacific Islander" means a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- B. Whenever the Contractor, or any Subcontractor subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participation in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G.1 through 16 of this section. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices, and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - 2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - 3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
  - 4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligation.
  - 5. Develop on-the-job training opportunities and/or participate in the training programs for the area, which expressly include upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G.2 above.
  - 6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation by assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - 7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time, and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - 8. Disseminate the Contractor's EEO policy externally including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
  - 9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - 10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - 11. Validate all tests and other selection requirements where there is an obligation to do so under State or Federal regulations.
  - 12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - 13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - 14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - 15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - 16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
  - 17. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G. 1 through 17). The efforts of a Contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling anyone or more of its obligations under G.1 through 17 of this section provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women general, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Orders 12549 and 12689, as amended.

- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 12549 and 12689, as amended, and its implementing regulations, by the Office of the Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this Contract and Executive Order 12549 and 12689, as amended.
  - M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
  - N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
  - O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
18. **Certification of Nonsegregated Facilities**  
 By submission of his/her bid and execution of this Contract, the Contractor or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that s/he does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The Contractor or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, \*transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontract exceeding 10,000 dollars which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).  
 \* parking lots, drinking fountains, recreation or entertainment areas.
19. **Civil Rights Act of 1964**  
 Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
20. **Section 109 of the Housing and Community Development Act of 1974**  
 No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
21. **Section 3" Compliance in the Provision of Training Employment and Business Opportunities**  
 If the contract or subcontract is greater than \$100,000, the following conditions apply:
- a. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u. (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.
  - b. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
  - c. The Contractor agrees to send to each labor organization or representative or workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers; representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.  
 The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
  - d. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
  - e. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
  - f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
22. **Certification of Compliance with Air and Water Acts**  
 If the contract or subcontract is greater than \$100,000 the following conditions apply:
- a. **Compliance with Clean Air and Water Acts**  
 During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 442 USC 1857 et seq., the Federal Water Pollution Control Act, as amended 33 USC 1251 et seq., Executive Order 11738, and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.
    - 1. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
    - 2. Agreement by the Contractor to comply with all the requirements of Sections 114 and 306 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1251) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114, Section 306 and Section 308, and all regulations and guidelines issued there under.
    - 3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EP A List of Violating Facilities.
    - 4. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.
23. **Special Contract Conditions Pertaining to Minority/Women=s Business Enterprise**
- a. **MBE/WBE Policy and Goal**

It is the goal of the Local Public Agency MBE/WBE Program that 6.9% of its total contract Dollars available through Federal CDBG/HOME Funds be expended for the performance of contracts and subcontracts executed by MBE/WBE participants as defined in the Local Public Agency's MBE/WBE Affirmative Action Program.

To establish a contractor/bidder as responsive, it shall be the responsibility of the contractor/bidder to utilize MBE/WBE subcontractors and suppliers for portions of the work, as appropriate, or to demonstrate sufficient reasonable efforts to obtain MBE/WBE participants.

b. Pre-Contract Obligations

A properly submitted bid shall commit the contractor/bidder to exercise positive efforts to comply with the MBE/WBE policy to achieve the stated participation goals and any such bid shall be deemed, relative to MBE/WBE compliance, to be responsive. Such positive efforts shall be exercised by the contractor/bidder through MBE/WBE subcontracts to the fullest extent possible consistent with the efficient performance of the scope of work defined in this Contract and Technical Specifications.

To demonstrate MBE/WBE compliance and goal achievement, the contractor/bidder shall provide the following information with his/her bid:

1) Name and address of the MBE/WBE subcontractor(s) and/or supplier(s), contact person, federal identification number, type of construction and/or supply subcontract and dollar amount of subcontract.

If the information provided does not demonstrate that the contractor/bidder will achieve the stated MBE/WBE goals, the bid may still be considered responsive if the contractor/bidder is able to demonstrate sufficient reasonable efforts to obtain MBE/WBE participants.

c. Definitions of Sufficient Reasonable Efforts

To demonstrate sufficient reasonable efforts to meet the MBE/WBE requirements, a contractor/bidder shall document the steps taken to obtain MBE/WBE participation including, but not limited to:

1) Written notification, including newspaper publications, to MBE/WBE firms that their interest in the contract is solicited;

2) Efforts made to select portions of the work proposed to be performed by MBE/WBE firms in order to increase the likelihood of utilizing MBE/WBE firms; and

3) Efforts to negotiate with MBE/WBE firms for specific subcontracts including identification of the firms and a statement of why agreements were not reached. When the MBE/WBE negotiation was unsuccessful due to failure to agree on price, the contractor must be able to document that the subcontractor selected bid was on the same work segment under negotiation with the MBE/WBE.

d. Technical Assistance

Upon request, the Local Public Agency will make available to contractors appropriate resources including the list of agencies who may provide technical assistance services to Minority and Women's Business Enterprise and a list of known MBE/WBE firms eligible to participate in the procurement process for the contractor/bidder's use in soliciting MBE/WBE participation. This technical assistance is intended only to provide potential resources to contractor/bidders and does not relieve the contractor/bidder of the responsibility for affirmatively promoting MBE/WBE participation in the procurement process.

e. Minority/Majority Ventures, Etc.

For purposes of determining the degree of goal attainment through minority/majority joint ventures, minority subcontractors and minority suppliers, the following methodology will be used.

1) A joint venture consisting of a minority and majority or women/majority business enterprises, functioning as prime contractor, will be credited with MBE or WBE participation on the basis of percentage of the dollar amount of the work to be performed by the MBE/WBE. For example, if a minority/majority joint venture proposes to perform 50 percent of a project and 50 percent of the work is to be performed by the minority partner in the joint venture, minority participation will be credited as 25 percent of the contract work,

2) An MBE/WBE contractor/bidder will be credited with minority participation for the portion of the contract, which it performs and for the portion subcontracted, to minority firms. For example, if the MBE bidder proposes to perform a project and subcontracts 25 percent of the work to a majority firm and 25 percent to a minority firm, minority participation will be credited as 25 percent.

f. Responsibility Determination

In the event a contractor/bidder is unable to objectively demonstrate positive efforts to meet the stated MBE/WBE goals, the bid may be rejected as non-responsive.

It is the goal of the Local Public Agency to afford maximum opportunities to minority and women's firms to participate in the bidding and contracting process. However, in situations where all contractor/bidders for a project have exercised good faith efforts to solicit MBE/WBE participation but have been unsuccessful in these efforts, the Local Public Agency shall have the option to proceed with awarding a contract for performance of the work. In such situations, the Local Public Agency shall discuss with the contractor the reasons for the lack of success and shall seek to identify actions, which may help resolve such problems in future bidding activities.

g. Geographic Area

Contractors shall, at a minimum, seek MBE/WBE firms in the same geographic area in which they seek subcontractors and suppliers generally for a given solicitation. If the contractor cannot obtain MBE/WBE firms from this geographic area, the contractor/bidder, as a part of his efforts, shall expand his search to a reasonable wider geographic area.

h. Defaulting Subcontractor/Supplier

In the event an MBE/WBE subcontractor or supplier is unable to perform successfully, the prime contractor is required to make good faith efforts to replace the subcontractors and supplier with an eligible and qualified MBE/WBE firm.

i. Special Documentation

The Local Public Agency reserves the right to request satisfaction factory documentation of ownership and/or control of any firm identified as a Minority or Women's Business Enterprise. The timely submission of such documentation to the Local Public Agency is the sole responsibility of the contractor.

j. Monitoring

The Local Public Agency will monitor MBE/WBE participation and achievement through the course of the contract to assure the MBE/WBE commitment as identified in the bid documents, is met. The prime contractor must report any and all changes in the subcontractors and/or suppliers which might affect the timely performance of the work and/or the achievement of the MBE/WBE objective.

Should changes in subcontractors or suppliers be necessary, compliance with subparagraph h above shall apply.

24. INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS

No officer, employee, or member of the federal government or governing body of the Local Public Agency who exercises any functions or responsibilities in connection with the carrying out of this project to which this Contract pertains, shall have any private interest, direct or indirect, in this Contract.

25. ORGANIZATIONAL CONFLICT OF INTEREST

a. The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he/she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this Contract and a prospective contractor's organizational, financial, contractual or other interests are such that:

1. award of this Contract may result in an unfair competitive advantage;

2. the Contractor's objectivity in performing the contract work may be impaired; or

3. the Contractor has disclosed all relevant information and requested the Local Public Agency to make a determination with respect to this Contract.

b. The Contractor agrees that if after award he/she discovers an organizational conflict of interest with respect to this Contract, he/she shall make an immediate and full disclosure in writing to the Local Public Agency which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The Local Public Agency may, however, terminate this Contract for the convenience of the Local Public Agency if it would be in the best interest of the Local Public Agency.

c. In the event the Contractor was aware of an organizational conflict of interest prior to the award of this Contract and intentionally did not disclose the conflict to the Local Public Agency, the local Public Agency may terminate the Contract for default.

d. The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the Local Public Agency and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance of work under this Contract.

26. INSPECTION BY LOCAL PUBLIC AGENCY

The Local Public Agency shall have the right to inspect the work at all times and at the completion thereof.

27. **PAYMENT**

An invoice for payment shall be submitted only after all work under this project is complete and the Local Public Agency has inspected and approved the condition of the work site. The following shall accompany the invoice for payment:

- a. receipts for rodent/pest extermination if required under this Contract;
- b. receipts from the State-approved disposal site where debris under this Contract was taken by the Contractor for disposal; and
- c. receipts from licensed septic tank waste hauler; and
- d. certification of lien releases and waiver of claim from subcontractors and/or suppliers.

Progress payments shall not be permitted, only a single final and full payment after work has been completed and approved shall be made.

28. **TIME FOR COMPLETION**

The work, which the Contractor is required to perform under this Contract, shall be fully 100 percent completed by December 31, 2010. **No extension of time shall be granted or excusable delays permitted for any reason whatsoever unless by approved change order.** Liquidated damages in the amount of \$50.00 per day for each calendar day beyond thirty (30) days shall be deducted from the contract amount. The Local Public Agency shall not be obligated to notify the contractor in advance when liquidated damages begin to accrue.

29. **EXCUSABLE DELAYS**

The contractor shall not be charged with liquidated damages for any delays in the completion of work due:

- a. To any acts of the Government; including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency.
- b. To any acts of the Local Public Agency;
- c. To causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor; including but not restricted to, acts of God or of the public enemy, acts of another contractor in the performance of some other contract with the owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and,
- d. To any delay of a subcontractor occasioned by any of the causes specified in subparagraph a., b., and c. above. Provided, however, that the contractor promptly (within 10 days) notifies the Local Public Agency in writing of the cause of the delay. If the facts show the delay to be properly excusable under the terms of this Contract, the Local Public Agency shall extend the contract time by a period commensurate with the period of excusable delay to the completion of the work as a whole.

30. **RECORDS RETENTION**

The Contractor shall retain all records related to this Contract for 5 years after final payment is made and all pending matters related to this Contract are closed. The Contractor shall permit access by the Local Public Agency, the U.S. Department of Housing and Urban Development (HUD), the State of Ohio, and the Comptroller General of the United States, or their designees to any books, documents, papers and records of the Contractor for the purpose of audit examination, excerpts and transcripts.

31. **TERMINATION OF CONTRACT**

The Local Public Agency may terminate this Contract at any time for cause or convenience by giving written notice of such to the Contractor 10 days in advance of such termination as follows:

a. **Termination of Clause**

If the Contractor should breach this Contract or fail to perform the services required by the Contract, the Local Public Agency may terminate the Contract for cause by giving written notice or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the Local Public Agency, the Contract may be terminated by the Local Public Agency at any time thereafter upon written notice to the Contractor or, in the alternative, the Local Public Agency may give such extension of time to remedy the breach as the Local Public Agency determines to be in its best interest. The Local Public Agency's forbearance by not terminating the Contract for a breach of contract shall not constitute a waiver of the Local Public Agency's right to terminate nor acquiescence in future act or omissions by the Contractor of a like nature. If the Contract is terminated for cause, breach of contract or failure to perform, the Contractor may be subject to a claim by the Local Public Agency for the costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the contract.

b. **Termination of Convenience**

The contract may be terminated by the Local Public Agency in whole or in part for the convenience of the Local Public Agency without a breach of Contract by delivering to Contractor a written notice of termination specifying the extent to which performance under this Contract is terminated and the effective date of the termination. Upon receipt of such a notice of termination, the Contractor must stop work, including but not limited to work performed by subcontractors and consultants, at such time and to the extent specified in the notice of termination. If the Contract is terminated in whole or in part for the convenience of the Local Public Agency, the Contractor shall be entitled only to payment for work done prior to the notice of termination and thereafter shall be entitled to payment for work, if any, not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR:

Raze International, Inc./Tom's Construction/Edgco, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

BELMONT COUNTY COMMISSIONERS

By: Ginny Favede /s/

Ginny Favede, President

Certificate of Fund Availability:

\_\_\_\_\_  
Andy Sutak

Auditor

Approved as to Form and Legality:

David K. Liberati /s/ (Assistant County Prosecutor)

Chris Berhalter

County Prosecutor

Upon roll call the vote was as follows:

Mr. Probst	Yes
Mr. Coffland	Yes
Mrs. Favede	Absent

**IN THE MATTER OF ADJOURNING  
COMMISSIONERS MEETING AT 12:15 P.M.**

Motion made by Mr. Coffland, seconded by Mr. Probst to adjourn the meeting at 12:15 p.m.

Upon roll call the vote was as follows:

Mr. Coffland	Yes
Mr. Probst	Yes
Mrs. Favede	Absent

Read, approved and signed this 8th day of September, 2010.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ COUNTY COMMISSIONERS

We, Ginny Favede and Jayne Long, President and Clerk respectively of the Board of Commissioners of Belmont County, Ohio, do hereby certify the foregoing minutes of the proceedings of said Board have been read, approved and signed as provided for by Sec. 305.11 of the Revised Code of Ohio.

\_\_\_\_\_ PRESIDENT  
\_\_\_\_\_ CLERK