

St. Clairsville, Ohio

October 12, 2023

The Board of Commissioners of Belmont County, Ohio, met this day in regular session. Present: J. P. Dutton, Jerry Echemann and Josh Meyer, Commissioners and Bonnie Zuzak, 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 APPROVING RECAPITULATION
OF VOUCHERS FOR THE VARIOUS FUNDS

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve and sign all bills that have been certified in the Auditor's office and considered by the Board. It is hereby ordered that the County Auditor issue her warrant on the County Treasurer in payment of the bills allowed:

IN THE TOTAL AMOUNT OF \$997,711.37

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

IN THE MATTER OF TRANSFERS WITHIN FUND

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve the following transfers within fund for the following funds:

A00 GENERAL FUND

FROM	TO	AMOUNT
E-0051-A001-A17.000 Memorial Day Expenses	E-0051-A001-A10.000 Professional Services	\$3.84
E-0141-A001-C03.010 Supplies	E-0141-A001-C12.000 Bank Fees	\$1,350.00
E-0250-A006-H05.000 Contract Services-Ambo Ser.	E-0051-A001-A10.000 Professional Services	\$6,420.00

H05 WORKFORCE DEVELOPMENT GRANT/BCDJFS

FROM	TO	AMOUNT
E-2600-H005-H02.000 Out-of-School Youth	E-2600-H005-H01.000 In-School Youth	\$50,000.00
E-2600-H005-H03.000 Adult	E-2600-H005-H01.000 In-School Youth	\$33,626.33
E-2600-H005-H03.000 Adult	E-2600-H005-H02.000 Out-of-School Youth	\$8,800.00

P59 WATER & SEWER DEVELOPMENT FUND/BCWSD

FROM	TO	AMOUNT
E-3709-P059-P10.074 Transfers Out	E-3709-P059-P06.013 Contract Projects	\$35,905.26

S70 BELMONT COUNTY SENIOR PROGRAMS

FROM	TO	AMOUNT
E-5005-S070-S16.000 Food	E-5005-S070-S18.000 Oakview	\$80,000.00

W82 D.R.E.T.A.C./TREASURER

FROM	TO	AMOUNT
E-1410-W082-T04.000 Other Expenses	E-1410-W082-T05.003 PERS	\$1,000.00

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

IN THE MATTER OF TRANSFERS BETWEEN FUND

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve the following transfers between funds as follows:

P05 WATER WORKS FUND AND O62 USDA WATER BOND PYMT/BCWSD

FROM	TO	AMOUNT
E-3702-P005-P34.074 Transfers Out	R-9262-O062-O08.574 Transfers In	\$124,000.00

P05 WATER WORKS FUND AND O63 USDA WATER BOND RESERVE FUND/BCWSD

FROM	TO	AMOUNT
E-3702-P005-P34.074 Transfers Out	R-9263-O063-O06.574 Transfers In	\$12,350.00

P05 WATER WORKS FUND AND N22 WWS CAPITAL IMPROVEMENT FUND/BCWSD

FROM	TO	AMOUNT
E-3702-P005-P34.074 Transfers Out	R-9022-N022-N08.574 Transfers In	\$28,750.00

P05 WATER WORKS FUND AND N88 WWS REVENUE BOND-SHORT LIVED/BCWSD

FROM	TO	AMOUNT
E-3702-P005-P34.074 Transfers Out	R-9088-N088-N04.574 Transfers In	\$58,000.00

P53 SANITARY SEWER DISTRICT FUND AND O03 USDA SSD BOND PYMT/BCWSD

FROM	TO	AMOUNT
E-3705-P053-P15.074 Transfers Out	R-9200-O003-O08.574 Transfers In	\$71,000.00

P53 SANITARY SEWER DISTRICT FUND AND 061 SEWER BOND RETIREMENT FUND/BCWSD

FROM	TO	AMOUNT
E-3705-P053-P15.074 Transfers Out	R-9261-O061-O04.574 Transfers In	\$6,600.00

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

IN THE MATTER OF ADDITIONAL APPROPRIATIONS

Motion made by Mr. Dutton, seconded by Mr. Echemann to make the following additional appropriations, in accordance with the Official Certificate of Estimated Resources as approved by the Budget Commission, under the following dates:

****JANUARY 10, 2023****

A00 GENERAL FUND

E-0131-A006-A17.010	Cruisers	\$3,800.00
OCTOBER 12, 2023		
<u>H08 WIA AREA 16 FUND/BCDJFS</u>		
E-2610-H008-H01.000	Belmont Co. DJFS-WIOA	\$100,000.00
E-2610-H008-H02.000	Carroll Co. DJFS-WIOA	\$100,000.00
<u>M67 ALTERNATIVE SCHOOL-JUVENILE COURT</u>		
E-0400-M067-M01.002	Salaries	\$80,000.00
E-0400-M067-M02.003	PERS	\$20,000.00
E-0400-M067-M03.004	Workers Comp	\$5,000.00
E-0400-M067-M04.005	Medicare	\$5,000.00
E-0400-M067-M05.008	Insurances	\$38,210.46
<u>N08 DISASTER RELIEF 4424/ENGINEER</u>		
E-9008-N008-N06.055	Construction	\$53,306.04
<u>Y41 INDIGENT APPLICATION FEES</u>		
E-9841-Y041-Y01.000	Remit to State	\$393.11
E-9841-Y041-Y02.000	Remit to County	\$1,572.45
<u>Y42 RECOUPMENT FEES INDIGENT/AUDITOR</u>		
E-9842-Y042-Y01.000	Remit to State	\$540.00
<u>SHERIFF/VARIOUS FUNDS</u>		
E-0131-A006-A20.000	False Alarms	\$850.00
E-0131-A006-A24.000	E-SORN	\$440.00
E-5100-S000-S01.010	Commissary	\$94,767.10
E-5101-S001-S06.000	CCW License	\$827.00
E-5101-S001-S07.012	CCW Equipment	\$868.00
E-9710-U010-U06.000	Reserve	\$6,012.50

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

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

Motion made by Mr. Dutton, seconded by Mr. Echemann to execute payment of Then and Now Certification dated October 12, 2023, 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 to order.

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

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

Motion made by Mr. Dutton, seconded by Mr. Echemann granting permission for county employees to travel as follows:
COURT OF COMMON PLEAS/PROBATE & JUVENILE DIVISION-Amy Tonkovich and Michelle Lindsey to Columbus, OH, on October 23, 2023, to attend the 2023 Probate Court Clerks Training.
HR DEPARTMENT-Erin McVay to Plain City, OH, on October 20, 2023, to attend the CLCCA Fall meeting. A county vehicle will be used for travel.
JAIL NURSES-Darcie Glover-Giordano, RN, to Columbus, OH, on October 24-26, 2023, to attend the Infectious Disease and Correctional Facilities Conference.
RECORDER-Jason Garczyk to Columbus, OH, on November 13, 2023, to attend the Ohio Recorders’ Association Winter Continuing Education Conference. A county vehicle will be used for travel.

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

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

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve the minutes of the Belmont County Board of Commissioners regular meeting of October 4, 2023.

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF APPOINTMENT TO THE
BELMONT COUNTY DISTRICT LIBRARY BOARD**

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve the appointment of Michael Mistovich to the Belmont County District Library Board effective immediately through July 30, 2028 to fill the unexpired term of Chris Berhalter.

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF ACKNOWLEDGING RECEIPT OF
UNSPECIFIED DONATIONS /DOG AND KENNEL FUND**

Motion made by Mr. Dutton, seconded by Mr. Echemann to acknowledge receipt of \$11,956.79 in unspecified donations to the Belmont County Dog and Kennel fund for the third quarter of 2023, as follows: \$2,439.35 for July, \$2,214.04 for August and \$7,303.40 for September.

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF ACKNOWLEDGING RECEIPT OF
UNSPECIFIED DONATIONS /ANIMAL SHELTER (GENERAL FUND)**

Motion made by Mr. Dutton, seconded by Mr. Echemann to acknowledge receipt of \$1,768.39 in unspecified donations to the Animal Shelter (General Fund) for the third quarter of 2023, as follows: \$1,768.39 for September.
Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

<u>IN THE MATTER OF</u>	[Belmont Co. Commissioners
<u>PLAT FOR MUELLER LANE (PRIVATE)</u>	[Courthouse
<u>GOSHEN TOWNSHIP, SEC. 24, T-7, R-5</u>	[St. Clairsville, Ohio 43950
	[Date <u>October 12, 2023</u>

Motion made by Mr. Dutton, seconded by Mr. Echemann to authorize the Clerk of the Board to establish a date and time for the Subdivision Hearing in regards to the Plat of Mueller Lane (Private Road), Goshen Township Section 24, T-7, R-5 pursuant to the Ohio Revised Code Section 711.05 and proceed with the required notifications.

NOTICE OF NEW SUB-DIVISION
Revised Code Sec. 711.05
----***----

To: Douglas Kemp, F.O., Goshen Township Trustees, 40939 Bethesda-Belmont Road, Bethesda, OH 43719.
You are hereby notified that the 25th day of October, 2023, at 9:45 o'clock A. M., has been fixed as the date, and the office of the Commissioners, in the Courthouse, St. Clairsville, Ohio, as the place where the Commissioners will act on the above stated matter.
By order of the Belmont County Commissioners.

Bonnie Zuzak /s/
Clerk of the Board

- Mail by certified return receipt requested
- cc: Goshen Township Trustees
Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF AUTHORIZING WATER AND SEWER DISTRICT TO PARTICIPATE IN
RENTAL PROGRAM WITH CINTAS CORPORATION AND THE STATE OF OHIO**

Motion made by Mr. Dutton, seconded by Mr. Echemann to authorize the Belmont County Water and Sewer District to participate in the rental program governed by State of Ohio DAS Contract RS900118, by and between Cintas Corporation and The State of Ohio, based upon the recommendation of Kelly Porter, Director.
Note: The agreement is a sixty-month term with a minimum participation term of twenty-four months for garments and facilities supplies and thirty-six months for flame resistant garments.
Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF APPROVING AGREEMENTS FOR ENGINEER AND PROFESSIONAL SERVICES
WITH VAUGHN, COAST AND VAUGHN, INC/WATER AND SEWER DISTRICT**

Motion made by Mr. Dutton, seconded by Mr. Echemann to approve and sign the following agreements for engineer and professional services with Vaughn, Coast and Vaughn, Inc., based upon the recommendation of Water and Sewer District Director Kelly Porter:

- Utility Engineering Services for various water and sewer work in the not to exceed amount of \$80,000.00.

Note: This will be paid for from Water & Sewer Revenues.

- Improvements to West End Force Main Project in the lump sum amount of \$75,000.00.
- Blaine Hill Force Main Replacement Project in the lump sum amount of \$156,000.00.

Note: These will be paid for from the Sewer Capital Improvement Fund.

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of OCT. 12, 2023 ("Effective Date") between **The Board of Commissioners of Belmont County, Ohio** ("Owner") and **Vaughn, Coast & Vaughn, Inc.** ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: **Utility Engineering Services for the Belmont County Water & Sewer District** ("Project").

Engineer's services under this Agreement are generally identified as follows: **Provide engineering services for various water and sewer utility work in support of the Belmont County Water & Sewer District on a retainer basis** ("Services").

The Engineer was selected by the Owner following the qualification-based selection process required by Ohio Revised Code Sections 153.65, et seq. to provide professional design services to the Owner. The Owner reserves the right to add additional scope and services that are in accordance with the Request for Qualifications ("RFQ"), as further improvements are identified and funds are available.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: One calendar year from the Effective Date of this Agreement. At the end of the initial period (one calendar year from the Effective Date of this Agreement) the Engineer will submit its pricing proposal for (1) two-year renewal of the Services. Should the parties fail to reach a written agreement regarding the remaining services for the Project, the Owner is entitled to terminate this Agreement as set forth herein.
- C. 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 as set forth in Section 2.03 of the Agreement.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month

from said thirtieth day. Engineer shall give Owner three days written notice before interest shall begin to accrue.

- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Owner shall pay Engineer for Services as follows:
 - 1. The Engineer’s compensation is on a time and materials basis, and the compensation for Services shall be billed at the hourly rates set forth in **Appendix 1** not to exceed the cumulative total of **\$80,000.00**, which includes Reimbursable Expenses incurred with no markup in connection with providing the Services and Engineer’s consultants’ charges, if any. Hours charged will be to the nearest half hour.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer’s employees, times standard hourly rates as set forth in **Appendix 1** for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer’s consultants’ charges, if any and shall be based upon written, signed agreement between the Owner and Engineer. No Additional Services shall be performed without written, signed agreement between the Owner and Engineer.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon thirty (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. In the event of termination of this Agreement under this section or any other provision of this Agreement, by either the Owner or the Engineer, and regardless of the default or breach of either party, the Owner may take possession of all Documents for the Project and other Project-related data theretofore prepared by the Engineer for the Project by whatever method the Owner deems expedient, and the Owner may use such Documents and other Project-related data prepared by the Engineer to complete the Project. In such case, the Owner may pursue any action available to it to obtain relief for actual damages suffered by reason of defaults, failures, or breaches of the Engineer under this Agreement. Notwithstanding the foregoing, the Engineer shall not be responsible for any damages that arise from the use of such Documents and other Project-related data.
 - b. By Engineer:
 - 1) upon thirty (30) days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or

2) upon thirty (30) days written notice if the Engineer's services for the Project are delayed or suspended by the Owner for more than ninety (90) days.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (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, sixty (60) days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. [Not Used].

C. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services satisfactorily performed in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination, subject to any setoffs by Owner. 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 5.01(F). In the event that there is a dispute over the amount due and owing to the Engineer at the time of termination, the Owner shall nevertheless have the right to take possession of and use the Documents and other Project-related data, as described above. The Owner will pay to the Engineer all amounts not in dispute within two (2) weeks of the termination, and the amount in dispute shall be placed into an interest-bearing account maintained by the Owner, and payment of the amount due to the Engineer, if any, shall be made following the resolution of the dispute in accordance with the provisions of this Agreement. If the Owner terminates the Engineer based upon a default of the Engineer, the Owner shall pay to the Engineer amounts earned for services performed through the date of the termination and any Reimbursable Expenses approved by the Owner, less any amounts determined owing to the Owner as a result of the Engineer's default. In such a case, payment shall be made to the Engineer of any amounts determined to be owed to it by the Owner following completion of the Project.
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 3.01.C.1, to invoice Owner and receive payment of a reasonable amount for services and expenses performed prior to termination, and, to the extent services are requested by Owner, after the effective date of termination.

4.01 *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 4.01.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. 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.

5.01 *General Considerations*

- 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 experienced in the design of similar projects and 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 any services performed or furnished by Engineer.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity 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, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have 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

due and owing for all Services and Additional 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. [Not Used]; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. *Waiver: To the fullest extent permitted by Laws and Regulations, the Engineer and Owner waive consequential damages for claims, disputes or other matters in question, arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.*
- I. The parties acknowledge that Engineer’s Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent 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 such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith prior to invoking the dispute resolution procedures below.
1. If the parties fail to resolve a dispute through negotiation under Paragraph 7.01.J, then the dispute shall be subject to litigation, as described in the following paragraphs.
 2. Mediation. The parties may subsequently agree to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreed to mediator. Should the parties be unable to agree to a mediator, then the parties shall submit the matter to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days of the request for mediation, or for a mutually-agreed-to

time period. If such mediation is unsuccessful in resolving a Dispute, then either party may seek to have the Dispute resolved by litigation.

- 3. Litigation. Disputes arising under this Agreement and related to the Project that are not resolved successfully through informal discussions between the parties or through mediation will be the subject of litigation in the Court of Common for the County in which the Project is located.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer’s Services and Additional Services do not include: (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 Insurance

- A. Engineer shall procure and maintain insurance as set forth below. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - 1. Engineer shall procure and maintain during the term of this Agreement and for a period of two (2) years after completion of the Project, subject to availability at commercially reasonable rates, at its own expense, the following insurance coverages, insuring the Engineer, its employees, agents, and designees, which insurance shall be obtained from an insurance company rated A-, A or A+ by Best Insurance Reports. The Engineer shall require each of its Consultants to maintain appropriate levels of coverages based upon the services to be provided related to the Project.
 - a. Professional liability insurance coverage in the amount of not less than One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) aggregate, covering claims of negligence, errors, acts, and omissions by the Engineer arising out of the performance or failure to perform professional services under this Agreement.
 - b. Commercial general liability insurance for bodily injury (including death) and property damage, including limited contractual liability coverage, in not less than the following amounts: (i) general aggregate limit: \$2,000,000 each occurrence; and (ii) each occurrence limit: \$1,000,000.
 - c. Worker’s compensation insurance as required by Ohio law.
 - 2. If the Engineer has not done so prior to the parties’ execution of this Agreement, the Engineer shall submit valid certificates of insurance in form and substance satisfactory to the Owner, evidencing the effectiveness of the foregoing insurance, naming the Owner as the holder of the certificates and, for the general liability insurance coverages, naming the Owner as an additional insured, and shall provide copies of the insurance policies upon request of the Owner.

- B. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project
- C. Engineer shall procure and maintain insurance as set forth herein. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- D. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- E. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, 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 insurance purchased and maintained by Contractor for the Project.
- F. Engineer shall deliver to the Owner certificates of insurance evidencing the coverages indicated herein. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants.
- H. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or non-renewed, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- I. 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 herein. 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.

7.01 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* Notwithstanding any other provision in this Agreement to the contrary, the Engineer shall indemnify, and hold the Owner and the Owner's officers and employees harmless from and against liabilities arising from claims by third parties for death or injury, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as

determined pursuant to section 2307.23 of the Revised Code, of the professional design firm or any consultant, subcontractor, or other entity used by the professional design firm, in performing services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Engineer for the breach of this Agreement for the breach of the Standard of Care.

- B. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. *Waiver:* To the fullest extent permitted by Laws and Regulations, the Engineer and Owner waive consequential damages for claims, disputes or other matters in question, arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

8.01 *Miscellaneous Provisions*

- A. *Notices:* A Notice is any written notice to the Owner or the Engineer. Written Notice to the Engineer shall be deemed to have been duly served if delivered in person to an officer or any other official of the Engineer or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of the Engineer. Written Notice to the Owner shall be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to the Owner’s representative identified in the Agreement. When sent by certified mail to either party, any written notice shall be considered properly delivered to the other party three (3) days after the date sent.
- 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 Laws and Regulations, 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.
- F. *Non-Discrimination:* Engineer agrees:
 - 1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

- 2. That neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
- 3. That there shall be deducted from the amount payable to the Engineer by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- 4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.
- G. **Modification:** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.
- H. **Ethics:** The Engineer is aware of the ethics responsibilities in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.
- I. **Findings for Recovery:** The Engineer is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, this Agreement is void, and the Engineer will immediately repay to the Owner any funds paid under this Agreement.
- J. **Counterparts:** This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail. Facsimile or electronic signatures shall be effective as originals

9.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

Definitions

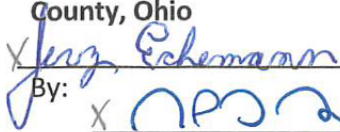
- B. **Constructor**—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that 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. §§5101 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.; or (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.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

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

Owner: The Board of Commissioners of Belmont County, Ohio

By: 

Print name: JERRY ECHEMANN - VICE-PRES

Title: J. P. DUTTON - PRES JOSH MEYER MEMBER

Date Signed: OCT 12, 2023

Engineer: Vaughn, Coast & Vaughn, Inc.

By: 

Print name: Jeffrey A. Vaughn

Title: Vice-Pres.

Date Signed: 10-5-2023

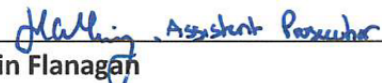
Engineer License or Firm's Certificate No. (if required):
01020

State of: Ohio

Address for Owner's receipt of notices:
101 W. Main St.
St. Clairsville, OH 43950

Address for Engineer's receipt of notices:
154 S. Marietta St.
St. Clairsville, OH 43950

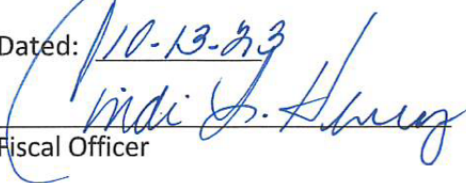
APPROVED AS TO FORM:


Kevin Flanagan
Belmont County Prosecutor

CERTIFICATE OF FUNDS
(ORC 5705.41)

The undersigned Fiscal Officer of Owner hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Dated: 10-13-23


Fiscal Officer

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of OCT. 12, 2023 the date this Agreement is (“Effective Date”) between
executed by the Owner
The Board of Commissioners of Belmont County, Ohio (“Owner”) and
Vaughn, Coast & Vaughn, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Improvements to the West End Force Main Project

("Project").

Other terms used in this Agreement are defined in Article 7.

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

The design and construction administration of a gravity sewer force main replacement including, but not limited to, manhole replacements, sanitary sewer lift station upgrades, and inspection services.
The Engineer was selected by the Owner following the qualification-based selection process required by Ohio Revised Code Sections 153.65, et seq. to provide professional design services to the Owner. The Owner reserves the right to add additional scope and services that are in accordance with the Request for Qualifications (“RFQ”), as further improvements are identified and funds are available.

Owner and Engineer further agree as follows:

ARTICLE 1 – INITIAL INFORMATION

- 1.01 *The Owner’s program for the Project*
- A. The Owner’s initial program for the Project is set forth in the Request for Qualifications issued by the Owner.

ARTICLE 2 – SERVICES OF ENGINEER

- 2.01 *Scope*
- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. The Engineer acknowledges that the Owner is entering into this Agreement in reliance upon the Engineer’s abilities to perform the services described in this Agreement. The Engineer will be fully responsible to the Owner for all services for which it is responsible under this Agreement, even if the services are performed by consultants hired by the Engineer.

- C. Engineer recognizes that the Owner’s Stated Cost Limitation for the Project is provided in Exhibit F.
- D. Consistent with its Standard of Care, Engineer shall use reasonable efforts to design the Project to achieve all work necessary to complete the Project so that Owner's total liability for performing all work does not exceed the amount set forth in Paragraph C above.

ARTICLE 3 – OWNER’S RESPONSIBILITIES

3.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for providing 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. Owner does not warrant the accuracy or completeness of any information provided by Owner to the Engineer, however, Engineer shall be entitled to rely on such information to the extent its Standard of Care permits.
- D. Owner shall give notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner’s performance of its responsibilities under this Agreement.
- E. Notwithstanding Paragraph 2.01.D above, the parties agree that the Owner has no duty to search for issues described in Paragraph 2.01.D.

ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES

4.01 Commencement

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

4.02 Time for Completion

- A. Engineer shall complete its obligations within the time provided in Exhibit A. Engineer hereby agrees the time periods provided in Exhibit A are 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 according to the Agreement.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted according to the Agreement.
- 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 to the recovery of all reasonable damages to the extent caused by such fault.

ARTICLE 5 – INVOICES AND PAYMENTS

5.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis (the “Payment Request Date”).

5.02 *Payments*

- A. [Not Used].
- B. As a condition precedent to payment, the Engineer, on or before the Payment Request Date, will submit to the Owner for the Owner’s approval (1) a statement of services in form and substance reasonably satisfactory to the Owner and (2) such additional information pertaining to the amount due the Engineer as the Owner may reasonably request within fifteen (15) days of such request. Each statement of services will set forth the amount due for services provided under this Agreement in accordance with a schedule developed by the parties for payment for services for the Project, a detailed breakdown of any amount due for a change in services under this Agreement, and a description of the change in services.
- C. Any provision hereof to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Engineer to the extent that such payment is requested with respect to one or more of the following conditions and the Engineer has been given written notice of the condition and failed to cure the condition:
 - 1. The Engineer is in default of any of its obligations hereunder or any of the Contract Documents; provided, however, that the Owner may retain only such amount as is reasonably necessary to cure the default.

- 2. Part of the payment requested is attributable to services that are not performed in accordance with this Agreement; provided, however, that such payment shall be made as to the part thereof attributable to services that were performed in accordance with this Agreement
- 3. The Engineer has failed to make payments promptly to consultants or other third parties used in connection with the services for which the Owner has made payments to the Engineer, unless the payment is being withheld by the Engineer as the result of a bona fide dispute.
- D. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion. The Owner will notify the Engineer of its objection to any amounts included on the statement of services within fifteen (15) days of its receipt. The Engineer shall provide additional information to support the items included in the statement of services upon request of the Owner.

ARTICLE 6 – OPINIONS OF COST

6.01 *Opinions of Probable Construction Cost*

- A. Engineer’s opinions (if any) of probable Construction Cost are to be made on the basis of Engineer’s experience, qualifications, and general familiarity with the construction industry in accordance with the Standard of Care.

6.02 *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 to this Agreement.

6.03 *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 tabulating the various categories that comprise Total Project Costs.

ARTICLE 7 – GENERAL CONSIDERATIONS

7.01 *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 experienced in the design of similar projects and practicing under similar circumstances at the same time and in the same locality.
- 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, at its cost, may retain 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 7.01.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 federal, state and local Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement, 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's written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, 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 document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and as modified by Owner.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety

at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs.

7.02 *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 Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor’s payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

7.03 *Use of Documents*

- A. All Documents are instruments of service for 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.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. 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 undisputed payment amounts due and owing for 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; and (3) such limited license to Owner shall not create any rights in third parties.
- D. 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.

7.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

7.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth below. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - .1 Engineer shall procure and maintain during the term of this Agreement and for a period of two (2) years after completion of the Project, subject to availability at commercially reasonable rates, at its own expense, the following insurance coverages, insuring the Engineer, its employees, agents, and designees, which insurance shall be obtained from an insurance company rated A-, A or A+ by Best Insurance Reports. The Engineer shall require each of its Consultants to maintain appropriate levels of coverages based upon the services to be provided related to the Project.
 - a. Professional liability insurance coverage in the amount of not less than One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) aggregate , covering claims of negligence, errors, acts, and omissions by the Engineer arising out of the performance or failure to perform professional services under this Agreement.
 - b. Commercial general liability insurance for bodily injury (including death) and property damage, including limited contractual liability coverage, in not less than the following amounts: (i) general aggregate limit: \$2,000,000 each occurrence; and (ii) each occurrence limit: \$1,000,000.
 - c. Worker’s compensation insurance as required by Ohio law.
 - .2 If the Engineer has not done so prior to the parties’ execution of this Agreement, the Engineer shall submit valid certificates of insurance in form and substance satisfactory to the Owner, evidencing the effectiveness of the foregoing insurance, naming the Owner as the holder of the certificates and, for the general liability insurance coverages, naming the Owner as an additional insured, and shall provide copies of the insurance policies upon request of the Owner.
- B. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and Engineer’s Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project
- C. Engineer shall procure and maintain insurance as set forth herein. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- D. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

- E. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, 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 insurance purchased and maintained by Contractor for the Project.
- F. Engineer shall deliver to the Owner certificates of insurance evidencing the coverages indicated herein. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants.
- H. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or non-renewed, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- I. 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 herein. 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.

7.06 *Suspension and Termination*

- A. *Suspension:*
 - 1. *By Owner:* Owner may suspend the Project for up to ninety (90) days upon seven (7) days written notice to Engineer.
 - 2. *By Engineer:* Engineer may, after giving thirty (30) days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. by either party upon thirty (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. In the event of termination of this Agreement under this section or any other provision of this Agreement, by either the Owner or the Engineer, and regardless of the default or breach of either party, the Owner may take possession of all Documents for the Project and other Project-related data theretofore prepared by the Engineer for the Project by whatever method the Owner deems expedient, and the Owner may use such Documents and other Project-related data prepared by the Engineer to complete the Project. In such case, the Owner may pursue any action available to it to obtain relief for actual damages suffered by reason of defaults, failures, or breaches of the Engineer under this Agreement. Notwithstanding the foregoing, the Engineer shall not be responsible for any damages that arise from the use of such Documents and other Project-related data.

- b. by Engineer:
 - 1) upon thirty (30) days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
 - 2) upon thirty (30) days written notice if the Engineer’s services for the Project are delayed or suspended by the Owner for more than ninety (90) days.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.06.B.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (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, sixty (60) days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer’s receipt of notice from Owner.

C. [Not Used].

D. *Payments Upon Termination:*

- 1. In the event of any termination under Paragraph 7.06, Engineer will be entitled to invoice Owner and to receive full payment for all services satisfactorily performed in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination, subject to any setoffs by Owner. 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 7.03. In the event that there is a dispute over the amount due and owing to the Engineer at the time of termination, the Owner shall nevertheless have the right to take possession of and use the Documents and other Project-related data, as described above. The Owner will pay to the Engineer all amounts not in dispute within two (2) weeks of the termination, and the amount in dispute shall be placed into an interest-bearing account maintained by the Owner, and payment of the amount due to

the Engineer, if any, shall be made following the resolution of the dispute in accordance with the provisions of this Agreement. If the Owner terminates the Engineer based upon a default of the Engineer, the Owner shall pay to the Engineer amounts earned for services performed through the date of the termination and any Reimbursable Expenses approved by the Owner, less any amounts determined owing to the Owner as a result of the Engineer's default. In such a case, payment shall be made to the Engineer of any amounts determined to be owed to it by the Owner following completion of the Project.

- 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 7.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses performed prior to termination, and, to the extent services are requested by Owner, after the effective date of termination.

7.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located. The parties agree to exclusive jurisdiction and venue in the Court of Common Pleas for the County in which the Project is located.

7.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 Constructor, other third-party 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.

7.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith prior to invoking the dispute resolution procedures below.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 7.09.A, then the dispute shall be subject to litigation, as described in the following paragraphs.
- C. Mediation. The parties may subsequently agree to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed to mediator. Should the parties be unable to agree to a mediator, then the parties shall submit the matter to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days of the request for mediation, or for a mutually-agreed-to time period. If such mediation is unsuccessful in resolving a Dispute, then either party may seek to have the Dispute resolved by litigation.
- D. Litigation. Disputes arising under this Agreement and related to the Project that are not resolved successfully through informal discussions between the parties or through mediation will be the subject of litigation in the Court of Common for the County in which the Project is located.

7.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. 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.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. [Not Used].
- E. [Not Used].
- 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.

7.11 Indemnification and Mutual Waiver

- A. *Indemnification by Engineer:* Notwithstanding any other provision in this Agreement to the contrary, the Engineer shall indemnify, and hold the Owner and the Owner’s officers and employees harmless from and against liabilities arising from claims by third parties for death or injury, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the professional design firm or any consultant, subcontractor, or other entity used by the professional design firm, in performing services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Engineer for the breach of this Agreement for the breach of the Standard of Care.
- B. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. *Waiver:* To the fullest extent permitted by Laws and Regulations, the Engineer and Owner waive consequential damages for claims, disputes or other matters in question, arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

7.12 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer’s services or pertinent to Engineer’s performance under this Agreement. Upon Owner’s request, Engineer shall provide a copy of any such item to Owner at cost.

7.13 Miscellaneous Provisions

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

- C. *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.
- D. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, 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.
- E. *Non-Discrimination:* Engineer agrees:
1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
 2. That neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
 3. That there shall be deducted from the amount payable to the Engineer by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
 4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.
- F. *Notices:* A Notice is any written notice to the Owner or the Engineer. Written Notice to the Engineer shall be deemed to have been duly served if delivered in person to an officer or any other official of the Engineer or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of the Engineer. Written Notice to the Owner shall be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to the Owner's representative identified in the Agreement. When sent by certified mail to either party, any written notice shall be considered properly delivered to the other party three (3) days after the date sent.
- G. *Modification:* No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

- H. *Ethics*: The Engineer is aware of the ethics responsibilities in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.
- I. *Findings for Recovery*: The Engineer is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, this Agreement is void, and the Engineer will immediately repay to the Owner any funds paid under this Agreement.
- J. *Counterparts*: This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail. Facsimile or electronic signatures shall be effective as originals

ARTICLE 8 – DEFINITIONS

8.01 *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 definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *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.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *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.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 - 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both;

contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

- 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that 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. §§5501 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.; or (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.
- 9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
- 10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
- 11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
- 12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
- 13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. 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 property; 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. Construction Cost is one of the items comprising Total Project Costs.
- 14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *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.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *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.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which 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.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based 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.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

- 27. *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.
- 28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
- 30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 32. *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.
- 33. *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 Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 34. *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 a Subcontractor.
- 35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, 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.

- 36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
- 37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

- 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS

9.01 *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. *(Not Used.)*
- H. *(Not Used.)*
- I. *(Not Used.)*
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, Engineer’s Proposal Dated , 202 incorporated to the extent not inconsistent with this Agreement.

9.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included 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 written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

9.03 *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 this Agreement on behalf of the respective party whom the individual represents.

9.04 *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: **The Board of Commissioners of Belmont County, Ohio**

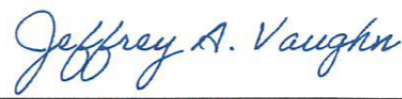
By: 

Print name: JERRY EHEMANN - VIC-PRES

Title: J.P. DUTTON - PRES
JOSH MEYER - MEMBER

Date Signed: _____

Engineer: **Vaughn, Coast & Vaughn, Inc.**

By: 

Print name: Jeffrey A. Vaughn

Title: Vice-Pres.

Date Signed: 10-5-2023

Engineer License or Firm's Certificate No.: 01020

State of: Ohio

Address for Owner's receipt of notices:

101 Main Street
St. Clairsville, Ohio 43950

Address for Engineer's receipt of notices:

154 S. Marietta St.
St. Clairsville, Ohio, 43950

Designated Representative (Paragraph 8.03.A):

Name: J.P. DUTTON, JERRY EHEMANN, JOSH MEYER

Title: BEL. CO. COMMISSIONERS

Phone Number: 740-699-2155

E-Mail Address: _____

Designated Representative (Paragraph 8.03.A):


Name: _____

Title: _____

Phone Number: _____

E-Mail Address: _____

APPROVED AS TO FORM:

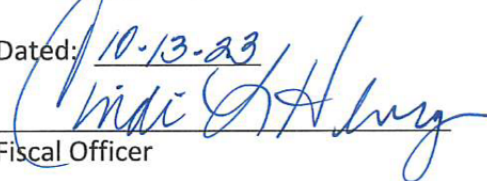


Kevin Flanagan
Belmont County Prosecutor

CERTIFICATE OF FUNDS
(ORC 5705.41)

The undersigned Fiscal Officer of Owner hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Dated: 10-13-23



Fiscal Officer

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of OCT. 12, 2023 the date this Agreement is ("Effective Date") between
executed by the Owner
The Board of Commissioners of Belmont County, Ohio ("Owner") and
Vaughn, Coast & Vaughn, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Blaine Hill Force Main Replacement Project
("Project").

Other terms used in this Agreement are defined in Article 7.

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

The design and construction administration of a gravity sewer force main replacement including, but not limited to, manhole replacements, sanitary sewer lift station upgrades, and inspection services.

The Engineer was selected by the Owner following the qualification-based selection process required by Ohio Revised Code Sections 153.65, et seq. to provide professional design services to the Owner. The Owner reserves the right to add additional scope and services that are in accordance with the Request for Qualifications ("RFQ"), as further improvements are identified and funds are available.

Owner and Engineer further agree as follows:

ARTICLE 1 – INITIAL INFORMATION

- 1.01 *The Owner’s program for the Project*
- A. The Owner’s initial program for the Project is set forth in the Request for Qualifications issued by the Owner.

ARTICLE 2 – SERVICES OF ENGINEER

- 2.01 *Scope*
- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. The Engineer acknowledges that the Owner is entering into this Agreement in reliance upon the Engineer’s abilities to perform the services described in this Agreement. The Engineer

will be fully responsible to the Owner for all services for which it is responsible under this Agreement, even if the services are performed by consultants hired by the Engineer.

- C. Engineer recognizes that the Owner’s Stated Cost Limitation for the Project is provided in Exhibit F.
- D. Consistent with its Standard of Care, Engineer shall use reasonable efforts to design the Project to achieve all work necessary to complete the Project so that Owner's total liability for performing all work does not exceed the amount set forth in Paragraph C above.

ARTICLE 3 – OWNER’S RESPONSIBILITIES

3.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for providing 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. Owner does not warrant the accuracy or completeness of any information provided by Owner to the Engineer, however, Engineer shall be entitled to rely on such information to the extent its Standard of Care permits.
- D. Owner shall give notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer’s services, (b) the Work, (c) the performance of any Constructor, or (d) Owner’s performance of its responsibilities under this Agreement.
- E. Notwithstanding Paragraph 2.01.D above, the parties agree that the Owner has no duty to search for issues described in Paragraph 2.01.D.

ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES

4.01 Commencement

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

4.02 *Time for Completion*

- A. Engineer shall complete its obligations within the time provided in Exhibit A. Engineer hereby agrees the time periods provided in Exhibit A are 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 according to the Agreement.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted according to the Agreement.
- 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 to pursue the recovery of reasonable damages to the extent caused by such fault.

ARTICLE 5 – INVOICES AND PAYMENTS

5.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis (the “Payment Request Date”).

5.02 *Payments*

- A. [Not Used].
- B. As a condition precedent to payment, the Engineer, on or before the Payment Request Date, will submit to the Owner for the Owner’s approval (1) a statement of services in form and substance reasonably satisfactory to the Owner and (2) such additional information pertaining to the amount due the Engineer as the Owner may reasonably request within fifteen (15) days of such request. Each statement of services will set forth the amount due for services provided under this Agreement in accordance with a schedule developed by the parties for payment for services for the Project, a detailed breakdown of any amount due for a change in services under this Agreement, and a description of the change in services.
- C. Any provision hereof to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Engineer to the extent that such payment is requested with respect to one or more of the following conditions and the Engineer has been given written notice of the condition and failed to cure the condition:

1. The Engineer is in default of any of its obligations hereunder or any of the Contract Documents; provided, however, that the Owner may retain only such amount as is reasonably necessary to cure the default.
 2. Part of the payment requested is attributable to services that are not performed in accordance with this Agreement; provided, however, that such payment shall be made as to the part thereof attributable to services that were performed in accordance with this Agreement
 3. The Engineer has failed to make payments promptly to consultants or other third parties used in connection with the services for which the Owner has made payments to the Engineer, unless the payment is being withheld by the Engineer as the result of a bona fide dispute.
- D. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion. The Owner will notify the Engineer of its objection to any amounts included on the statement of services within fifteen (15) days of its receipt. The Engineer shall provide additional information to support the items included in the statement of services upon request of the Owner.

ARTICLE 6 – OPINIONS OF COST

6.01 *Opinions of Probable Construction Cost*

- A. Engineer’s opinions (if any) of probable Construction Cost are to be made on the basis of Engineer’s experience, qualifications, and general familiarity with the construction industry in accordance with the Standard of Care.

6.02 *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 to this Agreement.

6.03 *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 tabulating the various categories that comprise Total Project Costs.

ARTICLE 7 – GENERAL CONSIDERATIONS

7.01 *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 experienced in the design of similar

projects and practicing under similar circumstances at the same time and in the same locality.

- 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, at its cost, may retain 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 7.01.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 federal, state and local Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement, subject to the Standard of Care set forth in Paragraph 7.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner’s written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner’s responsibilities or to Engineer’s scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, 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 document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and as modified by Owner.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's 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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs.

7.02 *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 Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

7.03 *Use of Documents*

- A. All Documents are instruments of service for 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.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. 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 undisputed payment amounts due and owing for 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; and (3) such limited license to Owner shall not create any rights in third parties.
- D. 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.

7.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

7.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth below. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - .1 Engineer shall procure and maintain during the term of this Agreement and for a period of two (2) years after completion of the Project, subject to availability at commercially reasonable rates, at its own expense, the following insurance coverages, insuring the Engineer, its employees, agents, and designees, which insurance shall be obtained from an insurance company rated A-, A or A+ by Best Insurance Reports. The Engineer shall require each of its Consultants to maintain appropriate levels of coverages based upon the services to be provided related to the Project.
 - a. Professional liability insurance coverage in the amount of not less than One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) aggregate, covering claims of negligence, errors, acts, and omissions by the Engineer arising out of the performance or failure to perform professional services under this Agreement.
 - b. Commercial general liability insurance for bodily injury (including death) and property damage, including limited contractual liability coverage, in not less than the following amounts: (i) general aggregate limit: \$2,000,000 each occurrence; and (ii) each occurrence limit: \$1,000,000.
 - c. Worker's compensation insurance as required by Ohio law.
 - .2 If the Engineer has not done so prior to the parties' execution of this Agreement, the Engineer shall submit valid certificates of insurance in form and substance satisfactory to the Owner, evidencing the effectiveness of the foregoing insurance, naming the Owner as the holder of the certificates and, for the general liability insurance coverages, naming the Owner as an additional insured, and shall provide copies of the insurance policies upon request of the Owner.
- B. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project
- C. Engineer shall procure and maintain insurance as set forth herein. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- D. Owner shall procure and maintain insurance as set forth herein. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

- E. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, 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 insurance purchased and maintained by Contractor for the Project.
- F. Engineer shall deliver to the Owner certificates of insurance evidencing the coverages indicated herein. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants.
- H. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or non-renewed, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- I. 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 herein. 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.

7.06 *Suspension and Termination*

- A. *Suspension:*
 - 1. *By Owner:* Owner may suspend the Project for up to ninety (90) days upon seven (7) days written notice to Engineer.
 - 2. *By Engineer:* Engineer may, after giving thirty (30) days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. by either party upon thirty (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. In the event of termination of this Agreement under this section or any other provision of this Agreement, by either the Owner or the Engineer, and regardless of the default or breach of either party, the Owner may take possession of all Documents for the Project and other Project-related data theretofore prepared by the Engineer for the Project by whatever method the Owner deems expedient, and the Owner may use such Documents and other Project-related data prepared by the Engineer to complete the Project. In such case, the Owner may pursue any action available to it to obtain relief for actual damages suffered by reason of defaults, failures, or breaches of the Engineer under this Agreement. Notwithstanding the foregoing, the Engineer shall not be responsible for any damages that arise from the use of such Documents and other Project-related data.

- b. by Engineer:
 - 1) upon thirty (30) days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon thirty (30) days written notice if the Engineer's services for the Project are delayed or suspended by the Owner for more than ninety (90) days.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.06.B.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (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, sixty (60) days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. [Not Used].

D. *Payments Upon Termination:*

- 1. In the event of any termination under Paragraph 7.06, Engineer will be entitled to invoice Owner and to receive full payment for all services satisfactorily performed in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination, subject to any setoffs by Owner. 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 7.03. In the event that there is a dispute over the amount due and owing to the Engineer at the time of termination, the Owner shall nevertheless have the right to take possession of and use the Documents and other Project-related data, as described above. The Owner will pay to the Engineer all amounts not in dispute within two (2) weeks of the termination, and the amount in dispute shall be placed into an interest-bearing account maintained by the Owner, and payment of the amount due to

the Engineer, if any, shall be made following the resolution of the dispute in accordance with the provisions of this Agreement. If the Owner terminates the Engineer based upon a default of the Engineer, the Owner shall pay to the Engineer amounts earned for services performed through the date of the termination and any Reimbursable Expenses approved by the Owner, less any amounts determined owing to the Owner as a result of the Engineer's default. In such a case, payment shall be made to the Engineer of any amounts determined to be owed to it by the Owner following completion of the Project.

- 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 7.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses performed prior to termination, and, to the extent services are requested by Owner, after the effective date of termination.

7.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located. The parties agree to exclusive jurisdiction and venue in the Court of Common Pleas for the County in which the Project is located.

7.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 Constructor, other third-party 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.

7.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith prior to invoking the dispute resolution procedures below.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 7.09.A, then the dispute shall be subject to litigation, as described in the following paragraphs.
- C. Mediation. The parties may subsequently agree to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed to mediator. Should the parties be unable to agree to a mediator, then the parties shall submit the matter to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days of the request for mediation, or for a mutually-agreed-to time period. If such mediation is unsuccessful in resolving a Dispute, then either party may seek to have the Dispute resolved by litigation.
- D. Litigation. Disputes arising under this Agreement and related to the Project that are not resolved successfully through informal discussions between the parties or through mediation will be the subject of litigation in the Court of Common for the County in which the Project is located.

7.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. 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.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. [Not Used].
- E. [Not Used].
- 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.

7.11 Indemnification and Mutual Waiver

- A. *Indemnification by Engineer:* Notwithstanding any other provision in this Agreement to the contrary, the Engineer shall indemnify, and hold the Owner and the Owner’s officers and employees harmless from and against liabilities arising from claims by third parties for death or injury, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the professional design firm or any consultant, subcontractor, or other entity used by the professional design firm, in performing services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Engineer for the breach of this Agreement for the breach of the Standard of Care.
- B. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- C. *Waiver:* To the fullest extent permitted by Laws and Regulations, the Engineer and Owner waive consequential damages for claims, disputes or other matters in question, arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

7.12 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer’s services or pertinent to Engineer’s performance under this Agreement. Upon Owner’s request, Engineer shall provide a copy of any such item to Owner at cost.

7.13 Miscellaneous Provisions

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

- C. *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.
- D. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, 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.
- E. *Non-Discrimination:* Engineer agrees:
 - 1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
 - 2. That neither the Engineer, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
 - 3. That there shall be deducted from the amount payable to the Engineer by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
 - 4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.
- F. *Notices:* A Notice is any written notice to the Owner or the Engineer. Written Notice to the Engineer shall be deemed to have been duly served if delivered in person to an officer or any other official of the Engineer or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of the Engineer. Written Notice to the Owner shall be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to the Owner's representative identified in the Agreement. When sent by certified mail to either party, any written notice shall be considered properly delivered to the other party three (3) days after the date sent.
- G. *Modification:* No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

- H. *Ethics:* The Engineer is aware of the ethics responsibilities in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.
- I. *Findings for Recovery:* The Engineer is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, this Agreement is void, and the Engineer will immediately repay to the Owner any funds paid under this Agreement.
- J. *Counterparts:* This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail. Facsimile or electronic signatures shall be effective as originals

ARTICLE 8 – DEFINITIONS

8.01 *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 definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *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.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *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.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 - 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both;

contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that 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. §§5501 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.; or (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.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. 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 property; 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. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *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.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *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.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which 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.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based 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.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *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.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *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.
33. *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 Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *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 a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, 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.

- 36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
 - 37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Day*:
- 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS

9.01 *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. *(Not Used.)*
- H. *(Not Used.)*
- I. *(Not Used.)*
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, Engineer’s Proposal Dated [REDACTED], 202[REDACTED] incorporated to the extent not inconsistent with this Agreement.

9.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included 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 written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

9.03 *Designated Representatives*

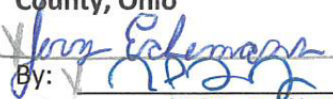
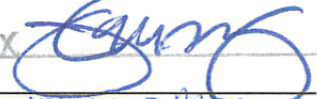
- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority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

9.04 *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: The Board of Commissioners of Belmont County, Ohio

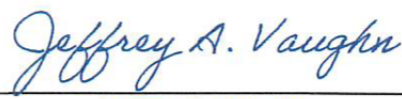
By:  

Print name: JERRY ECHEMANN - VICE-PRES

Title: J.P. DUTTON - PRESIDENT JOSH MEYER MEMBER

Date Signed: 10-12-2023

Engineer: Vaughn, Coast & Vaughn, Inc.

By: 

Print name: Jeffrey A. Vaughn

Title: Vice-Pres.

Date Signed: 10-5-2023

Engineer License or Firm's Certificate No.: 01020

State of: Ohio

Address for Owner's receipt of notices:

101 Main Street

St. Clairsville, Ohio 43950

Address for Engineer's receipt of notices:

154 S. Marietta St.

St. Clairsville, Ohio, 43950

Designated Representative (Paragraph 8.03.A):

Name: J.P. DUTTON, JERRY ECHEMANN, JOSH MEYER

Title: BEL. CO. COMMISSIONERS

Phone Number: 740-699-2155

E-Mail Address:

Designated Representative (Paragraph 8.03.A):


Name:

Title:

Phone Number:

E-Mail Address:

APPROVED AS TO FORM:


Assistant Prosecutor

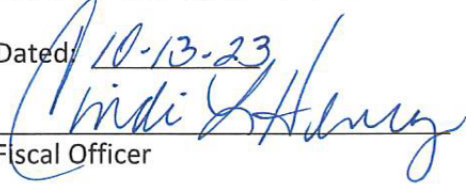
Kevin Flanagan

Belmont County Prosecutor

CERTIFICATE OF FUNDS
(ORC 5705.41)

The undersigned Fiscal Officer of Owner hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Dated: 10-13-23



Fiscal Officer

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

**IN THE MATTER OF EXECUTING THE OAKVIEW JUVENILE
RESIDENTIAL CENTER'S BUDGET REQUEST TO THE OHIO DEPARTMENT
OF YOUTH SERVICES-COMMUNITY CORRECTIONS FACILITIES GRANT FY 2024**

Motion made by Mr. Echemann, seconded by Mr. Meyer to authorize Commission President J. P. Dutton to execute the Oakview Juvenile Residential Center's Budget Request to the Ohio Department of Youth Services-Community Corrections Facilities Grant for FY 2024 in the amount of \$1,590,247.00.

Upon roll call the vote was as follows:

Mr. Echemann	Yes
Mr. Meyer	Yes
Mr. Dutton	Yes

OPEN PUBLIC FORUM-Frank Papini, St. Clairsville, inquired about the agreement for the county to provide water for the City of St. Clairsville. He heard the county wants to postpone entering into the agreement. Mr. Dutton said they have an agreement in place with the City for emergency services and are working on an agreement for daily service. The City is asking the county to provide more water than the county can provide. Mr. Dutton said the county can not overextend themselves, they also have water agreements with other entities.

Richard Hord, Martins Ferry, asked for an update on the former county home demolition. The new building will house the Health Department, Records and Coroner. Mr. Dutton explained they are responsible to provide space for the Health Department. They have outgrown that space. He added the Records building is not in good shape and the Coroner is using her private office to store records and meet with family members.

Chris Krebs, Colerain, said she had paid \$125 to sponsor the adoption of Valerie from the Animal Shelter. She was not able to adopt the dog due to having another dog at home. Ms. Krebs inquired what happened to the sponsorship money since Valerie was euthanized. She also said it was never advertised that the adoption fee would be covered. Ms. Krebs questioned who made the decision on what dogs to euthanize. Mr. Dutton said the shelter staff determines which dogs will be euthanized. He said the shelter is not an ideal environment for the animals. The board is making a determination on constructing a new facility. Mr. Dutton said he will have to find out about the adoption fee. Ms. Krebs said she is disappointed how animal rescue leagues in Belmont County handles things and there is zero accountability. Mr. Dutton said there are several non-profits in Belmont County, they are not county entities. Per ORC they contribute a small amount to a humane agent. He added they have tried to work with rescues in the past, but that was not successful. Mr. Dutton said the cats at the shelter is handled by a non-profit, the county just provides the space. He added euthanization is not taken lightly by the shelter staff. Ashley Barto, Flushing, said individuals have formed Belmont County Pawsitive Placements to facilitate adoptions of dogs and cats and are raising funds. She voiced criticism toward the dog warden and feels donations are not accounted for. Mr. Dutton said the goal is to have the animals adopted and they are doing everything possible to keep the shelter open. He noted the Dog and Kennel Fund doesn't bring in enough funding to cover running the shelter so it is supplemented with the General Fund.

RECESS

**Tamara Hess, Health Commissioner/Nurse Practitioner/Director of Nursing/ Infectious Disease Nurse
Re: Breast Cancer Awareness Month Proclamation**

Ms. Hess said in 2020, 23 males and 1,648 women were diagnosed with breast cancer in Ohio. She stressed the importance of early detection. Ohio breast cancer rates have decreased over the years.

**IN THE MATTER OF ADOPTING THE BREAST CANCER
AWARENESS MONTH PROCLAMATION**

Motion made by Mr. Dutton, seconded by Mr. Echemann to adopt the Breast Cancer Awareness Month Proclamation.

Proclamation

National Breast Cancer Awareness Month

WHEREAS, in 2023, an estimated 297,790 women will be diagnosed with breast cancer in the United States, making it the most common cancer in America; and
WHEREAS, every two minutes a woman in the United States is diagnosed with breast cancer; and
WHEREAS, the overall 5-year relative survival rate for all types and stages of breast cancer combined is 91%, which means 91 out of 100 women are alive 5 years after their diagnosis; and
WHEREAS, breast cancer death rates have slowly decreased since 1989, for an overall decline of 43% through 2020. This is in part due to better screening and early detection efforts, increased awareness, and continually improving treatment options; and
WHEREAS, currently there are more than 4 million women with a history of breast cancer in the United States, including women still being treated and those who have completed treatment; and
WHEREAS, we recognize breast cancer survivors, those battling the disease, their families, friends, and co-workers who are a source of love, encouragement, and support, and applaud the efforts of medical professionals and researchers working to find a cure for this deadly disease; and
WHEREAS, National Breast Cancer Awareness Month is an opportunity to unite all citizens in Belmont County to raise awareness of the disease.
NOW, THEREFORE, BE IT RESOLVED the Belmont County Commissioners do hereby recognize October as **BREAST CANCER AWARENESS MONTH** and call this observance to the attention of all our citizens.
Adopted this 12th day of October, 2023.

BELMONT COUNTY COMMISSIONERS

J. P. Dutton /s/
Jerry Echemann /s/
Josh Meyer /s/

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

RECESS

IN THE MATTER OF ENTERING EXECUTIVE SESSION AT 10:49 A.M.

Motion made by Mr. Dutton, seconded by Mr. Echemann to enter executive session with Katie Bayness, HR Administrator and Kelly Porter, Water and Sewer District Director, pursuant to ORC 121.22(G)(1) Personnel Exception to consider the employment of public employees.
Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

IN THE MATTER OF ADJOURNING EXECUTIVE SESSION AT 11:32 A.M.

Motion made by Mr. Dutton, seconded by Mr. Echemann to exit executive session at 11:32 a.m.
Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

Mr. Dutton said as a result there are no motions to be considered at this time.

RECESS

Reconvened at 1:15 p.m. with Commissioners Dutton, Echemann and Meyer present.

IN THE MATTER OF ENTERING EXECUTIVE SESSION AT 1:15 P.M.

Motion made by Mr. Echemann, seconded by Mr. Meyer to enter executive session with Katie Bayness, HR Administrator, pursuant to ORC 121.22(G)(1) Personnel Exception to consider the employment of public employees.

Upon roll call the vote was as follows:

Mr. Echemann	Yes
Mr. Meyer	Yes
Mr. Dutton	Yes

Mr. Echemann left executive session before adjournment.

IN THE MATTER OF ADJOURNING EXECUTIVE SESSION AT 2:20 P.M.

Motion made by Mr. Meyer, seconded by Mr. Dutton to exit executive session at 2:20 p.m.

Upon roll call the vote was as follows:

Mr. Meyer	Yes
Mr. Dutton	Yes
Mr. Echemann	Absent

Mr. Meyer said as a result of executive session there are no motions to be considered at this time. The meeting will stand in recess until departmental budget hearing on Monday, October 16, 2023.

Reconvened Monday, October 16, 2023, at 9:01 a.m. with Commissioners Dutton, Echemann and Meyer present.

Mr. Dutton said the meeting of October 12, 2023, was kept open for budget hearings and additional action that was needed.

IN THE MATTER OF AMENDING MOTION MADE ON OCTOBER 4, 2023

APPROVING QUIT CLAIM DEED FOR PARCEL NO. 29-03503.000 TO

READ APPROVING GENERAL WARRANTY DEED

Motion made by Mr. Dutton, seconded by Mr. Echemann to amend the motion made on October 4, 2023 approving the Quit Claim Deed conveying Parcel No. 29-03503.000 located in Pultney Township, to Michael W. Doyle, to read approving the General Warranty Deed.

GENERAL WARRANTY DEED

The Board of County Commissioners, Belmont County, Ohio, for valuable consideration paid, grants, with covenants of general warranty, to **Michael W. Doyle**, whose tax mailing address is 3330 Belmont Street, Bellaire, Ohio 43906, the following real property:

Situated in the Village of Bellaire, County of Belmont and State of Ohio, and known as and being Lot Number Eighteen (18) in Block 4, a strip of land of the uniform width of 6.50 inches off the entire northerly side of Lot Number Nineteen (19) in Block 4 and a strip of land of the uniform width of 9.00 inches off the entire southerly side of Lot Number Seventeen (17) in Block 4, as said lots are shown and designated on the map of the Village of Bellaire, of record in Volum 1, Page 63, 113, and 115, Record of Plats, Belmont County, Ohio. Cabinet E, Slide 83.

The part of said Lot No. 19 hereby conveyed is more particularly described as follows:

Beginning at the Northwest corner of said Lot No. 19. Thence from this place of beginning, and southerly with the westerly line of said Lot No. 19, 6.50 inches to the center of the northerly wall of the brick building situated on said Lot No. 19; thence easterly, and parallel with the northerly line of said Lot No. 19, and with the center line of said brick wall, 120.00 feet to the westerly line of an alley; thence northerly, and with the westerly line of said alley, 6.50 inches to the Northeast corner of said Lot No. 19 thence westerly, and with the northerly line of said Lot. No. 19, 120.00 feet to the place of beginning, containing 65.00 square feet, more or less.

Giving and granting to the Grantee herein, its successors and assigns, the right and privilege to use, as a partition wall, the stone and brick wall which is the northerly wall of the building situated on said Lot No. 19; subject to the right of the owners of said building to use said wall as a partition wall, all as set forth and provided in previous conveyances of the above described real estate, to which reference is hereby made for a more complete description thereof.

Said portion of Lot No. 18, hereinabove described and hereby conveyed being a strip of land of the uniform width of 9.00 inches off the entire southerly side of said Lot No. 17, is subject to the right of others to use and occupy the northerly half of the stone and brick wall 18.00 inches in width, the center line of which is situated for its entire length of 120.00 feet on the line dividing said Lot No. 17 and the above described Lot No. 18, all as set forth and provided in previous conveyances of the above described real estate, to which reference is hereby made for a more complete description thereof.

Prior Deed Reference: Volume 218, Page 325 Belmont County Deed Records.

Auditor Permanent Parcel No. 29-03503.000

Executed this 16th day of October, 2023.

J. P. Dutton /s/

J. P. Dutton, Commissioner

Josh Meyer /s/

Josh Meyer, Commissioner

Jerry Echemann /s/

Jerry Echemann, Commissioner

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

IN THE MATTER OF AMENDING MOTION MADE ON OCTOBER 4, 2023

APPROVING QUIT CLAIM DEED FOR PARCEL NO. 34-60012.000-44-B TO

READ APPROVING GENERAL WARRANTY DEED

Motion made by Mr. Dutton, seconded by Mr. Echemann to amend the motion made on October 4, 2023 approving the Quit Claim Deed conveying Parcel No. 34-60012.000-44-B located in Richland Township, to Tera Holdings, LLC., to read approving the General Warranty Deed.

GENERAL WARRANTY DEED

The Board of County Commissioners, Belmont County, Ohio, for valuable consideration paid, grants, with covenants of general warranty, to **Tera Holdings, LLC, an Ohio limited liability company**, whose tax mailing address is 47210 Belmont Warnock Road, Belmont, Ohio, 43718, the following real property:

Situated in the City of St. Clairsville, County of Belmont, State of Ohio, and being a part of Lot Numbered Forty-Four (44) as shown on the recorded plat of the City of St. Clairsville, recorded in Deed Book A, Page 27, and being more particularly described as follows:

Beginning for a description at a cross cut in the concrete sidewalk at the Southeast corner of said Lot Numbered Forty-Four (44) and on the North property line of Main Street. Thence from this place of beginning and along the dividing line between Lots Numbered Forty-Four (44) and Thirty-Six (36), N. 19° 00' W. 165.00 feet to an iron pin on the South line of a 16.50 foot alley; thence with the South line of said alley, S. 71° 30' W. 38.00 feet to an iron pin; thence S. 19° 00' E. 165.00 feet to a point on the North line of Main Street; thence therewith, N. 71° 30' E. 38.00 feet to the place of beginning, and containing 6,270.00 square feet, more or less.

The above description was prepared by Shriver and McFarland, Surveyors, after survey on or about September 25, 1962.

Being the same premises conveyed to The Board of County Commissioners, Belmont County, Ohio by Deed recorded in Volume 511, Page 16 of the Recorder of Deeds of Belmont County, Ohio.

Prior Deed Reference: Volume 511, Page 16 Belmont County Deed Records.

Auditor Permanent Parcel No. 34-60012.000-44-B

Executed this 16th day of October, 2023.

J. P. Dutton /s/
J. P. Dutton, Commissioner
Josh Meyer /s/
Josh Meyer, Commissioner

Jerry Echemann /s/
Jerry Echemann, Commissioner

Upon roll call the vote was as follows:

Mr. Dutton	Yes
Mr. Echemann	Yes
Mr. Meyer	Yes

BUDGET HEARINGS-Present: Jaclynn Smolenak, Fiscal Clerk
2024 budget requests were reviewed.

DIVISION COURTS-Present: Judges Costine, Trouten and Myser, Clerks Cheri Westlake and Donna Cottage.
\$776,349.12 is requested for 2024 for County Courts, \$75,000.00 for Probation Officers and \$50,400.00 for County Courts appointed judges and employees. Mr. Dutton said they are anticipating the same procedure from last year with no carryover for the General Fund and hope to finalize the budget in early December with the Auditor. Judge Myser said the \$25,000.00 given to each court for the probation officers does not cover the entire salary, the balance of approximately \$30,000.00 is covered by the Special Project Fund. Northern Court does not have as big a balance as the Eastern and Western Courts in that fund. IT, computer, Courtview and supplies are paid for by all of the courts with the Special Project Fund.

RECESS

Mr. Dutton left the meeting after the budget hearing.

IN THE MATTER OF ADJOURNING
COMMISSIONERS MEETING AT 9:26 A.M.

Motion made by Mr. Echemann, seconded by Mr. Meyer to adjourn the meeting at 9:26 a.m.
Upon roll call the vote was as follows:

Mr. Echemann	Yes
Mr. Meyer	Yes
Mr. Dutton	Absent

Read, approved and signed this 18th day of October, 2023.

J. P. Dutton /s/_____

Jerry Echemann /s/_____ COUNTY COMMISSIONERS

Josh Meyer /s/_____

We, J. P. Dutton and Bonnie Zuzak, 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.

J. P. Dutton /s/_____ PRESIDENT

Bonnie Zuzak /s/_____ CLERK