

July 19, 2023

Agenda

Lord's Prayer
Pledge of Allegiance

9:15 a.m. Carol Warther Moreland & Kristen Harmon – Warther Home & Museum Historical Site Recognition

Approve Minutes 7-12-2023
Suspend Minutes 7-17-2023

Approve Before/After Expenditures

Approve Supplemental Appropriation (5)

Approve Inter-Fund Transfer/Advance

Approve New Hire – JFS – Dingman

Update Prevention, Retention and Contingency Plan – JFS

Approve Out of State Travel – Coroner's Office

Approve Legal Ad – Cargo Van – Probate/Juvenile Court

Authorize Agreement – Dundee Water System Expansion
Approve Feasibility Study – Village of Baltic W & S

Pay Bills

Other Business

Adjourn

THE BOARD OF COMMISSIONERS OF TUSCARAWAS COUNTY MET IN REGULAR SESSION WEDNESDAY, THE 19th DAY OF JULY, 2023 WITH THE FOLLOWING MEMBERS PRESENT:

Kristin Zemis
Greg Ress

Commissioner Kristin Zemis presiding.

NOTE: Commissioner Abbuhl was not present.

The Lord's Prayer was said.
The Pledge of Allegiance was said.

RESOLUTION (611-2023) APPROVE MINUTES

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the minutes from the July 12, 2023 meeting as written.

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (612-2023) SUSPEND THE READING OF THE MINUTES

It was moved by Commissioner Ress, seconded by Commissioner Zemis to suspend the reading of the minutes of the July 17, 2023 meeting.

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (613-2023) BEFORE/AFTER EXPENDITURES

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the following before/after expenditures:

VENDOR	OFFICE	AMOUNT
RJ Wright & Sons	Sheriff's Office	\$46,101.56
Top Dog Uniform & Equipment	Sheriff's Office	\$8,000.00
COMDOC	Community Corrections	\$666.93
MNJ Technologies	Community Corrections	\$3,480.00
MNJ Technologies	Community Corrections	\$416.00
Tuscarawas County Sheriff's Office	Community Corrections	\$210.07
Tuscarawas County Treasurer	Child Support Enforcement Agency	\$67.29

VOTE: Chris Abbuhl, absent;
 Kristin Zemis, yes;
 Greg Ress, yes;

RESOLUTION (614-2023) SUPPLEMENTAL APPROPRIATIONS

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to approve the following supplemental appropriations:

DEPARTMENT	FROM	TO	AMOUNT	REASON
Water & Sewer	E-1310-P000-P34	E-1310-P000-P23	\$17,500.00	Wages/Benefits for contract employee
Water & Sewer	E-1310-P000-P34	E-1310-P000-P24	\$12,300.00	Wages/Benefits for contract employee
Water & Sewer	E-1300-P300-P16	E-1300-P000-P07	\$17,500.00	Wages/Benefits for contract employee
Water & Sewer	E-1310-P000-P34	E-1310-P000-P35	\$15,810.30	Final interest loan payment to OWDA for loan #8648. Wilkshire Hills Water System Improvement (loan payoff by USDA RD)
Water & Sewer	E-1310-P000-P34	E-1310-P000-P33	\$259,069.08	Final principle loan payment to OWDA for loan #8648. Wilkshire Hills Water System Improvement (loan payoff by USDA RD)
Sheriff's Office	E-2050-X032-X20	E-2050-X032-X04	\$11,500.00	Needed to replace 35 cameras for Deputies to photograph evidence when arrive on scene
Commissioners	E-0440-A018-A00	E-0010-A001-A03	\$1,500.00	(3) Commissioner Journal binders' w/paper and insert tabs and misc office supplies

VOTE: Chris Abbuhl, absent;
 Kristin Zemis, yes;
 Greg Ress, yes;

RESOLUTION (615-2023) INTER-FUND TRANSFER/ADVANCE

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the following inter-fund transfer/advance as per State Auditor's recommendation:

From: Co. General to Child Support	\$20,712.00
Child Services to Public Assistance	\$75,000.00

VOTE: Chris Abbuhl, absent;
 Kristin Zemis, yes;
 Greg Ress, yes;

RESOLUTION (616-2023) APPROVE HIRE – JFS – DINGMAN

It was moved by Commissioner Ress, seconded by Commissioner Zemis to accept the approval of the new hire as follows:

WHEREAS, Faith Dingman has been determined by Tuscarawas County Job and Family Services, to meet the minimum qualifications established for the classification of Social Service Worker 3.

THEREFORE, BE IT RESOLVED that Faith Dingman shall begin her employment as full time Social Service Worker 3 effective July 31, 2023, at the rate of \$18.86 per hour.

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (617-2023) UPDATE PREVENTION, RETENTION & CONTINGENCY PLAN

It was moved by Commissioner Ress, seconded by Commissioner Zemis to accept updates to the Tuscarawas County Prevention, Retention and Contingency, (PRC) Plan.
Effective August 1, 2023:

PRC Plan Update

Changes Effective August 1, 2023

Addition of Pre-Employment Testing/Screening Language

1. Under suggestion by ODJFS, we have determined the need to add additional language regarding pre-employment tests or screening to include the requirement that all of the following conditions must be met for this service or benefit:
 - a. There is an offer of employment.
 - b. The test or screening is required by the employer for all offers of employment.
 - c. The applicant is required to pay for the expense out of their own funds.

Updated TANF Purpose for Driver's Education Training

1. Correction of a typographical error that previously indicated that the service or benefit met TANF purpose #1. This has been corrected to reflect the appropriate TANF purpose of #2.



Prevention, Retention, and Contingency (PRC)

Prepared By Tuscarawas County Job & Family Services
11-01-99

- Revised 05/01/2014
- Revised 04/01/2015
- Revised 03/23/2016
- Revised 09/01/2016
- Revised 10/01/2017
- Revised 03/11/2019
- Revised 10/01/2019
- Revised 04/01/2020
- Revised 07/01/2020
- Revised 05/01/2021
- Revised 10/01/2021
- Revised 05/01/2023
- Revised 07/01/2023
- Revised 08/01/2023

Prevention Services: Designed to divert families from ongoing cash assistance by providing short term, non-assistance.

Retention Services: Provided to assist an employed member of the family in maintaining employment.

Contingency Services: Provided to meet an emergent need which, if not met, threatens the safety, health or well-being of one or more family members.

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (618-2023) OUT OF STATE TRAVEL – CORONER

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to approve the following out of state travel request for the Coroner’s Office as recommended by Dr. Jeff Cameron, Coroner:

DATE: October 8 - October 13, 2023
 LOCATION: Springfield, MO
 ATTEND: Rachel Fetty
 REASON: Medicolegal Training for new investigators
 EXPENSE: No County car will be used
 Meals: \$300.00
 Hotel: \$600.00
 Flight: \$700
 Mileage to airport: \$10.50
 Cab/Uber if no shuttle \$70.00

TOTAL: \$1,670.00

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (619-2023) ADVERTISE – BIDS – CARGO VAN – PROBATE/JUVENILE COURTS

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to approve the following advertisement for bids for a cargo van for Probate/Juvenile Courts, as requested by Sylvia Argento, Court Administrator.

Sealed bids will be received at the Office of the Clerk of the Board of County Commissioners of Tuscarawas County, 125 East High Avenue, New Philadelphia, OH 44663 until July 31, 2023 at 2:30 pm

for the purchase of the vehicle listed below. Specifications and bid sheets can be obtained at no cost at www.co.tuscarawas.oh.us/Commissioners

Vehicle Purchase

The Tuscarawas County Juvenile Court (TCJC) is securing bids for a Cargo Transit Van to store and deliver non-perishable food. The truck will be backed up to a warehouse loading dock, and pallets of food will be loaded into the back of the truck with a forklift.

All bids must be in a sealed envelope marked "Cargo Transit Van Bid."

The Commissioners have the right to reject any or all bids and to waive any informalities or irregularities in the bids received.

Submission Guidelines

The Tuscarawas County Juvenile Court is a tax-exempt entity. Our tax-exempt Certificate will be provided to the awarded bidder.

Bid price should include installation, Delivery and Warranty. Electronic bids will not be accepted.

BY ORDER OF THE TUSCARAWAS COUNTY COMMISSIONERS:

CHRIS ABBUHL
KRISTIN ZEMIS
GREG RESS

ATTENT: Rhonda Jordan, Clerk

Publish: The Times Reporter on July 21, 2023
www.co.tuscarawas.oh.us/Commissioners

Bid Tabulation will be posted on above website upon award of bid.

TUSCARAWAS COUNTY BID SPECIFICATIONS

One (1) 2022 or newer Transit Cargo Van

Automatic transmission

4-Wheel disc brakes

ABS Brakes

Auto high beam headlights

Power Steering

Power windows

Air Conditioning

Rear door type: split Swing out

Back up camera

Side door – sliding

Dual front airbags

Power door mirrors

Four-wheel independent suspension

Traction Control

Passenger capacity :2

O. LITERATURE / MANUALS:

1. Dealer to submit all available printed literature on cab and chassis and individual drive train components with bid.

- 2. One instruction, parts and service manual to be furnished with chassis upon delivery . _____
- 3. Dealer to provide access to factory build information. _____
- 4. Dealer to furnish 45-day tag. _____
- 5. Dealer to provide all necessary inspections and title documents to title to the Tuscarawas County Commissioners upon delivery. _____

P. ALL EXCEPTIONS MUST BE NOTED:

ALL ADDITIONS MUST BE NOTED:

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

Discussion: *Carol Moreland and Kristen Harmon, Warthers Museum.* Kristen Harmon reached out to the State Preservation Office about two years ago. The State Office came to the Museum and did an on-site visit and encouraged the Warther Family to move forward with the application process. Kristen worked with two people in the State Preservation Office to get the application ready. It was then reviewed by The National Park Service and ultimately, it passed. **Commissioner Zemis** stated she does not think a resident of Tuscarawas County has not been to the Warther Museum for one event or another.

Commissioner Zemis read the Recognition onto the record.

RESOLUTION (620-2023) RECOGNITION – WARTHER FAMILY HOME & MUSEUM

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the following resolution of recognition for the Warther Family Home & Museum acquiring historical status.



VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (621-2023) – AUTHORIZE AGREEMENT - ENGINEERING ASSOCIATES, INC. - DESIGN PHASE - DUNDEE WATER SYSTEM EXPANSION – PROJECT ID #XR-21-04

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve an Agreement with Engineering Associates, Inc. for the design phase of the Dundee Water System Expansion – Hardy, Stingy, Amber, Woodland Areas (Project ID #XR-21-04), hereinafter referred to as the Project.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners, Tuscarawas County, Ohio (“Board”):

Section 1 – The Board hereby approves the Agreement with Engineering Associates, Inc. for the design of the aforesaid Project with such Agreement being attached hereto and incorporated herein.

Section 2 – The President and/or Vice President of the Board are authorized to execute said Agreement on behalf of the Board.

Section 4 – It is found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were passed in an open meeting of this Board and that all deliberations of this Board that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

This Resolution and any referenced attachments have been reviewed and found in proper order by Steven A. Anderson, Special Counsel.

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of July 19, 2023 (“Effective Date”) between Tuscarawas County Commissioners, Ohio (“Owner”) and Engineering Associates, Inc. (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: Dundee Water System Expansion for the Hardy Dr, Amber Rd, Stingy Ln, and Woodland Ln area in Wayne Township, Tuscarawas County, Ohio. (“Project”).

Engineer’s services under this Agreement are generally identified as follows: Funding Services, field work, design, bidding and negotiating, construction administration, and construction observation for the Base scope which includes 10,600 LF of 3” water main, 12 gate valves, 23 service connections, connection to existing water main, 8 post & flush type hydrants and 1 booster station and the alternate scope which includes tentative assessment plan, legal description and exhibit for land acquisition for booster station site, and as-built drawings. (“Services”).

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: **12 months from the Effective Date.** If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- 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 equitably.

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 (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- 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—Lump Sum*

- A. Owner shall pay Engineer for Services as follows:
 - 1. A Lump Sum amount of \$103,000 which is comprised of the following services and amounts:

Base	
Field Work	\$10,000.00
Design	\$40,000.00
Construction Administration	\$8,000.00
Construction Observation (2 months)	\$30,000.00
Subtotal	\$88,000.00
Alternates	
Tentative Assessment Plan	\$5,000.00
Booster Station Site Legal Description & Exhibit	\$5,000.00
As-Built Drawings	\$5,000.00
Subtotal	\$15,000.00

The Owner shall notify the Engineer in writing which alternate services listed above are authorized. Only authorized alternate services will be performed by the Engineer.

- 2. In addition to the Lump Sum amount, reimbursement for the following expenses: None
- B. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

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 for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

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- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
- c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
- d. 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 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. 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 and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

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.

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5.01 *General Considerations*

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

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risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;

~~3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and~~

4. such limited license to Owner shall not create any rights in third parties.

- 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. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- 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 during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- 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 *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.

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7.01 Definitions

- A. **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.
- B. **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.

8.01 Attachments:

- Appendix 1, Engineer's Standard Hourly Rates
- Appendix 2, Engineer's Services
- Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

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

Owner: Tuscarawas County Commissioners
 By: *Kristen Zemis*
 Print name: Kristen Zemis
 Title: Board Vice-President
 Date Signed: 7/19/23

Engineer: Engineering Associates, Inc.
 By: *Bonny E. Portz* *Goshua S. Besancon*
 Print name: Bonny E. Portz Goshua S. Besancon
 Title: Principal
 Date Signed: 7/13/23

Engineer License or Firm's Certificate No. (if required):
 02099
 State of: Ohio

Address for Owner's receipt of notices:
 9944 Wilshire Boulevard NE
 Bolivar, Ohio 44612

Address for Engineer's receipt of notices:
 1935 Eagle Pass
 Wooster, Ohio 44691

Attest:
Rhonda Jordan
 Rhonda Jordan, Clerk

Approved as to Form:
Steven A. Anderson
 Steven A. Anderson
 Special Counsel to the Tuscarawas County
 Metropolitan Sewer District

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This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated [_____].

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Principal Engineer	\$ 170.00/hour
Senior Engineer	150.00/hour
Registered Surveyor	150.00/hour
Junior Engineer	100.00/hour
CAD Technician	90.00/hour
Field Personnel	85.00/hour
Clerical Personnel	80.00/hour

For additional services, any expenses relative to travel (at \$0.70 per mile) will be billed separately.

Appendix 1, Standard Hourly Rates Schedule.
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This is **Appendix 2**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Engineer's Services

Preliminary Design Phase

- A. After selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data". If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 3. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 4. Advise Owner if additional reports, data, information, or services are necessary and assist Owner in obtaining such reports, data, information, or services.
 5. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 6. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 7. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids,

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instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

8. Perform or provide the following other Preliminary Design Phase tasks or deliverables: None
 9. Furnish 3 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 90 days of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

Final Design Phase

- C. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

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3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of 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. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables: None
10. Furnish for review by Owner, its legal counsel, and other advisors, 3 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 30 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 15 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

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- 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of such documents to Owner within 15 days after receipt of Owner's comments and instructions.
- D. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- E. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts.
- F. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is 1. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

Bidding or Negotiating Phase

- G. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

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- 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
- 4. Consult with Owner as to the qualifications of prospective contractors.
- 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
- 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work..
- 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
- 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: None
- H. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

Construction Phase

- I. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 - 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform

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services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Appendix 3.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of 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, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed

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Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible

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with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

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19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to

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observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

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24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Prepare As-Built Drawings if authorized.
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor.
 26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- J. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract, then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

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This is **Appendix 3**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*

Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
- c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- 9. *Inspections, Tests, and System Start-ups:*

Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
10. *Records:*
- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - d. Maintain records for use in preparing Project documentation.
 - e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
11. *Reports:*
- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.

Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

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- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. *Completion:*
- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance.
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

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5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

Appendix 3, Duties, Responsibilities, and Limitations of Authority of Resident Project Representative.

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VOTE: Chris Abbuhl, absent;
 Kristin Zemis, yes;
 Greg Ress, yes;

RESOLUTION (622-2023) – APPROVE FEASIBILITY STUDY - TRANSFER OF WATER AND WASTEWATER FACILITIES FROM THE VILLAGE OF BALTIC

It was moved by Commissioner Ress, and seconded by Commissioner Zemis to approve the foregoing resolution:

WHEREAS, in connection with an Agreement between the Board of Commissioners, Tuscarawas County, Ohio (“Board”), the Village of Baltic (“Village”), the Sanitary Engineer’s office coordinated the preparation of a feasibility study to consider the transfer of the Village’s water and sewer facilities to an entity that could all Tuscarawas County to operate such facilities; and

WHEREAS, in accordance with the aforesaid Agreement, Dynotec, Inc. was selected to prepare a condition assessment and Five-Year capital improvement plan for the Village’s facilities; and

WHEREAS, the Sanitary Engineer’s office completed an evaluation of the impact of these facilities to its operations and finances, as well as coordination with special legal counsel, Albers and Albers, to determine the procedures required and costs associated with such transfer; and

WHEREAS, it has been determined that to proceed with such transfer, the County and the Village must agree to establish a Regional Water and Sewer District (“Regional District”) in accordance with Ohio Revised Code Chapter 6119 with the facilities being transferred to the Regional District upon formation; and

WHEREAS, it has been established that the Regional District shall contract with Tuscarawas County for operation and maintenance of the Village of Baltic facilities following the formation of the Regional District; and

WHEREAS, the Sanitary Engineer, Michael Jones, has submitted to the Board the Transfer Feasibility Study for the Village of Baltic Water and Sewer Systems, dated May 2, 2023, hereinafter referred to as the Feasibility Study, which attached hereto and incorporated herein.

WHEREAS, Albers and Albers have submitted a letter dated June 27, 2023 (“Engagement Letter”), which is attached hereto and incorporated herein, relating to the provision of legal services for the formation of the Regional District, preparation of a Transfer Agreement, and assistance to the Sanitary Engineer’s office for the preparation of an Operation and Maintenance Agreement between Tuscarawas County and the newly formed Regional District, and related matters.

NOW THEREFORE, BE IT RESOLVED by the Board:

Section 1: The Board hereby approves the above referenced Feasibility Study.

Section 2: In accordance with the Engagement Letter, the Board hereby authorizes Albers and Albers to: 1) prepare a Letter of Understanding between Tuscarawas County and the Village of Baltic to form a Regional District; 2) following the execution of the Letter of Understanding, to take all actions necessary to form a new 6119 District; 3) upon formation of said Regional District to prepare an Agreement transferring the Village of Baltic’s facilities to the newly formed Regional District; 4) assist the Regional District in its startup; and 5) assist the Sanitary Engineer’s office with the development of an Operation and Maintenance Agreement between the Regional District and Tuscarawas County, with such Agreement being subject to the requirements of the Ohio Environmental Protection Agency.

Section 3: It is found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were passed in an open meeting of this Board and that all deliberations of this Board that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

This Resolution and any referenced attachments have been reviewed and found in proper order by Steven A. Anderson, Special Counsel.

JOHN B. ALBERS II
JOHN M. HOPFINGER
Of Counsel:
SEAN A. McCARTER



HERBERT F. ALBERS
(1896-1960)

JAMES B. ALBERS
(1926-2017)

June 27, 2023

Tuscarawas County Commissioners
c/o Mike Jones, P.E. Director/Sanitary Engineer
9944 Wilkshire Blvd. NE
Bolivar, OH 44612
mjones@tcmsd.org

In Re: Engagement of Legal Services, Albers and Albers, Attorneys at Law

Dear Mr. Jones,

Albers and Albers appreciates the opportunity to provide legal services to Tuscarawas County (the “County”), as Special Counsel in connection with the formation of a regional district and the transfer of potable water and sanitary sewer facilities from the Village of Baltic to the regional district, and related matters (the “Matter”). We understand that Mike Jones will be our primary contact to discuss issues related to the Matter. Where appropriate, we will directly correspond with the County Commissioners or other individuals, as directed.

Our services are intended to be rendered only to the County and only for the benefit of the County. Accordingly, no other person or entity will be entitled to rely upon or otherwise benefit from our services.

We write to confirm the terms of our retention as counsel because our experience has shown that the attorney-client relationship works best when there is an early mutual understanding about matters such as the firm’s billing policies, charges and payment terms. The information below describes policies that will apply to the work we will be doing for the County.

Legal Fees

Albers and Albers primarily uses hourly rates on which to base its fees. We attempt to accomplish our work on an efficient basis, using people with a lower billing rate when practicable under the supervision of the lawyer(s) in charge of the project. Our billing rate is \$300.00 per hour for the Matter. We expect that the significant

1086 NORTH FOURTH STREET, SUITE 105
COLUMBUS, OHIO 43201

Phone: (614) 464-4414
Facsimile: (614) 464-0604
www.alberslaw.com

majority of the work on this matter will be performed by John Albers, John Hopfinger and Sean McCarter.

On an annual basis, we review our hourly rate schedule to see if it remains appropriate for each of the people providing services. This does not mean that rates will increase each year, but if our work for the County, on this matter or any other, continues from year to year, changes in individual hourly rates may occur and may affect our billings to the County. You would be notified prior to any changes.

Costs and Disbursements

Unlike other firms, we absorb many routine costs of support systems into our hourly fee. Therefore, certain costs such as long distance telephone charges, copying charges, mileage, automation support required by the engagement and computer research services incurred on the County's behalf will NOT be billed to the County as expenses. However, out-of-pocket payments, such as overnight shipping, filing fees, court reporter services, court costs, subpoena costs, witness fees, expert fees, investigation and the like, while payable to others, are to be paid by the County and will be billed to the County with the charges for legal services. In addition, advancements payable to others will be sent directly to the County for payment or, if advanced by the firm, billed directly to the County either separately or with our statement for legal services.

Billing

Our policy is that statements for services and reimbursement for expenses and disbursements advanced by the firm should be rendered on a monthly basis. Such statements are prepared at the end of each month and mailed to you early the following month unless you wish them to be send via facsimile or email. The statements are due and payable upon receipt, unless other arrangements have been made with the firm in advance.

Conflict Waiver

Attorneys owe a duty of undivided loyalty to each of their clients, which prevents the concurrent representation of two clients whose interests are adverse. However, the clients may consent to such representation provided they are first informed of the circumstances that create a conflict of interest for the lawyer and then agree to waive the conflict presented.

Albers and Albers is unaware of any potential conflict of interest which may exist with respect to providing the legal services contemplated herein.

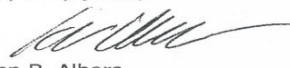
Conclusion

If the foregoing terms of retention are acceptable to the County, please sign the enclosed copy of this letter and return it to me. Notwithstanding the County's agreement, any time you have any questions about our billing policies or procedures or about a specific statement, you should contact us and we will respond promptly to your question.

The terms of our retention will be governed by the laws of the State of Ohio.

We look forward to working with you.

Very truly yours,



John B. Albers

Acceptance
Authorized Representative of
Tuscarawas County

By: Kristin Zemis

Title: Commissioner

Date: 7-19-2023

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (623-2023)

PAY BILLS

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to approve payment for the following bills:

911			
Mastercard	Travel Expense	\$700.00	
			\$700.00
Auditor			
AloNovus Corporation	Legal Ad	\$124.00	
			\$124.00
Child Support			
AEP	Electric Utility	\$1,494.12	
Bloom's Printing & Design	Supplies	\$1,005.00	
First Communications	Service	\$13.61	
Tusc Co Clerk of Courts	IV-D Contract	\$450.58	
Tusc Co Treasurer	2023 IV-D Contract	\$67.29	
Tusc Co Treasurer	2023 IV-D Contract	\$2,359.28	
Verizon Wireless	Service	\$80.22	
			\$5,470.10
Commissioners			
AEP	Electric Utility	\$6,398.46	
AEP	Electric Utility	\$23.49	
AEP	Electric Utility	\$1,506.38	
AEP	Electric Utility	\$739.93	
Benchmark Construction	Restroom Update	\$5,935.00	
Benchmark Construction	Restroom Update	\$15,520.00	
First Communications	Service	\$110.41	
First Communications	Service	\$14.06	
First Stop Signs	Supplies	\$395.00	
Frontier	Service	\$598.00	
Jim's Service	Repair	\$247.99	
Mancan	Services	\$799.36	
Muskingum Co Juvenile Det Ctr	Services	\$2,520.00	
Muskingum Co Juvenile Det Ctr	Services	\$58,880.00	
Patriot Industrial Technologies Ltd	Supplies	\$233.57	
Patriot Industrial Technologies Ltd	Supplies	\$1,316.43	
			\$95,238.08
Common Pleas			
Blooms	Supplies	\$339.00	
Courtview Justice Solutions Inc	Services	\$8,005.26	
Information Technology	Supplies	\$3,043.27	
Interpreters XP LLC	Services	\$520.00	
MNJ Technologies	Equipment	\$358.00	
OhioGuidestone	Services	\$375.00	
VEIT	Copier Contract	\$174.57	
Verizon	Service	\$60.18	
			\$12,875.28
Coroner			
Smith Livery Service	Services	\$3,300.00	
Verizon Wireless	Service	\$123.41	
			\$3,423.41
Dog & Kennel			
Kimble	Service	\$177.75	
			\$177.75

JFS

Anthony Hicks	Individual Living/Mos Incent	\$100.00
Ashley & Robert Bunton Jr	FP Reimb	\$728.78
Benjamin & Emily Lippert	FP Training	\$135.00
Brittany Renner	FC Meals	\$75.73
Clear Sky Realty Inc	FACES	\$1,365.00
Cody & Allison McKinney	Camp	\$320.00
David & Erma Miller	FP Training	\$270.00
Derek & Savannah McCune	FP Trans	\$96.00
Division of Vital Records	Birth Certificate	\$10.00
	Ice Mach	
Helblings Supply Inc	Cleaner/Workforce	\$35.14
Horizons Of Tusc & Carroll	Services	\$10,919.66
Horizons Of Tusc & Carroll	Services	\$11,674.06
Jacob & Marilyn Miller	FP Training	\$180.00
Jennifer Abbuhl	Non IV-E Daycare	\$207.44
Kalib & Emalee Winters	FP Reimb	\$129.85
Kayla Kirkpatrick	Employment/Savings Incent	\$100.00
Leon & Clare Miller	FP Training	\$352.50
Luke & Megan Kneuss	FP Training	\$262.50
Luke & Megan Kneuss	FP Reimb	\$236.90
Melvin & Verna Yoder	FP Reimb	\$114.80
Melvin & Verna Yoder	FP Reimb	\$240.99
MNJ Technologies	Workforce	\$687.00
Monique Bailey/Et-Al	Bd Home/June	\$36,148.00
Nicole Kadri	Non IV-E Daycare	\$363.74
Paul & Desiree Runyon	FP Training	\$150.00
Robert & Emma Troyer	Water Sample	\$100.00
Sean & Alisha Ketchum	FP Training	\$262.50
Speakwrite	Workforce	\$13.60
Tiffany Ryan	FP Training	\$135.00
Timothy & Jacquelyn McDonnell	FP Reimb	\$115.00
Timothy & Jacquelyn McDonnell	FP Reimb	\$498.56
Triad Deaf Services Inc	Services	\$125.00

\$66,152.75

Juvenile/Probate

Copley Ohio Newspapers Inc	Legal Ad	\$690.11
OH Assoc of Magistrates	Registration Fee	\$450.00
Tusc Co Probate Court	Supplies	\$115.28

\$1,255.39

Public Defender

Axon Enterprises Inc	License Fee	\$1,955.33
Charter Communications	Service	\$307.99
City of New Philadelphia	Services	\$55.45
CSEA	CAC Utilities	\$186.01
Interpreters XP	Services	\$65.00
Lisa Caldwell	Travel Reimbursement	\$84.00
Pitney Bowes	Rental Fee	\$62.82
Reserve Account	Postage	\$2,000.00
Staley Technologies	Repair	\$215.00
Staples Credit Plan	Supplies	\$686.80
Starlight Enterprises Inc	Services	\$400.00
Tusc Co Commissioners	July 2023 Rent	\$1,381.45
Tusc Co Treasurer	July '23 Cost Allocation	\$2,668.50
Zashin & Rich Co LPA	Services	\$974.50

\$11,042.85

Recorder

GovOS	Monthly Fee	\$4,125.00	
Office eXperts	Monthly Fee	\$5.00	
			\$4,130.00

Sheriff

Ambitec Inc	Equipment	\$2,399.96	
Culligan	Supplies	\$610.47	
G&L Supply	Supplies	\$1,576.95	
OPOTA	Training	\$1,100.00	
Staples	Supplies	\$178.69	
Staples	Supplies	\$187.36	
Treasurer State of Ohio	Services	\$107.00	
			\$6,160.43

Treasurer

Clerk of Courts	Services	\$482.22	
			\$482.22

Water & Sewer

AEP	Electric Utility	\$1,502.48	
AEP	Electric Utility	\$5,053.23	
AEP	Electric Utility	\$2,315.51	
Frontier	Service	\$335.47	
Frontier	Service	\$44.51	
Frontier	Service	\$44.51	
JA'S Auto Service	Repairs	\$387.74	
Mike Jones	Shipping Cost Reimb	\$39.36	
OWDA	Final Int Loan Pymnt	\$15,810.30	
OWDA	Final Principal Loan Pymnt	\$259,069.08	
RJ Wright & Sons	Fuel	\$2,839.13	
Twin City Water & Sewer District	Services	\$6,590.92	
			\$294,032.24

GRAND TOTAL \$501,264.50

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

RESOLUTION (624-2023) ADJOURN

It was moved by Commissioner Ress, seconded by Commissioner Zemis to adjourn at 9:28 a.m. to meet in Regular session Monday, the 24th day of July, 2023.

VOTE: Chris Abbuhl, absent;
Kristin Zemis, yes;
Greg Ress, yes;

We hereby certify the above and foregoing to be a true and correct account of the proceedings as had by and before us on the day and year first written above.

Absent
Chris Abbuhl



Kristin Zemis



Greg Ress



Attest: Rhonda Jordan, Clerk