

September 13 , 2023

Agenda

Lord's Prayer
Pledge of Allegiance

9:15 a.m. Mike Jones, Sanitary Engineer – Jetter Truck and Land Purchase Agreement
9:30 a.m. Bid Opening – Guardianship Services – Juvenile/Probate Court

Approve Minutes

Approve Supplemental Appropriation (7)

Approve No Hearing Liquor Permit – Moose Island

Re-Appoint Eastern Ohio Development Alliance (EODA) Board Members

Authorization to Apply for OPWC Programs – Engineer

Approve Allocations – Local Fiscal Recovery Fund

Release Senior Levy Funds

Change Request – Towpath Trail Extension – Park Dept

Pay Bills

Other Business

Adjourn

THE BOARD OF COMMISSIONERS OF TUSCARAWAS COUNTY MET IN REGULAR SESSION
WEDNESDAY, THE 13th DAY OF SEPTEMBER, 2023 WITH THE FOLLOWING MEMBERS
PRESENT:

Chris Abbuhl
Kristin Zemis
Greg Ress

Commissioner Chris Abbuhl presiding.

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

RESOLUTION (777-2023) APPROVE MINUTES

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the minutes from the September 11, 2023 meeting as written.

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

RESOLUTION (778-2023) 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 Department	E-1300-P300-P16	E-1300-P000-P07	\$9,600.00	Tree and brush clearing @ 5243 Lindentree Rd NE, Mineral city
Water & Sewer Department	E-1300-P300-P16	E-1300-P000-P08	\$18,000.00	Real Estate Purchasing Agreement Quillen Dairy Farm LTD, Sone Creek Proj #SC-21-01
Water & Sewer Department	E-1300-P300-P16	E-1300-P200-P16	\$4,421.00	OPWC Loan CN16Y 2021 Sanitary Sewer Projects
Sheriff's Office	B055-B25	B055-B05	\$13,100.00	Grinder between jail and New Phila needs repaired
Sheriff's Office	E-1607-S082-S99	E-1607-S082-S07	\$12,000.00	Needed to purchase Mobile Data Terminal Docks and Power Supplies for 7 cruisers
Juvenile Court	E-1700-T022-T20	E-1700-T022-T15	\$600.00	Needed for incentives for juveniles
OCED	E-2000-U060-U20	E-2000-U060-U24	\$350,000.00	To cover shortfall in ARPA funding for new County Multi-Use Building

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

RESOLUTION (779-2023) REQUEST NO HEARING – LIQUOR PERMIT – MOOSE ISLAND DASWANP, LLC

It was moved by Commissioner Zemis, seconded by Commissioner Ress, to request NO HEARING in regards to a liquor permit for Moose Island Daswamp, LLC DBA Moose Island. No correspondence has been received regarding this request.

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

RESOLUTION (780-2023) RE-APPOINT – EASTERN OHIO DEVELOPMENT ALLIANCE (EODA) BOARD

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to approve the re-appointment of Dee Grossman to the Eastern Ohio Development Alliance Board. The term will begin January 1, 2024 and end on December 31, 2025.

Current Board Members Whose Term Expires December 31, 2023	
County	Member
Athens	Luke Sulfridge
Belmont	JP Dutton
Carroll	Christopher Modranski
Columbiana	Tad Herold
Coshocton	Tiffany Swigart
Guernsey	Norm Blanchard
Harrison	Don Bethal
Holmes	Arnold Oliver
Jefferson	Ed Looman
Monroe	Mick Schumacher
Morgan	Shannon Wells
Muskingum	Matt Abbott
Noble	Gwynn Stewart
Perry	
Tuscarawas	Dee Grossman
Washington	Charlie Shilling

DISCUSSION: *Commissioner Abbuhl thanked Dee Grossman for taking on this role and continuing to do so for another term.*

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



RESOLUTION NO. 781-2023

A RESOLUTION AUTHORIZING THE TUSCARAWAS COUNTY ENGINEER TO PREPARE AND SUBMIT APPLICATIONS TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION STATE CAPITAL IMPROVEMENTS AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) AND TO EXECUTE CONTRACTS AS REQUIRED.

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

WHEREAS, the State Capital Improvements and the Local Transportation Improvement Program both provide financial assistance to political subdivisions for capital improvements to public infrastructure, and

WHEREAS, the County of Tuscarawas is planning to make capital improvements to various roads and bridges, and



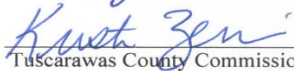
WHEREAS, the infrastructure improvements described above are considered to be a priority need for the County and are qualified projects under the OPWC programs.

NOW, THEREFORE, BE IT RESOLVED by the Tuscarawas County Commissioners:

Section 1: The County Engineer, Joseph S. Bachman or his successor, is hereby authorized to apply for the OPWC funds as described above.

Section 2: The County Engineer, Joseph S. Bachman or his successor, is further authorized to enter into any agreements that may be necessary and appropriate for obtaining this financial assistance.

Date: 9-13-2023




Tuscarawas County Commissioners

DISCUSSION: *Commissioner Abbuhl stated this is a great program and has worked very well for us for a number of years.*

RESOLUTION (782-2023) APPROVE ALLOCATIONS – LOCAL FISCAL RECOVERY FUND

It was moved by Commissioner Ress, seconded by Commissioner Zemis to increase the allocation from the Local Fiscal Recovery Fund:

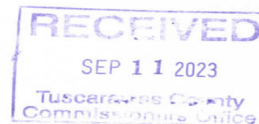
It is hereby resolved that the unencumbered funds of \$500,000 available in the Revenue Loss Replacement specifically 6.1 Provision of Government Services be allocated to the Multipurpose Building project previously approved via resolution 886-2022 for \$4,300,000. The total project allocation for construction and related building costs is now \$4,800,000.

It is hereby resolved that the unencumbered funds of \$20,000 available in the Revenue Loss Replacement specifically 6.1 Provision of Government Services be allocated to the Administrative Costs previously approved via resolution 328-2022 for \$100,000 to the consulting firm, Julian & Grube, Inc. The total project allocation for administrative costs is now \$120,000.

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

RESOLUTION (783-2023) RELEASE SENIOR LEVY FUNDS

It was moved by Commissioner Zemis, seconded by Commissioner Ress, to release all senior levy funds available to the Tuscarawas County Senior Center, as requested by Jamie L. Smith, Executive Director of the Tuscarawas County Committee on Aging, Inc.



425 Prospect St., Dover, Ohio 44622

Phone: 330-364-6611

September 7, 2023

Tuscarawas County Commissioners
125 E. High Ave.
Room 205
New Philadelphia, OH 44663

Subject: Request for available levy funds

Dear County Commissioners:

The Tuscarawas County Committee on Aging, Inc. is requesting all available levy funds for distribution.

Please make the check payable to the Tuscarawas County Committee on Aging, Inc. The check should be mailed to the following address:

Tuscarawas County Committee on Aging, Inc.
C/O Jamie L. Smith
425 Prospect Street
Dover, OH 44622

Please contact me if you have any questions. Thank you for your attention to this request.

Respectfully,

Jamie L. Smith, MBA
Executive Director

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

DISCUSSION: *Jesse Rothacher, Park Director, stated that after receiving the initial stage three plans, it was discovered that we needed more information on the sub-surface utilities located along this parcel. It was recommended by ODOT that it would be better to do the level A testing in this phase. This will allow us to make the appropriate design as apposed to allowing construction and then do discovery there. If there is any deviation or problems discovered during construction, this could lead to delays and would endanger our TAP Funding we have received from ODOT. Jesse made a recommendation to approve the Scope Change modification and move forward with the project and keep the ODOT TAP monies.*

RESOLUTION (784-2023) TOWPATH TRAIL EXTENSION MODIFICATION 2 – SUBSURFACE UTILITY LOCATING SCOPE CHANGE

It was moved by Commissioner Ress, seconded by Commissioner Zemis to approve the **Tuscarawas County/Ohio & Erie Canal Towpath Extension I Modification No. 2 Request – Subsurface Utility Locating Services Scope Change** from ms consultants, inc. in the amount of \$17,000.00. The location of these subsurface utilities is essential to mitigating conflict with gas lines on the Kimble Company property under license by the Commissioners, and avoids construction delays that could impact awarded ODOT TAP monies.

The Tuscarawas County Park Department has approved purchase orders (#96956, #96970) in the amount of \$20,000.00 set aside for 2023 scope changes or other project contingencies.

ms consultants, inc.
 engineers, architects, planners
 One Cascade Plaza
 Suite 1450
 Akron, Ohio 44308-1116
 p 330.258.9920
 f 330.258.9921
 www.msconsultants.com



July 3, 2023

Mr. Jesse Rothacher
 Park Manager
 Tuscarawas County Park Department
 125 East High Avenue
 New Philadelphia, Ohio 44663

**Re: PID 111280: Tuscarawas County/Ohio & Erie Canal Towpath Extension I
 Modification No. 2 Request – Subsurface Utility Locating Services Scope
 Change**

Dear Mr. Rothacher,

As a follow up to the April 14, 2023 between ms consultants, the Tuscarawas County Park Department, Kimble Company, and ODOT District 11 regarding potential conflicts with the gas line and need for Level A test holes to determine accurate locations, please find the attached modification request for a Lump Sum total fee of \$17,000 to perform the utility locating services. Should you have any questions or require additional information, please feel free to contact me at sriffle@msconsultants.com, or (330) 258-9920.

Respectfully,

Sean Riffle, PE
 Project Manager
 NE Ohio Transportation Operations Leader

cc: Daniel J. Lorenz, PE – LPA Manager, ODOT District 11
 Attachment: Exhibit A – SUL Level A Scope of Services and Fee Proposal

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

RESOLUTION (785-2023) PAY BILLS

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

Meeting Date - September 13, 2023

911

Agile Networks	Service	\$1,240.00	
Language Line Services	Services	\$70.18	
MNJ Technologies	Supplies	\$180.00	
			\$1,490.18

Child Support

Language Line Services	Interpretation Services	\$133.75	
Traci Berry	Travel Reimbursement	\$383.35	
Tusc Co Sheriff's Office	2023 IV-D Contract	\$3,980.41	
			\$4,497.51

Clerk of Courts

First Federal	Services	\$138.00	
NCC Group Software	Service	\$340.00	
			\$478.00

Commissioners

Blasenbauer Plumbing & Heating LLC	Repair	\$290.00	
Brandywine Valley Dev	Royalty Sharing	\$166.25	
City of NP Water Office	Service	\$205.70	
City of NP Water Office	Service	\$63.75	
City of NP Water Office	Service	\$431.15	
City of NP Water Office	Service	\$345.30	
College of Food Agr & Envr Sciences	4th Qtr Grant Distribution	\$65,412.50	
Dawson	Monitoring	\$135.00	
Don Ackerman	Apiary Services	\$725.80	
Frontier	Service	\$50.06	
Frontier	Service	\$69.70	

Lehigh-Endsley Insurance	Bond-Southern Dist	\$50.00	
Lowes	Supplies	\$602.64	
Mancan	Services	\$399.68	
Menard's - NP	Supplies	\$28.72	
Miller's Clothing & Shoes	Partial Uniform Pieces	\$325.89	
OMEGA	Registration	\$60.00	
Tusc Co Treasurer	Fuel	\$144.41	
Tuscora Electric Supply	Supplies	\$347.67	
			\$69,854.22
Common Pleas			
Elizabeth Stephenson	Supplies Reimbursement	\$58.37	
Ohio Guidestone	Aug 2023 Services	\$1,000.00	
Thomson Reuters-West Pymnt Ctr	Subscription 6/1/23-9/3/23	\$690.51	
VEIT	Service Contract	\$200.76	
Verizon	Service 8/2/23-9/1/23	\$60.18	
			\$2,009.82
Coroner			
Axis Forensic Toxicology Inc	Services	\$392.00	
Cuyahoga Co Medical Examiner	Services	\$2,000.00	
Cuyahoga Co Medical Examiner	Services	\$200.00	
Cuyahoga Co Medical Examiner	Services	\$150.00	
			\$2,742.00
Dog & Kennel			
Humble Creatures Vet Clinic	Services	\$440.00	
			\$440.00
Engineer			
Joe Bachman	Equipment Reimbursement	\$147.73	
Kimble Clay & Limestone	Material	\$24,364.34	
Liniform	Services	\$268.12	
National Lime & Stone	Material	\$103,385.60	
NP Water Dept	Services	\$913.86	
RJ Wright & Sons	Gas/Fuel/Oil	\$38,851.32	
Sidwell Materials Inc	Material	\$68.06	
Triple R Trailer Sales	Parts	\$1,397.76	
Twin City Automotive	Parts	\$45.05	
Uebels Welding LLC	Services	\$160.95	
Voto Mfg Sales Co	Supplies	\$1,027.44	
Yoder Small Engines	Parts	\$240.05	
Ziegler Bolt & Nut House	Supplies	\$371.85	
			\$171,242.13
Information Technology			
Horizon	Service	\$608.00	
OARnet	Service	\$142.50	
			\$750.50
JFS			
Brenda Hughes - Et/Al	Net Mileage	\$10,012.20	
			\$10,012.20
Juvenile/Probate			
Anthony Flex	Travel Reimbursement	\$660.02	
Hyatt Regency Columbus	Travel Expense	\$350.00	
Independence Business Supply	Supplies	\$35.00	
OAPJ c/o OJC	Registration	\$125.00	
Staples	Supplies	\$43.22	
Staples	Supplies	\$19.29	
Staples	Supplies	\$94.91	
Staples	Supplies	\$30.49	
Theresa Wolf	Travel Reimbursement	\$175.28	

TRACO Business Systems	Supplies	\$508.60	
Tuscarawas County Sheriff's Office	Juvenile Transports	\$316.32	
Vital Records Holdings LLC	Services	\$9,081.09	
			\$11,439.22
Law Library			
Independence Business Supply	Supplies	\$46.99	
Matthew Bender & Co Inc	Subscription Fee	\$271.58	
Thompson Reuters-West Pymnt Ctr	Subscription Fee	\$1,750.92	
Thompson Reuters-West Pymnt Ctr	Subscription Fee	\$532.54	
			\$2,602.03
Park			
Marsha Freeland	Supplies Reimbursement	\$41.11	
Marsha Freeland	Supplies Reimbursement	\$21.34	
Marsha Freeland	Supplies Reimbursement	\$47.95	
NAPA Auto Parts (Harrison)	Parts	\$34.88	
World Fuel Services Inc	Fuel	\$795.19	
			\$940.47
Prosecutor			
Douglas Jackson	Travel Reimbursement	\$228.00	
Information Technology	Supplies	\$500.00	
Information Technology	Supplies	\$1,200.00	
Matrix Pointe Software LLC	Mthly Subscription Fee	\$3,000.00	
Ryan Styer	Travel Reimbursement	\$164.40	
Verizon Wireless	Service	\$80.74	
			\$5,173.14
Sheriff			
Arney Automotive LLC	Repairs	\$6,077.84	
Bob Shott	Travel Reimbursement	\$19.50	
Chase Newell	Travel	\$254.95	
Clearwater Packaging Inc	Supplies	\$810.17	
Community Mental Health	QRT	\$1,065.92	
Dutch Creek Foods	Supplies	\$8,240.87	
Fenton Bros Electric Inc	Supplies	\$237.00	
Fisher Auto Parts	Supplies	\$150.00	
Militaur	Supplies	\$577.50	
New Phila Water Dept	Services	\$2,578.50	
Nickles Bakery	Supplies	\$782.88	
Ohio Guidestone	QRT	\$3,025.98	
Poly-Tech Associates Inc	Services	\$1,095.00	
RJ Wright & Sons Ltd	Gas	\$17,834.03	
Staples	Supplies	\$101.07	
Steel Valley Portable X-Ray Service	Services	\$200.00	
Sysco Food Services Cleveland	Supplies	\$5,238.26	
Todd's Mowing	Repair	\$94.17	
Union Hospital	Services	\$79.38	
United Site Services	Rental	\$30.00	
US Bank Equipment Finance	Copier Leases	\$557.93	
VEIT	Copier Charges	\$955.28	
			\$50,006.23
Treasurer			
Independence Business Supply	Supplies	\$35.76	
			\$35.76
Water & Sewer			
AEP	Electric Utility	\$10,905.03	
AEP	Electric Utility	\$3,081.66	
Columbia Gas	Gas Utility	\$47.88	
Columbia Gas	Gas Utility	\$176.12	

ECOBA	Extension Fee	\$100.00	
Enger Auto	Supplies	\$34.98	
Enterprise Fleet Mgmt	Lease Program	\$1,358.83	
Enterprise Fleet Mgmt	Lease Program	\$2,212.16	
Fastenal	Supplies	\$502.08	
Fastenal	Supplies	\$502.17	
Fenton Bros Electric	Materials	\$57.37	
Ferris Chevrolet	Supplies	\$19.81	
Fitzpatrick Zimmerman Rose	Services	\$21.25	
Fitzpatrick Zimmerman Rose	Services	\$85.00	
Frontier	Service	\$60.17	
Go Shred	Services	\$166.00	
Haueter Landscaping	Services	\$400.00	
Holdsworth Welding Service	Repair	\$700.00	
Holmes-Wayne Electric Cooperative	Electric Utility	\$865.00	
Huff Concrete	Repair	\$1,900.00	
Modern Auto & Truck Parts LLC	Materials	\$25.97	
National Road Utility Supply Inc	Materials	\$3,113.19	
OMEGA	Registration	\$30.00	
Parkway Auto Group	Repair	\$54.09	
Ream & Haager Lab	Services	\$1,889.00	
Ream & Haager Lab	Services	\$3,941.50	
RJ Wright & Sons	Fuel	\$4,106.32	
Solenis LLC	Supplies	\$11,816.40	
Treasurer State of Ohio	NPDES Renewal Permit	\$950.00	
			\$49,121.98
		GRAND	
		TOTAL	\$382,835.39

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

DISCUSSION: *Mike Jones, Sanitary Engineer, was present to recommend the approval of the Board to apply for financing for the Jetter Truck.*

RESOLUTION (786-2023) AUTHORIZING THE PRESIDENT OF THE BOARD OF COMMISSIONERS, TUSCARAWAS COUNTY, OHIO TO APPLY FOR, ACCEPT, AND ENTER INTO A COOPERATIVE AGREEMENT FOR PURCHASE OF A COMBINATION SEWER JETTER TRUCK BETWEEN TUSCARAWAS COUNTY AND THE OHIO WATER DEVELOPMENT AUTHORITY.

It was moved by Commissioner Zemis, seconded by Commissioner Ress to enter into the following agreement:

WHEREAS, the Board of Commissioners, Tuscarawas County, Ohio (hereinafter referred to as the "LGA") intend to purchase a Combination Sewer Jetter Truck for the exclusive purpose of maintaining the LGA's water and wastewater facilities; and

WHEREAS, the LGA desires to obtain a loan from the Ohio Water Development Authority (hereinafter referred to as the "OWDA") to finance costs of the planning of such facilities on the terms set forth in the Cooperative Agreement (defined below); and

WHEREAS, the OWDA has indicated its willingness to make a loan for that purpose and on those terms;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners, Tuscarawas County, Ohio:

Section 1. That the LGA hereby approves the purchase of the aforesaid Combination Sewer Jetter Truck in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for Construction, Maintenance and Operation of State Water Project or Wastewater Project" as set forth in Exhibit A (the "Cooperative Agreement") and hereby authorizes the Chief Executive Officer and the Chief Fiscal Officer of the LGA to execute the Cooperative Agreement with the OWDA substantially in the form set forth in Exhibit A.

Section 2. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution/ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees 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.

Passed: September 13, 2023

Attest: Rhonda Jordan

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

OWDA 1/30/2020

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE I – DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

DEFINITIONS RELATING TO PHYSICAL FACILITIES

- (a) "Approved Application" means the application of the LGA dated as of the date specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.
- (b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

- (c) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.
- (d) "System" means the facilities of the LGA specified as the "System" on the Term Sheet.

DEFINITIONS RELATING TO COSTS

- (e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

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publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or \$400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances, satisfactory to the OWDA, as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

DEFINITIONS RELATING TO PARTICIPATION IN COSTS

- (f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."
- (g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

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(i) "Contract Period of Years" means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(k) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the "Operational Date."

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

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(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

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Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (1) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the

Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

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provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs.

Section 3.9. The LGA represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA. The LGA acknowledges that the OWDA may inform potential and actual investors of bonds issued by the OWDA regarding the details of this Agreement, and that such investors may make an investment decision based on this Agreement.

Section 3.10. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges

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pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount.

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this

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Section are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 ("Rule 15c2-12") each promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board ("MSRB") through the EMMA System (as defined below), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA's incorporation by reference into OWDA official statements or other OWDA filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, "EMMA System" shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the website address for EMMA is emma.msrb.org. The LGA acknowledges that the OWDA is not responsible for any of the LGA's required filings under Rule 15c2-12 related to other indebtedness of the LGA, including, but not limited to, as to whether this Agreement is considered a "Financial Obligation" under Rule 15c2-12.

ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project

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Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

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Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in

connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

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Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

- (a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or
- (b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

ARTICLE VI - REPRESENTATIONS AND AGREEMENTS
OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS;
EVENTS OF DEFAULT AND REMEDIES THEREFOR;
INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

- (a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;
- (b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;

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(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default under this Agreement if the LGA demonstrates both of the following to the satisfaction of the OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof is intended to be exclusive of any other right or remedy given herein, by law or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law or otherwise.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the System, the Project Facilities, or the use thereof; provided that such

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indemnity under this Section shall not be effective for damages that result from negligent or intentional acts of the OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. The LGA acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet OWDA's obligations with regard to funding the applicable program and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the LGA's compliance with the provisions of this Agreement. Accordingly, the LGA agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund this Agreement (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

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(i) The LGA shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the OWDA hereunder (the "OWDA Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the OWDA Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The LGA shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the LGA, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the LGA hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the LGA referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or

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transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the LGA shall have any question about the application of Section 7.1., in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority
480 South High Street
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

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Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

OHIO WATER DEVELOPMENT
AUTHORITY

OWDA General Counsel

By: _____
OWDA Executive Director

APPROVED AS TO FORM

LGA:

LGA Legal Officer or Counsel

By: _____

By: _____

Schedule I
TERM SHEET

NOTE: The term sheet will be generated by OWDA after the loan is approved at the board meeting.

Exhibit A
PROJECT FACILITIES DESCRIPTION

Exhibit B
CONSTRUCTION CONTRACT(S)

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

DISCUSSION: *Mike Jones, Sanitary Engineer, stated the County is looking at replacing the Stone Creek Waste Water Treatment Plant. In order to do this, Water & Sewer must acquire additional property. Mike worked with the prior Board to authorization to negotiate with the adjoining land owner. The land owner has agreed to sell the land to the County for \$18,000. The land is over 1/3 of an acre.*

RESOLUTION (787-2023) – AUTHORIZING THE APPROVAL AND EXECUTION OF A REAL ESTATE PURCHASE AGREEMENT FOR THE PURCHASE OF ADDITIONAL LAND ADJACENT TO THE EXISTING STONE CREEK WWTP TO CONSTRUCT A REPLACEMENT FACILITY

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

WHEREAS, pursuant to a previously adopted resolution recorded on August 31, 2022 in Commissioner's Journal 85, the Board of Commissioners, Tuscarawas County, Ohio ("Board") authorized the Sanitary Engineer, to contact and negotiate with the owner(s) of land adjacent to the existing Stone Creek Wastewater Treatment Plant for the purpose of negotiating the purchase of land for the construction of a new wastewater treatment plant.

WHEREAS, the Sanitary Engineer has obtained and recommends approval of the attached Real Estate Purchase Agreement ("Agreement") with the property owner for the cost of \$18,000.00 and other considerations, and

NOW THEREFORE BE IT RESOLVED, by the Board:

Section 1: The Board hereby approves the above referenced Agreement and authorizes the President and/or Vice-President of the Board to execute said Agreement.

Section 2: 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.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT made this 13 day of September, 2023, by and between **Quillin Dairy Farm, Ltd.** of 5249 Angel Valley Rd. SW, Stone Creek, OH 43840, hereinafter called "**SELLER**", and **the Board of Commissioners, Tuscarawas County, Ohio**, of 125 East High Avenue, New Philadelphia, OH 44663, hereinafter called "**BUYER**".

1. PROPERTY.

In consideration of the Buyer's covenants and promises as hereinafter set forth to purchase the real estate, the Seller agrees to sell to the Buyer the following described real estate: **a 0.39 acre split from the southern portion of Tuscarawas County Parcel #30-00345-000 as shown on Exhibit "A" attached hereto.**

2. PURCHASE PRICE.

The purchase price for said property shall be the sum of **eighteen thousand and 0/100 dollars (\$18,000.00)**, payable by Buyer to Seller on closing as provided herein.

3. CONTINGENCIES.

This Agreement is contingent upon Buyer conducting a geotechnical investigation of the property to determine construction suitability for a proposed wastewater treatment facility. In order to cause no impact to the Seller's current farming operations, this investigation will be deferred until fall in 2023. Upon completion of the geotechnical study, if the Buyer determines that the property is a suitable location for the proposed wastewater treatment facility, this contingency shall be met.

All costs incurred in the sale and conveyance of the subject property will be paid for by the Buyer.

The Buyer and Seller agree that the Seller shall retain mineral rights to the property to the extent that Seller's exercise of such mineral rights does not adversely affect the Buyer's intended use and occupation of the property.

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The Buyer agrees that in the event the property is no longer needed for the purpose of conveying and treating wastewater and Buyer receives a bone fide offer from any person, persons, organization, or organizations to purchase in whole or in part, the property described herein, the Buyer shall send a copy of that proposed contract to Seller and notify Seller of Buyer's intent to accept the terms of the proposal. The Seller shall have 14 calendar days from the date of notification to accept the terms of said Contract in writing and within 30 calendar days thereafter to purchase the herein described land.

In the event the property is no longer needed for the purpose of conveying and treating wastewater, Seller shall have the right at that time to demand that Buyer sell the real estate back to Seller at the then appraised fair market value as established by an appraisal from an appraiser selected by Buyer. If Seller enforces this provision upon meeting the above condition and notifies Buyer in writing of its demand, Seller shall sell and Buyer shall purchase the land back at the appraised value within 30 calendar days of Seller's written notification to Buyer.

4. INSPECTION OF PREMISES.

Buyer acknowledges that he had the opportunity, subject to performing any above reserved inspections, to inspect the premises and that he has availed himself of that opportunity to the extent he desires. With respect to the property's condition, value, character, size and improvements and fixtures, if any, Buyer is relying solely upon such inspection and agrees that he is purchasing the property in its present "as is" condition. There are no express or implied representations or warranties by the Seller as to physical conditions, quality of construction, workmanship, or fitness for any particular purpose.

6. CLOSING.

Closing shall take place within 45 days of determination of site acceptance as demonstrated by a resolution authorized by the Seller and be held at Ohio Real Title, 112 E. 4th street, Dover, Ohio. Closing shall be defined as the date of recording of the deed conveyance.

7. POSSESSION.

Buyer shall be given possession of the property at closing. Closing shall be defined as the date of the deed recording.

8. REAL ESTATE TAXES.

Taxes and assessments shall be prorated to the closing date, using the latest available

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rates and valuations.

10. TITLE.

The Seller agrees to give Buyer a good and sufficient Warranty Deed conveying marketable title to said property. The title examination and subsequent Owner's policy of title insurance shall be issued by Ohio Real Title. Said Warranty Deed shall be subject to all restrictions, easements, conditions, leases, reservations, and right of ways of public record, as well as, limitations and zoning ordinances, and taxes and assessments, both general and special not yet due and payable. Marketability of title shall be determined in accordance with the standards of title examination adopted by the Ohio State Bar Association. If this cannot be done, then, at the option of Buyer, all funds and documents shall be returned to the parties depositing them and this contract shall be null and void.

In the event legal description on the deed of transfer is red-stamped by the County Map Office requiring a new survey for future transfer, the Buyer will bear the cost of a new survey.

14. EXPENSES OF CLOSING.

Buyer shall bear all costs incurred in the sale and purchase of the property herein.

15. BROKER.

Each of the parties hereto agree that no broker was involved in this transaction and each agrees to save the other harmless from any claim for broker's fees from any broker claiming through them.

16. ASSIGNMENT.

This Agreement shall be binding on the respective heirs, executors, administrators, successors, and to the extent assignable, on the assigns or nominees of the parties hereto, provided Buyer shall not transfer or assign this Agreement without first having obtained the expressed written consent of Seller.

17. DEFAULT.

Should Buyer fail to consummate the purchase of said property, and Seller not being in default hereunder, Seller may:

- A. Bring suit for damages against Buyer; and/or
- B. Retain the downpayment; and/or

- C. Bring suit for specific performance.

18. OHIO LAW.

This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

19. DESCRIPTIVE HEADINGS AND PRONOUNS.

The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections which precede or follow them, and have no effect whatsoever in determining the rights or obligations of the parties.

The pronoun "he" is intended to be gender neutral and to cover both singular and plural uses.

20. SOLE AGREEMENT.

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the aforesaid subject matter.

21. LEGAL REPRESENTATION.

Buyer acknowledges Attorney _____ represents the Seller and does not represent the interests of the Buyer. Buyer acknowledging having received a copy of this Agreement prior to signing and have had opportunity to have this Agreement reviewed by counsel of their choice.

Buyers Initials: _____

[The rest of this page is left intentionally blank]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunder set their hands this _____ day of _____, _____.

SELLER:

Jan R. Quilley

BUYER:

Chris Abbuhl

Chris Abbuhl

*This instrument prepared by:
Attorney
Fitzpatrick, Zimmerman & Rose Co., LPA
New Philadelphia, OH 44663*

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

RESOLUTION (788-2023) RECESS

It was moved by Commissioner Ress, seconded by Commissioner Zemis to recess at 9:22 a.m., for the purpose of the Guardianship Services bid opening.

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

Commissioner Abbuhl called the meeting out of recess at 9:30 a.m. and back into Regular Session for the purpose of the Guardianship Services bid opening.

RESOLUTION (789-2023) ADVISEMENT - BIDS- GUARDIANSHIP SERVICES - JUVENILE/PROBATE COURT

It was moved by Commissioner Zemis, seconded by Commissioner Ress, to take the following bids under advisement as read aloud by Juvenile/Probate Court Andrea Arnold:

GUARDIANSHIP SERVICES

TUSCARAWAS COUNTY

BID TABULATION

September 13, 2023 @ 9:30 a.m.

BIDDER	SERVICES PRICE
Ohio Network for Innovation	\$179,750.00


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

RESOLUTION (790-2023) ADJOURN

It was moved by Commissioner Ress, seconded by Commissioner Zemis, to adjourn at 9:32 a.m. to meet in Regular session Monday, the 18th day of September, 2023.

VOTE: Chris Abbuhl, yes;
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.


Chris Abbuhl


Kristin Zemis


Greg Ress


Attest: Rhonda Jordan, Clerk