

AGENDA

City Commission Meeting

Monday, August 10, 2009
City Commission Chambers
City Hall, 222 Meigs Street
5:00 p.m.

Invocation – Pledge of Allegiance
Meeting – Called to Order
Roll Call – DK, JF, CS, BF, PB, BW, DW
Minutes – July 20th and July 27th

CHARTER OFFICERS

Matthew Kline, City Manager
Don Icsman, Law Director
Edward Widman, Finance Director
B. Joyce Brown, Clerk of the City Commission

ADMINISTRATIVE STAFF

John Hancock, Engineering Director
Mike Meinzer, Fire Chief
Charlie Sams, Interim Police Chief
Scott Schell, Economic Development Specialist
Carrie Handy, Chief Planner

Audience Participation – Agenda Items Listed Below Only (3-minute limit)

PROCLAMATION – “SANDUSKY FIREFIGHTER APPRECIATION MONTH”

PROCLAMATION – TIM BELDEN – MILLS CREEK CLUB CHAMPION

NEW BUSINESS

ITEM #1 – Carrie R. Handy, Chief Planner

BUDGETARY INFORMATION: The total cost for the annual support fee is \$12,200.00 and will be paid with General Funds from the Sandusky Transit System budget. There will be no impact on the City's General Fund.

ORDINANCE NO. _____ Payment to Trapeze Software Group, Inc. of Dallas, Texas, for the Annual Software Support and Maintenance Fee for the period 7/1/2009 through 6/30/2010. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #2 – Jane E. Cullen, Engineering Technician

BUDGETARY INFORMATION: The revised project cost based on bids, including engineering, inspection, advertising and miscellaneous expenses is \$272,683.00 The City is responsible for the entire project cost and it will be paid with the City's Water Fund.

ORDINANCE NO. _____ Award a contract to Speer Bros. Inc. of Sandusky, Ohio, for the Buchanan Street and Hayes Avenue Waterline Project. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #3 – Kathryn K. McKillips, Deputy Engineer

BUDGETARY INFORMATION: The total estimated project cost including miscellaneous expenses is \$56,990.00 and will be paid with CDBG Funds.

RESOLUTION NO. _____ Proceed with the Demolition of 727 Meigs Street, 1217 Ransom Street, 1802 Putnam Street, 228 Cable Street, 617 & 619 Taylor Street and 617 E. Market Street (house only), Sandusky, Ohio; approving the specifications and engineer's estimate of cost thereof; and directing the City Manager to advertise for and receive bids in relation thereto. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #4 – Kathryn K. McKillips, Deputy Engineer

BUDGETARY INFORMATION: The project cost based on bids, including inspection, advertising and miscellaneous costs is \$198,873.00. ODNR Recreational Trail Program will fund \$113,500.00 with the City's 2009 CDBG Funds picking up the balance of \$85,373.00.

ORDINANCE NO. _____ Award a contract to Herbst Excavating, LLC, of Sandusky, Ohio, for the Sandusky Bay Pathway – Shelby to Mills Street Project. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ITEM #5 – Kathryn K. McKillips, Deputy Engineer

BUDGETARY INFORMATION: The total project cost including engineering, inspection, advertising and miscellaneous costs is \$7,422,350.00. The City will apply for an Ohio Water Development Authority Loan, to be paid back with Water Funds.

RESOLUTION NO. _____ Proceed with the Big Island Water Works (BIWW) Chemical Improvement Project; approving the specifications and engineer’s estimate of cost thereof; and directing the City Manager to advertise for and receive bids in relation thereto. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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ITEM #6 – Kathryn K. McKillips, Deputy Engineer

BUDGETARY INFORMATION: The cost for the Construction Administrative Services is \$598,000.00. The City will apply for an Ohio Water Development Authority Loan for the cost of the project, to be paid back with Water Funds.

ORDINANCE NO. _____ Enter into an agreement for Professional Design/Engineering Services with MWH Americas, Inc. for the Big Island Water Works (BIWW) Chemical Improvement Project. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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City Manager’s Report

Old Business

New Business

Audience Participation – open discussion on any item (5-minute limit)

Executive Session

Adjournment

TO: Matthew D. Kline, City Manager

FROM: Carrie R. Handy, Chief Planner
Department of Planning, Engineering and Development

DATE: August 3, 2009

SUBJECT: Trapeze Software Yearly Support Fee

ITEM FOR CONSIDERATION: It is requested that an Ordinance be approved authorizing payment to Trapeze Software for the annual support fee for the period 7/01/2009 through 6/30/2010 in the amount of \$12,200.00.

BACKGROUND INFORMATION: The City purchased Trapeze Software for the Sandusky Transit System program in 2000. This software aids the STS dispatchers in scheduling trips and keeps all of the statistics used for STS reporting for the Federal Transit Administration, ODOT, and the National Transit Database. It also tracks trips for local agencies' clients so that STS personnel can complete monthly agency billings for transportation services provided. The Commission may recall that STS discontinued use of Trapeze for approximately three years (2005-2007) and an ordinance was passed in August of 2007 which renewed the City's contract with Trapeze. This contract contained language obligating the City to pay an annual maintenance fee for the software.

Trapeze Software provides 24-hour-a-day, 7-day-a-week support service for the transit system. They also provide periodic updates to the system. These services are all covered by the yearly maintenance fee.

BUDGETARY INFORMATION: The total cost for the annual support fee is \$12,200.00 and will be paid with funds from the Sandusky Transit System budget. There will be no impact on the City's General Fund.

ACTION REQUESTED: It is requested legislation be approved authorizing payment in the amount of \$12,200.00 to Trapeze Software for the annual support fee for the period 7/1/2009 through 6/30/2010. It is also requested that the legislation be passed under the suspension of the rules in accordance with Section 14 of the City Charter to allow payment to be made as soon as possible.

Carrie R. Handy, Chief Planner

I concur with this recommendation:

Matthew D. Kline
City Manager

John Hancock
Department of Planning, Engineering, &
Development

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING PAYMENT TO TRAPEZE SOFTWARE GROUP, INC., OF DALLAS, TEXAS FOR THE ANNUAL SOFTWARE SUPPORT AND MAINTENANCE FEE FOR THE PERIOD 7/1/2009 THROUGH 6/30/2010; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City purchased Trapeze software in 2000 that was utilized by the Sandusky Transit System program until it was discontinued in 2005; and

WHEREAS, in 2007, City staff recommended the reinstatement of the Trapeze software and this City Commission approved an amendment to the software license and maintenance agreements with Trapeze for use by the Sandusky Transit System by Ordinance No. 07-473, passed on August 13, 2007, which included an annual software support and maintenance fee; and

WHEREAS, this software assists STS dispatchers in scheduling trips and maintains statistical information used for STS reporting to the Federal Transit Administration, Ohio Department of Transportation and the National Transit Database, along with tracking local agencies' clients which assists STS personnel to complete monthly agency billings for transportation services; and

WHEREAS, Trapeze Software Group provides a 24-hour-a-day, 7-day-a-week support service and periodic system updates as part of the services included in the annual software support and maintenance agreement; and

WHEREAS, the cost for the annual software support and maintenance fee for the period 7/1/2009 through 6/30/2010 is \$12,200.00 and will be paid with funds from the Sandusky Transit System's budget; and

WHEREAS, this legislation should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter to allow payment to be made to Trapeze Software Group, Inc. as soon as possible as the service period began July 1, 2009; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission hereby authorizes and directs the City Manager and/or Finance Director to make payment to Trapeze Software Group, Inc., of Dallas, Texas in an amount **not to exceed** Twelve Thousand Two Hundred and 00/100 Dollars (\$12,200.00) for the annual software support and maintenance fee for the period 7/1/2009 through 6/30/2010.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such

portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

To: Matthew D. Kline, City Manager
From: Jane E. Cullen, Engineering Technician
Date: July 29, 2009
Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: An ordinance awarding contract to Speer Bros., Inc., Sandusky, Ohio for the Buchanan Street and Hayes Avenue Waterline Project. This project will replace the existing 6" watermain in Hayes Avenue with a new 12" watermain from Pierce Street to Buchanan Street. The project will also install a new 12" watermain in Buchanan Street, east and west of Hayes Avenue. The existing watermains in Buchanan Street currently do not extend all the way to Hayes Avenue. This new watermain will improve water pressure for the surrounding area.

The following four (4) bids were received on July 28, 2009:

Speer Bros., Inc.	Sandusky, Ohio	\$229,145.50
Schirmer Construction	North Olmsted, Ohio	\$240,484.00
Ed Burdue & Company	Sandusky, Ohio	\$267,818.35
2D Construction	Vermilion, Ohio	\$278,887.96

The bid from Speer Bros., Inc. was determined to be the lowest and best bid.

BUDGETARY INFORMATION: The revised project cost based on bids, including engineering, inspection, advertising and miscellaneous expenses is \$272,683.00. The City is responsible for the entire project cost and it will be paid with the City's Water Fund.

ACTION REQUESTED: It is recommended that the Ordinance awarding contract to Speer Bros., of Sandusky, Ohio for the Buchanan Street and Hayes Avenue Waterline Project in the amount of \$229,145.50 be approved. It is requested that the legislation be passed under suspension of the rules and in accordance with Section 14 of the City Charter thereby allowing the contractor sufficient time to complete this project by the October 30, 2009 completion deadline.

Jane E. Cullen
Engineering Technician

I concur with this recommendation:

Matthew D. Kline
City Manager

Kathryn K. McKillips, P.E.
Deputy Engineer

/jec

cc: Edward Widman, Finance Director
Joyce B. Brown, Commission Clerk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO AWARD A CONTRACT TO SPEER BROS., INC., OF SANDUSKY, OHIO, FOR THE BUCHANAN STREET AND HAYES AVENUE WATERLINE PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission authorized the City Manager to enter into a contract for Professional Design Services with John Hancock & Associates for the proposed Buchanan Street and Hayes Avenue Waterline Project by the passage of Ordinance No. 08-118, passed on November 10, 2008; and

WHEREAS, this City Commission declared the necessity for the City to proceed with the Buchanan Street and Hayes Avenue Waterline Project by Resolution No. 011-09R passed on June 22, 2009; and

WHEREAS, this project involves replacing the 6" watermain in Hayes Avenue with a new 12" watermain from Pierce Street to Buchanan Street and the installation of a new 12" watermain in Buchanan Street, east and west of Hayes Avenue, which will improve water pressure for the surrounding area and is part of the City's master waterline looping plan to connect dead-end waterlines; and

WHEREAS, upon public competitive bidding as required by law four (4) appropriate bids were received and the bid from Speer Bros., Inc., of Sandusky, Ohio, was determined to be the lowest and best bid; and

WHEREAS, the revised project cost based on bids, including engineering, inspection, advertising and miscellaneous costs is \$272,683.00 and will be paid with Water Funds; and

WHEREAS, this legislation should be passed under suspension of the rules in accordance with Section 14 of the City Charter in order to allow the contractor sufficient time to complete the project by the October 30, 2009, completion deadline; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Division of Engineering of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a contract with Speer Bros., Inc., of Sandusky, Ohio, for the Buchanan Street and Hayes Avenue Waterline Project in an amount **not to exceed** Two Hundred Twenty Nine Thousand One Hundred Forty Five and 50/100 Dollars (\$229,145.50) consistent with the bid submitted by Speer Bros., Inc., of Sandusky, Ohio, currently on file in the office of the Deputy City Engineer of the Division of Engineering

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such

portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

TO: Matthew D. Kline, City Manager
FROM: Kathryn K. McKillips, P.E., Engineer
DATE: July 27, 2009
SUBJECT: Commission Agenda Item

ITEM FOR CONSIDERATION: Proposed Demolition of 727 Meigs Street, 1217 Ransom Street, 1802 Putnam Street, 228 Cable Street, 617 & 619 Taylor Street and 617 E. Market Street (house only). Four of the houses were ordered to be demolished by the City of Sandusky because they are vacant and dilapidated properties. The other three properties were authorized by the property owner to proceed with demolition.

228 Cable Street was ordered to be demolished at the March 24, 2009 Housing Board of Appeals meeting. 1217 Ransom Street was ordered to be demolished at the November 18, 2008 Housing Board of Appeals meeting. 1802 Putnam Street was ordered to be demolished at the October 21, 2008 Housing Board of Appeals meeting. 727 Meigs Street was ordered to be demolished at the January 20, 2009 Housing Board of Appeals meeting. The property owners of 617 and 619 Taylor Street and 617 E. Market Street signed Authorization and Release forms to have the houses demolished. All properties cleared historic preservation reviews by June 1, 2009.

BUDGETARY INFORMATION: The total estimated project cost including miscellaneous expenses is \$ 56,990.00 and will be paid with CDBG Funds.

ACTION REQUESTED: It is recommended that the City Commission approve a Resolution of Necessity. It is requested that this Resolution take effect immediately in accordance with Section 14 of the City Charter so that competitive bids can be obtained as soon as possible in order to move forward with the project and eliminate potential hazards from our neighborhoods.

John Hancock
Director of PED

I concur with this recommendation:

Matthew D. Kline
City Manager

KKM/cal

cc: Don Icsman, Law Director
Ed Widman, Finance Director
Joyce Brown, Clerk of City Commission

RESOLUTION NO. _____

A RESOLUTION DECLARING THE NECESSITY FOR THE CITY OF SANDUSKY, OHIO, TO PROCEED WITH THE DEMOLITION OF 727 MEIGS STREET, 1217 RANSOM STREET, 1802 PUTNAM STREET, 228 CABLE STREET, 617 AND 619 TAYLOR STREET AND 617 E. MARKET STREET (HOUSE ONLY), SANDUSKY, OHIO; APPROVING THE SPECIFICATIONS AND ENGINEER'S ESTIMATE OF COST THEREOF; AND DIRECTING THE CITY MANAGER TO ADVERTISE FOR AND RECEIVE BIDS IN RELATION THERETO; AND DECLARING THAT THIS RESOLUTION SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this project will provide for the demolition of the following properties located in Sandusky, Ohio, that were ordered to be demolished by the Housing Appeals Board: 1802 Putnam Street, ordered on October 21, 2008; 1217 Ransom Street, ordered on November 18, 2008; 727 Meigs Street ordered on January 20, 2009; 228 Cable Street, ordered on March 24, 2009; and

WHEREAS, this project will also provide for the demolition of 617 and 619 Taylor Street and 617 E. Market Street (house only), Sandusky, Ohio, in which consent forms were signed by the property owners; and

WHEREAS, all properties cleared historic preservation reviews by June 1, 2009; and

WHEREAS, the total estimated cost of the project including miscellaneous expenses is \$56,990.00 and will be paid with Community Development Block Grant (CDBG) funds; and

WHEREAS, this legislation should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to obtain competitive bids, award a contract and move forward with this project and eliminate potential hazards from City neighborhoods; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments, including the Division of Engineering of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Resolution** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The specifications and estimates of cost as prepared by the Director of Planning, Engineering and Development of the City of Sandusky, Ohio, and submitted to this City Commission, and which are now on file with the Clerk of this City Commission, and in the office of the Director of Planning, Engineering and Development, for the proposed demolition of the structures located at 727 Meigs Street, 1217 Ransom Street, 1802 Putnam Street, 228 Cable Street, 617 and 619 Taylor Street and 617 E. Market Street (house only), Sandusky, Ohio, be and the same are hereby approved by this City Commission.

Section 2. This City Commission hereby declares it necessary to proceed with

said demolitions at the earliest possible time.

Section 3. The City Manager of the City of Sandusky, Ohio, be and hereby is authorized and directed to advertise for and to receive bids in relation to said demolitions as required by law.

Section 4. If any section, phrase, sentence, or portion of this Resolution is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Resolution were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. That for the reasons set forth in the preamble hereto, this Resolution is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

To: Matthew D. Kline. City Manager
From: Kathryn K. McKillips
Date: July 28, 2009
Subject: Commission Agenda Item

Item for Consideration: Ordinance awarding a construction contract to Herbst Excavating LLC, Sandusky, Ohio, for the Sandusky Bay Pathway-Shelby to Mills Street. This is the third phase to construct a multi-use path along the waterfront through Sandusky. This project will consist of areas of concrete, asphalt, and striping beginning at Shelby Street, through the boat launch facility and ending at Mills Street. This 0.64 mile path will complete a segment of the Sandusky Bay Pathway which already has an existing 1.6 mile path along the waterfront from the City Building to the Jackson Street Pier. This project is a part of the Bayfront Corridor Concept to open the public areas to pedestrians and bicyclists alike. An ODNR Recreational Trail grant was applied for and approved in the amount of \$113,500.00.

Four bids were received on June 18, 2009; however, three bid forms contained errors that caused the base bid totals to increase. With this project having limited funds through the ODNR Grant and CDBG, it was decided that the City should exercise its right to reject all bids and provide another opportunity for the bidders to submit correct bids and possibly save the City funds in doing so. All four bids were rejected and the project re-bid. (The City saved \$13,078.55 by re-bidding the project)

The following two bids were received on July 21, 2009:

Herbst Excavating LLC Sandusky, Ohio	\$183,873.00 100% Bid Bond
A Bonamase Contracting Boardman, Ohio	\$193,488.25 100% Bid Bond

Budgetary Information: The project cost based on bids, including inspection, advertising and miscellaneous costs is \$198,873.00. ODNR Recreational Trail Program will fund \$113,500.00 with the City's 2009 CDBG funds picking up the balance of \$85,373.00.

Action Requested: It is requested that the Ordinance awarding the construction contract to Herbst Excavating LLC, Sandusky, Ohio, in the amount of **\$183,873.00** be approved and that it be passed in full accordance with Section 14 of the City Charter in order to proceed with executing the contract and scheduling the work. The work must be completed by December 31, 2009 to meet the requirements of the ODNR grant.

I concur with this recommendation:

Matthew D. Kline
City Manager

John Hancock, P.E., P.S.
Director of PED

/cal

cc: Edward Widman, Finance Director
Joyce B. Brown, Commission Clerk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO AWARD A CONTRACT TO HERBST EXCAVATING, LLC, OF SANDUSKY, OHIO, FOR THE SANDUSKY BAY PATHWAY - SHELBY TO MILLS STREET PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission declared the necessity for the City to proceed with the Sandusky Bay Pathway - Shelby to Mills Street Project by Resolution No. 010-09R passed on May 26, 2009; and

WHEREAS, the Sandusky Bay Pathway - Shelby to Mills Street Project is the third phase to construct a multi-use path along the waterfront through Sandusky and will consist of areas of concrete, asphalt and striping beginning at Shelby Street through the boat launch facility and ending at Mills Street; and

WHEREAS, the Sandusky Bay Pathway currently consists of a 1.6 mile path along the waterfront from the City Building to the Jackson Street Pier and this project will complete an additional 0.64 mile path extending from Shelby Street to Mills Street; and

WHEREAS, this project is part of the Bayfront Corridor Concept to make public areas available to pedestrians and bicyclists; and

WHEREAS, subsequent to advertisement according to law four (4) bids were opened on June 18, 2009, which three (3) bid forms contained errors causing the base bid totals to increase and the City exercised its right to reject all four (4) bids and the project was rebid; and

WHEREAS, upon public competitive bidding as required by law two (2) appropriate bids were received and the bid from Herbst Excavating LLC, of Sandusky, Ohio, was determined to be the lowest and best bid; and

WHEREAS, the total cost of the project based on bids, including inspection, advertising and miscellaneous costs is \$198,873.00 with the ODNR Recreational Trail Program grant providing \$113,500.00 and the City's 2009 Community Development Block Grant (CDBG) funding the remaining balance of \$85,373.00; and

WHEREAS, this legislation should be passed under suspension of the rules in accordance with Section 14 of the City Charter to allow the contract to be executed and the work scheduled in order to complete the project by December 31, 2009, which is a requirement of the ODNR grant; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Division of Engineering of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a contract with Herbst Excavating, LLC, of Sandusky, Ohio, for the Sandusky Bay Pathway - Shelby to Mills Street Project in an amount **not to exceed** One Hundred Eighty Three Thousand Eight Hundred Seventy Three and 00/100 Dollars (\$183,873.00) consistent

with the bid submitted by Herbst Excavating LLC, of Sandusky, Ohio, currently on file in the office of the Director of Planning, Engineering & Development.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

**CITY OF SANDUSKY
DIVISION OF ENGINEERING, DESIGN CONSTRUCTION
BID FORM**

LINE ITEM NO.	DESCRIPTION	QUANTITY	UNIT	A Bonamase Contracting Boardman, OH	Herbst Excavating Sandusky, OH	
Site Preparation						
1	201 Clearing & Grubbing	1	1	\$ 3,000.00	\$ 2,349.00	ls
				\$ 3,000.00	\$ 2,349.00	
2	202 Relocate Utility Pole	1	1	\$ 600.00	\$ 1,000.00	ea
				\$ 600.00	\$ 1,000.00	
3	202 Relocate Bike Rack	1	1	\$ 100.00	\$ 500.00	ea
				\$ 100.00	\$ 500.00	
4	202 Relocate Sign	3	3	\$ 100.00	\$ 250.00	ea
				\$ 300.00	\$ 750.00	
5	202 Remove Phone Booth	1	1	\$ 75.00	\$ 200.00	ea
				\$ 75.00	\$ 200.00	
6	202 Remove Pavement Hatching	1	1	\$ 350.00	\$ 500.00	ea
				\$ 350.00	\$ 500.00	
7	202 Asphalt Pavement Removal	419	419	\$ 7.00	\$ 4.00	sy
				\$ 2,933.00	\$ 1,676.00	
8	202 Concrete Walk & Pad Removals	2,697	2697	\$ 1.00	\$ 2.00	sf
				\$ 2,697.00	\$ 5,394.00	
9	202 Concrete Curb Removal	156	156	\$ 3.00	\$ 2.00	lf
				\$ 468.00	\$ 312.00	
10	202 Remove Fence & Gates	657	657	\$ 1.25	\$ 4.00	lf
				\$ 821.25	\$ 2,628.00	
11	630 Traffic Sign and Sign Support	4	4	\$ 200.00	\$ 300.00	ea
				\$ 800.00	\$ 1,200.00	
12	607 6' High Chain Link Fence w/ Barbed W	452	452	\$ 20.00	\$ 16.00	lf
				\$ 9,040.00	\$ 7,232.00	
13	614 Maintaining Traffic	1	1	\$ 1,500.00	\$ 2,500.00	ls
				\$ 1,500.00	\$ 2,500.00	

**CITY OF SANDUSKY
DIVISION OF ENGINEERING, DESIGN CONSTRUCTION
BID FORM**

14	misc	Removable Bollard	1	1	\$ 400.00	\$ 500.00	ea
					\$ 400.00	\$ 500.00	
		Asphalt Pavement					
15	204	Subgrade Compaction	389	389	\$ 1.00	\$ 2.00	sy
					\$ 389.00	\$ 778.00	
16	304	8" Aggregate Base (2-4" Courses)	86	86	\$ 35.00	\$ 34.00	cy
					\$ 3,010.00	\$ 2,924.00	
17	407	Tack Coat (0.15 gal/sy)	389	389	\$ 2.00	\$ 1.00	sy
					\$ 778.00	\$ 389.00	
18	408	Prime Coat (0.40 gal/sy)	389	389	\$ 2.00	\$ 1.00	sy
					\$ 778.00	\$ 389.00	
19	448	Asphalt Surface Course 1-1/2"	16	16	\$ 200.00	\$ 216.00	cy
					\$ 3,200.00	\$ 3,456.00	
20	448	Asphalt Intermediate Course 2-1/2"	27	27	\$ 210.00	\$ 203.00	cy
					\$ 5,670.00	\$ 5,481.00	
21	609	Type 6 Concrete Curb	249	249	\$ 11.00	\$ 12.00	lf
					\$ 2,739.00	\$ 2,988.00	
		Concrete Pavement			\$ -	\$ -	
22	203	Compacted Embankment Shoulder	205	205	\$ 16.00	\$ 28.00	cy
					\$ 3,280.00	\$ 5,740.00	
23	204	Subgrade Compaction	3,423	3423	\$ 1.00	\$ 1.00	sy
					\$ 3,423.00	\$ 3,423.00	
24	608	6" Concrete Pathway (5' wide)	1,471	1471	\$ 3.40	\$ 3.00	sf
					\$ 5,001.40	\$ 4,413.00	
25	608	6" Concrete Pathway (10' wide)	27,604	27604	\$ 3.40	\$ 3.00	sf
					\$ 93,853.60	\$ 82,812.00	
26	411	3" Stabilized Crushed Aggregate	285	285	\$ 35.00	\$ 30.00	cy
					\$ 9,975.00	\$ 8,550.00	
27	653	Topsoil Furnished and Placed	272	272	\$ 23.00	\$ 20.00	cy
					\$ 6,256.00	\$ 5,440.00	
28	659	Seeding and Mulching, Class 1	3,109	3109	\$ 1.00	\$ 1.00	sy

**CITY OF SANDUSKY
DIVISION OF ENGINEERING, DESIGN CONSTRUCTION
BID FORM**

				\$	3,109.00	\$	3,109.00		
29	640	Pavement markings	1	1	\$	3,500.00	\$	500.00	ls
				\$	3,500.00	\$	500.00		
30	Misc.	Truncated Domes	3	3	\$	300.00	\$	300.00	ea
				\$	900.00	\$	900.00		
		Storm Sewer							
31	604	Catch Basin (City Std. Type 3)	2	2	\$	1,400.00	\$	1,400.00	ea
				\$	2,800.00	\$	2,800.00		
32	207	Geotextile Inlet Protection	2	2	\$	150.00	\$	120.00	ea
				\$	300.00	\$	240.00		
33	603	6" STORM SEWER 707.45	61	61	\$	15.00	\$	22.00	lf
				\$	915.00	\$	1,342.00		
34	603	8" STORM SEWER 707.45	133	133	\$	19.00	\$	26.00	lf
				\$	2,527.00	\$	3,458.00		
35	Misc.	Contingency	1	1	\$	18,000.00	\$	18,000.00	LS
				\$	18,000.00	\$	18,000.00		
		TOTAL			\$	193,488.25	\$	183,873.00	
		BOND				100%		100%	

To: Matthew D. Kline, City Manager
From: Kathryn K. McKillips, P.E., Engineer
Date: July 29, 2009
Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: Resolution of Necessity for the Big Island Waterworks Chemical Improvement Project.

On July 23, 2007, the City Commission passed an ordinance, No. 07-044 to enter into an agreement to have the chemical processes at BIWW studied by MWH (preliminary design). Final Design, was performed under Ordinance No. 08-075. Ordinance No. 09-043 amended the design scope by adding additional tasks. An agreement with MWH to provide bidding and construction administration services for the project is being requested through companion legislation. BIWW staff has worked diligently with the design firm to complete the final design task. The final plans and specifications are complete. The complete bid packet has a construction estimate of \$5,920,000.00. This estimate also includes \$270,000.00 in allowances spread among each trade contract. The bid form is designed to allow the City to choose which tasks to complete through this project. The six tasks included in this project that will be listed separately on the bid form include the following:

- Chemical System
 - Sodium Hypochlorite
 - Sodium Permanganate
 - Alum System
 - Caustic
 - Hydrofluoric Acid
 - New Chemical Building and appurtenances
- Lagoon Effluent Pumping System
 - Connect settling ponds to sanitary sewer
- Pre-Sedimentation Tank Improvements
 - Cleaning of tanks
 - New Coating system
 - Rehabilitate troughs, rake arms, walls, floors, drives
- Access Roadway and Parking
 - Access road around filter building

- New parking area by Pre-sedimentation Building
- Sluice Gate Replacement
- Security
 - New fencing east side of filter building
 - Cages around clearwell overflows

Once bids are opened, the City can decide to move forward with part of the project or with the whole project based on the bid prices.

BUGETARY INFORMATION: The total project cost including engineering, inspection, advertising, and miscellaneous costs is \$7,422,350.00. The City will apply for an Ohio Water Development Authority loan, to be paid back with Water Funds.

ACTION REQUESTED: It is requested that a Resolution of Necessity be approved for the Big Island Waterworks Chemical Improvement Project and that the necessary legislation be passed under suspension of the rules and in accordance with Section 14 of the City Charter in order to bid the project and award a contract in order for the contractor to be able to begin work during the low demand season (winter). This project will take 547 days to complete, so getting the upcoming winter season included in the timeline is critical.

John Hancock, P.E., P.S.
Director of PED

I concur with this recommendation:

Matthew D. Kline
City Manager

cc: Don Icsman, Law Director
Joyce Brown, Clerk of City Commission
Ed Widman, Finance Director

RESOLUTION NO. _____

A RESOLUTION DECLARING THE NECESSITY FOR THE CITY OF SANDUSKY, OHIO, TO PROCEED WITH THE BIG ISLAND WATER WORKS (BIWW) CHEMICAL IMPROVEMENT PROJECT; APPROVING THE SPECIFICATIONS AND ENGINEER'S ESTIMATE OF COST THEREOF; AND DIRECTING THE CITY MANAGER TO ADVERTISE FOR AND RECEIVE BIDS IN RELATION THERETO; AND DECLARING THAT THIS RESOLUTION SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission authorized the City Manager to enter into an agreement with MWH Americas, Inc., for Professional Design Services for the Big Island Water Works (BIWW) Chemical Improvement Project by Ordinance No. 07-044, passed on July 23, 2007, and subsequently authorized the City Manager to enter into an Amendment to the Agreement to perform the final design, based upon the preliminary design and a recommendation to proceed with the chemical processes, by Ordinance No. 08-075, passed on August 25, 2008; and

WHEREAS, this City Commission authorized the execution of a Second Amendment to the Agreement for the addition of three new tasks, reallocating funds from the Alternative Energy Design, by the passage of Ordinance No. 09-043, passed on May 26, 2009; and

WHEREAS, in companion legislation this City Commission is being asked to approve an agreement with MWH Americas, Inc., for Professional Design / Engineering Services to perform bidding, construction administration, resident project representation and project closeout services; and

WHEREAS, this proposed project involves the following six tasks:

- Chemical System
 - Sodium Hypochlorite
 - Sodium Permanganate
 - Alum System
 - Caustic
 - Hydrofluoric Acid
 - New Chemical Building and appurtenances
- Lagoon Effluent Pumping System
 - Connect settling ponds to sanitary sewer
- Pre-Sedimentation Tank Improvements
 - Cleaning of tanks
 - New Coating system
 - Rehabilitate troughs, rake arms, walls, floors, drives
- Access Roadway and Parking
 - Access road around filter building
 - New parking area by Pre-sedimentation Building
- Sluice Gate Replacement
- Security
 - New fencing east side of filter building
 - Cages around clearwell overflows

; and

WHEREAS, the proposed six tasks will be listed separately on the bid form which will allow the City to make a determination to move forward with the complete project (all six tasks) or selected tasks of the project based on the bid prices; and

WHEREAS, the total estimated cost for this project including engineering, inspection, advertising and miscellaneous expenses is \$7,422,350.00, which the City will be applying for an Ohio Water Development Authority (OWDA) loan that will be paid back with Water Funds; and

WHEREAS, this legislation should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to

obtain competitive bids, award a contract and allow the contractor to begin work during the low demand winter season which is critical to the timeline of this project; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Division of Engineering of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Resolution** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The specifications and estimates of cost as prepared by the Director of Planning, Engineering and Development and submitted to this City Commission, and which are now on file with the Clerk of the City Commission, and the office of the Director of Planning, Engineering and Development, for the Big Island Water Works (BIWW) Chemical Improvement Project, be and the same are hereby approved by this City Commission.

Section 2. This City Commission hereby declares it necessary to proceed with the Big Island Water Works (BIWW) Chemical Improvement Project at the earliest possible time.

Section 3. The City Manager is authorized and directed to advertise for and to receive bids in relation to the Big Island Water Works (BIWW) Chemical Improvement Project as required by law.

Section 4. If any section, phrase, sentence, or portion of this Resolution is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Resolution were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. That for the reasons set forth in the preamble hereto, this Resolution is

hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

Attachment A

PROJECT DEFINITION AND SCOPE FOR CONSTRUCTION ADMINISTRATIVE SERVICES

SANDUSKY, OHIO Big Island Water Works Chemical Improvement Project

MWH Americas, Inc.

INTRODUCTION

This document summarizes MWH's proposed Scope of Work for Engineering Services during Bidding and Construction of the Sandusky Ohio Big Island Water Works Chemical Improvement Project.

PROJECT DESCRIPTION

In brief, the work includes the following:

1. Construction of a new Chemical Building.
2. Rehabilitation of an existing Chemical area.
3. Pre-sedimentation Basin improvements.
4. Site and roadwork.
5. Lagoon Effluent Pumping System.

SCHEDULE

The project is scheduled to advertise and bid in the 2th Quarter 2009 and start construction in 3rd Quarter 2009. Construction is scheduled to be complete in 18 months (early 2011). Below is a brief breakdown of the anticipated project schedule and total duration:

- Advertisement for Bids = 2 months
- Bid Review, Authorization to Award & Sign Contract = 1 months
- Notice to Proceed & Construction Period = 15 months
- Record Drawings and O&M Manual = 2 months
- Total duration of professional services = 20 months

SCOPE OF PROJECT

The scope of work for Construction Administration Services includes engineering services during both the bidding and construction phases of the project. MWH scope descriptions are Task 1- Bidding Phase, Task 2 – Construction Administration, Task 3 – Resident Project Representation, Task 4 – Project Closeout and are described as follows;

TASK 1 – Bidding

Estimated MWH level of effort for the Bidding Phase is based on the following subtasks.

- A. Electronic Files:** Furnish one electronic copy of the bid set of construction drawings and specifications. The files will include drawings in the latest version of AutoCad and specifications in Microsoft Word format written to CD. The CD will also include a copy of all drawings in PDF format.
- B. Printing:** Provide for printing up to 40 sets of contract documents (drawings and specs) for bidding purposes and for distribution to interested parties including regulatory and other interested agencies. With each set of contract documents, an unofficial half-size set will also be distributed for information.
- C. Pre-Bid Meeting:** Assist with one Pre-Bid Meeting. A record of the Pre-Bid Meeting will be included in an addendum to the bidding documents. A list of any significant questions and formal answers will be included in an addendum to the bidding documents.
- D. Addenda:** Prepare responses to bidder questions as forwarded by the City and assist in preparation and issuance of addenda during the bid phase. The estimated scope of services is based upon standard level of effort with up to twenty (20) questions and three (3) addenda.
- E. Bid Review:** Assist in analyzing up to six (6) bids and provide recommendations for award or rejection of bids.
- F. Pre-Award Meeting:** Prepare and participate in one Pre-Award Meeting. Prepare a draft questionnaire to be used for discussion at the meeting. Prepare minutes and distribute copies to all participants.
- G. Project Set-Up and Administration during Bid Period:** Prepare project files and other management documents as needed throughout the bid period. For the bidding and award phase of this project we estimate three (3) months of management / administration.

Task 2 - Construction Administration

Estimated MWH level of effort for the Construction Administration Phase is based upon the following subtasks.

- A. Pre-Construction Conference:** Participate in one Pre-Construction Conference. Prepare and distribute minutes to all participants.
- B. Update Documents (Posted Sets):** Update the Contract Documents to reflect revisions made during the addenda process. Provide for printing and distribution of

up to ten (10) sets of unofficial posted Contract Documents for distribution to the City, the Contractor and MWH.

C. Construction Submittals (Est up to 100 Submittals & 20 Resubmittals):

Review detailed construction shop drawings and other information submitted by the Contractor for compliance with the design concept and requirements of the Contract Documents; such data is to be recommended for approval, returned for revision, rejected, or distributed for information. Receive and review schedules, guarantees, bonds, and certificates of inspections that are provided by the Contractor in accordance with the Contract Documents. Construction submittals will be reviewed within a reasonable period commensurate with the detail of each submission.

MWH's review will not include the following:

- a) Variations from design requirements that are not conspicuously and specifically disclosed on the submittal.
- b) Contractor's means and methods.
- c) Design data shown on a submittal that is within the special expertise of the manufacturer / designer of that equipment, upon which MWH has a right to rely.
- d) Safety equipment, including but not limited to OSHA requirements and installation procedures.
- e) Approval for a given item will not constitute approval for an entire assembly of which the item forms a part.

D. Meetings: Attend the on-site monthly progress meetings over the project duration, anticipating up to eighteen (18) such meetings during periods of project start-up and active construction. Also attend special purpose meetings and address follow-up needs, estimating up to six (6) such meetings through the construction project.

E. Contract Document Interpretation: Furnish supplementary detailed working drawings, specifications and written instructions as may be necessary to interpret the Contract Documents and reply to Contractor questions. Estimated level of effort is based upon fifty (25) RFIs and similar coordination issues.

F. Change Orders / Work Orders: Prepare change order scope of work and drawing documents. Review and comment on change orders prepared for issue to the Contractor. Prepare an independent estimate of cost for the change order or review Contractor pricing for time and material cost proposals. Estimated level of effort is based upon four (4) change / work orders.

G. Claims: As required, review design and specification matters that are the subject of differing site condition or other claims. Estimated level of effort is based upon one (1) claim by the construction contractor.

H. Project Management: Provide project management and administrative services required to control and monitor project progress and budgets through the anticipated

duration of the construction contract (est. up to 15 months). Project management services will also extend for a period of up to 2 months beyond for project punchlist, final acceptance, closeout, record drawings and final O&M manual. Budgeted hours are based on seventeen (17) months of active project management beyond the bid and award period.

TASK 3 – RESIDENT PROJECT REPRESENTATION

Provide full-time Resident Project Representative (RPR) services during the estimated maximum nine (9) month construction duration and part time RPR services (50% effort) for a six (6) month period. RPR services encompass supervision of construction and will start on the date of Notice to Proceed. The following subtasks will be performed;

- A. Site Coordination:** The Engineer shall coordinate with Contractor to clarify the intent of the Contract Documents and details of the final construction product. The Engineer will provide coordination of construction activities with plant operations, including startup. The Engineer will provide direct input on the construction schedule and request for payment by the Contractor.

- B. Quality of Work:** The Engineer will provide oversight of the construction quality of work. If the Engineer becomes aware of defective work on the project, the Engineer will report the defective work to the City together with recommendations for corrective measures. The Contractor shall also be notified so defective work can be corrected.

- C. Progress and Records:** The Engineer shall record the progress of the Project and provide written reports to the City on a monthly basis. Such reports shall include, updated schedules, cash flow diagrams, process photographs, information on each Contractor's Work, as well as completion status on the Project showing percentages of completion and other reasonable information as may be occasionally requested by the City. The Engineer shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The Engineer shall keep records of all Contracts, Drawings, Specifications, Shop Drawings, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The Engineer shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor and any test results. Records will be made available to the Contractors and the City.

- D. Construction Schedule:** Based upon proposed schedules and information submitted by the Contractors, the Engineer shall compile the Construction Schedule and a schedule of submittals. The Engineer shall provide copies of the Construction Schedule and the schedule of submittals to the City. The Construction Schedule shall include a Critical Path for the Project. The Engineer shall require each Contractor to

provide records for any materials that require long lead-time and certify to the Engineer that such materials have been ordered for timely delivery to the Project. The Engineer shall periodically inform the City of updates of the Construction Schedule. If conditions indicate that milestone completion dates shown on the Construction Schedule may not be met, the Engineer shall recommend corrective action to the City and carry out the directions of the City so that the milestone completion dates may be met, unless the City agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Engineer shall prepare a revised Project Schedule and obtain the City's written approval.

- E. Tests and Inspections:** The Engineer shall advise and consult with the City during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project. The Engineer shall order any necessary special testing, inspections or approval of Work on the Project. The Engineer will arrange for reimbursement from the Contractor in case the Contractor is ultimately responsible to pay the costs of such testing, inspections or approval. The Engineer shall notify the City of the times for any scheduled special testing, inspections or approvals. The Engineer shall provide a written listing of all test types to be reasonably expected over the construction of the project, for use by the City in the writing of a Request for Proposal to secure independent testing services. The Engineer shall review the proposals for testing received by the City and provide a written recommendation on award.
- F. Project Costs:** The Engineer shall maintain cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis. The Engineer shall afford the City access to these records.
- G. Contractor Payment:** Based upon the Engineer's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Engineer shall review and recommend for approval, modification or rejection of the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each application for Payment shall be signed by the Engineer and delivered to the City.
- H. Contractor Responsibilities:** The Engineer shall not be responsible for and shall not have control or charge of construction means, methods, manners, techniques, sequences, procedures or scheduling used by a Contractor to comply with the contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the work on the Project. The Engineer shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any work on the Project.
- I. Startup Services:** The Engineer shall observe on-site plant start-up by the Contractor and provide recommendations to resolve an initial operating issues.

TASK 4 – PROJECT CLOSEOUT

Estimated MWH and subconsultant level of effort for the Construction Administration Phase is based upon the following subtasks.

- A. Contract Closeout:** Upon receipt of a Contractor's Punch List, the Engineer shall provide written notice to the City and the Contractor of rejection of the Contractor's request for Final Inspection or that the work is ready for Final Inspection. The Engineer shall conduct the Final Inspection. If applicable, the Engineer shall prepare an Engineer's Punch List and transmit it to the City and the Contractor.

- B. Record Drawings:** Provide one (1) set of record drawings showing actual construction based on the information provided by the Contractor. The drawings will be in the latest version of AutoCad and posted specifications in Microsoft Word format written to CD. The final record drawing set on CD will also include a copy of the drawings in PDF format.

- C. Operation & Maintenance Manual:** The Engineer shall provide to the City three (3) copies of a manual containing operating and maintenance information from Shop Drawing submittals organized by Specification section. The Engineer shall prepare a manual in the format of a written description of the overall operation of the newly designed facilities in the Project (the "Operator's Guide"). The Engineer shall also provide to the City a computer disk containing the Operator's Guide manual files.

SUPPLEMENTAL SERVICES

The following services are specifically excluded from this proposal scope and estimated level of effort but may be provided for additional fee if desired and authorized by City:

- a) Additional bidding-related services if required to re-bid the project.
- b) Response and data development for contract document interpretation, disputes, arbitration hearings, litigation, or extended protest proceedings beyond that estimated herein.
- c) Printing and distribution of documents, videos, etc. in excess of those stated herein.
- d) Review of construction submittals, change orders and claims beyond that estimated herein, and for review of repeated deficient shop drawing submittals.
- e) Preparation of extensive revisions to design documents as a result of Contractor change proposals or change orders beyond that estimated herein.
- f) Site visits and meeting attendance beyond that estimated herein.
- g) Additional subsurface exploratory or interpretive work, surveying or field visits beyond that estimated herein.

To: Matthew D. Kline, City Manager

From: Kathryn K. McKillips, P.E.

Date: July 29, 2009

Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: Agreement for Professional Services with MWH Americas, Inc., for the Big Island Waterworks Chemical Improvement Project. This agreement will authorize MWH to perform Bidding & Construction Administration Services for the project.

With the completion of the final design, the next phase for this important project will require an agreement with MWH to provide the necessary services summarized as follows:

- Task 1- Bidding Phase
- Task 2 – Construction Administration
- Task 3 – Resident Project Representation
- Task 4 – Project Closeout

BACKGROUND INFORMATION: On July 23, 2007, the City Commission passed an ordinance, No. 07-044 to enter into an agreement to have the chemical processes at BIWW studied by MWH (preliminary design). Final Design, was performed under Ordinance No. 08-075. Ordinance No. 09-043 amended the design scope by adding additional tasks.

Approval of this ordinance authorizing the execution of an agreement with MWH will permit the project to be bid and construction to begin as soon as possible. Commission approval of the resolution of necessity authorizing this phase of the BIWW Chemical Improvement Project is being requested through companion legislation.

MWH has developed a professional expertise of a specialized and technical nature at the BIWW plant. MWH most recently designed and managed the Filter and Clearwell Improvement Project and performed the study and design work for the Electrical Improvements Project. MWH also performed the preliminary and final design and analysis of the chemical feed processes for the water plant. This work has resulted in MWH gaining a unique knowledge and

understanding of BIWW's conditions and operating procedures providing a cost effective advantage and benefit to the City.

BUGETARY INFORMATION: The cost for the Construction Administrative Services is \$598,000.00. The City will apply for an Ohio Water Development Authority loan for the cost of the project, to be paid back with Water Funds.

ACTION REQUESTED: It is recommended that an Agreement for Professional Services with MWH, Americas, Inc., be executed and that the necessary legislation be passed under suspension of the rules and in full accordance with Section 14 of the City Charter in order for MWH to begin preparation for the bidding phase of the project. Components of the project will need to be constructed in during low demand season (winter). This project will need to be bid and awarded prior to November 2009 in order for the low demand work to begin as soon as possible.

John Hancock, P.E., P.S.
Director of PED

I concur with this recommendation:

Matthew D. Kline
City Manager

KKM/cal

cc: Don Icsman, Law Director
Joyce Brown, Clerk of City Commission
Ed Widman, Finance Director

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL DESIGN / ENGINEERING SERVICES WITH MWH AMERICAS, INC. FOR THE BIG ISLAND WATER WORKS (BIWW) CHEMICAL IMPROVEMENT PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission authorized the City Manager to enter into an agreement with MWH Americas, Inc., for Professional Design Services for the Big Island Water Works (BIWW) Chemical Improvement Project by Ordinance No. 07-044, passed on July 23, 2007, and subsequently authorized the City Manager to enter into an Amendment to the Agreement to perform the final design, based upon the preliminary design and a recommendation to proceed with the chemical processes, by Ordinance No. 08-075, passed on August 25, 2008; and

WHEREAS, this City Commission authorized the execution of a Second Amendment to the Agreement for the addition of three new tasks, reallocating funds from the Alternative Energy Design, by the passage of Ordinance No. 09-043, passed on May 26, 2009; and

WHEREAS, the additional engineering services to be provided by MWH Americas, Inc., for this project are to perform bidding, construction administration, resident project representation and project closeout services; and

WHEREAS, MWH Americas, Inc. has developed a professional expertise of a specialized and technical nature in the water treatment facilities at the City's BIWW Plant, having designed and managed the Filter and Clearwell Improvement Project, performed the study for and designed the Electrical Improvements Project and most recently performed the preliminary and final design and analysis of the chemical feed processes which has resulted in a unique knowledge and understanding of the BIWW Plant's conditions and operating procedures providing a cost effective advantage and benefit to the City; and

WHEREAS, in companion legislation this City Commission is being asked for approval of the resolution of necessity authorizing this phase of the Big Island Water Works (BIWW) Chemical Improvement Project; and

WHEREAS, the cost of the additional engineering services is \$598,000.00, which the City will be applying for an Ohio Water Development Authority (OWDA) loan that will be paid back with Water Funds; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order for MWH to begin preparation for bidding phase and award a contract prior to November, 2009, which will allow components of the project necessary to be constructed during the low demand winter season to be completed; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Division of Engineering of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into an

agreement with MWH Americas, Inc., for Professional Design / Engineering Services for the Big Island Water Works Chemical Improvement Project substantially in the same form as attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, at an amount **not to exceed** Five Hundred Ninety Eight Thousand and 00/100 Dollars (\$598,000.00).

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:



July 23, 2009

Re: Big Island Water Works Plant Chemical Improvement Project
Construction Administration Services

Ms. Kathy McKillips, P.E.
City of Sandusky
222 Meigs Street
Sandusky, OH 44870


Dear Ms. McKillips:

Please find enclosed for your review the scope for the Big Island Water Works Plant Chemical Project Construction Administration Services. The Construction Administration Services scope includes Task 1 Bidding, Task 2 Construction Administration, Task 3 Resident Project Representation, and Task 4 Project Closeout as described in detail in Attachment A. MWH will provide the services for Task 1 through 4 on a lump sum basis for \$598,000.00.

Please call me at (216) 298-0634 should you have any questions.

Very truly yours,

MWH AMERICAS, INC.


Robert R. Hrusovsky, P.E., BCEE

Enclosure

AGREEMENT
FOR
PROFESSIONAL DESIGN/ENGINEERING SERVICES

This Agreement for Professional Design/Engineering Services (this “Agreement”), made as of _____, 2009, by and between the City of Sandusky (the “City”), whose contact person shall be the Director of Engineering Services designated below or successor (the “City Engineer”), and MWH Americas, Inc. (the “Architect/Engineer”), whose contact person and address are set forth below.

WHEREAS, the City is operating under its Charter, ordinances and regulations and it is the intention of the City, in the exercise of its powers, to obtain professional design/engineering services for the following project (the “Project”):

Project Name:	BIWW Chemical Improvement Project
Director of Engineering Services: Address:	Kathryn K. McKillips, P.E., Director Department of Engineering Services City of Sandusky 222 Meigs Street Sandusky, Ohio 44870
Architect/Engineer: Contact: Address:	MWH Americas, Inc. Robert R. Hrusovsky, P.E. 1300 East ninth Street, Suite 1100 Cleveland, Ohio 44114

WHEREAS, the compensation of the Architect/Engineer set forth herein is determined to be fair and reasonable to the City and the Architect/Engineer; and

WHEREAS, the Architect/Engineer desires, and is licensed and capable, to provide professional design/engineering services for the Project;

WHEREAS, the Architect/Engineer has previously provided certain professional design/engineering services for the Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the City and the Architect/Engineer agree as follows:

ARTICLE 1. RESPONSIBILITIES OF ARCHITECT/ENGINEER

1.1. Architect/Engineer’s Services

1.1.1. Scope of Services; Applicable Law. The Architect/Engineer shall provide professional design/engineering services, including, without limitation, services customarily furnished in accordance with generally accepted architectural or engineering services, for the Project in

accordance with the terms of this Agreement. The Architect/Engineer shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations and the Contract Documents.

1.1.2. Construction Budget. The total amount available for the construction and all other elements of the Project is [_____] Dollars (\$ _____) (the “Construction Budget”). The City shall provide written notice to the Architect/Engineer of any change in the Construction Budget. It is recognized that the Architect/Engineer and the City do not have control over the cost of labor, materials or equipment, over Contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Architect/Engineer.

1.1.3. Timeliness; Standard of Care. The Architect/Engineer shall perform the Architect/Engineer’s services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule so as to cause no delay, impact, interference, dispute or hindrance in the Work, and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the City.

1.1.4. Design Schedule. Within thirty (30) days after the execution hereof, the Architect/Engineer shall submit for approval by the City a Design Schedule for the performance of the Architect/Engineer’s services which shall include allowances for reasonable periods of time required for review and approval of items by the City and for approvals of governmental authorities having jurisdiction over the project. The Architect/Engineer shall coordinate the Design Schedule with the Project Schedule and shall incorporate the Design Schedule into the Project Schedule. The Design Schedule, when approved by the City, shall not be exceeded by the Architect/Engineer without an adjustment of the Design Schedule approved in writing by the City.

1.1.5. Personnel No principal individuals, other than Robert Hrusovsky, P.E. shall perform the services of the Architect/Engineer without the written consent of the City.

1.1.6. Non-Discrimination. The Architect/Engineer represents that the Architect/Engineer is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.7. Consultants. The Architect/Engineer may provide services through one or more consultants employed by the Architect/Engineer (the “Consultants”); provided, however, the Architect/Engineer shall remain responsible to the City for all duties and obligations of the Architect/Engineer under this Agreement. Unless waived or otherwise modified in writing by the City upon written request of the Architect/Engineer, no Consultant shall be retained upon

terms inconsistent with this Agreement. The Architect/Engineer shall provide the City Engineer with the names and qualifications of any other proposed Consultant, together with a description of the services to be provided by such Consultant for approval. Once approved by the City Engineer, the identity of any Consultant and the extent of such Consultant's participation in performing the Architect/Engineer's services shall not be altered without the written consent of the City Engineer. Upon the request of the City, the Architect/Engineer shall terminate the employment of any Consultant. The City may communicate with any Consultant either through the Architect/Engineer or directly to the Consultant with notice to the Architect/Engineer.

1.1.8. Ethics Laws and Terrorist Non-Assistance. The Architect/Engineer represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 9.23 to 9.239, if applicable, 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements and that there are no unresolved findings for recovery against the Architect/Engineer under Section 9.24 of the Ohio Revised Code. The Architect/Engineer shall provide the City with a Declaration of Material Assistance/Non-Assistance to Terrorist Organization in accordance with Section 2909.33 of the Ohio Revised Code upon the execution of this Agreement.

1.1.9. Limitation of Authority. The Architect/Engineer shall not have any authority to bind the City for the payment of any costs or expenses without the express written approval of the City. The Architect/Engineer shall not have any authority to authorize any Contractor to perform Work for which the Contractor will seek compensation from the City. The Architect/Engineer shall have authority to act on behalf of the City only to the extent provided herein or in the Standard Conditions of Construction (the "Standard Conditions") for the Project. The Architect/Engineer's authority to act on behalf of the City shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.10. Approval or Disapproval of Architect/Engineer's Services. The City shall have the right to reasonably disapprove any portion of the Architect/Engineer's services for the Project, including, without limitation, any documents or Drawings prepared by the Architect/Engineer. In the event that any Phase of the Architect/Engineer's services is disapproved by the City, the Architect/Engineer shall proceed, when requested by the City, with revisions to the services, documents or Drawings prepared or performed for that Phase to attempt to satisfy the objections. The Architect/Engineer acknowledges that any review or approval by the City of any services, documents or Drawings prepared or performed by the Architect/Engineer pursuant to this Agreement shall not relieve the Architect/Engineer of the responsibility of the Architect/Engineer to properly and timely perform such services and prepare such documents and Drawings.

ARTICLE 2. SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

2.1. General

2.1.1. Basic Services to be provided by the Architect/Engineer shall consist of the two (2) phases set forth in Paragraphs 2.2 through 2.3, both inclusive and except as modified in Exhibit “A”, and include, without limitation, architectural, civil, structural, mechanical, electrical, interior and landscape design and engineering services for the Project and any necessary signage and graphics.

2.2. Bidding or Negotiation Phase (Bidding Assistance and Recommendation)

2.2.1. Obtaining Bids. The Architect/Engineer shall render interpretations and clarifications of the Contract Documents in Addenda, shall develop and make recommendations for bidding criteria, bidding schedules and bidding information and shall develop Bidders’ interest in the Project.

2.2.2. Prebid Meetings. The Architect/Engineer shall conduct prebid meetings with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and prevailing wage requirements. The Architect/Engineer shall prepare Addenda to respond to questions at prebid meetings

2.2.3. Bid Packages. The Architect/Engineer shall assemble the Contract Documents into appropriate packages and distribute the packages to prospective Bidders, the City and other appropriate Persons.

2.2.4. Bid Review. The Architect/Engineer shall review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the Architect/Engineer to the City about the award of, or rejection of, any bid or bids for each Contract for the Project in accordance with applicable law. In making the recommendation, the Architect/Engineer shall evaluate all applicable Alternates referenced in the Contract Documents.

2.2.5. Bid Substitutions. Substitutions contained in the bid of any Bidder shall not be considered by the Architect/Engineer in recommending the award of any Contract.

2.2.6. Conferences. The Architect/Engineer shall conduct pre-award and post-award conferences with apparently successful Bidders and shall gather documentation for Contract execution from such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the Architect/Engineer shall assist the City in considering whether an extension of time for submitting such documentation is appropriate.

2.2.7. Subcontractor and Material Supplier Review. The Architect/Engineer, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the Standard Conditions.

2.2.8. Over Budget Options. If the Construction Budget is exceeded by the total of the lowest responsible bids and any legally negotiated prices for the Project, the City shall, at the City’s option (1) approve in writing an increase in the Construction Budget; (2) authorize rebidding or renegotiation for some or all portions of the Project within a reasonable time without an increase in the Construction Budget; (3) suspend or abandon the Project, in whole or in part, and

terminate this Agreement, in whole or in part, in accordance with Subparagraph 8.1.2 or Subparagraph 8.1.4, as applicable; or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph 2.2.2 to reduce the actual cost of construction to the Construction Budget. If the City adopts option (1), the Architect/Engineer may request, in writing, an adjustment to the Basic Fee in accordance with Subparagraph 5.4.5. If the City adopts options (2), (3) or (4), the Architect/Engineer shall modify the Scope of the Project, the Project Schedule and the Contract Documents and cooperate in any necessary bidding or negotiation without additional charge.

2.2.9. Further Revisions to Cost Estimate and Project Schedule. If necessary, the Architect/Engineer shall inform the City of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the City of any such adjustments, the Architect/Engineer shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments and obtain the City's written approval thereof.

2.3. Construction Phase (Administration of Construction)

2.3.1. Duration, Extent, Access. The Construction Phase will commence with the award of a Contract for the Project to a Contractor and will terminate upon Final Acceptance of the Project by the City. The Architect/Engineer shall provide its services in accordance with the Standard Conditions. The Architect/Engineer shall at all times have access to the Project whenever any Work is in preparation or in progress. The Architect/Engineer shall respond to all questions for interpretation or clarification of the Contract Documents, including without limitation questions referred by the City, and shall be present on the site of the Project as required hereby and by the Contract Documents, and when notified by the City that the Architect/Engineer's presence on the site is necessary.

2.3.2. Duties Generally. The Architect/Engineer shall render interpretations and clarifications necessary for the proper execution or progress of the Work on the Project. All interpretations and clarifications shall be in writing, shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the City and each applicable Contractor. The Architect/Engineer shall provide administration of the Project, scheduling of work and coordination of Contractors and any other Persons on the site of the Project. The Architect/Engineer shall assist the prevailing wage coordinator for the Project. Unless waived in writing by the City, the Architect/Engineer shall establish and implement on-site organization and authority so that the Work on the Project may be accomplished timely and efficiently.

2.3.3. Investigation of Conditions. The Architect/Engineer shall, as portions of the Project become accessible and as reasonably necessary, investigate existing conditions and verify the accuracy of information provided by the City about existing conditions.

2.3.4. Site Visits. The Architect/Engineer and appropriate Consultants shall visit the Project at appropriate intervals, or at such intervals as the Architect/Engineer and the City agree, to review the Work of each Contractor for Defective Work, to become familiar with the progress and quality of the Work on the Project and to determine if the Work is proceeding in reasonable conformity with the Contract Documents. Such visits shall specifically include, without

limitation, observation of significant demolition, large excavations, observation of footings during placement of concrete and observation of masonry work, structural steel erection, roofing work and interior finishes. In all events, the Architect/Engineer and appropriate Consultants shall be on the site or sites of the Project for such purposes an average of not less than [____] hours per week, unless otherwise expressly provided in writing by the City. If the Architect/Engineer shall become aware, either through such visits or otherwise of any Defective Work on the Project, the Architect/Engineer shall report all Defective Work to the City together with recommendations for the correction thereof, and shall notify any applicable Contractor to correct such Defective Work.

2.3.5. Progress and Records. The Architect/Engineer shall record the progress of the Project and provide written reports to the City on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, updated schedules, cash flow diagrams, process photographs, bid analyses, rolling completion lists, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the Project showing percentages of completion and other information as may be requested by the City, from time to time. The Architect/Engineer shall coordinate compliance by the Contractors with the Contractor's safety programs. The Architect/Engineer's responsibilities to coordinate the safety programs shall not require the Architect/Engineer to control nor be responsible for the acts of Contractors, Subcontractors or any other Persons not employees of the Architect/Engineer. The Architect/Engineer shall keep a log containing a daily record of weather, number of workers on site of the Project for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The Architect/Engineer shall provide for the maintenance at the site of the Project, on a current basis, of records of all Contracts, Drawings, Specifications, Shop Drawings, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The Architect/Engineer shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the Contractors and the City at all times and at the completion of the Project deliver all such records to the City.

2.3.6. Construction Schedule. Based upon information from the Contractors, the Architect/Engineer shall develop the Construction Schedule and a schedule of submittals as prescribed in the Standard Conditions. The Architect/Engineer shall provide copies of the Construction Schedule and schedule of submittals to the City and incorporate the Construction Schedule and schedule of submittals into the Project Schedule so that the Project Schedule includes a Critical Path for the Project and provides for each scope of Work, including without limitation, phasing of construction, if applicable, times for commencement and completion required of each Contractor and ordering and delivery of materials requiring long lead-time. The Architect/Engineer shall require each Contractor to provide records for any materials that require long lead-time and to certify to the Architect/Engineer that such materials have been ordered for timely delivery to the Project. The Architect/Engineer shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the Project and shall make recommendations to the City about the adequacy of such workforce and equipment. The Architect/Engineer shall periodically inform the City of the need to update the Project Schedule as required to show current conditions, including without

limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the Architect/Engineer shall recommend corrective action to the City and carry out the directions of the City so that the milestone completion dates may be met, unless the City agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the Architect/Engineer shall prepare a revised Project Schedule and obtain the City's written approval thereof.

2.3.7. Meetings. The Architect/Engineer shall schedule, conduct and participate in pre-construction, progress, coordination, quality control and special meetings with the City appropriate Consultants, the Contractors and any other Persons involved in the Project to discuss such matters as procedures, progress, problems and scheduling. The Architect/Engineer shall initiate and participate in partnering meetings with the City, appropriate Consultants, the Contractors and other Persons involved in the Project.

2.3.8. Tests; Inspections. The Architect/Engineer shall advise and consult with the City during the Construction Phase as to the need for any special testing, inspections or approval of Work on the Project. The Architect/Engineer shall order any necessary special testing, inspections or approval of Work on the Project. The Architect/Engineer must arrange for reimbursement from the Contractor in case the Contractor is ultimately responsible to pay the costs of such testing, inspections or approval as provided in the Standard Conditions. The Architect/Engineer shall notify the City of the times for any scheduled special testing, inspections or approvals.

2.3.9. Submittal Review. As provided in the Standard Conditions, the Architect/Engineer shall review and approve or take other appropriate action upon Contractor submittals such as Shop Drawings and Samples, for reasonable conformity with the Contract Documents and shall review drawings, calculations and designs required of Contractors and provided with such submittals (except calculations and designs of manufacturers of original equipment and systems to be installed in the Project and except calculations and designs which the Contract Documents expressly make the sole responsibility of one or more Contractors, Subcontractors, Material Suppliers or other Persons).

2.3.10. Bulletins; Change Orders. The Architect/Engineer shall recommend necessary or desirable changes in the Project to the City, prepare Bulletins and other necessary documentation seeking Proposals from Contractors for changes in the Work and submit Bulletins to the City for review. The Architect/Engineer shall keep a log of all requests for information, Field Work Orders, Bulletins, Contractor Proposals and Change Orders. The Architect/Engineer shall prepare Change Orders and any necessary Drawings, Specifications and other documents and supporting data for Change Orders. The Architect/Engineer shall recommend approval or rejection of each Change Order, and shall deliver each such recommendation to the City for review.

2.3.11. Project Costs. The Architect/Engineer shall maintain Project cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis. The Architect/Engineer shall afford the City access to these records at all times.

2.3.12. Contractor Payments. Based upon the Architect/Engineer's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the Architect/Engineer shall review and recommend for approval, modification or rejection the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the Architect/Engineer and delivered to the City.

2.3.13. Partial Occupancy. The Architect/Engineer shall assist the City in determining dates of Partial Occupancy of the Work or portions thereof designated by the City and shall assist in obtaining any necessary temporary occupancy certificate or other certificate from any applicable government authority. The Architect/Engineer shall prepare lists of incomplete or unsatisfactory Work and submit them to the City.

2.3.14. Contract Close-out. Upon receipt of a Contractor's Punch List, the Architect/Engineer shall provide written notice to the City and the Contractor of rejection of the Contractor's request for Final Inspection or that the Work is ready for Final Inspection in accordance with the Standard Conditions. The Architect/Engineer shall conduct the Final Inspection. If applicable, the Architect/Engineer shall prepare an Architect/Engineer's Punch List and transmit it to the City and the Contractor. The Architect/Engineer shall process certificates of Contract Completion as provided in the Standard Conditions. The Architect/Engineer shall transmit a copy of any guarantees, warranties, releases, bonds and waivers in its possession to the City.

2.3.15. Contractor Claims. The Architect/Engineer shall review claims from Contractors for additional compensation and equitable adjustment of compensation, and shall deliver a written recommendation to the City about each claim and attend any dispute resolution meetings related to each claim.

2.3.16. Record Drawings. Based on marked-up prints, drawings or data and the As Built Drawings provided by the Contractors the Architect/Engineer shall furnish to the City one (1) set of Record Drawings in the form of reproducible Drawings correctly marked to show the Project as completed in the form of mylar tracings, one (1) set of all other Contract Documents showing the Project as completed in the form of paper documents and one (1) set of all Contract Documents showing the Project as completed on a computer medium approved by the City. The Record Drawings, to the best of the Architect/Engineer's knowledge based upon the As-Built Drawings delivered to the Architect/Engineer by the Contractors and the Architect/Engineer's observations during the progress of the Project, shall detail the actual construction of the Project and contain such annotations by the Architect/Engineer as may be necessary for someone unfamiliar with the Project to understand the changes that were made to the original Drawings.

2.3.17. Contractor Responsibilities. The Architect/Engineer shall not be responsible for and shall not have control or charge of construction means, methods, manners, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Work on the Project. The Architect/Engineer shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the Project.

ARTICLE 3. ADDITIONAL SERVICES

3.1. General

3.1.1. The following services are not included in Basic Services and shall be provided only if requested by the City in writing. The following services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Architect/Engineer shall not be compensated for any of the following services made necessary by the act or omission of the Architect/Engineer or any Consultant. Unless waived by the City in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

3.1.2. Specialized Services. Providing specialized design and engineering services not included in Basic Services and not ordinarily furnished in accordance with customary practice in the industry.

3.1.3. Partnering and Scheduling Consultant. Serving as a partnering facilitator or construction scheduling consultant.

3.1.4. Perspectives, Models, Renderings. Preparing professional perspectives, models or renderings which are not otherwise useful or necessary to the Architect/Engineer in the provision of Basic Services hereunder at the written request of the City.

3.1.5. Grant Applications. Preparing applications and supporting documents for governmental grants, loans or advances.

3.1.6. Special Studies. Providing programming, planning, site evaluations, wetlands or environmental studies, or comparative studies of alternative sites, and preparing special surveys, studies and submissions required for approval of governmental authorities or others having jurisdiction over the Project.

3.1.7. Surveys. Providing surveying services including land surveys and rights-of-way studies.

3.1.8. Off-Site Services. Providing planning or design services for off-site utilities which are not adjacent to the Project, building connections or roadways.

3.1.9. Certain Revisions. Making revisions in Drawings, Specifications or other Contract Documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

3.1.10. Replacement Work. Providing consultation concerning replacement of any Work on the Project damaged by fire, casualty or other cause not due to negligence of the Architecture/Engineer or any Consultant and furnishing services as may be required in connection with the replacement of such Work.

3.1.11. Contractor Default. Providing services made necessary by the default of a Contractor.

ARTICLE 4. RESPONSIBILITIES OF THE CITY

4.1. **Required Actions.** The City shall review, approve or take such actions as are required of the City by this Agreement and applicable law in a reasonable and timely manner.

4.2. **Instructions to Contractors.** All instructions of the City to Contractors shall be through, or in consultation with, the Architect/Engineer.

4.3. **City's Requirements.** The City shall provide full information regarding its requirements for the Project, any agreements related to the Project, and any design and construction standards and work rules which set forth the City's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, systems and site requirements.

4.4. **Authorized Representative.** The City has designated the City Manager or successor to be the City's Authorized Representative, i.e., a person authorized to act on the City's behalf with respect to the Project to the extent provided in the Contract Documents. If the City Manager is absent or unavailable, the City Engineer shall serve as the City's Authorized Representative.

4.5. **Site Description; Certain Reports and Surveys.** If reasonably requested by the Architect/Engineer as necessary for the Project, the City shall furnish a legal description and a certified land survey of each building, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and complete data pertaining to existing building, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. The City shall furnish to the Architect/Engineer any soil boring and test reports, site and utility surveys and environmental reports and assessments which the City obtains for the Project. The Architect/Engineer shall be entitled to rely upon the accuracy and completeness of information provided by the City under this Paragraph.

4.6. **Notice to Architect/Engineer.** If the City observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Architect/Engineer.

4.7. **Legal Representation.** The City shall not be responsible to provide, or pay for, any legal representation of the Architect/Engineer.

ARTICLE 5. COMPENSATION

5.1. **Direct Personnel Expense.**

5.1.1. **Definition.** Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Architect/Engineer or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment

taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law and similar benefits related to their time devoted to the Project. Direct Personnel Expense shall not include any bonus or similar plan or arrangement related to the Architect/Engineer's performance on, or profit from, the Project.

5.1.2. Records. Direct Personnel Expense for the Architect/Engineer's employees for such hours of their time as are devoted to performing services to the Project shall be evidenced by time records certified by the Architect/Engineer.

5.1.3. Limit. The Architect/Engineer shall use all reasonable means to minimize Direct Personnel Expense.

5.2. Reimbursable Expenses

5.2.1. Definition. Reimbursable Expenses means actual expenditures incurred by the Architect/Engineer or its Consultants in the interest of the Project approved by the City for reproduction of Construction Documents for distribution to Bidders, general building and NPDES permits, any other building permits not obtained by Contractors, soil or other testing and special inspections if requested by the City and reformatting Project Record Submittals to a computer medium different than a computer medium used by the Architect/Engineer. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2. Limit. The Architect/Engineer shall use all reasonable means to minimize Reimbursable Expenses.

5.3. Basis of Compensation

5.3.1. Basic Fee. For Basic Services provided by the Architect/Engineer and all Consultants, the City shall pay the Architect/Engineer a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of Five hundred ninety-eight thousand Dollars \$598,000.00. A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2. Additional Fees. For Additional Services provided by the Architect/Engineer and any Consultants in accordance with Article III, the City shall pay the Architect/Engineer Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the City and the Architect/Engineer, but in all events, such Additional Fees shall not exceed two and one-half (2.5) times the Direct Personnel Expense incurred by the Architect/Engineer and any applicable Consultant in providing those Additional Services. Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2.

5.3.3. Extent of Basic Fee. The Architect/Engineer's Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Architect/Engineer's employees at the principal office, branch offices and the field office, general operating expenses of the Architect/Engineer's principal office, branch offices and the field office, any part of the Architect/Engineer's capital expenses, including interest on the Architect/Engineer's capital employed for the Project, overhead or expenses of any kind, except

Reimbursable Expenses, any costs incurred due to the negligence of the Architect/Engineer, the Architect/Engineer's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3.4. Total Compensation. The total compensation of the Architect/Engineer and all Consultants shall consist of the Basic Fee, any Additional Fees and Reimbursable Expenses.

5.4. Method and Terms of Payment.

5.4.1. Basic Fee. Payment of the Basic Fee shall be made monthly upon based upon work performed upon submission of an invoice

5.4.2. Additional Fees, Reimbursable Expenses. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.2 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed and supported invoice of the Architect/Engineer.

5.4.3. Payments by Architect/Engineer. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Architect/Engineer shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4. Compensation for Extension of Project Time. If the Architect/Engineer notifies the City not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.4.2, that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Architect/Engineer, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the City and the Architect/Engineer. If, as a result of such negotiation, the City agrees that the Architect/Engineer shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect/Engineer renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the City.

5.4.5. Compensation for Change of Scope of Project or Construction Budget. The Scope of the Project is defined by the Approved Program of Requirements as provided in Subparagraph 2.2.2. The Construction Budget is defined in Subparagraph 1.1.2. Except as provided in Subparagraph 2.6.8, if the City materially changes the Scope of the Project after the Schematic Design Phase or the Construction Budget after the Design Development Phase through no fault of the Architect/Engineer, the compensation, if any, for Basic Services to be provided by the Architect/Engineer shall be negotiated to the mutual reasonable satisfaction of the City and the

Architect/Engineer. If, as the result of such negotiation, the City agrees that the Architect/Engineer shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect/Engineer renders any services made necessary by such change in the Scope of the Project or the Construction Budget, unless otherwise agreed in writing by the City. If, as the result of such negotiation, the Architect/Engineer agrees to a reduction in compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 as soon as practicable.

ARTICLE 6. INSURANCE AND INDEMNIFICATION

6.1. Insurance

6.1.1. Casualty Insurance. Except when a modification is requested in writing by the Architect/Engineer and approved in writing by the City, the Architect/Engineer shall carry and maintain at the Architect/Engineer's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;

b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:

- i. General Aggregate Limit:
\$2,000,000 each occurrence;
- ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and

c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

6.1.2. Professional Liability Insurance. Subject to the City's waiver or modification of Professional Liability Insurance upon written request of the Architect/Engineer, the Architect/Engineer shall maintain insurance to protect against claims arising from the performance of the Architect/Engineer's services caused by any negligent acts, errors or omissions for which the Architect/Engineer is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the City upon written request of the Architect/Engineer, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Architect/Engineer shall endeavor to keep such insurance in effect for so long as the Architect/Engineer may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Architect/Engineer commenced to perform services relating to the Project. The insurance company issuing the

Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

6.1.3. Certificates. The Architect/Engineer shall provide the City with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the City.

6.2. Indemnification.

6.2.1. Indemnification by Architect/Engineer Generally. To the fullest extent permitted by law, the Architect/Engineer shall and does agree to indemnify and hold harmless the City and its members, officers, officials, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Architect/Engineer's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only if they are caused by any negligent acts, errors or omissions of the Architect/Engineer, anyone directly or indirectly employed by the Architect/Engineer or anyone for whose acts the Architect/Engineer is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code, to the fullest extent permitted.

6.2.2. Intellectual Property Indemnification. To the fullest extent permitted by law, the Architect/Engineer shall and does agree to indemnify and hold harmless the City and its members, officials, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Architect/Engineer, anyone directly or indirectly employed by the Architect/Engineer or anyone for whose acts the Architect/Engineer is legally liable. The Architect/Engineer shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the City.

ARTICLE 7. DISPUTE RESOLUTION PROVISIONS

7.1. Mediation. Instead of, or in addition to, the procedures set forth below, the City and the Architect/Engineer may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

7.2. Notice and Filing of Requests. Any request by the Architect/Engineer for additional fees or expenses shall be made in writing to the City Engineer and filed prior to the final payment of the Basic Fee. Failure of the Architect/Engineer to timely make such a request shall constitute a waiver by the Architect/Engineer of any request for such fees and expenses.

7.3. Request Information. In every written request filed pursuant to Paragraph 7.2, the Architect/Engineer shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4. Meeting with Authorized Representative. If the Architect/Engineer files a written request with the City Engineer pursuant to Paragraph 7.2, the City Engineer shall immediately notify the Authorized Representative and the Authorized Representative shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Authorized Representative shall be attended by Persons expressly and fully authorized to resolve the request on behalf of the Architect/Engineer. The Authorized Representative shall render a decision on the request within thirty (30) days of the meeting unless a mutual agreement is made to extend the time for decision.

7.5. Appeal to Commission. If the efforts of the Authorized Representative do not lead to resolution of the request within sixty (60) days of receipt of the request provided pursuant to Paragraph 7.2 the Architect/Engineer may appeal to the City's Commission by written notice to the Authorized Representative who shall provide the Architect/Engineer an opportunity to present the claim at the Commission's next meeting, the Architect/Engineer shall be provided the opportunity to present the claim at the next succeeding meeting of the Commission. The Commission shall render a decision on the request within thirty (30) days of the meeting unless a mutual agreement is made to extend the time for decision. The decision of the Commission shall be final and conclusive, subject to litigation in a court of competent jurisdiction.

7.6. Delegation. No provision of this Paragraph shall prevent the Authorized Representative or the Commission from delegating the duties or authorities of the Authorized Representative or the City to any other Person selected at the discretion of the Authorized Representative.

7.7. Performance. The Architect/Engineer shall proceed with the Architect/Engineer's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Architect/Engineer and the City in writing. The City shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE 8. TERMINATION AND REMEDIES

8.1. Termination of Agreement

8.1.1. Means of Termination. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Architect/Engineer shall not terminate this Agreement for non-payment if the City initiates the payment process by preparing, executing and submitting a

voucher for all reasonably undisputed amounts due to the Architect/Engineer within ten (10) days of receipt of the Architect/Engineer's written notice to terminate. This Agreement may be terminated by the City in whole or in part, without cause upon fifteen (15) days written notice to the Architect/Engineer. This Agreement may be terminated in whole or in part, at any time upon the mutual consent of the City and the Architect/Engineer.

8.1.2. Architect/Engineer's Remedies Upon Termination by City Without Cause or Upon Termination by Architect/Engineer. In the event of a termination which is not due to the failure of the Architect/Engineer to perform in accordance with the terms of this Agreement, the Architect/Engineer shall be compensated for all Basic Services of a completed Phase performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Reimbursable Expenses incurred prior to the termination date. In such event, for services rendered prior to the termination date in an uncompleted Phase and for Additional Services, the Architect/Engineer shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the City, together with Reimbursable Expenses incurred prior to the termination date.

8.1.3. Architect/Engineer's Remedies Upon Termination by City for Cause. In the event of a termination which is due to the failure of the Architect/Engineer to perform in accordance with the terms of this Agreement, the Architect/Engineer shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed prior to the termination date. In such event, the Architect/Engineer shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the City consents in writing to the payment of Reimbursable Expenses incurred after that date.

8.1.4. Architect/Engineer's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the City and the Architect/Engineer, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

8.1.5. Post-Termination Matters. If the City and the Architect/Engineer agree that any services are to be performed for the Project by the Architect/Engineer after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2. Remedies

8.2.1. Cumulative Remedies. No remedy conferred upon the City by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the City shall be cumulative and shall be in addition to any other remedy given to the City hereunder or now or hereafter existing. Except as otherwise provided in this

Agreement, no remedy conferred upon the Architect/Engineer by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Architect/Engineer shall be cumulative and shall be in addition to any other remedy given to the Architect/Engineer hereunder or now or hereafter existing.

8.2.2. Remedies Not Waived. No delay, omission or forbearance to exercise any right, power or remedy accruing to the City or the Architect/Engineer hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1. Ownership and Use of Documents

9.1.1. Property of City. Drawings and other documents prepared by, or with the cooperation of, the Architect/Engineer or any Consultant pursuant to this Agreement, including all copyrights, are the property of the City whether or not the Project for which they are prepared is commenced or completed. The Architect/Engineer or Consultant, as applicable, may retain copies, including reproducible copies of such drawings and other documents for information and reference. Such drawings or other documents may be used by the City or others employed by the City for reference in any completion, construction, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Architect/Engineer or Consultant. Such drawings or other documents shall not be used by the City, or be given or sold by the City to be used by others, on other projects except by agreement in writing and with agreed upon appropriate compensation to the Architect/Engineer or Consultant, as applicable. If an event occurs for which the Architect/Engineer or Consultant may be liable, the City shall notify the Architect/Engineer or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Architect/Engineer or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2. Architect/Engineer's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Architect/Engineer in connection with or relation to the Project shall remain the property of the Architect/Engineer and shall be protected by the City from use by others except by agreement in writing with appropriate and agreed upon compensation to the Architect/Engineer.

9.2. Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the City. The Architect/Engineer shall not use the City's name or seal, nor any adaptation thereof, for any advertising or trade purposes, including without limitation press releases, without the express written consent of the City.

9.3. Records. The records of all of the Architect/Engineer's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a

generally recognized accounting basis and shall be available to the City at all times and shall be maintained for seven (7) years after final acceptance of the Project by the City. All other records kept by the Architect/Engineer related to the Project shall be available to the City at all times and shall be maintained for six (6) years after final acceptance of the Project by the City.

9.4. Successors and Assigns. The City and the Architect/Engineer, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Architect/Engineer shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the City.

9.5. Extent of Agreement

9.5.1. Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the City and the Architect/Engineer and supersede all prior negotiations, representations or agreements, either written or oral.

9.5.2. Amendments. This Agreement may be amended only by an amendment prepared by the City and signed by both the Architect/Engineer and the City.

9.5.3. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

9.5.5. Conditions to Validity. None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with.

9.5.6. Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of the Contract Documents shall prevail.

9.6. Governing Law

9.6.1. Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the Erie County, Ohio Court of Common Pleas shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2. Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7. Notices

9.7.1. Addresses. All notices, certificates and requests hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate address listed on the first page hereof. Other communications shall be in writing and may also be given by regular U.S. mail, postage prepaid, to the appropriate address listed on the first page hereof

9.7.2. Facsimiles. For convenience of communication only, notices, certificates, requests or other communications, except requests for payment, may be sent by facsimile transmission to the City at (419) 627-5933 and to the Architect/Engineer at (216) 621-4972 or by electronic mail to the City at kmckillips@ci.sandusky.oh.us and to the Architect/Engineer at Robert.R.Hrusovsky@us.mwhglobal.com Facsimile transmissions must not exceed ten (10) pages Notices, certificates, requests or other communications sent by facsimile transmission or electronic mail shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.7.1. Requests for payment may be sent to the City by facsimile transmission only upon specific direction from the City.

9.7.3. Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Architect/Engineer shall immediately notify the City by telephone.

9.7.4. Change of Address. The City or the Architect/Engineer may, by notice given hereunder, designate any further or different addresses telephone numbers or facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

9.8. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

9.9. Independent Contractor. The Architect/Engineer and any Consultant is an independent contractor with respect to any services performed under this Agreement. Neither the Architect/Engineer, nor any Consultant, shall be, or be deemed to be, servants, employees or agents of the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

MWH Americas, Inc.
("Architect/Engineer")

By: _____

CITY OF SANDUSKY

By: _____
Matthew D. Kline
City Manager

APPROVAL:
The legal form and correctness of the
Within instrument is hereby approved:

Donald C. Icsman
Law Director

CERTIFICATE OF FUNDS

In the matter of: Agreement with MWH Americas, Inc.

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Agreement have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to the appropriate fund, free from any previous encumbrances.

Dated: _____, 2007

CITY OF SANDUSKY

By: _____
Edward A. Widman
Finance Director

Account Number

Amount