

COMMISSIONERS JOURNAL NO. 68 - DELAWARE COUNTY  
 MINUTES FROM REGULAR MEETING HELD DECEMBER 28, 2017

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:  
 Jeff Benton, President  
 Gary Merrell, Vice President  
 Barb Lewis, Commissioner

**1**  
 RESOLUTION NO. 17-1358

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD DECEMBER 21, 2017:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on December 21, 2017; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion                      Mr. Merrell                      Aye                      Mrs. Lewis                      Aye                      Mr. Benton                      Aye

**2**  
 PUBLIC COMMENT

**3**  
 ELECTED OFFICIAL COMMENT

**4**  
 RESOLUTION NO. 17-1359

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1227 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR1227:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1227, memo transfers in batch numbers MTAPR1227 and Purchase Orders as listed below:

Vote on Motion                      Mrs. Lewis                      Aye                      Mr. Merrell                      Aye                      Mr. Benton                      Aye

**5**  
 RESOLUTION NO. 17-1360

**IN THE MATTER OF APPROVING THE FOLLOWING LIST OF CARRY-OVER PURCHASE ORDERS FOR 2018:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following list of carry-over purchase orders:

Further Be It Resolved, that all current purchase order request shall be closed before the carry-over purchase orders are opened.

PR Number	Vendor Name	Line Desc	Line Account	Amount
R1750198	BLUES AUTO SERVICE INC	REPAIR 2017 FORD EXPLORER	60111901 - 5370	\$5,333.37
R1750199	BLUES AUTO SERVICE INC	REPAIR 2013 FORD ESCAPE	60111901 - 5370	\$7,226.24

Vote on Motion                      Mr. Merrell                      Aye                      Mr. Benton                      Aye                      Mrs. Lewis                      Aye

**6**  
 RESOLUTION NO. 17-1361

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**IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

The Commissioners’ office is requesting the five (5) employees attend the BIA Shines award ceremony in Dublin, Ohio on January 25, 2018 at the cost of \$375.00 (fund number 10011101).

The Administrative Services department is requesting that Charles Jones attend a Humane Agent Training class in London, Ohio from June 18-21, 2018 at the cost of \$345.00 (dog shelter fund).

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**7  
RESOLUTION NO. 17-1362**

**SETTING DATE AND TIME FOR VIEWING AND PUBLIC HEARING FOR CONSIDERATION OF THE HOMESTEAD AT SCIOTO RESERVE SECTION 1 DRAINAGE MAINTENANCE IMPROVEMENT PETITION FILED BY THE HOMESTEAD AT SCIOTO RESERVE AND OTHERS:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to adopt the following resolution:

WHEREAS, on November 1, 2017, the Clerk of this Board gave notice to the Board of County Commissioners and the County Engineer of Delaware County, Ohio, on the filing with her of a petition signed by members of the Homestead at Scioto Reserve and Others to:

1. To repair, replace, or alter the existing improvements as required and to maintain these improvements per engineering plan (exhibit C) and associated Engineering design.
2. In Delaware County, Concord Township, in Homestead At Scioto Reserve and generally following the existing course and terrain of the improvement shown on document labeled exhibit C.

WHEREAS, the proper bond has been filed with the clerk, approved, conditioned for the payment of costs of notices, plus any other incidental expenses, except the cost incurred by the Engineer in making his preliminary reports, if the prayer of this petition is not granted, or if the petition is for any cause dismissed, unless the Board decides to pay the Engineer’s cost from the bond in accordance with Section 6131.09 of the Revised Code;

THEREFORE, BE IT RESOLVED, BY THE Board of County Commissioners, that **Monday February 12, 2018 at 1:30PM**, in the vicinity of the intersection of Golf Village Dr. and Scioto Ridge Dr., be and the same is hereby fixed as the time and place for the view thereon, and

BE IT FURTHER RESOLVED, that **Thursday April 5, 2018 at 10:00AM** at the Office of the Board of County Commissioners, 101 North Sandusky Street Delaware, Ohio be and the same is hereby fixed as the time and place for the first hearing on the petition, and

BE IT FURTHER RESOLVED, that notice of said view and hearing be given, as required by law.

Vote on Motion                      Mrs. Lewis              Aye              Mr. Benton              Aye              Mr. Merrell              Aye

**8  
RESOLUTION NO. 17-1363**

**IN THE MATTER OF WITHDRAWING THE ANNEXATION PETITION FILED ON DECEMBER 6, 2017 BY AGENT FOR THE PETITIONER, ANDREW P. WECKER, REQUESTING ANNEXATION OF 89.618 ACRES, MORE OR LESS, IN DELAWARE TOWNSHIP TO THE CITY OF DELAWARE:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to withdraw the annexation petition filed on December 6, 2017 by agent for the petitioner, Andrew P. Wecker, requesting annexation of 89.618 acres, more or less, in Delaware Township to the City of Delaware.

Whereas, on December 21, 2017 petitioner, Andrew P. Wecker, filed a letter withdrawing the petition filed on December 6, 2017 for annexation of 89.618 acres, more or less, in Delaware Township to the City of Delaware;

Therefore, Be It Resolved that the Board hereby acknowledges the withdrawing of the annexation petition filed on December 6, 2017 by agent for the petitioner, Andrew P. Wecker, requesting annexation of 89.618 acres, more or less, in Delaware Township to the City of Delaware.

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**DISCUSSION:  
THE DELAWARE COUNTY LAND REUTILIZATION CORPORATION**

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**9****RESOLUTION NO. 17-1364**

**ESTABLISHING THE DELAWARE COUNTY LAND REUTILIZATION CORPORATION FOR THE COUNTY TREASURER'S OFFICE, IN ACCORDANCE WITH R.C. § 5722.02, EFFECTIVE DECEMBER 28, 2017, APPROVING INITIAL ARTICLES OF INCORPORATION**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

**WHEREAS**, R.C. § 5722.02(A) permits a county to elect to adopt and implement the procedures set forth in R.C. §§ 5722.02 to 5722.15 to facilitate the effective reutilization of nonproductive land situated within its boundaries; and,

**WHEREAS**, R.C. § 1724.04 authorizes a county that elects to adopt and implement the procedures set forth in R.C. §§ 5722.02 to 5722.15 to organize a county land reutilization corporation for the purpose of exercising the powers granted to a county under Chapter 5722 of the Revised Code; and,

**WHEREAS**, the Board of Delaware County Commissioners (the "Board") has determined that the existence of nonproductive land within the boundaries of the County, including, but not limited to, that result from mortgage and tax payments delinquencies and foreclosures and other reasons, warrants the adoption and implementation of the procedures set forth in R.C. §§ 5722.02 to 5722.15 to facilitate the effective reutilization of nonproductive land situated within the County boundaries; and,

**WHEREAS**, R.C. § 5722.02(B) permits a county that adopts a resolution under R.C. § 5722.02(A) to cause to be organized a county land reutilization corporation under Chapter 1724 of the Revised Code to act on behalf of and cooperate with the county in exercising the powers and performing the duties of a county with respect to land reutilization under Chapter 5722 of the Revised Code; and,

**WHEREAS**, the Board now desires to adopt a resolution under R.C. § 5722.02(A) adopting and implementing the procedures set forth in R.C. §§ 5722.02 to 5722.15 to facilitate the effective reutilization of nonproductive land situated within the County's boundaries; and,

**WHEREAS**, in furtherance of the implementation of an effective land reutilization program and in accordance with R.C. § 5722.02(B), the Board also desires to organize a county land reutilization corporation under Chapter 1724 of the Revised Code to act on behalf of and cooperate with the County in exercising the powers and performing the duties of a county under Chapter 5722 of the Revised Code.

**NOW, THEREFORE, BE IT RESOLVED:**

1. In accordance with R.C. § 5722.02(A), this Board hereby finds and determines that the existence of nonproductive land within its boundaries due to, but not limited to, the result from mortgage and tax payment delinquencies and foreclosures and other reasons is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.
2. This Board hereby elects to adopt and implement the procedures set forth in R.C. §§ 5722.02 to 5722.15 to facilitate the effective reutilization of nonproductive land situated within its boundaries.
3. In furtherance of the implementation of a land reutilization program for the County, this Board hereby authorizes and directs that a county land reutilization corporation (the "Corporation") shall be organized under Chapters 1724 and 1702 of the Revised Code and hereby authorizes and directs the County Treasurer (the "Treasurer") to incorporate the Corporation in accordance with R.C. § 1724.04 by the execution and filing of its initial articles of incorporation in the form heretofore on file with the Clerk of the Board.
4. Pursuant to and in accordance with R.C. § 1724.04, this Board hereby approves the form of initial articles of incorporation heretofore filed with the Clerk of this Board.
5. Pursuant to division of R.C. § 5722.02(C), the Clerk of this Board is authorized and directed to deliver a certified copy of this resolution to the Auditor of the County, Treasurer, and Prosecuting Attorney of the County.
6. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.
7. This Resolution shall be in full force and effect immediately upon adoption.

Vote on Motion                      Mr. Merrell              Aye              Mrs. Lewis              Aye              Mr. Benton              Aye

**10****RESOLUTION NO. 17-1365**

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**IN THE MATTER OF APPROVING A SECOND LEASE MODIFICATION AGREEMENT BY AND BETWEEN TULLER SQUARE NORTHPOINTE, LLC, AND THE DELAWARE COUNTY COMMISSIONERS FOR THE CLERK OF COURTS' TITLE OFFICE AT NORTHPOINTE PLAZA:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

WHEREAS, the Clerk of Courts recommends approval of a Second Lease Modification Agreement to the Lease Agreement with Tuller Square Northpointe, LLC, for the Clerk's Title Office at Northpointe Plaza;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the Second Lease Modification Agreement in substantially the following form:

**SECOND LEASE MODIFICATION AGREEMENT**

This Second Lease Modification Agreement ("Agreement") is entered into as of 28th December, 2017 (the "Effective Date"), by and between TULLER SQUARE NORTHPOINTE LLC, an Ohio limited liability company ("Landlord"), and the DELAWARE COUNTY COMMISSIONERS ("Tenant").

**Recitals**

Landlord and Tenant have entered into that certain Lease Agreement, dated April 8, 2003, as modified by that certain Letter Agreement, dated April 16, 2008, and that certain First Lease Modification Agreement, dated April 25, 2013 (collectively, the "Lease"), for those certain premises consisting of approximately 2,500 square feet designated as Storeroom Number 01270 and having an address of 8647 Columbus Pike, Lewis Center, Ohio 43035 (the "Premises"), which Premises are situated within the NorthPointe Plaza Shopping Center ("Shopping Center") located in the City of Lewis Center, County of Delaware and State of Ohio.

The Term of the Lease expires May 31, 2018 and Landlord and Tenant desire to extend the Term through May 31, 2023.

Landlord and Tenant mutually intend and desire to modify the Lease on and subject to the terms and conditions hereinafter set forth.

**Agreement**

In consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

As of the Effective Date, the Lease is modified as follows:

Extended Term. Notwithstanding any provision of the Lease to the contrary, the Term of the Lease is hereby extended for five (5) Lease Years through May 31, 2023 (the "Fifth Extended Term"). All the terms, covenants, provisions and conditions of the Lease shall apply during the Fifth Extended Term except as otherwise set forth in this Agreement. "Term" as defined in the Lease shall include the Fifth Extended Term, and if duly exercised, the Sixth Extended Term as set forth in subsection (b) hereof.

Renewal Option. Provided Tenant is continuously open and operating its business and has not been in default under the Lease beyond any applicable cure period, Tenant is hereby granted one (1) option to extend the Term of the Lease for a period of five (5) Lease Years commencing on June 1, 2023 and continuing through May 31, 2028 (the "Sixth Extended Term"). Such option shall be exercised, if at all, by Tenant's delivery of written notice to Landlord no later than one hundred eighty (180) days prior to the last day of the Fifth Extended Term, time being of the essence with respect to such notice. If Tenant fails to timely notify Landlord as set forth herein, Tenant's option to extend the Term shall expire and the Lease shall terminate pursuant to the terms thereof.

Minimum Rent. Notwithstanding any provision of the Lease to the contrary, Section 1.01(H) and Section 2.01 are hereby amended to provide that the amount of Minimum Rent payable in accordance with the terms of the Lease during the Fifth Extended Term shall be as set forth below:

<u>Period</u>	<u>Annual Minimum Rent</u>	<u>Monthly Installment</u>	<u>Rate Per Leasable Sq. Ft. Per Lease</u>
06/01/2018 - 05/31/2023	\$49,550.00	\$4,129.17	\$19.82

Minimum Rent payable in accordance with the terms of the Lease during the Sixth Extended Term, if duly exercised, shall be as set forth below:

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<u>Period</u>	<u>Annual Minimum Rent</u>	<u>Monthly Installment</u>	<u>Rate Per Leasable Sq. Ft. Per Lease</u>
06/01/2023 - 05/31/2028	\$54,500.00	\$4,541.67	\$21.80

Common Area Maintenance Payment. Notwithstanding anything in the Lease to the contrary, Sections 1.01(K) and 9.01 are hereby amended to provide that, during the Fifth Extended Term, the Initial Common Area Maintenance Payment shall be \$572.92 per month (\$2.75 per leasable square foot), and that, during the Sixth Extended Term, if duly exercised, the Initial Common Area Maintenance Payment shall be \$631.25 per month (\$3.03 per leasable square foot), subject to adjustment as set forth in the Lease.

Real Estate Tax Expense. Notwithstanding anything in the Lease to the contrary, Sections 1.01(L) and 2.04 are hereby amended to provide that, during the Fifth Extended Term, the Initial Real Estate Tax Expense shall be \$500.00 per month (\$2.40 per leasable square foot), and that, during the Sixth Extended Term, if duly exercised, the Initial Real Estate Tax Expense shall be \$550.00 per month (\$2.64 per leasable square foot), subject to adjustment as set forth in the Lease.

Insurance Payment. Notwithstanding anything in the Lease to the contrary, Sections 1.01(M) and 12.02 are hereby amended to provide that, during the Fifth Extended Term, the Initial Insurance Payment shall remain \$41.67 per month (\$0.20 per leasable square foot), and that, during the Sixth Extended Term, if duly exercised, the Initial Insurance Payment shall be \$45.83 per month (\$0.22 per leasable square foot), subject to adjustment as set forth in the Lease.

Exhibit A. Exhibit A attached to the Lease is hereby deleted in its entirety and replaced with the Exhibit A attached to this Agreement and incorporated herein and into the Lease by this reference.

Notices and Payment. Landlord's notice address and payment address shall be as follows:

Landlord's Address for Notice:  
TULLER SQUARE NORTHPOINTE LLC  
c/o CASTO  
250 Civic Center Drive, Suite 500  
Columbus, Ohio 43215

Landlord's Address for Payments:  
TULLER SQUARE NORTHPOINTE LLC  
c/o CASTO  
P.O. Box 1450  
Columbus, Ohio 43216

Tenant's Notice Address shall be as follows:

Delaware County Commissioners  
91 North Sandusky Street  
Delaware, Ohio 43015

Any contrary provision of the Lease notwithstanding, notice address changes may be delivered via regular U.S. Mail.

2. Anything in this Agreement to the contrary notwithstanding, in the event Tenant defaults under the Lease prior to the Effective Date, Landlord may terminate and declare this Agreement null and void by providing written notice thereof to Tenant.

3. As a material inducement to Landlord entering into this Agreement, Tenant certifies to Landlord that as of the date hereof: (i) the Lease, as modified hereby, contains the entire agreement between the parties hereto relating to the Premises and that there are no other agreements between the parties relating to the Premises, the Lease or the Shopping Center which are not contained herein or in the Lease; (ii) Landlord is not in default in any respect in any of the terms, covenants and conditions of the Lease; and (iii) Tenant has no setoffs, counterclaims or defenses against Landlord under the Lease.

4. Tenant and its predecessors, successors, parent, subsidiaries, affiliates and any related entity or person, hereby release Landlord and its parent, subsidiaries, or affiliated entities, and their agents, partners, officers, directors, and employees, and the respective heirs, executors, administrators, successors and assigns of any of the foregoing, from any and all liability, claims, damages, causes of action or any other form of relief, legal or equitable, that are, have been, or could have been or in the future might be asserted in any way relating to the Lease, the Landlord's performance thereunder, or the Premises, from the Commencement Date of the Lease through the Effective Date.

5. Landlord and Tenant each warrant and represent to the other that there are no claims for brokerage commissions or finders fees in connection with consummating this Agreement, except with respect to State Street Capital Realty, LLC d/b/a "CASTO" (an affiliate of Landlord) ("Broker") whose commission shall be paid by Landlord pursuant to a separate agreement.

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6. Notwithstanding anything to the contrary contained in this Agreement or any other document attached hereto or executed and given to Landlord or Landlord's agent in conjunction or connection herewith or the leasing of the Premises, each signatory thereto, when purportedly executing this Agreement or such other document on behalf of a legal entity (i.e., a partnership, limited partnership, corporation, limited liability company, or joint venture) and whether domestic or foreign, warrants and represents to Landlord that, at the time of execution of this Agreement, or such other document, the: (1) named legal entity/political subdivision is in existence, validity created, in good standing and registered/organized in accordance with all applicable laws in the State of Ohio; (2) complete and correct legal name and entity/subdivision designation of the entity/subdivision appears as set forth in the first paragraph of this Agreement; (3) signatory is duly authorized to execute this Agreement on behalf of the entity/subdivision the signatory purports to represent in the capacity noted below the signature of such signatory; and (4) correct title of the signatory appears below the signature of such signatory.

7. This Agreement shall not be valid or binding on Landlord unless and until: (a) Tenant, by appropriate action or resolution taken and/or passed by the Delaware County Commissioners in regular or properly-noticed special session, has authorized and agreed to enter into and undertake Tenant's obligations set forth herein; (b) the President of Delaware County Commissioners, as authorized by duly-adopted Resolution of the Delaware County Commissioners, has signed this Agreement in the space provided below and such signature has been acknowledged by a Notary Public; (c) the Delaware County Prosecutor has affixed his or her signature to this Agreement in the space provided below; and (d) the Delaware County Auditor has affixed his or her signature to the Auditor's Certificate appearing below. Tenant agrees to comply with and complete any other requirements necessary to cause this Agreement to be a valid, binding and enforceable obligation of Tenant under applicable law. On or before Tenant's delivery of an executed copy or copies of this Agreement to Landlord for Landlord's execution, Tenant shall provide Landlord with reasonable evidence that the requirements set forth in this Section 7 have been satisfied.

8. Capitalized terms not defined herein shall have the definitions given such terms in the Lease.

9. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall be deemed operative and any conflicting or inconsistent terms contained in the Lease shall be deemed null and void. As modified and amended hereby, Landlord and Tenant each ratify and affirm the terms of the Lease.

10. This Agreement may be executed in counterparts, all of which counterparts shall be deemed originals, all of which counterparts taken together shall constitute a single Agreement, and signature pages of which may be detached from the several counterparts and attached to a single copy of this Agreement to physically form a single document.

Vote on Motion                      Mrs. Lewis              Aye              Mr. Merrell              Aye              Mr. Benton              Aye

**11**

**RESOLUTION NO. 17-1366**

**IN THE MATTER OF APPROVING A JOINT APPLICATION BY THE PROSECUTING ATTORNEY AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO AUTHORIZE THE APPOINTMENT OF LEGAL COUNSEL, LAURA MACGREGOR COMEK, ESQ., TO ADVISE, REPRESENT, PROSECUTE ON BEHALF OF, AND/OR DEFEND THE DELAWARE COUNTY BOARD OF ELECTIONS IN AND AS RELATED TO THE MATTER INVOLVING A REFERENDUM PETITION CONCERNING BERLIN TOWNSHIP:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve A Joint Application By The Prosecuting Attorney And The Delaware County Board Of Commissioners To Authorize The Appointment Of Legal Counsel, Laura MacGregor Comek, Esq., To Advise, Represent, Prosecute On Behalf Of, And/Or Defend The Delaware County Board Of Elections In And As Related To The Matter Involving A Referendum Petition Concerning Berlin Township:

**IN THE COURT OF COMMON PLEAS  
OF DELAWARE COUNTY, OHIO**

**IN RE APPOINTMENT OF LEGAL              :  
COUNSEL FOR DELAWARE                      :              Case No.  
COUNTY BOARD OF ELECTIONS              :**

**JOINT APPLICATION TO APPOINT LEGAL COUNSEL FOR  
DELAWARE COUNTY BOARD OF ELECTIONS**

Now comes Carol Hamilton O'Brien, Prosecuting Attorney, Delaware County, Ohio ("Prosecutor"), and the Board of Commissioners, Delaware County, Ohio ("Board"), and, pursuant to R.C. § 305.14(A), jointly move this Court to appoint legal counsel to advise, represent, prosecute on behalf of, and/or defend the Delaware County Board of Elections ("BOE") in and as related to the matter involving a referendum petition concerning Berlin Township Resolution 17-10-09 ("Petition"). The BOE has certified the referendum to the May 2018 ballot. A protest has been filed with the BOE in connection with the Petition and the BOE's decision to certify. The protest

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will come before the BOE for a decision. The BOE will require legal representation at the hearing and, if the BOE's decision is challenged, the BOE and its decision will need to be defended in the courts. The appointment of legal counsel is needed to assist the Prosecutor and is requested by the BOE because the Prosecutor previously advised Berlin Township on this matter and there is an actual and/or perceived conflict of interest. See Attached Affidavit. The BOE requests Laura MacGregor Comek, Esq. (0070959) be so appointed.

(SIGNATURE ON FOLLOWING PAGE)

Respectfully submitted,

\_\_\_\_\_  
Carol Hamilton O'Brien (0026965)  
Prosecuting Attorney  
Delaware County  
140 N. Sandusky Street, 3rd Floor  
Delaware, Ohio 43015  
Telephone: (740) 833-2690  
Facsimile: (740) 833-2689  
Email: cobrien@co.delaware.oh.us

AFFIDAVIT

STATE OF OHIO

:SS

COUNTY OF DELAWARE

Now comes Carol Hamilton O'Brien, and after being duly cautioned and sworn, hereby states as follows:

1. That she is the elected Delaware County, Ohio Prosecuting Attorney ("Prosecutor");
2. That she has knowledge of a certain matter involving a referendum petition concerning Berlin Township Resolution 17-10-09 ("Petition") that will come before the Delaware County Board of Elections ("BOE");
3. A protest has been filed with the BOE in connection with the Petition. The BOE will require legal representation at the hearing and, if the BOE's decision is challenged, the BOE and its decision will need to be defended in the courts.
4. The Prosecutor previously advised Berlin Township on this matter and there is an actual and/or perceived conflict of interest.
5. For the reasons set out above, it is in the public interest for the Court to appoint legal counsel to advise, represent, prosecute on behalf of, and/or defend the Delaware County Board of Elections in this matter.

Further Affiant Saith Naught.

\_\_\_\_\_  
Carol Hamilton O'Brien  
Delaware County Prosecuting Attorney

Sworn to before me and subscribed in my presence this \_\_\_\_ day of December, 2017 in Delaware, Ohio.

\_\_\_\_\_  
Notary Public

Vote on Motion            Mr. Benton            Aye            Mr. Merrell            Aye            Mrs. Lewis            Aye

**Resolution No. 17-1367 thru 17-1376 were not utilized**

**12**  
**RESOLUTION NO 17-1366**

**IN THE MATTER OF APPROVING THE AGREEMENT BY AND BETWEEN THE BOARD OF DELAWARE COUNTY COMMISSIONERS, THE DELAWARE COUNTY PROSECUTING ATTORNEY AND MT BUSINESS TECHNOLOGIES, INC.:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

**Exclusive Print Service Rental Agreement Between  
MT Technologies, Inc. and the Delaware County Prosecuting Attorney's Office**

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**Parties to the Agreement**

This Agreement is made and entered into this 28th day of December 2017, by and between MT Business Technologies, Inc., whose address is 1150 National Parkway, Mansfield, Ohio 44906 (hereinafter, "MT"), the Delaware County Board of Commissioners, whose principal place of business is 101 N. Sandusky Street, Delaware, Ohio 43015 (hereinafter, "Board") and the Delaware County Prosecuting Attorney's Office, whose address is 140 N. Sandusky Street, 3n1 Floor, Delaware, Ohio 43015 (hereinafter, "Customer") (hereinafter, collectively referred to as the "Parties").

**Preliminary Statements**

WHEREAS, the customer is in need of a Richo 7502 S.P. Copier (hereinafter, "Equipment") and attendant maintenance and services; and

WHEREAS, MT is willing to make available such Equipment and provide services attendant to the rental of such Equipment; and

WHEREAS, MT is qualified and willing to provide the Equipment and services, at an agreed-upon price and under the terms as set forth below.

**Statement of the Agreement**

NOW, THEREFORE, the Parties mutually agree as follows:

## 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to state the covenants and conditions under which MT will rent to Customer, and the Customer will rent from MT, a Richo 7502 Copier and a Richo 5002. Further, MT will provide attendant maintenance and services for the Equipment.

## 2. TERM

This Agreement shall be effective as of December 28, 2017, and shall be for a term of 39 months.

## 3. RENEWAL

Upon written agreement of the Parties, this Agreement may be renewed for a successive 39 month term, subject to the same terms and conditions provided herein and upon any such terms and conditions as may be specifically agreed upon, added, and/or amended in writing by the Parties.

## 4. SCOPE OF SERVICES/DELIVERABLES

a. MT will deliver the Equipment to Customer at the address indicted above. MT will service and maintain the Equipment at its location in Customer's office.

b. The equipment is the sole property of MT, together with additions, replacements, or substitutions therefore. Customer shall not make any alterations to the Equipment nor move the same to any location other than as set forth herein, nor assign the contract without the written consent of MT. Customer shall execute any documents required to perfect a security interest in MT with respect to the Equipment.

c. In the event of loss or damage of any kind to the Equipment herein leased, Customer, at the option of MT, shall (a) repair the unit to a condition of good repair, condition, and working order, or (b) replace the same with like equipment in good repair, condition, and working order, at no additional cost to the Customer. Repair or replacement will take place within a reasonable time upon MT's receipt of notice of the malfunction.

d. MT shall provide, without additional charge, all maintenance services which are required in order to maintain the Equipment in good working order, during the regular business hours of MT. Services required outside regular business hours will be charged to the Customer in accordance with MT's reasonable customary rates. Shipping and handling charges may be assessed to the Customer for supplies which are sent to the Customer and which are not contemplated by this Agreement.

e. Each Party agrees to be responsible for any damages or losses caused to the lease Equipment solely by its own negligence, actions, inactions, or omissions.

In the event of any loss, damage, injury, or harm to any person or any property, real or personal, regardless of owner, arising out of or resulting in whole or in part from any negligence, actions, inactions, or omissions of MT or otherwise related to the performance of this Agreement, MT shall assume full responsibility for, shall indemnify and hold free and harmless, the Customer, the Delaware County Board of County Commissioners, and Delaware County from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses arising from such loss, damage, injury, or harm.

f. Payment for Equipment rental and services during the term shall be made by Customer in accordance with the schedule for prints made from the Equipment as follows:

- Monthly Rental: \$550.00



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- Each Black and White Print: .01 (one cent)
- Black toner is included in the above stated price schedule
- Black and color developer is included in the above stated price schedule
- Software and data is excluded from the above stated price schedule.

g. customer agrees to use only approved Supplies with equipment and to provide MT with access to the Equipment, attachments, and records of Customer during reasonable times if verified computation of copies is deemed necessary by MT.

5. **INVOICING**

MT invoices will be mailed to Customer monthly. Payment under this Agreement shall be paid based on invoices, and shall not be paid in the absence of an invoice compliant with the terms of this Agreement. Invoices shall be submitted to the Customer on company letterhead clearly listing the word "invoice" with a sequential invoice number provided. The Customer may request additional documentation to substantiate said invoices and MT shall promptly submit documentation as needed to substantiate said invoices.

The terms are net thirty (30) days. Carrying of 1 % per month shall be applied on any balance not paid within the 30-day period. Imposition of carrying charges shall not be deemed a waiver of any other remedy available to MT under this Agreement.

6. **OVERPAYMENTS**

In case of overpayment, MT agrees to repay the Customer the amount of overpayment to which it is entitled.

7. **TAXES**

The Customer is a political subdivision or a department thereof and is tax exempt. MT therefore agrees to be responsible for all tax liability that accrues as a result of this Agreement and the services that MT provides to the Customer pursuant to this Agreement.

8. **CONFIDENTIALITY**

MT, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of MT, or divulge, disclose, or communicate in any manner, any information that is proprietary to Customer or that is confidential pursuant to law. MT and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Agreement.

Upon termination of this Agreement, MT Will return to Customer all records, notes, documentation, and other items that were used, created using Customer's materials, or controlled by MT during the term of this Agreement. Notwithstanding the foregoing, such materials will not include any work of authorship which was fixed in a tangible medium of expression by MT prior to the Effective Date, any intellectual property or other proprietary or trade secret information conceived or originated by MT prior to the Effective Date, or any employees, agents, and the like prior to the Effective Date.

9. **WARRANTY**

MT warrants that the Equipment, when installed, will be in a satisfactory working condition fit for the purposes to which the Equipment is ordinarily used. MT warrants that it will provide all necessary and regular maintenance and servicing for the Equipment, in order to maintain the Equipment, during the term of this Agreement, in a satisfactory working condition fit for its ordinary purposes. MT warrants that the maintenance services it provides pursuant to this Agreement are warranted, performed properly and are free from defects. MT without cost to the Customer, shall promptly correct any service that it provides pursuant to this Agreement that has not been properly performed or is defective.

MT further warrants that all of its officers, employees, volunteers, representatives, and/or servants that will be performing services under this Agreement are properly trained and/or licensed to be performing the tasks that they will be performing under this Agreement.

MT disclaims liability for consequential damages in the event of the failure of MT to perform any obligation under this Agreement or for any liability to perform any obligation hereunder caused by reasons beyond the control of MT.

10. **TERMINATION**

a. **Breach or Default**

Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a specified reasonable period of time. If the breach or default is not satisfactorily remedied within the specified time period, this Agreement may, at the election of the aggrieved Party, be immediately terminated. The Parties may, without limitation, exercise any available administrative, contractual, equitable, or legal remedies. In the event of such a breach or default, MT shall be entitled to receive compensation for any services satisfactorily performed hereunder: through the date of termination.

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If the contract is terminated by either party, MT may, at its option, enter the premises of Customer and recover the equipment, attachments and any supplies sold by MT to Customer and not then fully paid for.

b. Waiver

The waiver of any occurrence of breach or default is not and should not be interpreted as a waiver of any such subsequent occurrences. The Parties, without limitation, retain the right to exercise all available administrative, contractual, equitable, or legal remedies. If any Party fails to perform an obligation or obligations under this Agreement and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s). Waiver by any Party shall be authorized in writing and signed by an authorized Party representative.

c. Liquidated Damages

If the Customer terminates this Agreement prior to the end of the term, Customer shall, at the option of MT and in lieu of MT's alternative remedies for damages, pay MT as liquidated damages and not as a penalty that amount indicated as the Monthly Rental (above) multiplied by the number of months of unexpired rental time remaining under this Agreement, together with prior amounts in default, if any.

11. ACCESS TO AND RETENTION OF RECORDS

At any time, during regular business hours, with reasonable notice and as often as the Customer, the Comptroller General of the United States, the State, or other agency or individual authorized by the Customer may deem necessary, MT shall make available to any and/or all the above named Parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Agreement. The Customer and the above named parties shall be permitted by MT to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Agreement.

MT, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Agreement, agrees to retain and maintain, and assure that all of its subcontractors retain and maintain, all records, documents, writings and/or other information related to the performance of this Agreement. If an audit, litigation, or other action is initiated during the time period of this agreement, MT shall retain and maintain, and assure that all of its subcontractors retain and maintain, such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later. Such records shall be subject at all reasonable times to inspection, review, or audit by duly authorized federal, state, local, and/or Customer personnel.

12. INDEMNIFICATION

MT shall provide indemnification as follows:

a. To the fullest extent of the Law and without limitation, MT agrees to indemnify and hold free and harmless the Customer, the Board of Delaware County Commissioners, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants, and -representatives - (collectively "Indemnified Parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent, or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, - in whole or in part, to MT's, any subcontractor's or any subcontractor's performance of this Agreement or the actions, inactions, or omissions of MT, any subcontractor, including, but not limited to the performance, actions, inactions or omissions of MT's, any subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives (collectively "Contracted Parties".) MT agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that MT shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. MT further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that MT shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees.

b. MT shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from, any acts, inactions, or omissions negligent or accident, actual or threatened, intentional or unintentional of the Contracted Parties.

13. INSURANCE

a. General Liability

MT shall maintain commercial general liability insurance of \$1,000,000 for each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

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b. Automobile Liability Coverage

MT shall maintain automobile liability insurance of \$1,000,000 for each accident. Such coverage shall include coverage for owned, hired, and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

c. Worker's compensation Coverage

MT shall maintain worker's compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

d. Additional Insureds

The Customer and the Delaware County Board of County Commissioners shall be named as an additional insureds with respect to all activities under this Agreement in the policies required by subsections (a) and (b). MT shall require all of its subcontractors to provide like endorsements.

e. Proof of Insurance

Prior to the commencement of any work under this Agreement, MT, and all of its subcontractors, shall furnish the Customer with properly executed certificates of insurance for all insurance required by this Agreement and properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insureds as required in Subsection (d). Certificates of insures shall provide that such insurance shall not be cancelled without thirty (3) days prior written notice to the Customer. MT will replace certificates for any insurance expiring prior to the expiration of the term under this Agreement.

14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

15. INDEPENDENT CONTRACTOR

MT agrees that it shall act in performance of this Agreement as al) independent contractor. No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this. Agreement.

MT assumes all responsibility for any and all federal, state, municipal, or other tax liabilities, along with workers compensation, unemployment compensation, contributions to retirement plans, and/or insurance premiums which may accrue and/or become due as a result of compensation received for services and/or deliverables rendered and/or received under or pursuant to this Agreement.

MT and/or its board members officers, officials, employees, representatives, agents, and/or volunteers are not entitled to any benefits enjoyed by employees of the Customer or Delaware County, Ohio.

16. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT/ OPERS FORM

The Customer is a public employer as defined in R.C. § 145.01(D). The Customer has defined MT as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of MT and/or any of its board members, officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. MT acknowledges and agrees that the Customer, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If MT is an individual or has less than five (5) employees, MT, in support of being so informed and pursuant to RC. § 145.038, agrees to and shall complete and shall have each of his/her employees complete an OPERS Independent Contractor Acknowledgement Form ("Form"). The Form is attached hereto as Exhibit A and by this reference is incorporated as a part of this Agreement. The Customer shall retain the completed Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

If MT has five (5) or more employees, MT, by signature of its authorized representative below, hereby certifies such fact in lieu of completing the Form:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

17. SUBSEQUENT HIRING OF MT EMPLOYEES

Customer shall not hire, solicit for hire, or aid any third party in hiring any current MT employee for a period of one (1) year following performance of any MT employee service.

18. CAMPAIGN FINANCE- COMPLIANCE WITH ORC § 3517.13

Ohio Revised Code Section 3517.13 1(3) and J{3} requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to computation, . business tru8ty, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust

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unless the political subdivision hits received for that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13.;" Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering this Agreement as Exhibit B and by this reference is made a part of this Agreement.

**19. EQUAL OPPORTUNITY/NON-DISCRIMINATION**

In fulfilling the obligations and duties of this Agreement, MT shall not discriminate against any employee of applicant for employment on the basis of race, religion, national origin, color, creed, gender, sexual orientation, age, Vietnam-era Veteran status, or disability, as defined in the Americans with Disabilities Act.

MT shall ensure that applicants are hired and that employees are treated during employment without regard to any of the listed factors. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

MT agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that MT complies with all applicable federal and state non-discrimination laws. MT shall incorporate the foregoing requirements of this section in all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

**20. DRUG FREE ENVIRONMENT**

MT agrees to comply with all applicable state and federal laws regarding drug-free environment and shall have established and have in place a drug-free workplace policy. MT shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**21. FINDINGS FOR RECOVERY**

MT certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

**22. NOTICES**

All notices which may be required by this Agreement or by operation of any rule of law shall be hand delivered; sent via certified United States Mail, return receipt requested; sent via a nationally recognized and reputable overnight courier, return receipt requested; or via facsimile, confirmation of receipt required, to the following individuals at the following addresses and shall be effective on the date received.

Customer:

Nicole Ford, Office Manager  
Delaware County Prosecuting Attorney's Office  
140N. Sandusky Street, 3rd Floor  
Delaware, Ohio 43015

Mike Frommer, County Administrator  
Delaware County Board of County Commissioners  
101 N. Sandusky Street,  
Delaware, Ohio 43015

MT

Joe Monastra  
MT Business Technologies, Inc.  
1150 National Parkway  
P.O. Box 37  
Mansfield, Ohio 44901

**23. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed and heard before the courts of Delaware County, Ohio.

**24. SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of the Agreement. All provisions of this Agreement shall be deemed severable.

**25. ENTIRE AGREEMENT**

This Agreement shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

**26. COUNTY POLICIES**

MT shall be bound by, conform to, comply with, and abide by all current applicable Delaware County policies, including, but not limited to, the Contractor Safety Policy, Computer Use Policy, Social Media Policy, and Internet

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Use Policy (collectively "County Policy") and shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, subcontractors, and/or volunteers performing work under this Agreement and/or for or on behalf of the Customer to comply with County Policy and shall be responsible for such compliance. Customer may, in its sole discretion, immediately terminate this Agreement for failure of equipment or any of its employees or subcontractors to comply with County Policy. Copies of County Policy are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. Customer reserves the authority to change, amend, replace, enact, repeal, and/or rescind County Policy at any time and without notice.

27. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

28. INTERPRETATION

The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

29. HEADINGS

The subject headings of the paragraphs in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

30. SIGNATURES

Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

31. EFFECT OF SIGNATURE

The signature of the Parties below indicate that the signers and the entities that they represent agree to be bound by all the terms and conditions of this contract.

Vote on Motion                      Mr. Merrell              Aye              Mr. Benton              Aye              Mrs. Lewis              Aye

**13**

**RESOLUTION NO. 17-1378**

**IN THE MATTER OF AMENDING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY AUDITOR AND SUPERION LLC FOR THE ADDITION OF TRAKIT TO ONE SOLUTION SOFTWARE:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Whereas, Delaware County currently contracts with Superior, LLC, as successor in interest to Sungard Public Sector, LLC, for One Solution software, per Resolution No. 16-793; and

Whereas, the Director of Economic Development recommends approval of an amendment to the existing contract for the addition of TRAKiT to One Solution software;


Now, Therefore, Be It Resolved, that the Delaware County Board of Commissioners approves the following Amendment Order:

**AMENDMENT ORDER**

By the signatures of their duly authorized representatives below, the Superior LLC entity as successor in interest to SunGard Public Sector LLC, identified below ("Superion") and the customer identified below ("Customer"), intending to be legally bound, agree to all of the provisions of the Order between Superior and Customer dated August 17, 2016. Unless otherwise stated below, all terms and conditions shall remain in effect. This Order shall be effective upon the latest date shown on the signature page below ("Order Execution Date").

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Superion, LLC	Delaware County, OH
By: 	By:
Print Name: Tom Amburgey	Print Name:
Print Title: VP and General Manager, Public Administration	Print Title:
Date Signed: 12/14/2017	Date Signed:

CUSTOMER # 6115LG \_\_\_\_\_ SUPERION ORDER # 0000527 (Previous Order #26018)

**SOLUTION AND RELATED INFORMATION**

1. **SOLUTION:** Superion TRAKiT
2. **INITIAL TERM:** [Perpetual]
3. **SCOPE OF USE:**
  - a. **DESIGNATED LOCATION(s):** 101 North Sandusky St., Delaware, OH43015
  - b. **REGION:** UNITED STATES
4. **LICENSE AND INITIAL SUPPORT FEES:** See Project Cost Supplement

**Software Notes:**

1. Interfaces are interfaces only. Customer is responsible for obtaining the applicable software, hardware and system software from the appropriate third party vendor.
2. Support for the Initial Support Term is provided at no charge. The Support Fee in the table above represents the support fee for the first Renewal Support Term and is payable only if Customer elects to extend the term through the first Renewal Support Term. Subsequent renewals are subject to change

5. **SUPPORT TERM:**
  - a. **INITIAL SUPPORT TERM:** 12 months from the Order Execution Date.
  - b. **RENEWAL SUPPORT TERM(S):** Additional one year renewal periods commencing upon the expiration of the Initial Support Term (or anniversary thereof).

6. **SERVICES:** See Project Cost Supplement

**Services Notes:**

1. This price is a “not to exceed” amount based on the Services selected by Customer at the time of the execution of this Agreement. The amount listed above will change if additional services are necessitated by changes to the scope of the project, or if Customer chooses additional services, software, or hardware following the execution of this Agreement, or if Customer otherwise fails to cooperate with SunGard Public Sector and/or perform its responsibilities as reasonably required through the course of the project.
2. Travel and living expenses are additional and will be billed monthly as Superion renders the services.

7. **THIRD PARTY PRODUCTS:** See Project Cost Supplement

Third Party Products Notes

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1. See Attached Supplements
2. Actual shipping charges are additional and will be due upon delivery.

**8. PAYMENT TERMS:**

License Fee: Upon receipt of invoice, payment is due within 30 days.

Annual Support Fees: Support Fees are due thirty (30) days prior to the commencement of the Renewal Support Term for which such fees are being remitted.

Installation and Configuration: On invoice, upon completion.

Development and Conversion Fees: Upon invoice, as incurred

monthly. Technical Services: Upon invoice, as incurred

monthly.

Consulting Fees: Upon invoice, as incurred

monthly. Training Fees: Upon invoice; due as

incurred monthly. Project Management: Upon

invoice, as incurred monthly.

Third Party Products Hardware & Software Fee: Upon receipt of invoice, payment is due within 30 days.

Third Party Software Initial Annual Maintenance: The initial annual maintenance fee is included in the License fee. The Initial Annual Maintenance Fee amount shown above is for the second year of Third Party Product annual maintenance and is due prior to commencement of the second annual term. Annual Maintenance Fees for subsequent terms are subject to change and will be invoiced by and paid directly to Superion.

Third Party Software Initial Annual Subscription Fees: Upon receipt of invoice, payment is due within 30 days. **APPLICABLE TAXES ARE NOT INCLUDED IN THE PROJECT COST SUPPLEMENT, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT IN THE PAYMENT INVOICE(S) BEING SENT SEPARATELY TO CUSTOMER.**

**9. ADDRESSES:**

- a. **CUSTOMER ADDRESS FOR INVOICES:** 101 North Sandusky St., Delaware, OH 43015
- b. **CUSTOMER ADDRESS FOR NOTICES:** 101 North Sandusky St., Delaware, OH 43015
- c. **CUSTOMER ADDRESS FOR SOFTWARE SHIPMENT:** 101 North Sandusky St., Delaware, OH 43015
- d. **SUPERION'S ADDRESS FOR NOTICES:**  
  
Superion LLC  
Attn: Legal Counsel  
1000 Business Center Drive Lake Mary, FL 32746

**10. LIABILITY CAP:** The greater of ten thousand US dollars (\$10,000) or the License Fee actually paid by Customer to Superion under this Order

**11. SPECIFIED CONFIGURATION:** Host(s) or client server configuration(s) and/or combinations of host(s) and client server configuration(s) within the United States of America for which Superion supports the Solution. Customer acknowledges that certain Solutions software may require specific host or client configurations. Customer, as soon as reasonably practicable, will provide a detailed written description of the specified configuration so that Superion can confirm that it is a configuration on which Superion supports use of the Solution.

**12. OTHER TERMS APPLICABLE TO THIS ORDER:**

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- PROJECT COST SUPPLEMENT
- SUPPORT SUPPLEMENT
- SUPERION TRAVEL EXPENSE GUIDELINES
- SUPERION STANDARD TERMS – EXHIBIT A
- BLUEBEAM SOFTWARE THIRD PARTY SUPPLEMENT
- DELAWARE COUNTY REQUEST FOR COMPETITIVE SEALED PROPOSALS,  
DATED JUNE 19, 2017

**Project Cost Supplement**

Quote Number: Q-00000527      Valid Until:  
12/22/17

**License Fees & Maintenance**

Product Name	Quantity	License Fee	Maintenance
TRAKIT9 Community Development Suite User License	10	\$45,000.00	\$9,000.00
TRAKIT9 Regulatory Licensing Suite User License	2	\$6,000.00	\$1,200.00
TRAKIT-Finance Web API	1	\$10,000.00	\$2,000.00
TRAKIT Regulatory License Library	1	\$2,000.00	\$400.00
TRAKIT Plan Correction Library	1	\$1,000.00	\$200.00
TRAKIT GIS Advanced Engine	1	\$17,500.00	\$3,500.00
TRAKIT Enforcement Library	1	\$1,000.00	\$200.00
ITRAKIT Suite	1	\$30,000.00	\$6,000.00
eTRAKIT eCheck API	1	\$5,000.00	\$1,000.00
eTRAKIT Citizen Portal	1	\$20,000.00	\$4,000.00
eTRAKIT Credit Card API	1	\$5,000.00	\$1,000.00
TRAKIT Permit Form Library	1	\$2,000.00	\$400.00
Bluebeam Server API for TRAKIT	1	\$12,500.00	\$2,500.00
<b>Total</b>		<b>\$157,000.00</b>	<b>\$31,400.00</b>

**Third-Party License Fees & Maintenance**

Product Name	License Fee	Maintenance
Bluebeam Standard License	\$1,245.00	\$249.00
<b>Total</b>	<b>\$1,245.00</b>	<b>\$249.00</b>

**Professional Services**

**Installation & Configuration**

Product Name	Amount
TRAKIT Community Development Installation	\$11,900.00
<b>Total</b>	<b>\$11,900.00</b>

**Development & Conversion**

Product Name	Amount
TRAKIT Community Development -Development	\$38,400.00
<b>Total</b>	<b>\$38,400.00</b>

**Technical Services**

Product Name	Amount
TRAKIT Community Development Technical Services	\$50,000.00
<b>Total</b>	<b>\$50,000.00</b>

**Consulting**

Product Name	Amount
TRAKIT Community Development Consulting	\$148,120.00
<b>Total</b>	<b>\$148,120.00</b>

**Training**

Product Name	Amount
TRAKIT Community Development Training	\$36,160.00
<b>Total</b>	<b>\$36,160.00</b>

**Project Management**

Product Name	Amount
TRAKIT Community Development Project Management	\$59,520.00
<b>Total</b>	<b>\$59,520.00</b>



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	Total Professional Services	\$344,100.00
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**Summary**

Product/Service	Amount
License Fees	\$157,000.00 *
Professional Services	\$344,100.00
	Subtotal \$501,100.00
Third-Party License Fees	\$1,245.00 **
	Subtotal \$1,245.00
<b>Total</b>	<b>\$502,345.00</b>
Maintenance*	\$31,400.00
Third-Party Maintenance **	\$249.00

See Product notes in the Additional Information Section

**Additional Information Section**

**Product Notes:**

TRAKIT9 Community Development Suite User License: Includes access to GeoTRAK, PermitTRAK, ProjectTRAK, CodeTRAK, AEC TRAK, CRM TRAK modules and a report library with 100 standard reports.

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TRAKIT9 Regulatory Licensing Suite User License: Includes access to LicenseTRAK in TRAKIT9.

.....

TRAKIT Regulatory License Library: Library includes each of the following forms: -Standard License form -Two (2) standard Renewal License Notices

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TRAKIT Plan Correction Library: Library includes one each of the following forms: -Standard Plan Correction Notice -Standard Planning Commission Staff Report

.....

TRAKIT Enforcement Library: Library includes each of the following forms: -Two (2) standard Violation Letters

.....

TRAKIT Permit Form Library: Library includes one each of the following forms: -Standard Permit form -Certificate of Occupancy -Receipt -Invoice -Inspection Results Letter

**SUPPORT SUPPLEMENT**

1. Superion shall provide to Customer, during Superion's support hours as set forth in the Support Standards below ("Support Hours"), telephone assistance regarding Customer's proper and authorized use of a new edition of a Solution or Custom Modification (the "Release"), as applicable.
  
2. Superion shall provide to Customer, during the Support Hours, commercially reasonable efforts in solving Errors reported by Customer in accordance with this Order. Customer shall provide to Superion reasonably detailed documentation and explanation, together with underlying data, to substantiate any Error and to assist Superion in its efforts to diagnose, reproduce and correct the Error. These support services shall be provided by Superion at Customer location(s) if and when Superion and Customer agree that on-site services are necessary to diagnose or resolve the problem. If a reported Error did not, in fact, exist or was not attributable to a defect in the Solution or an act or omission of Superion, then Customer shall pay for Superion's investigation and related services at Superion's standard professional services rates. Customer must provide Superion with such facilities, equipment and support as are reasonably necessary for Superion to perform its obligations under this Order, including remote access to the Specified Configuration.
  
3. Customer shall promptly install and/or use any Release provided by Superion to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solution shall be furnished by means of new Releases of the Solution and shall be accompanied by updates to the

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Documentation whenever Superior determines, in its sole discretion, that such updates are necessary.

4. Support Surcharge Imposed In Certain Instances: At the commencement of any Renewal Support Term where Customer is operating on a Solution version that is more than two (2) general release versions behind the then-current release for any Solution, Superior will assess a ten percent (10%) surcharge over and above the support fee for that Renewal Support Term, with such surcharge to be imposed on a prorated basis for the portion of the Renewal Support Term that Customer remains on a general release version that is more than two (2) releases behind the then-current release of the Solution in question. Once Customer is using a release that is no more than two (2) general release versions behind the then-current release, the support surcharge will be removed on a prospective basis, as of the date that Customer is using the release that is no more than two (2) general release versions behind the then-current release.

**Support Standards**

**I. Support Hours: Hours During Which Superior’s Telephone Support Will be Available to Customer in Connection with the Provision of Maintenance:** Unless otherwise noted in the Order as to Support Type, support hours are Monday through Friday, 8:00 A.M. to 5:00 P.M. Customer’s Local Time within the continental United States, excluding holidays (“5x9”).

**II. Targeted Response Times.**  
“Notification” means a communication to Superior’s help desk by means of: (i) Superior’s web helpline; (ii) the placement of a telephone call; or (iii) the sending of an e-mail, in each case, in accordance with Superior’s then-current policies and procedures for submitting such communications.

<b>PRIORITY GOAL*</b>	<b>DESCRIPTION</b>	<b>RESPONSE GOAL*</b>	<b>RESOLUTION</b>
<b>Urgent</b> 1	A support issue shall be considered <b>Urgent</b> when it produces a Total System Failure; meaning Superior’s Solution/Custom Modification is not performing a process that has caused a complete work stoppage.	Superior has a stated goal to respond within 60 minutes of the issue being reported and have a resolution plan within 24 hours.	Although resolution times depending on the exact issue 24 hours of the issue  A resolution plan details the steps necessary understand and possibly resolve the issue.
<b>Critical</b> 2	A support issue shall be considered <b>Critical</b> when a critical failure in operations occurs; meaning Superior’s Solution/Custom Modification is not performing a critical process and prevents the continuation of basic operations. Critical problems do not have a workaround. This classification does not apply to intermittent problems.	Superior has a stated goal to respond within two hours of the issue being reported.	
<b>Non-Critical</b> 3	A support issue shall be considered <b>Non-Critical</b> when or there is a workaround.	Superior has a stated goal to respond within four hours of the issue being reported.	
<b>Minor</b> 4	A support issue will be considered <b>Minor</b> when the issue causes minor disruptions in the way tasks are performed, but does not affect workflow or operations. This may include cosmetic issues, general questions, and how to use certain features of the system.	Superior has a stated goal to respond within 24 hours of the issue being reported.	

With respect to Superior’s support obligations, Superior will use diligent, commercially reasonable efforts to respond to Notifications from Customer relating to the Solution or Custom Modifications identified in the Order in

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accordance with the following guidelines with the time period to be measured beginning with the first applicable Superior "Telephone Support" hour occurring after Superior's receipt of the Notification:

*\* Measured from the moment a Case number is created. As used herein a "Case number" is created when a) Superior's support representative has been directly contacted by Customer either by phone, email, in person, or through Superior's online support portal, and b) when Superior's support representative assigns a case number and conveys that case number to the Customer. Customer must provide remote access to its facility using a Superior approved remote access client so that Superior can perform the support obligations and/or services under this Order; and will provide appropriate security access and accounts for Superior staff and each session participant.*

**SUPERION TRAVEL EXPENSE GUIDELINES**

Superion will adhere to the following guidelines when incurring travel expenses:

All arrangements for travel are to be made through the Superior Corporate Travel Agent unless other arrangements have been made with the Customer and are documented in writing.

AIR TRAVEL – Superior will use the least expensive class of service available with a minimum of seven (7) day, maximum of thirty (30) day, advance purchase. Upon request, Superior shall provide the travel itinerary as the receipt for reimbursement of the airfare and any fees. Fees not listed on the itinerary will require a receipt for reimbursement.

Trips fewer than 250 miles round are considered local. Unless a flight has been otherwise approved by the Customer, Customer will reimburse the current IRS approved mileage rate for all local trips.

LODGING –Superion will use the most reasonable accommodations possible, dependent on the city. All food items, movies, and phone/internet charges are not reimbursable.

RENTAL CAR – Compact or Intermediate cars will be required unless there are three or more Superior employees sharing the car in which case the use of a full size car is authorized. Gas is reimbursable however, pre-paid gas purchases will not be authorized and all rental cars are to be returned with a full tank of gas. Upon request, receipts for car rental and gas purchases will be submitted to Customer. Superior shall decline all rental car insurance offered by the car rental agency as staff members will be covered under the Superior auto insurance policy. Fines for traffic violations are not reimbursable expenses.

OTHER TRANSPORTATION – Superior staff members are expected to use the most economical means for traveling to and from the airport (Airport bus, hotel shuttle service). Airport taxi or mileage for the employee's personal vehicle (per IRS mileage guidelines) are reimbursable if necessary. Upon request, receipt(s) for the taxi will be submitted to Customer. Proof of mileage may be required and may be documented by a readily available electronic mapping service. The mileage rate will be the then-current IRS mileage guideline rate (subject to change with any change in IRS guidelines).

OTHER BUSINESS EXPENSES – Parking at the airport is reimbursable. Tolls to and from the airport and while traveling at the client site are reimbursable. Tipping on cab fare exceeding 15% is not reimbursable. Porter tips are reimbursable, not exceeding \$1.00 per bag. Laundry is reimbursable when travel includes a weekend day or Company Holiday and the hotel stay is four nights or more. Laundry charges must be incurred during the trip and the limit is one shirt and one pair of pants/skirt per day. With the exception of tips, receipts shall be provided to Customer upon request for all of the aforementioned items.

MEALS – Standard per Diem. Subject to change due to cost of living.

**BLUEBEAM SOFTWARE – THIRD PARTY PRODUCTS SUPPLEMENT**

1.1 Bluebeam Software, Inc. owns the Bluebeam Third Party Products set forth in the Order herein ("Third Party Products"). To facilitate Customer's use of the Third Party Products, Bluebeam Software has agreed to allow Superior to provide the Third Party Products to Customer through its distributor Lifeboat Distribution. The Third Party Products shall be used in accordance with an EULA approved in writing between Customer and Bluebeam.

Vote on Motion                      Mrs. Lewis                      Aye                      Mr. Benton                      Aye                      Mr. Merrell                      Aye

**14**

**RESOLUTION NO. 17-1379**

**IN THE MATTER OF APPROVING THE REVOLVING LOAN FUND ADMINISTRATION AGREEMENT BETWEEN DELAWARE COUNTY AND THE STATE OF OHIO, DEVELOPMENT SERVICES AGENCY:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Economic Development Coordinator recommends approving the Revolving Loan Fund

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Administration Agreement between Delaware County and the State of Ohio, for 2018 through 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the Revolving Loan Fund Administration Agreement in the following form:

**ECONOMIC DEVELOPMENT REVOLVING LOAN FUND ADMINISTRATION AGREEMENT**

This Economic Development Revolving Loan Fund Administration Agreement (the "Agreement") is made and entered into by and between the State of Ohio, Development Services Agency, located at 77 South High Street, P.O. Box 1001, Columbus, Ohio 43216-1001 (the "Grantor"), and Delaware County, located at 101 N Sandusky St, Delaware, Ohio 43015 with F.T.I. Number: FTI 316400065 (the "Grantee"), and shall be effective beginning January 1, 2018 (the "Effective Date") and terminate December 31, 2020 (the Termination Date").

**BACKGROUND INFORMATION**

- A. Grantor, through its Office of Community Development ("OCD"), administers the federal Community Development Block Grant ("CDBG") Program for the State of Ohio.
- B. Grantee has been determined to be an eligible recipient of CDBG funds and Grantee has been awarded CDBG funds from the Grantor to finance eligible activities that may generate Program Income as defined herein.
- C. Grantor has recognized the positive impact on community development initiatives when the use of Economic Development Program Income is locally determined. Grantor has permitted the establishment of Economic Development Revolving Loan Funds within local political subdivisions to meet the primary development goals of: 1) encouraging the expansion and stability of the economic base of the designated area of the Economic Development Revolving Loan Fund; and 2) encouraging increased employment opportunities, particularly for low- and moderate-income persons in designated areas of the Economic Development Revolving Loan Fund.
- D. Grantor desires to have Grantee administer an Economic Development Revolving Loan Fund using the CDBG Program Income and Grantee desires to administer an Economic Development Revolving Loan Fund using the CDBG Program Income for the purposes stated above.
- E. Grantee has adopted a Resolution or Ordinance authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**STATEMENT OF THE AGREEMENT**

1. Economic Development Revolving Loan Fund Capitalization. Grantee shall deposit any and all Economic Development Program Income into an Economic Development Revolving Loan Fund account held by the Grantee.
2. Definitions.
  - a.) Economic Development Revolving Loan Fund ("RLF") is a separate fund established for the purpose of accounting for Program Income and of carrying out the specific activities designated in OCD's RLF Policies and Procedures Manual, available on OCD's Technical Assistance website, which, in turn, generate payments to the fund ("RLF Funds") for the continued use in carrying out the same activities.
  - b.) Economic Development Program Income is defined as gross income received by the recipient directly generated from the use of Ohio State Administered CDBG Program funds for economic development, downtown revitalization, and microenterprise business development activities.
  - c.) CDBG Economic Development RLF Consolidation. Grantee shall consolidate all existing Economic Development RLF, Downtown RLF, and Microenterprise RLF accounts into an Economic Development RLF Account held by the Grantee.
3. RLF Plan and Use of Funds. Grantee has adopted an RLF Plan that includes the policies and procedures established by Grantor in the OCD RLF Policies and Procedures Manual. The plan must include any designated administrative agent, an established board structure, loan review criteria, and procedures for workouts, delinquencies and defaults. Grantee shall use the RLF Funds solely for the stated purposes set forth in this Agreement, OCD's RLF Policies and Procedures Manual, the Local RLF Plan, and the current Ohio Consolidated Plan.
4. Loan and Grant Approvals. Grantee shall submit to Grantor an RLF loan or grant approval request for each project being considered for RLF assistance. Grantee must receive Grantor's written approval prior to the commencement of the Grantee's local RLF project.

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5. National Objective Requirements. Grantee shall ensure that all projects funded as a result of this Agreement meet the CDBG national objective of creating or retaining jobs for low-and-moderate income persons. Any projects not meeting this requirement must submit a request for waiver to Grantor. Grantor will review the request to determine if the project meets a CDBG National Objective. Written approval from Grantor must be received prior to the local RLF issuing approval for the project.
6. Subrecipient Agreements. Grantee shall not subgrant or subloan the Economic Development Program Income funds to any other local political jurisdiction or non-profit agency. Grantee may contract with a non-profit agency to administer the RLF Funds, but the funds are to remain with the Grantee in the Revolving Loan Fund Account. If there is a change in the designated administrative agent of the RLF Funds, it is the responsibility of the Grantee to notify OCD within fifteen (15) days of any change in status of the designated administrative agent.
7. Accounting of RLF Funds. RLF Funds shall be deposited and maintained in a separate fund account upon the books and records of Grantee (the "Account"). Grantee shall keep all records of the Account in a manner that is consistent with generally accepted accounting principles. All disbursements from the Account shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure.
8. Reporting Requirements. Grantee shall submit RLF Status Reports to Grantor no more than thirty (30) days after notification of the RLF Status Report request. RLF Status Reports may include but are not limited to the following: program income; program activities; and program outcomes.
9. Compliance with General CDBG Requirements. Grantee shall comply with all applicable provisions of the statutes, rules, regulations and guidelines as passed by Congress or promulgated by the Secretary of the Department of Housing and Urban Development (HUD).
10. Compliance with Environmental Requirements. Grantee shall comply with the provisions of 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, for all projects funded with Economic Development Program Income. Grantee agrees to prepare environmental review records and submit Request for Release of Funds and/or Certification documentation to Grantor for all funded projects. Grantee may not initiate project work until Grantor issues a Project Specific Release of Funds Respecting Environmental Grant Conditions.
11. Acquisition and Relocation. Grantee shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations set forth in 24 CFR 570.488 and 49 CFR Part 24 as they apply to the activities covered by this Agreement. Grantee shall comply with the process established under the Anti-Displacement and Relocation Plan.
12. Term of the Agreement. This Agreement shall begin on the Effective Date and shall terminate on the Termination Date, unless otherwise modified pursuant to Section 29 (f) herein. At least sixty (60) days prior to the Termination Date, Grantor will determine if the Grantee continues to have the capacity to administer the RLF Funds based on the performance of the Grantee and its designated administrative agent. Grantor shall promptly notify Grantee in writing of a determination questioning administrative capacity. Grantor reserves the right to determine if the State of Ohio will renew the Agreement to allow the Grantee to administer the RLF, have the Grantee close out the RLF by executing a CDBG Closeout Agreement or recapture the RLF Funds.
13. Records, Access and Maintenance. Grantee shall establish and maintain for at least three (3) years from the expiration of this Agreement, all direct information and such records as are reasonably related to the administration of an RLF as set forth in the OCD RLF Policies and Procedures Manual. Both parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement as provided in Section 20 of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RLF Funds, the Grantee shall, at its own cost and expense, segregate all such records related to the RLF Funds from its other records of operation.
14. Inspections. At any time during normal business hours upon three days prior written notice and as often as Grantor may deem necessary and in such a manner as not to interfere unreasonably with the normal business operations, Grantee shall make available to Grantor, and to appropriate state agencies or officials, for examination, all of its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment and shall permit Grantor to audit, examine and make excerpts or transcripts from such records.
15. Audits. An audited Grantee shall submit to the Federal Audit Clearinghouse and make available for public inspection a copy of the audit, data collection form and reporting package as described in 2 CFR 200 Subpart F – Audit Requirements within the earlier of 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period. In addition Grantees must notify the Grantor when their audit reporting package is submitted to the Federal Audit Clearinghouse. Notification should be sent to [singleaudit@development.ohio.gov](mailto:singleaudit@development.ohio.gov) and must take place within seven (7) days following submission of the reporting package to the Federal Audit Clearinghouse. In lieu of or in addition to the notification, Grantees may electronically submit their single audit report to [singleaudit@development.ohio.gov](mailto:singleaudit@development.ohio.gov) or mail one copy of the single audit report to Special Projects Coordinator, Audit Office, P. O. Box 1001, Columbus, Ohio 43216-1001.

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16. Equal Employment Opportunity. Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status, or ancestry. Grantee will take affirmative action to ensure that applicants are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status, or ancestry. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its respective contracts for any of the work for which the Grant Funds are expended (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

17. Prevailing Wage Rates and Labor Standards. In the commission of any Project(s) wherein federal funds are used to finance construction work as defined in the Code of Federal Regulations (CFR) Title 29, Part 5 to the extent that such activity is subject to the Davis-Bacon Act (40 United States Code (U.S.C.) 3141 to 3148, as amended), all laborers and mechanics employed by contractors or subcontractors on any such construction work assisted under this Agreement shall be paid the wages that have been determined by the U.S. Secretary of Labor to be the wages prevailing for the corresponding classes of laborers and mechanics employed on project(s) of a character similar to the contract work in the civil subdivision of the state wherein the work is to be performed. In addition, all laborers and mechanics employed by contractors or subcontractors on such construction work assisted under this Agreement shall be paid overtime compensation in accordance with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 to 3708. Furthermore, Grantee shall require that all contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable federal and state laws and regulations.

In the event that the construction work to be undertaken does not lie within the purview of the Davis-Bacon Act, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in the construction work to be assisted by this Project(s), Grantee will comply with the provisions of Ohio Revised Code (ORC) Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

18. Use of Federal Grant Funds. Grantee acknowledges that this Agreement involves the use of federal funds and as such, is subject to audit by the agency of the United States Government granting the funds to Grantor for the purposes of performing the work and activities as listed in the Grantee's RLF project report forms and in conformance with OCD's RLF Policies and Procedures Manual, and the Local RLF Plan. Grantee shall fully reimburse Grantor for any cost of Grantee which is disallowed by said federal agency and which must be refunded thereto by Grantor.

19. Property and Equipment Purchases. All items purchased by Grantee are and shall remain the property of Grantee, except if Grantor exercises its right to terminate this Agreement pursuant to paragraph 20, in which case all property and equipment purchased by Grantee with any Grant Funds herein awarded shall revert to Grantor. Grantee shall provide for the security and safekeeping of all items obtained through this Agreement.

20. Termination.

a. Grantor may immediately terminate this Agreement by giving reasonable written notice of termination to Grantee for any of the following occurrences:

- i. Failure of Grantee to fulfill in a timely and proper manner any of its obligations under this Agreement.
- ii. Failure of Grantee to submit any report required by this Agreement that is complete and accurate.
- iii. Failure of Grantee to use the Grant Funds for the stated purposes in this Agreement.
- iv. Cancellation of the grant of funds from HUD.

b. Early Termination: Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor (ii) admits Grantee's inability to pay its debts as such debts become due, (iii) Grantee commences a voluntary bankruptcy, (iv) an involuntary bankruptcy action occurs against Grantee which remains undismissed or unstayed for 60 days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location. The events permitting early termination by Grantor shall be considered a default by Grantee and subject to the Effects of Termination under Section 21 of this Agreement.

c. Grantor reserves the right to suspend the administration of the RLF at any time for failure of the Grantee or its designated administrative agent to administer the local RLF in compliance with the OCD's RLF Policies and Procedures Manual which is not attached but incorporated herein by reference. Throughout this Agreement, Grantee and any designated administrative agent must continue to demonstrate administrative capacity in the administration of the RLF. Failure to accurately report on the RLF Funds could result in Grantor placing the RLF

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Funds on hold or recapturing the RLF Funds. Grantor also reserves the right to request the RLF Funds be returned to the State of Ohio upon failure to comply with the OCD RLF Policies and Procedures Manual.

21. **Effects of Termination.** Within 60 days after termination of Agreement, Grantee shall surrender all reports, documents, and other materials assembled and prepared pursuant to Agreement, which shall become the property of Grantor, unless otherwise directed by Grantor. After receiving written notice of termination, Grantee shall incur no new obligations and shall cancel as many outstanding obligations as possible. Upon compliance with this Section, Grantee shall receive compensation for all activities satisfactorily performed prior to the effective date of termination.
22. **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.
23. **Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Grantee shall immediately disclose in writing to Grantor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Grantee shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
24. **Liability.** Unless Grantee is an Ohio political sub-division and can prove to Grantor that it is self-insured, Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents and subcontractors. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.
25. **Adherence to State and Federal Laws, Regulations.**
  - a. **General.** Grantee shall comply with all applicable federal, state and local laws in the performance of Grantee's obligations under Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.
  - b. **Ethics.** Grantee, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflicts of interest laws including, without limitation, ORC Section 102.01 et seq., Sections 2921.01, 2921.42, 2921.421, 2921.43, and 3517.13(I) and (J), and (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of Agreement and the grant of funds made pursuant to Agreement and may result in the loss of other contracts or grants with the State of Ohio.
26. **Outstanding Liabilities.** Grantee represents and warrants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any amount to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other amount to the State, a state agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.
27. **Falsification of Information.** Grantee affirmatively covenants that it has made no false statements to Grantor in the process of obtaining this award of the Grant Funds. If Grantee has knowingly made a false statement to Grantor to obtain this award of the Grant Funds, Grantee shall be required to return all the Grant Funds immediately pursuant to ORC Section 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than one hundred eighty (180) days.
28. **Public Records.** Grantee acknowledges that Agreement and other records in the possession or control of Grantor regarding the Project are public records under ORC Section 149.43 and are open to public inspection unless a legal exemption applies.

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29. Miscellaneous.

a. **Governing Law.** Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

b. **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to Agreement shall be brought only in a court in Columbus, Ohio.

c. **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of Agreement.

d. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

i. In the case of Grantor, to:

Ohio Development Services Agency Office of Community Development 77 South High Street, P.O. Box 1001  
Columbus, Ohio 43216-1001  
Attn: Deputy Chief

ii. In the case of Grantee, to:

Grantee Name: Delaware County  
Address: 1 01 N Sandusky St  
City, State, Zip: Delaware, Ohio 43015

f. **Amendments or Modifications.** Either party may at any time during the term of this Agreement request amendments or modifications, as described in the applicable State of Ohio Consolidated Plan Submission. Requests for amendment or modification of Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Project(s). Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original agreement.

g. **Pronouns.** The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h. **Headings.** Section headings contained in Agreement are inserted for convenience only and shall not be deemed to be a part of Agreement.

i. **Assignment.** Neither Agreement nor any rights, duties, or obligations described herein shall be assigned, subcontracted or subgranted by Grantee without the prior express written consent of Grantor.

j. **Permissible Expenses.** If "travel expenses," as defined in Ohio Administrative Code Section 126-1-02 (the "Expense Rule"), are a cost of the Project eligible for reimbursement with Grant Funds, Grantee shall be reimbursed accordingly. Grantee agrees that it shall not be reimbursed and Grantor shall not pay any items that are deemed to be "non-reimbursable travel expenses" under the Expense Rule, whether purchased by the Grantee or Grantor or their respective employees or agents.

k. **Binding Effect.** Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

l. **Survival.** Any provision of this Agreement which, by its nature, is intended to survive the expiration or



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other termination of this Agreement shall so survive and shall benefit the parties and their respective successors and permitted assigns.

m. Counterparts; PDF Accepted. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format (“PDF”) shall be deemed to be originals for purposes of execution and proof of this Agreement.

Signature: Each of the parties has caused this Economic Development Revolving Loan Fund Administration Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**15**

**RESOLUTION NO. 17-1380**

**IN THE MATTER OF APPROVING CHANGE ORDER NO. 3 AND CHANGE ORDER NO. 4 TO THE DEVELOPER-CONTRACTOR AGREEMENT BETWEEN METRO DEVELOPMENT II LLC AND TRUCCO CONSTRUCTION COMPANY, INC. FOR THE CLARK-SHAW SANITARY SEWER LINE PROJECT 1:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

**CHANGE ORDER NO. 3**

Whereas, there is a Developer-Contractor Agreement between Metro Development II, LLC and Trucco Construction Company, Inc. for the construction of the Clark-Shaw Sanitary Sewer Line Project 1; and

Whereas, Change Order No. 3 is for Force Account Item #7, a deduct for 120 linear feet of casing grout; and

Whereas, pursuant to the Third Amendment to the Amended and Restated Intergovernmental Cooperation Agreement between Delaware County and the Concord/Scioto Community Authority, the Delaware County Board of Commissioners must approve all change orders to the Developer-Contractor Agreement; and

Whereas, Change Order No. 3 authorizes a decrease to the contract in the amount of \$6,552.00; and

Whereas, the Sanitary Engineer recommends approval of Change Order No. 3.

**CHANGE ORDER NO. 4**

Whereas, there is a Developer-Contractor Agreement between Metro Development II, LLC and Trucco Construction Company, Inc. for the construction of the Clark-Shaw Sanitary Sewer Line Project 1; and

Whereas, Change Order No. 4 is for Force Account Item #9, an increase for additional asphalt patching on Butts Road; and

Whereas, pursuant to the Third Amendment to the Amended and Restated Intergovernmental Cooperation Agreement between Delaware County and the Concord/Scioto Community Authority, the Delaware County Board of Commissioners must approve all change orders to the Developer-Contractor Agreement; and

Whereas, Change Order No. 4 authorizes an increase to the contract in the amount of \$4,752.85; and

Whereas, the Sanitary Engineer recommends approval of Change Order No. 4.

**THEREFORE BE IT RESOLVED** that the Delaware County Board of Commissioners approve Change Order No. 3 and Change Order No. 4 to the Developer-Contractor Agreement between Metro Development II LLC and Trucco Construction Company, Inc. for the construction of the Clark-Shaw Sanitary Sewer Line Project 1.

Vote on Motion                      Mr. Merrell              Aye              Mrs. Lewis              Aye              Mr. Benton              Aye

**16**

**RESOLUTION NO. 17-1381**

**IN THE MATTER OF AWARDING A BID AND AWARDING A CASH LEASE TO TODD L. ETGEN FOR THE LEASE OF DELAWARE COUNTY FARM LAND LOCATED AT 6579 MOORE ROAD:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

Whereas: Sealed bids for the Lease of Delaware County Farm Land located at 6579 Moore Road were received by the County of Delaware, Ohio at the Office of the Sanitary Engineer at 10:00 o’clock a.m. local time, December 6,

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2017; and

WHEREAS: Three (3) bids were received. The highest bid received was from Todd L. Etgen; and

WHEREAS: The Sanitary Engineer recommends awarding a cash lease to Todd L. Etgen; and

Now, therefore, be it resolved that the bid for the lease of Delaware County farm land located at 6579 Moore Road be awarded to Todd L. Etgen. The Sanitary Engineer shall prepare the necessary Notice of Award and submit to the Tenant for execution.

Furthermore, be it resolved that the Board of Commissioners of Delaware County, Ohio, execute the following cash lease with Todd L. Etgen.

**CASH LEASE**

**SECTION I. DATE, PARTIES TO LEASE, AND DESCRIPTION OF PROPERTY**

1. This lease is made this 28<sup>th</sup> day of December, 2017, by and between the Board of Commissioners for Delaware County, Ohio, landlord, and Todd L. Etgen, tenant.
2. The landlord, in consideration of the hereinafter described agreements made by the tenant, does hereby lease to the tenant to occupy 44 acres of used for agricultural use, and described real estate as identified in "Exhibit A" and situated in Concord Township and further described as Cropland of Delaware County Lower Scioto Water Reclamation Facility Farm except for the following reservations: Buildings, Pasture Land and Barn and Feedlots.

**SECTION II. LENGTH OF LEASE**

Said tenant to have and to hold the said property, subject to the conditions and limitations hereinafter mentioned, for the 2018 crop year beginning on the 1st day of April, 2018, at 12:00 p.m. (noon) and ending on December 31, 2018, or ten days after the crops are removed, which ever comes first.

Said lease is thereafter renewable for three (3) additional one (1) crop years. To renew, the tenant must provide the landlord a written notice of intent to renew on or before the first day of November 2018 (for the 2019 crop year). Any renewal period pursued by the tenant will be subject to the same terms and conditions of the original lease period.

The landlord reserves the right not to renew the lease and must do so in writing to the tenant by December 15<sup>th</sup> of the original term and any renewal period.

**SECTION III. PAYMENT OF RENT**

For the occupancy and use of the real estate as herein described the tenant agrees to pay the landlord, a rent of \$9,944.00, being computed at \$ 226.00 per tillable acre.

One-half of the annual rent shall be due and payable at the Delaware County Regional Sewer District Delaware 50 Channing Street Delaware Ohio 43015 on or before April 1, 2018; the remaining one-half of the annual rent is due and payable on or before November 1, 2018 for the crop year. Rent any renewal period will be due in the same manner for the year of the lease is renewed.

Failure to pay rent on time will automatically result in non-renewal of lease.

**SECTION IV. LANDLORD CONTRIBUTION**

1. The landlord will furnish the above described real estate.

**SECTION V. TENANT'S CONTRIBUTION AND CARE OF PROPERTY**

The tenant agrees to farm the land in a husband-like manner and to standards, methods, and/or practices recommended by the Delaware County Soil and Water Conservations District and the USDA Natural Resource Conservation Service.

**SECTION VI. SYSTEM OF FARMING AND SOIL MAINTENANCE**

The tenant is encouraged to farm the property in accordance to the Resource Management System Conservation Plan developed by the USDA Natural resource Conservation Service and the Delaware Soil & Water Conservation District and adopted by the Board of Commissioners, and in addition, provided that the tenant does not do any of the following: plow identified surface drainage courses, cut straw on fields planted to wheat or oats after harvest, use any herbicides, pesticides, and/or use fertilizers that have any residual carry-over into the next crop. Straw cut during harvest may be removed from fields.

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A crop rotation of soybeans, winter wheat and corn is encouraged to be used.

The tenant shall not use the property that is subject of this lease for the pasturing of livestock. This lease does not include the use of any building or utilities on the property.

**SECTION VII. RIGHT OF ENTRY**

The landlord reserves the right to enter upon said land to inspect, to make improvements thereon, and for any and all lawful purposes arising from the ownership of the farm so long as it does not interfere with the rights of the tenant as provided in this lease.

**SECTION VIII. HEIRS AND SUCCESSORS**

1. This lease shall be binding upon the heirs, executors, administrators, and successors of both landlord and tenant.
2. However, if the lease is renewed for more than the crop year, the following applies:
  - a. If the land is sold or transferred during the term of this lease, the sale or transaction is subject to terms of this lease.
  - b. If the tenant dies during the terms of this lease, the lease shall be terminated at the end of the lease year in which the death occurs.

**SECTION IX. YIELDING POSSESSION AT END OF LEASE**

The tenant agrees that at the expiration of this lease he will yield possession of the property to the landlord without further notice and that it will be in as good order and condition as when the same was entered by the tenant.

**SECTION X. SUBLEASING**

The tenant will not re-lease or sublet said property or any part thereof without the written consent of the landlord.

**SECTION XI. TERMINATION OF LEASE/LIQUIDATED DAMAGES**

The landlord may, at its sole option, terminate this lease upon providing thirty (30) days written notice of its intent to do so. If the landlord terminates this lease for any reason before the planting of any crops, the landlord shall reimburse the tenant liquidated damages for all reasonable expenses, excluding lost profits but including any rent payments that already have been made, for that crop season. If the landlord terminates this lease after the planting of crops, the landlord shall reimburse the tenant liquidated damages in the estimated amount of the value the crop planted on the farmland. Estimated yield rates and rates for standard farming practices will be obtained from the local USDA Office and/or OSU Extension Office. The liquidated damages described in this section will be the only remedy available to the tenant under this agreement. The tenant hereby releases all other claims, rights and legal and equitable remedies against the landlord. The tenant further indemnifies and holds harmless the landlord for any claim made by any party against the landlord relating to this agreement or the tenant's use of the property.

**SECTION XII. ADDITIONAL FEATURES**

The tenant may enter the premises prior to April 1<sup>st</sup> for spring field work by contacting the Delaware County Regional Sewer District office.

At the end of the renewal period or the end of the original lease if the tenant does not exercise their option to renewal, the tenant shall allow access to the property to any new tenant for the no-till planting of wheat immediately after the harvest of soybeans if applicable.

**SECTION XIII. MISCELLANEOUS TERMS**

1. **Indemnity**: The Tenant shall indemnify and hold harmless the Landlord, its agents and employees from any and all losses, claims, damages, lawsuits, costs, judgments, expenses or any other liabilities which they may incur as a result of bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, caused in whole or part by the negligent act or omission of the Tenant, any person directly or indirectly employed by Tenant, or any person for whose acts Tenant may be liable.
2. **Insurance**: The Tenant shall carry and maintain throughout the life of the Lease such bodily injury and property damage liability insurance as will protect it and the Landlord, its respective board members,

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officers, employees, agents, representatives, servants, and volunteers against any and all claims for personal injury, including death, or property damage, which may arise under this Lease or from use of vehicles in connection therewith, and shall include coverage for indemnification as described above.

The Tenant shall present to the Landlord current certificates of insurance, and shall maintain such insurance during the term of this Lease. Said insurance shall, at a minimum, include the insurance specified below and the amount of coverage on said policies of insurance shall be at least that which is specified below:

- a. General Liability insurance for a minimum of one million dollars (\$1,000,000.00) per occurrence;
  - b. Auto Liability Insurance covering all owned, non-owned and hired vehicles used upon or about the leased premises, with limits of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage.
3. Severability: If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this lease, and such other provision shall continue in full force and effect.
4. Governing Law: This Lease shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Lease shall be filed in and heard before the courts of Delaware County, Ohio.

In witness whereof, the parties have signed this lease on the date named in Section I.

Vote on Motion                      Mrs. Lewis                      Aye                      Mr. Merrell                      Aye                      Mr. Benton                      Aye

**17**  
**RESOLUTION NO. 17-1382**

**IN THE MATTER OF ACCEPTING SANITARY SEWER IMPROVEMENTS FOR OLENTANGY FALLS EAST SECTION 2:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Whereas, the construction of new sanitary sewers at the Olentangy Falls East Section 2 have been completed to meet Delaware County Sewer District requirements; and

Whereas, the Sewer District has received the necessary items required by the Subdivider’s Agreement; and

Whereas, the Sanitary Engineer recommends accepting sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

<b>Olentangy Falls East Section 2</b>	2040’ of 8- inch sewer	\$160,501.60
	7- manholes	\$ 23,266.00

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby approves and accepts the above sanitary sewer improvements for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 2. The Board hereby releases any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed to insure faithful performance for construction of the above sanitary sewer improvements, if applicable.

Section 3. The Board hereby accepts any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed per the requirements of the subdivider’s agreement for the five-year maintenance period for the above sanitary sewer improvements.

Vote on Motion                      Mr. Benton                      Aye                      Mr. Merrell                      Aye                      Mrs. Lewis                      Aye

**18**  
**RESOLUTION NO. 17-1383**

**APPROVING THE AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT BETWEEN NHG DEVELOPMENT GROUP, LTD. AND THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO FOR THE TARTAN FIELDS GOLF CLUB COMMUNITY SUBDIVISION:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following agreement:

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AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT  
by and between  
NHG DEVELOPMENT GROUP, LTD.  
and  
THE BOARD OF COUNTY COMMISSIONERS OF  
DELAWARE COUNTY, OHIO  
Original Agreement Dated  
March 17, 1997  
Amended and Restated Agreement Dated  
December 28, 2017

AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT  
BY AND BETWEEN  
NHG DEVELOPMENT GROUP, LTD.  
AND  
BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO

This Subdivider’s Agreement (the “Agreement”) amends and restates the original agreement dated March 17, 1997, as amended by an Amendment to Subdivider’s Agreement dated June 7, 2001, and is made on this 28th day of December, 2017, by and between NHG DEVELOPMENT GROUP, LTD. (the “Developer”), an Ohio limited liability company, and the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO (the “County”), a county and political subdivision organized and existing under the Constitution and the laws of the State of Ohio, under the circumstances summarized in the following recitals (the Developer and the County may hereinafter be referred to individually as “Party” and referred to collectively as the “Parties”):

**WITNESSETH:**

WHEREAS, the County is a political subdivision located entirely within the State of Ohio; and

WHEREAS, the Developer has undertaken the development of an area in the County known generally as the Tartan Fields Golf Club Community (the “Development”); and

WHEREAS, as part of the Development, the Developer constructed a waste water reclamation and reuse system and treatment facility for the Development (the “Improvements”); and

WHEREAS, pursuant to the original agreement, dated March 17, 1997, as amended by the Amendment to Subdivider’s Agreement dated June 7, 2001 (collectively, the “Subdivider’s Agreement”), the Developer dedicated the Improvements to the County, and the County assumed maintenance and operation of the Improvements; and

WHEREAS, in order to accommodate additional development for the Future Tartan Fields Development Area and other areas adjacent thereto, and to realize the original design capacity for the treatment facility, the County will be required to make repairs, modifications, and enhancements to the Improvements; and

WHEREAS, the Parties mutually acknowledge that absent additional improvements thereto, the Improvements are at or near maximum capacity; and

WHEREAS, in recognition of the Developer’s investment in the Development and the Improvements and the County’s ongoing obligation to maintain and operate the Improvements, the Parties now desire to amend and restate the original agreement by entering into this Agreement;

NOW, THEREFORE, in consideration of the representations and mutual covenants contained herein, the Parties hereby covenant, agree and obligate themselves as follows:

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**ARTICLE 1 – STATUS OF IMPROVEMENTS**

Section 1.01 Status of Tap Credits. The Parties mutually acknowledge and agree that the Developer has received all tap credits requested under the Subdivider's Agreement to date (after taking into account the sewer taps provided in Section 3.01 below), and has retained all fees collected therefor to apply to Developer's original costs to construct and maintain the Improvements prior to the turn over and acceptance of the Improvements by the County on November 12, 1999, after which time the County assumed financial and legal responsibility for operation, maintenance and any necessary upgrades of the Improvements.

Section 1.02 Completed Construction. The Parties mutually acknowledge and agree that the Developer has completed construction of and dedicated the Improvements, that the County has assumed operation and maintenance of the Improvements effective November 12, 1999, and that the Improvements are at or near maximum capacity, requiring additional improvements to allow additional connections thereto at the County's expense (it being understood the Developer has no further obligation to contribute to the cost of maintenance, repair or upgrades of the Improvements).

**ARTICLE II ADDITIONAL PUBLIC IMPROVEMENTS**

Section 2.01 Construction/Installation of Additional Improvements. Except as set forth in Section 2.02 of this Agreement, the County shall be solely responsible for constructing and installing any additional improvements to the Improvements.

Section 2.02 Cost of Additional Improvements. The County shall bear the cost of the additional improvements to the Improvements and may fix and collect rates and charges to recover such costs, pursuant to R.C. Chapter 6117, subject only to the tap credits granted to Developer in Article III of this Agreement.

**ARTICLE III – FUTURE CONNECTIONS TO THE IMPROVEMENTS**

Section 3.01 Grant of Additional Tap Credits. In consideration of the Developer's investment in the Improvements, and in accordance with the Subdivider's Agreement, the County agrees to grant to the Developer thirty-four (34) tap credits for redemption or resale exclusively within the area identified as "Existing Tributary Area" on Exhibit A, attached hereto and, by this reference, incorporated herein. The Parties mutually acknowledge that this grant of tap credits is intended to establish the reasonable charge for the Developer to connect to the Improvements, pursuant to R.C. 6117.02, in consideration of the Developer's private investment in the Improvements, such charge being a special exception to the established charge. Each tap credit can be used as a credit for the connection charges by the County for one (1) residence or equivalent residential unit ("ERUs") of capacity. Capacity for the tap credits granted in this Section 3.01 shall be reserved until the tap credits have been exhausted, and the County guarantees capacity of the Improvements for the thirty-four (34) ERUs. County and Developer acknowledge and agree that Developer may assign any and all of the foregoing tap credits to the builders or purchasers of the residential lots in the Existing Tributary Area, and to retain all proceeds from the assignment and sale of any of the thirty-four (34) tap credits.

Section 3.02 Capacity for Future Tartan Fields Development Area. Consistent with Developer's exclusive rights under the Subdivider's Agreement to add future lots to the Improvements based on the capacity thereof, the County guarantees capacity exclusively to Developer for a maximum of ninety-three (93) ERUs within the area identified as "Future Tartan Fields Development Area" on Exhibit A. Developer will pay the County's connection fees for each such connection as provided in Section 3.04. Developer acknowledges the County is also separately providing seventy (70) ERUs to another developer(s) for proposed development(s) in the Future Tartan Fields Development Area. Furthermore, Developer acknowledges and agrees that the County may grant additional connections for lots in the Future Tartan Fields Development Area and any other areas the County desires to serve with the Improvements, provided that the ninety-three (93) ERUs for the Developer as specified herein are recognized and reserved. County agrees that the tap/connection fees received by the County from Developer and other developer(s) who receive sewer taps to the Improvements in the Future Tartan Fields Development Area will be utilized by the County to enhance and add to the capacity of the Improvements to the extent necessary for development of the Future Tartan Fields Development Area as contemplated herein and, thereafter, for any purpose authorized in Chapter 6117 of the Revised Code.

Section 3.03 Additional Connections. The County may, in its sole discretion, approve additional connections to the Improvements, subject to the capacity reservation and guarantee stated in Sections 3.01 and 3.02, outside of the Future Tartan Fields Development Area.

Section 3.04 Fees for Additional Connections. The County shall have the right to fix, charge, collect, and retain all connection fees for any connections to the Improvements pursuant to Sections 3.02 and 3.03.

Section 3.05 User Fees. The County shall have the right to fix, charge, collect, and retain all user fees on properties served, or capable of being served, by the Improvements, including, without limitation, those properties served, or capable of being served, by connections made pursuant to Section 3.01.

Section 3.06 Satisfaction of County's Obligation. Subject to the performance by the County of its obligations hereunder, Developer acknowledges and agrees that it shall no longer have the exclusive right to all connections

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to the Improvements for future developments based on the capacity of the Improvements, and this Agreement shall hereafter govern all future connections to the Improvements.

ARTICLE IV - GENERAL PROVISIONS

Section 4.01 Term. This Agreement shall commence on the last date of the execution of this Agreement by the Developer and the County.

Section 4.02 Support of Agreement. In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party or parties, the Parties each agree to cooperate and use its best efforts to defend this Agreement. Each Party shall bear its own costs in any such defense of this Agreement or any term or provision thereof.

Section 4.03 Signing Other Documents. The Parties each agree to cooperate and use its best efforts to implement this Agreement, and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions, in order to effectuate the purposes of this Agreement.

Section 4.04 Amendments. This Agreement may be amended by the Parties only in writing.

Section 4.05 Beneficiaries. This Agreement shall inure to the benefit of and shall be binding only upon the Parties and their respective successors or assigns, it being understood that Developer may assign its credits under Section 3.01 and to the actual builder or purchaser of the residential lots in question.

Section 4.06 Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Section 4.07 Notice Addresses. Except as otherwise specifically provided herein, all notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered, or mailed by first class certified mail, postage prepaid, addressed:

- a. in the case of the County:

Michael Frommer, P.E.  
Delaware County Sanitary Engineer  
50 Channing Street  
Delaware, Ohio 43015

- b. in the case of the Developer:

NHG Development Group, Ltd.  
c/o Northwood Land Corporation  
941 Chatham Lane, Suite 100  
Columbus, Ohio 43221  
Attn: David Haid

The County and the Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed, but no such communication shall thereby be required to be sent to more than two addresses.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly signed in their respective names by their duly authorized officers as of the date first above written.

Vote on Motion                      Mr. Merrell              Aye              Mrs. Lewis              Aye              Mr. Benton              Aye

19

RESOLUTION NO. 17-1384

IN THE MATTER OF ESTABLISHING AND AMENDING CHARGES FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT IN CONFORMITY WITH PROVISIONS OF SECTION 6117.02 OF THE OHIO REVISED CODE:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, pursuant to section 6117.02 of the Revised Code, the Delaware County Board of Commissioners (the "Board") shall fix reasonable rates and fees for the use, or availability of use, and connection to the Delaware County Sewer District (the "District") sanitary sewer facilities; and

WHEREAS, the Board may change the rates from time to time as it considers advisable and, accordingly, has previously made changes in Resolution Nos. 94-336 and 16-1312; and

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WHEREAS, the Board established the District to include the entire unincorporated area of Delaware County, Ohio and such additional territory within the boundaries of incorporated municipalities, when so authorized by the legislative authority of said municipality and when so accepted by resolution of this Board; and

WHEREAS, the District has previously created capacity fee surcharge sub-districts to pay for regional capital improvement projects, and the surcharge fee was in addition to the capacity fee established in accordance with Resolution No. 94-336; and

WHEREAS, the District has prepared a comprehensive system-wide Master Plan to identify the operation, maintenance, and capital needs of the District for existing infrastructure as well as new infrastructure for a ten-year planning period; and

WHEREAS, the District has prepared a financial model as part of the Master Plan to determine the revenue needs to support the recommendations of the Master Plan and the District’s primary sources of revenue include connection fees and service rates; and

WHEREAS, the Delaware County Sanitary Engineer recommends a change to the capacity fee charges and surcharges and the collection of said capacity fees;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:  
 Section 1: The Board hereby establishes the capacity fee for the District in the amount of \$6,400 for one (1) residential equivalent which shall be effective immediately upon adoption. The capacity fee shall be increased in subsequent years to \$6,900 on January 1, 2018, \$7,500 on January 1, 2019, and \$8,100 on January 1, 2020.  
 Section 2: The Board hereby establishes a sub-district surcharge for the Lower Scioto Service Area in the amount of \$2,500 per residential equivalent.

Section 3: The Board shall decrease other sub-district capacity fee surcharges incrementally as outlined below:

Surcharge Area	Surcharge Amount / Effective Date		
	Current	1/1/2019	1/1/2020
Cheshire Pump Station	\$1,200.00	\$500.00	\$0.00
Cheshire Elementary	\$1,450.00	\$650.00	\$0.00
Maxtown Pump Station	\$1,000.00	\$500.00	\$0.00
North Orange	\$0.00	\$0.00	\$0.00
Liberty Park Pump Station sub-district	\$500.00	\$250.00	\$0.00
Perry Taggart	\$2,000.00	\$1,000.00	\$0.00
Liberty Sawmill	\$650.00	\$300.00	\$0.00
Seldom Seen Acres	\$0.00	\$0.00	\$0.00

Section 5: The additional surcharge amount of \$1,350 established by Resolution No. 16-612 on properties within the “Owner’s Choice” area shall remain in full force and effect.

Section 6: Payment of one hundred percent (100%) of the capacity (tap) fees shall be made prior to connection to the sewer system and construction of the tap. This replaces Resolution No. 94-336 where fifty percent (50%) of the capacity (tap) fee was required to be deposited prior to platting.

Section 7: The District shall update the financial model on a routine basis, and the Board may consider an amendment to these fee changes upon receipt of the updated financial model.

Section 8: Notwithstanding any other provision of this Resolution, the properties within the Scioto Reserve and Northstar developments and which are part of the original development or an amendment to said development and properties identified in Resolution No. 16-612 as owned or controlled by the Developer shall pay the capacity fees and surcharges, if any, established by the agreements governing sewer service for those developments. All properties connected to sewer which were not part of the original development or amendment, or specifically exempted by written agreement, shall pay the Sewer District Tap Fee and any applicable surcharges established in Sections 1, 2, and 3 of this Resolution.

Section 9: Notwithstanding any other provision of this Resolution, the Capacity Charges associated with the Powell Assessment Project shall remain at \$2,400 per residential equivalent.

Section 10: Notwithstanding any other provision of this Resolution, all capacity fees in the Evans Farm New Community Authority (NCA) are hereby established at \$8,100. This fee is established to provide consistency for the development because part of the Evans Farm NCA is in the Perry Taggart surcharge area, and part of the NCA is in an area with no surcharge.

Section 11: Notwithstanding any other provision of this Resolution, the properties within the Tartan Fields development shall pay the capacity fees and surcharges, if any, established by the agreements governing sewer



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service for those developments. The District Tap Fee for Tartan Fields is hereby established to be \$8,100.

Section 12: This Resolution supersedes all previous resolutions inconsistent herewith, which are hereby repealed, and shall be effective immediately upon adoption.

Vote on Motion                      Mrs. Lewis              Aye              Mr. Merrell              Aye              Mr. Benton              Aye

**20**

**RESOLUTION NO. 17-1385**

**IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR COURTYARDS AT MUIRFIELD RIDGE:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval.

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans.

THEREFORE BE IT RESOLVED, that the Board of Commissioners approve the sanitary sewer improvement plans for Courtyards at Muirfield Ridge for submittal to the Ohio EPA for their approval.

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**21**

**RESOLUTION NO. 17-1386**

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH QUALITY CONTROL INSPECTION, INC FOR ON-CALL CONSTRUCTION INSPECTION SERVICES:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Quality Control Inspection, Inc. to perform the services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Quality Control Inspection, Inc.:

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into this 28th day of December, 2017, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Quality Control Inspection, Inc. (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

**1 SERVICES PROVIDED BY CONSULTANT**

- 1.1 The Consultant will provide “Services” in connection with the following “Project”:  
On-call construction inspection services (2018)
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:  
Exhibit A – Scope of Services  
Exhibit B – Fee Schedule

**2 SUPERVISION OF SERVICES**

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the Project Manager and agent of the County for this Agreement.
- 2.2 The Sanitary Engineer or his designee shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

**3 AGREEMENT AND MODIFICATIONS**

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior

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understandings and agreements relating to the Project, and may only be modified or amended in writing with the mutual consent and agreement of the parties.

**4 FEES AND REIMBURSABLE EXPENSES**

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Schedule noted in Section 1.3.
- 4.2 For all services described in the Scope of Services and Fee Schedule, except "If Authorized" tasks, the fee shall be as set forth in Exhibit B.
- 4.3 For all Services identified in the Scope of Services and Fee Schedule as "If Authorized" tasks, the fee for each authorized task shall be the fee specified in the Fee Schedule for said task. "If Authorized" tasks shall only be performed upon written Notice from the Sanitary Engineer. The total fee for all "If Authorized" tasks shall not exceed the amount set forth in Exhibit B for such Services.
- 4.4 Total compensation under this Agreement shall not exceed Forty-nine Thousand, Nine Hundred Dollars and Zero Cents (\$49,900.00) without subsequent modification.
- 4.5 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

**5 NOTICES**

- 5.1 "Notices" issued under this Agreement shall be served to the parties listed below in writing. The parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

Sanitary Engineer:

Name: Delaware County Sanitary Engineer's Office  
Attn: Nathan A. Givens

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: ngivens@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Mark Pace, Director of Business Development

Address of Firm: 2800 Corporate Exchange Drive

City, State, Zip: Columbus, Ohio 43231

Telephone: (614) 898-9800

Email: mpace@qcigroup.com

**6 PAYMENT**

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the Sanitary Engineer and on the calculated percentage of Services performed to date in accordance with the Consultant's Fee Schedule.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

**7 NOTICE TO PROCEED, COMPLETION OF SERVICES, DELAYS AND EXTENSIONS**

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Sanitary Engineer and shall complete the Services no later than December 31, 2018.

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- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

**8 SUSPENSION OR TERMINATION OF AGREEMENT**

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

**9 CHANGE/ADDITIONS IN SCOPE OF SERVICES**

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

For services in addition to those included in Section 1 as authorized or "if authorized", a scope and fee shall be negotiated and agreed to by both parties prior to performance of the services. This Agreement shall be modified or amended in writing with the mutual consent and agreement of the parties prior to performance of the additional services.

**10 OWNERSHIP**

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

**11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT**

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or sub-consultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

**12 INDEMNIFICATION**

- 12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

**13 INSURANCE**

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

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- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.
- 14 MISCELLANEOUS TERMS AND CONDITIONS**
- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for

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such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the Services to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

Vote on Motion                      Mr. Merrell              Aye              Mr. Benton              Aye              Mrs. Lewis              Aye

**22**

**RESOLUTION NO. 17-1387**

**IN THE MATTER OF APPROVING A NEW FUND, NEW ORGANIZATION KEY, SUPPLEMENTAL APPROPRIATION, TRANSFER OF APPROPRIATION, TRANSFER OF FUNDS, AND REPAYMENT OF ADVANCE:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

**New Fund**  
420

Capital Improvement Reserve Fund

**New Organization Key**  
42011438

Capital Improvement Reserve

**Supplemental Appropriation**

10011102-5801	Commissioner General/Misc Cash Transfer	2,270,290.61
25522309-5001	Drug Court Docket/Salaries	(10,000.00)
28631323-5001	LEAP Forward 2016/Salaries	(4,043.00)
28631323-5201	LEAP Forward 2016/General Supplies	(5,727.00)
28631323-5260	LEAP Forward 2016/Inventoried Equipment	(3,868.00)
28631323-5365	LEAP Forward 2016/Grant Related Services	(2,747.00)
29440431-5401	S Old St Improvement/Land	(1,496,441.84)
29440435-5420	Big Walnut Interchange/Road Construction	(233,900.00)
29440437-5420	Sunbury Rd Improvement/Road Construction	(460,187.31)
52111140-5720	BR DI Midway Gardens/Bond Interest	(0.50)
52411143-5720	BR DI Roof/Bond Interest	(0.36)
70161606-5001	FCFC HMG/Salaries	(3,143.62)

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
10011102-5201	10011102-5801	3,000.00
Commissioner General/General Supplies	Commissioner General/Misc Cash Transfer	
10011102-5301	10011102-5801	400,000.00
Commissioner General/Contracted Prof Serv	Commissioner General/Misc Cash Transfer	

**Transfer of Funds**

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<b>From</b>	<b>To</b>	
10011102-5801	42011438-4601	3,000,000.00
Commissioner General/Misc Cash Transfer	Capital Improvement Reserve/Interfund Revenue	

**Repayment of Advance**

<b>From</b>	<b>To</b>	
29440431-8501	10040421-8401	1,800,000.00
S Old State Rd Improvement/PY Advance Out	Road & Bridge Projects/PY Advance In	

Vote on Motion            Mrs. Lewis            Aye            Mr. Benton            Aye            Mr. Merrell            Aye

**RESOLUTION NO. 17-1388**

**IN THE MATTER OF AUTHORIZING THE CONTINUATION OF ADVANCES FROM GENERAL FUND DOLLARS TO VARIOUS FUNDS FOR THE YEAR 2017:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

Whereas in previous years advances from the general fund were made to various funds, and

Whereas these funds are not able to repay the general fund at this time, it is necessary to carry over the advances into the year 2018.

Whereas, these dollars are expected to be repaid to the general fund in the year 2018.

Therefore be it resolved that the following advances be carried over to the year 2018

28631323	LEAP Forward	50,000.00
29440431	S Old State Rd Improvement	1,650,000.00
29440435	Big Walnut Interchange	250,000.00
29440437	Sunbury Road Improvements	60,000.00
52211141	BR Chadwick	5,064.11
52111140	BR DI Midway Gardens	2,142.10
52411143	BR DI Roof	12.81

Vote on Motion            Mr. Benton            Aye            Mr. Merrell            Aye            Mrs. Lewis            Aye

**23**

**RESOLUTION NO. 17-1389**

**IN THE MATTER OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS APPROVING A LETTER OF SUPPORT FOR DELAWARE COUNTY PURSUING ADMISSION INTO THE NETWORK OF AGE-FRIENDLY CITIES AND COMMUNITIES INITIATIVE:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

December 28, 2017

Ms. Barbara Sykes  
State Director, AARP Ohio  
17 S. High St. Ste. 800  
Columbus, OH 43215

Dear Ms. Sykes:

The Delaware County Commissioners are in support of Delaware County pursuing admission into the Network of Age-Friendly Cities and Communities Initiative. Delaware County is committed to a collaborative effort to identify needs, promote policies, and foster partnerships in an effort to improve the livability for all residents throughout Delaware County. We have great confidence in SourcePoint, who in partnership with the Delaware General Health District, will lead the effort.

SourcePoint has demonstrated their commitment to providing high quality services and supports to Delaware County’s older residents for 25 years. The Delaware General Health District has been the leader in making Delaware County the healthiest county in the state for several years. As the fastest growing county in the State of Ohio, it is no surprise that Delaware County’s population ages 60 and over is also expected to grow by 153 percent, while the state is only expected to grow 47 percent during this same time frame. Due to this expected extreme population growth, it is vital for Delaware County to strive to assure our community is one where older adults can live healthy and successful lives.

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In order to better serve our aging population, Delaware County has adopted a resolution supporting the Age-Friendly Project, and SourcePoint and the Delaware General Health District have committed to the following:

- Complete an assessment to review the gaps and needs of the aging population throughout the County.
- Create a stakeholder group to address each domain within the Age-Friendly Project
- Develop an action plan responding to the needs identified by the assessment process and stakeholder group.
- Commit to measuring activities, reviewing action plan outcomes and reporting on them publically.

We know that SourcePoint and the Delaware General Health District will work with your staff to achieve the best conditions for Delaware County’s older population. We believe this project will result in valuable partnerships throughout the county and will improve the livability of Delaware County for residents of all ages.

Sincerely,

\_\_\_\_\_  
Jeff Benton, Commissioner

\_\_\_\_\_  
Barb Lewis, Commissioner

\_\_\_\_\_  
Gary Merrell, Commissioner

Vote on Motion                      Mrs. Lewis              Aye              Mr. Benton              Aye              Mr. Merrell              Aye

**24**

**ADMINISTRATOR REPORTS**

Mike Frommer, County Administrator

- Enjoys this time of the year. It’s a time to reflect on the accomplishments of 2017 and what we can do better in 2018. A former boss once told him to plan the work and then work the plan.
- Big Thank You to the Commissioners on behalf of directors and administrators for your support.

**25**

**COMMISSIONERS’ COMMITTEES REPORTS**

Commissioner Merrell

- The Commissioners are planning for the future with the new courthouse and the purchase of the Career Center. We are transitioning from a rural to an urban county.
- Attended a Developmental Disabilities Board meeting last week.
- Happy New Year to everyone in Delaware County.
- Make sure turn on the TV Monday night and cheer on the Sooners!

Commissioner Lewis

- Thank you to President to the Board, Jeff Benton for chairing the meetings so well this past year.
- Thank you to our team of Administrator, Deputy Administrators, Jane Hawes, Karen First, Clerks, the Economic Development department for a job well done this year.
- Happy New Year to everyone
- Go Bucks!

Commissioner Benton

- Go Dawgs!

**26**

**RESOLUTION NO. 17-1390**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL FOR PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)–(7) of the Revised Code; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby adjourns into executive session for consideration of employment, compensation of a public employee or public official; for pending or imminent litigation.

Vote on Motion                      Mr. Benton              Aye              Mr. Merrell              Aye              Mrs. Lewis              Aye

**RESOLUTION NO. 17-1391**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

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It was moved by Mr. Merrell, seconded by Mrs. Lewis to adjourn out of Executive Session at 10:51 AM.

Vote on Motion            Mr. Merrell      Aye      Mrs. Lewis      Aye      Mr. Benton      Aye

There being no further business, the meeting adjourned.

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Gary Merrell

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Barb Lewis

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Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners