

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

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

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

1
RESOLUTION NO. 18-991

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 10, 2018:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on September 10, 2018; 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. 18-992

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0912:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0912 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Cin Children's Hospital	Residential Treatment JFS	22511607-5342	\$ 41,000.00
City Of Delaware	EMS Runs	10011303-5345	\$40,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>
R1804947	CHUCKS SEPTIC TANK	SINK HOLD REPAIR - LOWER	66211905 -	\$ 8,950.00
	SEWER &	SCIOTO	5328	
R1804955	MIRKA,BETHANY	FAMILY LIAISON SERVICES	70161603 -	\$ 11,250.00
		CONTRACT AMENDMENT	5301	
R1804976	RF VALVES INC	AIR RELEASE FOR FORCE	66211903 -	\$ 8,796.00
		MAINS - RSD	5260	
R1804976	RF VALVES INC	AIR RELEASE FOR FORCE	66211904 -	\$ 8,796.00
		MAINS - RSD	5260	

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

5
RESOLUTION NO. 18-993

IN THE MATTER OF SETTING DATE AND TIME FOR INVITATION TO BID FOR THE LEASE OF DELAWARE COUNTY FARM LAND:

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

WHEREAS, the Manager of Facilities recommends approving the bid specifications and bid opening date and time for the invitation to bid for the lease of Delaware County Farm Land;

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

NOW, THEREFORE, BE IT RESOLVED that the Board of Delaware County Commissioners approves the bid specifications and bid opening date and time for the invitation to bid for the lease of Delaware County Farm Land.

**LEGAL NOTICE
LEASE OF DELAWARE COUNTY FARM LAND
4781 County Home Road
1020 US Highway 42 North**

Parties interested in leasing farmland from Delaware County may submit a sealed bid to the Board of Commissioners, Delaware County, Ohio, at 101 North Sandusky Street, Delaware, Ohio 43015 until **10:00am** on Wednesday, **October 3, 2018** for the cash lease of the County’s farmland. Said land being offered for lease, located at the former Delaware County Home, 4781 County Home Road, and the Engineer’s Salt Storage Facility, 1020 US Highway 42 North, Delaware, Ohio.

There will be 218 acres at the County Home and 51 acres at the Engineer’s Salt Storage Facility for a total of 269 acres, more or less, of cropland as denoted by the ASC Maps, to be offered for rent for one (1) crop season from April 1, 2019, with options to renew for four (4) additional one (1) year terms. Payment of one half of annual rent shall be made on or before April 1st and remaining one half of the annual rent by November 1st of each crop season. The notice of intent to exercise the options to extend the lease for one year period is to be submitted to County Commissioners in writing by December 1st preceding the crop year for the extension. Said lease shall be for purpose of use of land for crop purposes and does not provide for use of buildings, utilities or pasturing livestock.

Bid blanks may be obtained online at <http://www.co.delaware.oh.us> under the heading “Public Notices and Bids” or from Delaware County Facilities Management, 1405 US Rt. 23 North, Delaware, Ohio during normal business hours.

Bids will be opened and a cash lease will be entered into according to the discretion of the Board of Commissioners. The Commissioners reserve the right to reject any and all bids, to waive any irregularities or informalities in each. Bids shall be submitted in a sealed envelope marked "Sealed Bid for Farmland Cash Lease." No bid shall be withdrawn for a period of sixty (60) days after being publicly opened and read.

Delaware County Commissioners
Jon Melvin, Director of Facilities

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

**6
RESOLUTION NO. 18-994**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH M+A ARCHITECTS FOR THE RENOVATION/REUSE OF DACC NORTH CAMPUS FOR COUNTY FACILITIES PHASE I SERVICES:

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

WHEREAS, the Director of Facilities recommends approval of a Professional Services Agreement with M+A Architects for the Renovation/Reuse of DACC North Campus for County Facilities Phase I Services;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Professional Services Agreement with M+A Architects for the Renovation/Reuse of DACC North Campus for County Facilities Phase I Services:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 13th day of September, 2018, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and M+A Architects, 775 Yard Street, Suite 325, Columbus, Ohio 43212 (“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,” as further defined in Section 1.3, in connection with the following “Project”:
Proposal for Renovation / Reuse of DACC North Campus for County Facilities Phase I Services
- 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.

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

- 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" TO CONTRACT AGREEMENT - August 23, 2018 (Revision #2)

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities as the "Project Manager" and agent of the County for this Agreement.
- 2.2 The Project Manager 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 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 Proposal noted in Section 1.3.
- 4.2 For all Services described in the Scope of Services and Fee Proposal, except "If Authorized" tasks, the lump sum fee shall be \$188,600.00.
- 4.3 For all Services identified in the Scope of Services and Fee Proposal as "If Authorized" tasks, the fee for each authorized task shall be the lump sum specified in the Fee Proposal for said task. "If Authorized" tasks shall only be performed upon written Notice from the Project Manager. The total fee for all "If Authorized" tasks shall not exceed \$5,000.00.
- 4.4 Total compensation under this Agreement shall not exceed \$193,600.00 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.

Project Manager:

Name: Jon Melvin, Director of Facilities

Address: 1405 US Highway 23 North
Delaware, OH 43015

Telephone: 740 833-2283

Email: jmelvin@co.delaware.oh.us

Consultant:

Name of Principal in Charge: James G. Mitchell, AIA

Address of Firm: M+A Architects 775 Yard Street, Suite 325

City, State, Zip: Columbus, Ohio 43212

Telephone: 614-764-0407

Email: jimm@ma-architects.com

6 PAYMENT

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

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 Project Manager and on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal.

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") from the Project Manager and shall complete the Services no later than January 31, 2019.

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 Project Manager 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 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 not take effect until approved in writing by both Parties.

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 subconsultants 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 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

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

- 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.
- 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 services hereunder. 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 work 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 work 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.

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

- 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 work 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 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 work 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 work 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 work 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 work 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

7

RESOLUTION NO. 18-995

IN THE MATTER OF APPROVING A CONTRACT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND APCO INTERNATIONAL FOR THE APCO INTELICOM SOFTWARE, AND TECHNICAL SUPPORT FOR EMERGENCY MEDICAL DISPATCHING:

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

WHEREAS, the Director of Emergency Communications recommends approval of the contract with APCO International for 911 Intellicomm Software, And Technical Support for Emergency Medical Dispatching;

NOW THEREFORE BE IT RESOLVED, that the Delaware County Board of Commissioners approve the contract and purchase order with APCO International for Intellicomm Software, And Technical Support for Emergency Medical Dispatching:

APCO IntelliComm Guidecard Software as a Service Agreement

This APCO IntelliComm Guidecard Software as a Service Agreement (the "Agreement") is made and entered into on this 23rd day of August, 2018, (the "Effective Date") by and between the Association of Public-Safety Communications Officials International, Inc., a non-profit corporation with offices at 1426 Prince St, Alexandria, VA 22314 ("APCO" or "we") and the Delaware County Board of Commissioners, for and on behalf of Delaware County Emergency Communications at 10 Court Street, Delaware, OH 43015 ("Agency" or "you") with an Agency Fiscal Year beginning on January 1st of each year.

This Agreement provides the terms and conditions for the use of the APCO IntelliComm Guidecard Software as a Service ("APCO IntelliComm" or "Services").

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

1. APCO's Obligations. APCO agrees to provide the Services, including hosting, maintenance, and technical support for APCO IntelliComm in accordance with the usage specifications provided to Agency and subject to the flow down terms of use for embedded services as described in Exhibit A.
2. Use Rights. Agency agrees to utilize the Services in strict compliance with the terms of this Agreement and limit user access to the Services to the number of authorized positions for which Agency has paid. APCO grants Agency a non-exclusive, non-transferable, non-sublicensable right to use the Services for their intended purposes. Agency shall maintain and monitor a list of assigned users for the authorized positions. APCO reserves all other rights in and to the APCO IntelliComm Services.
3. Use Restrictions. Agency shall not: (1) permit any third party or concurrent users in excess of the authorized positions to use the Services; (2) modify, or attempt to modify, APCO IntelliComm; (3) sublicense all or any portion of APCO IntelliComm; (4) decompile any code associated with APCO IntelliComm; or (5) reverse engineer any portion of APCO IntelliComm. APCO IntelliComm Services may include a physical guidecard component ("Guidecard") for use in the Services. Agency agrees that it shall not attempt to use the Guidecards in third party software or other technology platforms. The Guidecards are locked to prohibit modification absent APCO approval. Agency shall not modify APCO IntelliComm outside the approved protocols established by APCO.
4. Modifications. In the event that Agency desires modifications, Agency shall submit its request in writing to APCO. Agency acknowledges and agrees that additional fees will be charged for any Agency-specific configuration of Guidecards beyond two rounds of initial editing. If modifying EMD-related Guidecards, Agency shall provide APCO with written approval of the modification from Agency's local medical director. Upon receipt of the foregoing approval, APCO shall either approve or reject the requested modifications. If such modifications fall outside the aforementioned two rounds of editing during initial Services set up for Agency, APCO will provide a time-based estimate and invoice to Agency based on APCO's prevailing hourly rate. Payment in full in advance will be required prior to APCO or its agents commencing such work.
5. Fees. The total fees for APCO IntelliComm and Services are as described in Exhibit B ("Total Fees"). If not enumerated in Exhibit B, additional fees may also be invoiced to Agency for EMD-related training, certification, renewal, and re-certification of instructors and employees pursuant to the standard APCO rate sheet applicable at the time of delivery of Services to Agency.
6. Payment Terms. Agency agrees to pay the Total Fees per the following two installment payment schedule: an initial 50 percent payment upon the signing by Agency of this Agreement and the second 50 percent payment due following successful completion of User Acceptance Testing (the "Final Acceptance Date"). Future payments of Maintenance Fees will be due annually based upon the "Final Acceptance Date" (the "Renewal Period"). Payments that are not received within thirty (30) days of the applicable due date shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), or at the maximum amount permitted by law, until paid to APCO in full. APCO may at its sole discretion defer or discontinue Services to the Agency while payments are in dispute and until APCO is paid in full. Agency agrees that the charges set forth herein are reasonable compensation for the acceptance and handling by APCO of such late payments. APCO further reserves the right to use any and all means of collection available under applicable law to collect any amount past due. Agency acknowledges and agrees that payments are nonrefundable once made, except pursuant to certain remedies otherwise specified in this Agreement.
7. Maintenance Fees. Maintenance fees are required to be paid by Agency for continued use of APCO IntelliComm ("Maintenance Fees"), which may be initially included in an Implementation Fee. Maintenance Fees are assessed annually on a per authorized position basis. APCO must provide Agency written notice of any change to the Maintenance Fees at least ninety (90) days prior to the end of the Renewal Period upon which time Agency has thirty (30) days to provide APCO written notice of termination. Inaction on the part of the Agency shall be regarded as consent to the increased Maintenance Fees.
8. Additional Services Upon Request. Agency may also elect to hire APCO or its agents to undertake configuration tasks or other ancillary work for which Agency is responsible. Adding disciplines (e.g., Fire and Law Enforcement) after initial Agency deployment of APCO IntelliComm shall also be subject to additional cost. APCO shall provide a time-based estimate and invoice Agency based on its then prevailing hourly rate. Payment in full in advance will be required prior to APCO or its agents commencing such work.
9. Term; Termination. This Agreement shall commence on the Effective Date and is subject to renewal annually on the anniversary of the Final Acceptance Date (the "Renewal Period"). Either party may terminate this Agreement upon sixty (60) days written notice prior to the next Renewal Period.

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

Regardless of which party terminates the Agreement, and regardless of cause, Agency acknowledges and agrees that APCO shall retain all fees and costs incurred by Agency up to and including the date of termination, and remit to Agency the pro rata portion of the fees unused following the date of termination. APCO may terminate this Agreement immediately at any time upon APCO's determination that Agency is not in compliance with any of its obligations hereunder. Agency agrees that upon termination, it will immediately cease use of APCO IntelliComm and return to APCO any physical Guidecards purchased as part of this Agreement.

10. EMD Obligations. If you are subscribing to the EMD module of APCO IntelliComm, Agency agrees to the following:
 - a. The EMD program shall be conducted by Agency in strict compliance with the requirements provided in the implementation guide for APCO IntelliComm's EMD program ("Implementation Guide"), including but not limited to training of instructors and employees, re-certification, and preparation, configuration and utilization of Guidecards.
 - b. Agency is responsible for engaging a local medical director to assist Agency in the configuration of EMD-related Guidecards. APCO will undertake edit rounds no more than twice yearly and will not perform any edits to any EMD-related Guidecards unless the edits have been specifically approved by the Agency's medical director and subject to other terms as stipulated in the Agreement. Agency further acknowledges and agrees that only APCO can make edits to the Guidecards and that Agency will not make any edits on its own to its Guidecards.
 - c. Notify APCO immediately of any change in either its local medical director or its EMD program contact, but in no event later than thirty (30) days from the change in personnel and/or contact information for said personnel
 - d. The Implementation Guide may be modified at any time by APCO and Agency will comply with any new requirements within thirty (30) days of receipt of the new Implementation Guide.

11. Compliance Audit. Agency agrees that APCO may audit Agency at any time to ensure Agency's compliance with applicable guidelines during the term of the Agreement, or any time thereafter if APCO reasonably believes that APCO IntelliComm is being utilized beyond the effective date of termination. APCO may audit Agency no more than twice a year and the audits must be performed during normal business hours. Agency agrees to make all records and personnel available for this purpose, so long as APCO provides no less than ten (10) business days' notice of its intent to audit Agency. Agency agrees to fill out and return any compliance audit forms requested by APCO within thirty (30) days of receipt thereof.

12. Insurance. APCO shall maintain the following insurance coverage for the duration of the Agreement and name the Agency as an additional insured as applicable and provide a copy of said endorsement page upon request from the Agency:
 - a. General Comprehensive Liability in the amount of \$1,000,000 for each occurrence and \$3,000,000 in the aggregate;
 - b. Automobile Liability (applicable only if APCO personnel have automobile operating exposure) in the amount of \$1,000,000 for bodily injury and property damage per accident, including coverage for owned, hired and non-owned vehicles;
 - c. Workers' Compensation insurance in the amount as may be required under the applicable State Law or, if not applicable, Employer's Liability insurance with a suitable "other states" endorsement in the amount of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate;
 - d. Professional liability insurance in the amount of \$1,000,000; and
 - e. Umbrella Liability of \$2,000,000 for each occurrence and \$4,000,000 in the aggregate.

13. General Representations and Warranties. Each party represents and warrants that: (i) it is, and shall remain, in compliance with all applicable laws, regulations, and ordinances, and all written representations made to the other party; and (ii) that the content, materials, and intellectual property supplied and utilized by each party do not infringe the trademark, copyright, patent, or other rights of

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

any third party.

14. APCO Service Warranty and Remedies. APCO warrants that it will provide the Services in a professional and workmanlike manner consistent with general industry standards and that the Services will perform substantially in accordance with the most recent specifications.
- a. APCO will provide one secure, isolated production environment per Agency that includes the number of authorized positions specified in the Agreement. Agency will undergo User Acceptance Testing (UAT) of APCO IntelliComm in a production ready environment for a period not to exceed 30 contiguous days. By the end of this period, Agency must have authorized Final Acceptance of APCO IntelliComm or have exercised the escalation procedure described herein.
 - b. APCO IntelliComm is a hosted solution with no software to physically install. Depending on Agency’s network configurations, APCO may require the installation of a proxy server at the Agency through which users will connect to APCO IntelliComm to satisfy its encryption and security protocols. Such proxy server will be configured and provisioned by APCO and its agents and sent with instructions for physical installation by Agency preferably in consultation with an IT staff person or consultant with prior knowledge of Agency’s network.
 - c. The APCO IntelliComm software includes an Application Program Interface (API) for Computer Aided Dispatch (CAD) integration. The API includes commands the CAD can use to communicate system events to APCO IntelliComm and allows transmission of ongoing call and transcript content as well as dispatch commands to the CAD. Configuration of the CAD interface with APCO IntelliComm is ultimately the responsibility of the Agency and its vendor. APCO and its agents will conduct integration testing within a test environment and verify same within Agency's production environment. APCO will also work with CAD vendors to enhance the baseline API when it provides system-wide benefit for APCO IntelliComm users.
 - d. APCO and its agents will provide priority-based response and resolution of issues based on the severity level of the incident as generally described below.

1	Critical	Critical system processing has stopped and Agency is unable to perform its duties as related to the system. No workaround, bypass or alternative is available. (Critical System is defined as: network infrastructure, server or key application outage with critical impact on service delivery at the Agency.) Incident Response Target: within four (4) hours of notification
2	Major	A key component, application, Critical System or network is down, degraded or unusable. Processing is severely impacted at the Agency and no acceptable workaround, alternative or bypass exists. A potential critical impact on service delivery condition exists. Incident Response Target: within eight (8) hours of notification
3	Minor	A component, minor application or procedure is down, unusable or difficult to use. There is some operational impact to Agency, but no immediate impact on service delivery. An acceptable workaround, alternative or bypass exists. One or more users are impacted. Problems that would be considered Severity Level 1 or 2 that have a workaround, alternative or bypass available will be assigned a Severity level of 3. Incident Response Target: within one (1) business day of notification
4	Question, Cosmetic, with No Impact	A component, procedure or <u>personal</u> application (not critical to Agency) is not usable. No impact to operations, single incident failure, and a workaround, alternative or bypass is available. Deferred maintenance is acceptable. Incident Response Target: within two (2) business days of notification

- d. APCO encourages Agency to use the online ticketing process whenever feasible to better assure accuracy of reporting and promptness of response to issues. Phone support is also available on a 24 hours per day, 7 days per week basis with live support available during Support Hours (8:30 am to 5:30 pm Eastern Time, Mon-Fri, excluding federal holidays). Regardless of time of day, online tickets and voice messages are routed to the attending support desk personnel for priority handling.
- e. In the unlikely event that a severity level 1 or 2 incident is not resolved within three business days, APCO will escalate the matter to its Chief Technology Officer (CTO) or designee who

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

will convene subject matter experts associated with APCO's agents and the Agency to resolve the issue.

- f. If any issues cannot be rectified within a reasonable time after escalation, Agency's sole and exclusive remedy is to terminate this Agreement upon written notice to APCO and to receive a refund of any fees paid for the period beginning on the date the problem requiring correction was reported to APCO.
- g. This service warranty shall be valid provided that:
 - i. APCO IntelliComm has not been modified, changed, or altered by anyone other than APCO and its agents;
 - ii. The operating environment, including hardware, systems software and network connectivity, meets APCO's recommended specifications and is in good working order;
 - iii. Agency promptly notifies APCO of its need for service;
 - iv. Agency provides adequate troubleshooting information and access so that APCO and its agents can identify and address problems; and
 - v. All fees due to APCO have been paid.

15. APCO IntelliComm Software Upgrades.

- a. Regular updates to the APCO IntelliComm software to fix bugs, glitches, or errors or to improve security, efficiency or functionality will be automatically delivered system-wide.
- b. Given the accelerating pace of innovation, APCO can anticipate a future time when substantial enhancements to APCO IntelliComm may justify the release of an entire new version of APCO IntelliComm. In such instances, Agency will receive at least ninety (90) days advance notice and, provided its warranty remains valid, shall be offered during an introductory period the new APCO IntelliComm software at a reduced fee from what APCO intends to charge new customers. Where feasible, APCO and its agents may be in a position to support both the old and new versions of the APCO IntelliComm software for a transitional period.
- c. APCO and its agents may offer add-on modules to Agency from time-to-time on a subscription basis that provide enhanced functionality, security, or analytic ability. Agency has the option to annually subscribe to such add-on modules, which will be subject to the same terms of use herein. Agency will be billed initially on a pro-rata basis and, subsequently, invoiced annually with payment due by the start of the Renewal Period.

16. Service Warranty Limitations.

- a. Agency is responsible for acquiring and configuring all its hardware, system software and providing all network and related interfaces necessary for implementation of APCO IntelliComm. APCO and its agents are not responsible for any modifications made by a third party on Agency's behalf or the operation or use of APCO IntelliComm with any other product, hardware device, system software, program, data, apparatus, method or process.
- b. APCO IntelliComm strives to incorporate to the extent possible various external data resources, including the Emergency Response Guide (ERG) from the Pipeline and Hazardous Materials Safety Administration and checklists from the National Center for Missing and Exploited Children (NCMEC) among other third party sources to include updates made to such resources; however, inasmuch as these resources are driven by protocols established and modified from time to time by those third parties, APCO and its agents are not responsible for the compatibility, security, configurability, functionality and continuous availability of such resources across all environments and over time.
- c. If Agency is making available to APCO and its agents any facilities, software, hardware or other resources in connection with APCO's performance of its Services, Agency agrees to obtain any licenses or approvals related to these resources that may be necessary for APCO and its agents to perform Services without APCO and its agents being required to obtain additional licenses or pay a fee.
- d. APCO does not guarantee that the Services will perform error-free, virus-free, or uninterrupted, or that APCO or its agents will be able to correct for all errors. Agency acknowledges that APCO does not control the transfer of data over communications lines, including the Internet, nor guarantee the speed or availability of end-to-end connections, and that the Services may be subject to limitations, delays and other problems inherent in the use

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

of such communications. Notwithstanding the above, any and all compensation for down time that may be attributed to APCO or its agents shall be limited to a pro-rata refund of the maintenance fee based on the period of system unavailability.

17. Disclaimer of Other Warranties. ASIDE FROM THE TERMS AND CONDITIONS OF THE ABOVE SERVICE WARRANTY, APCO EXPRESSLY DISCLAIMS TO THE EXTENT PERMITTED BY APPLICABLE LAWS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
18. Ownership. Agency acknowledges that APCO retains complete ownership of the APCO IntelliComm software and all intellectual property residing therein and that this Agreement shall not be construed as a license or transfer of any interest in APCO IntelliComm or its intellectual property to Agency.
19. Data Protection. APCO and its agents take ordinary and customary security measures in protecting all data passing through the APCO IntelliComm software, cloud and the portions of the non-public communications network within APCO's control.
 - a. In relation to all data provided or processed through APCO IntelliComm, Agency will at all times remain the Data Controller and will be responsible for compliance with all applicable data protection or similar laws. To the extent that APCO or its agents process data in the course of providing the Services, it will do so only as a Data Processor acting on behalf of Agency as Data Controller and in accordance with the requirements of this Agreement. For any data and the content of any database Agency makes available to APCO and its agents in connection with this Agreement, Agency is responsible for the selection and implementation of procedures and controls regarding access, security, encryption, use and transmission of data and the backup and recovery of the database and any stored data. APCO may be obligated to disclose certain data associated with the operation and use of APCO IntelliComm to the extent required by law.
 - b. Agency is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the APCO IntelliComm platform, and for its Users' compliance with the terms of this Agreement. APCO and its agents will act as though any electronic communications it receives under Agency's user names have been sent by the Agency. Agency will immediately notify APCO if it becomes aware of any loss or theft or unauthorized use of any of user passwords or user names. APCO has the right at any time to terminate or suspend access to any User or to Agency if APCO or its agents believe in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or APCO's network.
 - c. APCO disclaims all liability for the accuracy and/or completeness of data, including but not limited to data supplied with the APCO IntelliComm software or as added or modified by Agency or any third party. Agency bears the entire responsibility for its computer network, including Agency's use of the APCO IntelliComm software, its integration with other third party interfaces, and the resulting performance of the APCO IntelliComm software and the exchange of data on Agency's and APCO's network.
20. Cognitive Data. The parties acknowledge that APCO IntelliComm is capable of cognitive analysis and machine-based learning that may improve and expand with use in ways that allow APCO IntelliComm to see, hear, speak, understand, and interpret user needs through natural methods of communication, thus making APCO IntelliComm for the Agency and all users more intelligent, engaging, and discoverable. Such added intelligent features may include but are not limited to emotion and sentiment detection, vision, noise and speech pattern recognition, knowledge, search, and natural language understanding. Agency provides its consent to APCO and its agents to mine all such cognitive data derived from Agency use to improve APCO IntelliComm and related products and services, such as using said data to improve the underlying algorithms and models over time. APCO and its agents may also retain and use such cognitive data after Agency is no longer using the Services.
21. Personal and Sensitive Information Restrictions. The following provisions apply in the event that Agency (as Data Controller) makes personal or sensitive information available to APCO or its agents (as Data Processor):
 - a. Personally Identifiable Information ("PII") is any information that identifies or can reasonably be used to identify, contact, or locate the individual to whom such information pertains. Personal Information includes information that relates to individuals in their

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

- personal capacity (e.g., an individual's home address) as well as information that relates to individuals in their professional or business capacity (e.g., an individual's business address.);
- b. Sensitive Personal Information (“SPI”) refers to information that is considered "sensitive" due to the risks that such information could be misused to significantly harm an individual in a financial, employment or social way. Examples of SPI include: an individual’s name in conjunction with that individual’s social security number, driver’s license number, state identification number, medical information, date of birth, electronic signature or mother’s maiden name;
 - c. Criminal Justice Information Services (“CJIS”) refers to information that must comply with security precautions to protect sensitive information such as fingerprints, criminal backgrounds, etc. gathered by local, state, tribal and federal law enforcement agencies;
 - d. Health Insurance Portability and Accountability Act (“HIPAA”) refers to information that is considered “sensitive” due to a US law designed to provide privacy standards to protect patient’s medical records and other health information;
 - e. Agency agrees to communicate, manage and mitigate risk by implementing security measures to protect PII, SPI, CJIS and/or HIPAA data from transmission to APCO or its agents other than as permitted or required by laws and regulations (“Laws”);
 - f. Each party agrees to inform the other of cases where it learns that an unauthorized third party has accessed or acquired Agency’s PII, SPI, CJIS and/or HIPAA; and
 - g. Each party may analyze data based on use of the Software for research purposes that may be reported in the aggregate provided that any PII, SPI, CJIS and/or HIPAA data has been anonymized and de-identified in accordance with Laws.
22. Export Controls. Agency warrants and certifies the Software will not be exported, re-exported or otherwise made available by Agency to any country in violation of any U.S. laws or regulations.
23. [This section #23 omitted upon agreement of the parties.]
24. Dispute Resolution. Each party will allow the other party reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, (i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two (2) years after the cause of action arose; and (ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action hereby lapse.
25. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR ECONOMIC CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, REVENUE, DATA, GOODWILL OR ANTICIPATED SAVINGS WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES OR APCO INTELLICOMM, EVEN IF THE PARTY AGAINST WHICH A CLAIM IS MADE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE NOTWITHSTANDING, THE TOTAL CUMULATIVE LIABILITY OF APCO AND ITS AGENTS HEREUNDER FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE SHALL BE LIMITED TO (i) THE AMOUNT PAID BY AGENCY FOR THE TWELVE (12) MONTH TERM DURING WHICH THE CAUSE OF ACTION FOR SUCH CLAIM OR DAMAGE AROSE OR (ii) THE COVERAGE LIMITS IN THE CASE OF DAMAGES FOR WHICH INDEMNITY COVERAGE IS PROVIDED BY APCO’S INSURANCE CARRIERS.
26. Acknowledgment. Each party to this Agreement represents that it has carefully read this Agreement and knows and understands the contents hereof, that it has signed this Agreement as its own free act without any duress, coercion, or undue influence by or on behalf of any other party, and that it has had the benefit of counsel of its own choice in connection with the negotiation and execution of this Agreement
27. Survival. Upon termination of this Agreement, the provisions of paragraphs 3, 6, 7, 9, 11, 13, 16 through 28 shall survive.
28. General Provisions.
- a. Entire Agreement. This Agreement (including exhibits, schedules, embedded hyperlinks)

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

comprises the entire understanding between the parties with respect to, and supersedes any prior understanding or agreement, oral or written, relating to, the subject matter hereof. This Agreement may only be amended by a writing signed by both parties.

- b. Order of Precedence. In the event of a conflict between this Agreement and any Exhibits hereto, this Agreement shall prevail.
- c. Notices. All notices, requests, consents and other communication hereunder shall be in writing, shall be addressed to the receiving party's address as herein or as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by e-mail or facsimile transmission, or (iii) sent by overnight courier. All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by e-mail or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, or (iii) if sent by overnight courier, on the next business day following the day such mailing is made
- d. Severability. The parties agree that all terms and conditions contained herein are severable, and in the event that any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid provisions were not contained herein, and the remaining provisions of this Agreement shall not be affected by such determination and shall remain in full force and effect.
- e. Further Assurances. The parties hereto shall at any and all times, upon request by the other party, or its legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefore.
- f. Waiver. The failure of any party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement, or understanding at a future time.
- g. Choice of Law. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of Ohio without regard to conflicts of laws principles. The parties hereby agree that in the event of any litigation between them, such proceeding shall be brought exclusively within the courts of Delaware County, Ohio, and the parties irrevocably consent and submit to the jurisdiction of, and venue in, the aforementioned courts, and further waive any claim that a proceeding brought therein has been brought in an inconvenient forum.
- h. Assignability. Agency shall not assign, delegate or transfer any of its rights or obligations hereunder without the prior written consent of APCO, which shall not be unreasonably withheld. APCO may assign, delegate or transfer any of its rights or obligations hereunder provided such designee is able, willing and agrees to fulfill the applicable terms of the Agreement.
- i. Counterparts. This Agreement may be executed in one or more counterparts and when each party hereto has executed at least one counterpart, this Agreement shall become binding on all parties and such counterparts shall be deemed to be one and the same document. This Agreement may be executed by facsimile signature.
- j. Headings. The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- k. Force Majeure. Neither party shall be deemed in breach of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted, or prevented by reason of any acts of God, of any government, of war, terrorism, civil disturbance, riots, natural disaster, fire, floods, unusually severe weather conditions, epidemics, quarantine restrictions, lockouts, strikes, freight embargoes, communication line or power failures or any other act or condition beyond the reasonable control of the party in question.
- l. Taxes. Unless Agency is an exempt entity, Agency shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, federal, state, or otherwise, however designated which are levied or imposed by reason of the transactions contemplated by this Agreement. Agency agrees to promptly pay to APCO an amount equal to any such items actually paid, or required to be collected or paid by APCO. If Agency is an exempt entity, Agency will provide APCO with proof of exemption in writing within thirty (30) days of APCO's written request of such proof.

COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018

- m. Independent Contractor. The Parties acknowledge and agree that APCO 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. APCO also agrees that, as an independent contractor, it 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.

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

8

RESOLUTION NO. 18-996

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO REPRESENT THE BOARD AT, AND APPROVE AND EXECUTE ALL DOCUMENTS ASSOCIATED WITH, THE CLOSING OF THE JAMES G. SHERMAN AND SUSAN SHERMAN AGRICULTURAL EASEMENT, 2016 OHIO DEPARTMENT OF AGRICULTURE LOCAL AGRICULTURAL EASEMENT PURCHASE PROGRAM:

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

WHEREAS, on April 11, 2016, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 16-338, authorizing participation in the Ohio Department of Agriculture Local Agricultural Easement Purchase Program (LAEPP) for the property owned by James G. Sherman and Susan Sherman (the "Sherman Farm"); and

WHEREAS, the Sherman Farm was approved for participation in the LAEPP, and all requirements have been met and documents prepared to proceed to closing;

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

Section 1. The Board hereby approves proceeding to closing for the Sherman Farm Agricultural Easement, 2016 Ohio Department of Agriculture LAEPP.

Section 2. The Board hereby authorizes the County Administrator to represent the Board at the closing for the Sherman Farm Agricultural Easement and to approve and execute all the documents associated therewith.

Section 3. This Resolution shall take immediate effect upon adoption.

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

9

RESOLUTION NO. 18-997

IN THE MATTER OF AUTHORIZING THE SUBMITTAL OF A LOCAL SPONSOR APPLICATION TO THE OHIO DEPARTMENT OF AGRICULTURE OFFICE OF FARMLAND PRESERVATION:

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

WHEREAS, the Ohio Department of Agriculture Office of Farmland Preservation offers matching grants for the acquisition of farmland preservation easements through local sponsors; and

WHEREAS, the Delaware County Board of Commissioners, in cooperation with the Delaware Soil and Water Conservation District, wishes to submit an application for Delaware County to serve as a local sponsor for the program; and

WHEREAS, the Delaware County Board of Commissioners, as a matter of policy, plans to request approval of a modified scoring system that reflects the need for Delaware County to establish a proper balance between farmland preservation and the obligation to obtain future easements for the County's sanitary sewer system; and

WHEREAS, the Board hereby declares that Resolution No. 17-1131 (approving a memorandum of understanding between Delaware County, Ohio and the Ohio Department of Agriculture for The Local Agricultural Easement Purchase Program), shall remain in full force and effect;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby authorizes the County Administrator to complete a local sponsor application to the Ohio Department of Agriculture Office of Farmland Preservation and authorizes the President of the Board to sign and submit this application.

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

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

10

RESOLUTION NO. 18-998

IN THE MATTER OF APPROVING A REPAYMENT OF ADVANCES, ADVANCE OF FUNDS, SUPPLEMENTAL APPROPRIATION AND TRANSFER OF FUNDS:

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

Repayment of Advances

From	To	
52211141-8501 BR Chadwick/PY Advance Out	10011102-8401 Commissioners General/PY Advance In	5,064.11
52411143-8501 BR Roof/PY Advance Out	10011102-8401 Commissioners General/PY Advance In	12.81

Advance of Funds

From	To	
10011102-8500 Commissioner General/Advance Out	52111140-8401 BR Midway/Advance In	425.39

Supplemental Appropriation

40311446-5728	Winding Creek/Bond Fees	1,810.00
40311457-5728	Scott Lateral/Bond Fees	1,868.00
40311449-5728	Havens/Bond Fees	1,823.00
10011102-5801	Commissioner General/Misc Cash Transfer	500,000.00

Transfer of Funds

From	To	
10011102-5801 Commissioner General/Misc Cash Transfer	60211902-4601 Employee Benefits/Interfund Revenue	500,000.00
10011102-5801 Commissioner General/Misc Cash Transfer	50111117-4601 Bond Retirement/Interfund Revenue	2,240,925.00

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

11

RESOLUTION NO. 18-999

IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE DELAWARE COUNTY AUTOMATIC DATA PROCESSING BOARD, THE DELAWARE COUNTY BOARD OF COMMISSIONERS, AND THE DELAWARE COUNTY FINANCE AUTHORITY:

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

WHEREAS, the Delaware County Auditor recommends an intergovernmental cooperation agreement with the Delaware County Automatic Data Processing Board, the Delaware County Board of Commissioners, and the Delaware County Finance Authority; and

WHEREAS, the Delaware County Finance Authority is dedicating funds to be provided to the County to support economic development activities, specifically within the area of marketing, education, travel and relationship development;

NOW, THEREFORE, BE IT RESOLVED that the Board of Delaware County Commissioners approves the Intergovernmental Cooperation Agreement with the Delaware County Automatic Data Processing Board, the Delaware County Board of Commissioners, and the Delaware County Finance Authority:

INTERGOVERNMENTAL COOPERATION AGREEMENT

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 13th day of September, 2018 by and between the Delaware County Automatic Data Processing Board and the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 (collectively, the “County”), and the Delaware County Finance Authority, 101 North Sandusky Street, Delaware, Ohio 43015 (the “DCFA”), (hereinafter referred to individually as “Party” or collectively as the “Parties”).

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

Section 2 – Purpose

This Agreement is authorized by sections 9.482, 307.846, and 307.15, et seq., of the Revised Code. The DCFA desires to enter into an agreement with the County that allows Delaware County Information Technology staff to provide Information Technology (“IT”) services, and Support Staff and Resources (“County Resources”) to the DCFA, and the County is willing and able to provide such services and resources. The DCFA desires to make contributions to further the economic development efforts of the County. This Agreement shall establish the terms and conditions for contributions of the Parties.

Section 3 – Contributions of the Parties

The DCFA shall pay, as specified below, for IT services provided. The County, via the Delaware County Data Center Administrator, shall administer the IT services on behalf of the DCFA, supervise the work of the staff, and advise the DCFA regarding IT projects. The specific services to be provided are more fully set forth in Exhibit A, which is attached hereto and, by this reference, fully incorporated herein. Additionally, the County, via its Economic Development Department, shall provide County Resources to assist the DCFA with its purpose of fostering economic development throughout Delaware County. The specific County Resources are also more fully set forth in the attached Exhibit A.

The DCFA shall contribute its resources (“DCFA Resources”) as described herein, including, but not limited to, funding to help: fund marketing activities focused on business attraction and community development, further County staff’s abilities to promote and further economic and community development in the County, and fund business meetings, business meals, trainings and seminars, and other business development activities. The specific contributions are more fully set forth in Exhibit B, which is attached hereto and, by this reference, fully incorporated herein.

Section 4 – Compensation

The DCFA agrees to pay the County \$85.00 per Microsoft Exchange email license provided to the DCFA.

There shall be no compensation paid by the DCFA to the County for County Resources.

Section 5 – Records

- 5.1 County and DCFA acknowledge and agree that DCFA data received by County in the course of providing the IT services under this Agreement is taken delivery of solely under the authority stated above and only to provide automatic or electronic data processing, data storage services and/or other IT services to DCFA.
- 5.2 County and DCFA acknowledge and agree that this data is not a public record [as defined in R.C. Section 149.011(G)] of the County or any of its offices, agencies, etc., that County is not the keeper or person responsible for any record contained in such data or otherwise responsible for providing inspection or copies of the same and that any records contained within the same shall at all times be considered DCFA records and not properly the subject of a public records request directed to the County under R.C. Section 149.43.
- 5.3 However, to assist DCFA in meeting its responsibilities:
- (a) County will maintain full access by DCFA to the DCFA’s data stored in its system.
 - (b) If County receives a public records request for DCFA records contained in such data, it will inform the requester that the information requested is not a public record of the County and that their request will be forwarded to the DCFA Secretary as the individual responsible for DCFA records. County will then immediately forward the request to the DCFA Secretary and advise them as to the circumstances of the request and its receipt.
 - (c) County will provide technical assistance to the DCFA Secretary, as requested, in compiling and delivering DCFA data responsive to a public records request.
- 5.4 If the County should ever determine that it is legally compelled by any means (including public records request under R.C. 149.43, deposition, interrogatory, request for documents, subpoena, civil investigative demand, etc.) to disclose DCFA data received or stored under this Agreement, it must make reasonable efforts to provide DCFA with prompt notice of such legal requirement prior to disclosure so that DCFA may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, County will: (i) furnish only that portion of the data that it is legally required to furnish; and (ii) cooperate with DCFA in reviewing such material for appropriate redaction prior to disclosure.
- 5.5 Upon termination or expiration of this Agreement, County will return all DCFA data to DCFA and shall not retain copies of all or any portion of it within its system.
- 5.6 The Parties agree that each shall maintain their respective public records concerning the services provided under this Agreement, pursuant to the laws of the State of Ohio pertaining to public records.

Section 6 – Term

This Agreement shall take immediate effect upon approval by all Parties hereto and shall continue in full force and effect until December 31, 2018, whereupon this Agreement shall then automatically renew for successive one (1) year terms, unless either Party gives notice to the other Party that it does not intend to renew the Agreement at the expiration of the then-current term. Notice of intent to terminate must be in writing and

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

received by the opposite Party no later than thirty (30) days prior to the intended termination date. This Agreement may be amended in writing with the mutual consent and agreement of the Parties.

Section 7 – Legal Contingencies

In the event a change in law, whether by statute, judicial determination, or administrative action, affects this Agreement or the ability of the Parties to enter into, or continue to operate pursuant to, this Agreement, the Parties mutually agree to immediately institute a review of this Agreement. The Parties agree to negotiate in good faith to address any necessary modifications to this Agreement, to the extent permitted by applicable law.

Section 8 – Personnel

The Parties each agree to maintain control over their respective personnel, and this Agreement shall not be construed to alter the employment relationship each Party has with its respective personnel. Each Party shall be responsible for the compensation, benefits, and liabilities of its respective personnel and hereby agrees to release the other Party from any responsibility therefor. In no event shall County's employees be considered employees of the DCFA within the meaning or application of any federal, state or local laws or regulations and vice versa.

Section 9 – Equipment and Facilities

Each Party to this Agreement shall be responsible for providing its own equipment and facilities. In no way shall this Agreement be construed to require the sale or donation of equipment under the ownership and control of either Party of this Agreement.

Section 10 – Insurance and Liability

Each Party shall, for the life of this Agreement, maintain comprehensive general liability insurance coverage, with minimum limits in the amount of \$1,000,000.00 each occurrence or equivalent and \$2,000,000.00 in the aggregate, and shall cause the other Party to be named as an additional insured on any applicable insurance policies.

The DCFA acknowledges that there is a risk of disruption of service to its IT equipment and service due to damage to the fiber optic cable and other equipment or system failures beyond the control of the County. As a condition of this Agreement, the DCFA agrees to release the County from any liability or costs due to such disruption of service.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 **Entire Agreement**: This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.
- 11.2 **Governing Law and Disputes**: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio.
- 11.3 **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.
- 11.4 **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.
- 11.5 **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 in full force and effect.

Exhibit A

Provision by County of general IT services required for DCFA business, including, but not limited to:

1. Provision of DCFA email accounts on the existing County email server (DCFA will pay for licenses)
2. Provision of website design and hosting services
3. The DCFA shall seek prior approval of the county Chief Technology Officer for any projects outside of Exhibit A, including but not limited to custom programming, prior to engaging IT staff.

**COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018**

Provision by County of County Resources for DCFA business, including, but not limited to:

1. Use of the County logo and/or the County letterhead, or a version thereof approved by the Parties
2. Use of County marketing resources, including, but not limited to, the occasional consult of County staff and/or use of marketing and design software, to the extent such use complies with the County’s licenses for the software
3. Use of County Economic Development Department staff to assist the DCFA in its operations and purpose

Exhibit B

Provision by DCFA of DCFA Resources, including, but not limited to:

1. A minimum of ten thousand dollars (\$10,000.00) per year for marketing activities focused on business attraction and community development
2. A minimum of ten thousand dollars (\$10,000.00) per year to help further County staff’s abilities to promote and further economic and community development in the County
3. A minimum of ten thousand dollars (\$10,000.00) per year to help fund business meetings, business meals, trainings and seminars, and other business development activities

Note: The amounts listed above shall, at the election of the DCFA, be prorated for the remainder of calendar year 2018, and then contributed in full starting in calendar year 2019.

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

13

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-There are three things that Fall brings to the County: football, fair time and budgets. The budgets will look similar to the years past. Will be proving the Commissioners with a summary of each office.

14

COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis

-The Delaware-Morrow Mental Health and Recovery Services Board will be holding an Open House this evening from 5:00-7:00.

Commissioner Benton

-Met with Dr. John Comerford, President of Otterbein University this week. Their Entrepreneurial Center is fully leased.

-Attended the Land Bank meeting Tuesday afternoon. There are a lot of identified buildings on the list for help. The Land Bank has retained a firm to help guide them thru the process of what the next steps are for those properties.

-We will be holding session at the Fair on Monday, starting at 10:00AM.

-Received financial statements from Karen First. She did a good job in preparing those.

Commissioner Merrell

-Treasurer Peterson is very organized and thorough with the information he has received for the meetings.

-Will be having breakfast with Dr. John Comerford tomorrow.

-Will be meeting with Economic Development Director Lamb, Commissioner Tom Whiston to discuss how Delaware County does Economic Development.

-Will be attending the MORPC meeting this afternoon at 1:30PM.

15

RESOLUTION NO. 18-1000

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR COLLECTIVE BARGAINING:

It was moved by Mr. Benton, 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 collective bargaining.

COMMISSIONERS JOURNAL NO. 69 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 13, 2018

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

RESOLUTION NO. 18-1001

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mrs. Lewis to adjourn out of Executive Session.

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

12

RESOLUTION NO. 18-1002

IN THE MATTER OF APPROVING PAID TIME OFF FOR THE COUNTY ADMINISTRATOR:

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

WHEREAS, pursuant to Section 305.29 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may appoint a county administrator, who shall be the administrative head of the county under the direction and supervision of the Board and who shall hold office at the pleasure of the Board; and

WHEREAS, on November 9, 2017, the Board adopted Resolution No. 17-1195, appointing Michael Frommer as Delaware County Administrator, effective November 10, 2017, and on March 1, 2018, adopted Resolution No. 18-209, fixing the salary of the County Administrator;

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

Section 1. The Board hereby approves two (2) weeks of paid time off per calendar year for the County Administrator, effective immediately upon adoption of this Resolution, and hereby authorizes the President of the Board to execute any necessary administrative documents in furtherance of this Resolution. The benefit approved herein shall be in addition to all other statutory leave available to the County Administrator, shall expire at the end of each calendar year, and shall not be eligible for payout if accrued and unused upon separation.

Section 2. The Board hereby finds and determines that approval of this Resolution and all deliberations thereon are in compliance with the laws of the State of Ohio, including specifically Section 121.22 of the Revised Code.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners