

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

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

10:00 A.M. Public Hearing For Consideration Of The Davis #240 Drainage Improvement Petition (Public Participation In This Hearing Will Be Taking Place Only By Virtual Means)

1
RESOLUTION NO. 20-772

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD AUGUST 31, 2020:

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 August 31, 2020; 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
RESOLUTION NO. 20-773

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0902:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0902 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Account	Amount
R2002882	OUTSIDER ENTERTAINMENT LLC	VIDEO PRODUCTION SERVICES	10011139 - 5301	\$25,000.00
R2004175	CRAUN LIEBING CO INC	REBUILD KIT FOR OECC & LS	66211900 - 5228	\$1192.50
R2004175	CRAUN LIEBING CO INC	EFFLUENT SAMPLE PUMPS OECC & LOWER SCIOTO	66211900 - 5260	\$5,340.00
R2004187	TYLER TECHNOLOGIES INC	RMS CAD SYSTEM - SHERIFF PORTION	41711436 - 5452	\$78,000.00

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

3
RESOLUTION NO. 20-774

IN THE MATTER OF A NEW LIQUOR LICENSE REQUEST FROM TAMARKIN CO (DBA GETGO 3503) AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

WHEREAS, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a new D1 liquor license request from Tamarkin Co (dba GetGo 3503), located at 9151, Columbus Pike, Lewis Center, OH 43035; and

WHEREAS, the Delaware County Board of Commissioners has found no reason to file an objection;

NOW, THEREFORE, BE IT RESOLVED that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

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

4

RESOLUTION NO. 20-775

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY SHERIFF’S OFFICE, THE DELAWARE COUNTY BOARD OF COMMISSIONERS, AND VIRTRA, INC. FOR SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES:

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

WHEREAS, the Delaware County Sheriff and his staff recommend approval of an agreement with VirTra, Inc., for Simulated Firearm Equipment and Training Services;

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

VIRTRA, INC.

SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES AGREEMENT

AGREEMENT: Simulated Firearm Equipment and Training Services Agreement (the "Agreement") is made and entered by and between the organizations or entities set forth below to provide Agency with certain hardware, software, documentation, installation, training, maintenance, and support (collectively, the "System").

CONTRACT PRICE SUMMARY:

Contract initiation payments (one time.)

Setup & Training \$5,940.00
S&H \$1,500.30

Annual Recurring Payment:

Annual Contract \$40,540.19
Rate (STEP)

TERM: This Agreement will become effective upon the date the customer receives and accepts control over a substantial portion of the equipment listed on Exhibit D and services listed on the System Acceptance Checklist (Exhibit C) but not more than 90 days after Contract execution date. Unless terminated as set forth herein, this Agreement shall remain in force for a period of twelve (12) months (the "Term") from the Effective Date. After the Term, this Agreement may be renewed for additional periods of twelve (12) months (each a "Renewable Term"), up to a total aggregated term of sixty (60) months), unless and until one party provides the other party with written notice of termination at least sixty (60) days prior to the end of the Term, or any subsequent Renewal Term.

EXHIBITS: The following exhibits are incorporated herein by reference and form a material part of this Agreement.

- Exhibit A: General Terms and Conditions.
- Exhibit B: Maintenance and Support Agreement.
- Exhibit C: System Acceptance Check List.
- Exhibit D: Services, Equipment, and Pricing Summary

EXHIBIT A VIRTRA, INC.

AGREEMENT FOR SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES
GENERAL TERMS AND CONDITIONS

1. NON-EXCLUSIVE AGREEMENT

The Agreement does not establish an exclusive contract between the Agency and VirTra. Each party expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from VirTra; and the unrestricted right to bid and supply any such product, support or service.

2. PRODUCTS AND SERVICES

VirTra agrees to provide the Agency with the System, including all goods and services in accordance with the terms and conditions set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated herein, as well as all necessary manpower and other necessary resources.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS INCLUDING, WITHOUT

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

LIMITATION, ELECTRONICALLY OR IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. THE PARTIES AGREE THAT ALL TERMS AND CONDITIONS ARE SET FORTH IN THIS AGREEMENT OR ANY AMENDMENTS THERETO.

Employees and agents of VirTra, shall, while on the premises of the Agency, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, VirTra shall be responsible for installation, training and knowledge transfer activities in relation to the goods being supplied, as set forth in Exhibit B to this Agreement.

All equipment shall be delivered to an Agency site specified in the contract release purchase order, or if not so specified therein, as otherwise agreed by the parties in writing.

Upon any termination or expiration of this Agreement, the System and all other related materials provided to Agency hereunder shall be returned to VirTra or, at VirTra's option, VirTra may arrange for pickup of the System and related materials. The System and related materials must be returned to VirTra in good repair and functionality, considering reasonable wear and tear.

VirTra shall provide the System and perform work in a professional manner consistent with, at a minimum, general industry standards.

3. NECESSARY ACTS AND FURTHER ASSURANCES

The parties agree that they shall cooperate and execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

4. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

5. PRICING

Unless otherwise stated, prices shall be fixed for the first year of the Agreement, with increases in payments in subsequent years to be mutually agreed by the parties in writing. If any product listed in this Agreement is discontinued or upgraded prior to delivery, VirTra shall extend the same pricing towards a comparable replacement that is functionally equivalent or an upgraded version.

Exhibit D of the Agreement is the basis for pricing and compensation throughout the term of the Agreement.

6. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on Agency unless it is in writing and signed by an authorized representative of the Agency.

7. HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Agency is listed in the Hazardous Substances List of the Regulations of the Occupational Safety and Health Administration, or if the product presents a physical or health hazard, VirTra must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

8. SHIPPING AND RISK OF LOSS

Goods shall be packaged, marked and otherwise prepared by VirTra in suitable containers in accordance with sound commercial practices. VirTra shall include an itemized packing list with each shipment and with each individual box or package shipped to the Agency. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by VirTra to Agency will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, VirTra agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at Agency's destination; and such loss, injury or destruction shall not release VirTra from any obligation hereunder.

9. INSPECTION AND RELATED RIGHTS

All goods and services are subject to inspection, testing, approval and acceptance by the Agency. Inspection shall be made within prior to execution of the System Acceptance Checklist, shown in Exhibit C.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

In the event that VirTra's goods are not accepted by Agency due to a material breach by VirTra. VirTra shall be liable to remedy, repair, or replace the rejected goods.

The rights and remedies of Agency provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by Agency of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by VirTra, or of any other claim, right or remedy of the Agency.

Agency's acceptance of the goods and services offered by VirTra hereunder shall be evidenced by an authorized signature on Exhibit C.

10. ADJUSTMENT BY COMPANY

The Agency reserves the right to waive a variation in specification of goods or services supplied by VirTra. VirTra may request an equitable adjustment of payments to be made by Agency if Agency requires a change in the goods or services to be delivered. Any claim by VirTra for resulting adjustment of payment must be asserted within thirty (30) days from the date of receipt by VirTra of the notification of change required by Agency.

11. INVOICING

VirTra shall invoice Agency on a periodic basis, in accordance with the pricing set forth in Exhibit B of the Agreement. Invoices shall be sent to the Agency customer or department referenced above or such other person or address as the Agency may provide to VirTra, in writing, from time to time. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: VirTra's complete name and remit-to address; invoice date, invoice number, and payment term; Agency contract number; pricing per the Agreement; applicable taxes; and total cost.

VirTra and Agency shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

12. AVAILABILITY OF FUNDING

The Agency's obligation for payment of any fees or charges beyond the Initial Term is contingent upon the availability of funding and upon appropriation for payment to VirTra.

13. PAYMENT

The Agency's standard payment term shall be Net 30, unless otherwise agreed to by the parties. Payment shall be due thirty (30) days from the date of receipt of each invoice issued hereunder.

14. OTHER PAYMENT PROVISIONS

Notwithstanding anything to the contrary, Agency shall not make payments prior to receipt of service or goods (i.e. the Agency will not make "advance payments").

15. TERMINATION FOR CAUSE

Either party may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon thirty (30) days written notice to the other party. For purposes of this Agreement, cause includes, but is not limited to any of the following: (a) material breach of this Agreement or any contract release purchase order, (b) violation by a party of any applicable laws or regulations; or (c) assignment or delegation by a party of the rights or duties under this Agreement without the written consent of the other party.

In lieu of terminating immediately upon default, the non-defaulting party may, at its option, provide written notice specifying the cause for termination and allow the defaulting party ten (10) days (or other specified time period in the written notice) to cure. If, within ten (10) days (or other specified time) after such notice has been given, the defaulting party has not cured the default to the reasonable satisfaction of the non-defaulting party, or if the default cannot be reasonably cured within that time period, the non-defaulting party may terminate this Agreement at any time thereafter.

16. TERMINATION FOR BANKRUPTCY

If VirTra is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of VirTra's insolvency, the Agency may terminate this Agreement immediately without penalty. For the purpose of this Section, bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the party's duties under this Agreement.

17. TERMINATION FOR CONVENIENCE

Either Party may terminate this agreement, for any reason, if the terminating Party provides the other party with written notice of termination at least sixty (60) days prior to the end of the current Term. Termination for Convenience cannot occur by either Party during the first (12 months) Term of this agreement.

18. DISPUTES

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

by agreement shall be subject to mediation and then binding arbitration.

19. ACCOUNTABILITY

VirTra will be the primary point of contact for the manufacturer, deliverer or any subcontractors and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, VirTra must take immediate action to correct or resolve the issues.

20. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT

VirTra may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of Agency. Notwithstanding the foregoing VirTra may transfer its rights and obligations under this Agreement in conjunction with a sale of all or substantially all of VirTra's assets.

VirTra is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

21. MERGER AND ACQUISITION

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving VirTra. In the event of an acquisition, merger, divestiture or other transfer of rights VirTra must ensure that the enquiring entity or the new entity is legally required to:

- A. Honor all the terms negotiated in this Agreement and any pre-acquisition or pre-merger Agreement between VirTra and the Agency, including but not limited to: a) established pricing and fees; b) product support and maintenance until the contract is terminated; and c) no price escalation during the term of the Agreement.
- B. If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. The Agency will not be required to pay any additional license or maintenance fee.
- C. Give the Agency prompt written notice following the closing of an acquisition, merger, divestiture or other transfer of rights involving VirTra.

22. COMPLIANCE WITH ALL LAWS & REGULATIONS

VirTra shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. VirTra's violation of this provision shall be deemed a material default by VirTra, giving Agency the right to terminate the Agreement. Examples of such Regulations include but are not limited to Occupational Safety and Health Act of 1970 and the standards and regulations issued there under. VirTra agrees to indemnify and hold harmless the Agency for any loss, damage, fine, penalty, or any expense whatsoever as a result of VirTra's failure to comply with the act and any standards or regulations issued there under.

23. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting Force Majeure as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The Agency shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by VirTra. The Agency shall reserve the right to extend the agreement and time for performance at its discretion.

24. CONFLICTS OF INTEREST

VirTra shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

regulations. In accepting this Agreement, VirTra covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. VirTra further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. VirTra, including but not limited to VirTra's employees and subcontractors.

25. INDEPENDENT CONTRACTOR

VirTra shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Agency. VirTra shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Agency and VirTra. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Agency, nor shall any such person be entitled to any benefits available or granted to employees of the Agency.

As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of VirTra and/or any of its officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. VirTra acknowledges and agrees that the Agency, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If VirTra is an individual or has less than five (5) employees, VirTra, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor Acknowledgement Form ("OPERS Form"), which is attached as Exhibit A.

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

26. INSURANCE

At all times during the Term of this Agreement, VirTra shall maintain insurance coverage commensurate with VirTra's obligations and liabilities hereunder.

27. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages caused by VirTra's negligence or operations shall be repaired, replaced or reimbursed by VirTra at no charge to the Agency. Repairs and replacements shall be completed in a timely and expedient manner. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from VirTra's vehicles or during performance shall be the responsibility of VirTra. All materials must be cleaned up in a manner and time reasonably acceptable to Agency (completely and immediately to prevent potential as well as actual environmental damage). VirTra must promptly report each incident to the Agency. Damage observed by VirTra, whether or not resulting from VirTra's operations or negligence shall be promptly reported by VirTra to Agency. Agency may, at its option, approve and/or dictate the actions that are in Agency's best interests.

28. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

VirTra represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Right of use and possession to the material and supplies accepted shall pass directly from VirTra to Agency at the F.O.B. point, subject to the right of Agency to reject upon inspection.

29. HOLD HARMLESS

Each party shall hold harmless the other party and the employees and agents of the other party from any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of a party or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of a party.

30. WARRANTY; MAINTENANCE

VirTra shall provide the warranty and maintenance services set forth in Exhibit B to this Agreement. Except as expressly set forth therein, VirTra shall have no other maintenance or support obligations.

31. COOPERATION WITH REVIEW

VirTra shall cooperate with Agency's periodic review of VirTra's performance. VirTra shall make itself available onsite to review the progress of the project and Agreement, as requested by the Agency, upon reasonable advance notice.

32. NON-DISCRIMINATION

VirTra shall comply with all applicable Federal, State, and local laws and regulations concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; and The Rehabilitation Act of 1973 (§§ 503 and 504), VirTra shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs,

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall VirTra discriminate in provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. VirTra's violation of this provision shall be deemed a material default by VirTra giving Agency a right to terminate the Agreement for cause.

33. SEVERABILITY

Should any part of the Agreement between Agency and VirTra or any purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement or any purchase order which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

34. NON-WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by Agency. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the Agency so specifies.

35. USE OF COMPANY'S NAME FOR COMMERCIAL PURPOSES

VirTra may not use the name of the Agency or reference any endorsement from the Agency in any fashion for any purpose, without the prior express written consent of the Agency.

36. HEADINGS AND TITLES

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

37. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

38. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described herein.

39. NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Each party may designate their desired contact person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

40. SURVIVAL

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

41. CONTRACT EXECUTION

Unless otherwise prohibited by law or Agency policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the Agency.

42. AGENCY POINT OF CONTACT

Each party will identify a point of contact to facilitate the contractual relationship, be responsible and accountable for fulfilling the requirements under the Agreement. Updated contact information for each point of contact shall be provided to the other party from time to time, as necessary.

43. THIRD PARTY BENEFICIARIES

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

44. AUTHORITY

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf, including the entity's Board of Directors or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by an authorized representative, as evidenced by their signature as set forth in this Agreement.

45. DATA AND OWNERSHIP

All content generated or stored by the System that is related to the performance and activity of Agency personnel while using the System ("Content") shall be the sole and exclusive property of Agency. Agency acknowledges and agrees that the System provides certain Content backup and verification features and that preservation of the Content is the sole and exclusive responsibility of Agency.

Agency hereby grants VirTra access to the Content for purposes limited to measuring System performance and function, System maintenance, calibration, data aggregation for tests, training results, measurements, or any other duty required to be performed by VirTra pursuant to this Agreement.

46. CONFIDENTIAL INFORMATION

"Confidential Information" shall include all material non-public information, written or oral, disclosed, directly or indirectly, through any means of communication or observation to a party or any of its affiliates or representatives by the other party. Neither Party shall, without the other Party's written permission, use or disclose Confidential Information other than in the performance of its obligations under this Agreement unless otherwise required by law or court order. All Confidential Information shall remain the property of the party that developed or legally acquired the Confidential Information. Neither party shall acquire an ownership interest in the other party's Confidential Information by virtue of this Agreement. All Agency specific data gathered pursuant to this Agreement remains the property of the Agency subject to the provisions of Section 149.43 of the Ohio Revised Code.

In the event Agency, as a political subdivision of the State of Ohio, is required to disclose Confidential Information as required by a law, court, agency, or other governing body having, or purporting to have, jurisdiction over the Agency, the Agency shall use reasonably best efforts to notify the other Party prior to such required disclosure, so as to allow the other Party an opportunity to resist such disclosure and/or to seek appropriate protection from further disclosure.

47. LIMITATION OF LIABILITY

Both parties' liability for damages to each other for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of five hundred thousand dollars (\$500,000) or two (2) times the Total Agreement Value. For purposes of this Section, "Total Agreement Value" will mean the aggregate Agreement price and any subsequent amendments to this Agreement. In no event will either party be liable to the other party for any special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory. The foregoing limitation of liability shall not apply to: (i) any personal injury, death, property damage or (ii) willful misconduct, gross negligence, or fraud.

48. OWNERSHIP PROPERTY

Except as expressly set forth herein, Agency acknowledges and agrees that all right, title, and interest in and to the System (and the intellectual property rights associated therewith) provided to Agency under the terms and conditions of this Agreement shall, at all times, belong to VirTra or VirTra's partners, suppliers, and licensors. Nothing in this Agreement shall be construed or interpreted to confer any ownership interest in or to the System to Agency. Notwithstanding the foregoing, VirTra may, in VirTra's sole discretion, transfer ownership of the System to Agency provided, however, that no transfer of intellectual property shall be inferred by such a transfer and continued use of the System after transference is permitted only by means of a continuing license from VirTra.

49. TAX EXEMPTION

Agency must provide VirTra with a correct, valid and signed tax exemption certificate applicable to the specific goods and services purchased, relevant to the end use location, prior to VirTra invoicing.

**Exhibit B
Maintenance and Support Agreement**

During the term of the Agreement, and provided that Agency is in material compliance with the terms and conditions set forth in Exhibit B, VirTra includes the following maintenance and support at no additional charge. Notwithstanding the foregoing, warranty and support may be excluded for any and all equipment damaged or destroyed by improper use or misuse in which case, additional charges may apply.

1: VirTra System Technician on installation site one time during Plan Year to perform the following functions as needed and if applicable.

*Annual site visits only available on Contracts with the VirTra V-180 or V-300 Simulator Systems in Exhibit

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

D.

- Upgrade VirTra Operating System (VOS) Features 1
- Install new VirTra training scenarios²
- Clean Computer, Monitor & Keyboard
- Perform Computer Diagnostics
- Clean Simulator Screens
- Upgrade to most current base library
- Recalibrate System
- Inspect Refill Station & Regulator
- Recondition & Test Recoil Kits
- Zero all Laser Based Items
- Test Threat-Fire™ Devices for Proper Functionality
- Test OC & Taser Devices for Proper Functionality
- Inspect & Test Speakers and Sound FX
- Provide a List of Inspected Items
- Provide User Refresher Training

2: Parts and Labor in the event of a non-functioning system or accessory. 3

3: Use of VirTra's Advance Replacement Program.⁴

4: Telephone Support between the hours of 8AM and 5PM AZ Time. After Hours Support calls returned between 8AM and 9AM the following day.

5: Simulator Computer and Projector Upgrade after five (5) years of deployment and if Contract renewal into sixth year of service. Other electronics and hardware to be upgraded at VirTra's discretion.

6: Travel expenses if a VirTra technician must travel to customer location. 7: Overnight Shipping on all replacement or repaired parts⁵

8: Remote Assistance 6

1- VirTra Operating Software Version 4 (VOS 4) will be automatically upgraded to the most current 4.XX.XX release during Annual visit Hardware must be supported by the new release and have enough hard drive space available on the system

2- Agency will receive the most current base library at the time of the 1st annual service visit. Not all training scenarios may be compatible with Agency's system and, accordingly, no guarantee of additional scenarios is provided

3 - TASER X26 blue handle units found to be defective will be replaced with laser slm cartridges and customer will be required to supply working TASER handle.

4 - Limited Quantities and not available for all components 5 - Where Available

6 - Agency must allow remote access to System

**Exhibit C
System Acceptance Checklist**

Initial Setup and Testing (Some items may not be applicable) Visually Inspect the System and Explain it's Components Open each box/container and verify all items are accounted for

Setup and Position Screen(s) and CPU Rack

Layout Speakers, All Wiring and Balance all Sound Levels Install Training Platform (If Applicable)

Install and Align all Projected Images and Camera Views Test all Weapon Kits and Wireless Accessories

Ensure all User Manuals are Correct for System & Accessories Instructional Training (***)Some items may not be applicable) Explain Proper Maintenance and Environmental Conditions Explain the importance of Firearm Safety

Explain and Demonstrate how to Install Weapon Kits

Explain and Demonstrate how to properly Maintain Weapon Kits

***Explain and Demonstrate how to use the VirTra Refill Station & Tank Filling Explain and Demonstrate how to Fill the Weapon Magazines

Explain and Demonstrate how to Properly Boot Up and Shutdown the System Explain the functionality of Wake-On-LAN

Explain and Demonstrate how to Run VOSTM

Explain the Different Scenario Types and how to run Each Type of Scenario Explain and Demonstrate how to Create Scenario Tags and Filters

Explain and Demonstrate how to Create Scenario Play lists Explain and Demonstrate how to Add Scenario Favorites Explain and Demonstrate Proper Projector Alignment

Explain and Demonstrate V-Tracking Camera Calibration through V-Tracking Tools

Explain and Demonstrate how to use Diagnostics through V-Tracking Tools Explain Laser ID's vs Pulse Lengths

Explain and Demonstrate how to Add a New Weapon Kit Explain and Demonstrate how to Enter a New Trainee

Explain and Demonstrate how to assign Trainee's and Weapons Explain and Demonstrate how to Zero a Weapon

Explain and Demonstrate Directional Surround Sound

Explain and Demonstrate how to run and Configure VirTra Accessory Controller Explain and Demonstrate how to use VirTra Wireless Devices

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

Explain and Demonstrate how to Run a Video Scenario Explain and Demonstrate Scenario Branching
 Explain and Demonstrate Scenario Debrief Explain and Demonstrate Presentation Mode
 ***Explain and Demonstrate Low-Light
 ***Explain and Demonstrate TMaR
 ***Explain and Demonstrate Breach Door
 Explain and Demonstrate how to Create a Marksmanship Trainee Set Explain and Demonstrate how to Boresight in Marksmanship
 Explain and Demonstrate how to Run a Free Fire Course in Marksmanship Explain and Demonstrate how to Run a Pre-built Course in Marksmanship Explain and Demonstrate how to Run Marksmanship Debrief
 Explain and Demonstrate how to Create and Import a Custom Target Explain and Demonstrate how to Create and Import a Custom Course of Fire Explain and Demonstrate how to use VirTra Remote Desktop
 Explain how to access VirTra Administration, including as an Administrator Explain all Icons and their functions of VirTra Administration
 Explain the Safety Precautions and Waiver Explain what consumable items are
 Explain the VirTra Warranty and Customer Service & Support Procedures Show client where manuals are located for System/Accessories
 ***Explain and Demonstrate how to run V-Author™
 ***Explain and Demonstrate how to use the VirTra Pano Edit Tool
 ***Explain and Demonstrate how to Import a V-Author™ Scenario
 ***Explain and Demonstrate how to Export a New V-Author™ Scenario
 ***Explain and Demonstrate how to Author a Single Screen Scenario

**Exhibit D:
Services, Equipment, and Pricing Summary**

Product Code	Product Description	Quantity
V-VICTA-01	VirTra-Virtual Interactive Coursework and Training Academy™ certified simulator training curriculum. V-VICTA™ is a progressive science based approach to the use of simulation as a training system. Program materials include teacher lesson plans, student outline, presentation material, pre-tests, post-tests, course evaluation and all interactive video learning material in conjunction with the simulator for each available course. Virtual Instructor scenarios teach, train, test and sustain methodology to ensure participants dynamically absorb information to facilitate long term transfer of critical psycho-motor skills. Available exclusively to all VirTra simulation systems under a current Service or Subscription plan.	1.00
V-ATCC-5-STEP	Advanced Trainer Certification Course (ATCC): 40-hour high demand course on how to incorporate video simulation into your training program properly and successfully. Includes 32 hours of "The Science of Simulation Training," and "Train the Operator Certification." The Science of Simulation is a critical overview and application of the recent science into adult learning specifically as it applies to simulation. Adult learning concepts in this course apply to all modes of learning both inside and outside the simulator. Training occurs at VirTra Global HQ in Tempe, AZ. Included with initial term of STEP Contracts only. Travel and expenses not included and are the responsibility of the customer.	1.00
V-180LE-1	VirTra Systems 180 LE-1 simulator system uses three interconnected screens to produce a more immersive training environment. Multi-directional training allows for scanning, situational awareness, acquiring and engaging moving targets and overcoming distractions. System includes LE content library, computer rack, UPS backup, and audio/projection equipment. System is configurable to fit in a variety of spaces (within minimum requirements). One year warranty and support services included.	1.00
VHU-BS-180	Eliminates the 5 inch black border between screens to increase immersion on VirTra 180 systems.	1.00
VATU-LL-G2X	Hardware and software for low light training, includes 2 flashlights. For use with advanced handheld lights only (VATU-FLT-G2X).	1.00
VATU-ASU-VA	VirTra V-Author™ software and desktop computer. Create and edit custom scenario content using included or site specific panoramic photographs and included assets. Includes standard asset and background package. Two day on-site training and installation included (CONUS.) Additional hardware required. For use with V-180 and V-300 systems.	1.00
VATU-TFI	VirTra Systems patented Threat-Fire™ return-fire-simulator device delivers a safe and adjustable electrical impulse to simulate hostile fire and enhance realism during training. No eye-protection required (Requires wireless station).	2.00
VWSA-WS	Required for wireless recoil kits and the Threat-Fire™ to connect to the VirTra simulator (Only one wireless station needed per system).	1.00
VATR-M16	Advanced micro-switch activated tetherless rifle recoil kit for AR15, M4 and M16. Incorporates laser, supports tactical reload and instructor jamming capability. Includes one wireless programmable magazine. Requires VirTra's wireless station. (All recoil kits convert real firearms which must be supplied by the customer).	2.00
VATR-M16-MAG	Advanced refillable rifle magazine with pressure supply, shot counting (defaults to 30 rounds per magazine), rechargeable battery pack, and wireless communications. For use with the VATR-M16 recoil kit. (Requires the VWSA-RFS, VWSA-WS, and VWSA-RCS).	2.00

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

VWSA-VATRM16-AP	Adapter plate for the VATR-M16-MAG (Requires VirTra refill station).	1.00
VWSA-RFS	Table-top refill station for all refillable magazines. Includes automatic push button activation and one CO2 tank which must ship empty.	1.00
VTRK-G22	Micro-switch activated tetherless handgun recoil kit for the Glock 22. Includes one magazine (All recoil kits convert real firearms which must be supplied by the customer).	2.00
VTRK-G22-MAG	Additional magazine for use with the VTRK-G22 recoil kits.	2.00
VWSA-G22-AP	Adapter plate for the VTRK-G22-MAG (Requires VirTra refill station).	1.00
VNLW-TAS-X26/P	TASER® X26 simulation cartridge. Fits both X26 and X26P live TASER® handles. (X26/P handles supplied by customer.)	2.00
VNLW-OCC-MK3	Laser-based MK3 model OC training device.	2.00
		\$40,540.19

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

5
RESOLUTION NO. 20-776

IN THE MATTER OF APPROVING SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR THE PROJECT KNOWN AS ITB #20-02 SNOW REMOVAL SERVICES:

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

WHEREAS, the Director of Facilities recommends approval of the Specifications and Setting Bid Opening Date and Time for the project known as ITB #20-02 Snow Removal Services;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Specifications and Setting Bid Opening Date and Time for the project known as ITB #20-02 Snow Removal Services:

**PUBLIC NOTICE
INVITATION TO BID**

Bids shall be submitted electronically through the www.bidexpress.com web service until 10:00 AM on Wednesday, September 30, 2020, at which time they will be publicly received and read aloud for the following:

ITB #20-02 – SNOW REMOVAL SERVICES

All proposals shall be submitted electronically through the web service www.bidexpress.com. A Bid Guaranty must be submitted with each bid, pursuant to the requirements of O.R.C. 307.88.

To access this Project through the electronic bidding service, you must first register at www.bidexpress.com by clicking on the “REGISTER FOR FREE” button and following the instructions. In order to bid, you must create and enable a digital ID within the service. This process requires the submission of notarized paperwork and may take up to five business days to complete. There are no fees to register, create and enable a digital ID, or to download bid documents. There is a small expense on a monthly or per bid basis to submit a bid. The electronic bidding service offers customer support that may be reached at 888.352.2439 or via email at support@bidexpress.com.

Bid award shall be to the lowest and best bidder as determined by Delaware County. Delaware County reserves the right to reject any and all bids, in whole or in part, to waive any defect in any or all bids. Each bid shall contain the full name and address of the bidder and all interested parties. No bid shall be withdrawn for a period of sixty (60) days after being publicly opened and read.

Notice to Bidders are posted on the Internet and may be viewed on Delaware County’s web site at www.co.delaware.oh.us under the heading “Public Notices and Bids”.

Delaware Gazette Advertisement Dates:
September 2, 2020

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

6
RESOLUTION NO. 20-777

IN THE MATTER OF DONATING PERSONAL PROPERTY NOT NEEDED FOR PUBLIC USE TO THE CRAWFORD COUNTY SHERIFF’S OFFICE:

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

WHEREAS, Delaware County currently owns certain personal property, specifically a 2011 Ford Crown Vic

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

Police Interceptor VIN 2FABP7BV0BX139657 with 165,566 miles and associated law enforcement equipment (the "Property"), that is no longer needed for use by Delaware County; and

WHEREAS, pursuant to section 307.12(D) of the Revised Code, the Board of County Commissioners (the "Board") may sell or donate county personal property to any political subdivision of the state without advertisement or public notification, regardless of the property's value; and

WHEREAS, the Wynford Local School District in Crawford County has entered into a MOU with the Crawford County Sheriff's Office to provide a school resource officer, however, the Crawford County Sheriff's Office does not have a cruiser to provide the officer and can utilize the Property;

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

Section 1. The Board hereby approves the donation of the Property to the Crawford County Sheriff's Office, Crawford County, Ohio.

Section 2. Pursuant to section 307.12(D) of the Revised Code, the Board makes no determination of the value of the Property, and the Property shall be donated upon the condition that the Property is accepted "as is."

Section 3. The Director of Facilities is hereby authorized to execute any documents necessary to complete the donation of the Property approved herein.

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

7
RESOLUTION NO. 20-778

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER'S AGREEMENT FOR EVANS FARM SECTION 2 PHASE C:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider's Agreement for Evans Farm Section 2 Phase C;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Sanitary Sewer Subdivider's Agreement for Evans Farm Section 2 Phase C:

SUBDIVIDER'S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 3rd day of September 2020, by and between **Evans Farm Land Development Company, LLC**, hereinafter called "Subdivider", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County"), and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for Phase C of the **Sanitary Sewer Improvement Plan for Evans Farm Section 2, Phase B, C, D & D-2**, dated **November 20, 2019**, approved by the County on **January 6, 2020**, and **revised on July 8, 2020** all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **12** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

For on-site improvements the following options for financial warranty apply:
OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$58,972.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 2 for this project.

Initials _____

Date _____

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **Evans Farm Section 2, Phase C**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of Phase C in the **Sanitary Sewer Improvement Plan for Evans Farm Section 2, Phases B, C, D & D-2 (\$2,064.02)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight and one-half percent (8½ %) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of Phase C of **Evans Farm Section 2, Phase B, C, D & D-2 (\$5,012.62)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight and one-half percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Evans Farm Section 2, Phase C** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider 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 any negligent acts, errors or omissions of the Subdivider, its employees, agents, or contractors, or any other person for whose acts any of them may be liable.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

The Subdivider shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Subdivider shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

22111502-5001	22111502-5312	1,000.00
Litter Grant/Compensation	Litter Grant/Advertising & Legal Notices	

Vote on Motion	Mr. Merrell	Aye	Mrs. Lewis	Aye	Mr. Benton	Aye
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9**RESOLUTION NO. 20-780**

IN THE MATTER OF AWARDING A BID AND APPROVING CONTRACTS BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND SHELLY & SANDS, INC. FOR DEL-CR13-1.65, WORTHINGTON ROAD IMPROVEMENTS, AND STRAWSER PAVING COMPANY FOR DEL-CR14-1.23, EAST POWELL ROAD IMPROVEMENTS PHASE 2:

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

**DEL-CR13-1.65, Worthington Road Improvements
Bid Opening of August 11, 2020**

WHEREAS, as the result of the above referenced bid opening, the Engineer recommends that a bid award be made to Shelly & Sands, Inc., the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and Shelly & Sands, Inc., for the project known as DEL-CR13-1.65, Worthington Road Improvements as follows:

CONTRACT

THIS AGREEMENT is made this 3rd day of September, 2020 by and between **Shelly & Sands, Inc., 1515 Harmon Avenue, Columbus, Ohio 43216**, hereinafter called the "Contractor" and the Orange Township Board of Trustees, hereinafter called the "Owner".

The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named "**DEL-CR13-1.65, Worthington Road Improvements**", and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed **Six Million Nine Thousand One Hundred Twenty-Two Dollars and Sixteen Cents (\$6,009,122.16)**, subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation to Bid
- d. Instructions to Bidders
- e. Signed copy of bid
- f. Work Specifications (including all plans, drawings, etc.)
- g. Specifications – General Provisions
- h. Federal and State Requirements

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern except as otherwise specifically stated.

**DEL-CR14-1.23, East Powell Road Improvements Phase 2
Bid Opening of August 4, 2020**

WHEREAS, as the result of the above referenced bid opening, the Engineer recommends that a bid award be

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

made to Strawser Paving Company., the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and Strawser Paving Company for the project known as DEL-CR14-1.23, East Powell Road Improvements Phase 2 as follows:

CONTRACT

THIS AGREEMENT is made this 3rd day of September, 2020 by and between Strawser Paving Company, 1595 Frank Road, Columbus, Ohio 43223, hereinafter called the “Contractor” and the Delaware County Board of Commissioners, hereinafter called the “Owner”.

The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named “DEL-CR14-1.23, East Powell Road Improvements Phase 2” and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed Eight Million Four Hundred Forty-Nine Thousand Six Hundred Seventy-Three Dollars and Sixty-Four Cents (\$8,449,673.64), subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation to Bid
- d. Instructions to Bidders
- e. Signed copy of bid
- f. Work Specifications (including all plans, drawings, etc.)
- g. Specifications – General Provisions
- h. Federal and State Requirements

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern except as otherwise specifically stated.

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners awards the bids to and approves the contracts with Shelly & Sands, Inc. for DEL-CR13-1.65, Worthington Road Improvements, and with Strawser Paving Company for DEL-CR14-1.23, East Powell Road Improvements Phase 2.

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

**10
RESOLUTION NO. 20-781**

IN THE MATTER OF ESTABLISHING A COUNTY PUBLIC DEFENDER COMMISSION:

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

WHEREAS, pursuant to section 120.13(A) of the Revised Code, the Delaware County Board of Commissioners (the “Board”) may establish a county public defender commission; and

WHEREAS, the Board recommends transitioning from the current court-appointed counsel system of providing legal representation to indigents in Delaware County to a county-based public defender office, supplemented as necessary by court-appointed counsel; and

WHEREAS, the establishment of a county public defender commission is necessary to implement the Board’s plan by appointing a county public defender and providing legal representation to indigents in Delaware County through

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

a county-based public defender office in accordance with the plan; and

WHEREAS, the Board’s plan for this transition, formulated in consultation with the Delaware County judiciary, includes a phased approach commencing with, in addition to the county public defender and necessary administrative support employees, two assistant public defenders assigned to the Court of Common Pleas General Division and two assistant public defenders assigned to the Municipal Court, while continuing to utilize assigned counsel for Juvenile Court, Domestic Relations Division, conflict cases, and those cases in the General Division and Municipal Court that could not be handled in volume by the public defender attorneys; and

WHEREAS, the Board’s plan includes subsequent phases to monitor and evaluate staffing levels and caseloads at regular intervals to ensure that an appropriate staffing level would be reached for the county public defender’s office to handle approximately eighty percent of indigent defense within five to ten years of establishment; and

WHEREAS, the Board’s plan also includes the county public defender commission devoting resources to conduct audits and investigations of the financial status of represented persons and securing agreements with municipal corporations for reimbursement of the county for the county public defender providing legal representation for indigent persons who are charged with a violation of the ordinances of the municipal corporation; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. Pursuant to section 120.13(A) of the Revised Code, the Board hereby establishes the Delaware County Public Defender Commission (the “Commission”), which shall consist of five members, three of whom shall be appointed by the Board, and two by the presiding judge of the Court of Common Pleas of Delaware County. At least one member appointed by each of these appointing bodies shall be an attorney admitted to the practice of law in this state.

Section 2. The Commission shall be formally established, and the appointments of all members thereof shall take effect, on October 1, 2020. The Board hereby directs the Clerk of the Board to certify a copy of this Resolution to the Ohio Public Defender Commission, thereby notifying that body of the date of establishment.

Section 3. In accordance with the requirements of sections 120.13(A) and (C) of the Revised Code, the Board shall, by separate Resolution, make the following appointments to the Commission: (A) Two members who shall serve terms commencing on the date of establishment in Section 2 of this Resolution and expiring two years thereafter; and (B) One member who shall serve a term commencing on the date of establishment in Section 2 of this Resolution and expiring four years thereafter. At least one of the Board’s appointments shall be an attorney admitted to the practice of law in this state.

Section 4. The Board hereby requests that the presiding judge of the Court of Common Pleas of Delaware County appoint two additional members to the Commission, at least one of whom is an attorney admitted to the practice of law in this state. One member appointed by the presiding judge shall serve a term commencing on the date of establishment in Section 2 of this Resolution and expiring two years thereafter, and one member appointed by the presiding judge shall serve a term commencing on the date of establishment in Section 2 of this Resolution and expiring four years thereafter.

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

11

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator
-No reports.

12

COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Merrell
-The annual CORSA meeting (Hybrid) will be tomorrow at 10:00 A.M.
-Attended the Richwood Fair yesterday, which was holding their Jr. Fair.

Commissioner Lewis
-No reports.

Commissioner Benton
-MORPC Executive Committee will meet this afternoon.
-CEBCO will hold their regular meeting Friday. They will start their smart shopper program soon; that will help consumers find alternative and more cost effective costs to procedures. Will also be looking for a new Wellness Vendor.
-Labor Day is Monday.
-House Bill 606 passed the House and Senate. This is the Liability Immunity Bill to fight against frivolous

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

lawsuits. It will take effect in 90 days and will be retroactive to Mach 9, 2020 and go through September 30, 2021.

-The TID will meet next Wednesday.

For the health, safety and well-being of county residents, in response to the continued threat of COVID-19, and in accordance with orders of the Ohio Director of Health, public participation in this hearing Will Be Taking Place Only By Virtual Means

13

RESOLUTION NO. 20-782

10:00A.M. - RECONVENING OF HEARING FOR CONSIDERATION OF THE DAVIS #240 DRAINAGE IMPROVEMENT PETITION:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to reconvene the hearing at 10:07 A.M..

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

13 continued

RESOLUTION NO. 20-783

IN THE MATTER OF APPROVING, FOR A SPECIFIC OCCURRENCE, A SUSPENSION OF RULE 3-SPEAKER REGISTRATION; RULE 4-LIMITATIONS AND RULE 7-PUBLIC COMMENT PROCEDURE FROM THE RULES GOVERNING PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve, for a specific occurrence, a suspension of Rule 3-Speaker Registration; Rule 4-Limitations; Rule 7-Public Comment Procedure from the Rules Governing Public Comment Before The Board Of County Commissioners Of Delaware County, Ohio

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

13 continued

RESOLUTION NO. 20-784

IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF THE DAVIS #240 DRAINAGE IMPROVEMENT PETITION:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to close the hearing at 11:27 A.M..

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

13 continued

RESOLUTION NO. 20-785

IN THE MATTER OF GRANTING THE PRAYER OF THE PETITION AND DIRECTING THE DELAWARE COUNTY ENGINEER TO PROCEED WITH PREPARATION OF PLANS, REPORTS, AND SCHEDULES FOR THE DAVIS #240 DRAINAGE IMPROVEMENT PETITION:

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

WHEREAS, on February 18, 2020, a Drainage Improvement Petition to Davis #240 Watershed Drainage Improvement was filed with the Board of Commissioners of Delaware County (the "Board"); and

WHEREAS, the Board on August 17, 2020, conducted a view of the proposed improvements; and

WHEREAS, the Board held on September 3, 2020, a public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for Davis #240 Watershed Drainage Improvement; and

WHEREAS, after hearing testimony from property owners and the preliminary report of County Engineer, Chris Bauserman, the Board is prepared to issue its findings on the proposed improvements;

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

Section 1. The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the cost of the proposed improvement will be less than the benefits. Accordingly, the Board hereby grants the prayer of the petition. The hearing on the Petition is hereby adjourned to the date fixed for the filing of the reports, plans, and schedules by the

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020

Delaware County Engineer.

Section 2. The Board hereby orders the Delaware County Auditor to transfer \$ Zero from the general revenue funds of the county to the general drainage improvement fund.

Section 3. Upon the transfer of funds ordered in Section 2, the Board hereby orders the Delaware County Engineer to proceed with the preparation of plans, reports and schedules as presented for the proposed Davis #240 Watershed Drainage Improvement. The Board hereby fixes September 3, 2022 as the date for filing of the engineer’s reports, plans, and schedules. Upon filing of this information a public hearing date will be set and proper notification given to property owners in the affected watershed.

Section 4. THE BOARD HEREBY APPROVES ESTABLISHING A NEW ORGANIZATION KEY FOR THE DAVIS #240 DRAINAGE IMPROVEMENT PROJECT 40311480.

Section 5. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

Section 6. Sections 1, 4, 5, and 6 of this Resolution shall take immediate effect upon passage. Sections 2 and 3 of this Resolution shall take effect upon the expiration of the twenty-one day appeal period, provided no appeal has been taken.

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

14

RESOLUTION NO. 20-786

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING OR IMMINENT LITIGATION; FOR COLLECTIVE BARGAINING:

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 pending or imminent litigation; for collective bargaining.

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

RESOLUTION NO. 20-787

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 3, 2020**

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners