

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 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

1
RESOLUTION NO. 20-1061

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 23, 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 November 23, 2020; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 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. 20-1062

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1125 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR1125:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1125, memo transfers in batch numbers MTAPR1125 and Purchase Orders as listed below:

| <u>Vendor</u> | <u>Description</u> | <u>Account</u> | <u>Amount</u> |
|---------------------|-------------------------------|----------------|---------------|
| PO' Increase | | | |
| PHOENIX | PERSONAL PROTECTIVE EQUIPMENT | 10011303-5225 | \$11,000.00 |
| ZOOM VIDEO | SOFTWARE SERVICES | 10011102-5320 | \$15,879.45 |
| DROPOX & HELLOSIGN | SOFTWARE SERVICES | 10011102-5320 | \$44,641.97 |
| CAPITAL TRANSPORT | Job &Family Services Program | 22311611-5348 | \$6,450.00 |
| EMERGENCY PLUMBING | Job &Family Services Program | 22311611-5348 | \$5,000.00 |
| VARIOUS TANF | Job &Family Services Program | 22411601-5348 | \$7,500.00 |
| VARIOUS CCMEP | Job &Family Services Program | 22311611-5348 | \$4,000.00 |
| FOX RUN | Job &Family Services Care | 22511607-5342 | \$22,040.00 |
| YOUNG STAR | Job &Family Services Care | 22511607-5342 | \$16,365.00 |

| <u>PR Number</u> | <u>Vendor Name</u> | <u>Line Description</u> | <u>Line Account</u> | <u>Amount</u> |
|------------------|-------------------------------|--|---------------------|---------------|
| R2004885 | OHIOHEALTH CORPORATION | EMPLOYEE TB TESTING | 10011303 - 5301 | \$7,000.00 |
| R2004907 | COMPUTATIONAL HYDRAULICS INTL | MODELING SOFTWARE LICENSING RENEWAL PCSWMM | 66211900 - 5320 | \$5,440.00 |
| R2004919 | COMMISSIONERS | DAVIS #240 DITCH MAINTENANCE CHARGES | 40311480 - 5328 | \$720.71 |
| R2004919 | COMMISSIONERS | DUSTIN ROAD DITCH MAINTENANCE CHARGES | 40311476 - 5328 | \$643.86 |
| R2004919 | COMMISSIONERS | ENGLISH #346 DITCH MAINTENANCE CHARGES | 40311470 - 5328 | \$1,224.18 |
| R2004919 | COMMISSIONERS | FRANKLIN DITCH MAINTENANCE CHARGES | 40311478 - 5328 | \$587.98 |
| R2004919 | COMMISSIONERS | GORSUCH JOINT COUNTY DITCH MAINTENANCE CHARGES | 40311472 - 5328 | \$3,216.98 |
| R2004919 | COMMISSIONERS | HIDDEN SPRINGS DITCH MAINTENANCE CHARGES | 40311468 - 5328 | \$31.64 |
| R2004919 | COMMISSIONERS | ORANGE VILLAGE PARK DITCH MAINTENANCE | 40311469 - 5328 | \$31.64 |

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

| | | CHARGES | | |
|----------|---------------|---|-----------------|-------------|
| R2004919 | COMMISSIONERS | HOOVER #61 DITCH MAINTENANCE CHARGES | 40311475 - 5328 | \$542.76 |
| R2004919 | COMMISSIONERS | KINGSTON #2017-1 DITCH MAINTENANCE CHARGES | 40311463 - 5328 | \$2,602.04 |
| R2004919 | COMMISSIONERS | LANETTA LANE DITCH MAINTENANCE CHARGES | 40311474 - 5328 | \$852.28 |
| R2004919 | COMMISSIONERS | NORRIS RUN DITCH MAINTENANCE CHARGES | 40311460 - 5328 | \$2,205.52 |
| R2004919 | COMMISSIONERS | RADNOR TWP #2015-1 DITCH MAINTENANCE CHARGES | 40311458 - 5328 | \$1,066.4 |
| R2004919 | COMMISSIONERS | RIBOV #620 DITCH MAINTENANCE CHARGES | 40311450 - 5328 | \$1,802.36 |
| R2004919 | COMMISSIONERS | RUDER WEST DITCH MAINTENANCE CHARGES | 40311466 - 5328 | \$11,988.05 |
| R2004919 | COMMISSIONERS | THOMAS #9 DITCH MAINTENANCE CHARGES | 40311453 - 5328 | \$3,129.3 |
| R2004919 | COMMISSIONERS | TOOT #98 DITCH MAINTENANCE CHARGES | 40311417 - 5328 | \$1,844.27 |
| R2004919 | COMMISSIONERS | VILLAS AT MAPLE CREEK DITCH MAINTENANCE CHARGES | 40311479 - 5328 | \$767.93 |
| R2004919 | COMMISSIONERS | WATSON-FORD #25 DITCH MAINTENANCE CHARGES | 40311477 - 5328 | \$540.95 |
| R2004919 | COMMISSIONERS | WEBSTER-ARNOLD #355 DITCH MAINTENANCE CHARGES | 40311455 - 5328 | \$151.66 |

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

**3
RESOLUTION NO. 20-1063**

IN THE MATTER OF GRANTING ANNEXATION PETITION FROM AGENT FOR THE PETITIONER, MICHAEL R. SHADE, ATTORNEY-AT-LAW, REQUESTING ANNEXATION OF 32.475 ACRES OF LAND IN DELAWARE TOWNSHIP TO THE CITY OF DELAWARE:

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

WHEREAS, on November 3, 2020, the Clerk to the Board of the Delaware County Commissioners received an annexation petition filed by Michael R. Shade, Attorney-at- Law, agent for the petitioners, requesting annexation of 32.475 acres, more or less, from Delaware Township to the City of Delaware; and

WHEREAS, pursuant to section 709.023 of the Revised Code, if the Municipality or Township does not file an objection within 25 days after filing of the annexation petition, the Board at its next regular session shall enter upon its journal a resolution granting the proposed annexation; and

WHEREAS, 25 days have passed and the Clerk of the Board has not received an objection from the City of Delaware or the Township of Delaware;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners grants the petition requesting annexation of 32.475 acres, more or less, from Delaware Township to the City of Delaware.

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

**4
RESOLUTION NO. 20-1064**

IN THE MATTER OF APPROVING A TRANSFER OF FUNDS FOR THE DELAWARE COUNTY BOARD OF DEVELOPMENTAL DISABILITIES:

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

| Transfer of Funds | |
|---|--|
| From | To |
| 29519000-5801 Developmental Disabilities/Misc Cash Transfer | 29652504-4601 DODD Medicaid Reserve/Interfund Revenue |
| | 1,439,000.00 |

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

5

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020

RESOLUTION NO. 20-1065

IN THE MATTER OF AUTHORIZING THE PURCHASE OF TELECOMMUNICATIONS
EQUIPMENT AND SERVICES – ARCHIVING INTERFACE SERVER AND CHANNEL
ADDITION:

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

WHEREAS, the Director of Emergency Communications recommends the purchase of telecommunications equipment and services; and

WHEREAS, the necessary equipment and services are available for purchase through the State of Ohio’s cooperative purchasing program (the “Program”); and

WHEREAS, the Board of County Commissioners (the “Board”) is a member of the Program and wishes to purchase the equipment and services through the Program;

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

Section 1. The Board hereby approves the purchase of telecommunications equipment and services from Motorola Solutions, Inc., in accordance with the AIS Addition and 1 Channel Add proposal dated November 2, 2020.

Section 2. The purchase shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index # STS-073, Contract # 573077-0, which is, by this reference, fully incorporated herein and of which the purchase order shall be made a part.

Section 3. The Board hereby approves a purchase order with Motorola Solutions, Inc., in the amount of \$441,198 from org key 41711436.

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

6

RESOLUTION NO. 20-1066

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR LAND AND BUILDINGS:

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

Transfer of Appropriation

| | | |
|---------------------------------|-------------------------------------|-----------|
| From: | To: | |
| 10011105-5001 | 10011105-5201 | 10,000.00 |
| Land and Buildings/Compensation | Land and Buildings/General Supplies | |

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

7

RESOLUTION NO. 20-1067

IN THE MATTER OF DECLARING PERSONAL PROPERTY OBSOLETE, UNFIT, OR NOT NEEDED FOR PUBLIC USE AND THE INTENT OF SELLING SUCH PROPERTY VIA INTERNET AUCTION OR DISPOSAL OF PROPERTY OF NO VALUE:

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

WHEREAS, Delaware County has personal property that is not needed for public use, obsolete, or unfit for the use for which it was acquired; and

WHEREAS, Ohio Revised Code section 307.12(E) allows, by resolution, the sale of such property by internet auction; and

WHEREAS, the Delaware County Board of Commissioners passed Resolution No. 16-749 on August 1, 2016, declaring its intent to sell such property by internet auction; and

WHEREAS, certain of such property may require a signature to transfer such property from the county to a buyer; and

WHEREAS, certain of such property may receive no bids during the internet auction and can be declared to be of no value;

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners, Delaware County, State of Ohio, that the following property listed below be sold in the manner prescribed in Resolution No. 16-749 and that items receiving no bids be considered of no value and may be discarded or salvaged at the direction of the Director of Facilities. The Director of Facilities is hereby authorized to sign any documents needed to transfer such property on behalf of the Board.

| Asset #/Type | Make | Model | VIN/Serial Number | Mileage/Note |
|--------------|----------|-----------------|-------------------|--------------|
| 574/SEDAN | FORD | 2011 CVPI 4.6L | 2FABP7BV4BX137975 | 153,296 |
| 570/SEDAN | FORD | 2011 CVPI 4.6L | 2FABP7BV7BX137971 | 169,102 |
| 581/SEDAN | FORD | 2011 CVPI 4.6L | 2FABP7BV7BX139659 | 156,577 |
| 560/SEDAN | FORD | 2010 CVPI 4.6L | 2FABP7BV9AX132012 | 169,125 |
| 548/SEDAN | FORD | 2009 CVPI 4.6L | 2FAHP71V99X132387 | 136,026 |
| 554/SEDAN | CHEVY | 2009 IMPALA | 2G1WS57MX91274312 | 147,711 |
| 165/SEDAN | CHEVY | 2008 IMPALA | 2G1WS553X89226593 | 162,907 |
| 26/VAN | GMC | 2000 SAVANA | 1GKFG15R8Y1211234 | 222,997 |
| Trailer | Buckeye | 6x12 | N/A | |
| Trailer | Haulmark | 2010 TS7X16DT12 | 16HPB16276H143519 | |

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

**8
RESOLUTION NO. 20-1068**

IN THE MATTER OF APPROVING GMP AMENDMENT NO. 1 TO THE AGREEMENT WITH PETERSON CONSTRUCTION COMPANY FOR CMAR SERVICES FOR THE ALUM CREEK WATER RECLAMATION FACILITY CLARIFIER UPGRADE PROJECT:

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

WHEREAS, on February 27, 2020, the Delaware County Board of Commissioners (the “Board”) adopted Resolution No. 20-205, approving an agreement with Peterson Construction Company for CMAR services for the Alum Creek Water Reclamation Facility clarifier upgrade project (the “Agreement”); and

WHEREAS, the Sanitary Engineer recommends approval of GMP Amendment No. 1 to the Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following GMP Amendment No. 1 to the Agreement with Peterson Construction Company:

**GMP Amendment No. 1
Agreement Exhibit D**

The Delaware County Board of Commissioners and the CM enter into this Amendment as of the date set forth below to amend the Contract they entered into as of November 30, 2020 in connection with the Project.

- Project Number:**
- Project Name:** **Alum Creek WRF Clarifier Upgrades**
- Owner (“County”):** **Delaware County Regional Sewer District**
- Contracting Authority:** **Delaware County Board of Commissioners**
- Construction Manager (“CM”):** **Peterson Construction Company**

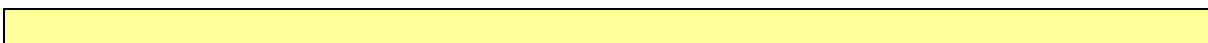
- CONTRACT SUM AND RELATED ITEMS

The Contract Sum is **\$4,293,029**, which is the sum of the estimated Cost of the Work, plus the CM’s Contingency, plus the CM’s Fee as follows:

The estimated Cost of the Work is **\$4,110,087**, which includes all Allowances (if any) and Unit Prices (if any) defined through this Amendment, and is the sum of:

CM’s Construction Stage Personnel Costs in the amount of **\$243,220**, which amount shall not exceed **\$243,220**;

General Conditions Costs in the amount of **\$58,000**, which shall not exceed **\$58,000**;



**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

All Work the CM proposes to provide through Subcontractors in the amount of **\$1,776,234**;

All Self-Performed Work the CM proposes to provide directly or through a CM Affiliated Entity in the amount of **\$1,882,600**, which amount does not include any costs accounted for under the CM's Construction Stage Personnel Costs or General Conditions Costs.

A Design Contingency in the amount of **\$100,000**, which shall not exceed **\$100,000**;

The Owner's Contingency in the amount of **\$50,033**, which shall not exceed **\$50,033**.

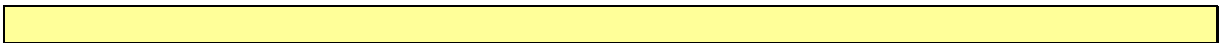
The CM's Contingency in the amount of **\$54,883**, which shall not exceed **1.5** percent of the above-identified Cost of the Work.



The CM's Fee in the amount of **\$128,059**, which shall not exceed **3.5** percent of the sum of the above-identified Cost of the Work plus the above-identified CM's Contingency.

| Compensation Component Description (refer to complete description in the Section of this GMP Amendment referenced below) | Current Amount (before execution of this GMP Amendment) | Increase(Decrease) (amount added to or (deducted from) Current Amount) | Amended Amount (after execution of this GMP Amendment) |
|--|---|--|--|
| 0 Contract Sum | | | \$4,293,029 |
| 0 Estimated Cost of the Work | | | \$4,110,087 |
| 0 Personnel Costs | | | \$243,220 |
| 0 General Conditions Costs | | | \$58,000 |
| 1.1.1.3 Subcontracted Work | | | \$1,776,234 |
| 0 Self-performed Work | | | \$1,882,600 |
| 1.1.1.5 Design Contingency | | | \$100,000 |
| 1.1.1.6 Owner Contingency | | | \$50,033 |
| 0 CM's Contingency | | | \$54,883 |
| 0 CM's Fee | | | \$128,059 |

Recap of Contract Sum and Related Items:



The penal sum of the CM's Bonds shall equal 100 percent of the CM's Total Compensation.

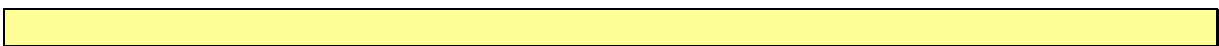
- CONTRACT TIMES

The Contract Times are the periods established in the following table for the achievement of the associated

| Construction Stage Milestone(s) to which Liquidated Damages apply | Contract Time | Projected Date (as of the date of this GMP Amendment) |
|--|----------------------|---|
| Substantial Completion of all Work | | September 1, 2021 |
| Final Completion | | October 1, 2021 |

Milestones:

The projected dates listed under "Projected Date (as of the date of this GMP Amendment)" are provided only for convenient reference during the consideration and negotiation of this GMP Amendment. The durations listed under "Contract Time" define the Contract Times and take precedence over the projected dates.



- LIST OF EXHIBITS

This Amendment is based upon the following documents:

Basis Documents attached as **GMP Exhibit A; Hazen Technical Memorandum for Alum Creek CMAR Dated 10/7/2019. (Geotechnical Report, Preliminary Specifications, Preliminary Drawings and Addendum 1)**

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

(This exhibit includes a list, which identifies by number, title, and date, all of the Drawings, Specifications, and other documents, upon which the CM relied to prepare this Amendment.)

Project Estimate attached as **GMP Exhibit B; Final GMP dated 10/1/2020**

(This exhibit includes a detailed estimate of the Cost of the Work which (1) allocates the cost of each of item of the Work to labor and materials/equipment organized by trade categories and (2) does not contain a lump-sum estimate for any item other than the CM's Fee and the CM's Contingency. This exhibit is informational only. It is included to provide a tool to evaluate, analyze, and discuss the proposed Contract Sum.)

Construction Progress Schedule attached as **GMP Exhibit C; Peterson Construction Schedule**

Staffing Plan attached as **GMP Exhibit D; Ty Bergfeld – Project Manager, Rich Baker – Project Superintendent (As previously approved)**

(This exhibit includes the CM's detailed plan for staffing the Project during the Construction Stage and an outline of the qualifications and experience of the CM's proposed project manager and proposed superintendent, including references, unless the CM previously submitted that information and the CM's project manager and superintendent were approved.)

Subcontractor Work Scopes attached as **GMP Exhibit E;**

(This exhibit includes a detailed scope-of-Work description for each anticipated Subcontract.)

Scope of CM's Self-Performed Work attached as **GMP Exhibit F;**

(This exhibit includes a detailed scope-of-Work description for all Self-Performed Work the CM proposes to provide itself or through a CM Affiliated Entity if the requirements in the Contract are met; otherwise this scope of Work will be performed by a Subcontractor.)

Schedule of Unit Prices attached as **GMP Exhibit G (if applicable); Concrete Repair Bid Unit Prices**

(This exhibit includes a complete list and detailed description of all Unit Price items with related measurement and payment terms.)

Schedule of the Bid Package attached as **GMP Exhibit H; ACWRF Clarifier Project Bid Package Fees.**

(This exhibit includes the complete lists of Bid Packages with all costs.)

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

9

RESOLUTION NO. 20-1069

IN THE MATTER OF APPROVING AN AGREEMENT WITH PETERSON CONSTRUCTION COMPANY FOR PROGRESSIVE DESIGN-BUILD SERVICES FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER HEADWORKS AND AERATION UPGRADES PROJECT:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Peterson Construction Company for Progressive Design-Build Services for the Olentangy Environmental Control Center Headworks and Aeration Upgrades Project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Peterson Construction Company:

This Agreement is made as of the date set forth below between the Delaware County Board of Commissioners, and the Design-Builder in connection with the Project.

Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

This AGREEMENT is made as of the 30th day of November in the year of 2020, by and between the following parties, for services in connection with the Project identified below:

OWNER: **Delaware County Board of Commissioners
Delaware County Sewer District
50 Channing Street
Delaware, Ohio 43015**

DESIGN-BUILDER: **Peterson Construction Company
18817 State Route 501 North
P.O. Box 2058
Wapakoneta, Ohio 45895**

PROJECT: **Olentangy Environmental Control Center**

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

**Headworks and Aeration Upgrades
Progressive Design Build Project
10333 Olentangy River Road
Powell, Ohio 43065**

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) (“General Conditions of Contract”);

2.1.2 The GMP Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

2.1.3 This Agreement, including all exhibits but excluding, if applicable, the GMP Exhibit;

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner’s acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner’s acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner’s Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner’s Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner’s Interest in Work Product upon Project Completion and Payment in Full to Design-Builder. Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

4.3 Owner’s Interest in Work Product upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, transfer to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product to use the Work Product to complete the Project and subsequently occupy the Project without the involvement of Design-Builder, subject to the same conditions set forth in Section 4.2.

4.4 Owner’s Interest in Work Product upon Design-Builder’s Default. If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder shall immediately transfer to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product to use the Work Product to complete the Project and subsequently occupy the Project without the involvement of Design-Builder, subject to the same conditions set forth in Section 4.2.

4.5 Owner’s Use of Work Product. All Work Product generated pursuant to this Agreement is not intended or represented to be suitable for reuse by Owner on any other project or for any other purpose other than that for which the same was created. If Owner uses the Work Product on any other project, Owner agrees that it shall do so at its sole risk. Owner further agrees that it shall release the Design-Builder and anyone working through them from any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, the Owner may incur as a result of such use of the Work Product on another project.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 The date of Substantial Completion of the entire Work shall be established in the GMP Proposal accepted by the Owner in accordance with this Agreement (“Scheduled Substantial Completion Date”).

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be established in the GMP Proposal accepted by the Owner in accordance with this agreement.

5.2.3 Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract. Design-Builder understands that if Final Completion is not achieved by the date established in the GMP Proposal accepted by the Owner in accordance with this Agreement, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved by such date, Design-Builder shall pay to Owner Two Thousand Dollars (\$2,000), as liquidated damages for each calendar day that Final Completion is delayed beyond such date.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Two Thousand Dollars (\$2,000) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. Notwithstanding the foregoing, in no event shall liquidated damages be assessed as a result of delays caused by the Owner.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.1.2 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, in accordance with Design-Builder's Fee and Rate Proposal Form, identified as "Attachment F" attached hereto and, by this reference incorporated herein.

6.2 Design-Builder's Fee.

6.2.1 Design-Builder's Fee shall be as set forth in Section 6.1.2 above, as adjusted in accordance with Section 6.2.2 below:

6.2.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.2.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee calculated as a percentage of the additional Costs of the Work incurred for that Change Order, with the percentage being equal to the percentage stated in "Attachment F" for the class of services constituting the additional Work.

6.2.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Attachment F and performing the function set forth in said document.

6.3.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

6.3.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.3.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.3.9 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.10 Costs of removal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.3.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.3.14 All fuel and utility costs incurred in the performance of the Work.

6.3.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.3.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.3.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.3.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.21 Accounting and data processing costs related to the Work.

6.3.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.4 Allowance Items and Allowance Values.

6.4.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

6.4.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.4.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.4.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.4.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

6.5.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

6.5.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

6.5.1.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price ("GMP").

6.6.1 [NOT USED]

6.6.2 GMP Established after Execution of this Agreement.

6.6.2.1 GMP Proposal. If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

6.6.2.1.1 A proposed GMP, which shall be the sum of:

- i.** Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii.** The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and
- iii.** If applicable, any prices established under Section 6.1.2 hereof.

6.6.2.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

6.6.2.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

6.6.2.1.4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

6.6.2.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

6.6.2.1.6 If applicable, a schedule of alternate prices;

6.6.2.1.7 If applicable, a schedule of unit prices;

6.6.2.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

6.6.2.1.9 The time limit for acceptance of the GMP Proposal.

6.6.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.6.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

6.6.2.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

6.6.2.4.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

6.6.2.4.2 Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

6.6.2.4.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be retained in full by the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the First (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments. PHASE II ONLY (Construction Phase)

7.2.1 Owner will retain Eight to Fifty percent (8 to 50%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing fifteen (15) days after payment is due at the rate of one and one-half percent (1.5%) per month until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days’ written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 Overhead and profit in the amount of Fifteen percent (15%) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid for the preliminary services provided at the time of termination, in accordance with Attachment F.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid the amount as established in the GMP Proposal accepted by the Owner in accordance with the Agreement.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder’s express written consent and such third parties’ agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner’s Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative (“Owner Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Tiffany Maag, P.E.
Director/Sanitary Engineer
50 Channing Street
Delaware, Ohio 43015
740-833-2240

9.1.2 Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Brad Stanton
Construction Administrator
50 Channing Street
Delaware, Ohio 43015

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

740-833-2249

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Robert Knapke
VP-Water/Wastewater Division
18817 S.R. 501 North
Wapakoneta, Ohio 45895
419-941-2233

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Robert Knapke
VP-Water/Wastewater Division
18817 S.R. 501 North
Wapakoneta, Ohio 45895
419-941-2233

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Prior to execution of this Agreement, Design-Builder shall provide the Performance Bond and Payment Bond required under OAC Section 153:1-4-02 and below:

Performance Bond. The Performance Bond shall be in the form of Document 00 61 13.13 - Performance Bond Form.

Payment Bond. The Payment Bond shall be in the form of Document 00 61 13.16 - Payment Bond Form.

10.3 Bond Conditions. Each Surety under the Bonds shall be licensed to do business in Ohio and satisfactory to the Owner. If there is more than one Surety under a Bond, each of them shall be jointly and severally liable as surety under that Bond. The penal sum of each of the Bonds, when initially submitted, shall be equal to 100 percent of the Design-Builder's estimate of the Cost of the Work. Bond forms with terms and conditions not compliant with OAC Section 153:1-4-02 and/or riders will not be accepted by the Owner. The Design-Builder shall submit with each executed Bond (1) a certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety and (2) a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

10.4 Increases. If the estimate of the Cost of the Work increases at any time after the Bonds are provided, the Design-Builder shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the revised estimate. As a condition precedent to the effectiveness of the GMP Amendment, the Design-Builder shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the Contract Sum established in the GMP Amendment. If the Contract Sum increases at any time after the GMP Amendment, the Design-Builder shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the increased Contract Sum. Any time the Design-Builder increases the penal sums of the Bonds, the Design-Builder shall deliver to the Owner new Bonds showing the increased penal sums and written consent of the affected Surety or Sureties confirming the increased penal sums. The Owner's receipt of replacement Bonds and that written consent is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase.

Article 11

Other Provisions

11.1 Section 7 of the RFP (Standard Terms and Conditions) is incorporated by this reference as if fully set forth herein.

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

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

10

RESOLUTION NO. 20-1070

IN THE MATTER OF PURCHASING HVAC SERVICES FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER, CENTRAL MAINTENANCE FACILITY, ALUM CREEK WATER RECLAMATION FACILITY, LOWER SCIOTO WATER RECLAMATION FACILITY, AND NORTHSTAR WASTEWATER TREATMENT PLANT:

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

WHEREAS, the Sanitary Engineer recommends that the Central Maintenance Facility, Olentangy Environmental Control Center, Alum Creek Water Reclamation Facility, Lower Scioto Water Reclamation Facility, and Northstar Wastewater Treatment Facility are in need HVAC services; and

WHEREAS, the HVAC services necessary are available for purchase through the State of Ohio’s cooperative purchasing program (the “Program”); and

WHEREAS, the Board of County Commissioners (the “Board”) is a member of the Program and wishes to purchase the HVAC services through the Program;

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

Section 1. The Board hereby approves the purchase of HVAC services from Limbach Company, LLC, a state-approved dealer for the HVAC services under the Program, in accordance with the proposal dated October 12, 2020.

Section 2. The purchase shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index # MMA632, Contract # MMA7622, which is, by this reference, fully incorporated herein and of which the purchase order shall be made a part.

Section 3. The Board hereby approves a purchase order with Limbach Company, LLC, in the amount of \$44,492.00 from org key 66211900 – 5328.

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

11

RESOLUTION NO. 20-1071

IN THE MATTER OF APPROVING A PRELIMINARY ENGINEERING AGREEMENT WITH CSX TRANSPORTATION, INC. FOR A RAILROAD GRADE SEPARATION ON ORANGE ROAD:

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

WHEREAS, under Resolution No. 20-190, the Board of Delaware County Commissioners declared the necessity for a railroad grade separation on Orange Road (the “Improvements”); and

WHEREAS, section 305.15 of the Revised Code provides that when the services of an engineer are required with respect to roads, turnpikes, ditches, bridges, or any other matter, a board of county commissioners may enter into enter with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has selected CSX Transportation, Inc., for the required engineering services related to the Improvements and recommends entering into an agreement for said engineering services associated with the Improvements;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County that the following agreement is approved for the providing of services for the Improvements:

PROPOSED NEW GRADE
SEPARATION CSXT OVER
ORANGE ROAD
IN VICINITY OF CSXT MILEPOST QE-
123.87 LEWIS CENTER, DELAWARE
COUNTY, OHIO CSXT OP NUMBER

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

OH1388

PRELIMINARY ENGINEERING AGREEMENT

This Preliminary Engineering Agreement (this "Agreement") is made as of November 30, 2020, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and COUNTY OF DELAWARE, a body corporate and political subdivision of the State of Ohio ("Agency").

EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed new grade separation / existing at-grade crossing elimination project to carry CSXT over Orange Road (DOT# 481 481W) in the vicinity of CSXT Columbus Line Subdivision Milepost QE-123.87, as located near Lewis Center, Delaware County, Ohio (the "Project").
2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties' consideration of the Project.
3. Subject to the approval of CSXT, which approval may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Scope of Work

- 1.1. Generally. The work to be done by CSXT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for CSXT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, plats, legal descriptions, assessments, studies, easements, agreements and related construction documents submitted to CSXT by Agency for the Project (collectively, the "Engineering Work"). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT's opinion, is not relevant to CSXT's participation in the Project.
- 1.2. Effect of CSXT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the "Plans"), CSXT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or the Project constructed in accordance with the Plans.

2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project, which approval or consent may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities. The Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.

3. Reimbursement of CSXT Expenses.

- 3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by CSXT pursuant to applicable law (collectively, the "Reimbursable Expenses").
- 3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately **\$ 75,000.00** (the "Estimate" as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.

3.3. Payment Terms.

3.3.1. Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in CSXT Schedule PA, attached hereto, a copy of which shall accompany the advance payment. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.

3.3.2. Following completion of all Engineering Work, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.

3.3.3. In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement:
(i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and
(ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the

Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

3.4. Effect of Termination. Agency's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.

4. Appropriations. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations.

5. Termination.

5.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.

5.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (i) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from CSXT to Agency of such breach.

5.3. Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or safely suspend the Engineering Work. Agency shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.

6. Subcontracts. CSXT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$25,753.72 for the benefit of the lot being created in this site. The developed area of 20.08 acres will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$25,753.72. An annual maintenance fee equal to 2% of this basis (\$515.05) will be collected for each developed lot. It is understood that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year’s assessment for all of the lots in the amount of \$515.05 has been paid to Delaware County, receipt of which is hereby acknowledged.

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

13

RESOLUTION NO. 20-1073

IN THE MATTER OF APPROVING THE PLATS OF SUBDIVISION FOR SCIOTO RESERVE EXTENSION, PIATT PRESERVE SECTION 2, AND THE ENCLAVE AT ABBEY KNOLL:

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

Scioto Reserve Extension

WHEREAS, C.M. Vince Properties, Ltd., has submitted the Plat of Subdivision (“Plat”) for Scioto Reserve Extension, including related development plans (“Plans”) and requests approval thereof by the Board of Commissioners of Delaware County; and

WHEREAS, the Concord Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on October 22, 2020; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on October 26, 2020; and

WHEREAS, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on October 29, 2020; and

WHEREAS, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on November 6, 2020; and

WHEREAS, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on November 23, 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Scioto Reserve Extension:

Scioto Reserve Extension

Situated in the State of Ohio, County of Delaware, Township of Concord, Farm Lots 15 and 16, Quarter Township 2, Township 3, Range 19, United States Military Lands, being a 7.919 acre tract of land conveyed to C.M. Vince Properties, Ltd. of record in Official Record Volume 1755, Page 1358 (all references to records on file in the Office of the Recorder, Delaware County, Ohio). Cost: \$42.

Piatt Preserve Section 2

WHEREAS, D.R. Horton – Indiana, LLC, has submitted the Plat of Subdivision (“Plat”) for Piatt Preserve Section 2, including related development plans (“Plans”) and requests approval thereof by the Board of Commissioners of Delaware County; and

WHEREAS, the Berlin Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on October 19, 2020; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on October 19, 2020; and

WHEREAS, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on October 21, 2020; and

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

WHEREAS, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on November 6, 2020; and

WHEREAS, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on November 23, 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Piatt Preserve Section 2:

Piatt Preserve Section 2

Situated in the Township of Berlin and being a part of Farm Lot 9 and 10, Section 3, Township 4N, Range 18W, County of Delaware, State of Ohio, United States Military Lands, and being all of a 19.159 acre parcel conveyed to D.R. Horton – Indiana, LLC, a Delaware Limited Liability Company, by deed of record in D.B. 1848, PG. 887-890. All references to records being on file in the office of the Recorder, Delaware County, Ohio. Cost: \$66.

The Enclave at Abbey Knoll:

WHEREAS, Joshua J. Morgan has submitted the Plat of Subdivision (“Plat”) for Piatt The Enclave at Abbey Knoll including related development plans (“Plans”) and requests approval thereof by the Board of Commissioners of Delaware County; and

WHEREAS, the Orange Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on October 126, 2020; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on October 26, 2020; and

WHEREAS, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on October 29, 2020; and

WHEREAS, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on November 6, 2020; and

WHEREAS, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on November 23, 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of The Enclave at Abbey Knoll:

The Enclave at Abbey Knoll

Situated in the Township of Orange, County of Delaware, State of Ohio, located in Farm Lots 14 & 15, Section 1, Township 3 North, Range 18 West, United States Military Lands, and being all of a 16.443 acre trace conveyed to Joshua J. Morgan as described in Volume 1642, Page 1896-1900, County Recorder’s Office, Delaware, Ohio. Cost: \$78.

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

14

RESOLUTION NO. 20-1074

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY PROSECUTING ATTORNEY, AND MATRIX POINTE SOFTWARE, LLC, FOR A NEW CASE MANAGEMENT SYSTEM:

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

WHEREAS, the Prosecutor recommends approving the agreement between the Delaware County Board of Commissioners, the Delaware County Prosecuting Attorney, and Matrix Pointe Software, LLC, for a new case management system;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the agreement between the Delaware County Board of Commissioners, the Delaware County Prosecuting Attorney, and Matrix Pointe Software, LLLC, for a new case management system:

SOFTWARE LICENSE AGREEMENT

This. Software License Agreement, which includes the Order Form(below), the attached Terms and Conditions

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

(collectively, this ;"Agreement"), and State Term Schedule ("STS") STS033/Contract No:534556 and all of its terms and conditions, between Matrix Pointe Software, LLC an Ohio limited liability company ("Matrix") and the licensee named below ("Licensee"), is made effective as of the date of executed by Licensee (the "Effective Date"). Matrix and. Licensee have read and agree to the provisions of this Agreement and all incorporated documents.

Order Form

Matrix Pointe Software, LLC
Attn: Joseph J.Whang, CEO
30400 Detroit Road
Suite 400
Cleveland, Ohio 44145
(216) 3\$3-1263
jwhang@matrixpointesoftware.com

Licensee:
Delaware County Prosecuting Attorney's Office
Attn: Melissa A. Schiffel, Prosecutor
145 North Onion St., 3rd Floor;
P.O. Box 8006
Delaware, OH 43015 (740) 833-2690
MSchiffel@co.delaware.oh.us

Modules:

MatrixProsecutor, MatrixCrime, MatrixExchange (Including the Defense Attorney Portal), and MatrixCivil

Included Services:

- Access to the criminal statute database for the State Of Ohio
- Unlimited Support Services for two (2) Designated System Administrators in accordance with Section 4 of this Agreement

Software License and Professional Services:

MatrixSoftware License Fees, and Professional Services as detailed in the Payment Terms , Section 7 and Exhibit A, are due after initial Criminal system set-up and customer access to the system.

Maintenance:

Maintenance Fees, as detailed in the Payment Terms; Section 7 and Exhibit A. are due beginning the first month one (1)year after initial Criminal system set-up and customer access to the system.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**



Terms and Conditions to Software License Agreement

1. Defined Terms

"Agreement" means the Software License Agreement Order Form, the Terms and Conditions to Software License Agreement, and any exhibits.

"Designated System Administrators" or "Super user" means the user selected by the Licensee to act as a System (defined in this Section) expert and as a conduit between the Licensee and Matrix.

"License Commencement Date" means completion of initial system set-up, customer acceptance, and customer access to the system.

"Licensee Location" shall mean the physical location designated for installation of the System.

"Licensee Data" means electronic communications of data and all other information that is input into, processed through or created by the use of the System (defined in this Section) by the Licensee.

"Maintenance Services" is defined in Section 5.

"Professional Services" is defined in Section 4.

"Professional Services Fees" means the fees for Professional Services specified by current State Term contract rates.

"Services" means the Support Services, Maintenance Services and the Professional Services and any other services provided by Matrix.

"Support Services" is defined in Section 4.

"System" means the Modules to be licensed to Licensee (Modules may be updated from time to time in the sole discretion of Matrix), including, but not limited to, user documentation and training processes and materials.

"Third Party Components" means any software licensed or sold by any third party to Subscriber or Matrix, including documentation or other materials that Matrix provides Subscriber on a pass-through basis.

"Third Party Documentation" means the end-user license agreements and documentation for Third Party Components that contain the terms and conditions of use for such Third Party Components.

2. License

Subject to Licensee's compliance with the terms and conditions of this Agreement, Matrix hereby grants to Licensee a perpetual, non-exclusive, limited, non-transferable, worldwide right and license, without the right to sublicense, to use the System as installed at the Licensee Location solely for Licensee's internal business operations.

Licensee shall (i) not allow any third party, including, without limitation, any competitor of Matrix, to view, access, or use the System in any manner whatsoever, (ii) not copy, alter, reverse engineer, disassemble, decompile, translate, download or share the System, (iii) maintain all titles, trademarks, patent, and copyright and other proprietary or restrictive legends or notices included in the System, and (iv) not permit the System to be used to process or administer data on behalf of any third party (including, without limitation, another governmental agency), whether or not Licensee is paid a fee for such processing or administration.

3. Login Identities

The use and confidentiality of any and all login identities and password(s) are the responsibility of Licensee. Licensee shall promptly notify Matrix in writing of any lost or stolen passwords.

4. Technical Support & Professional Services

The System will be installed at the Licensee Location. Matrix shall provide unlimited telephone and email support to two (2) Designated System Administrators during normal business hours (i.e., 8:00 a.m. to 5:00 p.m. for Licensee's time zone, Monday through Friday, excluding holidays) (the "Support Services"). Support requests by anyone not identified as a Designated System Administrator may be subject to support fees. For purposes of clarity, the Support Services will not include support for any third party software or systems. Additional services such as implementation, onsite training, consulting, integration and data conversion (the "Professional Services") are available for an additional fee.

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020



5. Software Maintenance

(a) Matrix will provide the standard maintenance program that Matrix normally provides to its client base. The maintenance program will include all new releases, updates, patches, and fixes to the System. Licensee will receive all future upgrades to the Software as long as a current Maintenance Fees are maintained.

(b) Software upgrades. After an initial acquisition of the license, the Licensee may want to acquire a broader license than the original or the Licensee may later want to migrate to another platform for the System. When Matrix makes the broader license generally available to its customer base or makes the version of the System that runs on the new platform to which the Licensee wants to migrate, then the Licensee will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the Licensee intends to use. In these cases, Matrix will provide the broader license or other version of the System in exchange for a license fee that is based on Matrix's standard upgrade or migration fee.

(c) Principal period of maintenance. Software maintenance will be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will be included in the price of the maintenance.

(d) Maintenance access. For all Software maintenance under this Contract, the Licensee will provide Matrix with reasonable access to perform maintenance. Matrix will use commercially reasonable efforts to schedule Maintenance Periods between 5:00 PM (Eastern Time) and 8:00 a.m. (Eastern Time) and to provide email notification forty-eight (48) hours in advance. Notwithstanding the foregoing, if Matrix determines, in its sole discretion, that a Maintenance Period is necessary outside of the hours stated above, Matrix will use commercially reasonable efforts to notify Licensee by email prior to such Maintenance Period.

6. Licensee Data

(a) Licensee authorizes Matrix to share selected Licensee Data with other Licensees and governmental agencies through MatrixExchange. Licensee may opt-out of submitting selected Licensee Data through MatrixExchange by notifying Matrix in writing. Licensee also acknowledges and agrees that Matrix may use Licensee Data in the aggregate for internal business purposes, including but not limited to making improvements to the System.

(b) Except as provided in Section 6, (i) Matrix shall hold the Licensee Data in strict confidence, and (ii) Matrix will not permit any third party, or any employee, consultant, subcontractor or agent to access the Licensee Data except in connection with the normal course of business (including, without limitation, help desk support). Each party agrees not to communicate any information to the other party in violation of the proprietary rights of any third party.

(c) Your License Grant to Matrix. You grant to Matrix a non-exclusive, worldwide, irrevocable and royalty-free license to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use your data and content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly: (a) grant to Matrix a license to cache materials distributed or made available for distribution via the Services, and (b) agree that this caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

(d) Notwithstanding the provisions of this Agreement, Licensee Data will not be subject to the obligations in Section 6 if (i) it has been published or is otherwise readily available to the public without restriction other than by a breach of this Agreement; (ii) it has been provided to Matrix by a third party that is not subject to any confidentiality obligations to Licensee; or (iii) it is required to be disclosed in the context of any administrative or judicial proceeding or as may be required by law.

(e) Licensee hereby authorizes Matrix to use, analyze and disclose all non-personally

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**



Identifiable Licensee Data, except crime victim data, in connection with creating criminal justice statistics and conducting comparative studies that have been aggregated with data from other Licensees and/or governmental agencies. Licensee will have access to this aggregated information.

7. Payment Terms

(a) Licensee shall pay to Matrix the one time License Fees, one time Professional Service Fees, and Annual Maintenance Fees as set forth in Exhibit A incorporated herein by reference.

(b) Additional Professional Services Fees will be the hourly rate(s) in effect at the time of the performance of the Professional Services.

(c) All Fees shall be due net thirty (30) days from the date invoice is received by Licensee. Furthermore, Licensee shall promptly (but in any case no later than net thirty (30) days from the date invoice is received by Licensee) reimburse Matrix for all mutually agreed upon out-of-pocket expenses incurred by Matrix in connection with the performance of the Services.

(d) Any License Fees or Professional Services Fees that are not paid within thirty (30) days of the due date for such payment shall accrue interest at the lesser of 1.5% per month or the maximum amount permitted by applicable law.

(e) Delaware County, Ohio is a political subdivision and tax exempt. Matrix shall not charge Licensee any tax, regardless of type or kind, and agrees to be responsible for all tax liability that accrues as a result of this Agreement and the products and Services that Matrix provides to Licensee pursuant to this Agreement. Licensee shall, upon request, provide Matrix with proof of exemption.

8. Copyright and Restrictions

As between Matrix and Licensee, the System (and all intellectual property rights therein) is owned by Matrix and is protected by United States laws and international treaty provisions. Any rights not expressly granted herein are reserved to Matrix. Licensee may not (i) permit any third party to access the System, (ii) create derivative works based on the System, (iii) sublicense, rent or lease

all or any portion of the System, (iv) copy, frame or mirror any part or content of the System, other than copying or framing on Licensee's own intranets or otherwise for its own internal business purposes, (v) reverse engineer the System, or (vi) access the System in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the System.

9. Warranties

(a) Each party represents and warrants that (i) it has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated hereby; (ii) this Agreement is a valid and binding obligation enforceable against such party in accordance with its terms; and (iii) neither the execution, delivery and performance of this Agreement and the other agreements and instruments contemplated hereunder, nor the consummation of the transactions contemplated hereby will violate or conflict with or constitute a default under any contractual obligation.

(b) Matrix represents, warrants and covenants that it: (a) has the right to grant the rights and licenses contemplated by this Agreement; (b) the System, to the best of Matrix's knowledge, does not contain any viruses, Trojan horses, worms, time bombs, locks, backdoors, counters, timers, spyware or other malware or any other computer programming devices that may damage Licensee's systems or data or prevent Licensee from operation or use of its systems, data or the materials licensed under this Agreement; and (c) the System and Professional Services will be performed by qualified personnel and delivered in a workman like manner consistent with industry standards.

(c) Licensee represents and warrants that (i) Licensee is and shall be in compliance with all applicable laws and regulations, including, without limitation, laws and regulations related to the collection, use, disclosure, and storage of Licensee Data; (ii) Licensee is and shall be in compliance with all contractual obligations and privacy policies relating to Licensee Data; and (iii) Licensee is and shall be solely responsible for all Licensee Data or Third Party data derived from

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020



Licensee Data including, without limitation, any and all claims of third parties relating thereto (including claims that Licensee Data is erroneous, outdated or inaccurate).

(d) EXCEPT FOR THE WARRANTIES EXPRESSLY STATED ABOVE AND IN THE STS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS RELATING TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE SYSTEM, THE SERVICES, AND ANY THIRD PARTY SYSTEMS AND SOFTWARE USED IN CONNECTION WITH THE SYSTEM), EXPRESS, IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. MATRIX EXPRESSLY DISCLAIMS ALL WARRANTIES RELATING TO THE FREQUENCY AND ACCURACY OF ANY LEGAL UPDATES, AND THAT THE OPERATION OF THE SYSTEM WILL BE FREE OF INTERRUPTIONS AND ERRORS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SYSTEM IS PROVIDED "AS-IS" AND WITH ALL FAULTS. FURTHERMORE, MATRIX IS NOT RESPONSIBLE FOR FAILURES OF EQUIPMENT, INTEGRATION WITH OR FAILURES OF THIRD PARTY SYSTEMS OR SOFTWARE, LOST DATA, ERRONEOUS, OUTDATED OR INACCURATE DATA OR THIRD PARTY TELECOMMUNICATIONS OR DATA LINES. MATRIX DOES NOT WARRANT THAT ITS NETWORKS AND APPLICATIONS (OR THOSE OF ITS THIRD PARTY PROVIDERS) WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

(e) In no event will any action against either party in connection with this Agreement be instituted more than one year after discovery of the incident that gave rise to such action.

(f) Licensee's remedy for a breach of this warranty is the correction of the Software so that it conforms to this warranty or, if Matrix is unable to correct the Software after exerting commercially reasonable efforts to do so, to discontinue all use of the Software and return all copies to Matrix for a refund prorated to the first

date Matrix was not in compliance with the warranty.

(g) **Third Party Components.** If any Third Party Component fails to operate in accordance with its specifications, Licensee's remedy will be to pursue any remedies Licensee may have against the Third Party Component supplier. Third Party Components are provided subject to all of the terms and conditions of the Third Party Documentation and without any warranty, or support from Matrix.

10. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOST PROFITS IN CONNECTION WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND WITH THE EXCEPTION OF VIOLATION OF A MATRIX'S INTELLECTUAL PROPERTY RIGHTS AND/OR FAILURE TO MAKE PAYMENTS DUE UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF THE LICENSE FEES, PROFESSIONAL SERVICE FEES, AND MAINTENANCE FEES PAYMENTS PAID IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY OR THE DATE OF THE COMMENCEMENT OF THE ENSUING LEGAL ACTION, WHICHEVER IS LATER.

11. Confidential Information

Matrix acknowledges that this Agreement and the information contained in this Agreement may be required to be disclosed as a result of public records laws.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**



12. Term, Renewal, and Termination

(a) Unless sooner terminated as set forth in this Agreement, the term of this Agreement shall begin on the Effective Date and terminate on December 31, 2021 (the "Initial Term").

(b) Upon written acknowledgement of the parties, this Agreement may be renewed for successive two (2) year periods subject to the same terms and conditions provided herein unless the parties agree to new or additional terms and conditions in writing at the time of renewal (each, a "Renewal Term").

(c) Licensee may terminate this Agreement for any reason and at any time upon written notice to Matrix, and such termination will be effective upon receipt by Matrix or such later date mutually agreed upon by the parties in writing.

(d) Matrix may terminate this Agreement if Licensee does not comply with any of its material terms; provided that Matrix is required to give Licensee written notice of such termination and thirty (30) days to cure the non-compliance. In addition, Matrix may terminate this Agreement if: (i) all or a substantial portion of the assets of Licensee are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy; (ii) a proceeding is commenced by or against Licensee for relief under bankruptcy or similar laws and that proceeding is not dismissed within sixty (60) days; or (iii) Licensee is adjudicated bankrupt.

(e) Upon termination of this Agreement for any reason, all licenses will immediately terminate. Sections 1, 6, 7, 8, 9, 10, 11, 12, 13 and 14 will survive any termination of this Agreement.

(f) Upon any termination of this Agreement for any reason, all Licensee Data shall remain and shall be property of the Licensee and Matrix shall promptly transfer all Licensee Data to Licensee in a format usable by Licensee.

13. Intellectual Property Infringement Indemnification.

Notwithstanding anything to the contrary in this Agreement or the STS:

(a) Matrix shall indemnify and defend Licensee, Delaware County, and its elected officials and employees against any third party claim(s) that the System, or its use by Licensee, infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and shall promptly pay the amount of any resulting adverse final judgment (or settlement to which Matrix consents). Such indemnity obligation is subject to Licensee: (a) promptly giving Matrix notice in writing of the claim and (b) providing Matrix sole control over its defense or settlement, including the choice of counsel, and full authority to settle any such claim; provided, however, that Matrix may not agree to any settlement that requires any payment, action, or forbearance by Licensee without Licensee's prior written approval. Licensee agrees to provide Matrix with reasonable assistance, cooperation, and information in defending the claim at Matrix's expense. Licensee shall not attempt to settle any such claim on its own behalf.

(b) Matrix's obligations under this Section will not apply to the extent the claim or adverse final judgment is based on Licensee's: (a) use of a previous version of the System and the claim would have been avoided had Licensee installed and used the current version of the System, and Matrix provided notice of that requirement to Licensee; (b) combining the System with any product or device not provided by or approved by Matrix; (c) altering or modifying the System, including any modification by third parties at Licensee's direction or otherwise expressly permitted by Licensee; (d) use of the System in contradiction of this Agreement, including use by, with, or for non-licensed third parties; or (e) willful infringement, including use of the System after Matrix notifies Licensee to discontinue use.

(c) (c) If Licensee's use of the System is or is likely to be enjoined for any reason, including but not limited to claims for infringement or misappropriation, Matrix may, in its sole discretion and at its sole expense: (a) procure the right for Licensee to continue use of the System, (b) modify the System in a functionally equivalent manner so as to avoid such injunction, or (c) replace the System with a functional equivalent that avoids such injunction, in which case

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**



Licensee will stop running the replaced System immediately. If the foregoing options are not available on commercially reasonable terms and conditions, as determined by Matrix in its sole discretion, Matrix may terminate the Agreement and refund the license fees paid for the infringing System, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. Any modification or replacement, as contemplated in this Section, shall substantially conform to the Agreement and not result in a material degradation of performance. This section provides Licensee's exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

14. General Indemnification

Matrix shall indemnify and hold harmless Licensee, Delaware County, and its elected officials and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by Matrix's negligence or willful misconduct; or (b) Matrix's violation of a law applicable to its performance under this Agreement. Licensee must notify Matrix promptly in writing of the claim and give Matrix sole control over its defense or settlement; provided, however, Matrix may not agree to any settlement that requires payment or adversely impacts Licensee without Licensee's prior written approval. Licensee agrees to provide Matrix with reasonable assistance, cooperation, and information in defending the claim at Matrix's expense.

15. Miscellaneous

(a) Entire Agreement. This Agreement, and STS with its Exhibits, contains Matrix's and Licensee's entire agreement with respect to the subject matter herein. This Agreement may not be modified except by written instrument signed by both parties and referring to the particular provisions to be modified. All terms, conditions, or provisions in a purchase order or confirmation shall be of no force and effect notwithstanding the execution of such purchase order or other

document subsequent to the date of this Agreement.

(b) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Ohio and applicable federal law. Licensee and Matrix hereby consent to the exclusive jurisdiction and venue of the courts of the State of Ohio, and Licensee hereby consents to and waives any objection regarding jurisdiction and venue in such courts.

(c) Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

(d) Force Majeure. Neither party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, Internet service interruptions or slowdowns, vandalism or "hacker" attacks (including, without limitation, by Licensee's employees or agents), or governmental demands or requirements.

(e) Waiver. The failure of either party to require performance by the other party of any provision of this Agreement or any Attachment shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of any other or future breach.

(f) Severability. If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the parties' objectives to the greatest

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020



extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

(g) Independent Contractor. The parties shall act in performance of this Agreement as independent contractors. No agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement.

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

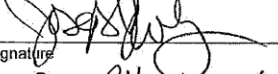
Matrix and/or its board members, officers, officials, employees, representatives, agents, and/or volunteers are not entitled to any benefits enjoyed by employees of Licensee or Delaware County, Ohio.

Neither Licensee nor Matrix is by virtue of this Agreement authorized as an agent or other representative of the other.

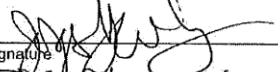
(h) Independent Contractor Acknowledgment /No Contribution to OPERS. Licensee and Delaware County, Ohio (for purposes of this section collectively "County") are public employers as defined in R.C. § 145.01(D). The County has classified Matrix as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of Matrix and/or any of its board members, officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. Matrix acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If Matrix is an individual or has less than five (5) employees,

Matrix, 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/ Worker Acknowledgement Form ("OPERS Form"). The OPERS Form is attached hereto as Exhibit B. The County shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

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


Signature
JOSEPH S. WHANG
Printed Name
CEO
Title
11-17-20
Date

(i) Certification Regarding Personal Property Taxes. Matrix, by signature of its authorized representative below, hereby certifies that it is not charged with delinquent personal property taxes on the general list of personal property in Delaware County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio.


Signature
JOSEPH S. WHANG
Printed Name
CEO
Title
11-17-20
Date

(j) Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define,

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020



limit, or describe the scope or extent of such section.

(k) Injunctive Relief. In the event Matrix alleges a breach or threatened breach by Licensee of this Agreement, Matrix will be entitled to file for a restraining order and/or an injunction prohibiting such breach to protect Matrix's intellectual property interests, in addition to any and all other remedies that may be available under equity, law, or this Agreement. Licensee retains its right to defend any such action.

(l) Application of UCITA. The parties agree that pursuant to Section 104 of the Uniform Computer Information Transactions Act (UCITA), they hereby express their mutual determination to "Opt-Out" of the provisions of UCITA and its application to this Agreement or the transaction of the parties and the parties further agree that UCITA shall not apply to this Agreement or the transaction of the parties. To the extent that certain provisions of UCITA may not be excluded under the law applicable to the Agreement or under the provision of Section 104 of UCITA, only those provisions that cannot be excluded by mutual agreement of the parties pursuant to Section 104 shall apply and no other provision of UCITA shall be applicable to the Agreement or the transaction of the parties.

(m) Assignment; Binding Effect. Matrix may assign this Agreement without the consent of Licensee. Licensee may not assign this Agreement without the prior written consent of Matrix. This Agreement will inure to the benefit of and be binding upon each party and its respective successors and permitted assigns.

(n) Counterparts. This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

(o) Contract Maximum. The maximum amount payable during the Initial Term of this Agreement is \$400,000.00. A new maximum amount shall be included in any agreement for a Renewal Term.

(p) Certification of Specifications. By signature of its authorized representative on this Agreement, Matrix hereby certifies that the Software and Services provided by it to Licensee pursuant to this Agreement are listed in and/or covered by STS033/Contract No: 534556 and its schedules/ pricelists.

(q) Competitive Bidding Not Required. This purchase was made through the State of Ohio Department of Administrative Services, Cooperative Purchasing Program under STS033/Contract No: 534556. Consistent with R.C. § 125.04(B)(3), this Agreement is not required to be competitively bid.

(r) Drafting. This Agreement shall be deemed to have been drafted by both Parties, each having counsel available to it and the full ability to consult with such counsel about its subject matter. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted, and no such presumption shall apply for purposes of interpreting the Agreement.

(s) Incorporation of Exhibits. By this reference, the following exhibits and referenced documents and all their terms and conditions are hereby incorporated into and made a part of this Agreement:

- Order Form
- State Term Schedule ("STS") STS033/Contract No: 534556 and all of its terms and conditions
- Exhibit A - Pricing
- Exhibit B - OPERS Form

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020



Exhibit A

| | On-Prem (Client hosted) | |
|--|-------------------------|-------------------|
| | License | Maintenance (20%) |
| Software (includes telephone/email support) | <u>One-time</u> | <u>Annual</u> |
| MatrixProsecutor/MatrixCivil | | |
| - Number of Users | 34 | |
| - Cost per user | \$ 3,250 | |
| - Subtotal | \$ 110,500 | \$ 22,100 |
| MatrixCrime Site License | \$ 45,000 | \$ 9,000 |
| MatrixExchange Site License | \$ 25,000 | \$ 5,000 |
| Total Licenses - Matrix | \$ 180,500 | \$ 36,100 |
| Third Party Licenses | | |
| OCR License (800,000 pages included) | \$ 6,000 | |
| Total Software Licenses | \$ 186,500 | \$ 36,100 |
| Professional Services | | |
| Implementation/Training | \$ 90,000 | |
| On-Prem Setup | \$ 39,200 | |
| Total Professional Services | \$ 129,200 | |
| Other/Optional | | |
| Monthly Assistance w/Software Updates | | \$ 18,000 |
| Data Conversion (estimated-need more info) | \$ 25,800 | |

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

15
RESOLUTION NO. 20-1075

IN THE MATTER OF APPROVING THE OHIO DEPARTMENT OF HEALTH CONTRACT UNIT TUBERCULOSIS FUNDING AGREEMENT BETWEEN THE OHIO DEPARTMENT OF HEALTH (“ODH”) AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS:

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

**OHIO DEPARTMENT OF HEALTH
TUBERCULOSIS FUNDING AGREEMENT**

This Tuberculosis Funding Agreement (“Agreement”) is between:

Ohio Department of Health (“ODH”)
Bureau of Infectious Diseases, Tuberculosis/Healthcare-Associated Infections Program
Sarah Mitchell, Program Manager (“ODH Agreement Manager”)
246 N. High Street, Columbus, Ohio 43215

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

614-387-0652
sarah.mitchell@odh.ohio.gov

and

Delaware County Board of Commissioners
President, County Commissioner Jeff Benton
101 North Sandusky St. Delaware, OH 43015
(740) 833-2100
jbenton@co.delaware.oh.us
0000056163-36

For the purpose of this Agreement, the term “Party” or “Parties” may be used to refer to either ODH and/or Recipient/County Commissioner individually or collectively. Two (2) hardcopies of this Agreement should be signed by Recipient and returned along with required attachments (see §5) to Ohio Department of Health, Tuberculosis-Healthcare Associated Infections Program, ATTN: Carolyn Willis (carolyn.willis@odh.ohio.gov), 246 North High Street, Columbus, Ohio 43215, within fourteen (14) days of receipt at the above address. A copy of the fully executed Agreement will be returned to Recipient.

1. PURPOSE & OBJECTIVE. All Ohio counties will be eligible to receive funds to offset the cost of public health activities associated with Tuberculosis ("TB") cases that complete an approved course of treatment. The provision of such funds and services will benefit the citizens of Ohio in a manner consistent with the overall mission of the Ohio Department of Health to protect and improve the health of all Ohioans. Eligibility criteria are based upon standards of care set forth in the American Thoracic Society ("ATS"), Centers for Disease Control and Prevention ("CDC") and Infectious Disease Society of America ("IDSA") guidance documents, and are referenced in Ohio Revised Code ("O.R.C.") 339.71 through 339.89 and Ohio Administrative Code ("O.A.C.") 3701-15-01 through 3701-15-03. CDC considers this project to be (1) increasing Human Resource Development ("HRD") for the prevention and control of TB through education and training activities, and; (2) increasing the capacity for appropriate medical evaluation and management of persons with TB disease and infection through medical consultation, for which disclosure of protected health information by covered entities is authorized by section 164.512(b) of Health Insurance Portability and Accountability Act ("HIPAA").

2. REQUIRED QUALIFICATIONS. Recipient must be an office of an Ohio County Commissioner.

3. AGREEMENT TERM. Subject to §8 and other terms and conditions specified in this Agreement:

- 3.1. “Agreement Beginning Date” shall be defined as the date indicated here, or the date of Agreement execution by both Parties, whichever is later: 10/19/2020
- 3.2. “Agreement Ending Date” shall be defined as the date indicated here, the date of Agreement termination or the date to which the Agreement has been extended: 12/31/2020
- 3.3. “Agreement Period” shall be defined as the time between the “Agreement Beginning Date” and “Agreement Ending Date” unless prior to the expiration date, the Agreement is renewed, terminated, or cancelled in accordance with the Agreement Terms and Conditions. Any reference to the Agreement Period shall include any renewal terms.

4. AGREEMENT FUNDING.

4.1 “Agreement Funding Source” shall be defined as:

| |
|---|
| <p>Center for Disease Control and Prevention (CDC) - National Center for HIV, Viral Hepatitis, STDs and TB Prevention (PS) Cooperative Agreement</p> |
|---|

4.2 Federal Award Identification Number (FAIN):

| |
|----------------------------|
| <p>NU52PS910184</p> |
|----------------------------|

4.3 CFDA Number:

| |
|----------------------|
| <p>93.116</p> |
|----------------------|

4.4 Ohio Statute Authorizing Administration of the Program:

| |
|---|
| <p>Ohio Revised Code (“O.R.C.”) 3701.04(A)(4) & 3701.146; HIPAA 45 CFR Parts 160 & 164 (covered entities may disclose PHI to public health authorities); 42 U.S.C. 247b(1)(2) and 247b-6, as amended</p> |
|---|

5. ATTACHMENTS & ACKNOWLEDGEMENTS. Attachments specified in this Agreement are made a part hereof, and are incorporated as terms and conditions of this Agreement. PLEASE READ CAREFULLY

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

AND INITIAL EACH PARAGRAPH BELOW:

__Recipient affirms that they have read and understand and agree to be bound by the Scope of Activities, Deliverables & Subsidy terms in §7 below, and by the Agreement Terms and Conditions in §8 below;

__If Recipient is not currently a registered vendor with the State of Ohio, Recipient must register online using the OAKS Supplier Self-Registration module at www.supplier.obm.ohio.gov;

__Recipient must complete and submit with this Agreement an Affirmation and Disclosure Form attached and marked Attachment A;

__Recipient certifies its non-profit status and authority to do business in Ohio;

__Recipient must submit with this Agreement verification of any required licenses, registrations or other qualifications required by this Agreement;

__Recipient certifies it is not debarred from consideration for any state or federal government contracts and it is not subject to any unresolved finding for recovery; and

__Effective March 28, 2019, if the Agreement Funding Source identified in §4.1. of this Agreement is one of the following listed funding sources, Recipient must certify that it does not perform nontherapeutic abortions; promote nontherapeutic abortions; contract with any entity that performs or promotes nontherapeutic abortions; nor will Recipient become nor is Recipient currently affiliated with any entity that performs or promotes nontherapeutic abortions as defined in O.R.C. §9.04:

- Violence Against Women Act;
- Breast and Cervical Cancer Mortality Prevention Act;
- Infertility prevention project;
- Minority HIV/AIDS initiative; or
- State of Ohio funds, including infant mortality reduction or infant vitality initiatives.

6. FEDERAL NOTICE OF AWARD RESTRICTIONS, DISCLAIMERS, EXCEPTIONS and/or MATERIAL BREACH. In the event of a conflict of terms, the terms and conditions of this Agreement shall take precedence over any conflicting terms in attachments.

6.1 Federal Notice of Award restrictions:

6.1.1. **Audit Requirements:** If 45 CFR 75 Subpart F applies, subrecipients receiving CDC funds under this Agreement must meet applicable audit requirements set forth in 45 CFR 75.

6.1.2. **Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS):** Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services
Louvern Asante, Specialist (GMS)
Centers for Disease Control and Prevention
Infectious Disease Services Branch
2920 Brandywine Road, M/S E-15
Atlanta, GA 30341
Telephone: 770-488-2835
Email: LHA5@cdc.gov

AND

U.S. Department of Health and Human Services
Office of the Inspector General
ATTN: Mandatory Grant Disclosures, Intake Coordinator
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or
Email: MandatoryGranteeDisclosures@oig.hhs.gov

This mandatory disclosure requirement must be included in all subawards and contracts under this award. Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 and 376, and 31U.S.C. 3321).

CDC is required to report any termination of a federal award prior to the end of the period of performance due to material failure to comply with the terms and conditions of this award in the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS). (45 CFR 75.372(b)) CDC must also notify the recipient if the federal award is terminated for failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. (45 CFR 75.373(b))

6.1.3. Publications: Publications, journal articles, etc. produced under a CDC grant support project must bear an acknowledgement and disclaimer, as appropriate, for example:

This publication (journal article, etc.) was supported by the Grant or Cooperative Agreement Number, 6 NU52PS004703-05, funded by the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention or the Department of Health and Human Services.

6.1.4. Disclaimer for Conference/Meeting/Seminar Materials: If a conference/meeting/seminar is funded by a grant, cooperative agreement, sub-grant and/or a contract, the following statement must be included on the conference materials, including promotional materials, agenda, and internet sites:

Funding for this conference/meeting/seminar/training was made possible (in part) by the Centers for Disease Control and Prevention. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services, nor does the mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.

IN WITNESS WHEREOF, the Parties by signing below indicate their agreement to this Agreement.

ON BEHALF OF COUNTY COMMISSIONER OHIO DEPARTMENT OF HEALTH

7. SCOPE OF ACTIVITIES, DELIVERABLES & SUBSIDY.

| | Scope of Activities and/or Deliverables (Due Date and Subsidy only noted if Applicable or Required) | Due Date | Subsidy |
|------|---|-----------------|----------------|
| | During the Agreement Period, County Commissioner and ODH agree that County Commissioner shall complete the following activities and ODH will disburse amounts as indicated: | | |
| 7.1. | <p>Offices of County Commissioners will support public health activities associated with reporting, investigation and case management of tuberculosis patients that completed treatment between 1/1/2019- 12/31/2019.</p> <p>The following criteria must be met and documented in ODRS to receive payment:</p> <ol style="list-style-type: none"> 1. Anti-TB drug regimen must meet American Thoracic Society (ATS) / Centers for Disease Control and Prevention (CDC) / Infectious Disease Society of America (IDSA) treatment guidelines and be appropriate for susceptibility pattern, severity of disease and underlying comorbidities; 2. Directly observed therapy ("DOT") must be performed and documented according to dosing and intervals that are consistent with ATS/CDC/IDSA guidelines; 3. Treatment completion dates and doses for the anti-TB drug regimen must be documented; 4. HIV status must be documented as negative, positive, or refused; 5. For pulmonary TB cases, sputum specimens must be collected to document whether culture conversion occurred within 60 days of treatment initiation; and 6. Cases that are transferred from another jurisdiction must receive | 12/31/2020 | |

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

| | | | |
|------|--|------------|---|
| 7.2. | County Commissioners shall submit an invoice related to the costs of the work associated with this Agreement. Mandatory requirements on invoice: 1. Time period when work was performed (1/1/2019-12/31/2019); 2. List of ODRS numbers for all eligible cases that met criteria; 3. Total number of eligible cases; 4. Description of services provided (e.g. TB control staff salaries, travel, medical consultation, education); and | 12/31/2020 | \$4,000 per TB case meeting treatment standards |
|------|--|------------|---|

| | |
|-------------------------------|------------------------------|
| TOTAL AGREEMENT AMOUNT | Not to Exceed \$4,000 |
|-------------------------------|------------------------------|

8. AGREEMENT TERMS AND CONDITIONS.

8.1 Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Agreement and intending to be legally bound, Recipient agrees to perform, and ODH agrees to pay Recipient, in accordance with §7 and the terms of this Agreement.

8.2 Scope of Activities, Deliverables, and Subsidy. Recipient shall provide work, services, products and deliverables in the time and manner and for the Subsidy specified in §7 and any attachment specified or incorporated into this Agreement. In consideration, ODH agrees to pay the Subsidy as set forth in §7. If at any time during the term of this Agreement, ODH determines that Recipient is not using the funds allocated in accordance with the terms of this Agreement or if data, including reports, are not entered in a timely manner, ODH may withhold future payments.

8.2.1.1 Total Agreement Amount. The Total Agreement Amount, as indicated in §7, includes the cost for all services, travel, or any other expenses that Recipient may incur as a result of Recipient’s performance of this Agreement. Recipient shall not submit claims for expenses.

8.2.2 The Office of County Commissioner shall monitor the work under this Agreement.

8.2.3 The Office of County Commissioner waives the interest provisions of O.R.C. 126.30.

8.2.4 Subject to the provisions of O.R.C. 126.07 and O.R.C. 131.33, which shall at all times govern this Agreement, ODH represents that it intends to maintain this Agreement for the full Agreement Period set forth in this Agreement and has no reason to believe that it will not have sufficient funds to enable it to make all payments due. ODH further represents that it will use best efforts to obtain the appropriation of any necessary funds during the Agreement Period.

8.2.5 Funds Availability. Recipient understands and agrees that this Agreement is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Agreement Funding Source. The Funding Source will subsidize multiple Recipients under this program. Invoices will be paid out on a first-come-first-served basis. If the Funding Source is depleted or the Ohio General Assembly discontinues funding ODH for the activity specified in this Agreement, this Agreement is terminated as of the date funding expires without further obligation of ODH, State of Ohio, or any other Agreement Funding Source. If ODH has knowledge of insufficient funds to make future payments under this Agreement, ODH will notify Recipient.

8.2.6 ODH will not pay the Subsidy to Recipient for any work performed prior to receipt of written notification from the ODH Agreement Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C.127.16 have been met. ODH will not pay the Subsidy to Recipient for any work performed after the Agreement Ending Date, as applicable.

8.2.7 Invoices. Recipient shall invoice ODH in accordance with §7 for work or services Recipient provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to ODH, ATTN: Accounts Payable, P.O. Box 118, Columbus, Ohio 43216-0118. ODH will make payment to Recipient within thirty (30) days of receipt of a valid invoice for the amount of payment due pursuant to Ohio Administrative Code 126-3-01. ODH shall return any invalid or incomplete invoice to Recipient within fifteen (15) days after ODH receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Agreement shall be submitted by Recipient no later than thirty (30) days after the end of the Agreement Period.

8.2.7.1. Electronic Commerce Program. The State of Ohio is an active participant in the E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Recipient by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Recipient is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at www.supplier.obm.ohio.gov.

8.2.8 Recipient shall furnish its own support staff and services as necessary for the satisfactory performance of this Agreement. Unless otherwise specified in this Agreement, ODH will not provide any staff, services, or material to Recipient for the purpose of assisting Recipient's performance.

8.2.9 ODH may, from time to time as it deems appropriate, communicate specific instructions and requests to Recipient concerning the performance of the work described in this Agreement. Upon such notice and within ten (10) days after receipt of instructions, Recipient shall comply with such instructions and fulfill such requests to the satisfaction of ODH. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Agreement and are not intended to amend or alter this Agreement or any part thereof. The Agreement Manager will communicate all such instructions and requests to Recipient.

8.2.10 If the Agreement Funding Source identified in §4.1. of this Agreement is one of the following listed funding sources, Recipient certifies that Recipient does not perform nontherapeutic abortions; promote nontherapeutic abortions; contract with any entity that performs or promotes nontherapeutic abortions; is or will become affiliated with any entity that performs or promotes nontherapeutic abortions as defined in O.R.C. §9.04:

8.2.10.1. Violence Against Women Act;

8.2.10.2. Breast and Cervical Cancer Mortality Prevention Act;

8.2.10.3. Infertility prevention project;

8.2.10.4. Minority HIV/AIDS initiative; and/or

8.2.10.5. State of Ohio funds, including infant mortality reduction or infant vitality initiatives. Any failure by Recipient to comply with this section shall be treated as a material breach of this Agreement.

8.3 Agreement Period; Extension. This Agreement shall be effective on the Agreement Beginning Date and shall remain in effect until the Agreement Ending Date. Upon written mutual consent of both parties, this Agreement may be renewed or extended past the Agreement Ending Date, subject to the same terms and conditions of this Agreement and subject to any federal and state directives, regulations, laws, Request for Quote or Request for Proposals relating to the subject matter of this Agreement.

8.4 Suspension and Termination. ODH may suspend or terminate this Agreement for any reason thirty (30) days after delivery of written notice to Recipient. ODH may suspend or terminate this Agreement immediately after delivery of written notice to Recipient if ODH (i) discovers any illegal conduct on the part of Recipient; (ii) discovers any violation of this Agreement regarding Conflict of Interest and Ethics Laws; (iii) discovers any violation regarding a Drug Free Workplace; (iv) discovers any violation of the funding restriction specified in §8.2.10; (v) is subject to a loss of funding as specified in §8.2.5; (vi) discovers that Recipient or any of its subcontractors has performed any services under this Agreement in violation of §8.12 regarding Prohibition of the Expenditure of Public Funds for Offshore Services; or (vii) discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Recipient. If at any time during the Agreement Period a bankruptcy or similar proceeding has been filed by or against Recipient, Recipient shall immediately notify ODH of the filing.

8.4.1 Recipient to Cease Work and Other Agreement Activities. Recipient, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate any subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this Agreement, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODH may require. Any unused subsidies must be returned to ODH upon termination.

8.4.2 Determining Subsidy after Agreement Suspension or Termination. In the event of suspension or termination under this Agreement, with the exception of termination for violation of §8.2.10 and §8.12, Recipient shall be entitled to the Subsidy, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by ODH based on the Subsidy set forth in §7 and §8.2, less any funds previously paid by or on behalf of ODH. ODH shall not be liable for any further claims, and the claims submitted by Recipient shall not exceed the total amount of Subsidy allowed by this Agreement.

8.5 Breach or Default.

8.5.1 Material Breach. Upon a Material Breach of the Agreement, as designated in §8.2.10 and §8.12, ODH may unilaterally terminate this Agreement without payment of the Subsidy to Recipient as a material breach is understood by the Parties to be so significant that it has destroyed the value of the Agreement and, due to the nature of the services that Recipient offers the State of Ohio, a Material Breach would undermine the sole purpose of the Agreement.

8.5.2 Upon breach or default by Recipient of any of the provisions, obligations or duties provided for in this Agreement, ODH may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

waiver of subsequent occurrences, and ODH retains the right to exercise all remedies provided for in this Agreement.

8.5.3 If ODH or Recipient fail to perform an obligation or obligations under this Agreement and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by ODH shall not be effective unless it is in writing and signed by the Director of Health or his or her designee, except that Agreement Manager may agree in writing to non-substantial changes to §7, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable.

8.6 Independent Contractor. It is fully understood and agreed that Recipient is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Health (for purposes of O.R.C. Chapter 145) solely on the basis of this Agreement. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement. Inasmuch as ODH is interested in Recipient's services, ODH does not control the manner in which Recipient performs this Agreement. ODH is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Recipient assumes responsibility for tax liabilities that result from the subsidy paid to Recipient by ODH. ODH will report any payment made under this Agreement to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Agreement shall be construed as entitling Recipient to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of ODH or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).

8.7 Conflict of Interest and Ethics Laws.

8.7.1 Neither Recipient nor any officer, member or employee of Recipient shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.

8.7.2 Recipient hereby covenants that neither Recipient, nor any officer, member, or employee of Recipient, have any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Agreement.

8.7.3 Recipient shall not promise or give to any ODH employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Recipient shall not solicit an ODH employee to violate any ODH rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.

8.7.4 Recipient hereby covenants that Recipient and any officer, member or employee of Recipient are in compliance with O.R.C. 102.04 and that if Recipient is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.

8.7.5 Recipient hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.

8.7.6 Recipient hereby certifies and affirms that, as applicable to Recipient, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 (One Thousand Dollars) to the Governor or to his campaign committees. If it is determined that Recipient's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Recipient shall return to ODH all monies paid to Recipient under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

8.8 Nondiscrimination and Equal Employment Opportunity.

8.8.1 In carrying out this Agreement, Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin or ancestry. Recipient shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination and equal employment opportunity as those laws may be amended from time to time, including but not limited to the following:

8.8.1.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

8.8.1.2. Title VII of the Civil Rights Act of 1991 (P.L. 102-166) which prohibits discrimination on the basis of race, color or religion, national origin and sexual orientation employment;

8.8.1.3. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see www.lep.gov), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80;

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

8.8.1.4. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86;

8.8.1.5. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85;

8.8.1.6. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91;

8.8.1.7. Intentionally omitted; and

8.8.1.8. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.

8.9 “Sweatshop Free” Certification. Recipient hereby certifies that all facilities used for the production of supplies or performance of services offered in this Agreement is in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Recipient in furnishing the supplies or services pursuant to this Agreement. If it is determined that Recipient's certification of this requirement is false or misleading, then Recipient understands that it shall be grounds for the termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

8.10 Records, Documents and Information. All records, documents, writings or other information produced or used by Recipient in the performance of this Agreement shall be treated according to the following terms:

8.10.1 All ODH information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Recipient. Where there is a question as to whether information is public or private, ODH shall make the final determination. Recipient shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Recipient agrees to be bound by the same standards of confidentiality that apply to the employees of ODH and the State of Ohio. If at any time during the Agreement period a proceeding has been filed by or against Recipient which would compel disclosure of private information under this Agreement, Recipient shall immediately notify ODH of the filing. The terms of this section shall be included in any subcontracts executed by Recipient for work under this Agreement.

8.10.2 All proprietary information of Recipient shall be held to be strictly confidential by ODH in accordance with Section 149.43 of the Ohio Revised Code. Proprietary information is information which, if made public, would put Recipient at a disadvantage in the market place and trade of which Recipient is a part. Recipient is responsible for notifying ODH of the nature of the information prior to its release to ODH. ODH reserves the right to require reasonable evidence of Recipient's assertion of the proprietary nature of any information to be provided.

8.10.3 All records relating to costs, work performed and supporting documentation for invoices submitted to ODH by Recipient shall be retained and made available by Recipient for audit by the State of Ohio (including, but not limited to, ODH, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Agreement. If an audit, litigation, or other action is initiated during this time period, Recipient shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.

8.11 Disclosure of Personal Health Information. Recipient hereby agrees that the information provided or made available by ODH shall not be used or disclosed other than as permitted or required by this Agreement or as required by law. Recipient will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by this Agreement. Recipient shall comply with 45 C.F.R.164.504(e)(2)(ii) and the Federal Information Security Management Act (P.L. 107-347) (“FISMA” as applicable to CDC grants). Recipient shall immediately report to ODH any discovery of use or disclosure of information not provided for or allowed by the Agreement. Recipient hereby agrees that anytime information is provided or made available to any subcontractor or agent, Recipient must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of information as contained in this Agreement. Recipient must obtain ODH approval prior to entering into such agreements. Further, Recipient agrees to make available and provide right of access to an individual of their protected health information when that protected health information is obtained in the performance of Recipient's obligations under this Agreement.

8.12 Prohibition of the Expenditure of Public Funds for Offshore Services. No State of Ohio Cabinet, Agency, Board or Commission will enter into any contract to acquire for services provided outside the United States or that allows State of Ohio data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States. Notwithstanding any other terms of this Agreement, ODH reserves the right to recover any funds paid for services the Recipient performs outside of the United States for which it did not receive a waiver. The Recipient must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Recipient understands and will meet the requirements of the above prohibition. The Affirmation and Disclosure Form is attached hereto as Attachment A. During the performance of this Agreement, the Recipient must not change the location(s) disclosed on the Affirmation and

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

Disclosure Form, unless a duly signed waiver has been attained to perform the services outside the United States. Recipient agrees to immediately notify ODH of any change or shift in the location(s) of services performed by Recipient or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that is outside of the United States.

8.12.1 Termination, Sanction, Damages. If Recipient or any of its subcontractors perform services under this Agreement outside of the United States or State of Ohio data is sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside the United States, the performance of such services shall be treated as a material breach of the Agreement. ODH is not obligated to pay and shall not pay for such services. If Recipient or any of its subcontractors perform any such services, Recipient shall immediately return to ODH all funds paid for those services. ODH may also recover from Recipient all costs associated with any corrective action ODH may undertake, including but not limited to an audit or a risk analysis, as a result of Recipient performing services outside the United States.

8.12.2 ODH may, at any time after the breach, terminate the Agreement, upon written notice to Recipient. ODH may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

8.12.3 If ODH determines that actual and direct damages are uncertain or difficult to ascertain, ODH in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Agreement.

8.12.4 ODH, in its sole discretion, may provide written notice to Recipient of a breach and permit Recipient to cure the breach. Such cure period shall be no longer than fourteen (14) calendar days. During the cure period, ODH may buy substitute services from a third party and recover from Recipient any costs associated with acquiring those substitute services.

8.12.5 Notwithstanding ODH permitting a period of time to cure the breach or Recipient's cure of the breach, ODH does not waive any of its rights and remedies provided ODH in this Agreement, including but not limited to recovery of funds paid for services Recipient performed outside of the United States, costs associated with corrective action, or liquidated damages.

8.13 Assignment. Recipient will not assign any of its rights nor delegate any of its duties and responsibilities under this Agreement without prior written consent of ODH. Any assignment or delegation not consented to may be deemed void by the ODH.

8.14 Drug Free Workplace. Recipient shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Recipient shall make a good faith effort to ensure that all employees of Recipient do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.

8.15 Security & Safety Rules. When using or possessing ODH data or accessing State of Ohio networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable state rules, policies, and regulations regarding state-provided IT resources, data security and integrity. When on any property owned or controlled by the State of Ohio, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

8.16 Trafficking Victims Act. In carrying out this Agreement, Recipient, its employees, subcontractors and their employees shall comply with Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104); and is now located at 2 CFR Part 175 during the term of this Agreement. Recipient must include this provision in its contracts and subcontracts under this Agreement. Recipient must inform ODH immediately of any information regarding violation of the foregoing. Recipient understands that its failure to comply with this provision may subject ODH to loss of federal funds. Recipient agrees to compensate ODH for any such funds lost due to its failure to comply with this condition, or the failure of its subcontractors to comply with this condition.

8.17 Compliance.

8.17.1 Recipient affirmatively represents and warrants to ODH that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Recipient further affirmatively represents and warrants to ODH that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Recipient agrees that if this representation and warranty is deemed false, the Agreement will be void *ab initio* as between the Parties to this Agreement, and any funds paid by ODH hereunder shall be immediately repaid to ODH, or an action for recovery may be immediately commenced by ODH for the recovery of said funds.

8.17.2 Recipient certifies that Recipient is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Recipient is federally debarred from participating in government contracts funded by federal money, for whatever reason, Recipient shall immediately notify ODH of the debarment.

8.17.3 Recipient certifies that all approvals, licenses, registrations or other qualifications necessary to conduct business where the services are performed have been obtained and are operative. If at any time during the contractual period Recipient becomes disqualified from conducting business in Ohio,

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

for whatever reason, Recipient shall immediately notify ODH of the disqualification.

8.17.4 Recipient certifies that it is in compliance and will remain in compliance throughout the duration of this Agreement with all other applicable federal and state laws, regulations, rules and Executive Orders and will require the same certification from its subgrantees or subcontractors.

8.18 Limitation of Liability. Both Parties agree to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Agreement, and nothing in this Agreement shall be interpreted or construed to place any responsibility for professional acts or omissions onto ODH. ODH's liability for damages, whether in contract or in tort, shall not exceed the amount of direct damages incurred by Recipient, and is the Recipient's sole and exclusive remedy for ODH's failure to perform its obligations under this Agreement. In no event shall ODH be liable for any indirect or consequential damages, including loss of profit, even if ODH knew or should have known of the possibility of such damages. Neither Party is responsible to the other Party for nonperformance or delay in performance of the terms of this Agreement due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.

8.19 Insurance. Recipient will provide, at its own expense, Workers' Compensation insurance, as required by Ohio law or the laws of any other state where work under this Agreement will be performed. Recipient may be required to show proof of insurance upon request by ODH. Recipient also will provide for its employees performing work under this Agreement employer's liability insurance, and personal injury, bodily injury, and property damage liability insurance, including automobile coverage with personal injury and bodily injury coverage in the amount of at least \$100,000.00 per person, \$300,000.00 per occurrence. In lieu of providing the policies of insurance in the amounts specified in this section, Recipient instead may elect to self-insure such risk in accordance with the laws of this state, based upon a good-faith analysis of the potential liability as it relates to the work to be performed under this Agreement, provided that Recipient is one of the following:

8.19.1 A "state institution of higher education" as defined in O.R.C. 3345.12(A)(1), a community college established under O.R.C. Chapter 3354, a state community college established under O.R.C. Chapter 3358, a university branch established under O.R.C. Chapter 3355, or technical college established under O.R.C. Chapter 3357;

8.19.2 A "state agency", which means a department, bureau, board, commission, office, agency, institution or other organized body or instrumentality established by the constitution and laws of the state of Ohio for the exercise of any function of state government; or

8.19.3 A "political subdivision" of this state, which means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

8.20 Rights in Deliverables, Data and Copyrights. Any intellectual property or copyrightable materials produced specifically for and as a deliverable under the terms of this Agreement, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of ODH, which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. This section does not apply to any preexisting materials owned by Recipient. Recipient shall not obtain copyright, patent, or other proprietary protection for the Work or Deliverables under this Agreement. ODH grants Recipient an unlimited license to use work and materials produced by Recipient under this Agreement, including the right to publish the results of any work performed under this Agreement. In the event that the Agreement Funding Source is federal funding, in whole or in part, such license is subject to the royalty-free, non-exclusive and irrevocable license to such material retained by the United States government. Further, the work must state: "This publication was made possible by Grant or Cooperative Agreement Number funded by Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of Centers for Disease Control and Prevention or the Ohio Department of Health." Recipient shall not include in any Deliverable or Work any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.

8.21 Attachments. Attachments and documents referenced in this Agreement are made a part hereof, and are incorporated as terms and conditions of this Agreement. In the event of a conflict of terms, the terms and conditions of this Agreement shall take precedence over any conflicting terms.

8.22 Construction. This Agreement is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Agreement. In the event that any terms of this Agreement or applicable statutes conflict, then statutes and regulations take precedence.

8.23 Severability. If any portion of this Agreement is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Agreement shall not be affected thereby, provided that the absence of the unenforceable provision does not render impossible the performance of the remainder of this Agreement.

8.24 Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Agreement may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing written amendments. Any written amendments to this Agreement shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.

8.25 Headings. The headings in this Contract are for convenience only and will not affect the interpretation

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

of any of the Agreement terms and conditions.

8.26 Survival. All sections herein relating to payment, confidentiality, liability, record retention, audit, conflicts of interest and ethics, publicity, warranties and limitations on damages shall survive the termination of this Agreement.

8.27 Notices.

8.27.1 Form of Notice. All notices, requests, claims, demands and other communications between the Parties shall be in writing.

8.27.2 Method of Notice. All notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by electronic mail to the address of the Party specified in this Agreement as “ODH Agreement Manager” or “Recipient’s Authorized Representative” or such other address as either Party may specify in writing. The Parties acknowledge that change in authorized representatives and their addresses are not substantive and a change shall be recognized with proper Notice.

8.27.3 Receipt of Notice. All notices shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the fifth (5th) day following mailing, whichever occurs first.

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

16

RESOLUTION NO. 20-1076

IN THE MATTER OF APPROVING A RENEWAL OF THE AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND THE CITY OF DELAWARE FOR INDIGENT DEFENSE SERVICES FOR MUNICIPAL CODE VIOLATIONS (ASSIGNED COUNSEL SYSTEM):

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

WHEREAS, on August 7, 2017, the Delaware County Board of Commissioners (the “Board”) adopted Resolution No. 17-829, approving an agreement with the City of Delaware for indigent defense services for municipal code violations (the “Agreement”); and

WHEREAS, pursuant to Section 3.1 of the Agreement, the Agreement may be renewed for additional one year terms upon proper resolution by each party agreeing to the one year extension and proper appropriation of funding for the new year;

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

Section 1. The Board hereby agrees to renew the Agreement, with proper appropriation of funding, for an additional one (1) year term, commencing on January 1, 2021 and ending December 31, 2021.

Section 2. The Board hereby directs the Clerk of the Board to cause copies of this Resolution to be delivered to the City of Delaware, 1 South Sandusky Street, Delaware, Ohio 43015, and the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

Section 3. This Resolution shall be effective immediately upon adoption.

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

17

RESOLUTION NO. 20-1077

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO APPROVE AND EXECUTE ZONING APPLICATIONS AND OTHER DOCUMENTS IN SUPPORT OF THE REDEVELOPMENT AND IMPROVEMENT OF THE PROPERTY LOCATED AT 50 CHANNING STREET:

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

WHEREAS, the Delaware County Board of Commissioners (the “Board”) currently owns real property located at 50 Channing Street, Delaware, Ohio, consisting of buildings occupying the site, as well as adjacent parking areas (the “Property”); and

WHEREAS, upon the completion of improvements to, and relocation of offices to, the Byxbe Campus, the Board may determine that the Property is not needed for public use and consider transferring the Property to the Delaware County Land Reutilization Corporation or the Delaware County Finance Authority for redevelopment in the best interests of Delaware County and the surrounding community; and

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

WHEREAS, due to the current zoning of the Property, rezoning may be necessary to redevelop the Property for its highest and best use; and

WHEREAS, as the record owner of the Property, the Board’s approval is necessary for any zoning applications, and the Board wishes to expedite any necessary approvals; and

WHEREAS, pursuant to section 305.30(K) of the Revised Code, the Board may authorize the County Administrator to perform such duties as the Board may determine by resolution;

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

Section 1. Subject to Section 2 hereof, the Board hereby authorizes the County Administrator to approve and execute zoning applications and other documents in support of the redevelopment and improvement of the Property and to submit any applications or documents so approved and executed to the City of Delaware.

Section 2. The County Administrator shall provide copies of any proposed application or document, prior to approval and execution in accordance with Section 1 hereof, to the Board for its review for a period of not less than one week and shall not approve and execute any proposed application or document until the adjournment of the next regular meeting of the Board after the review period.

Section 3. The Board hereby authorizes and directs the County Administrator to negotiate an agreement between the Board and either the Delaware County Land Reutilization Corporation or the Delaware County Finance Authority to facilitate the transfer and redevelopment of the Property. The County Administrator may approve and execute any non-binding term sheets or memoranda in the course of negotiations, but any final and legally-binding agreement shall be submitted to the Board for approval and execution.

Section 4. This Resolution shall take immediate effect upon adoption.

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

18
ADMINISTRATOR REPORTS

Mike Frommer, County Administrator
-The Small Business Grant program will close on December 4th.

19
COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis
-No reports.

Commissioner Merrell
-Budget hearings start this afternoon.
-Congratulations to Bob Lamb and his team for an intergovernmental agreement with Morrow County.
-Thanks to the Pre-hospital for the purchase of the software to go with the new CAD system that should be in place by August 2021.
-Hopes everyone had a good Thanksgiving.

Commissioner Benton
-Thinks the intergovernmental agreement with Morrow County will be equally beneficial for both counties.
-The East portion of the Berlin Business Park was approved at Regional Planning.

20
RESOLUTION NO. 20-1078

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 30, 2020**

development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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 appointment of a public employee or public official and confidential information related to economic development.

Section 2. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Section 3. The Board hereby finds and determines that the information listed in Section 2 is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

Section 4. The Board hereby finds and determines that the executive session held pursuant to Section 2 is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

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

RESOLUTION NO. 20-1079

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 Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners