

**COMMISSIONERS JOURNAL NO. 74 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 18, 2021**

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

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

1
RESOLUTION NO. 21-109

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 11, 2021:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on February 11, 2021; and

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

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

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

2
RESOLUTION NO. 21-110

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0217 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0217:

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0217, memo transfers in batch numbers MTAPR0217 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount
R2102185	GAUMARD SCIENTIFIC COMPANY INC	LABOR & DELIVERY PATIENT SIMULATOR - EMS	41711436 - 5450	\$6,171.00
R2102189	OFFICE CITY EXPRESS INC	HISTORIC COURTHOUSE FF&E	42011438 - 5410	\$11,190.24
R2102214	SHERIFF'S OFFICE	IV- D CONTRACT SERVICES	23711630 - 5301	\$65,520.60
R2102226	FISHEL DOWNEY ALBRECHT &	ATTORNEY SERVICES	10011303 - 5361	\$8,000.00

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

3
RESOLUTION NO. 21-111

IN THE MATTER OF AUTHORIZING THE USE OF A PROCUREMENT CARD FOR THE AUDITOR'S OFFICE:

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

WHEREAS, on September 30, 2004, the Board of Commissioners of Delaware County (the "Board") adopted Resolution No. 04-1193, adopting a policy for the use of county procurement cards, pursuant to section 301.29 of the Revised Code; and

WHEREAS, on October 3, 2011, the Board adopted Resolution No. 11-1040, approving amendments to the Policies and Procedures for the county procurement card program; and

WHEREAS, the Board has adopted the procurement card policy for the use of the cards to pay for specific classes of work related expenses, without submitting a monthly estimate of the expenses, pursuant to section 301.29(F)(2) of the Revised Code;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, authorizes the use of the following procurement card to the limits indicated and for specific work related

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expenses designated in the Procurement Card Policy without submitting a monthly estimate of expenses and with the following Department Coordinator:

Appointing Authority: Auditor’s Office
Office/Department: Auditor’s Office

Daily spending per card: \$5,000
 Monthly spending per card: \$5,000
 Single transaction limit: \$2,500
 Daily number of transactions per card: 5
 Monthly number of transactions per card: 50

Name on Card: Shari Baker
Department Coordinator: Sandy Fish

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

4
RESOLUTION NO. 21-112

IN THE MATTER OF APPROVING THE DKMM COUNTY RECYCLING AND LITTER PREVENTION OFFICE PROGRAM STATUS FINAL REPORT FOR 2020:

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

**Program Status Report (last half)
 Report of DKMM District Funds Spent**

Reports due: January 31, 2021
 Date of Report: January 25, 2021

AMOUNT OF FUNDS RECEIVED: \$77,843.00
 APPROVED CARRYOVER BALANCE \$0.00
 TOTAL FUNDS AVAILABLE \$77,843.00

EXPENDITURES:
 Salaries \$41,778.29
 Fringe Benefits \$21,434.77
 Supplies \$114.00
 Advertising \$793.29
 Awards \$0.00
 Travel \$0.00
 Other \$0.00

Total DKMM Funds Available \$13,722.65

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

5
RESOLUTION NO. 21-113

IN THE MATTER OF APPROVING A CONTRACT WITH ELITAIRE, LLC, A DAIKIN COMPANY FOR THE 101 NORTH SANDUSKY COOLING TOWER REPLACEMENT PROJECT:

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

WHEREAS, the Director of Facilities recommends replacement of the BAC cooling tower at the 101 North Sandusky Street building (the “Project”); and

WHEREAS, the materials and services necessary for the Project are available for purchase through the OMNIA Partners 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 materials 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 a contract with ElitAire, LLC, a Daikin Company, for the materials and services for the Project, in accordance with the Program, pursuant to the contract and terms and conditions set forth in OMNIA Partners Region 4 ESC Contract #R200401.

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Section 2. This Resolution shall take effect immediately upon adoption.

SERVICES AGREEMENT

This Agreement is made and entered into this 18th day of February, 2021, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 ("County"), and ElitAire LLC A Daikin Company, 11325 Reed Hartman Highway, Suite 100, Cincinnati, OH 45241 ("Contractor"), hereinafter collectively referred to as the "Parties."

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide services to perform the project known as the Delaware County Commissioner's Building Cooling Tower Replacement (the "Services").
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the following documents, by this reference made part of this Agreement:
- Delaware County Commissioner's Building Cooling Tower Replacement Quote #: Q-00053678 dated 1/25/2021 ("Exhibit A")
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities (the "Director") as the agent of the County for this Agreement.
- 2.2 The Director shall supervise, and have authority to order commencement and suspension of, the Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, shall supersede all prior understandings and agreements relating to the Services, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with Exhibit A.
- 4.2 For all Services, the lump sum fee shall be \$117,670.00.
- 4.3 Total compensation under this Agreement shall not exceed \$117,670.00 without subsequent modification.
- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

5 NOTICES

- 5.1 "Notices" issued under this Agreement shall be served on the individuals listed below in writing by U.S. Certified Mail. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

County:

Name:	Jon Melvin, Director of Facilities
Address:	1405 US Highway 23 North, Delaware, OH 43015
Telephone:	740 833-2283
Email:	jmelvin@co.delaware.oh.us

Contractor:

Name of Principal in Charge:	Tara Smith
Address of Firm:	11325 Reed Hartman Highway, Suite 100
City, State, Zip:	Cincinnati, OH 45241
Telephone:	614 359-8246

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Email: tsmith@elitaire.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Director and shall be in accordance with Exhibit A.
- 6.2 Invoices shall be submitted to the Director by the Contractor on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS

- 7.1 The Contractor shall commence Services upon written Notice to Proceed ("Authorization") from the Director and shall complete the Services in accordance with Exhibit A.
- 7.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Director may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

9 INDEMNIFICATION

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

10 INSURANCE

- 10.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 10.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 10.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 10.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 10.1 and 10.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 10.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

11 MISCELLANEOUS TERMS AND CONDITIONS

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- 11.1 Prohibited Interests: Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 11.2 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 11.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 11.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 11.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 11.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 11.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 11.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee

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hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

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

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

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

6
RESOLUTION NO. 21-114

IN THE MATTER OF APPROVING A CONTRACT WITH GARLAND/DBS, INC., FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER ROOFING PROJECT (2021 PHASE):

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

WHEREAS, the Sanitary Engineer recommends repairs to roofing on various buildings at the Olentangy Environmental Control Center; and

WHEREAS, the roofing materials and services necessary for the renovations are available for purchase through the OMNIA Partners 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 roofing materials 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 a contract with Garland/DBS, Inc., for roofing materials and services for the Olentangy Environmental Control Center Roofing Project (2021 Phase), in accordance with the Program, pursuant to the contract and terms and conditions set forth in OMNIA Partners Contract #PW1925.

Section 2. This Resolution shall take effect immediately upon adoption.

**CONTRACT FOR
JOB # 25-OH-200815**

BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, FOR AND ON BEHALF OF THE DELAWARE COUNTY REGIONAL SEWER DISTRICT AND GARLAND/DBS, INC. FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER ROOFING PROJECT (2021 PHASE).

- 1.) This CONTRACT is made at **Delaware County** as of February 18, 2021, ("Effective Date"), by and between the **Delaware County Board of Commissioners, for and on behalf of the Delaware County Regional Sewer District** located at **50 Channing Street, Delaware, Ohio 43015** (hereinafter designated the "CUSTOMER"), and **Garland/DBS, Inc.**, located at **3800 East 91st Street Cleveland, OH 44105** (hereinafter designated the "CONTRACTOR").
- 2.) The CONTRACTOR shall furnish all material, labor, equipment, and tools necessary for the **Roofing Project (Buildings I, F, J, and K)** located at **10333 Olentangy River Road, Powell, Ohio 43065** as well as all work incidental and pertinent thereto, (hereinafter designated the "Project") all in accordance with the original proposal # **25-OH-200815** dated **10/6/2020** submitted by the CONTRACTOR (hereinafter together designated the "Specifications"), a copy of which is attached hereto as Exhibit A and incorporated herein. This CONTRACT is entered into, pursuant to cooperative purchasing authority, subject to and in accordance with OMNIA Partners Contract #PW1925, which is, by this reference, fully incorporated herein. In the event of any conflict, ambiguity, or inconsistency between the terms contained in this CONTRACT and the Exhibits or other documents incorporated by reference, the terms set forth in this CONTRACT shall govern and control.
- 3.) The term of the CONTRACT shall begin on the Effective Date first written above, and shall be completed **360** days thereafter, unless sooner terminated as permitted herein, or unless extended by agreement of the parties set forth in writing. The work shall commence within ten (10) days from the date that CONTRACTOR receives a copy or original of the fully executed CONTRACT, which receipt shall be considered Notice to Proceed. Project scheduling will be agreed upon at the preconstruction meeting. The CONTRACTOR is required to submit to the CUSTOMER a Certificate of Insurance and

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Performance and Payment bonds prior to commencing work. In addition, the work shall be scheduled as agreed upon by the parties.

- 4.) The sums to be paid to the CONTRACTOR shall be at the price(s) shown on the Specifications (Exhibit A), and the total to be paid to CONTRACTOR shall be a maximum of **\$361,018.00**, as set forth in the purchase order and Exhibit A. Invoices shall provide details of all Project expenses as permitted in this CONTRACT. CONTRACTOR shall apply no late charges, interest or penalties to any invoice or charges for services until 30 days from the CUSTOMER receipt of the invoice. If this CONTRACT is terminated for convenience for any reason, then the CONTRACTOR shall be paid pro rata for all services performed and materials purchased to the effective date of termination.
- 5.) If the CUSTOMER wishes to terminate the CONTRACTOR for cause due to the failure of CONTRACTOR to perform as required under this CONTRACT and/or in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, then the CUSTOMER must provide the CONTRACTOR with written notice of said failure to perform. The CUSTOMER must give ten (10) working days from the CONTRACTOR's receipt of the Notice to Cure for the CONTRACTOR to cure or take reasonable action to commence to cure the performance concerns specified. If the CONTRACTOR does not take appropriate action within the ten (10) day period, the CUSTOMER may issue a Final Notice to Cure. The CONTRACTOR will have an additional five (5) working days from the receipt of the Notice to Cure to cure or take reasonable action to commence to cure before the CUSTOMER can terminate the CONTRACT. If the CONTRACTOR is terminated for cause, the CUSTOMER may provide or employ any necessary labor and materials in lieu of CONTRACTOR to finish part or all of the work under the CONTRACT or to supplement the work of CONTRACTOR, and to deduct the cost thereof from any money, then due or thereafter to become due to the CONTRACTOR; and if such cost shall exceed the balance due to CONTRACTOR, then the CONTRACTOR shall pay the difference to the CUSTOMER.
- 6.) CUSTOMER may issue subsequent modifications to the Purchase Order(s) for additional work that was not known or included in the Specifications that is found to be needed during the work on the Project to complete the Project over and above the amount set forth in paragraph four (4) and in Exhibit A. CONTRACTOR must seek approval from the CUSTOMER before performing any additional work. The CUSTOMER must provide the CONTRACTOR written documentation of the modification to the Purchase Order within three (3) business days of verbal approval. CONTRACTOR is not obligated to perform additional work until written modification has been received from the CUSTOMER, but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the CONTRACTOR without CUSTOMER consent will be evaluated and considered for payment based upon the work's merit. If the CUSTOMER determines the incidental additional work was not included in the original scope of the project and required for the CONTRACTOR's uninterrupted performance in fulfillment of the contract, then the CUSTOMER will approve the CONTRACTOR's request for payment for incidental additional work.
- 7.) All the work done under this CONTRACT shall be performed under the oversight of **the Delaware County Sanitary Engineer, or her designee**, the CUSTOMER'S representative. All notices hereunder shall be (a) in writing; (b) delivered to the representatives of the parties at the addressees set forth in the Specifications, unless changed by either party by notice to the other party; and (c) effective upon receipt.
- 8.) The CONTRACTOR shall furnish the CUSTOMER with a performance or contract bond and a labor and material bond, each in the amount of **\$361,018.00** a Certificate of Workers' Compensation, and a Certificate of Insurance evidential of comprehensive general liability insurance and property insurance with minimum coverage in amounts reasonable to or exceeding what is normally expected for a comparable project in size and scope. Further, said Certificate of Insurance shall name **Delaware County, Ohio** as an additional insured. Said Certificate of Insurance shall also provide that at least thirty (30) days written notice shall be given to the CUSTOMER of any material change in, or cancellation of, said insurance.
- 9.) Should the CONTRACTOR at any time refuse or neglect to supply a sufficiency of properly skilled workers or materials of the proper quality, or fail in any respect to prosecute the work herein described with promptness and diligence, or fail in the performance of any of the agreements contained herein, the CUSTOMER shall have the right to immediately suspend all work, or any part thereof under this CONTRACT, upon the CUSTOMER's issuance of a stop work notice to the CONTRACTOR and the CONTRACTOR's confirmed receipt of the stop work notice. The work shall continue to be suspended until such time as the CUSTOMER and CONTRACTOR have come to a mutual agreement on how the work under the CONTRACT shall proceed. Should the CONTRACTOR continue to refuse or neglect to supply a sufficiency of properly skilled workers or materials of the proper quality, or fail in any respect to prosecute the work herein described with promptness and diligence, or fail in the performance of any of the agreements contained herein, then the CUSTOMER may, after following the procedures listed in Section 5 above, terminate the CONTRACT for cause.
- 10.) The CONTRACTOR shall indemnify, save harmless, and defend the CUSTOMER from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgments of every nature and

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description, made, brought, or recovered against the CUSTOMER by reason of any negligent act or omission of the CONTRACTOR, its agents, its subcontractors, or its employees, in the execution of the work herein contracted for.

- 11.) The CONTRACTOR or CUSTOMER has the right to request and be granted a Termination for Convenience from the CONTRACT obligations if there is a joint determination from both the CUSTOMER and the CONTRACTOR that the termination is in the best interests of both parties, or if the CONTRACTOR or CUSTOMER believes the Termination for Convenience to be in its best interests because a timely resolution, within ten (10) days from the CUSTOMER'S receipt of written notification, will not be provided with regard to requests for information (RFI), request for clarification, or requests for modification to the Purchase Order(s) due to differing site conditions, vague Specifications, or unforeseen circumstances. Under a Termination for Convenience, the CONTRACTOR or CUSTOMER shall be reimbursed for the price of supplies and services delivered under the CONTRACT or Purchase Order.
- 12.) This CONTRACT, and those documents incorporated by reference herein, shall be deemed to contain all the terms and conditions agreed to between the parties, who both agree that no representations or promises of any kind whatsoever have been made other than herein contained, and this CONTRACT shall be binding upon both parties and their respective heirs, administrators, executors, successors, and assigns.
- 13.) This CONTRACT is contingent upon receipt of a written purchase order from CUSTOMER. All terms must be agreed upon by both parties.
- 14.) CUSTOMER shall have the right to approve all subcontracts or assignments of work equal to or exceeding \$10,000. CUSTOMER shall not unreasonably withhold, delay or condition subcontracting or assignments, but may express final and binding disapproval of a proposed assignee or subcontractor. Should the CONTRACTOR be forced to choose a different subcontractor/assignee that is of higher cost than the initial subcontractor/assignee, due to the CUSTOMER's disapproval, the CONTRACTOR shall be able to request and will receive approval from the CUSTOMER for a modification to the CONTRACT to cover the additional cost. CONTRACTOR shall remain responsible for the work of any agent or independent contractor to whom it assigns its Work, and any assignment or subcontract shall incorporate the terms of this Contract into its contract delegating its Work.
- 15.) This Project involves construction of a public improvement at a cost exceeding the threshold for payment prevailing wage rates of pay, so each laborer, workman or mechanic employed by the CONTRACTOR for performance of the Project herein described or by the subcontractor shall be paid not less than the minimum rate of pay for the applicable pay classification. The CONTRACTOR and their subcontractors who are subject to the requirements of paying prevailing wages shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. The CONTRACTOR and its subcontractors shall deliver to the CUSTOMER a certified copy of their respective payrolls, within two weeks of the CUSTOMER's request, for each pay period requested by the CUSTOMER.
- 16.) Payments to the CONTRACTOR shall be made at the rate of ninety-five percent (95%) of the approved partial payment estimate for each monthly progress billing. The CUSTOMER will retain five percent (5%) of every approved partial payment. The retained amount will be paid to the CONTRACTOR no later than thirty (30) days following Final Acceptance of the work. Upon completion and acceptance of the work, the CUSTOMER shall issue a certificate attached to the final payment request that the work has been accepted by it under the terms, promises and conditions of the CONTRACT.
- 17.) CONTRACTOR has been employed under this Contract as an independent contractor in order to construct its portion of the Project. CONTRACTOR agrees that no authority has been conferred upon it by CUSTOMER to hire any person(s) on behalf of CUSTOMER, and CUSTOMER undertakes no obligation of any sort to CONTRACTOR's employees or subcontractors. It is understood and agreed that the CONTRACTOR shall select, engage, and discharge its employees, agents, or servants and otherwise direct and control their services. CONTRACTOR will also comply with all laws concerning qualification to do business and engage in the work involved under this CONTRACT and will file all returns and reports required of it and pay all taxes and contributions imposed upon it.
- 18.) CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex, or national origin.
- 19.) The CUSTOMER shall not be considered to have accepted possession of the work under this CONTRACT until a notice of completion is issued to the CONTRACTOR by the CUSTOMER or CUSTOMER's representative, or payment of the full CONTRACT compensation is received by the CONTRACTOR, unless the Parties otherwise mutually agree.
- 20.) CONTRACTOR, at all times during its performance of its work under this CONTRACT, shall keep the work site, grounds, and roof tops surrounding the work site free from accumulation of waste materials or rubbish caused by its activities. Upon completion of the work under this CONTRACT, the

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CONTRACTOR shall promptly remove all its waste materials and rubbish from and about the work site, as well as, its tools, construction equipment, machinery, and surplus materials, as to leave the work site "Broom Clean" or its equivalent.

- 21.) The law is hereby agreed to be the law of the State where the Project is situated. The parties agree that the proper venue for action, suit, or other litigation arising under this agreement shall lie in the courts of **Delaware County, Ohio**. In the event legal action is instituted to enforce this agreement, each party agrees to bear its own attorney fees and costs while waiving the right to collect attorney fees and costs from the opposing party.

IN WITNESS WHEREOF, authorized representatives of each party to this CONTRACT, indicating their party’s approval of the terms herein, have signed as of the dates set forth below.

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

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RESOLUTION NO. 21-115

IN THE MATTER OF SETTING THE BID DATE AND TIME TO RECEIVE BIDS FOR LIQUID SLUDGE HAULING SERVICES:

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

WHEREAS, the Delaware County Sewer District recommends soliciting bids for Liquid Sludge Hauling Services; and

WHEREAS, Sewer District staff has provided the contract documents and technical specifications for the Liquid Sludge Hauling Services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the specifications for the project known as Liquid Sludge Hauling Services and authorizes the Sanitary Engineer to advertise for and receive bids in accordance with the following Legal Notice:

**Legal Notice
Invitation to Bid**

The Delaware County Commissioners are seeking competitive bids from contractors for a one (1) year contract for the removal, transportation, and offloading of liquid digester sludge from the County’s various wastewater treatment facilities to the Alum Creek Water Reclamation Facility on an as-needed basis. Bids will be received at the Delaware County Sanitary Engineer’s Office, 50 Channing Street, Delaware, Ohio 43015, until **12:00 p.m. on Friday, March 12, 2021**. At that time, bids will be opened and read aloud. In-person drop off is available at the south entrance of the Sanitary Engineer’s Office; upon arrival call (740) 833-2240 and a Sewer District representative will receive your bid.

The bids must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked “SEALED BID FOR LIQUID SLUDGE HAULING.”

This public notice and the complete Invitation to Bid are posted on the internet and may be viewed on Delaware County’s web page at <http://www.co.delaware.oh.us> under the heading Public Notices and Bids or may be obtained from the Delaware County Regional Sewer District web page at <https://regionalsewer.co.delaware.oh.us/bids/>.

Any bid submitted shall be accompanied by bond or certified check, cashier’s check, or money order on a solvent bank or savings and loan association in the amount of Five Hundred Dollars (\$500.00).

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to waive irregularities and to reject any or all bids.

Questions about the bid shall be directed in writing to Julie McGill via email at jmcgill@co.delaware.oh.us.

Delaware Gazette Advertisement Date:
Friday, February 19, 2021

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

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RESOLUTION NO. 21-116

IN THE MATTER OF AUTHORIZING PARTICIPATION IN THE ODOT ROAD SALT
CONTRACT 018-21:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (hereinafter referred to as the "Political Subdivision") hereby submits this written agreement to participate in the Ohio Department of Transportation's (ODOT) annual winter road salt bid (018-21) in accordance with Ohio Revised Code 5513.01(B) and hereby agrees to all of the following terms and conditions in its participation of the ODOT winter road salt contract:

- a. The Political Subdivision hereby agrees to be bound by all terms and conditions established by ODOT in the winter road salt contract and acknowledges that upon award of the contract by the Director of ODOT it shall be bound by all such terms and conditions included in the contract; and
- b. The Political Subdivision hereby acknowledges that upon the Director of ODOT's signing of the winter road salt contract, it shall effectively form a contract between the awarded salt supplier and the Political Subdivision; and
- c. The Political Subdivision agrees to be solely responsible for resolving all claims or disputes arising out of its participation in the ODOT winter road salt contract and agrees to hold the Department of Transportation harmless for any claims, actions, expenses, or other damages arising out of the Political Subdivision's participation in the winter road salt contract; and
- d. The Political Subdivision's electronic order for Sodium Chloride (Road Salt) will be the amount the Political Subdivision agrees to purchase from its awarded salt supplier at the delivered bid price per ton awarded by the Director of ODOT; and
- e. The Political Subdivision hereby agrees to purchase a minimum of 90% of its above-requested salt quantities from its awarded salt supplier during the contract's effective period; and
- f. The Political Subdivision hereby agrees to place orders with and directly pay the awarded salt supplier on a net 30 basis for all road salt it receives pursuant to ODOT winter salt contract; and
- g. The Political Subdivision acknowledges that it may not rescind this participation agreement. Furthermore, it is the sole responsibility of the Political Subdivision to ensure ODOT has received this participation agreement. The Department shall not be held responsible or liable for failure to receive a Political Subdivision's participation agreement.

NOW, THEREFORE, be it resolved by the Board of Commissioners of Delaware County, Ohio that this participation agreement for the ODOT winter road salt contract is hereby approved, funding has been authorized subject to future appropriation, and the Political Subdivision agrees to the above terms and conditions regarding participation on the ODOT winter salt contract, and that the County Engineer is authorized to act on behalf of the Board to order up to 2000 tons of road salt under this agreement.

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

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ADMINISTRATOR REPORTS

Mike Frommer, County Administrator
-No reports.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis

-The Secretary of State Frank LaRose has sent a letter to Governor DeWine asking for Board of Election employees and poll workers be added to the list of primary people to receive the COVID vaccination. The May primary is fast approaching.

Commissioner Benton

- The Land Bank met yesterday. The Old Jail is on the market for private sale. Several parties are interested in purchasing.
- The Treasurer of State has a program called OMAP (Ohio Market Access Program) which lets investors purchase bonds provided by OMAP.
- Participated in a CCAO budget call.
- Will be participating in a COYC call this afternoon at 4:00 PM.

Commissioner Merrell

-The Land Bank does has several attractive offers from parties about the purchase of the Old Jail.

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- Attended Regional Planning executive committee meeting yesterday morning.
- Participated in the Delaware Leadership class.
- CORSA met virtually last week.
- CEBCO will meet virtually tomorrow.
- Spoke about the passing of Rush Limbaugh.

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RESOLUTION NO. 21-117

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

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

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

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

Section 1. The Board hereby adjourns into executive session for consideration of appointment of a public employee or public official.

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

RESOLUTION NO. 21-118

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners