

COMMISSIONERS JOURNAL NO. 74 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 27, 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. 21-455

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 24, 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 May 24, 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. 21-456

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0526 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0526:

It was moved by _____, seconded by _____ to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0526, memo transfers in batch numbers MTAPR0526 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount
R2103231	4IMPRINT INC	FOSTER RECRUITMENT GIVE AWAYS	22511607 - 5317	\$8,580.00
R2103249	TREASURER,STATE OF OHIO	MICROSOFT SURFACE PROS	22311611 - 5260	\$3,405.00
R2103249	TREASURER,STATE OF OHIO	22" MONITORS	22311611 - 5201	\$702.50
R2103249	TREASURER,STATE OF OHIO	MICROSOFT SURFACE PROS	22411601 - 5260	\$1702.50
R2103301	TREASURER,DELAWARE COUNTY	RETAINAGE - OECC ROOFING PROJECT 2021 PHASE	66211900 - 5410	\$28,881.44

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

3
RESOLUTION NO. 21-457

IN THE MATTER OF GRANTING THE ANNEXATION PETITION OF 0.384 ACRES OF LAND IN ORANGE TOWNSHIP TO THE CITY OF COLUMBUS:

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

WHEREAS, on May 13, 2021, the Clerk to the Delaware County Board of Commissioners (the "Board") received an annexation petition, filed by Jennifer Gallagher, Director of public service of the City of Columbus, and agent for the petitioner, of 0.384 acres, more or less, in Orange Township to the City of Columbus; and

WHEREAS, pursuant to section 709.16(B) of the Revised Code, if the only territory to be annexed is contiguous territory owned by a municipal corporation, the board of county commissioners, by resolution, shall grant the annexation; and

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WHEREAS, the only territory to be annexed is contiguous territory owned by the City of Columbus; and

WHEREAS, pursuant to section 709.16(E) of the Revised Code, the board of county commissioners shall act upon a petition for annexation filed under this section within thirty days after receipt of the petition;

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

Section 1. The Board hereby grants the annexation of 0.384 acres, more or less, in Orange Township to the City of Columbus, as petitioned by Jennifer Gallagher, Director of public service of the City of Columbus, and agent for the petitioner.

Section 2. The Board hereby directs the Clerk of the Board to cause delivery of a certified copy of this Resolution upon Jennifer Gallagher, Director of public service of the City of Columbus, and agent for the petitioner.

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

4
RESOLUTION NO. 21-458

IN THE MATTER OF APPROVING A QUITCLAIM DEED TO CONSOLIDATE THE HISTORIC COURTHOUSE LOT WITH THE REMAINDER OF THE JAIL LOT AND A VACATED SEGMENT OF ST. PATRICK STREET:

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

WHEREAS, on or about October 19, 2020, and pursuant to Resolution No. 20-923, the Delaware County Board of Commissioners (the "Board") approved a quitclaim deed transferring a part of the Historical County Jail property located at 20 West Central Avenue, Delaware, Ohio, to the Delaware County Land Reutilization Corporation; and

WHEREAS, a condition of approval of the lot split necessary to transfer that part of the Historical County Jail property was that the Board would consolidate the remainder of the Historical County Jail property with the Historic Courthouse lot; and

WHEREAS, the segment of St. Patrick Street between the jail lot and the courthouse lot was vacated in 1991, is owned in its entirety by the Board, and should also be consolidated with the remainder of the jail lot and the courthouse lot; and

WHEREAS, the necessary documents have been prepared and preliminary approvals received to proceed with the transaction consolidating the various parcels;

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

Section 1. The Board hereby approves a quitclaim deed to consolidate the Historic Courthouse Lot with the remainder of the Jail Lot and a vacated segment of St. Patrick Street and authorizes the President of the Board to execute the quitclaim deed on behalf of the Board.

Section 2. The County Administrator is hereby authorized to approve and execute any other documents necessary to effect the consolidation approved herein.

Section 3. The Board hereby directs the Clerk to certify a copy of this Resolution and the deed to the County Auditor, the County Recorder, and the City of Delaware.

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

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT the **Commissioners of Delaware County, aka the Board of County Commissioners of Delaware County, Ohio**, the Grantor herein, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, convey, release, and forever quitclaim to the **Board of County Commissioners of Delaware County, Ohio**, and its successors, and assigns, the Grantee herein, all right, title, and interest in fee simple in the real property described in Exhibit A, attached hereto and fully incorporated herein, being portions of the real property Grantor acquired by that certain deed of record in the Office of the Delaware County Recorder, **Volume 3, Page 193**. This instrument is

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intended to consolidate the following various parcels of real property owned by the Grantor into one lot: part of Jail Lot, all of Courthouse Lot, and vacated St. Patrick Street between the Jail Lot and Courthouse Lot (Delaware City Ordinance 91-53; Plat Cabinet 1, Slides 4-5), all as identified in the Plat of the Public Ground recorded in the Office of the Delaware County Recorder, **Volume 8, Page 106.**

To have and to hold said property unto the Grantee, except: (a) easements, restrictions, conditions, and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules, and regulations; and (d) any and all taxes and assessments not yet due and payable.

The Grantor has executed this instrument on _____.

BOARD OF COUNTY COMMISSIONERS
OF DELAWARE COUNTY, OHIO

Gary Merrell, President
Pursuant to Resolution No. 21-_____

STATE OF OHIO
COUNTY OF DELAWARE ss:

Before me, a Notary Public, in and for said County and State, personally appeared the above named Gary Merrell, the duly-appointed and authorized President of the Board of County Commissioners of Delaware County, Ohio, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of the Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2021.

Notary Public

Instrument prepared by:
Aric I. Hochstettler, Esq.
Board of County Commissioners
Delaware County, Ohio
91 North Sandusky Street
P.O. Box 8006
Delaware, Ohio 43015

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LEGAL DESCRIPTION
COMMISSIONERS DELAWARE COUNTY
1.216 ACRES

Situate in the State of Ohio, County of Delaware, City of Delaware, being part of Jail Lot, all of Courthouse Lot, and all of a 49.5 foot vacated St. Patrick Street of the Plat of the Public Ground for the Town of Delaware as recorded in Volume 8, Page 106, and being part of tract of land conveyed to Commissioners Delaware County as recorded in Deed Book 3, Page 193 (all references to deeds, microfiche, plats, surveys, etc. refer to the Delaware County Recorder's Office or Engineer's Office) and being more particularly described as follows:

BEGINNING FOR REFERENCE at mag nail set at the intersection of the centerline of W Central Avenue (66 foot wide) and the centerline of N Sandusky Street (99 foot wide);

Thence along said N Sandusky Street centerline, North 04°13'11" East, for a distance of 33.00 feet to a mag nail set;

Thence across the right of way of said N Sandusky Street, North 85°37'10" West, for a distance of 44.50 feet to a mag nail set at the intersection of the northerly right of way of said W Central Avenue and the westerly right of way of said N Sandusky Street, also being the **TRUE POINT OF BEGINNING**;

Thence along said northerly right of way, North 85°37'10" West, for a distance of 296.53 feet to a 3/4" iron pipe found (Sands Decker cap) at the southeast corner of a 0.473 acre tract of land conveyed to Delaware County Land Revitalization Corporation as recorded in Book 1791, Page 1983;

Thence along easterly lines of said 0.473 acre tract for the following three (3) courses:

- 1) North 04°16'45" East, for a distance of 110.72 feet to a 3/4" iron pipe found (Sands Decker cap) at a corner thereof;
- 2) North 33°37'22" West, for a distance of 35.81 feet to a 3/4" iron pipe found (Sands Decker cap) at a corner thereof;
- 3) North 04°16'45" East, for a distance of 44.21 feet to a mag nail found at the northeast corner of said 0.473 acre tract, and also being on the southerly right of way of Court Street (33 foot wide);

Thence along said southerly right of way, South 86°03'15" East, for a distance of 103.62 feet to a mag nail set at the intersection of said southerly right of way and the westerly right of way of St. Patrick Street (49.5 foot wide);

Thence along said westerly right of way, South 04°20'42" West, for a distance of 14.00 feet to a mag nail set at the intersection of said westerly right of way and the southerly right of way of Court Street (25.90 foot wide);

Thence along said southerly right of way, South 86°03'15" East, for a distance of 214.76 feet to a mag nail set at the intersection of said southerly right of way and the westerly right of way of said N Sandusky Street;

Thence along said westerly right of way, South 04°13'11" West, for a distance of 171.57 feet to the **TRUE POINT OF BEGINNING**;

Containing a total of 1.216 acres, more or less, subject however to all covenants, conditions, restrictions, reservations and easements contained in any instrument of record pertaining to the above described tract of land.

Being a 0.470 acre part of Tax Parcel 519-432-11-026-000.
Being a 0.746 acre part of Tax Parcel 519-432-11-027-000.

All iron pins set are 3/4" inside diameter iron pipe being 30 inches in length with a 1" yellow plastic cap inscribed "Sands Decker".

Bearings are based on the Ohio State Plane Coordinate System, North Zone, NAD83 by GPS observation referenced to the ODOT VRS network.

This description is based upon actual field surveys performed on December, 2020 by Sands Decker, LLC.


Steven W. Newell
Ohio Registered
Professional Surveyor 7212

12/08/2020
Date

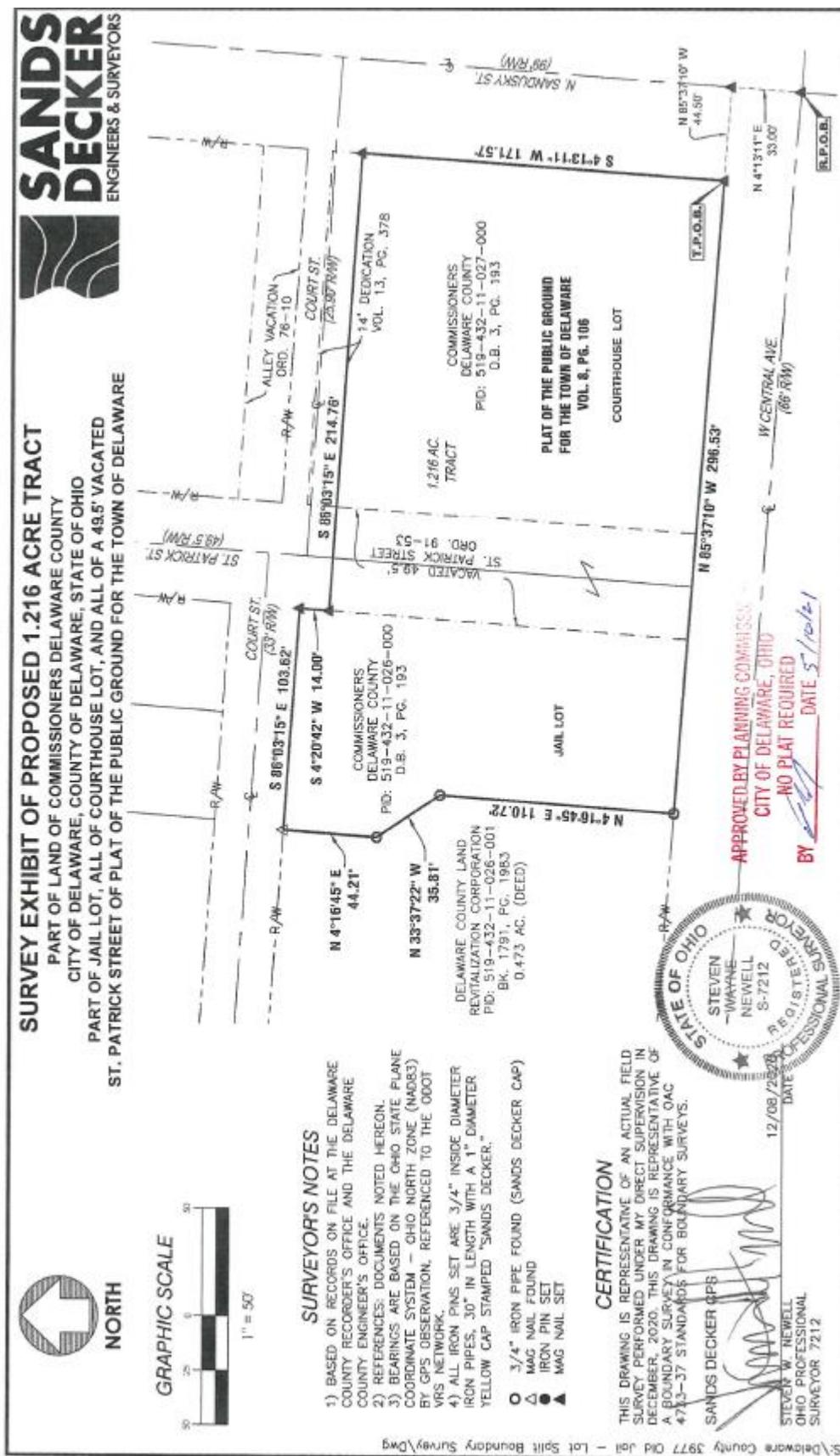


APPROVED BY PLANNING COMMISSION
CITY OF DELAWARE, OHIO
NO PLAT REQUIRED
BY  DATE 5/10/21

DESCRIPTION FOR CLOSING ONLY
 RPC Approval Required
 Municipal Approval Required
Delaware County Engineer

APPROVED BY PLANNING COMMISSION
CITY OF DELAWARE, OHIO
NO PLAT REQUIRED
BY  DATE 5/10/21

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

RESOLUTION NO. 21-459

IN THE MATTER OF APPROVING A COOPERATIVE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND THE DELAWARE COUNTY CONVENTION AND VISITORS BUREAU, INC.:

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

WHEREAS, the Director of Economic Development recommends approval of a Cooperative Agreement between the Delaware County Board of Commissioners and the Delaware County Convention and Visitors Bureau, Inc. to promote Polaris;

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NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following Cooperative Agreement with the Delaware County Convention and Visitors Bureau, Inc.:

COOPERATIVE AGREEMENT

This Cooperative Agreement (the "Agreement") is made effective this 27th day of May, 2021 (the "Effective Date") by and among the Board of Commissioners, Delaware County, Ohio (the "County"), a political subdivision formed under the laws of the State of Ohio; and the Delaware County Convention and Visitors Bureau, Inc. (the "CVB"), a non-profit organization located in Delaware County, Ohio (collectively referred to as the "Parties").

RECITALS:

- A. The County and the CVB understand and recognize the need to highlight the positives of Polaris Fashion Place (the "Polaris") and the businesses located there to foster growth and travel to Delaware County and maintain strong retailing of and patronage to the area.
- B. The Parties recognize the impact of the most recent events that occurred at Polaris and seek to highlight the positives of the mall and surrounding area.
- C. The purpose of this Agreement is to outline a funding partnership with the CVB in order to promote Polaris.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Contributions of the Parties.

By CVB:

The CVB will be responsible for the scope of work presented in the proposal letter dated April 6, 2021 attached as Exhibit A and the CVB has engaged a marketing consultant, Inspire PR Group to assist the CVB in creating a marketing strategy that will leverage and highlight the positive attributes of Polaris and the surrounding area. The CVB will work collaboratively with representatives from Polaris to make sure the marketing strategy is done in a manner that they support.

By County:

The County shall, pursuant to R.C. 307.693, provide the CVB with funding, not to exceed an aggregate amount of \$54,850, to be paid within thirty (30) days of the execution of this Agreement to help fund the marketing efforts described in Exhibit A..

Section 2. Terms and Termination. The Agreement shall be in force and effect as of the date first written above (the "Effective Date") and shall terminate one year from the Effective Date. The Agreement may be terminated early only by written consent of all the Parties subject to the Agreement.

Section 3. Binding Effect. This Agreement is a binding obligation on the Parties hereto.

Section 4. Representations of the County. The County represents that:

- a) it is duly organized and validly existing under the laws of the State of Ohio;
- b) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement;
- c) it is not in violation of or in conflict with any provisions of the laws of the State of Ohio that would impair its ability to carry out its obligations contained in this Agreement;
- d) it is empowered to enter into the transactions contemplated by this Agreement;
- e) it has duly authorized the execution, delivery and performance of this Agreement; and
- f) it will do all things in its power in order to assure the assumption of its obligations under this Agreement by any successor public body.

Section 5. Representations of the CVB. The CVB represents that:

- (a) It is duly organized and validly existing under the laws of the State of Ohio;
- (b) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement;

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- (c) it is not in violation of or in conflict with any provisions of the laws of the State of Ohio that would impair its ability to carry out its obligations contained in this Agreement;
- (d) it is empowered to enter into the transactions contemplated by this Agreement;
- (e) it has duly authorized the execution, delivery and performance of this Agreement; and
- (f) it will do all things in its power in order to assure the assumption of its obligations under this Agreement by any successor.

Section 6. Events of Default; Remedies. Any failure by the County or the CVB, as applicable, to observe and perform any of the obligations under this Agreement shall be considered an event of default hereunder. Upon the occurrence of an event of default, and after the expiration of thirty (30) days after written notice of the event of default is delivered to the defaulting party by the non-defaulting party, the non-defaulting party shall be entitled to pursue any and all remedies available at law or in equity.

Section 7. Miscellaneous.

(a) Assignment and Amendment. This Agreement may only be assigned and/or amended if approved in writing by all Parties hereto.

(b) Notices. All notices, certificates, requests or other communications hereunder shall be deemed to be sufficiently given on the next business day when mailed by overnight courier, or when personally delivered, or three (3) business days after deposit in the U.S. registered or certified mail, postage prepaid, addressed as follows, in each case with all delivery charges and postage prepaid:

To County: Delaware County, Ohio
91 N. Sandusky Street
Delaware, Ohio 43015
Attention: County Administrator

To the CVB: Destination Delaware (Delaware Ohio)
44 N. Liberty Street
Powell, Ohio 43065
Attention: Executive Director

(c) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.

(d) Severability. If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act, or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(e) Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and Agreements of the CVB and the County contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, stipulation, obligation or Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the CVB and the County in other than his or her official capacity, and neither the members of the Parties' respective governing bodies nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, stipulations, obligations or agreements of the CVB and the County, respectively, contained in this Agreement or in any other document. Any obligation the CVB and the County created by or rising out of this Agreement shall never constitute a general obligation, debt or bonded indebtedness of the CVB or the County or give rise to any pecuniary liability of the CVB and the County.

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

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6**RESOLUTION NO. 21-460**

**IN THE MATTER OF APPROVING THE 2020 LOCAL AGRICULTURAL EASEMENT
PURCHASE PROGRAM (LAEPP) COOPERATIVE AGREEMENT BETWEEN THE OHIO
DEPARTMENT OF AGRICULTURE AND THE DELAWARE COUNTY COMMISSIONERS:**

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

**2020 LOCAL AGRICULTURAL EASEMENT PURCHASE PROGRAM (LAEPP)
COOPERATIVE AGREEMENT BETWEEN
THE OHIO DEPARTMENT OF AGRICULTURE
AND
DELAWARE COUNTY COMMISSIONERS**

This Cooperative Agreement (hereinafter “Agreement”), effective as of this 27th day of May by and between the State of Ohio, Department of Agriculture, located at 8995 East Main Street, Reynoldsburg, Ohio 43068, (“ODA”) and DELAWARE COUNTY COMMISSIONERS located at 91 North Sandusky, Delaware, OH 43015 (“Local Sponsor”) (hereinafter collectively “Parties”), for the implementation of Local Agricultural Easement Purchase Program (“LAEPP”) as authorized under Ohio Revised Code (“ORC”) § 901.21, et. seq.

RECITALS

ORC § 901.21 authorizes the Director of Agriculture to utilize funding received from the Clean Ohio fund to purchase agricultural easements, in conjunction with eligible governmental and non-profit entities, for the purpose of protecting the agricultural uses of eligible land by limiting the non-agricultural uses of the land. To be eligible, the farm land must meet the criteria and further the purposes as provided in ORC § 901.22 and Ohio Administrative Code (“OAC”) § 901-2-01, et seq.

WHEREAS, as the context may require, the singular may be read as the plural and the plural as the singular;

WHEREAS, the Local Sponsor and ODA have mutual interests in maintaining land in agricultural production and preventing the conversion of agricultural lands to non-agricultural uses;

WHEREAS, ODA administers the LAEPP through its Office of Farmland Preservation;

WHEREAS, Local Sponsor administers a farmland protection program, is a certified local sponsor as defined in OAC § 901-2-07 for LAEPP, and has opportunities to acquire agricultural easements from landowners within the County of Delaware in the State of Ohio; and

WHEREAS, ODA and Local Sponsor have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby, covenant and agree as follows:

AGREEMENT

ARTICLE I: BENEFITS

The funding allocated to the Local Sponsor by ODA in this Agreement will be used for the protection of Ohio farm lands against conversion to non-agricultural use.

ARTICLE II: SCOPE OF WORK

2.1 The Local Sponsor shall be responsible for the duties and obligations set forth in “Exhibit A – Scope of Work,” attached hereto and incorporated herein by reference, in connection to the use of ODA funds as identified in Article IV of this Agreement. These funds are for the acquisition of agricultural easements on real estate (“Property”) described in the attached “Exhibit B – Property/Funds,” attached hereto and incorporated herein by reference.

2.2 Exhibit B shall be amended from time to time as Properties are selected in accordance with Exhibit A. For the purposes of this Agreement, “agricultural easement” shall be defined as provided in ORC § 901.21, et seq. Local Sponsor hereby represents and warrants that it will comply with all applicable federal and state laws, specifically including but not limited to OAC § 901-2-01, et seq. in performing its described obligations

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herein.

2.3 Local Sponsor warrants that it has the necessary background, education, training, and skills to provide ODA with the essential services required to carry out the Scope of Work included as Exhibit A herein. Local Sponsor further warrants that he/she will provide satisfactory efforts in the performance of the same. Satisfactory performance of work pursuant to these standards shall be determined in ODA's sole discretion. There will be no breach of this covenant if Local Sponsor is prevented from maintaining this standard by causes wholly beyond its control and without any default on its part.

2.4 All deeds will be drafted by ODA. Local Sponsor shall ensure that no changes are made to the deed at closing without the express knowledge and the prior written permission of ODA.

2.5 The agricultural easement closing ("Closing") in connection with each Property shall occur on a time and date mutually agreed to by the parties, but in no event later than June 30, 2021. Local Sponsor may receive an extension to this deadline with the prior written approval of ODA.

2.6 ODA may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Local Sponsor concerning the performance of the work described in this Agreement; including but not limited to, the performance of Closing Instructions. An example of which is provided in "Exhibit C – ODA Closing Instructions," which is attached hereto and incorporated herein by reference. Upon such notice and within a reasonable time, the Local Sponsor shall comply with such instructions and fulfill such requests to the satisfaction of ODA. It is expressly understood by the parties that the instructions and requests are for the sole purpose of performing the specific tasks requested and to ensure satisfactory completion of the work described in this Agreement.

2.7 The Local Sponsor shall retain responsibility for the management of the work, including the exclusive right to control or direct the manner or means by which the work described herein is performed. ODA retains the right to ensure that the work of the Local Sponsor is in conformity with the terms and conditions of the Agreement. Local Sponsor is to accept direction only from ODA in the performance of work contained in this Agreement and set forth in Exhibit A, Exhibit C, or other specialized instructions provided during the course of this agreement, unless explicitly stated otherwise in writing by ODA.

2.8 Nothing in this Agreement obligates ODA to complete the acquisition of an agricultural easement. There may be problems or issues which in the sole opinion of ODA require modifications, additions, or deletions to Exhibit B depending on the ability to obtain good and clear title and local input regarding the implementation of an agricultural easement. Additions to Exhibit B must have the written pre-approval from ODA. The additions and deletions must be made by a formal written amendment to this Agreement and must contain the same deadlines for closing for the acquisition of the agricultural easements and the request for payment.

ARTICLE III: TIME OF PERFORMANCE

3.1 The services as stated in Exhibit A shall be concluded by the Local Sponsor on or before June 30, 2021. Prior to the expiration of this Agreement, the parties may mutually agree to renew this Agreement as indicated in Paragraph 3.3 below.

3.2 This Agreement shall remain in effect until the work described in Exhibit A is completed to the satisfaction of ODA or until terminated as provided in Article VIII, Termination of Local Sponsor's Services, whichever is sooner. However, in no event will this Agreement continue beyond June 30, 2021, unless renewed as provided for herein.

3.3 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2021. This contract may be renewed, at ODA's option, for a period of one (1) year upon the same terms contained herein.

3.4 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of ORC § 127.16.

ARTICLE IV: ODA'S OBLIGATION TO FUND

4.1 Subject to the terms and conditions of this Agreement, upon execution of this Agreement, ODA shall obligate the sum of \$183,340.00 (One Hundred Eighty-Three Thousand Three Hundred Forty Dollars and 00/100 Dollars) for the acquisition by Local Sponsor of agricultural easements for the parcels approved by the Director of ODA and added by amendment to Exhibit B.

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4.2 ODA's contribution for the acquisition of each agricultural easement to be acquired by the Local Sponsor shall be up to but not more than seventy-five percent (75%) of the appraised value, as determined by ORC § 901.22 and OAC § 901-2-09, of the subject agricultural easement as provided in the Landowner Program Application.

4.3 If agricultural easements for all properties listed on Exhibit B are not closed, or payment for the agricultural easement is not requested by the mutually agreed closing date as provided in Exhibit A and previously stated herein, any remaining funds may be released from this obligation unless a written request to extend the closing or payment date is sent to ODA 30 days or less before such date, and approved in writing by ODA.

ARTICLE V: LOCAL SPONSOR CONTRIBUTION AND RESPONSIBILITIES

5.1 Local Sponsor must disburse one hundred percent (100%) of the payment, minus any cost or expense permitted by OAC § 901-2 *et seq.*, representing the agricultural easement purchase price, to the landowner at the time of Closing, as that term is hereinafter defined. Local Sponsor shall pay all costs of the agricultural easement procurement and will operate and manage each agricultural easement in accordance with the Local Sponsor's program, this Agreement, and any relevant federal or state laws, regulations, or codes.

5.2 Local Sponsor shall not use ODA funds to acquire an agricultural easement on a property in which an employee or board member of the Local Sponsor, with decision-making involvement in matters related to easement acquisition and management, or their immediate family or household member, has a property interest. Local Sponsor agrees to generally conduct itself in a manner so as to protect the integrity of agricultural easements which it holds, avoid the appearance of impropriety or actual conflicts of interests in its acquisition and management of agricultural easements, and in compliance with Article XVII: Ethics and Article XI: Conflicts of Interest, herein contained.

5.3 Local Sponsor agrees that it will not at any time, when the Local Sponsor is named as a Grantee in the agricultural easement, seek to acquire the remaining fee interest in the Property or otherwise enter into a partnership or joint venture wherein a partner has a fee interest in the Property.

5.4 When an agricultural easement violation is observed by Local Sponsor or reported to Local Sponsor by ODA, then Local Sponsor shall, after appropriate administrative and appeal rights, enforce the terms and conditions of the agricultural easement. Enforcement shall be pursuant to all available enforcement procedures; including legal and equitable remedies. In the event Local Sponsor should decide to utilize any legal or equitable remedy that involves the filing of a lawsuit, such use shall be subject to the mutual consent of the Parties prior to filing. The Local Sponsor agrees to completely and fully support ODA and work with ODA in the enforcement of this Agreement, the agricultural easement, and any agreement with a Landowner arising out of this Agreement. Failure to do so shall be a breach by the Local Sponsor of this Agreement.

5.5 Local Sponsor agrees to include ODA in any public news releases, events, brochures, fact sheets, or any other information distributed to the media ("Media Release") related to the acquisition of an agricultural easement on the Property listed in Exhibit B and acquired with ODA funds under this Agreement. Local Sponsor agrees to provide any Media Release to ODA for review and comment at least three (3) business days prior to its publication.

5.6 Local Sponsor agrees to comply with ODA guidelines and requirements regarding the disclosure of any confidential and/or potentially sensitive information about governmental and landowner issues, and such information shall not be disclosed without the prior written consent of ODA.

5.7 If Local Sponsor enters into a Cooperative Agreement with the United States Department of Agriculture – Natural Resources Conservation Service ("USDA-NRCS") to receive matching funds under its Agricultural Conservation Easement Program – Agricultural Land Easement ("ACEP-ALE") program, Local Sponsor is responsible for completion of all requested documents and services outlined in Cooperative Agreement with NRCS.

5.8 Any ODA funds received by Local Sponsor under this Agreement may not be utilized for reimbursement by Local Sponsor under any federal or state program, including ACEP- ALE.

ARTICLE VI: PAYMENT AND CERTIFICATION OF FUNDS

6.1 The Local Sponsor shall notify ODA when the funds for the agricultural easement are to be requested

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for payment.

6.2 Funds shall be paid to Local Sponsor via an escrow agreement as provided in “Exhibit H – Escrow Agreement,” or substantially similar to the same, and approved by ODA with the title company as arranged by Local Sponsor. Local Sponsor shall, upon receipt of the funds from ODA, deposit and endorse over the funds to the title agent pursuant to the escrow agreement. Such escrow agreement shall specifically provide that:

- a. ODA is a third-party beneficiary of the escrow agreement;
- b. Funds shall be returned to ODA if not disbursed to Landowner within 90 calendar days of the deposit of funds to the title agent unless otherwise agreed in writing by ODA; and
- c. Any other requirements as specified by ODA.

6.3 Local Sponsor shall provide ODA notice of the scheduled Closing not less than 90 calendar days prior to said Closing to ensure timely delivery of the funds.

6.4 In the event that funds are requested and placed with the title company in escrow, and that said funds are not disbursed at Closing within 90 calendar days of such deposit, the use of said funds shall be de-obligated and returned to ODA by the title agent unless the title agent has received an amendment to the escrow agreement which consents to holding the funds longer than 90 days.

6.5 In the event that any funds sent to the Local Sponsor are not endorsed or otherwise provided to the title agent pursuant to the requirements of this paragraph within 5 days of receipt, such check shall be returned to ODA unless written permission is provided by ODA to continue to hold the check.

6.6 Any periods of time longer than 90 calendar days to hold the funds shall require prior written amendment of this Agreement by the parties.

6.7 It is understood that ODA's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments due hereunder, this Agreement is terminated as of the date that the funding expires without further obligation to ODA.

6.8 ORC 126.30 is applicable to this Agreement and requires payment of interest on overdue payments. The interest charge shall be at the rate per calendar month which equals one-twelfth of the rate per annum prescribed by ORC 5703.47.

6.9 This Agreement is subject to ORC 126.07, which provides, in part, that orders under this Agreement shall not be valid and enforceable unless the Director of the Office of Budget Management first certifies that there is a balance in the appropriations not already obligated to pay existing obligations.

6.10 Under ORC 5739.02(B)(1) the State of Ohio is exempt from all state and local taxes. Neither the State of Ohio nor ODA agree to pay any taxes.

ARTICLE VII: AGRICULTURAL EASEMENT REQUIREMENTS

7.1 The Local Sponsor shall ensure that agricultural easements acquired under this Agreement meet the following requirements:

- a. Run with the land in perpetuity;
- b. Protect agricultural use and related conservation values by limiting nonagricultural uses of the land and specify prohibited uses along with permitted uses;
- c. Provide for the administration, management, and enforcement of the agricultural easement by the Local Sponsor or its successors;
- d. Provide that if this Easement is extinguished, terminated, or condemned, in whole or in part, Landowner shall reimburse ODA for the amount equal to the proportionate share of the fair market value of the Protected Property unencumbered by this Easement as required by ORC § 901.22(A)(2)(b), and which is further specified in the terms of that certain Deed of Agricultural easement; and

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e. All other provisions as required by ODA.

7.2 The form of any deed of agricultural easement used under this Agreement shall be drafted, approved, and provided by ODA. Any revisions or modifications thereto must be approved by ODA in writing prior to the Closing.

ARTICLE VIII: TERMINATION OF LOCAL SPONSOR'S SERVICES

8.1 ODA and Local Sponsor may mutually agree, at any time prior to the completion of services by the Local Sponsor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to the other Party.

8.2 ODA shall be entitled, by written or oral notice, to cancel this Agreement in its entirety or in part, for breach of any of the terms, and to have all other rights against Local Sponsor by reason of the Local Sponsor's breach as provided by law. A breach shall mean, but shall not be restricted to, any one or more of the following events:

a. Local Sponsor fails to perform the services by the date required or by such later date as may be agreed to in a written amendment to the Agreement, signed by ODA;

b. Local Sponsor breaches any warranty or fails to perform or comply with any term of this Agreement;

c. Local Sponsor makes any general assignment for the benefits of any creditors not previously authorized;

d. In ODA's sole opinion, Local Sponsor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;

e. Local Sponsor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency, or reorganization or relief from debtors; or

f. Any receiver, trustee or similar official is appointed for Local Sponsor or any of Local Sponsor's property.

8.3 Upon notice of suspension or termination, Local Sponsor shall cease all work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, and take all necessary steps to limit disbursements and minimize costs. If requested by ODA, Local Sponsor will 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, conclusions resulting therefrom, and any other matters ODA requires.

8.4 If the Local Sponsor materially fails to comply with the terms of this Agreement, ODA reserves the right to wholly or partially recapture funds provided hereunder in accordance with applicable regulations.

8.5 ODA cannot make commitments in excess of funds authorized by law or made administratively available. If ODA cannot fulfill its obligations under this Agreement because of insufficient funds, this Agreement will automatically terminate with no further obligation by ODA. The Local Sponsor understands and agrees that no action arising out of or related to this Agreement may be brought by the Local Sponsor more than one (1) year after the cause of action accrued, regardless of the form of action.

8.6 In the event this Agreement is terminated prior to its completion, Local Sponsor shall deliver to ODA all work products and documents which have been prepared by Local Sponsor in the course of providing services under this Agreement. All such materials shall become and remain the property of ODA, to be used in such manner and for such purpose as ODA may choose.

8.7 Local Sponsor agrees to waive any right to, and shall make no claim for, additional compensation against ODA by reason of such suspension or termination.

ARTICLE IX: RELATIONSHIP OF PARTIES

9.1 ODA and Local Sponsor agree that Local Sponsor shall be engaged by ODA solely on an independent

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contractor basis and Local Sponsor shall therefore be responsible for all of its own business expenses. Including, but not limited to, computers, phone service and office space. Local Sponsor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

9.2 While Local Sponsor shall be required to render services described hereunder for ODA during the term of this Agreement, nothing herein shall be construed to imply, by reason of Local Sponsor's engagement hereunder as an independent contractor, that ODA shall have or may exercise any right of control over Local Sponsor with regard to the manner or method of Local Sponsor's performance of services hereunder.

9.3 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

9.4 It is fully understood and agreed that the Local Sponsor is an independent contractor and is not an agent, servant or employee of ODA or the State of Ohio.

ARTICLE X: RELATED AGREEMENTS

10.1 The work contemplated in this Agreement is to be performed by Local Sponsor, who may subcontract without ODA's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Exhibit A, but which are required for its satisfactory completion. Local Sponsor shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by ODA. All work subcontracted shall be at Local Sponsor's expense.

10.2 Local Sponsor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind ODA to terms inconsistent with, or at variance from, this Agreement.

10.3 Local Sponsor shall furnish to ODA a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

ARTICLE XI: CONFLICTS OF INTEREST

11.1 Subject to the terms of paragraph 11.3 below, Local Sponsor shall not acquire, prior to the completion of the terms contained herein, any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of its functions and responsibilities with respect to the terms contained herein.

11.2 Subject to the terms of paragraph 11.3 below, should Local Sponsor acquire an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or involuntarily acquires any such incompatible or conflicting personal interest, Local Sponsor shall immediately disclose Local Sponsor's interest to ODA in writing. Thereafter, Local Sponsor shall not participate in any action affecting the terms of this Agreement, unless ODA determines that, in light of the personal interest disclosed, Local Sponsor's participation in any such action would not be contrary to the public interest, the statement of work, or the statutory and regulatory authority of ODA.

11.3 As an agency of the State of Ohio, ODA may not contract for services currently being performed for another state agency, so that the State actually pays more than once for the same services. Nor may ODA contract for services with another agency where the other agency's contracts could interfere with or conflict with the terms set forth in this Agreement or the regulatory authority and power of ODA. Therefore, Local Sponsor asserts that it has not entered into other agreements with another state or public agency for similar work as set forth herein that would negatively impact or interfere with the terms set forth herein or the regulatory power and authority of ODA. Nor shall Local Sponsor enter into similar agreements, without informing ODA in writing of the other agreements.

11.4 Charitable organizations shall continue to meet the requirements specified in OAC § 901- 2-04 and § 901-2-07.

ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

The work product and its component parts provided by Local Sponsor under this Agreement are considered "work for hire" and shall become the property of the State of Ohio and neither Local Sponsor, nor employees or

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anyone with whom it subcontracts shall claim or assert any right, title, or other interest in, the work product or any of its component parts. The State, and any person, agency, or instrumentality providing financial assistance for the work performed under this Agreement shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the work product, and Local Sponsor shall not obtain copyright, trademark, service mark, or other proprietary protection for the work product. Local Sponsor shall not include in any work product any matter for which there is proprietary protection, unless the owner and any person, agency, or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such protected matter. If any of the work products is subcontracted, the Local Sponsor shall bind the subcontractor to the terms of this Article.

ARTICLE XIII: RECORD KEEPING

13.1 Any payment required under this Agreement shall be for obligations incurred in performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the costs incurred.

13.2 All records shall be kept in a manner consistent with generally accepted accounting procedures. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Records shall be maintained for three years after the completion of the Agreement.

13.3 Upon ODA's request, Local Sponsor shall provide reasonable access and a right to examine, during normal business hours, any and all books, documents, and records necessary to ensure or review compliance of this Agreement to ODA.

ARTICLE XIV: CONFIDENTIALITY

14.1 Local Sponsor shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of ODA.

14.2 All provisions of this Agreement relating to "confidentiality" shall remain binding upon Local Sponsor in the event of cancellation.

ARTICLE XV: NONDISCRIMINATION OF EMPLOYMENT

Local Sponsor agrees to comply with all applicable federal, state, and local laws in the conduct of the terms herein, including but not limited to ORC 125.111. In the event that any provision of this Agreement conflicts with any law, rule, or regulation, said law, rule or regulation shall prevail.

ARTICLE XVI: ASSIGNMENT

16.1 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Local Sponsor, without the prior written consent of ODA.

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

ARTICLE XVII: OHIO ETHICS LAW REQUIREMENTS

17.1 Local Sponsor certifies that he/she has not given nor promised to give anything of value to any public official or employee of ODA or any other board, commission, or agency of the State of Ohio. Local Sponsor also certifies that he/she is in compliance with and will remain in compliance with all of the provisions of Ohio Ethics Law as provided by ORC102.03 and 102.04.

17.2 Local Sponsor affirms that, as applicable to Local Sponsor, no party listed in ORC 3517.13(I) and (J) or spouse of such party has made, as an individual, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees within the two previous calendar years.

17.3 Local Sponsor certifies that it does not have on its staff, payroll, or otherwise employed for monetary compensation or not, any employee who, within the past twelve months, was a public official or ODA employee or any other board, commission or agency of the State of Ohio who had the ability to make decisions regarding approval, disapproval, recommendation, rendering advice, investigation or otherwise exercised substantial

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administrative control over matters concerning Local Sponsor at the time of his/her state employment.

ARTICLE XVIII: LIABILITY

18.1 Each Party agrees to be responsible for their own liability resulting from the negligence or intentional acts or omissions of its trustees, officers, employees, and agents, including but not limited to patent or copyright infringement, while they are acting within the scope of this Agreement.

18.2 Each party to this Agreement shall be responsible for any breach of this Agreement, or negligent acts or omissions arising out of or in connection with this Agreement, or any other agreement entered into as a result of this Agreement, as determined by a court of competent jurisdiction, or as the parties may otherwise mutually agree. Nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party.

18.3 Each party is responsible for paying its own costs and attorney's fees that arise from defending any claims brought under the terms of this Agreement.

18.4 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

18.5 If Local Sponsor enters into a Cooperative Agreement with the United States Department of Agriculture – Natural Resources Conservation Service (“USDA-NRCS”) to receive matching funds under its Agricultural Conservation Easement Program – Agricultural Land Easement (“ACEP-ALE”) program, and to which ODA shall be obligated to act as party to or secondary beneficiary to that certain Cooperative Agreement and associated rights and responsibilities, Local Sponsor shall be responsible for any and all obligations which arise under or which are related to that Cooperative Agreement.

ARTICLE XIX: CONDITIONS AND WARRANTIES

19.1 Local Sponsor warrants that it is not listed with the Secretary of State for unfair labor practices, pursuant to ORC 121.23.

19.2 Local Sponsor affirmatively represents and warrants to the State that it is not subject to a finding for recovery under ORC 9.24, or that it has taken the appropriate remedial steps required under ORC 9.24 or otherwise qualifies under that section.

19.3 Local Sponsor warrants that he/she has no outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments provided to the Local Sponsor by the State pursuant to this Agreement may be applied against such liabilities currently owing or incurred in the future.

19.4 Local Sponsor agrees that if this representation and warranty is deemed to be false, the Agreement shall be void *ab initio*, and any funds paid by State hereunder shall be immediately repaid to State

19.5 Local Sponsor affirmatively represents that it does not and will not boycott any jurisdiction with whom the State can enjoy open trade during the contract period, in accordance with ORC 9.76.

ARTICLE XX: ENTIRE AGREEMENT AND WAIVER

20.1 This written Agreement constitutes the entire Agreement between Local Sponsor and ODA, and there are no other agreements between them, either oral or written, which relate to the work to be performed under this Agreement.

20.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties. No change to any provision of this Agreement shall be effective unless stated in writing and signed by both parties to this Agreement.

20.3 No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver or consent is in writing and signed by both parties to this Agreement. ODA may at its discretion, in event of a breach, notify Local Sponsor of the breach and allow the time specified by ODA to correct the breach.

20.4 A waiver by any Party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

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ARTICLE XXI: NOTICES

21.1 All notices, consents, requests, and other communications hereunder shall be in writing and shall be deemed to be given upon receipt thereof and shall be sent to the addresses set forth hereunder or to such other address as the other party hereto may designate by written notice transmitted in accordance with this provision. Electronic or facsimile notices are permitted when reasonable and upon approval by ODA.

1) In case of ODA to:
Jody Bowen
Ohio Department of Agriculture Office of Farmland Preservation
8995 East Main Street Reynoldsburg, Ohio 43068

2) In case of the Local Sponsor to:
Scott Stephens
Delaware County Commissioners c/o
Delaware Soil and Water and Conservation District 557 Sunbury Road
Suite A
Delaware, OH 43015-8656

21.2 Any and all notices and other documents and communications required to be given pursuant to this Agreement shall be deemed duly given: (a) upon actual delivery, if delivery is by hand or courier service; (b) upon receipt by the transmitting party of confirmation or answer back if delivery is by facsimile or electronic means; or (c) upon the third day following delivery into the U.S. mail if delivery is by regular U.S. mail. Each such notice shall be sent to the respective party at the address indicated first above or at any other address as the respective party may designate by notice delivered pursuant hereto.

ARTICLE XXII: CONSTRUCTION, APPLICABLE LAW, AND HEADINGS

22.1 Under ORC Chapter 2743 the State of Ohio has waived its immunity from liability and consented to be sued and have its liability determined in its Court of Claims in accordance with the same rules of law applicable to suits between private parties, except to the extent the determination of the State of Ohio's liability is subject to limitations set forth in ORC Chapter 2743.

22.2 In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

22.3 This Agreement and any claims arising in any way out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect.

22.4 All actions regarding this Agreement shall be formed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio and both parties irrevocably waive any objections to convenience of forum. In the event that this Agreement should become subject to the jurisdiction of the Court of Claims, the parties agree that such jurisdiction shall be binding and take precedence over any other forum selection clauses of this Agreement.

22.5 Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.

22.6 The headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

ARTICLE XXIII: DEBARMENT

Local Sponsor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or ORC 25.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Local Sponsor shall immediately repay to ODA any funds paid under this Agreement.

ARTICLE XXIV: ANTITRUST ASSIGNMENT

Local Sponsor agrees to assign to ODA all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

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ARTICLE XXV: EXCUSE OF PERFORMANCE

25.1 The performance of this Agreement, except for the payments of money for services already rendered, may be suspended by either Party for cause or causes beyond the reasonable control of such Party.

25.2 Such causes shall include, but not be limited to, acts of God, acts of war, riot, fire, explosion, accident, flood or sabotage; unforeseeable or unpreventable lack of adequate fuel, power, raw materials, labor or transportation facilities; unforeseeable changes in governmental laws, regulations, requirements, orders or actions; unforeseeable or preventable breakage or failure of machinery or apparatus; national defense requirements; injunctions or restraining orders; unforeseeable or unpreventable labor trouble, strike, lockout or injunction, provided that neither Party shall be required to settle or prevent a labor dispute against its own best judgment.

ARTICLE XXVI: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.

ARTICLE XXVII: DRUG FREE WORKPLACE

Local Sponsor agrees to comply with all applicable state and federal laws regarding drug-free and smoke-free workplace requirements and shall make good faith effort to ensure that all its employees will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way and will not violate Ohio Liquor Law or any other state or federal law regarding the sale, transfer, or consumption of alcoholic beverages

ARTICLE XXVIII: EXECUTION

This Agreement is not binding upon ODA unless executed in full.

A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature.

This instrument was prepared by: Ohio
Department of Agriculture 8995 East
Main Street Reynoldsburg, OH 43068-
3342

(Copy of exhibits available in the Commissioners' Office and Soil and Water Conservation Office until no longer of Administrative value).

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

7
RESOLUTION NO. 21-461

IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF DEVELOPMENTAL DISABILITIES AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR FACILITIES MANAGEMENT AND FACILITIES MAINTENANCE:

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

WHEREAS, the Director of Facilities recommends approval of an Intergovernmental Cooperation Agreement by and between the Delaware County Board of Developmental Disabilities and the Delaware County Board of Commissioners for Facilities Management and Facilities Maintenance;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves an Intergovernmental Cooperation Agreement by and between the Delaware County Board of Developmental Disabilities and the Delaware County Board of Commissioners for Facilities Management and Facilities Maintenance:

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INTERGOVERNMENTAL COOPERATION AGREEMENT

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 27th day of May, 2021, by and between the Delaware County Board of Developmental Disabilities, 7991 Columbus Pike, Lewis Center, OH 43035 (“DCBDD”) and the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), (hereinafter collectively referred to as the “Parties”).

Section 2 – Purpose

This Agreement is authorized by sections 9.482, 307.846, and 307.15, et seq., of the Revised Code. The purpose of this Agreement is for the County to assist the DCBDD with the Facilities Management of their property and provide facilities maintenance for the DCBDD. The County may perform the services as set forth in the Exhibit A, which is attached hereto and, by this reference, fully incorporated herein.

Section 3 – Division of Responsibilities

DCBDD designates Kristine Hodge, Superintendent, and Jared Zirillo, Director of Operations, as administrators and agents of DCBDD for Work performed in accordance with this Agreement. The County designates Jon Melvin, Director of Facilities, as administrator and agent of the County for Work performed in accordance with this Agreement. The administrators shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 4 – Compensation

DCBDD shall pay the County for the services provided. The rate shall be based upon the assigned County Employee’s total compensation rate performing the work, plus a \$5 overhead rate. The County shall utilize their work order software to track and invoice for all work performed.

DCBDD estimates a need of up to 80 hours per month for a not to exceed amount of \$40,000.00 for the initial term of this Agreement, i.e., July 1, 2021 through June 30, 2023. For each subsequent renewal period, the total amount of compensation shall include a 3% increase from the prior year. DCBDD will pay directly for the cost of all materials.

Compensation shall be paid based on invoices submitted to the DCBDD administrators by the County. DCBDD may request additional documentation to substantiate said invoices, and the County shall promptly submit documentation as needed to substantiate said invoices. DCBDD shall pay invoices within thirty (30) days of receipt.

Section 5 – Records

The Parties agree that each shall maintain their respective public records concerning the services provided under this Agreement, pursuant to the laws of the State of Ohio pertaining to public records.

Section 6 – Term

This Agreement shall take effect July 1, 2021 upon approval by all Parties hereto and shall continue in full force and effect until June 30, 2023, whereupon this Agreement shall then automatically renew for successive one (1) year terms, unless either Party gives written notice to the other Party, at least 60 days prior to the expiration of the then-current term, that it does not intend to renew the Agreement at the expiration of the then-current term. This Agreement may only be amended in writing with the mutual consent and agreement of the Parties.

Either Party may, upon 60 days written notice given to the other Party, suspend or terminate this Agreement for convenience and with or without cause. In the case of Termination, the County shall submit a final invoice within 60 days of the Notice of Termination for work completed up to the date of termination.

Section 7 – Legal Contingencies

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

Section 8 – Personnel

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

Section 9 – Equipment and Facilities

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

Section 10 – Insurance and Liability

Each Party shall, for the life of this Agreement, maintain comprehensive general liability insurance coverage, with

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minimum limits in the amount of \$1,000,000.00 each occurrence or equivalent and \$2,000,000.00 in the aggregate, and shall cause the other Party to be named as an additional insured on any applicable insurance policies.

Each Party agree to be responsible for the negligent acts and omissions of itself and its respective officers, employees, agents, and volunteers arising out of or in connection with this Agreement, and nothing in this Agreement shall impute or transfer any such responsibility from one Party to the other Party. Each Party is responsible for paying its own costs and attorney's fees that arise from defending any claims arising out of or in connection with this Agreement. In no event shall any Party to this Agreement be liable to the other Party for indirect, consequential, incidental, special, or punitive damages, including, but not limited to, lost profits, lost income, or loss of use.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 **Entire Agreement:** This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.
- 11.2 **Governing Law and Disputes:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio.
- 11.3 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 11.4 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.5 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

Exhibit A

Services may include, but not limited to, the following:

1. Provide routine maintenance services to include changing lights, painting, repairing office furniture and other day-to-day services. Be available for on-call maintenance issues.
2. Assist the DCBDD with contractors to understand how systems operate and service requirements and accept manuals, warranties and maintenance schedules. Keep all plans current and accurate. Assist the DCBDD to set up an annual service plan and maintenance contracts for certain services. These services include, but are not limited to, the following:
 - Heating and ventilation, including automated controls
 - Fire systems, including sprinkler and alarm systems
 - Retention pond fountains and maintenance
 - Emergency light testing
 - Electric backup generators
 - Elevator service and state inspections
 - Make modifications to insure handicapped accessibility and installation of adaptive and therapeutic equipment as necessary. Train staff on use of such equipment as necessary.
 - General upkeep of building (painting, wall patching, etc.)
3. Assist the DCBDD to develop specifications, solicit bids and make recommendations for service contracts for janitorial and grounds maintenance contracts.
4. The DCBDD desires to make ongoing improvements inside the building located at 7991 Columbus Pike Lewis Center, Ohio 43035 in an acceptable, allowable, and cost efficient manner to complete facility related projects (the "Improvements"). The Improvements may require a contract for professional design firms and design-build firms. The DCBDD shall enter into, administer, and pay for any necessary

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contracts for professional design services for the Improvements. The County shall administer the qualifications-based selection process, pursuant to section 153.65, et seq., of the Revised Code and advise the DCBDD regarding the contracts for professional design firms and design-build firms.

- 5. The DCBDD shall be permitted to enter into, administer, and pay for contracts for supplies and services with qualified firms, partnerships, associations, or corporations through the County’s membership in the State of Ohio Cooperative Purchasing Program. The County shall administer the administrative process, pursuant to 125.04 of the Revised Code and advise DCBDD regarding the purchase of supplies and services through the State of Ohio Cooperative Purchasing Program.

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

Other Business:

Commissioner Lewis wanted to discuss Targeted Community Alternatives to Prison (T-CAP) program voluntary at the county level.

9
COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis

-Participated in the Bridges/Community Action virtual meeting yesterday. One of the topics was increasing pay for Community Action employees.

8
ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-Would like to commend Tim Wilson on taking the initiative to promote the Polaris area.

9
COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Benton

-Attended the State Treasurer’s Advisory Board meeting. Interestingly enough, many on the call were talking about pay scales. Another topic was the Ohio Market Access Program which allow municipalities to get a loan for a cheaper rate and quicker amount of time (for a twelve month period). The idea of allowing for a longer loan period is being is being discussed.

-Regional Planning will meet virtually tonight.

-Olentangy Local Schools will have their groundbreaking for the new middle school at 5:30 PM.

-Townships, small cities and villages will receive money from the state.

-The Commissioners will be hosting an Open House for employees tomorrow from 1-3PM to showcase the renovations of the Historic Courthouse.

Commissioner Merrell

-There will be an Open House later this summer for the public to showcase the renovations of the Historic Courthouse.

-Mary Beth Freeman’s retirement part was yesterday.

-The first vaxamillion winner was drawn last night.

-Women’s Softball will have a game broadcasted on the network Saturday. This is the first time softball has been on national TV. The two teams playing will be Oklahoma University vs. University of Washington.

10
RESOLUTION NO. 21-462

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

It was moved by , seconded by 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; employment; compensation of a public employee or public official; for pending or imminent litigation; for collective bargaining.

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

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RESOLUTION NO. 21-463

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

RECESS AT 11:36 AM/RECONVENED AT 12:15 PM

RESOLUTION NO. 21-464

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

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

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

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

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

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

RESOLUTION NO. 21-465

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

Attendance Commissioners' Hearing Room:

- Michael Frommer, County Administrator
- Dawn Huston, Deputy County Administrator
- Aric Hochstettler, Staff Attorney
- Jennifer Walraven, Clerk to the Board Commissioners
- Sarah Dinovo, Assistant Clerk/Administrative Assistant
- Jane Hawes, Director of Communications
- Heather Van Hull, Communications/Legal Assistant Board of Commissioners
- Marisa Stith, Communications/Executive Assistant Board of Commissioners
- Jon Melvin, Director of Facilities
- Jared Zirillo, Director of Operations / Business Manager
- Patrick Brandt, Director of Emergency Communications
- Zachary Dowley, Economic Development Specialist
- Tim Wilson, Delaware County Convention & Visitor's Bureau Executive Director
- Rebecca Longsmith, Delaware County Soil & Water

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

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Jeff Benton

Jennifer Walraven, Clerk to the Commissioners