

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD AUGUST 26, 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**

**10:00 A.M. Public Hearing For Consideration Of The Drainage Improvement Petition For The Kingston Township Watershed 2017-2 Filed By Kathy Magee And Others**

**1  
RESOLUTION NO. 21-781**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD AUGUST 23, 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 August 23, 2021; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

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

**2  
PUBLIC COMMENT**  
 -None.

**3  
RESOLUTION NO. 21-782**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0825:**

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0825 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO' Increase</b>			
P2103838 (Lutheran Homes)	Residential Job and Family /FCFC	70161605-5342	\$25,500.00
P2103470 (Buckeye Ranch)	Residential Job and Family	22511607-5342	\$45,000.00
P2103366 (NorthEast Adopt)	Residential Job and Family	22511607-5342	\$15,000.00
P2101164 (Trane)	Facilities Services	10011105-5328	\$ 600.00
P2101555 (Zig Zag Lawn)	Lawn Care	10011105-5325	\$ 6,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>		
Vote on Motion	Mr. Merrell	Aye	Mrs. Lewis	Aye	Mr. Benton	Aye

**4  
RESOLUTION NO. 21-783**

**IN THE MATTER OF APPROVING MODIFICATION NO. 1 TO THE SOFTWARE LICENSE AND RELATED PROFESSIONAL SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY AUDITOR'S OFFICE AND DATA CLOUD SOLUTIONS, LLC:**

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

WHEREAS, the Auditor's Office entered into a contract with Data Cloud Solutions, LLC, for the purpose of licensing software and the provision of related professional services; and

WHEREAS, Data Cloud Solutions, LLC, has recently been acquired by Woolpert, Inc.; and

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WHEREAS, the County Auditor recommends approval of Modification No. 1 to the Software License and Related Professional Services Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves Modification No. 1 to the Software License and Related Professional Services Agreement:

**Modification No. 1 to Software License and Related Professional Services Agreement**

This Modification No. 1 to the Software License and Related Professional Services Agreement dated May 6, 2020 is made and entered into this 26th day of August, 2021 by and between the Delaware County, OH Auditor’s Office, 145 N. Union Street, Delaware, Ohio 43015 (“Customer”) and Data Cloud Solutions, LLC, 4 West Main Street – Suite 908, Springfield, Ohio 45501 (“DCS”) (hereinafter collectively referred to as the “Parties”).

**Article 1 – Amendment**

The Parties mutually agree to amend the Software License and Related Professional Services Agreement by changing the name of Data Cloud Solutions, LLC to Woolpert, Inc. (DBA: Data Cloud Solutions).

**Article 2 – Remaining Provisions**

All other terms and conditions of the Software License and Related Professional Services Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Modification No. 1.

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

**RESOLUTION NO. 21-784**

**IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY AUTOMATIC DATA PROCESSING BOARD, AND THE BOARD OF TOWNSHIP TRUSTEES OF GENOA TOWNSHIP FOR INFORMATION TECHNOLOGY SERVICES TO THE TOWNSHIP:**

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

WHEREAS, the County Auditor recommends approval of an Intergovernmental Cooperation Agreement with the Board of Township Trustees of Genoa Township for Information Technology Services to the Township;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves an Intergovernmental Cooperation Agreement between the Delaware County Board of Commissioners, the Delaware County Automatic Data Processing Board, and the Board of Township Trustees of Genoa Township for Information Technology Services to the Township:

**INTERGOVERNMENTAL COOPERATION AGREEMENT**

**Section 1 – Parties to the Agreement**

This Agreement is made and entered into this 26<sup>th</sup> day of August, 2021, by and between the Delaware County Automatic Data Processing Board and the Delaware County Board of Commissioners, 91 North Sandusky Street, Delaware, Ohio 43015 (collectively, the “County”), and the Board of Township Trustees of Genoa Township, 5111 South Old 3C Highway, Westerville, Ohio 43082 (the “Township”), (hereinafter referred to individually as “Party” or collectively 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 Township desires to enter into an agreement with the County that allows Delaware County Information Technology staff to provide Information Technology (“IT”) services to the Township, and the County is willing and able to provide such services. However, the County shall have no obligation to provide support for software or other products that the County does not also own and/or utilize. The County may provide other software support services at its discretion and subject to the prior approval of the County Chief Technology Officer.

This Agreement shall establish the terms and conditions for the support of Township IT services.

**Section 3 – Division of Responsibilities**

The Township shall pay, as specified below, for IT services provided. The County, via the Delaware County Data Center Administrator, shall administer the services on behalf of the Township, supervise the work of the staff, and advise the Township regarding IT projects. By entering into this Agreement, the Township authorizes the Delaware County Automatic Data Processing Board, its Director and staff to perform any and

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all actions, which in his/their professional judgment, are necessary to provide the services contemplated under the terms of this Agreement.

The specific services to be provided are more fully set forth in Exhibit A, which is attached hereto and, by this reference, fully incorporated herein.

**Section 4 – Compensation**

The Township agrees to pay to the County a monthly fee of \$250.00 per virtual server and \$12.00 per user account. Township and County agree there are currently two (2) virtual servers and eighty four (84) user accounts, and the Parties understand that the number of virtual servers and user accounts may increase or decrease.

The Township shall also, for all time exceeding fifteen (15) minutes in length that is spent on an individual service item, reimburse the County for the costs of personnel utilized in providing the service. County and Township acknowledge and agree that costs of personnel (salaries) will change as adjusted. This will be payable at the hourly rates set forth in Exhibit B, which is attached hereto and, by this reference, fully incorporated herein. The County shall submit monthly invoices that include the monthly fee and any reimbursable hourly charges incurred for the previous month. The Township shall pay all invoices within thirty (30) days of receipt thereof.

The Township may request for the County to provide document imaging services. The County will consult with the Township and develop a recommendation for imaging services. The Township recognizes the County has a significant investment in infrastructure to support the imaging system. The Township will pay for their own licenses that are required to complete the imaging project. Additionally the Township will pay the County \$300 per month for basic imaging services and storage up to 1TB.

**Section 5 – Records**

5.1 County and Township acknowledge and agree that Township data received by County in the course of providing the IT services under this Agreement is taken delivery of solely under the authority stated above and only to provide automatic or electronic data processing, data storage services, and/or other IT services to Township.

5.2 County and Township acknowledge and agree that this data is not a public record [as defined in R.C. Section 149.011(G)] of the County or any of its offices, agencies, etc., that County is not the keeper or person responsible for any record contained in such data or otherwise responsible for providing inspection or copies of the same and that any records contained within the same shall at all times be considered Township records and not properly the subject of a public records request directed to the County under R.C. Section 149.43.

5.3 However, to assist Township in meeting its responsibilities:

- (a) County will maintain full access by Township to the Township's data stored in its system.
- (b) If County receives a public records request for Township records contained in such data, it will inform the requester that the information requested is not a public record of the County and that their request will be forwarded to the Township Fiscal Officer as the individual responsible for response to requests for Township records. County will then immediately forward the request to the Township Fiscal Officer and advise them as to the circumstances of the request and its receipt.
- (c) The County will provide technical assistance to the Township, as requested by the Township Administrator, in compiling and delivering Township data responsive to a public records request.

5.4 If the County should ever determine that it is legally compelled by any means (including public records request under R.C. 149.43, deposition, interrogatory, request for documents, subpoena, civil investigative demand, etc.) to disclose Township data received or stored under this Agreement, it must make reasonable efforts to provide Township with prompt notice of such legal requirement prior to disclosure so that Township may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, County will: (i) furnish only that portion of the data that it is legally required to furnish; and (ii) cooperate with Township in reviewing such material for appropriate redaction prior to disclosure.

5.5 Upon termination or expiration of this Agreement, County will return all Township data to Township and shall not retain copies of all or any portion of it within its system.

5.6 The Parties agree that each shall maintain their respective public records concerning the services provided under this Agreement, pursuant to the laws of the State of Ohio pertaining to public records. The Township acknowledges and agrees to the County's applicable records retention schedules.

**Section 6 – Term**

This Agreement shall take immediate effect upon approval by all Parties hereto and shall continue in full force and effect for one year, whereupon this Agreement shall then automatically renew for a successive one (1) year term, unless either Party gives written notice to the other Party, at least thirty (30) 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. At least

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ninety (90) days prior to the expiration of the successive one (1) year renewal term, if it occurs, the Parties mutually agree to review the Agreement and the compensation stated herein in order to consider a replacement agreement. This Agreement may only be amended in writing with the mutual consent and agreement of the Parties. Either County or Township may terminate the Agreement upon providing thirty (30) days written notice to the other Party.

**Section 7 – Legal Contingencies**

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

**Section 8 – Personnel**

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

**Section 9 – Equipment and Facilities**

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

**Section 10 – Insurance and Liability**

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

The Township acknowledges that there is a risk of disruption of service to its IT equipment and service due to damage to the fiber optic cable and other equipment or system failures beyond the control of the County. As a condition of this Agreement, the Township agrees to release the County from any liability or costs due to such disruption of service. Otherwise, the Parties acknowledge that they are political subdivisions of the State of Ohio and lack the authority to indemnify and therefore, each Party agrees to be responsible for the negligent acts of its employees, agent, and volunteers.

**Section 11 – Miscellaneous Terms & Conditions**

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

**EXHIBIT A**

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

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1. Provision of dedicated file server for Township applications and data files
2. Provision of Township email
3. Provision of antivirus software (Township will pay for annual licenses)
4. Provision of a 400Mb shared Internet connection with the County
5. Provision of support of Extreme switches and access points at each location (Township will pay annual maintenance for equipment)
6. Provision of dedicated desktop support for Township owned equipment and Township users
7. The Township shall seek prior approval of the County Chief Technology Officer for any projects outside of Exhibit A, including but not limited to custom programming, prior to engaging IT staff.
8. Township Administrator shall be the Township’s primary contact for all communications and interactions with the Delaware County Automatic Data Processing Board, its director and staff for all specialized technical support and data processing services that are not considered to be routine maintenance or Help Desk support. Township understands that any project requiring these services requires planning and discussion with the Director so that the project can be scheduled accordingly with IT staff and other projects that may be a priority for the overall security and operations of County services.
9. By entering into this Agreement, the Township authorizes the Delaware County Automatic Data Processing Board, its Director and staff to perform any and all actions, which in his/their professional judgment, are necessary to provide the services contemplated under the terms of this agreement.
10. In the event the Township ceases use of software, the Township shall be solely responsible for any costs arising from the use, or cessation of use, thereof. The County shall not be required to assume any costs for Township software.

**EXHIBIT B**

Name	Hourly Rate	Hours	Total	OPERS	Medicare	Health Insurance	Wcomp	Total Cost
Curry Hoffman	36.15	1	\$ 36.15	\$ 5.06	\$ 0.53	\$ 4.10	\$ .36	\$ 46.20
Calvin Lawson	24.98	1	\$24.98	\$ 3.50	\$ 0.36	\$ .0	\$ .25	\$ 29.09
Paul Winters	24.98	1	\$24.98	\$3.50	\$0.36	\$ .0	\$ .25	\$ 29.09
Jason Montgomery	36.15	1	\$ 36.15	\$ 5.06	\$ 0.53	\$ 12.49	\$ .36	\$ 54.59
Ron Clayton	28.54	1	\$ 28.54	\$ 4.00	\$ 0.41	\$ 12.49	\$ .29	\$ 45.73
Mike Massaro	24.98	1	\$ 24.98	\$ 3.50	\$ 0.36	\$ 4.10	\$ .25	\$ 33.19
Shane Herbert	55.20	1	\$ 55.20	\$7.73	\$ .80	\$ 12.49	\$ .55	\$ 76.77

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

**6**  
**RESOLUTION NO. 21-785**

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BROWN AND CALDWELL FOR SCADA SERVICES FOR THE NORTHSTAR AND LOWER SCIOTO WATER RECLAMATION FACILITIES SCADA UPGRADES:**

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Brown and Caldwell for SCADA services for the Northstar and Lower Scioto Water Reclamation Facilities SCADA upgrades;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Brown and Caldwell:

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into this 26<sup>th</sup> day of August, 2021, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Brown and Caldwell, 445 Hutchinson Avenue, Suite 540, Columbus, Ohio 43235 (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

**1 SERVICES PROVIDED BY CONSULTANT**

1.1 The Consultant will provide SCADA services for the Northstar and Lower Scioto WRFs SCADA Upgrades (the “Services”).

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1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.

1.3 Services are defined in, and shall be rendered by the Consultant in accordance with, the following documents, by this reference made part of this Agreement:  
Exhibit A – Scope of Services and Fee Schedule

**2 SUPERVISION OF SERVICES**

2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the agent of the County for this Agreement.

2.2 The Sanitary Engineer or her designee shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

**3 AGREEMENT AND MODIFICATIONS**

3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the 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 the Fee Schedule noted in Section 1.3.

4.2 For all Services identified in the Scope of Services and Fee Schedule as “If Authorized” tasks, the fee for each authorized task shall be the fee specified in the Fee Schedule for said task. “If Authorized” tasks shall only be performed upon written Notice from the Sanitary Engineer. The total fee for all “If Authorized” tasks shall not exceed the amount set forth in Exhibit A for such Services without prior approval from the County.

4.3 Total compensation under this Agreement shall not exceed Amount (\$) 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 tasks as set forth in the Scope of Services.

**5 NOTICES**

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

Sanitary Engineer:

Name: Delaware County Sanitary Engineer’s Office  
Attn: Erik McPeek

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: emcpeek@co.delaware.oh.us

Consultant:

Brown and Caldwell

Name of Principal in Charge: Bruce E. Bassett, Jr

Address of Firm: 445 Hutchinson Ave, Suite 540

City, State, Zip: Columbus, Ohio 43235

Telephone: (614) 923.0866

Email: bbassett@brwncald.com

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**6 PAYMENT**

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

**7 NOTICE TO PROCEED, COMPLETION OF SERVICES, DELAYS AND EXTENSIONS**

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Sanitary Engineer and shall complete the Services no later than Date.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.
- 7.4 Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents, (2) acts of God, (3) failure of County to furnish timely information or to approve or disapprove Consultant's instruments of service promptly, and (4) faulty performance or nonperformance by Contractor, Contractor's independent consultants or contractors, or governmental agencies. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof.
- 7.5 While Consultant has made reasonable efforts to incorporate into its plan for the project any known current project impacts of the COVID-19 pandemic, Consultant has not accounted for, and is not responsible for, unknown future changes due to the COVID-19 pandemic, including, without limitation, additional restrictions by government agencies or others (such as the availability of the site for access or the availability of County or Consultant staff or others) to the extent they delay or otherwise impact the project. In that event, Consultant will notify the County and work in good faith to equitably address any unexpected impacts therefrom.

**8 SUSPENSION OR TERMINATION OF AGREEMENT**

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

**9 CHANGE/ADDITIONS IN SCOPE OF SERVICES**

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only be effective if approved in a writing signed by both Parties.

For Services in addition to those included in Section 1 as authorized or "if authorized," a scope and fee shall be negotiated and agreed to by both Parties prior to performance of the services. This Agreement shall be modified or amended in writing with the mutual consent and agreement of the Parties prior to performance of the additional services.

**10 OWNERSHIP**

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement

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10.2 Upon payment to consultant, the County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.

10.3 This section does not require unauthorized duplication of copyrighted materials.

**11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT**

11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or sub-consultants assigned to the Services as contemplated at the time of executing this Agreement.

11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

**12 INDEMNIFICATION**

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

**13 INSURANCE**

13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company authorized to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.

13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.

13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

**14 MISCELLANEOUS TERMS AND CONDITIONS**

14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor,



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Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services 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 Services to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

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

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Consultant 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

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**RESOLUTION NO. 21-786**

**IN THE MATTER OF APPROVING CHANGE ORDER NO. 02 TO THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND PETERSON CONSTRUCTION COMPANY FOR PROGRESSIVE DESIGN-BUILD SERVICES FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER HEADWORKS AND AERATION UPGRADES PROJECT:**

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

WHEREAS, the Delaware County Board of Commissioners entered into an agreement with Peterson Construction Company for the Olentangy Environmental Control Center Headworks and Aeration Upgrades Project; and

WHEREAS, Change Order No. 02 includes preliminary design phase services for an odor control system at the new screen building, buried piping improvements, closure and replacement of the underground fuel storage tank, and replacement of slide gates at the final clarifiers and authorizes an increase to the contract in the amount of \$177,500; and

WHEREAS, the Sanitary Engineer recommends approval of Change Order No. 02;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves Change Order No. 02 to the Agreement between the Delaware County Board of Commissioners and Peterson Construction Company for the Olentangy Environmental Control Center Headworks and Aeration Upgrades Project.

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

**For Consideration For Other Business:**

**RESOLUTION NO. 21-787**

**IN THE MATTER OF ACCEPTING AN ALLOTMENT OF TICKETS TO THE DELAWARE COUNTY FAIR FROM THE DELAWARE COUNTY AGRICULTURAL SOCIETY:**

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has a long history of cooperation with and support of the Delaware County Agricultural Society (the "Society") and the Delaware County Fair; and

WHEREAS, the Society, in the spirit of continued cooperation and appreciation and in order to promote the Delaware County Fair and Delaware County as a whole, has presented Delaware County with a donated allotment of tickets to the Delaware County Fair; and

WHEREAS, the Board wishes to use the allotment of tickets for the purpose of promoting the Delaware County Fair and Delaware County as a whole by fostering county employee attendance at the Delaware County Fair, encouraging economic development within Delaware County, and promoting tourism to and within Delaware County, all in accordance with section 307.07(B)(6) of the Revised Code;

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

Section 1. The Board approves accepting this allotment of tickets to the Delaware County Fair from the Delaware County Agricultural Society.

Section 2. The Board hereby declares that the allotment of tickets is accepted for the purpose of promoting the Delaware County Fair and Delaware County as a whole by fostering county employee attendance at the Delaware County Fair, encouraging economic development within Delaware County, and promoting tourism to and within Delaware County.

Section 3. The Board hereby authorizes the Delaware County Administrator to cause distribution of said

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tickets to visiting dignitaries, in order to further the purposes stated in Section 2 herein, and to cause the distribution of any remaining tickets to county employees via raffle.

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

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

**10**

**COMMISSIONERS’ COMMITTEES REPORTS**

Commissioner Benton

- Attended the Delaware Chamber event at the Old Jail last week.
- Participated in the Land Bank meeting yesterday.
- Participated in the Investment Advisory Committee meeting this morning.

Commissioner Lewis

- Participated in the Investment Advisory Committee meeting this morning.
- Received a message from CCAO concerning the number of counties participating in the opioid settlements.

Commissioner Merrell

- Regional Planning will meet tonight.
- Will be attending a CORSA meeting tomorrow.

**RECESSED AT 9:47 AM/RECONVENED AT 10:00 AM**

**8**

**RESOLUTION NO. 21-788**

**10:00A.M. - PUBLIC HEARING FOR CONSIDERATION OF THE KINGSTON TOWNSHIP WATERSHED #2017-2 DRAINAGE IMPROVEMENT PETITION FILED BY KATHY MAGEE AND OTHERS:**

It was moved by Mr. Benton, seconded by Mrs. Lewis to open the hearing at 10:00 A.M..

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

**RESOLUTION NO. 21-789**

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

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

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

**RESOLUTION NO. 21-790**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF THE KINGSTON TOWNSHIP WATERSHED #2017-2 DRAINAGE IMPROVEMENT PETITION FILED BY KATHY MAGEE AND OTHERS:**

It was moved by Mrs. Lewis, seconded by Mr. Benton to close the hearing at 11:06 A.M..

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

**RESOLUTION NO. 21-791**

**IN THE MATTER OF PROCEEDING WITH THE PETITION FOR THE KINGSTON TOWNSHIP WATERSHED #2017-2 DRAINAGE IMPROVEMENT, FILED BY KATHY MAGEE AND OTHERS, AND ORDERING THE DELAWARE COUNTY ENGINEER TO PROCEED WITH PREPARATION OF REPORTS, PLANS, AND SCHEDULES FOR THE PROPOSED IMPROVEMENT:**

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

WHEREAS, on March 17, 2021, a Drainage Improvement Petition to the Kingston Township Watershed

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#2017-2 Drainage Improvement was filed with the Board of Commissioners of Delaware County (the “Board”); and

WHEREAS, on June 15, 2021, the Board conducted a view of the proposed improvements; and

WHEREAS, on Thursday, August 26, 2021, the Board held the first hearing on the petition; and

WHEREAS, after hearing the preliminary report of the Delaware County Engineer and any evidence offered by any owner for or against the granting of the proposed improvement or for or against the granting of any laterals, branches, spurs, or change of route, course, termini, or manner of construction described in the petition, the Board is prepared to vote to determine whether to proceed with the project survey and design or to dismiss the petition, taking into consideration the petition, the preliminary report, and comments on the proposed improvements;

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

Section 1. The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the benefits of the proposed improvement will outweigh its costs. Accordingly, the Board hereby decides to proceed with the project survey and design.

Section 2. The Board hereby determines that the route and termini of the proposed improvement, and the manner of construction thereof, shall be as set forth in the Delaware County Engineer’s preliminary report.

Section 3. The Board hereby orders the Delaware County Engineer to prepare reports, plans, and schedules for the proposed Kingston Township Watershed #2017-2 Watershed Drainage Improvement. The Board hereby sets August 26, 2023, as the date by which the Delaware County Engineer shall file the reports, plans, and schedules, whereupon a public hearing date will be set and proper notification given to property owners in the affected watershed.

Section 4. THE BOARD HEREBY APPROVES ESTABLISHING A NEW ORGANIZATION KEY FOR THE KINGSTON TOWNSHIP WATERSHED #2017-2 DRAINAGE IMPROVEMENT PROJECT 40311486.

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

Section 6. This Resolution shall be effective immediately upon adoption.

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

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RESOLUTION NO. 21-792**

**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:**

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; employment; compensation of a public employee or public official; for pending or imminent litigation.

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

**RESOLUTION NO. 21-793**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

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

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

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

\_\_\_\_\_  
Barb Lewis

\_\_\_\_\_  
Jeff Benton

\_\_\_\_\_  
Jennifer Walraven, Clerk to the Commissioners