

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022

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

Present:
 Barb Lewis, President
 Gary Merrell, Commissioner

Absent:
 Jeff Benton, Vice President

1
 RESOLUTION NO. 22-68

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JANUARY 31, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on January 31, 2022; 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 Absent

2
 PUBLIC COMMENT
 -None.

3
 RESOLUTION NO. 22-69

IN THE MATTER OF APPROVING PURCHASE ORDERS:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2200448 (Property Worx)	Facilities Department	10011105-5325	\$8,275.76

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>
R2201589	CAREER STEP LLC	LMS RMS SYSTEM EMS FIRE CERT LIBRARIES	10011303 - 5301	\$ 13,650.00
R2201589	CAREER STEP LLC	MAINTENANCE FEE	10011303 - 5301	\$ 680.00
R2201901	PNC BANK	PNC MATERIALS	21011113 - 5200	\$ 500.00
R2201901	PNC BANK	PNC SERVICES	21011113 - 5300	\$ 5,000.00
R2201904	ENVIRO-CONSTRUCTION CO LLC	GORSUCH DRAINAGE IMPROVEMENT PROJECT	40311472 - 5301	\$246,920.00
R2201905	OHIO EDISON CO	EMS ELECTRIC SERVICES	10011303 - 5338	\$ 6,000.00
R2201912	GOVCONNECTION INC	QTY 14-IPADS	10011303 - 5201	\$ 6,302.80
R2201914	SENG SEWER FEE REFUND	CUSTOMER REFUNDS - 2022	66211900 - 5319	\$ 32,000.00
R2201961	HEALTH DEPARTMENT	2022 LITTER GRANT	22111502 - 5365	\$ 79,910.00
R2201985	FEECORP INC	CLEANING WET WELL AT LEATHERLIPS PS	66211900 - 5328	\$ 18,999.07
R2201989	AT & T MOBILITY LLC	EMS AIRCARDS	10011303 - 5315	\$ 16,000.00
R2202005	DETECTION INSTRUMENTS CORP	TWO ACRULOG H2S LOGGERS	66211900 - 5260	\$ 6,590.00
R2202005	DETECTION INSTRUMENTS CORP	DATA PLANS FOR THE ACRULOG H2S LOGGERS	66211900 - 5330	\$ 420.00
R2202005	DETECTION INSTRUMENTS CORP	TWO MANHOLE ANTENNAS	66211900 - 5228	\$ 1,190.00

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

R2202005	DETECTION INSTRUMENTS CORP	REPAIRS ON SIX EXISTING ACRULOGS	66211900 - 5328	\$ 3,000.00
R2202005	DETECTION INSTRUMENTS CORP	SHIPPING CHARGES	66211900 - 5331	\$ 200.00
R2202006	ARCADIS US INC	RESOLUTION 22-59	66211900 - 5301	\$ 49,900.00

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

**4
RESOLUTION NO. 22-70**

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Auditor’s Office is requesting that Steve Lewis, Jason Montgomery and Paul Winters attend a Cyber Security and Phishing Conference in Orlando, Florida from April 19-22, 2022 at the cost of \$4,685.68 (fund number 2031501).

The Facilities Department is requesting that Lance Hauersperger attend a Pump Repair & Maintenance virtual class from March 7-8, 2022 at the cost of \$1,195.00 (fund number 10011105).

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

**5
RESOLUTION NO. 22-71**

IN THE MATTER OF GRANTING THE ANNEXATION PETITION OF 23.398 ACRES OF LAND IN TROY TOWNSHIP TO THE CITY OF DELAWARE:

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

WHEREAS, on January 7, 2022, the Clerk to the Delaware County Board of Commissioners (the “Board”) received an annexation petition, filed by Andrew P. Wecker, an agent for the petitioner, of 23.398 acres, more or less, in Troy Township to the City of Delaware; and

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

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

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners grants the petition requesting annexation of 23.398 acres, more or less, from Troy Township to the City of Delaware.

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

**6
RESOLUTION NO. 22-72**

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

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

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

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

VIRTRA, INC.

SIMULATED FIREARM EQUIPMENT AND TRAINING SERVICES AGREEMENT

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

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

CONTRACT PRICE SUMMARY:Contract initiation payments (one time.)

Setup & Training: \$0.00
S&H \$70.00

Annual Recurring Payment:

Annual Contract \$1,960.36
Rate (STEP)

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

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

Exhibit A: General Terms and Conditions.

Exhibit B: Maintenance and Support Agreement.

Exhibit C: System Acceptance Check List.

Exhibit D: Services, Equipment, and Annual Rate Summary

EXHIBIT A**VIRTRA, INC.**

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

1. NON-EXCLUSIVE AGREEMENT

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

2. PRODUCTS AND SERVICES

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

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS, INCLUDING, WITHOUT LIMITATION, ELECTRONICALLY OR IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. THE PARTIES AGREE THAT ALL TERMS AND CONDITIONS ARE SET FORTH IN THIS AGREEMENT.

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

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

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

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

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

3. NECESSARY ACTS AND FURTHER ASSURANCES

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

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

4. COUNTING DAYS

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

5. PRICING

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

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

6. MODIFICATION

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

7. HAZARDOUS SUBSTANCES

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

8. SHIPPING AND RISK OF LOSS

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

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

9. INSPECTION AND RELATED RIGHTS

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

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

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

Agency's acceptance of the goods and services offered by VirTra hereunder shall be evidenced by an authorized signature on Installation Sign-off.

10. ADJUSTMENT BY COMPANY

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

11. INVOICING

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

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

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

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

12. AVAILABILITY OF FUNDING

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

13. PAYMENT

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

14. OTHER PAYMENT PROVISIONS

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

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

VirTra shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Purchase Order and such payment shall be identified under VirTra's federal and state identification number(s).

15. TERMINATION FOR CAUSE

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

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

16. TERMINATION FOR BANKRUPTCY

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

17. DISPUTES

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be subject to mediation and then binding arbitration.

18. ACCOUNTABILITY

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

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

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

20. MERGER AND ACQUISITION

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

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

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

other transfer of rights involving VirTra.

21. COMPLIANCE WITH ALL LAWS & REGULATIONS

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

22. FORCE MAJEURE

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

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

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

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

23. CONFLICTS OF INTEREST

VirTra shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations. In accepting this Agreement, VirTra covenants that it presently has no interest, and will not acquire any interest, direct or indirect financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. VirTra further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest, including but not limited to VirTra's employees and subcontractors.

24. INDEPENDENT CONTRACTOR

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

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

25. INSURANCE

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

26. DAMAGE AND REPAIR BY CONTRACTOR

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

28. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

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

29. INDEMNITY

Neither party shall not be liable for, and each party shall defend, indemnify and hold harmless the other party and the employees and agents of the other party (collectively, the "Indemnified Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of a party or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of a party. A party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which a party is obligated to indemnify, defend and hold harmless the other party as set forth herein.

30. WARRANTY; MAINTENANCE

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

31. COOPERATION WITH REVIEW

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

32. NON-DISCRIMINATION

VirTra shall comply with all applicable Federal, State, and local laws and regulations concerning nondiscrimination and equal opportunity in contracting. Such laws include , but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; and The Rehabilitation Act of 1973 (§§ 503 and 504), VirTra shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color , national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall VirTra discriminate in provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability ty, physical disability, medical condition, political beliefs, organizational a affiliations, or marital status. VirTra's violation of this provision shall be deemed a material default by VirTra giving Agency a right to terminate the Agreement for cause.

33. SEVERABILITY

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

34. NON-WAIVER

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

35. USE OF COMPANY'S NAME FOR COMMERCIAL PURPOSES

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

36. HEADINGS AND TITLES

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

37. ENTIRE AGREEMENT

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

38. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement,

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered a method described herein.

39. NOTICES

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

40. SURVIVAL

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

41. CONTRACT EXECUTION

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

42. AGENCY POINT OF CONTACT

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

43. THIRD PARTY BENEFICIARIES

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

44. AUTHORITY

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

45. DATA AND OWNERSHIP

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

Agency hereby grants VirTra a license to the Content for purposes including, but not limited to, measuring System performance and function, System maintenance, calibration, data aggregation for tests, training results, measurements, etc.

46. CONFIDENTIAL INFORMATION

"Confidential Information" shall include all material non-public information, written or oral, disclosed, directly or indirectly, through any means of communication or observation to a party or any of its affiliates or representatives by the other party. Neither party shall, without the other party's written permission, use or disclose Confidential Information other than in the performance of its obligations under this Agreement unless required by law. All Confidential Information shall remain the property of the party that developed or legally acquired the Confidential Information. Neither party shall acquire an ownership interest in the other party's Confidential Information by virtue of this Agreement. Each party shall defend, indemnify and hold the other party harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by that party and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the other party.

47. LIMITATION OF LIABILITY

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

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

48. OWNERSHIP PROPERTY

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

49. TAXES

Sales tax, end user tax, pass-through tax, value-added tax (VAT), transaction privilege tax, consumption tax, customs tax and/or duties are the sole responsibility of the Agency, and Agency agrees to reimburse VirTra for all applicable taxes that Agency is required to collect, regardless of the tax amount being excluded from VirTra's quotes or Agency's Purchase Orders.

50. TAX EXEMPTION

Agency must provide VirTra with a correct, valid and signed tax exemption certificate applicable to the specific goods and services purchased, relevant to the end use location, prior to VirTra invoicing. If an invalid tax exemption certificate is received or no tax exemption certificate is received, it will be the responsibility of the Agency to pay all required taxes. Additionally, it will be Agency's responsibility to obtain any tax refunds permitted if VirTra has collected and remitted taxes to a taxing authority.

**Exhibit B
Maintenance and Support Agreement**

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

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

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

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

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

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

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

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

6: Travel expenses if a VirTra technician must travel to customer location.

7: Overnight Shipping on all replacement or repaired parts⁵

8: Remote Assistance ⁶

1 - VirTra Operating Software Version will be automatically upgraded to the most current and applicable release during Annual visit. Hardware must be supportive of the new release and have enough hard drive space available on the system.

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

3- TASER X26 blue handle units found to be defective will be replaced with laser s1m cartridges and customer will be required to supply working TASER handle.

4- Limited Quantities and not available for all components.

5 - Where Available.

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

6 - Agency must allow remote access to System.

**Exhibit C
System Acceptance Checklist**

Initial Setup and Testing (Some items may not be applicable)
 Visually Inspect the System and Exclaim its Components
 Open each box/container and verify all items are accounted for
 Setup and Position Screen(s) and CPU Rack
 Layout Speakers, All Wiring and Balance all Sound Levels
 Install Training Platform (If Applicable)
 Install and Align all Projected Images and Camera Views Test all Weapon Kits and Wireless Accessories
 Ensure all User Manuals are Correct for System & Accessories
 Instructional Training (**Some items may not be applicable)
 Explain Proper Maintenance and Environmental Conditions
 Explain the importance of Firearm Safety
 Explain and Demonstrate how to Install Weapon Kits
 Explain and Demonstrate how to properly Maintain Weapon Kits
 ***Explain and Demonstrate how to use the VirTra Refill Station & Tank Filling
 Explain and Demonstrate how to Fill the Weapon Magazines
 Explain and Demonstrate how to Properly Boot Up and Shutdown the System
 Explain the functionality of Wake-On-LAN
 Explain and Demonstrate how to Run VOST™
 Explain the Different Scenario Types and how to run Each Type of Scenario
 Explain and Demonstrate how to Create Scenario Tags and Filters
 Explain and Demonstrate how to Create Scenario Playlists Explain and Demonstrate how to Add Scenario
 Favorites Explain and Demonstrate Proper Projector Alignment
 Explain and Demonstrate V-Tracking Camera Calibration through V-Tracking Tools Explain and
 Demonstrate how to use Diagnostics through V-Tracking Tools
 Explain Laser ID's vs Pulse Lengths
 Explain and Demonstrate how to Add a New Weapon Kit
 Explain and Demonstrate how to Enter a New Trainee
 Explain and Demonstrate how to assign Trainee's and Weapons
 Explain and Demonstrate how to Zero a Weapon
 Explain and Demonstrate Directional Surround Sound
 Explain and Demonstrate how to run and Configure VirTra Accessory Controller
 Explain and Demonstrate how to use VirTra Wireless Devices
 Explain and Demonstrate how to Run a Video Scenario Explain and Demonstrate Scenario Branching
 Explain and Demonstrate Scenario Debrief Explain and Demonstrate Presentation Mode
 ***Explain and Demonstrate Low-Light
 ***Explain and Demonstrate TMaR
 ***Explain and Demonstrate Breach Door
 Explain and Demonstrate how to Create a Marksmanship Trainee Set
 Explain and Demonstrate how to Boresight in Marksmanship
 Explain and Demonstrate how to Run a Free Fire Course in Marksmanship
 Explain and Demonstrate how to Run a Pre-built Course in Marksmanship
 Explain and Demonstrate how to Run Marksmanship Debrief
 Explain and Demonstrate how to Create and Import a Custom Target
 Explain and Demonstrate how to Create and Import a Custom Course of Fire
 Explain and Demonstrate how to use VirTra Remote Desktop
 Explain how to access VirTra Administration, including as an Administrator
 Explain all Icons and their functions of VirTra Administration
 Explain the Safety Precautions and Waiver Explain what consumable items are
 Explain the VirTra Warranty and Customer Service & Support Procedures Show client where manuals are
 located for System/Accessories
 ***Explain and Demonstrate how to run V-Author™
 ***Explain and Demonstrate how to use the VirTra Pano Edit Tool
 ***Explain and Demonstrate how to Import a V-Author™ Scenario
 ***Explain and Demonstrate how to Export a New V-Author™ Scenario
 ***Explain and Demonstrate how to Author a Single Screen Scenario

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

**Exhibit D:
Services, Equipment, and Annual Rate Summary**

Product Code	Product Description	Quantity
V-TF	VirTra's patented V-Threat-Fire™ return-fire-simulator device. Attaches via integrated belt clip to deliver a safe and adjustable electrical impulse to trainee. Enhances realism and simulates physical threats during VirTra Training. No eye protection required. Requires wireless station, included. Requires VOS 5,0.36 or higher to integrate.	2.00
VATU-FLT-TLR1	Model TLR-1 laser-based weapon mounted flashlight. Not compatible with filter flashlight (Requires low light training).	3.00
VLSI-SHG	Non-eject shotgun laser insert for all 12 gauge pump action shotguns. Please contact us to confirm weapon compatibility.	2.00
VTRK-G22	Micro-switch activated tetherless handgun recoil kit for the Glock 22. Includes one magazine (All recoil kits convert real firearms which must be supplied by the customer).	2.00
Annual Contract		\$1,960.36

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

**7
RESOLUTION NO. 22-73**

IN THE MATTER OF AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DELAWARE COUNTY PROSECUTOR’S OFFICE, THE DELAWARE COUNTY BOARD OF COMMISSIONERS, AND THE DELAWARE COUNTY SHERIFF’S OFFICE REGARDING FUNDING FOR A GRAYKEY MOBILE DEVICE FORENSIC TOOL:

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

WHEREAS, the Sheriff, Sheriff’s Office Staff, and the Delaware County Prosecutor’s Office recommend the following Memorandum of Understanding between the Delaware County Prosecutor’s Office, the Delaware County Board of Commissioners, and the Delaware County Sheriff’s Office regarding funding for a Graykey Mobile Device Forensic Tool;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves, and authorizes the County Administrator to execute, the following Memorandum of Understanding between the Delaware County Prosecutor’s Office, the Delaware County Board of Commissioners, and the Delaware County Sheriff’s Office regarding funding for a Graykey Mobile Device Forensic Tool:

MEMORANDUM OF UNDERSTANDING REGARDING FUNDING FOR A GRAYKEY MOBILE DEVICE FORENSIC TOOL

This Memorandum of Understanding ("MOU") is entered into this February 7, 2022 by and between the Delaware County Prosecutor ("Prosecutor"), whose principal place of business is located at 145 North Union Street, 3rd Floor, Delaware, Ohio 43015, Delaware County Board of Commissioners ("Board"), whose principal place of business is located at 91 North Sandusky Street, Delaware, Ohio 43015, and the Delaware County Sheriff’s Office ("Sheriff"), whose principal place of business is located at 149 N. Sandusky Street, Delaware, Ohio 43015 (individually "Party," collectively, "Parties").

1. PURPOSE

This MOU states the terms and conditions under which the Prosecutor will transfer funds from the Prosecutor's Law Enforcement Trust Fund Account ("LETF") to the Sheriff for the Sheriff to contract and pay for the acquisition and licensing of a GrayKey Mobile Device Forensic Tool ("GrayKey").

2. TERM

The term of this MOU shall be effective on and be inclusive of the date the last Party signs this MOU and continue through December 31, 2022, unless otherwise terminated as provided in this MOU.

3. RENEWAL

This MOU may be renewed for any term as agreed to in writing and signed by the Parties.

4. SCOPE OF SERVICES

The Prosecutor may expend LETF monies, consistent with the Prosecutor's LETF internal control policy, for law enforcement purposes that the Prosecutor determines to be appropriate pursuant to R.C. 2981.13(C)(2)(a)(v). The Prosecutor desires that the funds that are the subject of this MOU be used to acquire a GrayKey device to assist in criminal investigations and

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

prosecutions and has determined that this is an appropriate law enforcement expenditure under R.C. 2981.13(C)(2)(a)(v) and is consistent with the Prosecutor's LETF internal control policy.

A. Prosecutor Responsibilities

- i. During the term of this MOU, the Prosecutor shall, upon receipt of a price quote from the Sheriff, transfer to the Sheriff up to \$28,070.00 of the Prosecutor's LETF monies to be used for law enforcement purposes. Such funds are to be used by the Sheriff to pay the costs of the initial one year term to acquire and utilize GrayKey as indicated in the attached price quote, Exhibit A.
- ii. Once transferred, the Prosecutor shall have no further responsibility for the use and/or management of the transferred LETF funds, except as requested by the Prosecutor to receive signed written documentation from the Sheriff evidencing use of the funds for the intended purpose.

B. Sheriff Responsibilities

- i. The Sheriff shall use the funds it receives from the Prosecutor pursuant to this MOU to contract and pay for the acquisition and use of GrayKey.
- ii. The Sheriff shall be responsible for contracting for GrayKey and retain all responsibility, control, and management over the contract.
- iii. The Sheriff, as requested by the Prosecutor, shall provide to the Prosecutor signed written documentation evidencing use of the funds for the intended purpose.
- iv. If the funds are not used to acquire GrayKey or if there are any remaining funds after GrayKey is acquired, the Sheriff shall immediately return all the funds or any remaining funds to the Prosecutor.

5. MAXIMUM PAYMENT

The maximum amount payable pursuant to this MOU is \$28,070.00.

6. NO ALTERNATE FUNDS

The Sheriff fully understands and acknowledges that the full extent of the Prosecutor's financial responsibility under this MOU is limited to only to the granting of the LETF funds that are the subject of this MOU.

7. PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS

The Parties to this MOU are political subdivisions and are unable to indemnify. As a result, the Parties shall be individually and solely responsible for their own negligence, actions, inactions, and/or omissions and/or the negligence, actions, inactions, and/or omissions of their respective board members, officials, officers, directors, employees, agents, representatives, and/or volunteers resulting from the performance of this MOU or otherwise.

8. TERMINATION

Except as otherwise stated in this MOU, this MOU may be terminated as follows:

A. Convenience:

Any Party may terminate this MOU at any time and for any reason by giving at least 7 days advance notice, in writing, to the other Parties.

B. Breach or Default:

Upon breach or default of any of the provisions, obligations, or duties embodied in this MOU, the aggrieved Party may provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a reasonable period of time. If the breach or default is not satisfactorily remedied within the stated period of time, this MOU may, at the election of the aggrieved Party, be immediately terminated. The terminating Party shall provide prompt written notice of the termination to the other Parties.

Termination under this section will relieve the Parties of any and all further obligations under this MOU. The Parties, without limitation, retain all such other and further rights and

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

remedies as are available to them at law or in equity.

9. WAIVER

The waiver of any requirement of this MOU or any occurrence of breach or default is not and shall not be interpreted as a waiver of any such subsequent occurrences. If any Party fails to perform an obligation(s) under this MOU and that failure(s) is (are) waived by the other Parties, that waiver will be limited to the particular failure(s) so waived and will not be deemed to waive any other failure(s).

10. NOTICES

All notices that may be required by this MOU or by operation of any rule of law must be sent via certified US mail, return receipt requested, by nationally recognized and reputable overnight courier, return receipt requested, by email, read receipt requested, or hand delivered to the following individuals at the following addresses and will be effective on the date sent or hand delivered:

BOARD

Tracie Davies
Delaware County Administrator 91
North Sandusky Street Delaware,
Ohio 43015

Email: TDavies@co.delaware.oh.us

SHERIFF

Dean Stelzer
Chief Business Officer
Delaware County Sheriff 149
N. Sandusky Street Delaware,
OH 43015

Email: dstelzer@co.delaware.oh.us

PROSECUTOR

Nicole Ford
Executive Administrator
Delaware County Prosecutor's Office 145
North Union Street, 3rd Floor
PO BOX 8006
Delaware, OH 43015

Email:
nford@co.delaware.oh.us

11. AUDIT

In connection with the funds received under this MOU, the Sheriff agrees to submit to audit and accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority.

12. HEADINGS

The subject headings of the paragraphs in this MOU are included for purposes of convenience only and do not affect the construction or interpretation of any of its provisions.

13. DRAFTING

This MOU is deemed to have been drafted by all Parties, and no interpretation shall be made to the contrary.

14. SEVERABILITY

The provisions of this MOU are severable and independent, and if any provision is

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, will nevertheless be binding and enforceable.

15. COUNTERPARTS

This MOU may be executed in counterparts.

16. SIGNATURES

Any person executing this MOU in a representative capacity hereby warrants that he/she has authority to sign this MOU or has been duly authorized by his/her principal to execute this MOU on the principal's behalf and is authorized to bind the principal.

17. NO THIRD PARTY BENEFIT

The terms and conditions of this MOU are for the benefit of the Parties only. This MOU does not benefit any third parties or give rise to or create any third party rights or causes of action.

18. ENTIRE CONTRACT

This MOU constitutes the entire understanding and agreement between the Parties and supersedes all prior understandings and agreements/contracts, written or oral relating to the subject matter hereof. It may be amended only in writing with the mutual written and signed consent of the Parties.

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

**8
RESOLUTION NO. 22-74**

IN THE MATTER OF APPROVING AN END USER LICENSE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY SHERIFF'S OFFICE, AND GRAYSHIFT, LLC FOR A GRAYKEY MOBILE DEVICE FORENSIC TOOL:

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

WHEREAS, the Sheriff and Sheriff's Office Staff recommend approval of an End User License Agreement between the Delaware County Board of Commissioners, the Delaware County Sheriff's Office, and Grayshift, LLC for a Graykey Mobile Device Forensic Tool;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the End User License Agreement between the Delaware County Board of Commissioners, the Delaware County Sheriff's Office, and Grayshift, LLC for a Graykey Mobile Device Forensic Tool:

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

GRAYSHIFT, LLC

END USER LICENSE TERMS

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING GRAYSHIFT-SUPPLIED SOFTWARE AS PART OF THE GRAYSHIFT PRODUCT (THE "PRODUCT") CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

THIS PRODUCT CONTAINS CERTAIN SOFTWARE ("SOFTWARE") AND OTHER PROPRIETARY MATERIAL, THE USE OF WHICH IS SUBJECT TO THIS END USER SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT CLICK "I AGREE" AND DO NOT USE THE SOFTWARE. YOUR CLICKING "I AGREE" OR USING THE PRODUCT OR SOFTWARE INDICATES THAT YOU ACCEPT THESE TERMS. IF YOU DO NOT AGREE WITH ALL TERMS, YOU MUST RETURN THE PRODUCT, ALL MANUALS AND DOCUMENTATION, AND PROOF OF PAYMENT AND DISCONTINUE USE OF THE SOFTWARE. WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL BY OR ON BEHALF OF GRAYSHIFT SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY. IF YOU HAVE ORDERED THIS PRODUCT, GRAYSHIFT'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS.

1. ACCEPTANCE AND DELIVERY. Software will be provided by electronic means. Acceptance of Software ("Acceptance") shall be automatic upon the successful completion of Grayshift's standard installation procedures on the Product.

2. LICENSE GRANT. Subject to the terms of this Agreement and for the consideration specified in the Order (defined below), Grayshift, LLC ("Grayshift") hereby grants to you ("Licensee" or "You") a limited, revocable, nontransferable, non-assignable, non-sublicensable, non-exclusive license to use and allow Authorized Users to use the Software, in object code form, solely as such Software is embedded in proprietary equipment provided herewith ("Product") and solely for purposes of accessing mobile devices ("Devices") in your possession or control. You may only use the Product at the authorized physical locations (the "Authorized Locations") specified in your online order (the "Order") or that you have otherwise registered with Grayshift and you acknowledge and agree that in order for the Product to function properly in online mode, you must be connected to the Internet. When you are using the Product in offline mode, you do not need to be connected to the Internet. Grayshift may use certain third-party monitoring tools to ensure that you are in compliance with the foregoing restrictions, which such tools may be subject to Third Party Components terms as further described herein. For purposes of this Agreement, "Authorized Users" means collectively, employees, agents, or contractors of Licensee accessing or using the Product.

3. THIRD PARTY COMPONENTS. The Software makes use of or otherwise incorporates third party components, including certain Google Maps features and content. Use of Google Maps features and content is subject to the then-current versions of the: (1) Google Maps/Google Earth Additional Terms of Service at https://maps.google.com/help/terms_maps.html; and (2)

Google Privacy Policy at <https://www.google.com/policies/privacy/>.

4. LICENSE RESTRICTIONS. Notwithstanding anything to the contrary in this Agreement, Licensee will not (or allow an Authorized User to): (a) modify any Product; (b) reverse compile, reverse assemble, reverse engineer or otherwise translate all or any portion of any Product; (c) pledge, rent, lease, share, distribute, sell or create derivative works of any Product; (d) use any Product on a time sharing, service bureau, application service provider (ASP), rental or other similar basis; (e) make copies of any Product, except as provided for in the license grant above; (f) remove, alter or deface (or attempt any of the foregoing) proprietary notices, labels or marks in any Product; (g) distribute any copy of any Software to any third party, including without limitation selling any Product in a secondhand market; (h) use any Software other than with Products provided by Grayshift; (i) deactivate, modify or impair the functioning of any disabling code in any Software; (j) circumvent or disable Grayshift copyright protection mechanisms or license management mechanisms; (k) use any Product in violation of any applicable Law or to support any illegal activity; or (l) use any Product to violate any rights of any third party. Grayshift expressly reserves the right to seek all available legal and equitable remedies to prevent any of the foregoing and to recover any damages or costs resulting from any of the foregoing.

5. FEES. Licensee shall pay the license fees set forth in the relevant Purchase Order for the Software and Product. Licensee and all Delaware County, Ohio boards, departments, offices, and agencies thereof are exempt from all federal, state, and local taxes. As such, the County shall not be invoiced for and shall not pay any taxes. A tax exempt certificate shall be provided to Grayshift upon request. Any portion of any amount payable

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

hereunder that is not paid when due will accrue interest at two percent (2%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

6. **SUPPORT.** Grayshift will provide support services (including updates and upgrades) for the Software as specified in the Order and in accordance with the support terms located at <https://grayshift.com>.

7. **TITLE.** As between the parties, Grayshift and its licensors retain all right, title, and interest, including, without limitation, all intellectual property rights to the Product. Licensee understands that Grayshift may modify or discontinue offering the Product at any time. The Product is protected by the copyright laws of the United States and international copyright treaties. This Agreement does not give Licensee any rights not expressly granted herein. This Agreement does not constitute a sale of the Product or any portion or copy of it. All rights not granted are reserved for Grayshift.

8. **LIMITATION OF LIABILITY.** UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM USE. GRAYSHIFT'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE FOR THE PRODUCT.

9. **LICENSEE WARRANTIES.** Licensee represents, warrants and covenants to Grayshift that (a) only Authorized Users of Licensee who have obtained any necessary consents and approvals pursuant to applicable laws shall be permitted to use any of the Grayshift Products in connection with any Devices; (b) Licensee and its Authorized Users shall only use the Products and Software in compliance with all applicable laws; and (c) Licensee and its Authorized Users shall only use the Products and Software in accordance with the consents and approvals obtained pursuant to applicable laws.

10. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH IN THIS AGREEMENT, GRAYSHIFT PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, QUIET ENJOYMENT, INTEGRATION, TITLE, NON-INTERFERENCE AND NON-INFRINGEMENT. FURTHER, GRAYSHIFT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS

Page 2 of 6
SWRS FINAL 1.7.2021

THAT THE PRODUCT OR SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR THAT THE PRODUCT, SOFTWARE OR WRITTEN MATERIALS WILL BE CORRECT, ACCURATE, OR RELIABLE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. SHOULD THE PRODUCT PROVE DEFECTIVE FOLLOWING LICENSE, LICENSEE (AND NOT GRAYSHIFT) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR, EXCEPT AS MAY OTHERWISE BE PROVIDED BY A GRAYSHIFT RESELLER OR SUPPORT PROVIDER.

11. **CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS.** Licensee, Licensees employees or agents who require access in order to perform hereunder and all final users of the Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information, as defined below, nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Grayshift's rights therein, at all times exercising the highest duty of care. Further, the Receiving Party shall not attempt to use any Confidential Information to discover, reverse compile, reverse assemble or reverse engineer the Product, including by removal, disassembly or alteration of any of the Product's components, whether internal or external. Receiving Party agrees to restrict access to Grayshift's Confidential Information to those employees or agents who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Grayshift.

11.1. For the purposes of this Agreement, "Confidential Information" means any proprietary, trade secret, financial, technical and non-technical information related to Grayshift's business and current, future and proposed products and services and any derivatives therefrom containing, including, referring to, or otherwise reflecting and/or generated from such Confidential Information. Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, contents, features, functions and solutions of Grayshift's software or product offerings (including the Product and the Software), user manuals (including the Product User's Manual); (ii) information related to Grayshift's research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans; and (iii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as "confidential" or "proprietary."

11.2. Confidential Information shall not include any

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

information that is (i) already known to the Receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with Grayshift that rightfully acquired such information; or (iv) communicated to a third party by the Receiving Party with Grayshift's express written consent.

11.3. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order, Ohio Public Records Law pursuant to Chapter 149 of the Ohio Revised Code, or other judicial or governmental process shall not be considered a breach of this Agreement; provided the Receiving Party promptly notifies Grayshift in writing of the requested disclosure. At Grayshift's own expense, Grayshift may oppose such disclosure by obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

TERM AND TERMINATION. This Agreement shall continue until terminated as set forth herein. Notwithstanding the foregoing, the license to any Product is only during the license term applicable to such Product. The license term shall be determined in the Order. Grayshift may revoke such license and/or terminate this Agreement immediately if Licensee violates any provision of this Agreement. Licensee may terminate this Agreement at any time and for any reason with 30 days written notice to Grayshift. Upon early termination by either party, Grayshift shall be entitled to receive compensation for any services performed hereunder through the date specified on the notice as the effective date of termination. Any termination of this Agreement shall terminate the licenses granted hereunder. All Confidential Information, Products, Software and/or derivatives therefrom delivered pursuant to this Agreement shall be and remain the property of the Grayshift, and, to the extent consistent with Ohio law, upon expiration or termination of this Agreement for any reason, Licensee shall destroy (or return, at Grayshift's election) (i) the Product; (ii) all hardware that contains copies of the Software; and (iii) all materials in the possession of Licensee in any medium that contain, refer to, or relate to all other written, printed, or tangible materials containing Confidential Information; and (iv) any derivatives therefrom, and shall so certify to Grayshift that such actions have occurred. No such material shall be retained or used by the Receiving Party in any form or for any reason except as required by Ohio law.

Except for the license and except as otherwise expressly provided herein, the terms of this Agreement, including the Confidentiality and Non-Disclosure obligations in Section 11 hereto, shall survive expiration and termination. Notwithstanding any other provision of this Agreement, the obligations of the parties as to Confidential Information shall remain binding in perpetuity until such information no longer

Page 3 of 6
SWRS FINAL 1.7.2021

qualifies as Confidential Information or until Grayshift sends the Receiving Party written notice releasing the Receiving Party from its obligations under Section 11 hereto, whichever occurs first.

13. GENERAL INDEMNITY. Each party agrees to be responsible for any negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in this Agreement, with the exception of Section 14, shall impute or transfer any such responsibility from one to the other.

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

15. GOVERNMENT USE. If Licensee is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product or any related documentation is restricted in accordance with the Federal Acquisition Regulation 12.212 for civilian agencies and the Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Product and documentation is a "commercial item", "commercial computer software" and "commercial computer software documentation." The use of the Product and documentation is further restricted in accordance with the terms of this Agreement, or any modifications thereto.

16. EXPORT CONTROLS. Licensee shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of the United States or foreign agency or authority. Licensee will not export, or allow the export or re-export, of the Product in violation of any such laws, restrictions or regulations.

17. NOTICES. All notices, requests, or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022

delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

18. **FORCE MAJEURE.** Neither party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, Internet service interruptions or slowdowns, or governmental demands or requirements.

19. **CERTIFICATION REGARDING PERSONAL PROPERTY TAXES.** Grayshift, by signature of its authorized representative below, hereby certifies that it is not charged with delinquent personal property taxes on the general list of personal property in Delaware County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio.

20. **HEADINGS.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.

21. **COUNTERPARTS.** This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

22. **COMPETITIVE BIDDING NOT REQUIRED.** This purchase is not subject to competitive bidding pursuant to R.C. 307.86 as the total contract cost is less than \$50,000.00.

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

24. **EXHIBITS.** By this reference, the following exhibits and referenced documents and all their terms and conditions are hereby incorporated into and made a part of

this Agreement:

- 11/18/2021 Grayshift Invoice Quote Number Q-10609-1
- OPERS Certification Form

25. **SIGNATURES.** 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.

26. **INDEPENDENT CONTRACTOR.** Licensee and Delaware County, Ohio (for purposes of this section collectively "County") are public employers as defined in R.C. § 145.01(D). The County has classified Grayshift as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of Grayshift and/or any of its board members, officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. Grayshift acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If Grayshift is an individual or has less than five (5) employees, Grayshift, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor/Worker Acknowledgement Form ("OPERS Form"). The OPERS Form is attached hereto as Exhibit B. The County shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

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

Designated by: Mark Snell
 Signature
 Mark Snell
 Printed Name
 Chief Financial Officer
 Title
 1/3/2022
 Date

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022

27. MISCELLANEOUS.

This Agreement represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of either party to require performance by the other party of any provision of this Agreement or any Attachment shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of any other or future breach. This Agreement is personal to Licensee and may not be assigned, sublicensed, or transferred for any reason whatsoever (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control involving Licensee) without Grayshift's consent and any action or conduct in violation of the foregoing shall be void and without effect. This Agreement shall be governed by and construed under the laws of the State of Ohio, U.S.A. without regard to the conflicts of laws provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the state and federal courts in Ohio; Grayshift hereby agrees to service of process in accordance with the rules of such court.

GRAYSHIFT: _____

AGENCY: Delaware County Sheriff's Office

Signature: Mark Snell
Name: MARK SNELL
Title: Chief Financial Officer
Date: 1/3/2022

Signature: Russell S. Martin
Name: Sheriff Russell Martin
Title: Sheriff
Date: 1-13-2022

LICENSEE
Board of Commissioners
Delaware County, Ohio

Jeff Benton Date
Commissioner

Barb Lewis
Commissioner

Gary Merrell
Commissioner

Board of Commissioners
Delaware County, Ohio
101 N. Sandusky St.
Delaware, Ohio 43015

Approved as to Form:

Melissa A. Schiffel MSJ 1-14-2022
Melissa A. Schiffel (0082154) Date
Prosecuting Attorney

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

9
RESOLUTION NO. 22-75

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE SHERIFF'S OFFICE:

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

Supplemental Appropriation
10031301-5320 Sheriff/Deputies Software and Computer Services \$28,070.00

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

10
RESOLUTION NO. 22-76

IN THE MATTER OF APPROVING THE DKMM COUNTY RECYCLING AND LITTER PREVENTION OFFICE PROGRAM FINAL STATUS REPORT FOR 2021:

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

Exhibit #2
Report Cover Page

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

REPORT DUE: January 31, 2022

COUNTY: Delaware

DATE OF REPORT: 1-27-2022

ITEMS TO BE INCLUDED WITH THE REPORT

- A. Auditors Report dated 12-31-21.
- B. Detailed explanation of expenditures on the Financial Report provided.
- C. Itemized listing of purchase orders carried into 2022.
- D. Detailed explanation of activities on the Activity Report provided.
- D. An up to date inventory list.
- E. Disposal of Equipment Form as provided (if applicable).

REVENUE

1.	Unexpended balance on 1-1-2021	\$
2.	Total DKMM Funds received year to date	\$79,227.00
3.	Miscellaneous Reimbursements 2021 (workers comp. refunds etc.)	\$
4.	Total DKMM Funds Available (add line 1, 2, 3)	\$79,227.00

EXPENDITURES (totals from the Financial Report)

Salaries	\$34,937.02
Fringe Benefits	\$19,079.28
Contracts	\$
Equipment	\$
Supplies	\$ 286.07
Advertising (general)	\$ 1,712.94
Event advertising (minimum \$1,000)	\$
Awards	\$
Travel	\$
Other	\$

Total DKMM Funds Available (line 4 above)	\$79,227.00
Total All Expenditures 2021	\$56,015.31
Total of Purchase Orders Carried into 2022	\$ 0.00

*** Unencumbered Fund Balance \$23,211.69**
(Unencumbered fund balance = total funds-expenditures-purchase orders carried into 2022)

* If the unencumbered fund balance is more than 10% of the total contract amount, the difference must be paid to DKMM as outlined in the agreement.

(Copy of exhibits available for review at the Commissioners' Office until no longer of administrative value.)

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

**11
RESOLUTION NO. 22-77**

IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE SANITARY SEWER SUBDIVIDER'S AGREEMENT FOR BERLIN MEADOWS SUBDIVISION:

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

WHEREAS, the Sanitary Engineer recommends approval of Amendment No. 1 to the Sanitary Sewer Subdivider's Agreement for Berlin Meadows Subdivision;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approve the following Amendment No. 1 to the Sanitary Sewer Subdivider's Agreement for Berlin Meadows Subdivision:

AMENDMENT NO. 1 TO SUBDIVIDER'S AGREEMENT
Berlin Meadows Subdivision

This Amendment No. 1 to the original Subdivider's Agreement, which was entered into on June 15, 2020, is made and entered into on February 7, 2022, by and between **Metro Development, LLC** (the "Subdivider"), and the **Delaware County Board of Commissioners** (the "County").

RECITALS

WHEREAS, pursuant to Section 2 of the Subdivider's Agreement, the County provided tap credits to the Subdivider for use within certain specified developments; and

WHEREAS, the Subdivider has requested approval to apply the tap credits to an additional development, the Nolan Reserve project;

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

NOW, THEREFORE, in light of the Recitals set forth herein, which are deemed to be an integral part of this Amendment No. 1, the Subdivider and the County mutually agree to amend the original Subdivider’s Agreement by deleting existing Section 2 and replacing it with the following text:

2. Tap Fee Credits: The County shall reimburse Subdivider a portion of the construction cost of the Improvements through tap credits in the total amount of **\$331,701.00**, which may only be used by the Subdivider within the Subdivision, including the school site within the Subdivision, the Fourwinds Residential Hotel project, the Nolan Reserve project, and the future North Farms multi-family project. The Subdivider and the County mutually acknowledge and agree that this grant of tap credits is intended to establish the reasonable charge for the Subdivider to connect to the County’s sanitary facilities, pursuant to R.C. 6117.02, in consideration of the Subdivider’s private investment in the sanitary facilities, such charge being a special exception to the established charge.

REMAINING PROVISIONS

All remaining provisions of the Agreement shall continue in full force and effect unless specifically amended herein.

IN WITNESS WHEREOF, the Subdivider and the County have executed this Amendment No. 1 as of the date first written above.

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

**12
RESOLUTION NO. 22-78**

IN THE MATTER OF SETTING THE BID DATE AND TIME TO RECEIVE BIDS FOR 2022 FERRIC CHLORIDE, GLYCERIN, AND SODIUM HYPOCHLORITE CHEMICAL SUPPLY CONTRACT FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT, DCRSD CONTRACT #22-03:

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

WHEREAS, the Delaware County Regional Sewer District desires to purchase ferric chloride, glycerin, and sodium hypochlorite to be used at the treatment facilities of the Delaware County Regional Sewer District; and

WHEREAS, Sewer District staff has developed the contract documents and technical specifications for the needed ferric chloride, glycerin, and sodium hypochlorite;

NOW, THEREFORE, BE IT RESOLVED that the specifications for the project known as 2022 Ferric Chloride, Glycerin, and Sodium Hypochlorite Chemical Supply Contract DCRSD Contract 22-03 are hereby approved, and the Sanitary Engineer is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Invitation to Bid:

**Legal Notice
Invitation to Bid**

Sealed bids will be received at the Office of the Delaware County Sanitary Engineer, 50 Channing Street, Delaware, Ohio 43015, until **11:00 a.m. Friday, March 4, 2022**, at which time they will be opened and read aloud, for the project known as 2022 Ferric Chloride, Glycerin, and Sodium Hypochlorite Chemical Supply Contract - DCRSD Contract #22-03.

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked “SEALED BID FOR 2022 FERRIC CHLORIDE, GLYCERIN, AND SODIUM HYPOCHLORITE CHEMICAL SUPPLY CONTRACT #22-03.”

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

The Board of Commissioners reserves the right to make a non-exclusive award and to issue purchase orders on an as needed basis.

All bids shall be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in the amount of \$500.00, conditioned that the bidder, if the bidder's bid is accepted, shall execute a contract in conformity to the invitation and the bid.

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

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022

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

Delaware Gazette Advertisement Date:
Tuesday, February 8, 2022

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

13

RESOLUTION NO. 22-79

IN THE MATTER OF APPROVING A WORK AGREEMENT WITH ROBERT W. AND DOROTHY SUE POSTLE AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS IN CONJUNCTION WITH THE LOWER ALUM CREEK RELIEF PUMP STATION PROJECT:

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

WHEREAS, the Sanitary Engineer recommends approval of a work agreement in conjunction with the Lower Alum Creek Relief Pump Station Project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the following Work Agreement with Robert W. and Dorothy Sue Postle:

WORK AGREEMENT

by and among
ROBERT W. AND DOROTHY SUE POSTLE,
and

THE BOARD OF DELAWARE COUNTY COMMISSIONERS

Robert W. and Dorothy Sue Postle [the "Owners"], the Owners of the property located at 6824 Bale-Kenyon Road, bearing parcel number 31841201002009, situated in Delaware County, Ohio [the "Property"], in consideration of there being no costs, assessments, or other expenses to Owners for the work hereinafter described, hereby authorizes the Board of Delaware County Commissioners [the "Board"], and its duly authorized employees, agents, and contractors to enter upon the Property for the purposes of performing the work described in Exhibit A attached hereto and by this reference incorporated herein.

This authority to enter granted to the Board shall commence on 2/1/2022 and will terminate on 3/31/2022.

The work described in Exhibit A shall be performed in accordance with the plans and specifications prepared by the Board for the construction and/or improvement of sanitary service associated with the Lower Alum Creek Relief Pump Station Project.

Owners hereby release the Board and its employees from any and all damages or claims for damages resulting by reason of the above described work and operations, excepting those arising from said plans and specifications. It is understood that any contractor engaged for the purposes described above is an *Independent Contractor*, and is solely responsible for any and all damages or claims for damages arising from any conduct not within the control of the Board. All work shall be performed under the supervision of the specifying Ohio registered engineer and substantially meeting all engineer design requirements.

The Board will require its independent contractor(s) to clean up and remove all construction debris from Owners' lands promptly after completion of installation and construction of the improvements.

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Owners and the Board and their respective heirs, executors, administrators, successors and assigns.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is made in writing, cites this Agreement, and is signed by Owners and the Board.

IN WITNESS WHEREOF, the parties hereto, namely **Error! Reference source not found.**, and Robert W. and Dorothy Sue Postle, have executed this Agreement on the date(s) indicated immediately below their respective signatures.

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

14

RESOLUTION NO. 22-80

IN THE MATTER OF AWARDED A BID TO AND APPROVING A CONTRACT WITH TIDEWATER PRODUCTS, INC. FOR 2022-2023 SLUDGE THICKENING POLYMERS CHEMICAL SUPPLY CONTRACT FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT, DCRSD CONTRACT #22-01:

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

WHEREAS, sealed bids for the 2022-2023 Sludge Thickening Polymers Chemical Supply Contract DCRSD

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

Contract 22-01 were received at the Office of the Delaware County Sanitary Engineer at 11:00 a.m. Friday, December 3, 2021; and

WHEREAS, four (4) bids were received, and the lowest and best bid received was from Tidewater Products, Inc.; and

WHEREAS, the Sanitary Engineer recommends awarding a contract to Tidewater Products, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners hereby awards the bid for the 2022-2023 Sludge Thickening Polymers Chemical Supply Contract DCRSD Contract 22-01 to Tidewater Products, Inc., and directs the Sanitary Engineer to prepare the necessary Notice of Award and Contract documents for execution;

BE IT FURTHER RESOLVED that the Delaware County Board of Commissioners hereby approves the following agreement with Tidewater Products, Inc.:

**2022-2023 SLUDGE THICKENING POLYMERS CHEMICAL SUPPLY CONTRACT
DCRSD CONTRACT #22-01**

This Agreement is made and entered into on February 7, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Tidewater Products, Inc. (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide and deliver various emulsion polymers (the “Services”) in accordance with the Invitation to Bid and Specifications for 2022-2023 Sludge Thickening Polymers Chemical Supply Contract - DCRSD Contract #22-01 (the “Bid Documents”), which are by this reference fully incorporated herein.

2 SUPERVISION OF WORK

- 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 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 Contractor, shall supersede all prior understandings and agreements relating to the Services, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 COMPENSATION

- 4.1 Compensation shall be based upon the unit price in Contractor’s Bid.

5 NOTICES

- 5.1 “Notices” issued under this Agreement shall be served on the Parties to the attention of the persons 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.

County:

Name: Julie McGill

Address: 50 Channing St. Delaware, OH 43015

Telephone: (740) 833-2240

Email: jmcgill@co.delaware.oh.us

Contractor:

Name of Principal in Charge: Adam Karakas

Address of Firm: P.O. Box 23181

City, State, Zip: Toledo, OH 43623

Telephone: (419) 534-9870

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

Email: akarakas@tidewaterproducts.com

6 PAYMENT

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

7 SUSPENSION OR TERMINATION OF AGREEMENT

- 7.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.
- 7.3 This Agreement shall expire on December 31, 2022, with the option to extend the length of the Agreement for up to two (2) additional one (1) year terms if mutually agreed in a writing signed by both County and Contractor.

8 INDEMNIFICATION

- 8.1 The Contractor shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Contractor, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.
- 8.2 The Contractor shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result breach of contract, infringement of any right to use, possess, or otherwise operate or have any owned, protected, licensed, trademarked, patented, non-patented, and/or copyrighted software, product, service, equipment, invention, process, article, or appliance manufactured, used, or possessed in the performance of the Agreement and/or in providing the Services, to the extent caused by any act, error, or omission of the Contractor, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

9 INSURANCE

- 9.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 9.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 9.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 9.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 9.1 and 9.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 9.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

10 MISCELLANEOUS TERMS AND CONDITIONS

- 10.1 **Prohibited Interests:** Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 10.2 **Independent Contractor:** The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 10.3 **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.
- 10.4 **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.
- 10.5 **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.
- 10.6 **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.
- 10.7 **Findings for Recovery:** Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 10.8 **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.
- 10.9 **County Policies:** The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, and Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 10.10 **Drug-Free Workplace:** The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 **Non-Discrimination/Equal Opportunity:** Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

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

15

RESOLUTION NO. 22-81

IN THE MATTER OF APPROVING RIGHT-OF-WAY WORK PERMIT SUMMARY SHEET:

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

WHEREAS, the below requests to perform work within the right-of-way have been reviewed and approved by the Delaware County Engineer;

NOW, THEREFORE, BE IT RESOLVED that the following permits are hereby approved by the Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
UT22-0008	Spectrum	Quail Landing	Place cable in ROW
UT22-0009	Spectrum	Birtles Court	Place cable in ROW
UT22-0010	Horizon	Woodtown Road	Install underground conduit
UT22-0011	AEP	Chandler Court	Replace poles
UT22-0012	Spectrum	Anchor Drive	Place cable in ROW
UT22-0013	Columbia Gas	Sunbury Road	Abandon gas line
UT22-0014	Horizon	Moore Road	Install new aerial
UT22-0016	Everstream	Liberty Road	Underground bore
UT22-0017	Everstream	Curve Road	Underground bore
UT22-0018	Horizon	Harris Road	Directional bore
UT22-0019	Spectrum	Africa Road	Replace cable

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

16

RESOLUTION NO. 22-82

IN THE MATTER OF APPROVING A PROCUREMENT CARD FOR THE ENGINEER'S OFFICE:

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

WHEREAS, pursuant to section 301.29 of the Revised Code, the Board of Commissioners of Delaware County, by Resolution No. 04-1193, dated September 30, 2004, adopted a policy for the use of County Procurement Cards; and

WHEREAS, the Board of Commissioners of Delaware County, by Resolution No. 11-1040, dated October 3, 2011, adopted amendments to the Policies and Procedures for the county procurement card program; and

**COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022**

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, authorizes the use of the following procurement cards to the limits indicated and for specific work related expenses designated in the Procurement Card Policy without submitting a monthly estimate of expenses:

Appointing Authority:	County Engineer
Office/Department:	Engineer’s Office
Daily spending per card:	\$4,000
Monthly spending per card:	\$10,000
Single transaction limit:	\$4,000
Daily number of transactions per card:	10
Monthly number of transactions per card:	50

Name on Card: Michelle Strohl

Department Coordinator: Christine Williams

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

**17
RESOLUTION NO. 22-83**

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

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

WHEREAS, the Board of Delaware County Commissioners (the “Board”) deems it necessary for the public convenience and welfare to construct highway improvements known as Byxbe Parkway (Project ID: DEL-3642-0.00) by construction, reconstruction, installation, replacement, repair, maintenance and improvement of the identified road in Delaware County, Ohio (the “Improvement”); and

WHEREAS, the Board has determined that additional land is necessary for the Improvement and that the Board and property owners were unable to agree on the terms of conveyance through good faith negotiations; and

WHEREAS, the Board has determined the fair market value (“FMV”) for the property to be appropriated and any resultant damages; and

WHEREAS, the Board has determined that it is necessary to take immediate possession of the property to be appropriated via the “quick take” procedure under section 163.06(B) 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 deems it necessary, and it is hereby declared to be the intention of the Board, to appropriate the following property necessary for the Improvement and determines the FMV for the same:

Property Owner(s)	Interest to be Appropriated	FMV
E.J. Miller, Trustee of the E.J. Miller Trust dated July 5, 2005	7-WD	\$34,981.00
Thomas Z Davis, Jr. & Ellen Sue Davis	8-WD, T	\$54,592.00

The parcel identifiers listed in the table above are taken from the approved right-of-way plans and highway construction plans for the Improvement, which are, by this reference, fully incorporated herein and are on file and available for inspection or copying at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015.

Section 2. The appropriations deemed necessary herein being for the purpose of making or repairing roads which shall be open to the public without charge, the Board further deems it necessary, and hereby states its intention, to immediately obtain and take possession of and enter upon the property to be appropriated upon filing the Petition and depositing the FMV with the Court, in accordance with section 163.06(B) of the Revised Code.

Section 3. The Board hereby directs the Staff Attorney to commence the appropriation proceedings on behalf of the Board.

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 7, 2022

Section 4. This Resolution shall take effect and be in force immediately upon passage.

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

18

ADMINISTRATOR REPORT

Tracie Davies, County Administrator

-Thank you to all our employees who worked throughout the snow event of last week. Your efforts are much appreciated.

-Thank you to our communications team who highlighted our employees who work 24/7/365 no matter the weather conditions.

-Happy belated birthday to Commissioner Merrell.

19

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

-Will be attending a 9-1-1 Board meeting tomorrow afternoon.

-Appreciates the efficiency in which Administrator Davies kept up communication with staff.

-Attended the Byxbe groundbreaking event last Tuesday.

Commissioner Lewis

-Would like to highlight Deputy Chief Jon Scowden for taking the time to drive around early Friday morning to assess the road conditions.

-Participated in a zoom meeting with Administrator Davies and Mayor Jill Love for an update about the happenings in Galena.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners