

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 4, 2022

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

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

9:45 A.M. Public Hearing With Respect To The Proposed Issuance By Franklin County Of Its Revenue Bonds Pursuant To Chapter 140, Ohio Revised Code, To Finance And Refinance Hospital Facilities For The Benefit Of Nationwide Children’s Hospital Located In Franklin County And Delaware County And Approving The Issuance Of The Bonds Pursuant To Section 147(F) Of The Internal Revenue Code.

1
RESOLUTION NO. 22-236

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

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on March 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 Aye

2
PUBLIC COMMENT
-None.

3
RESOLUTION NO. 22-237

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0401:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0401 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount
R2202562	BERLIN TOWNSHIP	EMS RENTAL	10011303-5335	\$16,200.00
R2202628	XYLEM WATER SOLUTIONS USA INC	REPLACEMENT PUMP AT NORTHSTAR PUMP STATION	66211900 - 5450	\$36,507.00
R2202638	COMMISSIONERS	2022 CENTRAL COST ALLOCATION	66211900 - 5380	\$400,655.00
R2202647	APO PUMPS AND COMPRESSORS LLC	SERVICE ON PULSE AIR SYSTEMS	66211900 - 5328	\$15,000.00
R2202657	KOMLINE SANDERSON ENGINEERING CORP	BELT PRESS REPAIR PARTS - BEARINGS, DRIVE ROLLS	66211900 - 5228	\$22,050.00

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

4
RESOLUTION NO. 22-238

IN THE MATTER OF RESCHEDULING THE DELAWARE COUNTY COMMISSIONERS’ SESSION SCHEDULED FOR MONDAY APRIL 25, 2022 TO TUESDAY APRIL 26, 2022 AT 9:30A.M.:

It was moved by Mr. Benton, seconded by Mr. Merrell to reschedule the Delaware County Commissioners’ Session scheduled for Monday, April 25, 2022 to Tuesday April 26, 2022 at 9:30A.M.

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

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RESOLUTION NO. 22-239

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The EMS Department is requesting that Jarrod Tupps attend a Journal Emergency Medical Services (JEMS) Conference in Indianapolis, Indiana April 24-29, 2022 at the cost of \$1,400.00 (fund number 10011303).

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

6

RESOLUTION NO. 22-240

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS AND TRANSFER OF FUNDS FOR THE CLERK OF COURTS:

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

Supplemental Appropriations		
24820101-5801	Title Administration/Cash Transfers	25,244.28
10011102-5801	Commissioners General/Cash Transfers	25,244.28

Transfer of Funds		
From:	To:	
24820101-5801	10011102-4601	25,244.28
Title Administration/Cash Transfers	Commissioners General/Interfund Revenues	
10011102-5801	28129204-4601	25,244.28
Commissioners General/Cash Transfers	Common Pleas Data Fund/Interfund Revenues	

Supplemental Appropriations		
28129204-5320	Common Pleas Data Fund/Software Licenses & Computer Svcs	25,244.28

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

7

RESOLUTION NO. 22-241

IN THE MATTER OF APPROVING A CONTRACT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS; THE COMMON PLEAS COURT, GENERAL DIVISION; THE COMMON PLEAS COURT, DOMESTIC RELATIONS DIVISION; AND ELECTRONIC SPECIALTY COMPANY FOR MAINTENANCE AND SERVICE FOR AUDIO/VIDEO EQUIPMENT AND SYSTEMS:

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

WHEREAS, the Judge of the Delaware County Court of Common Pleas, the Judge of the Domestic Relations Division, and staff recommend approval of the contract by and between the Delaware County Board of Commissioners; the Common Pleas Court, General Division; the Common Pleas Court, Domestic Relations Division; and Electronic Specialty Company for Maintenance and Service for Audio/Video Equipment and Systems;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the contract by and between the Delaware County Board of Commissioners; the Common Pleas Court, General Division; the Common Pleas Court, Domestic Relations Division; and Electronic Specialty Company for Maintenance and Service for Audio/Video Equipment and Systems, as follows:

AUDIO/VIDEO SYSTEMS MAINTENANCE AGREEMENT

This Agreement is entered into this 4th day of April, 2022 by and between the Board of Commissioners, Delaware County, Ohio (“BOC”), whose principal place of business is located at 91 North Sandusky Street, Delaware, Ohio 43015, the Common Pleas Court, General Division, Delaware County, Ohio (“General Division”), whose principal place of business is located at 117 North Union Street, 500 Level, Delaware, Ohio 43015, the Common Pleas Court, Domestic Relations Division, Delaware County, Ohio (“DR Division”), whose principal place of business is located at 117 North Union Street, 400 Level, Delaware, Ohio 43015 (General Division and DR Division collectively “Court”)(Court and BOC collectively “County”) and Electronic Specialty Company (“ESCOM”), whose principal place of business is located at 1325 Dunbar Avenue, P.O. Box 400, Dunbar, West Virginia 25064 (individually “Party,” collectively, “Parties”).

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1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to state the covenants and conditions under which ESCOM will provide maintenance and service for Audio/Video Equipment and Systems (collectively "AV Systems") owned by the County and used by the Court (collectively "Services"). Such AV Systems are located at 117 North Union Street, Delaware, Ohio 43015.

2. TERM

This Agreement shall become effective on and be inclusive of the date the last Party signs this Agreement. Notwithstanding any statement to the contrary on Exhibit 1, Services shall begin on January 1, 2022 and continue through December 31, 2024, unless otherwise terminated as provided in this Agreement.

3. RENEWAL

Upon written agreement of the Parties, this Agreement may be renewed for successive one (1) year periods subject to the same terms and conditions provided herein and upon any such terms and conditions as may be specifically agreed upon, added and/or amended in writing by the Parties. Notwithstanding the foregoing, the combined total cost of this Agreement and any renewal shall not exceed \$49,999.

4. SCOPE OF SERVICES

ESCOM shall provide all of the Services listed under "Proposed Scope of Service Agreement" on page 2 of ESCOM Quote 211015-MWR1 dated October 15, 2021 ("Quote"), attached as Exhibit 1. The Services listed in the Quote as being provided at 6 and 12 months shall be fully provided during such months of each year of the Agreement.

Before beginning the Services, ESCOM shall provide to the Court the following items as listed in the Quote:

- Detailed information regarding the onsite training;
- Detailed information regarding systems inspection, testing and reporting services;
- Detailed information regarding the Offsite Remote Services;
- A complete copy of the Onsite Labor Warranty;
- A complete copy of the Factory Sponsored Warranty on Electro Voice and Biamp Equipment (2022); and,
- Detailed information regarding the Technical Services, Firmware Update.

ESCOM shall coordinate and schedule the performance of all Services in advance with the court administrator for the respective Court. All firmware updates shall be scheduled to be installed after regular business hours and when the Court is not in session and hearings are not being held. All Services shall be performed in a timely, professional, and ethical manner.

5. FINANCIAL AGREEMENT

A. Fees.

In exchange for ESCOM satisfactorily performing the Services, as solely determined by the Court, the Court shall pay ESCOM a total fee of \$36,000.00.

B. Maximum Payment

The maximum amount payable pursuant to this Agreement is \$36,000.00.

C. Taxes

The County and all boards, departments, offices, and agencies thereof are exempt from all federal, state, and local taxes. As such, the Court shall not be invoiced for and shall not pay any taxes. A tax exempt certificate shall be provided to ESCOM upon request.

D. Competitive Bidding Not Required

Consistent with R.C. § 307.86 this Agreement is not required to be competitively bid.

E. Invoice and Payment

To receive payment, ESCOM shall:

- Submit to the Court a completed federal IRS W-9 form (Exhibit 2).

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- Submit to the Court a proper detailed invoice. A proper detailed invoice is defined as an invoice free from defects, discrepancies, errors, and/or other improprieties and shall include, but is not limited to including, the following:
 - ESCOM's full name, address, telephone number, and facsimile number;
 - Name of a contact person with ESCOM in charge of billing, including a telephone number and email address for such contact person;
 - ESCOM's federal employer identification number;
 - Court's full name and address;
 - Detail, including, but not limited to, a description of the Services to be or that have been provided and term (dates) the Services will be or have been provided.
 - Itemized costs, including, but not limited to, rates, applicable discounts, the formula/means of arriving at the total amount owed, and total amount owed.

As applicable, the invoice shall be accompanied by documentation, satisfactory to the Court, supporting the invoiced amount.

Upon submission of a proper detailed invoice and, if applicable, any accompanying documentation, payment shall be made to ESCOM within thirty (30) days of the date of the invoice.

Defective invoices shall be returned to ESCOM noting areas for correction. When such notification of defect is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.

6. INDEPENDENT CONTRACTOR

ESCOM agrees that it shall act in performance of this Agreement as an independent contractor. No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement.

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

ESCOM and/or its officers, officials, employees, representatives, agents, and/or volunteers are not entitled to any benefits enjoyed by employees of the BOC, Court, or Delaware County, Ohio.

**7. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT/
NO CONTRIBUTION TO OPERS**

The County is a public employer as defined in R.C. § 145.01(D). The County has classified ESCOM 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 ESCOM and/or any of its officers, officials, directors, employees, representatives, agents, and/or volunteers for performance of this Agreement and/or other services and/or deliverables rendered and/or received under or pursuant to this Agreement. ESCOM 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 ESCOM is an individual or has less than five (5) employees, ESCOM, 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 to this Agreement as Exhibit 3. The Court shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

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

Owen S. Higgins II
President
Electronic Specialty Company

8. INDEMNITY

ESCOM shall provide indemnity as follows:

- A. To the fullest extent of the law and without limitation, ESCOM agrees to and shall indemnify and hold free and harmless the BOC, Court, Delaware County, Ohio, and all of their respective boards, officers, officials, directors, employees, volunteers, agents, and representatives (collectively "Indemnified Parties") from any and all actions, claims, suits, demands,

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judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, damage, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to ESCOM's or any subcontractor's performance of this Agreement or the actions, inactions, or omissions of ESCOM or any subcontractor, including, but not limited to the performance, actions, inactions, or omissions of ESCOM's or any subcontractor's boards, officers, officials, directors, employees, volunteers, agents, or representatives. ESCOM agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that ESCOM shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. ESCOM further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that ESCOM shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees.

- B. ESCOM shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from any actions, inactions, or omissions negligent or accidental, actual or threatened, intentional or unintentional of ESCOM, its subcontractors, and/or their respective boards, officers, officials, directors, employees, volunteers, agents, or representatives.

9. INSURANCE

ESCOM shall be bonded and shall carry and maintain throughout the term of the Agreement, without lapse, the following policies of insurance with the following minimum coverage limits.

- A. Commercial General Liability Insurance with minimum coverage limits of at least one million dollars (\$1,000,000.00) per occurrence, with an annual aggregate of at least two million dollars (\$2,000,000.00), including coverage for subcontractors, if any are used. This insurance shall include, but not be limited to, the following coverage:
1. Premises-Operations
 2. Product and Completed Operation
 3. Broad Form Property Damage
 4. Contractual
 5. Personal Injury
- B. Umbrella or Excess Liability Insurance (over and above Commercial General Liability) with minimum coverage limits of at least two million dollars (\$2,000,000.00).
- C. If vehicles are to be used by ESCOM in connection with this Agreement, Auto/Vehicle Liability Insurance covering all owned, leased, non-owned, and/or hired vehicles so used with minimum coverage limits of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

Prior to commencement of this Agreement, ESCOM shall present to the Court current certificates of insurance for the required insurance and shall maintain current, without lapse, such insurance during and throughout the entire term of this Agreement.

The BOC, Court, and Delaware County, Ohio shall be named as additional insureds on all required policy(ies) of insurance.

ESCOM shall be responsible for any and all premiums for all required policy(ies) of insurance.

The insurance company needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance company to bind coverage on its behalf.

All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance.

The above required insurance coverage shall be primary insurance as respects the Indemnified Parties and any insurance maintained by the Indemnified Parties shall be excess to the above required insurance and shall not contribute to it.

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The insurer shall provide at least thirty (30) days written notice to Court before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place.

If there is any change in insurance carrier or liability amounts and/or upon renewal, new certificates of insurance must be provided to the Court within seven (7) calendar days of change or renewal.

During the term of this Agreement, the Court may require ESCOM to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default.

In addition to the rights and protections provided by the insurance policies as required above, the BOC, Court, and Delaware County, Ohio shall retain all such other and further rights and remedies as are available to them at law or in equity.

10. WORKER'S COMPENSATION INSURANCE

ESCOM shall carry and maintain throughout the term of the Agreement and without lapse Worker's Compensation Insurance as required by Ohio law and any other state in which work will be performed. ESCOM shall be responsible for any and all premiums for such policy(ies). At any time throughout the term of the Agreement the Court may request proof of such insurance. Proof of such insurance shall be promptly provided upon request.

11. WARRANTY

ESCOM hereby warrants that all of its and its subcontractor's officers, officials, directors, employees, volunteers, agents, and representatives that have or will perform this Agreement were, are, or, will be at the time of performance, legally and properly trained and/or licensed to perform the tasks they are required to perform under this Agreement.

ESCOM also hereby warrants that the Services that it provides pursuant to this Agreement are correct, accurate, performed properly, and are free from defect. ESCOM, without cost to the Court, shall promptly and properly fix, correct, re-perform, and/or replace the Services, any deliverable, or any portion thereof provided pursuant to this Agreement that, in the sole discretion of the Court, is/are defective and/or not satisfactorily performed.

12. CONFIDENTIALITY

ESCOM understands and agrees that in the performance of this Agreement it may have access to confidential information of the Court or parties to litigation before the Court or that is required to remain confidential by law, rule, or regulation. ESCOM shall hold such information in confidence and shall not, without the prior written consent of the Court, disclose it to any third party or use it for any purpose other than in performance of this Agreement. ESCOM shall be responsible for assuring that its employees and subcontractors comply with this requirement of confidentiality. This obligation of confidentiality shall not apply to any of the following types of information:

- Information that is generally available to the public through no act or omission of ESCOM; or,
- Information that becomes known to ESCOM through a third party with no obligation of confidentiality.

Notwithstanding any other termination provision contained in this Agreement, the Court may immediately terminate this Agreement, if, in the sole discretion of the Court, the Court determines that actions of ESCOM, any ESCOM employee, or any ESCOM subcontractor resulted in a breach of confidentiality and/or any violation of this obligation to maintain confidentiality. In the event of such termination, all unearned compensation shall be immediately refunded by ESCOM to the Court.

To the fullest extent of the law and without limitation, ESCOM agrees to indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any breach or violation of confidentiality, in whole or in part, by ESCOM, any ESCOM employee, or any ESCOM subcontractor. In the event of a breach or violation of confidentiality, ESCOM shall take any and all necessary and appropriate action and cooperate with the Court to arrest the breach or violation, mitigate the effects of the breach or violation, and protect any victims of the breach or violation, by including, but not limited to, if required by the event, the purchase and payment for, at no cost to the BOC, the Court, or Delaware County, Ohio, of appropriate identify theft protection and/or insurance for the victims of such breach or violation. Additionally, ESCOM agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that ESCOM shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. ESCOM further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that ESCOM shall pay, settle, compromise and/or procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and

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expenses, including, but not limited to attorney's fees.

13. LICENSES

ESCOM certifies and warrants that it, its employees, and/or subcontractors have obtained and maintain current all approvals, licenses, including operator (driver's) licenses, certifications, permits, and/or other qualifications or prerequisites (collectively "Licenses") necessary to fully perform this Agreement and to conduct business in the state of Ohio. ESCOM further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason. Proof of such Licenses shall be promptly provided upon request.

14. ACCESS TO RECORDS

At any time during regular business hours, with reasonable notice, and as often as the Court or other agency or individual authorized by the Court may deem necessary, ESCOM shall make available to any or all the above named parties or their authorized representatives, at no cost, all contracts, subcontracts, invoices, receipts, reports, documents, and all other information or data, regardless of form or media, relating to all matters covered by this Agreement (collectively "Records"). The Court and the above named parties shall be permitted by ESCOM and shall be entitled to inspect or audit and/or make excerpts, copies, and/or transcripts of the Records.

15. RETENTION OF RECORDS

For a minimum of three (3) years after expiration or termination of this Agreement, ESCOM shall retain and maintain and assure that all of its subcontractors retain and maintain all Records. If an audit, litigation, or other action related to this Agreement is initiated during the term of this Agreement or the three (3) year retention period, ESCOM shall retain and maintain, and assure that all of its subcontractors retain and maintain the Records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever occurs last.

16. TERMINATION

This Agreement may be terminated as follows:

A. Convenience:

The Court may terminate this Agreement at any time and for any reason by giving at least seven (7) days advance notice, in writing, to ESCOM.

The Parties may terminate this Agreement at any time and for any reason upon the mutual written consent of the Parties.

B. Breach or Default:

Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, the aggrieved Party shall 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 Agreement may, at the election of the aggrieved Party, be immediately terminated. The terminating Party shall provide prompt written notice of such termination to the other Party.

Termination pursuant to this section shall relieve the Parties of any and all further obligations under this Agreement, except that ESCOM shall be entitled to receive compensation for any Services satisfactorily performed hereunder through the date specified on the notice as the effective date of termination. All unearned compensation shall be immediately refunded by ESCOM to the Court.

If the Agreement is terminated pursuant to this Section, ESCOM shall have no cause of action against the BOC, Court, and/or Delaware County, Ohio, except for a cause of action for non-payment for Services rendered prior to the effective date of termination. The County, without limitation, retains and reserves and may exercise any available administrative, contractual, or equitable rights, legal actions, or remedies.

17. WAIVER

The waiver of any provision or requirement of this Agreement or any occurrence of breach or default is not and shall not be interpreted as a waiver of any such subsequent occurrences. If either Party fails to perform an obligation(s) under this Agreement and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive any other failure(s). Waiver by either Party shall be authorized in writing and signed by an authorized representative(s) of the waiving Party. In the case of the County, any waiver shall be approved by the Court.

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18. NOTICES

All notices which may be required by this Agreement or by operation of any rule of law shall be sent via certified 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 shall be effective on the date sent or hand delivered:

GENERAL DIVISION

Kristin Schultz
Court Administrator
Delaware County Common Pleas Court
General Division
117 North Union Street, 500 Level
Delaware, OH 43015

Email:
kschultz@co.delaware.oh.us

DR DIVISION

Larry McQuain
Court Administrator
Delaware County Common Pleas Court
Domestic Relations Division
117 North Union Street, 500 Level
Delaware, OH 43015

Email:
lmcquain@co.delaware.oh.us

ESCOM

Owen S. Higgins II
President
Electronic Specialty Company
1325 Dunbar Avenue
P.O. Box 400
Dunbar, WV 25064

Email:
Shane@electronicspecialty.com

19. CERTIFICATION REGARDING FINDINGS FOR RECOVERY

ESCOM, by signature of its authorized representative below, hereby certifies that it is not subject to any current unresolved findings for recovery pending with or issued by the Ohio Auditor of State.

Owen S. Higgins II
President
Electronic Specialty Company

20. CERTIFICATION REGARDING PERSONAL PROPERTY TAXES

ESCOM, 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.

Owen S. Higgins II
President
Electronic Specialty Company

21. NON-DISCRIMINATION/EQUAL OPPORTUNITY/CIVIL RIGHTS

ESCOM agrees to both of the following:

- A. That, in the hiring of employees for the performance of work under the this Agreement or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in R.C. § 4112.01, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates;

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- B. That ESCOM, its subcontractors, or person acting on behalf of ESCOM or any of its subcontractors shall not, in any manner, 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 or military status as defined in R.C. § 4112.01, national origin, or ancestry.

ESCOM agrees to the above and, by the signature of its authorized representative on attached Exhibit 4 (Non-Discrimination/Equal Opportunity/Civil Rights), agrees to the requirements contained in said exhibit and certifies that it complies with all applicable federal, state, and local laws regarding non-discrimination, equal opportunity, and/or civil rights and will not discriminate.

22. PROHIBITED INTEREST

ESCOM agrees that no employee of the County during his/her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. ESCOM agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the date this Agreement expires or is terminated without the prior express signed written consent of the County.

23. CONFLICT OF INTEREST

ESCOM is unaware of and certifies that there are no conflicts of interest, either involving it or its employees, that would prohibit ESCOM from entering this Agreement and agrees to immediately notify the Court when and if it becomes aware of any actual or potential conflict(s) of interest that arises during the term of the Agreement.

24. DRUG FREE ENVIRONMENT

ESCOM agrees to comply with all applicable federal, state, and local laws regarding drug-free environment and shall have established and have in place a drug free workplace policy. ESCOM shall make a good faith effort to ensure that all of its employees, when performing this Agreement, will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

25. COUNTY/COURT POLICIES

ESCOM shall be bound by, conform to, comply with, and abide by all current applicable Court and Delaware County policies, including, but not limited to, the Contractor Safety Policy, Computer Use Policy, Social Media Policy, and Internet Use Policy (collectively "County Policy") and shall require any and all of its boards, board members, officers, officials, directors, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County (collectively "Employees") and subcontractors to comply with County Policy and shall be responsible for such compliance. Notwithstanding any other termination provision of this Agreement, the County may, in its sole discretion, immediately terminate this Agreement for failure of ESCOM or any of its Employees or subcontractors to comply with Court or County Policy. Copies of Court and County Policy are available upon request or County Policy is available online at:

<http://www.co.delaware.oh.us/index.php/policies>.

The Court and County reserve the authority to change, amend, replace, enact, repeal, and/or rescind Court and/or County Policy at any time and without notice.

26. AUDIT

ESCOM 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. ESCOM agrees to reimburse the Court the amount of any identified audit exception.

27. SUBCONTRACTING

ESCOM may subcontract any portion of this Agreement with prior written approval of the Court, such approval not to be unreasonably withheld. If all or any portion of this Agreement is subcontracted, any subcontractor shall be bound by all applicable terms of this Agreement and ESCOM shall continue to act as the prime contractor for all subcontracted work and shall assume full responsibility for the performance of the work. ESCOM shall remain the sole point of contact and shall be ultimately responsible for the performance of the work.

28. ASSIGNMENT

This Agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the prior express signed written consent of the County, except that ESCOM may assign this Agreement to a successor in interest in all its business.

29. AUTHORITY

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The County is authorized by including, but not limited to, R.C § 307.843 to enter this Agreement.

30. NO EXCLUSIVITY

ESCOM shall not be an exclusive provider to the Court. The Court, in the Court's sole discretion, may utilize other contractors to provide or perform the same or similar products, work, or services.

31. GOVERNING LAW AND VENUE

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 an appropriate court in the State of Ohio and such courts shall be deemed to have jurisdiction and venue. The Provider hereby irrevocably consents to such applicable law, venue, and jurisdiction.

32. INCORPORATION OF EXHIBITS

The following exhibits are attached to this Agreement and by this reference incorporated into and made a part of this Agreement:

- Exhibit 1 - ESCOM Quote 211015-MWR1(*)
- Exhibit 2 - IRS W-9 Form
- Exhibit 3 - OPERS Form
- Exhibit 4 - Non-Discrimination/Equal Opportunity/Civil Rights Form

*(*The header of ESCOM Quote 211015-MWR1 states "Confidential." However, the Parties understand and agree the Quote may be a public record pursuant to R.C. § 149.43 and other applicable law)*

To the extent that any terms and conditions of this Agreement conflict with those contained in the attached exhibits, the terms and conditions of this Agreement shall prevail.

33. HEADINGS

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

34. DRAFTING

This Agreement shall be deemed to have been drafted by both Parties and no interpretation shall be made to the contrary.

35. SURVIVAL

Sections 4 (Scope of Services), 8 (Indemnity), 9 (Insurance), 10 (Worker's Compensation Insurance), 12 (Confidentiality), 14 (Access to Records), 15 (Retention of Records), 17 (Waiver), 18 (Notices), 22 (Prohibited Interest), 23 (Conflict of Interest), 25 (County/Court Policies), 26 (Audit), 31 (Governing Law and Venue), 32 (Incorporation of Exhibits), 35 (Survival), 37 (Severability), and 39 (Signatures) shall survive termination or expiration of this Agreement.

36. FORCE MAJEURE

The Parties shall be temporarily excused from performance under this Agreement and shall not be entitled to impose any penalty as a result of any delay in performance or interruption of payments caused by reason of war, insurrection, terrorism, riots, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Agreement are to be executed, epidemic, pandemic, strike, supplier and third party failure, lockouts, or labor difficulties automobile fuel shortage, weather, explosion, act of God, order of Court or other public authority, or any other cause beyond the reasonable control of the Parties. Such excusal from performance or interruption of payments shall continue until such force *majeure* ceases to exist or the Agreement is terminated as provided herein.

37. SEVERABILITY

The provisions of this Agreement are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall nevertheless be binding and enforceable.

38. COUNTERPARTS

This Agreement may be executed in counterparts.

39. SIGNATURES

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REMOTE TECHNICAL SUPPORT 24 X 7	April 10, 2022	April 9, 2027
REPAIR SERVICES	April 10, 2022	April 9, 2027
PROVISION SOFTWARE SUPPORT	April 10, 2022	April 9, 2027
CORRECTIVE MAINTENANCE	April 10, 2022	April 9, 2027
PEVENTIVE MAINTENANCE	April 10, 2022	April 9, 2027

4. SUPPORT COSTS

AviatCare Maintenance and Support Services			
Services	Services Part Number	Product Qty Based on T/R Count	5 year Extended Pricing
WarrantyPlus Support ✓ Priority Technical Support: Available 24 X 7 ✓ AviatCloud Support Portal: Available 24 X 7, Level 2 ✓ Repair Services: ✓ 20 Calendar Day turnaround time on Aviat Networks manufactured equipment ✓ Advance Replacement – 3- 5 Business Day turnaround time; Based on availability of inventory ✓ Repair Logistics Program – No cost shipping to customer; Aviat handles shipping both ways	SNA-BNWXA1006038	• (26) IRU600 Sales Order: 2317708, 2310278, A44924	\$43,940 Less 35% discount = \$28,561
All OEM is an Extension of Warranty services offered by that Vendor; ✓ Technical Support: Available 24 X 7 ✓ Repair Services: Targeted 30 Calendar Day turnaround time; no advance replacements, repair of parts only	SWW-OMEW000060AN	• (13) Dehydrators	\$7,385
ProVision Software			
Provide general available software releases and product updates during the coverage period	SWW-PV85G1XX6099	• 1-20 NODES	\$15,000 Less 35% discount = \$9,750
Preventive and Corrective Maintenance			
Corrective Maintenance ➤ Emergency Onsite Ground Crew - 4 Hour SLA (Critical Alarms)	SNA-CM4HL1006099	(13) Sites	\$72,900

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<ul style="list-style-type: none"> ➤ 9 callouts ➤ Additional Callouts, please reference 4.1 			
Ground Preventive Maintenance - Annual per Site Visit	SNA-PM1YL1006099		\$105,300
Total AviatCare maintenance and support April 10, 2022 – April 9, 2027			\$223,896
Annual Invoice* PO must be for full dollar value			\$44,779

4.1 OPTIONAL AND TRUE-UP SUPPORT FEES:

Aviat Networks quotes onsite support services based on the following factors: network configuration, number of dispatches for the duration of a contract, number of hours onsite per dispatch, tower crew mobilization/demobilization, spares availability, and any specialized site access requirements. Aviat Networks offers customers the option, where available, to purchase one-time support services which are invoiced at the time of service request. In addition, Aviat can supply onsite support services in excess of negotiated contract terms where the number of dispatch requests exceed the number of quoted dispatches during a given contract period, Aviat Networks will invoice the customer for the additional services (True-up) at the time of dispatch request. Fees for one-time and True-up callouts are listed below.

Optional, One-Time & True-Up Managed Services Fees:		
Managed Network Service: Miscellaneous, Additional Ground Dispatch (Onsite Corrective and Preventive Maintenance)	SWW-MSGENXX10199	Per Occurrence \$2,080
Managed Network Service: Miscellaneous, Additional Tower Dispatch (SLA restrictions apply)	SWW-MSGENXX20199	Per Occurrence
- Emergency		\$11,000
- Non-Emergency		\$ 8,333
Managed Network Service: Miscellaneous, Material	SWW-MSGENXX30199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Travel	SWW-MSGENXX40199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Special Site Access Equipment	SWW-MSGENXX50199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Site Power Support	SWW-MSGENXX60199	Per Occurrence Time and Materials
Miscellaneous, Misc Extra Onsite Work	SWW-MSGENXX70199	Per Occurrence Time and Materials

4.2 SERVICE LEVEL SUPPORT DESCRIPTION

Access to Aviat Networks Customer Online Technical Support Site

The Customer will have access to the Aviat Networks Customer Online Technical Support web site 24/7 for a variety of tools and support services. Tools/support services include the following:

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1. RMA Request & Status Updates.
2. RMA Reporting such as repair turnaround time performance.
3. Technical Support such as Service Request opening, reporting and status.
4. Information such as technical notes, frequently asked questions, solutions for commonly asked technical or operational issues.
5. Software Downloads.
6. Sales Order tracking and status (Eclipse Only).

URL: <http://www.aviatcloud.com/>

4.2.1 REPAIR SERVICES

Repair services are available to the Customer during the standard manufacturing equipment warranty period which includes any repair or replacement of defective units during the stated warranty period. Additional charges may apply during the warranty period for customers returning a high volume of No Fault Found units, require advance replacements, or a non-repairable units. Prior to the warranty period expiring, customers may procure ongoing access to this support service through the purchase of an extended warranty program or through one of our AviatCare Maintenance support offerings. Otherwise the Repair service is made available for out of warranty products through a Per Incident billing process that can be enabled through our regional RMA Desk. See further details on how repair services are provided below.

All equipment under this specific Maintenance Level Agreement shall be covered with our standard Repair / Replace policy. There is no limit to the number of units returned for repair but customers are subject to the same limitations for No Fault Found (NFF), damaged beyond repair units, and non-returned Advance Replacement units where additional charges may apply:

- a) **Repair Center Support.** Customer shall place all RMA requests at the following link: https://aviatcloud.com/rma_tracking.asp . This link is available for use 24 hours a day, 7 days a week except where routine maintenance is performed. Customers can also email or fax RMA requests to the appropriate Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA reference number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

In order for Aviat Networks to process an RMA request, the customer must provide the following information:

- Company name;
- Shipping and billing address;
- Part Number;
- Serial Number of the defective unit(s)
- Unit software load;
- Description of the suspected failure;
- Whether any special requirements exist;
- Maintenance Level Agreement contract number (if applicable); and
- Provide a purchase order at the applicable price for billable requests. Billable requests include any request for express service regardless of warranty status. Contact your local Aviat Networks Repair Center for price information.

- b) **Turnaround Time.** Aviat Networks will provide a Turnaround time on repair as per the following:

- 20 Calendar Day turnaround time on Aviat Networks manufactured equipment
- 45 Calendar Day turnaround on Aviat Networks Manufactured Discontinued equipment

- c) **Turnaround Time Calculation.** Turnaround time is measured from the time that a returned unit is received at the Aviat Networks Repair Center, which will be advised at time of issuing a RMA, until the time the unit is shipped from the Aviat Networks Repair Center. Thus, the measurement of turnaround time does NOT begin when a returned unit is shipped from the customer's premises and does NOT include the shipping time accrued after the returned unit is shipped from the Aviat Networks Repair Center to the Customer's premises. Additionally, turnaround time will not be guaranteed in the following situations:

- If more than five (5) Units of the same type or more than ten (10) Units of any type are received at the same time.

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- Missing information such as failure details, return shipping address, shipping instructions and/or any other information that may affect the start of the repair process of the shipment of the Returned Unit as the repair completed.
 - Any returned unit is deemed No Fault Found.
 - Any returned unit received due to any of the reasons listed in the [Exclusions from Repair & Return](#) Clause of this Section.
 - Any returned unit received improperly packaged and therefore sustained physical or electrostatic damage in shipping.
 - Returned units placed in Isolation.
 - Event of Excusable Delay as described under the [Excusable Delay](#) clause of the Additional Terms & Conditions section of this Agreement.
- d) **OEM.** For OEM, repair turnaround times are set by the OEM supplier. Aviat Networks close working relationship with OEM suppliers assures the best possible turnaround time. These times will be communicated to customer at time of RMA issuance. Excludes Tower repair.
- e) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of units shipped to Aviat Networks, the Customer must provide a detailed packing list and commercial (Proforma) invoice to support the delivery. Each commercial invoice must clearly state the full description, the value of each unit and the RMA number. Once a unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the commercial invoice and airway bill number pertaining to the shipment.
- f) **Exclusions from Repair & Return.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:
- Damage caused by mishandling, customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
 - Modifications, alterations, or repairs made other than by Aviat Networks.
 - Damages by persons other than Aviat Networks or its authorized service providers.
 - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
 - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
 - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
 - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
 - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.
- Repairs necessitated during the Agreement period by any of the above causes may be made by Aviat Networks, and the Customer shall pay Aviat Networks' standard charges for time and materials, together with all shipping and handling charges arising from such repairs.
- g) **Stockpiling of Failed Units.** The Customer agrees to obtain an RMA Number for all failed units from an Aviat Networks Repair Center immediately following a failure and return the Units for repair immediately after receipt of the RMA Number from Aviat Networks. The customer agrees this Agreement will not apply retrospectively to cover any units failed and in the Customer's possession prior to the execution date of this Agreement, and will not apply to any units for which RMA numbers had already been obtained from Aviat Networks prior to the date of execution of this Agreement. Following execution of this Agreement the Customer agrees not to stockpile failed units and accepts that Aviat Networks will not be required to meet the turnaround times outlined in this Agreement if the units are not returned to Aviat Networks on receipt of an RMA Number or if they are stockpiled.

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h) **No Fault Found Fee.** If in any given quarter during the Maintenance Level Agreement support period the number of returned units a Customer reports as defective exceeds 10% of the total number of returned units received by Aviat Networks during the same support quarter, but are thereafter found to meet Aviat Networks product test specifications resulting in a No Fault Found repair status, Aviat Networks will charge the Customer the then-current No Fault Found inspection fee for each non-defective returned unit in excess of such ten percent (10%) as a True-Up support fee at the conclusion of the maintenance support quarter.

i) **Damaged Beyond Repair.** Returned Units that Aviat Networks (in its sole discretion) determined are damaged Beyond Repair or have been repaired (or otherwise modified) by a party other than Aviat Networks will be placed in Isolation. The Customer shall be advised by fax or e-mail, within ten (10) days working days, of the nature and extent of the damage. The Customer shall be responsible for informing Aviat Networks of the next course of action. If the Customer decides to replace the unit(s), they must follow the usual purchasing process. Note: If the returned unit is no longer in current manufacture and/or is OEM, Aviat Networks will not guarantee availability of a unit for sale.

4.2.2 ADVANCE REPLACEMENT

Advance Replacement provides the Customer with shipments of a limited number of Units intended as an advanced replacement of Returned Units, upon the Customer's request. The service encompasses the following:

a) **Repair Center Support.** Customer shall place Advance Replacement requests at the following link: https://aviatcloud.com/rma_tracking.asp. This link is available for use 24 hours a day, 7 days a week. Customers can also email or fax the RMA request to the Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA Number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

b) **Shipping Costs.** Customer is responsible for all charges associated with shipping the Returned Unit to the designated Aviat Networks Repair Center, which shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid) Aviat Networks Repair Center (Incoterms:2000). Aviat Networks is responsible for the charges associated with shipping the Returned Unit back to the Customer, which shipment shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid), Customer's premises (Incoterm:2000).

c) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of Units shipped to Aviat Networks, the Customer must provide a detailed packing list and commercial (Proforma) invoice to support the delivery. Each commercial invoice must clearly state the full description, the value of each unit and the RMA number. Once a unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the commercial invoice and airway bill number pertaining to the shipment.

d) **Returned Unit.** If this Agreement entitles the Customer to the RLP and the Customer elects to use it for the returned unit, the Customer will be invoiced for the list price of the Advance Replacement Unit(s) if Aviat Networks does not receive notification to pick-up the pertinent returned unit, at most, ten (10) days after Customer's receipt of the Advance Replacement Unit. In the event that the Customer is not entitled to the RLP or the Customer elects to return the returned unit to Aviat Networks via a freight forwarder outside of the RLP, the Customer will be invoiced for the list price of the Advance Replacement Unit if Aviat Networks does not receive the pertinent returned unit at the Aviat Networks Repair Center within, at most, thirty (30) days after receipt of the Advance Replacement Unit. The returned unit will become the property of Aviat Networks. The Customer agrees that the returned unit must be repairable and does not fall into any of the categories listed in the [Exclusion from Advance Replacement](#) clause.

e) **Exclusion from Advance Replacement.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:

- Damage caused by mishandling, customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.

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- Modifications, alterations, or repairs made other than by Aviat Networks.
 - Damages by persons other than Aviat Networks, or its authorized service providers.
 - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
 - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
 - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
 - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
 - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.
- f) **No Fault Found Fee.** If in any given quarter during the Maintenance Level Agreement support period the number of returned units a Customer reports as defective exceeds 10% of the total number of returned units received by Aviat Networks during the same support quarter, but are thereafter found to meet Aviat Networks product test specifications resulting in a No Fault Found repair status, Aviat Networks will charge the Customer the then-current No Fault Found inspection fee for each non-defective returned unit in excess of such ten percent (10%) as a True-Up support fee at the conclusion of the maintenance support quarter.
- g) **Limits.** Customer is entitled to receive a limited number of Advance Replacement Units per year. This number is not to exceed ten percent (10%) of the total Repair & Return requests during that year. Accrued Advance Replacement Units that have not been requested by the Customer may not be carried over to the next year. Additional Advance Replacement Units will be provided at Aviat Networks' then current prices, terms and conditions.
- h) **Unavailability.** If an Advance Replacement Unit is not available, then Aviat Networks will repair the Returned Unit within a mutually agreed Turnaround time. Customer agrees that repair of the Returned Unit shall be Aviat Networks' sole obligation, and the Customer's sole remedy, if an Advance Replacement Unit requested by the Customer is not available.
- i) **Turnaround Time Commitments.** Standard Advanced Replacement service ensures customer will receive a comparable unit to the one being returned within 3 to 5 business days from date of RMA. If customer requires a replacement unit in a shorter period of time there is an added charge for this and based on replacement unit availability will be delivered on a next business day basis. Customer will be informed at time of RMA request whether this service can be provided or not depending on component availability.

4.2.3 REPAIR LOGISTICS PROGRAM (RLP)

Aviat Networks shall provide free freight to the Customer for all Units returned via the Aviat Networks Repair Logistics Program (RLP). In the event that the Customer returns Units to Aviat Networks via a freight forwarder outside of this Program, all freight expenses and damage liability will be the responsibility of the Customer. Aviat Networks is responsible for all tariffs, duties, or taxes associated with importing Units for repair. After the repair, the Units shall be returned to the Customer DDU (Delivered Duty Unpaid) Customer's premises (Incoterms 2000). To implement the return of a Unit via this Program the Customer shall request an RMA for the Unit using the link in the [Repair Services](#) or [Advance Replacement](#) Sections or the contact information as listed in the [Aviat Networks Contacts](#) Section.

Liability of Units Damaged During Shipping. Aviat Networks will assume responsibility for insuring the Units against loss or damage that is moving via the RLP. The Customer shall examine the condition of all shipments returned from Aviat Networks via the RLP at the time of delivery. Visible signs of damage shall be brought to the attention of the carrier and the contents shall be examined for damage immediately. Aviat Networks will not be liable for any direct reports by the Customer for Units that are found to be damaged upon receipt by the Customer that are made over seven (7) days after the Units have been delivered. Units damaged through transit shall be returned for repair at Aviat Networks through the normal return process. Damage or loss incurred to Units shipped to Aviat Networks by the Customer outside the RLP shall be the responsibility of the Customer.

4.2.4 REMOTE TECHNICAL SUPPORT 24 X 7

Customer 24 X 7 Remote Support

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24 X 7 Remote Support provides around-the-clock (24 X7) telephone access to Aviat Networks' Technical Assurance Center in order to resolve Critical Service Requests, Major Service Requests, Minor Service Requests and Inquiry Service Requests.

- a) **Telephone Number.** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during normal business hours. **OR** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during the day or night. For night support services (after business hours in the local time zone), Aviat Networks will handle all such requests that are Critical or Major that the Customer reasonably categorizes as being High Priority. In addition with this service customer can pre-schedule after hours support when doing a new software installation or a network upgrade related to covered equipment.
- b) **Rapid Response Time.** Aviat Networks will route Critical Service Requests to the appropriate TAC subject matter expert within fifteen (15) minutes of call receipt.
- c) **Service Request Number.** Aviat Networks will assign, to each Service Request, a number that will be logged, tracked and stored in our Case Management database.
- d) **Service Request Management.** Aviat Networks will dedicate continuous attention to Critical and Major Service Requests until service is restored or request is closed. Aviat Networks will work to resolve the Service Request until Customer accepts the proposed solution, at which point the TAC will close the Service Request.
- e) **Documented Escalation Procedures.** Aviat Networks will implement internal escalation and notification procedures in order to facilitate the timely resolution of Service requests by a TAC Engineer with an adequate level of expertise. The technical support process includes rigid managerial escalations that are intended to facilitate the appropriate handling of recovery efforts and Customers being regularly updated on the status of the Service Request. Additional information on this escalation process is available in our Global Network Service Customer Support guidelines document available on our website at www.aviatnetworks.com.
- f) **Service Request Submission.** Under this Agreement, there is no limit to the number of Service Requests that Customer may submit for resolution. Customer may also define and authorize specific users within its organization to have access to this Service Request Submission Service. To ensure appropriate management of this support Aviat Networks has implemented a Support Assurance Program where an Express PIN will be assigned to each customer which clearly identifies the level of service a customer is entitled to receive. All Service Request Submissions will require Express PIN information prior to being submitted.

Service Request Severity Classifications

There are four (4) Service Request severity classifications: (a) Critical; (b) Major; (c) Minor; and (d) Inquiry. Critical, Major and Minor Service Requests pertain to problems in the Product. Inquiry Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

- a) **Critical Service Requests** are those that severely affect service, traffic, billing and/or maintenance capabilities, and require immediate corrective action (regardless of the time of day or day of the week).
- b) **Major Service Requests** are those that cause conditions that seriously affect Product operation, maintenance and/or administration, and require immediate attention. The urgency is less than in Critical Service Requests because of a lesser immediate or impending effect on Product performance, customer and/or network operation and revenue.
- c) **Minor Service Requests** are problems that are tolerable during Product use, do not significantly impair the functioning of the Product and do not significantly affect service to customers.
- d) **Inquiry Service Requests** are questions about technical details concerning the usage or behavior of the Product.

4.2.5 PROVISION SUPPORT 24 X 7

Aviat Networks shall provide remote technical support to the Customer on ProVision. The remote technical support 24 X 7 shall be provided as per the terms outlined in the Remote Technical Support 24 X 7 section of this Agreement.

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Aviat Networks shall provide support on the current and previous ProVision production release and will investigate all reproducible product anomalies for the supported version. Aviat Networks shall also provide general availability releases and product updates to the Customer free of charge during the coverage period.
Customer Responsibility

To enable the Aviat Networks TAC to fully investigate ProVision issues, the Customer shall provide the TAC the appropriated logs and remote access where possible. The Customer will provide the capability to allow Aviat Networks to remotely access the Customer’s network by means of a secure internet connection to the Customer’s site. This connection process will need to be defined at time of Agreement such that any issues arising after Agreement closure can be addressed expeditiously.

Exclusion from Provision Support 24 X 7

The services to be rendered on ProVision by Aviat Networks under this Agreement shall not comprise any services, which are required as a result of one or the more of the following:

- Customers using old versions of ProVision. The ProVision Agreement provides regular updates; customers are required to have the current GA release or the previous GA release installed and commissioned before they can obtain Aviat Networks technical support.
- Customer’s lack of basic user training. It is expected that all users will have received basic user training when the ProVision system was installed.
- Network Planning; NMS Integration; Training courses; Installation and Commissioning; On Site Support. These are separate Aviat Networks service offerings, which are not delivered under this Agreement.
- Due to the complex nature of ProVision issues, which may be network related rather than ProVision related, not all Customer-defined level three product anomalies can be rectified within the commercial bounds in which Aviat Networks operates. Aviat Networks will require that all product anomalies are reproducible, prior to the commencement of any detailed fault analysis or potential product re-engineering. Aviat Networks undertakes to provide a response on all logged product issues and will provide work-around’s where possible.

4.2.6 CORRECTIVE MAINTENANCE

Corrective maintenance provides for the dispatch of the necessary support personnel and test equipment for the purposes of diagnosing a problem, restoring service or correcting a service request that Aviat Networks has unsuccessfully attempted to resolve remotely from one of our Technical Assistance Centers.

All sites under maintenance must have undergone full commissioning and proven to be in good working condition. The Customer shall make available site commissioning and acceptance data if requested by Aviat Networks. .

The service is provided according to the following Service Level Agreement (SLA):

CRITICAL FAULTS FOR RADIOS	4 Hours
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Aviat Networks shall use its best effort to be onsite within four (4) hours of the Aviat Networks first level support personnel receiving emergency onsite support requests. Notwithstanding anything contained herein to the contrary, all services provided may be performed by Aviat Networks directly or through one or more qualified Subcontractors. Aviat Networks shall coordinate, supervise, manage and be responsible for the services of all the Subcontractors.

Limitations: In order to meet the on-site SLA response requirements, the Customer is responsible for providing access to difficult to reach sites (i.e. site not accessible by public road using 2 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require customer presence. The customer is responsible for provisioning and making available spare parts.

4.2.7 EMERGENCY ONSITE TOWER CREW – OPTIONAL

Aviat Networks shall use its best effort to have a Tower Crew onsite with a mean time of 12 hours time, but not-to-exceed 24 hours, of the Aviat Networks NOC requesting an emergency onsite. Notwithstanding anything contained herein to the contrary, all services provided may be performed by Aviat Networks directly or through one or more qualified subcontractors. Aviat Networks shall coordinate, supervise, manage and be responsible for the services of all the subcontractors. Tower Crew pricing is based on a 2 person crew. If above 250 feet, 3 tower crew resources are required. If above 400 feet, then 4-5 resources are required. Scope of work includes addressing the issue that is affecting system performance. The closest capable crew will be dispatched to assess the issue and develop a plan requesting materials that may be required. All responding members will be trained in the OSHA requirements for safe work.

Note: Issues or concerns that are not essential to the restoration of the network are to be addressed in a separate mobilization

Limitations:

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- Onsite response time is based on weather permitting a tower climb. In order to meet the on-site SLA response requirements, the Customer is responsible for providing approval of additional expense for enabling access to difficult to reach sites (i.e. site not accessible by public road using 4 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require Customer presence.
- Customer is responsible for ensuring availability of adequate Stock.

Generators: When there is an imminent threat of an approaching disaster (e.g. hurricane) Aviat Networks will work with Customer to plan in advance and stage generators that will be needed (after receipt of Customer acceptance to stage and rent generators).

Notes:

- Competency and readiness of Tower Crew and Ground Crew:
 - Tower Crew and Ground Crew are trained for the operation and troubleshooting of all Aviat Network provided equipment.
 - Upon arrival to sites, Tower Crew will be equipped with tools and materials (including but not limited to in-line connector, jumper cable, compression N-type connectors, 400-ft spare LMR400 cable, line sweeper, ground kits), to resolve the issues described by the dispatcher and to perform common tower/site corrective tasks including but not limited to:
 - Performing path alignment of dishes with size up to and including 10-ft
 - Performing structural restoration of the dishes
 - Performing loop-back tests on the Aviat equipment
 - Performing line sweeps and identifying cable faults
 - Performing cable/connector replacement
 - Performing equipment replacement/removal
 - Performing bypassing of surge arrestors with jumper cables and in-line connectors

4.2.8 PREVENTIVE MAINTENANCE

Preventative Maintenance provides a resource to work with the customers in reviewing operational aspects related to the performance of Microwave equipment and associated software within the customer's network. A resource will come on-site to all customer locations covered under the associated agreement for this service. Once analysis is complete, Aviat Networks will provide a written summary of findings and recommendations related to the work that has taken place.

An engineer is deployed to site as per the customer and Aviat agreed upon schedule commitment for this service. A system health check on Aviat Networks' equipment will be completed which includes performance testing and an analysis of historical data. A visual site audit is included under this service offering, which includes the following: (Complete Checklist in Attachment 1: Preventive Maintenance Checklist)

4.2.8.1 Ground PM

- Spot check Internal and external grounding
- Visual inspection of indoor and outdoor equipment
- Visual inspection of all cables, connectors, weather proofing
- Visual inspection of antenna installations
- Verify DC power levels

During the on-site time, the Aviat Networks' resource may recommend routine maintenance to the customer – which will be the responsibility of the customer to perform - and the Aviat Networks resource may, with the customer's agreement, perform routine upgrades to operating firmware or software that do not require network downtime. This preventative service work covers all Aviat Networks Microwave radio equipment, associated OEM equipment, DC systems and the Antenna Systems.

A final report will be presented to the customer stating findings, conclusions and any further recommendations. This preventative service work includes one day of time to visit with customer and review in detail the findings from preventative analysis effort.

4.2.8.2 Tower PM – OPTIONAL

- Provide inspection of Condition of Tower
- Provide inspection of Grounding
 - Provide visual inspection of Safety Lighting Systems

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- Provide inspection of all cables, connectors, weather proofing
- Provide inspection of Waveguide and Pressure Window assemblies if used
- Provide inspection of walkways, platforms, and sensors
- Provide inspection of antenna installation, condition, and alignment

During the on-site time, the Aviat Networks’ resource may recommend routine maintenance to the customer – which will be the responsibility of the customer to either perform or provide authorization to Aviat to perform. This preventative service work covers only Antenna Systems under current Aviat support contract. A final report will be presented to the customer stating findings, conclusions and any further recommendations.

Limitations: In order to meet the on-site SLA response requirements, the Customer is responsible for providing access to difficult to reach sites (i.e. site not accessible by public road using 2 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require customer presence. The customer is responsible for provisioning and making available spare parts.

Exclusion: Materials are excluded from scope of work and pricing. Materials or special transport equipment (snow cat, boom truck, etc) will be invoiced as time and materials.

NOTES: If additional hours are required to complete out of compliance repairs (above the 2 hours), Aviat will true-up with the client at completion of all sites. Assuming all fixes are during maintenance window, Hourly rate will be \$201 for a Lead Microwave Technician and \$302 per Tower Climber. Any materials will be invoiced at time and materials.

5. AVIAT NETWORKS CONTACTS

Outlined below is the process to contact Aviat Networks once the Agreement is effect.

For Questions or concerns on the Agreement either before or after it is in effect, please contact:	
<p>NORTH AMERICA Repairs, Returns & Advance Replacements Phone: 1--800-227-8332 (selecting Option 2, then 1)</p> <p>Direct number: 1-210-526-6345</p> <p>Fax: 1-210-526-6315</p> <p>E-mail: CustomerCare.Americas@aviatnet.com</p> <p>Online RMA Request: https://aviatcloud.com/rma_tracking.asp</p>	<p>NORTH AMERICA Technical Assistance Phone: 1-800-227-8332 (Option1, enter PIN, press 1 to confirm PIN, then Option 1 for TAC)</p> <p>Direct number: 1-210-526-6345</p> <p>Fax: 1-210-526-6315</p> <p>E-mail: TAC.AM@aviatnet.com</p> <p>Online Technical Assistance Request: www.aviatcloud.com</p>
<p>NORTH AMERICA Network Operations Center (NOC) Aviat NOC Contacts: Email: noc.notifications@aviatnet.com Phone: 877-662-7871 opt 1, 24x7</p>	<p>NOC Escalation Contacts: Sr. Manager Stephen Berger Phone: 210-973-4218 Email: stephen.berger@aviatnet.com</p>

6. ADDITIONAL TERMS AND CONDITIONS

This Agreement is between the party purchasing services described herein (the “Customer”), with Aviat U.S., Inc., a wholly owned subsidiary of Aviat Networks Inc. (“Aviat Networks”), with offices at 200 Parker Drive, Suite C100A, Austin, Texas 78728 .

6.1 SCOPE OF SERVICES

Aviat Networks will furnish the services outlined in the [Service Level Support](#) Section of this Agreement (“**Services**”) for the products for Customer as may be required from time to time for the period specified in the [Duration of Support Period](#) Section providing receipt and acceptance of the Customer’s purchase order. The Services will be provided in conformity with the terms, conditions, specifications and other requirements of this Agreement and each request for Services will be governed by the terms and conditions stated herein.

The Customer must ensure that the Products to be included in this Agreement be in good operating condition prior to the commencement of this Agreement. Aviat Networks., Inc. reserves the right to inspect any and all of the Products to be included in the Agreement prior to the commencement of the Agreement, and if the Product is found to be defective, the Customer shall be responsible for the cost of repair of the defective units.

An authorization to return units to Aviat Networks under this Agreement must be obtained from an Aviat Networks representative prior to making shipment to the Aviat Networks’ Repair Center. Aviat Networks

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warrants that each Unit that is repaired or replaced under this Agreement, shall, at the time of return to Customer, for a period of ninety (90) days thereafter or until the expiration or termination of this Agreement, whichever is longer, be free from defects in materials and workmanship. Such warranty shall not include any consumable components to which a specific manufacturer's guarantee applies. If any Unit shall prove to be defective in materials or workmanship under normal intended usage, operation and maintenance during the term of this Agreement, as determined by Aviat Networks after examination of the Unit claimed to be defective, then Aviat Networks shall repair or replace, at Aviat Networks' sole option, such defective Unit, in accordance with procedures specified herein, at no additional cost, exclusive, however, of the cost of labor by the Customer's own employees, agents or contractors in identifying, removing or replacing the defective part(s) of the Units.

Liability of Aviat Networks for breach of any and all warranties hereunder is expressly limited to the repair or replacement of defective Units as set forth in this Agreement, and in no event shall Aviat Networks be liable for special, incidental or consequential damages by reason of any breach of warranty or defect in materials or workmanship.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED, OR STATUTORY. IN PARTICULAR, THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED AND SHALL NOT BE APPLICABLE EITHER FROM AVIAT NETWORKS OR ANY OTHER EQUIPMENT MANUFACTURER. AVIAT NETWORKS' WARRANTY OBLIGATIONS AND CUSTOMER'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, UNDER NO CIRCUMSTANCES SHALL AVIAT NETWORKS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING UNDER CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOSS OF CAPITAL, REVENUE OR PROFITS AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT. IN NO EVENT SHALL AVIAT NETWORKS' LIABILITY TO CUSTOMER, OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE LESSER OF \$100,000.00 USD OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY ITEMS SUPPLIED HEREUNDER.

EXCLUSIONS:

Except as set forth below, the following are excluded from the scope of this Agreement:

1. Repair or replacement of Products which have been subjected to:
 - damage as a result of Customer's fault, negligence, improper use or failure to maintain Products in good working order; or
 - accident (including fire, flood, storm, lightning strike, or other act of God)
2. Repair or replacement of Products furnished, modified, altered or repaired by Customer or any other third party other than Aviat Networks or its authorized agent.
3. Repair of Products that are not repairable due to lack of component availability.
4. Expedited Services such as Emergency Repair. Expedited Services may be requested and will be executed based on inventory availability only. Expedited Services will be quoted at time of service request;
5. Repair of Antenna Systems. Tower crews, and the associated dispatch/labor support, for repairing antenna systems are excluded from Warranty and Extended Warranty unless specifically identified as a purchased service option. Field support for antenna repair will be contracted by the Customer on a per incident basis.

6.2 PRICES/PAYMENT/TAXES/SHIPPING

All payments shall be made via check to the accounts specified on the invoice in advance of the commencement of each year of service/coverage. Customer shall make payment of the total amount due to Aviat Networks within thirty (30) days from the invoice date, unless otherwise specified or agreed to in writing by Aviat Networks. In the event any payment by Customer is past due, Aviat Networks reserves the right to withhold Services until such payment is received. Prices and payment terms for Services or Products not included in this Agreement, such as Emergency Repair, etc., will be established on a case-by-case basis subject to the mutual written agreement of the parties.

All prices are exclusive of all sales, use, excise, and other taxes, duties or charges. Unless evidence of tax exempt status is provided by Customer, Customer shall pay, or upon receipt of invoice from Aviat Networks, shall reimburse Aviat Networks for all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks, resulting from this transaction or any part thereof.

All shipments made by Aviat Networks under this Agreement are made via the methods (as applicable) outlined in the [Repair Services](#) and/or [Advance Replacement](#) Sections or the [Repair Logistics Program](#) Section (if purchased) of this Agreement. Unless instructed otherwise, Aviat Networks will arrange for standard commercial shipping. In the event Customer requires other than standard commercial shipping, Customer will

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be responsible for any additional costs incurred. Responsibilities regarding the export of items delivered under this Agreement are detailed in the [Export and Re-Export Restrictions](#) and [Export Documents](#) Sections below.

If payment is not made when due, Aviat Networks may assess interest on the overdue balance at the lesser of 1-1/2% per month or the maximum rate allowed by law.

6.3 EXPORT AND RE-EXPORT RESTRICTIONS

Performance and delivery of the equipment, documents, Services and Software sold or delivered hereunder are subject to export control laws and regulations of the United States, as applicable, and conditioned upon receipt of required U.S. Government licenses and approvals by Aviat Networks. Customers shall not export or re-export Products or technical data delivered hereunder from the United States without complying with regulations of the Bureau of Export Administration of the United States Department of Commerce, as applicable. Customers shall not re-export the Products and technical data delivered hereunder from the country of delivery or to any facility engaged in the design, development, stockpiling, manufacturing or use of missile, chemical or biological weapons without fully complying with the regulations of the above United States government agencies. Customer warrants that it will comply with the United States Foreign Corrupt Practices act of 1997, as amended.

6.4 EXPORT DOCUMENTS

Customer shipments, under this Agreement, to Aviat Networks shall be made via the methods (as applicable) outlined in the [Repair Services](#) and/or [Advance Replacement](#) Sections or the [Repair Logistics Program](#) Section (if purchased) of this Agreement. Customer shall be responsible for insurance and for clearing incoming Products through customs in their country.

Customers shall be responsible for obtaining any necessary import licenses into the country of delivery. Aviat Networks shall provide certificates of delivery, affidavits of origin, and other information under its control which is necessary for Customer to import Products.

Customers shall provide all information, certificates and Letters of Assurance necessary for Aviat Networks to obtain any export licenses required for Aviat Networks to export Products out of the country for repair, as applicable. Aviat Networks shall be responsible for selection and/or approval of freight forwarder(s). In the event that Customer wishes to utilize a freight forwarder that is not acceptable to Aviat Networks, Customer shall be the shipper of record and shall be responsible for obtaining required export licenses which shall be in the name of the Customer.

6.5 EXCUSABLE DELAY

Aviat Networks shall be excused from performance under this Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of a public enemy, labor difficulties or disputes, failure or delay in delivery by Aviat Networks' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of God, or Customer's fault or negligence, or where compliance with any applicable environmental law or regulation by Aviat Networks is not reasonably technologically or economically feasible, or would otherwise require Aviat Networks to change its manufacturing process. ("Excusable Delay").

In the event of an Excusable Delay, Aviat Networks shall make reasonable efforts to notify Customer of the nature and extent of such a delay and Aviat Networks (i) will be entitled to a schedule an extension on at least a day-for-day basis, and (ii) in the event the delay is caused by Customer's fault or negligence, Aviat Networks will be also entitled to an equitable adjustment in the price under this Agreement.

6.6 TERMINATION

Either party may terminate this Agreement immediately upon written notice to the other party if: either party breaches any provision of this Agreement in any respect and such breach remains unremedied for thirty (30) days after written notice from the non-breaching party. In the event this Agreement is terminated due to a breach by Customer, Aviat Networks shall retain the entire amount of the annual fee paid by Customer. The right of termination provided herein is absolute and neither party shall be liable to the other for damages or otherwise by reason of such termination.

6.7 ASSIGNMENT

Customer may not assign this Agreement in whole or in part without the prior written consent of Aviat Networks which shall not be unreasonably withheld.

6.8 GOVERNING LAW, VENUE AND JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the **State of Ohio**. The parties agree that any action to enforce any provision of this Agreement or arising out of or based upon this

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Agreement or the business relationship between Aviat Networks and Customer will be filed in and heard before the courts of Delaware County, Ohio.

6.9 ENFORCEABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

6.10 LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING UNDER THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, AND CONSEQUENTIAL OR LOSS OF PROFIT TYPES OF DAMAGES AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT.

6.11 COMPLIANCE WITH LAW

- a) Customer agrees to assist Aviat Networks to comply with any applicable conventions, laws, rules, regulations, and bylaws incident to its activities under this Agreement, including, without limitation, United States export control regulations, the United States Foreign Corrupt Practices Act, and the United States anti-boycott regulations. Customer will promptly deliver to Aviat Networks a copy of any notice or instrument alleging a violation of any of these laws.
- b) Customer warrants that Customer shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to Customer's performance hereunder, and shall promptly act to correct any noncompliance once identified.
- c) **EXPORT AND RE-EXPORT RESTRICTIONS.** Customer acknowledges that the Equipment and Licensed Programs sold or licensed to it by Aviat Networks under this Agreement may be subject to export controls under the laws of the United States or Canada. Customer will not export or re-export the Equipment or Licensed Programs, technology, or products manufactured from the technology that are the subject of the Agreement in violation of the export control laws of the United States or Canada.

6.12 ENTIRE AGREEMENT

This Agreement supersedes all previous communications, transactions, and understandings, whether oral, or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.

6.13 INDEMNIFICATION

Notwithstanding any other term or condition of this Agreement, Aviat Networks shall indemnify and hold harmless the Customer, its officials, agents and employees from any and all losses, claims, damages, lawsuits, costs, judgments, expenses or any other liabilities which 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 extent caused by the negligent act or omission of Aviat Networks, its subcontractors and consultants, any person directly or indirectly employed by any of them, or any person for whose acts any of them may be liable.

6.14 INSURANCE

6.14.1. Aviat Networks 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.

6.14.2. Aviat Networks 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.

6.14.3. Aviat Networks 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.

6.14.4. Customer, 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 14.14.1 and 14.14.2. Aviat Networks shall require all of its subcontractors to provide like endorsements.

6.14.5. Prior to the commencement of any work under this Agreement, Aviat Networks, and all of its subcontractors, shall furnish the Customer with properly executed certificates of insurance for all insurance required by this Agreement, as well as properly executed endorsements indicating the

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additional insureds as required by subsection 14.14.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the Customer. Aviat Networks will replace certificates for any insurance expiring prior to completion of work under this Agreement.

6.15 INDEPENDENT CONTRACTOR

Aviat Networks agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Aviat Networks also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

7. SIGNATURES

BE IT FURTHER RESOLVED that the Delaware County Board of Commissioners approves the purchase order request to Aviat U.S., Inc in the amount of \$44,779.00.

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

**9
RESOLUTION NO. 22-243**

IN THE MATTER OF PURCHASING RADIOS AND RELATED COMPONENTS FOR USE IN THE COUNTYWIDE PUBLIC SAFETY COMMUNICATIONS SYSTEM:

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

WHEREAS, the Delaware County Director of Emergency Communications recommends the purchase of additional radios, and related components and software, for the countywide public safety communications system; and

WHEREAS, the radios and related components are available for purchase at discounted pricing through the State of Ohio’s cooperative purchasing program (the “Program”); and

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

WHEREAS, pursuant to section 307.12(G) of the Revised Code, if the Board finds, by resolution, that the county has personal property that is not needed, or is unfit for public use, the Board may offer to sell the property to a firm from which the Board proposes to purchase new property and have the selling price credited to the firm against the purchase price of the new property; and

WHEREAS, EF Johnson Company/Kenwood is currently offering a promotion for trading in obsolete radios for a credit on the purchase of new radios; and

WHEREAS, the county has radios that are not needed, obsolete, or unfit for public use and qualify for the trade in promotion;

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

Section 1. The Board hereby approves the purchase of sixteen (16) VM5930 mobile radios, and related components and software, from Vasu Communications, Inc., a state-approved dealer under the Program, in accordance with Quote Numbers 201006784 dated March 11, 2022, for a total price of \$40,923.04

Section 2. The Board hereby finds that the county has sixteen (16) Motorola XTS5000 Model II portable radios that are not needed, obsolete, or unfit for public use and authorizes the sale of the radios to Vasu Communications, Inc., for a total credit to the purchase price of \$4,960.00. This credit is reflected in the total price stated in Section 1.

Section 3. The purchase shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index STS073, Schedule # 573004-0, which are, by this reference, fully incorporated herein and of which the purchase order approved herein shall be made a part.

Section 4. The Board hereby approves a purchase order in the amount of \$40,923.04 to Vasu Communications, Inc., from Fund Number 21411306.

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

**10
RESOLUTION NO. 22-244**

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IN THE MATTER OF DONATING PERSONAL PROPERTY TO THE CITY OF WESTERVILLE:

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

WHEREAS, Delaware County currently owns certain personal property, specifically three (3) New Communication Switch Model NCS—C250A, Serial Number: G06K-10994, H28D-11068, L08J-11402 (the “Property”), that is no longer needed for use by Delaware County; and

WHEREAS, pursuant to section 307.12(D) of the Revised Code, the Board of County Commissioners (the “Board”) may sell or donate county personal property to any political subdivision of the state without advertisement or public notification, regardless of the property’s value; and

WHEREAS, the City of Westerville Police Department has expressed a need for and can utilize the Property;

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

Section 1. The Board hereby approves the donation of the Property to the City of Westerville.

Section 2. The Property shall be donated upon the condition that the Property is accepted “as is.”

Section 3. The Clerk of the Board shall provide a certified copy of this Resolution to the Fiscal Officer for the City of Westerville.

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

11

RESOLUTION NO. 22-245

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ENVIRONMENTAL DESIGN GROUP, LLC, FOR THE PROJECT KNOW AS DEL-2024-CULVERTS (PID 2135), VARIOUS CULVERT REPLACEMENTS:

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

WHEREAS, section 305.15 of the Revised Code provides that a board of commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from engineering firms interested in providing services for the project known as DEL-2024-CULVERTS (PID 2135); and

WHEREAS, the County Engineer has selected the consulting firm of Environmental Design Group, LLC, through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services for engineering and design of the improvements, and requests that the Board enter into Contract with said firm;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Professional Services Agreement:

**PROFESSIONAL SERVICES AGREEMENT
DEL-2024-Culverts (PID 2135), Various County Culvert Replacements**

This Agreement is made and entered into this 4th day of April, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Environmental Design Group, LLC, 450 Grant Street, Akron, Ohio 44311 (“Consultant”), hereinafter collectively referred to as the “Parties,” and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide professional design services for the preparation of construction and right of way plans in connection with the project known as DEL-2024-Culverts (PID 2135), Various County Culvert Replacements (the “Services”), which project consists of the analysis and design of five culvert replacements or rehabilitations, including preparation of construction plans and necessary right-of-way plans.
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 The Services are further defined in and shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Consultant’s Scope of Services and Fee Proposal, dated March 4, 2022

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2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer (the "County Engineer") as the agent of the County for this Agreement.
- 2.2 The County 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 Consultant, shall supersede all prior understandings and agreements relating to the Services, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Scope of Services and Fee Proposal noted in Section 1.3.
- 4.2 For all the Services the total fee shall be \$299,025.19, which amount shall not be exceeded without subsequent modification.
- 4.3 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

5 NOTICES

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

Project Manager:

Name: Delaware County Engineer
Attn: Andrew Fortman (Design Engineer)

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2400

Email: afortman@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Dwayne A Groll, P.E., LEED AP

Address of Firm: 450 Grant Street

City, State, Zip: Akron, OH 44311

Telephone: (330) 375-1390

Email: bnewell@envdesigngroup.com

6 PAYMENT

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

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

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- 7.1 The Consultant shall commence Services upon written authorization from the County Engineer and shall complete the Services in a timely manner in accordance with the Scope of Services.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written authorization from the County Engineer.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the County Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall not be effective unless and until the modification is approved in a writing signed by both Parties.

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

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

13 INSURANCE

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subconsultants, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subconsultants, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subconsultants, if any.

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- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subconsultants to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subconsultants, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are

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available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the Services to which the Agreement relates.

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

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

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

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

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RESOLUTION NO. 22-246

IN THE MATTER OF APPROVING OWNER’S AGREEMENT FOR HYATTS ROAD WIDENING AT HYATTS MEADOWS:

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Hyatts Road Widening at Hyatts Meadows;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreement for Hyatts Road Widening at Hyatts Meadows, as follows:

OWNER’S AGREEMENT
PROJECT NUMBER:
22028

THIS AGREEMENT made and entered into this 4th day of April, 2022, by and between the **COUNTY OF DELAWARE** (acting through its **BOARD OF COUNTY COMMISSIONERS**), hereinafter called the **COUNTY**, and **OMFD Ltd** hereinafter called the **OWNER**, as evidenced by the Engineering and Construction Plan entitled Hyatts Rd Widening at Hyatts Meadows which was approved by the **County Engineer**, hereinafter called the **Plan**, is governed by the following considerations to wit:

- 1) The **OWNER** is to construct, install or otherwise make all of the improvements as shown and set forth to be performed and completed on the **PLAN**, which is part of this **AGREEMENT**.
- 2) The **OWNER** shall pay the entire cost and expense of said improvements.
- 3) The **OWNER** is to provide an irrevocable letter of credit or other approved financial warranties in the amount of \$606,800.00 payable to the **BOARD OF COUNTY COMMISSIONERS** to insure the faithful performance of this **AGREEMENT** and the completion of all of the said improvements in accordance with the current "**Delaware County Engineering and Surveying Standards for Subdivision Development**" and current "**Subdivision Regulations of Delaware County, Ohio**". Said financial warranty will be released and returned to the **OWNER** within thirty (30) days of the acceptance of the improvements by the **COUNTY**.
- 4) Before beginning construction, the **OWNER** shall deposit inspection fees in the amount of \$30,000.00 estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Engineer**. Upon completion of the project and acceptance of the improvements by the **DELAWARE COUNTY**

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COMMISSIONERS, the remaining amount in the fund shall be returned to the **OWNER**.

- 5) The **OWNER** is to complete all construction to the satisfaction of the **COUNTY no later than December 31, 2022** and will receive an approval letter from the **Delaware County Engineer** as evidence of the **OWNER'S** release from responsibility to said project.
- 6) The **OWNER** shall indemnify and hold the **COUNTY** free and harmless from any and all claims for damages of every nature arising or growing out of the construction of said improvements.
- 7) The **OWNER** will at all times during the construction of said improvements maintain thru traffic on the public roadway and keep the same free of unreasonable hazards to the public. Said roadway shall not be closed to traffic except as approved by the **Delaware County Engineer**. Construction signs, barricades and lights shall be placed as needed on the job site as in accordance with the **Ohio Department of Transportation "Uniform Traffic Control Devices" and "Traffic Control for Construction and Maintenance"**.
- 8) The **OWNER** further agrees that any violation of or noncompliance with any of the provisions as stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **Delaware County Engineer** shall have the right to stop work forthwith and use the surety for the completion of the improvements.
- 9) If the **OWNER** should become unable to carry out the provisions of this **AGREEMENT**, the **OWNER'S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.
- 10) Upon approval and acceptance of the improvements, the original copy of the **PLAN** shall become the property of the **COUNTY** and shall be filed in the office of the **Engineer**.
- 11) In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants to the **OWNER** or his agent the right and privilege to make the said improvements stipulated herein.

EXHIBIT "A"	
CONSTRUCTION COST ESTIMATE	\$606,800.00
CONSTRUCTION BOND AMOUNT	\$606,800.00
INSPECTION FEE DEPOSIT	\$30,000.00

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

13
RESOLUTION NO. 22-247

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

It was moved by Mr. Merrell, seconded by Mr. Benton 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
UT22-0049	Del-Co Water	Bale Kenyon Road	Install waterline
UT22-0050	Del-Co Water	County Line Road South	Install waterline

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

OTHER BUSINESS:
RESOLUTION NO. 22-248

IN THE MATTER OF APPROVING A PROPOSAL FROM MSD ENVIRONMENTAL SERVICES, INC. FOR RENTAL OF A 3 BELT 1.0 METER BDP TRAILER MOUNTED BELT PRESS:

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

WHEREAS, the Sanitary Engineer recommends approval of a proposal from MSD Environmental Services, Inc., for rental of a 1.0 meter BDP trailer mounted belt press;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following proposal from MSD Environmental Services, Inc.:

BE IT FURTHER RESOLVED that the Board of County Commissioners of Delaware County, Ohio approves a purchase order with MSD Environmental Services, Inc.

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**MSD Environmental Services, Inc.
March 30, 2022**

Cory Smith
Delaware County Regional Sewer District
Phone: 937-243-7413
Email: csmith@co.delaware.oh.us

RE: Proposal for Rental of 3 Belt, 1.0 Meter BDP Trailer Mounted Belt Press

Dear Cory,

MSD Environmental Services, Inc. is pleased to provide you with the following quotation for the rental of a trailer mounted BDP model 3DP belt press on a Curtain side, drop-deck trailer.

Equipment Description

One (1) Late model BDP Industries, 1 Meter, Model 3DP belt filter press, including sludge conditioning and mixing device, seamed woven belts, nylon coated drive/pressure rolls and idler rolls, hydraulic belt tensioning and tracking devices, variable speed press drive, controls and starting equipment, and accessory items or special construction features as follows:

1. One (1) 1M 3DP with independent gravity section at operator level
 - Hot Dipped Galvanized steel tubular frame.
 - Machined bearing pads.
 - 304 stainless steel wetted parts.
 - 304 stainless steel hardware.
 - Nylon coated rollers.
 - Self-cleaning showers.
 - 50 PLI hydraulic belt tension.
 - Up-flow feedbox with high solids, variable speed paddle wheel distribution box to insure even sludge distribution.
 - Ten foot long, independent gravity belt section at operator level.
 - Six rows of adjustable, furrowing plows.
 - Adjustable, curved wedge section.
 - 20" diameter, 304, stainless steel perforated roller.
 - Stainless steel non-rewetting perforated roll.
 - Eight s-wrap, vertical pressure section.
 - Severe duty, TEFC motors.
 - Individual drip trays to eliminate cake rewetting.
2. One (1) Hydraulic Power Unit.
3. One (1) Custom bi fold, full width conveyor, capable of loading large dump trucks and trailers. Conveyor is made of stainless steel and is variable speed, hydraulic drive.
4. One Emulsion polymer feed system with 10 GPH progressive cavity pump.
5. One Bornemann EH1900 progressive cavity sludge pump, rated at an approximate maximum of 300 GPM.
6. One (1) 20 hp Gould's 3656 booster pump for shower water rated for 60 GPM at 120 PSI.
7. One (1) Hot dipped galvanized skid with a 304L stainless steel sump pan with 4" cam lock connections on both sides.
8. One 4" Diameter Siemens Magnetic Flow Meter.
9. One (1) Complete electrical control panel for all belt filter press control functions and drives. The press shall contain interlocks required for ancillary equipment.
 - NEMA 4X stainless steel enclosure.
 - 100 amp service.
 - Start/Stop push buttons with run lights on all press drives and auxiliary equipment.
 - PLC based control system.
 - Alarm lights for e-stop, belt misalignment.
 - All VFD drives for press, GBT and sludge feed pump.
10. Custom Stainless Steel Catwalks, including:
 - Catwalks with non-slip aluminum grating. Stainless steel construction on catwalk frame and handrails. Cantilever design to fold up & down. Complete on one side of the press.
11. One lot of wash down hoses and spray nozzles.

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Scope of Work

MSD will perform/provide the following:

- Supply unit as described.
- Test run machine prior to shipment.
- Provide setup assistance and training as noted in proposal.

Under the terms of this agreement, the Customer will be responsible to provide the following:

- Access to the site to facilitate the delivery of the press.
- Utilities - Electrical -480 volt, 3 phase 100 amp power source with a disconnect.
- Set up, maintenance and repairs of unit, as outlined in the O&M manual.
- Optimal polymer required for proper press operation.
- Competent operation of the unit.
- Daily cleaning of the press, after operation has ceased.
- Protection from cold weather (daily winterization of the press)

A certificate of Insurance: A certificate of Insurance providing the following:

- o Property coverage for the value of the rental unit and including MSD as a loss payee. Value: \$465,000.00
- o Liability coverage for no less than \$1,000,000 per occurrence for bodily injury and/or property damage and \$2,000,000 aggregate, listing MSD Environmental Services, Inc. as additional insured.
- o Cancellation provision to give 30 days' notice to Certificate Holder.
- o Certificate holder to read: MSD Environmental Services, Inc., 1000 US 127 South, Eaton, OH 45320
- Any necessary permits and associated fees required for the project.
- All rental equipment must be kept clean, and returned in excellent condition. Customer will be responsible for all maintenance and any cleaning charges. Customer will also be responsible for any damage to the unit while in Customer's possession. Customer is responsible for missing parts or items. MSD reserves the right to inspect the equipment at any time, during normal working hours. Customer agrees to pay MSD invoices for damaged or missing parts or equipment.

Rental Pricing

The rental price for the 1M unit as outlined above is \$20,000.00* per month 1 month minimum

Set Up Assistance and Training

MSD will provide one day of setup and training for \$1,000.00
Any further training or set up is \$1,000.00 per day, per technician needed

Pickup and Return

MSD will provide third party Pickup and return for an estimated \$2,000.00 (Charge actual)

The rental rate starts the day the unit leaves our shop in Eaton, OH. The rental rate stops when unit returns to our shop.

PAYMENT TERMS

The first month's rent and delivery is due prior to pickup of the equipment. The following net invoice amounts shall be due in full within fifteen (15) days from the invoice date.

*Taxes and Other Charges: Any use tax, sales tax, excise tax, duty, custom, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. Buyer shall provide Seller at the time the Contract is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge. However, in the event any governmental authority subsequently requires Seller to pay any such tax, fee or charge, then Buyer shall be responsible for and shall promptly reimburse Seller for the full amount that Seller is required to pay.

This Proposal is Valid for 30 days

Equipment Availability

As with any "in-stock" equipment, the units are available on a "first come-first serve" basis. If the unit is rented or sold prior to your rental, MSD can provide quotes on additional equipment, if available.

Thank you for the opportunity to extend this proposal. If you have any questions or concerns, don't hesitate to call me at 937-733-7734.

Sincerely,
Aaron Deaton
MSD Environmental Services, Inc.

LIMITATION OF LIABILITY

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In no event and under no circumstances shall MSD Environmental Services, Inc. be liable to the customer for consequential, incidental, indirect, special or punitive damages, whether due to delay, breach of contract, tort (including without limitation negligence) or any other cause. In no event shall MSD Environmental Services, Inc. liability hereunder exceed the value to this contract regardless of legal theory. MSD Environmental Services, Inc. is not responsible for any accidents or injuries related to the equipment.

Non Hazardous Certification

Customer hereby certifies that none of the residuals to be provided to MSD Environmental Services, Inc. under this agreement shall constitute hazardous waste under federal, state or local law. Customer further certifies that it will not combine or mix hazardous waste with the residuals to be provided to MSD Environmental Services, Inc.

CHOICE OF FORUM AND APPLICABLE LAW

This Agreement shall be construed under and governed by the laws of the State of Ohio. The Customer submits and consents to the jurisdiction of the Preble County Common Pleas Court, State of Ohio as the sole and exclusive forum, court and venue to hear any lawsuit or other cause of action regarding this Agreement including, but not limited to, its enforceability, interpretation, validity, damages and issuance of restraining orders, injunctions, both temporary and permanent.

Shipment and Risk of Loss

Risk of loss or damage to the Equipment shall pass to Customer upon tender of the Equipment to Customer or common carrier at MSD Environmental Services, Inc.'s facility. Customer shall keep the Goods fully insured with loss payable to Seller from the time of delivery until the Equipment has been returned to MSD Environmental Services, Inc.

ACCEPTANCE OF THIS PROPOSAL:

We accept the terms and conditions of this proposal as prepared and presented to Delaware County, Delaware County Regional Sewer this 4th day of April, 2022 for the rental of a 1 Meter Skid Mounted Belt Press. By signing the acceptance of this proposal, the individuals warrant that they have the authority to bind the respective parties in this agreement.

MSD Environmental Services, Inc.

Delaware County Regional Sewer District

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

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ADMINISTRATOR REPORTS

Tracie Davies, County Administrator

-Spoke with the Montrose Group last week. They are preparing their search for our next Economic Development Director.

Dawn Huston, Deputy Administrator

-No reports.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

-There will be a board meeting tomorrow for the 9-1-1 Board.

Commissioner Benton

-Attended the CEBCO Annual Meeting Friday.

-The DKMM Budget Committee will meet tomorrow.

-CCAO will meet on Wednesday.

-The Genoa Business Association will meet Wednesday morning. Their guest speaker will be Engineer Bauserman.

-The OSU extension office will host an appreciation lunch today for the Commissioners' office and Facility department today.

-This is the best sports week of all year. The NCAA final is tonight, the Master's starts Thursday and Major League baseball starts this week.

Commissioner Lewis

-Would like the other commissioners input into having Communications Director email those who have questions about the Sawmill Parkway curb-cuts.

-There was an article in the paper featuring a Delaware County farmer, Glen Harsh, talking about the price increases for materials.

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RESOLUTION NO. 22-249

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9:45A.M. IN THE MATTER OF OPENING THE PUBLIC HEARING WITH RESPECT TO THE PROPOSED ISSUANCE BY FRANKLIN COUNTY OF ITS REVENUE BONDS PURSUANT TO CHAPTER 140, OHIO REVISED CODE, TO FINANCE AND REFINANCE HOSPITAL FACILITIES FOR THE BENEFIT OF NATIONWIDE CHILDREN’S HOSPITAL LOCATED IN FRANKLIN COUNTY AND DELAWARE COUNTY AND APPROVING THE ISSUANCE OF THE BONDS PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE:

It was moved Mr. Merrell, seconded by Mr. Benton to open the hearing at 9:45 A.M.

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

RESOLUTION NO. 22-250

IN THE MATTER OF CLOSING THE PUBLIC HEARING WITH RESPECT TO THE PROPOSED ISSUANCE BY FRANKLIN COUNTY OF ITS REVENUE BONDS PURSUANT TO CHAPTER 140, OHIO REVISED CODE, TO FINANCE AND REFINANCE HOSPITAL FACILITIES FOR THE BENEFIT OF NATIONWIDE CHILDREN’S HOSPITAL LOCATED IN FRANKLIN COUNTY AND DELAWARE COUNTY AND APPROVING THE ISSUANCE OF THE BONDS PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE:

It was moved Mr. Benton, seconded by Mr. Merrell to close the hearing at 9:49 A.M.

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

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RESOLUTION NO. 22-251

A RESOLUTION APPROVING THE POTENTIAL ISSUANCE BY FRANKLIN COUNTY OF ITS REVENUE BONDS PURSUANT TO CHAPTER 140, OHIO REVISED CODE, TO FINANCE AND REFINANCE HOSPITAL FACILITIES FOR THE BENEFIT OF NATIONWIDE CHILDREN’S HOSPITAL LOCATED IN FRANKLIN COUNTY AND DELAWARE COUNTY AND APPROVING THE ISSUANCE OF THE BONDS PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE.

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

WHEREAS, the County of Franklin, Ohio (“Franklin County” or the “Issuer”), as a “public hospital agency,” as defined in Chapter 140, Revised Code (the “Act”), is authorized and empowered by the Act to (a) acquire, construct, improve and equip “hospital facilities,” as defined in the Act, and (b) issue its revenue bonds to refund bonds and other obligations issued to pay the “costs of hospital facilities,” as defined in the Act;

WHEREAS, pursuant to the Act and certain public hearings, including a hearing held by the County Hospital Commission of Franklin County on March 30, 2022, and a hearing held by this Board of County Commissioners on April 4, 2022, Franklin County anticipates issuing its Hospital Facilities Revenue Bonds (the “Series 2022 Bonds”) in an aggregate principal amount not to exceed \$500,000,000, the proceeds of which are to be used by Nationwide Children’s Hospital, an Ohio nonprofit corporation (the “Corporation”) to (i) finance and refinance the costs of the acquisition, construction, installation and equipping of certain “hospital facilities” located within the County of Franklin, Ohio, and the County of Delaware, Ohio and (ii) fund interest rate hedge termination payments;

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

Section 1. Approval. The issuance of the Series 2022 Bonds is hereby approved by this Board, as an “applicable elected representative” of Delaware County, solely for the purpose of satisfying the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended. Based on representations of the Corporation, a portion of the proceeds of the 2022 Bonds will be used for the purpose of (i) restructuring or refunding on a current basis all or a portion of the Issuer’s (a) \$45,000,000 original principal amount Variable Rate Demand Hospital Improvement Revenue Bonds, Series 2008B (Nationwide Children’s Hospital Project), dated May 7, 2008, (b) \$75,000,000 original principal amount Hospital Improvement Revenue Bonds, Series 2012A (Nationwide Children’s Hospital Project), dated May 15, 2012, (c) \$45,580,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2014B (Nationwide Children’s Hospital), dated November 20, 2014, (d) \$12,635,000 original principal Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2016A (Nationwide Children’s Hospital) dated April 28, 2016, (e) \$35,035,000 original principal Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2016B (Nationwide Children’s Hospital) dated April 28, 2016, (f) \$44,155,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2013A (Nationwide Children’s Hospital Project) dated June 4, 2013, (g) \$22,830,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2013B (Nationwide Children’s Hospital Project) dated June 4, 2013, (h) \$17,225,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2014 (Nationwide Children’s Hospital Project) dated June 4, 2014, and the County’s \$46,150,000 Hospital Facilities Revenue Refunding and Improvement Bonds, Series 2017B (Nationwide Children’s Hospital Project) dated November 16, 2017

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(collectively, the “Prior Bonds”), (ii) funding interest rate hedge fund termination payments, and (iii) paying certain costs of issuance of the Bonds. The projects financed and refinanced by the Prior Bonds consist of construction, additions, improvements and equipping of health care facilities located at 700 Children’s Drive, Columbus, Ohio, 6435 East Broad Street, Columbus, Ohio, 5675 Venture Drive, Dublin, Ohio, and 433 N Cleveland Ave, Westerville, Ohio (the “Prior Projects”). The Prior Projects have been, and will continue to be, owned by the Corporation.

Section 2. No Obligation. The costs of issuance of the Series 2022 Bonds shall be paid from the proceeds of the Series 2022 Bonds, or from moneys made available by the Corporation. The Series 2022 Bonds do not constitute a general obligation, debt or bonded indebtedness of Franklin County or this County and neither the faith or credit or taxing power of Franklin County or this County or any other political subdivision is pledged to the payment of principal of or interest on the Series 2022 Bonds and the holders or owners thereof shall not be given the right and have no right to have excises or taxes levied by Franklin County or this County for the payment of principal of and interest thereon. Further, no part of the Series 2022 Bonds are to be issued, or shall be deemed issued, for or on behalf of this County.

Section 3. Bond Terms. The terms and provisions of the Series 2022 Bonds shall be as provided for in or pursuant to resolutions of the County Hospital Commission of Franklin County and the Board of County Commissioners of Franklin County authorizing the issuance, sale and delivery of the Series 2022 Bonds.

Section 4. Execution of Other Documents. Any member of this Board, the Clerk of this Board, and other County officials, as appropriate, are each authorized and directed to sign any transcript certificates and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

Section 5. Compliance with Open Meeting Requirements. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. Effectiveness. This Resolution shall be in full force and effect immediately upon its adoption.

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

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RESOLUTION NO. 22-252

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE SALE OF PROPERTY AT COMPETITIVE BIDDING; FOR PENDING OR IMMINENT LITIGATION:

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

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

Section 1. The Board hereby adjourns into executive session for consideration of appointment of a public employee or public official; to consider the sale of property at competitive bidding; for pending or imminent litigation.

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

RESOLUTION NO. 22-253

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

OTHER BUSINESS:

RESOLUTION NO. 22-254

IN THE MATTER OF APPOINTING A MEMBER TO THE NORTHSTAR COMMUNITY AUTHORITY BOARD OF TRUSTEES:

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

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WHEREAS, on August 16, 2007, the Delaware County Board of Commissioners (the “Board of Commissioners”) adopted Resolution No. 07-985, establishing the NorthStar Community Authority, pursuant to Chapter 349 of the Revised Code; and

WHEREAS, as the organizational board of commissioners, the Board of Commissioners shall make appointments to the Community Authority Board of Trustees, pursuant to Resolution No. 07-985 and section 349.04 of the Revised Code; and

WHEREAS, a current citizen member resigned his position, effective March 9, 2022, and a replacement appointment is needed to fulfill the unexpired term;

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

Section 1. The Board of Commissioners hereby approves the appointment of the following member to the NorthStar Community Authority Board of Trustees for the term specified herein:

Position	Appointee	Term Ends
Citizen Member	Michael Ringle	August 15, 2023

Section 2. The appointment approved herein shall be effective on the date this Resolution is adopted.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners