

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD NOVEMBER 21, 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

1
 RESOLUTION NO. 22-1016

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 17, 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 November 17, 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. 22-1017

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1118, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1118 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR1118:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1118, memo transfers in batch numbers MTAPR1118, Procurement Card Payments in batch number PCAPR1118 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2200741 (Endicott Microfilm)	Records Center	10011103-5201	\$31,100.00
P2204541 (Electronic Special)	Machinery & Equipment (less than \$5,000)	41711436-5450	\$60,000.00
P2203133 (George Jr. Republic in PA)	Medical & Health Related Services	70161608-5342	\$39,000.00
P2203360 (Buckeye Ranch Inc.)	Medical & Health Related Services	70161608-5342	\$13,300.00
P2203288 (Children's Hospital Medical Center)	Medical & Health Related Services	70161605-5342	\$27,000.00
P2203360 (Buckeye Ranch Inc.)	Medical & Health Related Services	70161605-5342	\$38,700.00
P2203362 (The Village Network)	Medical & Health Related Services	70161605-5342	\$50,000.00
P2203872 (Bellefaire Jewish Children Bure)	Medical & Health Related Services	70161605-5342	\$50,000.00
P2203874 (Home Remedy LLC)	Medical & Health Related Services	70161605-5342	\$9,000.00
P2204009 (Home Remedy LLC)	Medical & Health Related Services	70161605-5342	\$7,000.00
P2201523 (M Tech)	Vehicle Maintenance & Repair	66211900-5228	\$5,000.00

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

4
 RESOLUTION NO. 22-1018

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Engineer’s Office is requesting that its employees attend various trainings, meetings, conferences and continuing education classes throughout 2023, at the cost of \$33,500.00.

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

5
ANDY VOLENIK, DELAWARE COUNTY TRANSIT DIRECTOR
INTRODUCTION/UPDATE DELAWARE COUNTY TRANSIT

6
ERIC PENKAL, DIRECTOR DELAWARE COUNTY GUARDIANSHIP SERVICES BOARD
PRESENTATION/UPDATES
DELAWARE COUNTY GUARDIANSHIP SERVICES BOARD

7
RESOLUTION NO. 22-1019

IN THE MATTER OF APPROVING A COOPERATION AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, AND THE CITY OF DELAWARE FOR THE RELOCATION OF COUNTY FIBER OPTIC COMPONENTS:

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

WHEREAS, the Director of Information Technology recommends approving a cooperation agreement by and between the Delaware County Board of Commissioners and the City of Delaware for the relocation of County fiber optic components;

NOW, THEREFORE, BE IT RESOLVED the Board of Commissioners approves a cooperation agreement by and between the Delaware County Board of Commissioners and the City of Delaware for the relocation of County fiber optic components:

COOPERATION AGREEMENT
BY AND BETWEEN
THE CITY OF DELAWARE
AND
DELAWARE COUNTY
FOR CONDUIT USE

This cooperation agreement (“Agreement”) is made and entered into on November 21, 2022 by and between the Delaware County Board of Commissioners, 91 North Sandusky Street, Delaware, Ohio 43015 (the “County”), and the City of Delaware, 1 South Sandusky Street, Delaware, Ohio 43015 (the “City”), hereinafter referred to individually as “Party” or collectively as the “Parties.”

1 AUTHORITY

1.1 Pursuant to section 9.482 of the Revised Code, a political subdivision may enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render. Similarly, under Section 5 of the Delaware Charter, City Council may authorize an intergovernmental agreement for the purpose of improving public services.

2 PURPOSE

2.1 The County seeks to access and use the City’s conduit from Wade Street on the South side of William Street and east to the end of City conduit for the relocation of County fiber optic components (the “Project”).

2.2 This Agreement shall establish the terms and conditions whereby the City shall permit the County to access and use the City’s conduit for the Project.

3 NOTICES

3.1 Notices served under this Agreement shall be made in writing to the representatives of each party listed below:

3.1.1 County:

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Steve Lewis
Information Technology Director
101 North Sandusky Street
Delaware, Ohio 43015
Email: slewis@co.delaware.oh.us

3.1.2 City:

Susie Daily
Chief Information Officer
1 South Sandusky Street
Delaware, Ohio 43015
email: sdaily@delawareohio.net

4 MANAGEMENT OF PROJECT

- 4.1 The County shall have sole responsibility to design and manage the Project and shall keep the City, through its Chief Information Officer, informed of the Project's progress.
- 4.2 The County shall solely bear responsibility for the full cost of all aspects of the entire Project, pursuant to a separate agreement with a third-party contractor. The County shall also solely bear responsibility for future maintenance of the County's fiber components included in the Project.

5 PERSONNEL

- 5.1 The Parties each agree to maintain control over their respective personnel, and this Agreement shall not be construed to alter the employment relationship each Party has with its respective personnel. Each Party shall be responsible for the compensation, benefits, and liabilities of its respective personnel and hereby agrees to release the other Party from any responsibility therefor.

6 EQUIPMENT AND FACILITIES

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

7 RECORDS

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

8 INSURANCE AND LIABILITY

- 8.1 The Parties are both political subdivisions and lack authority to indemnify.
- 8.2 Each Party shall, for the life of this Agreement, maintain comprehensive general liability insurance coverage, with minimum limits in the amount of \$1,000,000.00 each occurrence or equivalent and \$2,000,000.00 in the aggregate, and shall cause the other Party to be named as an additional insured on any applicable insurance policies.

9 MISCELLANEOUS TERMS & CONDITIONS

- 9.1 Entire Agreement: This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.
- 9.2 Governing Law and Disputes: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before a court of competent jurisdiction in the State of Ohio.
- 9.3 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 9.4 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or

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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.

9.5 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

10 TERM

10.1 This Agreement shall take immediate effect upon approval by all Parties hereto and shall continue in full force and effect, unless and until modified, superseded, or terminated in accordance with this Section.

10.2 The City shall maintain authority to terminate this Agreement in its sole discretion by providing the County written notice of termination at least one hundred eighty days (180) prior to the effective date of termination.

10.3 The Parties shall review this Agreement every two (2) years starting in 2024, and any changes to this Agreement shall only be effective if included in a written amendment signed by both Parties. If no changes are made as a result of the review, the most recent version of the Agreement shall remain in effect.

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

**8
RESOLUTION NO. 22-1020**

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND HARRIS AND HEAVENER EXCAVATING, INC. FOR THE INSTALLATION OF RELOCATED FIBER CONDUIT:

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

WHEREAS, the Director of Information Technology recommends approving a services agreement by and between the Delaware County Board of Commissioners and Harris and Heavener Excavating, Inc. for the installation of relocated fiber conduit;

NOW, THEREFORE, BE IT RESOLVED the Board of Commissioners approves a services agreement by and between the Delaware County Board of Commissioners and Harris and Heavener Excavating, Inc. for the installation of relocated fiber conduit:

SERVICES AGREEMENT

This Agreement is made and entered into on November 21, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Harris and Heavener Excavating, Inc., 149 Humphries Drive, Reynoldsburg, Ohio 43068 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide labor, materials, tools, and equipment necessary for the installation of relocated fiber conduit (the “Services”) in the general locations depicted with yellow pins in Exhibit A attached hereto and, by this reference, incorporated herein.
- 1.2 The Services shall be rendered by the Contractor in accordance with the Contractor’s Quote dated November 7, 2022, which is attached hereto as Exhibit B and, by this reference, incorporated herein.
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Information Technology (the “Director”) as the agent of the County for this Agreement.
- 2.2 The Director shall have authority to review changes, commencement, and suspension of the

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Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Quote.
- 4.2 Total compensation under this Agreement shall not exceed \$47,530.82 without subsequent modification in accordance with Section 3.1.
- 4.3 The compensation specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, tools, and materials necessary to complete the Services.

5 PAYMENT

- 5.1 Compensation shall be paid in accordance with the Quote, based on invoices submitted by the Contractor and approved by the Director.
- 5.2 Invoices shall be submitted to the Director by the Contractor on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 5.3 The County shall pay invoices within thirty (30) days of receipt.

6 COMMENCEMENT; EXTENSIONS; CLAIMS

- 6.1 The Contractor shall commence Services upon written order from the Director and shall complete the Services promptly in accordance with the Quote. The Contractor acknowledges that time is of the essence, due to third party construction activity necessitating the Services to be rendered under this Agreement.
- 6.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Director may grant such an extension provided that all other terms of the Agreement are adhered to.
- 6.3 The Contractor shall submit any claims for additional compensation in writing to the Director promptly after the event giving rise to the claim, but in no event later than five (5) days after the event giving rise to the claim. Any claim or change in the scope of the Services shall require a written modification of this Agreement in accordance with Section 3.1.

7 SUSPENSION OR TERMINATION OF AGREEMENT

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

8 INDEMNIFICATION

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

9 INSURANCE

- 9.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be

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required to be provided by all subcontractors, if any.

- 9.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 9.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 9.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 9.1 and 9.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 9.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

10 MISCELLANEOUS TERMS AND CONDITIONS

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

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- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 10.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

9
RESOLUTION NO. 22-1021

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE RECORDER’S OFFICE:

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

Supplemental Appropriation		
24113102-5450	County Recorder Equipment/Machinery & Equipment	\$20,579.11

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

10
RESOLUTION NO. 22-1022

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

It was moved by Mr. Benton, seconded by Mr. Merrell 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
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UT2022-0194	AEP-OHIO	LACKEY OLD STATE	ELECTRIC
UT2022-0195	DELCO WATER	MURPHY ROAD	WATER LINE
UT2022-0196	COLUMBIA GAS	RUTH CROSSING	NATURAL GAS
UT2022-0197	SPECTRUM	CARTERS CORNER	CABLE

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

11

RESOLUTION NO. 22-1023

IN THE MATTER OF AWARDING A BID TO AND APPROVING A CONTRACT WITH PETERSON CONSTRUCTION COMPANY FOR THE BERLIN BUSINESS PARK PUMP STATION PROJECT FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:

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

WHEREAS, sealed bids for the Berlin Business Park Pump Station Project, Contract 2-2022, were received at www.bidexpress.com at 10:00 a.m. Thursday, November 10, 2022; and

WHEREAS, two (2) bids were received, and the lowest and best bid received was from Peterson Construction Company; and

WHEREAS, the Sanitary Engineer recommends awarding a contract to Peterson Construction Company;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners hereby awards the bid for the Berlin Business Park Pump Station Project, Contract 2-2022, to Peterson Construction Company and directs the Sanitary Engineer to prepare the necessary Notice of Award and contract documents and submit them to the contractor for execution;

BE IT FURTHER RESOLVED that the Delaware County Board of Commissioners hereby approves the following agreement with Peterson Construction Company:

**AGREEMENT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND CONTRACTOR
FOR DCES CONTRACT 2-2022: BERLIN BUSINESS PARK PUMP STATION PROJECT**

This AGREEMENT is by and between Delaware County Board of Commissioners, Delaware,
Ohio

(Owner) and Peterson Construction Company, 18817 SR 501 North, Wapakoneta, OH 45895

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of a Sanitary Pump Station, along with associated pump station structure, electrical equipment, upstream wastewater collection system, discharge force main piping, and general site work around the pump station.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The Berlin Business Park Pump Station Project

ARTICLE 3 - ENGINEER

3.01 The Project is designated to the Delaware County Sanitary Engineer (Engineer), who is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. All inquiries and correspondence shall be directed to Tiffany Maag, P.E., Delaware County Regional Sewer District.

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The Design Engineer is ms consultants, inc.

Within the State of Ohio, Department of Transportation, Construction and Material Specification, wherever the word "State" occurs, it is to mean OWNER. Wherever the word "Department" occurs, it is to mean OWNER. Wherever the words "Director", "Deputy Director" or "Engineer" occur or any other reference to a State of Ohio employee, it is to mean DELAWARE COUNTY SANITARY ENGINEER.

Within the City of Columbus, Construction and Material Specification, wherever the word "City" occurs, it is to mean OWNER. Wherever the words "Department" or "Division" occur, it is to mean OWNER. Wherever the words "Director" or "Engineer" occur or any other reference to a City of Columbus employee, it is to mean DELAWARE COUNTY SANITARY ENGINEER.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence - All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Dates for Substantial Completion and Final Payment- 330 days from Notice to Proceed to Substantial Completion and 360 days from Notice to Proceed to Final Payment.

4.03 Liquidated Damages-\$1,000/day

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.02 of the General Conditions:

a. 92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

b. 98 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 15.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.07.

ARTICLE 7 - INTEREST

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7.01 All moneys not paid when due as provided in Article 6 of this contract shall bear interest at the rate of one percent (1.0%) per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 5.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 5.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (00 52 00, inclusive).
2. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid (00 41 00, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (Bidding Forms, inclusive).
3. Contract bond (00 43 00, inclusive).
4. Legal and Fiscal Officers (00 54 01, inclusive).
5. Certificate of Insurance (00 62 16 inclusive).
6. Addenda (numbers 1 to 3, inclusive).
7. Construction Drawings bearing the following general title: BERLIN BUSINESS PARK PUMP STATION PROJECT

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8. Specifications and Standard Drawings as listed in the table of contents of the BERLIN BUSINESS PARK PUMP STATION PROJECT
 9. Supplementary Conditions (00 73 00, inclusive).
 10. General Conditions (00 72 00, inclusive).
 11. The following documents, which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice of Award
 - b. Notice to Proceed
 - c. Work Change Directive(s).
 - d. Change Order(s).
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented by change order. as provided in Paragraph 3.04 of the General Conditions.
- E. This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.
- F. In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.

ARTICLE 10 – INSURANCE

- 10.1 Insurance Coverage
Contractor shall maintain insurance as described in the General Conditions and Supplementary Conditions.
- 10.2 Additional Insureds
- The 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 Subsection 10.1. Contractor shall require all of its subcontractors to provide like endorsements.
- 10.3 Proof of Insurance:
- Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 10.2. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

ARTICLE 11 – INDEMNIFICATION

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the

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indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph. A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 12 - MISCELLANEOUS

12.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions

12.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

12.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

12.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Other Provisions

12.05 Findings for Recovery

A. Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

12.06 Contractor agrees to the following:

A. That, in the hiring of employees for the performance of work under the contract or any subcontract, Contractor, any subcontractor, or any person acting on Contractor's or subcontractor's behalf, by reason of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color, shall not discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;

B. That Contractor, any subcontractor, or any person on Contractor's or subcontractor's behalf, shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability as defined in section 4112.01 of the Revised Code, or color.

C. That there shall be deducted from the amount payable to the Contractor by the Owner, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;

D. That the contract shall be canceled or terminated by the Owner, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.

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

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ADMINISTRATOR REPORTS

Tracie Davies, County Administrator
-No reports.

Dawn Huston, Deputy Administrator
-No reports.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Benton
-Attended the COYC meeting Thursday afternoon.
-Attended the Regional Planning meeting on Thursday evening.
-The Land Bank will meet on Wednesday morning.
-Wishing everyone a Happy Thanksgiving.
-Big game on Saturday with OSU and that team up north.

Commissioner Merrell
-Attended the COYC meeting Thursday afternoon.
-Attended the Regional Planning meeting on Thursday evening.
-The Land Bank will meet on Wednesday morning.

Commissioner Lewis
-Happy Thanksgiving!

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RESOLUTION NO. 22-1023

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING OR IMMINENT LITIGATION; FOR COLLECTIVE BARGAINING:

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 pending or imminent litigation; for collective bargaining.

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

RESOLUTION NO. 22-1025

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton