

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD DECEMBER 19, 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

Absent:  
Gary Merrell, Commissioner

1:30 P.M. Viewing For Drainage Petition For Vienot #23 Watershed

**1**  
RESOLUTION NO. 22-1111

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD DECEMBER 15, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on December 15, 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 Absent Mr. Benton Aye

**2**  
PUBLIC COMMENT

**3**  
RESOLUTION NO. 22-1112

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1216 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR1216:

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then and Now Certificates, payment of warrants in batch numbers CMAPR1216, memo transfers in batch numbers MTAPR1216 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Account	Amount
R2205271	KING BUSINESS INTERIORS	BYXBE CAMPUS FURNITURE	42011440-5410	\$2,163,489.90

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

**4**  
RESOLUTION NO. 22-1113

IN THE MATTER OF APPROVING THE ADDENDUM TO THE ORDER FORM AND TERMS OF SERVICE FOR MONSIDO PLATFORM STANDARD NEW BY AND BETWEEN MONSIDO, LLC AND DELAWARE COUNTY, OHIO TO REVIEW AND MONITOR THE COUNTY WEBSITE:

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

WHEREAS, the Director of Information Technology recommends approving the addendum to the order form and terms of service for Monsido Platform Standard New by and between Monsido, LLC and Delaware County, Ohio;

NOW, THEREFORE, BE IT RESOLVED the Board of Commissioners approves the addendum to the order form and terms of service for Monsido Platform Standard New by and between Monsido, LLC and Delaware County, Ohio to review and monitor the county website:

**ADDENDUM TO ORDER FORM AND TERMS OF SERVICE**

This ADDENDUM to the ORDER FORM AND TERMS OF SERVICE FOR MONSIDO PLATFORM STANDARD NEW is entered into this 7th day of December, 2022 by and between Monsido, LLC

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(hereinafter, "Monsido"), whose principal place of business is located at 5880 Oberlin Dr., 6th Fl, San Diego, CA 92121, and Delaware County, Ohio (hereinafter, "Customer"), whose principal place of business is located at 10 Court Street, Delaware, Ohio 43015 (Monsido and Customer individually "Party" and collectively "Parties").

WHEREAS, the Parties desire to enter into the Contract known as ORDER FORM AND TERMS OF SERVICE AGREEMENT WITH MONSIDO PUBLISHING FOR MONSIDO PLATFORM - STANDARD NEW (hereinafter "CONTRACT"). This ADDENDUM will add the following terms and conditions to CONTRACT by incorporation and reference.

NOW THEREFORE, the Parties agree as follows:

1. The Parties agree to amend the Agreement to add the following Provisions:

A. Indemnification. Monsido shall provide indemnification as follows:

i. To the fullest extent of the law and without limitation, Monsido agrees to indemnify and hold free and harmless the Customer and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives (collectively "Indemnified Parties") from any third party actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature related in any manner, in whole or in part, to Monsido's actions, inactions, or omissions including, but not limited to, the performance, actions, inactions, or omissions of any of Monsido's boards, officers, officials, employees, volunteers, agents, servants and representatives. Monsido agrees that in the event of or should any such actions, claim, suits, or demands be brought against the Indemnified Parties that Monsido 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. Monsido further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that Monsido shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees. Such indemnity obligation shall not apply in the event that any third party actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence arises from the negligence or misconduct of Customer.

ii. Monsido 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 Monsido, or Monsido's boards, officers, officials, employees, volunteers, agents, servants and representatives.

B. Insurance. Monsido shall carry and maintain current throughout the term of the Agreement, Without lapse, such bodily injury and property damage general liability insurance and, if applicable, automobile insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of the Services and/or this Agreement or from the use of any equipment and/or vehicle(s) in connection therewith, and shall include coverage for indemnification as described above. In addition to the rights and protections provided by the insurance policies below, the Customer shall retain any and all such other and further rights and remedies as are available at law in equity. At a minimum, Monsido shall carry and maintain the following policies of insurance with the following minimum coverage limits:

i. 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 any subcontractors and sub-subcontractors. This insurance shall include, but shall not be limited to, the following coverage:

- Premises-Operations
- Product and Completed Operation
- Broad Form Property Damage
- Contractual
- Personal Injury

ii. 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).

iii. Automobile Insurance, if an automobile/motor vehicle is used in or in connection with the performance of the Services or this Agreement, Monsido shall carry and maintain current automobile/motor vehicle liability insurance covering each vehicle so used, whether Monsido owned, leased, non-owned, and/or hired, with coverage in an amount equal to or greater than that required by law and covering all sums which Monsido and/or the vehicle's owner may or shall become legally obligated to pay as damages, but in an amount providing for minimum coverage of at least one million dollars (\$1,000,000.00) (Combined Single Limit) or,

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five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per accident for bodily injury and five hundred thousand dollars (\$500,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

iv. Professional Liability Insurance (Errors and Omission Insurance) for itself (Monsido) and all employees providing Services with coverage adequate to protect Monsido and Indemnified Parties against any and all liability or damages arising from the professional services provided under this Agreement, but 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).

v. Worker's Compensation insurance as required by Ohio law and any other state in which work will be performed.

C. Independent Contractor/No Contribution to OPERS. Monsido agrees that it is an independent contractor and shall act in performance of this Contract/Agreement as an independent contractor. No agency, employment, joint venture, or partnership has been or will be created between the Parties pursuant to the terms and conditions of this Contract/Agreement. As an independent contractor, Monsido and/or its boards, officers, officials, employees, consultants, representatives, agents, volunteers and/or servants are not entitled to any of the benefits enjoyed by employees of the Customer or Delaware County, Ohio. Monsido 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.

Customer is a public employer as defined in R.C. 145.01(D). Customer has classified Monsido 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 Monsido and/or any of its officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Contract. Monsido acknowledges and agrees that the Customer, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If Monsido has less than five (5) employees, Monsido, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of his/her employees complete an OPERS Independent Contractor Acknowledgement Form ("Form").

D. Findings for Recovery. Monsido certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

E. Civil Rights, Equal Opportunity, and Non-discrimination. In the performance of this Agreement Monsido will be bound by the following:

Monsido will not discriminate against any employee or applicant for employment because of race, creed, color, religion, gender, age, sexual orientation, transgendered status, national origin, Vietnam-era veteran status, or physical or mental handicap. Monsido will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, gender, age, sexual orientation, transgendered status, national origin, Vietnam- era veteran status, or physical or mental handicap. Such actions shall include, but not be limited, to the following: employment , upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination ; rate of pay or other forms of compensation; and selection for or training, including apprenticeship. Monsido agrees to post notice in conspicuous places in his/her office(s), available to all employees and applicants for employment , the provisions of this Non-Discrimination/ Equal Opportunity / Civil Rights clause and/or such similar notices as may be required by state and/or federal law.

Monsido will, in all solicitations or advertisements for employees placed by or on behalf of Monsido, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, gender, age, sexual orientation, transgendered status, national origin, Vietnam-era veteran status, or physical or mental handicap.

Monsido further agrees that he/she will incorporate or cause to be incorporated into any subcontract the regulations contained herein during the performance of this Agreement.

Monsido agrees to and shall comply with all applicable federal, state, and local laws regarding Non-Discrimination Equal Opportunity / Civil Rights clause and will not discriminate.

F. Accessibility to Disabled/Handicapped. Monsido shall make all Services provided pursuant to this Agreement accessible to the disabled/handicapped. Monsido shall comply with any and all federal and state laws mandating accessibility, including, but not limited to, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794) and all requirements imposed by the applicable HHS regulations (45 CFR 8;4), and all guidelines, regulations, rules, and interpretations issued pursuant thereto.

G. Drug Free Environment. Monsido agrees to comply with all applicable state and federal laws regarding drug free environment and shall have established and have in place a drug free workplace policy. Monsido shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

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H. Conflict of Interest. No officer, official, director, employee, representative, or agent of the Parties who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of the Services shall have or acquire, prior to the completion of the Services, any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions and responsibilities with respect to the Services.

I. Retention and access of Records. Monsido shall retain and maintain and assure that all of its subcontractors retain and maintain for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract or the retention period, the Contractor shall retain and maintain, and assure that all of its subcontractors retain and maintain, such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later.

At any time during business hours and with reasonable notice, Monsido shall make available to the Customer or its authorized representatives, at no cost and within a reasonable period of time, any and/or all Records. The Customer or its authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records.

J. Conflicts. In the event of a conflict between the terms of the Order Form, Agreement, and this Amendment, the terms of this Amendment shall prevail.

K. Headings. The subject headings of the paragraphs in this Contract are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

L. Terms of Contract Unchanged. All term and conditions of the Contract/Agreement not changed by this ADDENDUM remain the same, unchanged, and in full force and effect.

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

**5**  
**RESOLUTION NO. 22-1114**

**IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, AND FORENSIC FLUIDS LABORATORIES, INC. FOR THE PURCHASE OF DRUG SCREENING LABORATORY SERVICES:**

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

WHEREAS, the Director of Jobs & Family Services recommends approval of the following contract between the Delaware County Board of Commissioners, the Delaware County Department of Job and Family Services, and Forensic Fluids Laboratories, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following contract between the Delaware County Board of Commissioners, the Delaware County Department of Job and Family Services, and Forensic Fluids Laboratories, Inc. for drug screening laboratory services:

**CONTRACT for the PURCHASE OF  
CONFIDENTIAL ORAL DRUG SCREENING, CONFIRMATION, and REPORTING SERVICES  
BETWEEN THE DELAWARE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AND  
FORENSIC FLUIDS LABORATORIES, INC.**

This Contract is entered into this 19th day of December, 2022 by and between the Delaware County Board of County Commissioners (hereinafter, "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015 on behalf of Delaware County Department of Job and Family Services (hereinafter, "DCDJFS"), whose address is 145 North Union Street, Delaware, Ohio 43015, and Forensic Fluids Laboratories, Inc. (hereinafter, "PROVIDER") whose address is 225 Parsons Street, Kalamazoo, MI 49007 (hereinafter singly "Party," collectively, "Parties").

**PRELIMINARY STATEMENTS**

**WHEREAS**, PROVIDER provides confidential oral drug screening, confirmation, and reporting services to citizens in Ohio; and,

**WHEREAS**, DCDJFS has accepted federal and/or state funds to pay for confidential oral drug screening, confirmation, and reporting services using the following funding streams:

Shared Administration Funds;

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Title XX CFDA #93.667; and  
SCPA

WHEREAS, PROVIDER is willing to provide such services; and,

WHEREAS, PROVIDER is willing to provide those services at an agreed-upon price.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

1. PURPOSE OF CONTRACT

The purpose of this Contract is to state the covenants and conditions under which PROVIDER, for and on behalf of DCDJFS, will provide confidential drug screening, confirmation, and reporting services (hereinafter collectively "Services") to clients in Delaware County, Ohio. Services to be provided are described in detail and/or set forth in:

Appendix I – Forensic Fluids Laboratories, Inc. Proposal – dated October 29, 2022

Appendix II – Legal Consultations Fees

2. TERM

This agreement shall have an initial service period of 01/01/23 through 12/31/23.

By mutual consent, the Agency and Provider may determine that an extension of this contract is in the best interest of all Parties. Therefore, by mutual agreement of the Parties, the contract may be extended for two (2) additional consecutive years in one (1) year period increments. There shall be no increase in transaction costs nor a decrease in services, and all other terms of this contract remain unchanged, unless amended by a separate written amendment signed by all Parties.

Extension is contingent upon the availability of funds, the terms of the grant agreement between the Agency, the state of Ohio and/or the federal government, as well as satisfactory performance by the Provider, and is subject to approval by the Agency, with renegotiation to be initiated by the Agency before the expiration of the existing service period.

3. SCOPE OF SERVICES/DELIVERABLES

The Services to be provided under this Contract to DCDJFS by PROVIDER are set forth and are more fully described in:

Appendix I – Forensic Fluids Laboratories, Inc. Proposal – dated October 29, 2022

Appendix II – Legal Consultations Fees

4. FINANCIAL AGREEMENT

A. PAYMENT PROCEDURES:

DCDJFS shall reimburse PROVIDER in accordance with the following:

To receive reimbursement, PROVIDER shall submit to DCDJFS proper monthly invoices for Services actually provided.

The PROVIDER shall provide a monthly invoice to the DCDJFS no later than 30 days past the service month. Failure to provide the invoice within the 30 days may delay payment of the invoice.

If the invoice is not received by DCDJFS within the 30-day deadline, the Provider agrees to be bound by the removal rates listed below:

- 31-45 days 10% of the total invoice amount
- 46-60 days 20% of the total invoice amount
- 61+ days 30% of the total invoice amount

Any removal rate amounts applied toward an invoice in accordance with these terms shall count toward the remaining Contract balance. The final invoice must be submitted in accordance with the above terms except that the final invoice must be submitted no later than 60 days of the end of Contract period. In the event that Contractor fails to submit the final invoice within 60 days, a removal rate shall apply toward the final invoice in the amount of 100% of the final invoice. Contractor agrees that said credits represent liquidated damages and are not a penalty. Contractor acknowledges and agrees that these percentages are a genuine estimate of Board's damages for late submission of invoices and are reasonable in light of the harm that will be caused by late submission, the difficulty of proving the extent of monetary loss, and the inconvenience of otherwise obtaining an adequate remedy at law.

B. MAXIMUM PAYMENT:

PROVIDER agrees to accept as full payment for Services rendered in a manner satisfactory to

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DCDJFS, the lesser of the following: (1) The maximum amount of thirty thousand dollars and no cents (\$30,000) or (2) the amount of actual expenditures made by PROVIDER for purposes of providing the Services. It is expressly understood and agreed that in no event shall the total compensation to be reimbursed exceed the maximum of thirty thousand dollars and no cents (\$30,000).

**5. AWARD INFORMATION**

CFDA Title and Number: Medicaid 93.778

Award Name: Medical Assistance Program

Name of Federal Agency: U.S. Department of Health and Human Services

Program Authorizing Legislation: Social Security Act, Title XIX, as amended; Public Laws 89-97, 90-248, and 91-56; 42 U.S.C. 1396 et seq., as amended; Public Law 92-223; Public Law 92-603; Public Law 93-66; Public Law 93-233; Public Law 96-499; Public Law 97-35; Public Law 97-248; Public Law 98-369; Public Law 99-272; Public Law 99-509; Public Law 100-93; Public Law 100-202; Public Law 100-203; Public Law 100-360; Public Law 100-436; Public Law 100-485; Public Law 100-647; Public Law 101-166; Public Law 101-234; Public Law 101-239; Public Law 101-508; Public Law 101-517; Public Law 102-234; Public Law 102-170; Public Law 102-394; Public Law 103-66; Public Law 103-112; Public Law 103-333; Public Law 104-91; Public Law 104-191; Public Law 104-193; Public Law 104-208, 104-134; Balanced Budget Act of 1997, Public Law 105-33; Public Law 106-113; Public Law 106-554; Public Law 108-27; Public Law 108-173; Public Law 109-91; Public Law 109-171; Public Law 109-432; Public Law 110-28; Public Law 110-161; Public Law 111-3; Public Law 111-5; Public Law 111-8; Public Law 111-31; Public Law 111-68; Public Law 111-88; Public Law 111-117; Public Law 111-118; Public Law 111-148; Public Law 111-150; Public Law 111-150; Public Law 111-152; Public Law 111-309, Public Law 112-10, Public Law 112-33, Public Law 112-36, Public Law 112-55, Public Law 112-74, Public Law 112-78, Public Law 112-96, Public Law 112-175, P.L. 113-6, Public Law 113-46, Public Law 113-73, Public Law 113-76, Public Law 113-235, Public Law 114-10.

CFDA Title and Number: TANF 93.558

Award Name: Temporary Assistance for Needy Families

TANF Purpose:

Name of Federal Agency: U.S. Department of Health and Human Services

Program Authorizing Legislation: Social Security Act, Title IV, Part A as amended, Personal Responsibility and Work Opportunities Reconciliation Act of 1996, Public Law 104-193, Balanced Budget Act of 1997, Public Law 105-33.

CFDA Title and Number: Social Services Block Grant 93.667

Award Name: Title XX

Name of Federal Agency: U.S. Department of Health and Human Services

Program Authorizing Legislation:

CFDA Title and Number: SNAP 10.561

Award Name: Supplemental Nutrition Assistance Program

Name of Federal Agency: U.S. Department of Agriculture

Program Authorizing Legislation: Food and Nutrition Act of 2008, as amended, Section 16, Public Law 95-113, 91 Stat. 958, 7 U.S.C. 2025; Public Law 99-198, Public Law 105-33, Public Law 105-185, Public Law 110-246, American Recovery and Reinvestment Act of 2009, Public Law 111-5, Healthy Hunger Free Kids Act, Public Law 111-296, American Taxpayer Relief Act, Public Law 112-240; Agricultural Act of 2014.

**6. LIMITATION OF SOURCE OF FUNDS**

PROVIDER warrants that any costs incurred pursuant to this Contract will not be allowable to or included as a cost of any other federally or state financed program in either the current or a prior period.

**7. DUPLICATE BILLING/OVERPAYMENT**

PROVIDER warrants that claims made to DCDJFS for payment, shall be for actual services rendered and do not duplicate claims made by PROVIDER to other sources of funding for the same services. In case of overpayments, PROVIDER agrees to repay DCDJFS the amount of overpayment and that to which it is entitled.

**8. INFORMATION REQUIREMENTS**

PROVIDER will provide such information to DCDJFS as is necessary to meet the specific fiscal and program requirements contained in this Contract. This shall include regular reports, at intervals to be determined by the Parties, of services provided and outcomes achieved.

**9. AVAILABILITY AND RETENTION OF RECORDS**

At any time, during regular business hours, with reasonable notice and as often as DCDJFS, the

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Comptroller General of the United States, the State, or other agency or individual authorized by DCDJFS may deem necessary, PROVIDER shall make available to any or all the above named parties or their authorized representatives, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. DCDJFS and the above-named parties shall be permitted by PROVIDER to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Contract.

PROVIDER, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract, agrees to retain and maintain all records, documents, writings and/or other information related to performance of this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract, PROVIDER shall retain and maintain such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later.

Prior to the destruction of any records related to performance of this Contract, regardless of who holds such records, PROVIDER shall contact DCDJFS in writing to obtain written notification that such records may be destroyed. Such request for destruction of records must specifically identify the records to be destroyed.

**10. INDEPENDENT FINANCIAL RECORDS**

PROVIDER shall maintain independent books, records, payroll, documents, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Such records shall at all reasonable times be subject to inspection, review, and/or audit by duly authorized federal, state, local, or DCDJFS personnel.

PROVIDER shall allow access by the Ohio Department of Job and Family Services (ODJFS), the Certified Financial Services Auditor and the local WIOA area, the federal grantor agency, the comptroller general of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

**11. SERVICE DELIVERY RECORDS**

PROVIDER shall maintain records of services provided under this contract. Such records shall be subject at all reasonable times to inspection, review or audit by duly authorized federal, state, local, and/or DCDJFS personnel.

**12. RESPONSIBILITY OF AUDIT EXCEPTIONS**

PROVIDER agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority that is in any way associated with this Contract. PROVIDER agrees to reimburse DCDJFS for the amount of any such audit exception.

**13. INDEPENDENT CONTRACTORS**

PROVIDER shall act in performance of this Contract as an independent contractor. As an independent contractor, PROVIDER and/or its officers, employees, representatives, agents, volunteers and/or servants are not entitled to any of the benefits enjoyed by employees of DCDJFS and Delaware County.

PROVIDER certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained, are operative, and are current.

DCDJFS and Delaware County are public employers as defined in R.C. § 145.01(D). The Parties acknowledge and agree that PROVIDER 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. PROVIDER also agrees that, as an independent contractor, PROVIDER 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.

Because PROVIDER has been designated as an independent contractor or another classification other than public employee, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of the PROVIDER and/or any of his/her officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Contract. The PROVIDER acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed him/her of such classification and that no contributions will be made to OPERS. If the PROVIDER is an individual or has less than five (5) employees, the PROVIDER, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete an OPERS Independent Contractor Acknowledgement Form ("Form"). DCDJFS shall retain the completed Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

**PROVIDER hereby certifies that it has five or more employees and that none of the employees**

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are public employees for purposes of Chapter 145 of the Ohio Revised Code.

**14. INDEMNIFICATION**

PROVIDER shall provide indemnification as follows:

- A. To the fullest extent of the law and without limitation, PROVIDER agrees to indemnify and hold free and harmless the Delaware County, the Board, DCDJFS, and the State (collectively "Indemnified parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, 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 the parties performance of this Contract or their actions or omissions. PROVIDER agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that PROVIDER 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. PROVIDER further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that PROVIDER shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees.
- B. PROVIDER 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 to the extent arising out of or resulting in whole or in part from any acts or omissions negligent or accidental, actual or threatened, intentional or unintentional of the contracted parties to this agreement.
- C. To the fullest extent of the law and without limitation, PROVIDER agrees to indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, penalties, fines, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any violation of governmental laws, regulations, any spoilage, harm, damage, injury, or loss of or upon the environment, including, but not limited to land, water, or air, or any adverse effect on the environment, including, but not limited to land, water, or air, 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 the contracted parties performance of this Contract or their actions or omissions. PROVIDER agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that PROVIDER 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. PROVIDER further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that PROVIDER shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, penalties, fines, and expenses, including, but not limited to attorney's fees.
- D. PROVIDER'S indemnification liability under this Section 13 shall be limited to the maximum of PROVIDER'S insurance coverage limits as provided to DCDJFS under the terms of Paragraph 14 ("INSURANCE") below.

**15. INSURANCE**

PROVIDER shall carry and maintain current throughout the life of the Contract such bodily injury and property damage liability insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Contract or from the use of any vehicle(s) in connection therewith, and shall include coverage for indemnification as described above.

Prior to commencement of this Contract, PROVIDER shall present to the Board and DCDJFS current certificates of insurance, and shall maintain current such insurance during and throughout the entire term of this Contract. Said insurance shall, at a minimum, include the insurance specified below and the amount of coverage on said policies of insurance shall be at least that which is specified below:

Worker's Compensation Insurance as required by Ohio law and any other state in which work will be performed, or letter of exemption.

Commercial General Liability Insurance for a minimum of \$1,000,000 per occurrence with an annual aggregate of at least \$2,000,000.

Umbrella or Excess Liability\* insurance (over and above Commercial General Liability and Auto Liability) with a limit of at least \$2,000,000.

Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with



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the work of Delaware County, or its departments, with limits of at least \$1,000,000 Combined Single Limit.

The Board of Delaware County Commissioners and the Department of Job & Family Services) must be named as "Additional Insured". The Board of Delaware County Commissioners must also be named as the Certificate Holder.

\*Note: Umbrella/Excess Liability coverage may be waived if the following limits are carried for Commercial General Liability and Auto Liability:

Commercial General Liability Insurance for a minimum of \$3,000,000 per occurrence with an annual aggregate of at least \$4,000,000.

Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work of Delaware County, or its departments, with limits of at least \$3,000,000 Combined Single Limit

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.

The insurer shall provide thirty (30) days written notice to DCDJFS 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, a new certificate of insurance must be provided to the Board and DCDJFS within seven (7) calendar days of change.

During the life of the Contract, the Board or DCDJFS may require PROVIDER 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 Board and DCDJFS shall retain any and all such other and further rights and remedies as are available at law or in equity.

Provider's failure to maintain current insurance certificates at any time during the duration of the contract awarded pursuant to this RFP shall be deemed a breach of the contract. In the event of such breach, the County shall have the right to withhold any further payment(s) due to Provider and to terminate the contract immediately without liability for any such payment(s).

In lieu of termination, the County may, at its option, choose to withhold any further payment(s) due to the Provider until the Provider presents current certificates. In the event that the Provider fails to present current certificates to the County's satisfaction, the County may exercise its right to terminate the contract in accordance with the above paragraph.

**16. CONFLICT OF INTEREST**

The PROVIDER covenants that, to the best of its knowledge, no person under its employ who presently exercises any functions or responsibilities in connection with the Board, the DCDJFS, or projects or programs funded by the Board or the DCDJFS, has any personal financial interest, direct or indirect, in this contract. The PROVIDER further covenants that in the performance of this Contract, no person having such conflicting interest shall knowingly be employed by the PROVIDER. Any such interest, on the part of the Contractor or its employees, when known, must be disclosed in writing to the DCDJFS.

**17. EVALUATION AND MONITORING**

Monitoring is required by ORC 5101:2-47-23.1. Such monitoring will take place during the contract service period, utilizing a monitoring format and checklist developed by the DCDJFS. The checklist will be used to sign-off and confirm agreement on the items that are non-compliant with contract terms and deliverables. Contractor will be required to develop a plan, approved by the DCDJFS, to correct noncompliance issues within a term defined by the DCDJFS.

DCDJFS shall conduct Risk Assessment monitoring during the contract service period and annually for contracts where the service period (and its related service period extensions) exceeds 12 months.

**18. RESPONSIBILITY FOR BOARD / DCDJFS PROPERTY**

PROVIDER shall assume full responsibility for any damage to or loss of any DCDJFS and/or County property, including but not limited to, buildings, structures, vehicles, fixtures, furnishings, equipment,

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supplies, accessories and/or parts resulting in whole or part from any acts or omissions, seen or unforeseen, intentional or unintentional, known or unknown, of PROVIDER or any board members, officials, officers, employees, agents, representatives, volunteers, and/or servants of PROVIDER as related to this contract or services provided thereunder.

**19. TERMINATION**

**A. TERMINATION FOR THE CONVENIENCE:**

The Parties may terminate this Contract at any time and for any reason by giving at least thirty (30) days advance notice, in writing, to the other Parties. PROVIDER shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date specified on the notice as the effective date for such termination.

**B. BREACH OR DEFAULT:**

Upon breach or default of any of the provisions, obligations, or duties embodied in this contract, the aggrieved Party shall provide thirty (30) days 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 specified reasonable period of time. If the breach or default is not satisfactorily remedied within the specified time period, this contract may, at the election of the aggrieved Party, be immediately terminated. The Parties may, without limitation, exercise any available administrative, contractual, equitable or legal remedies. In the event of such a breach or default, PROVIDER shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date of termination.

**C. WAIVER:**

The waiver of any occurrence of breach or default is not and should not be interpreted as a waiver of any such subsequent occurrences. The Parties, without limitation, retain the right to exercise all available administrative, contractual, equitable or legal remedies. If any Party fails to perform an obligation or obligations under this contract and such failure(s) is (are) waived by the other Parties, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s). Waiver by any Party shall be authorized in writing and signed by an authorized Party representative.

**D. LOSS OF FUNDING:**

It is understood by PROVIDER that availability of funds for this contract and thus this contract is contingent on appropriations made by the Local, State and/or Federal governments. In the event that the Local, State and/or Federal reimbursement is no longer available to DCDJFS, PROVIDER understands that changes and/or termination of this contract will be required and necessary. To the extent permitted by law, PROVIDER agrees to hold harmless DCDJFS and the Board for any such changes and/or termination. Such changes and/or termination shall be effective on the date that the Local, State and/or Federal reimbursement is no longer available, or later as otherwise stipulated in writing by DCDJFS.

**20. SAFEGUARDING OF CLIENT**

The Parties agree that the use or disclosure by any Party of any information concerning any individual eligible for services provided pursuant to this contract for any purpose not directly related with the administration of this contract is strictly prohibited except upon the written consent of DCDJFS and the individual or, if a minor, his/her responsible parent or guardian.

**21. CIVIL RIGHTS**

DCDJFS and PROVIDER agree that as a condition of this contract, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, handicap, sexual orientation, or any other factor as specified in Title VI of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments. It is further agreed that PROVIDER will comply with all appropriate federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this contract. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this contract.

**22. ACCESSIBILITY OF PROGRAMS TO THE DISABLED/HANDICAPPED**

PROVIDER agrees as a condition of this contract to make all services provided pursuant to this contract accessible to the disabled/handicapped. PROVIDER further agrees as a condition of this contract to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), all requirements imposed by the applicable HHS regulations (45 CFR 8;4) and all guidelines and interpretations issued pursuant thereto. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health

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and Human Services and termination of this contract.

**23. DRUG-FREE WORKPLACE**

Provider agrees to comply and certifies compliance with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. PROVIDER shall make a good faith effort to ensure that all of its and any of its officials, officers, employees, agents, representatives, volunteers, and/or servants will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**24. FINDINGS FOR RECOVERY**

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

**25. ASSURANCES AND CERTIFICATIONS**

PROVIDER assures and certifies that:

It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

Appropriate standards for health and safety in work and training situations will be maintained.

It shall comply with the provisions of the Delaware County Concealed Carry Policy when providing services under this Contract.

It recognizes and accepts its responsibility to maintain easily accessible and auditable financial records.

Neither it nor any other units planned for participation in the activities to be funded hereunder, are listed on the debarred list due to violations of Titles VI or VII of the Civil Rights Act of 1964, nor are any proposed parties to Contract, aware of any pending action which might result in such debarment.

It will comply with any applicable minimum wage and maximum hour provisions of the Fair Labor Standards Act.

It agrees to comply with 42 U.S.C. Sections 1320d through 1320d-8, and implementing regulations at 45 C.F.R. Section 164.502(e) and Sections 164.504(e) regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act of 1996.

Nothing in this Contract shall be interpreted to prohibit concurrent use of multiple sources of public funds to serve participants as long as the funds from Contract supplement and do not supplant existing services. Supplanting of funds is considered material breach of this Contract, permitting DCDJFS to terminate the Contract.

It agrees to cooperate with the Ohio Department of Job and Family Services and any Ohio Child Support Enforcement Agency in ensuring that its employees meet child support obligations established under state law. PROVIDER further certifies that it will include a provision in any agreement, contract, grant or procedure requiring the other party to include a similar provision in any agreement or grant issued by that entity for the performance of duties related to such agreement, contract, grant or procedure.

It is bound by all of the confidentiality, disclosure and safeguarding requirements of the Ohio Revised Code and the Ohio Department of Job & Family Services, including, but not limited to those stated in the Ohio Revised Code Sections 5101.26, 5101.27, 5101.272, 5101.28, 5160.45, 42 Code of Federal Regulations Sections 431.300 through 431.307 and Ohio Administrative Code Section 5101:1-1-03 and 5160:1-1-01.1. Disclosure of information in a manner not in accordance with all applicable federal and state laws and regulations is deemed a breach of the Contract and subject to the imposition of penalties, including, but not limited to, the penalties found in Revised Code Section 5101.99.

By signing this Contract, PROVIDER certifies that it is currently in compliance with, and will continue to adhere to the requirements of the Ohio Ethics Law as provided by Ohio Revised Code chapter 102 and the related provisions of chapter 2921.

It will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of

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Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.D. 1352. Any lobbying with non-Federal funds that takes place in connection with obtaining any federal award will be disclosed.

It will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act 42 SC 1857(h), Section 508 of the Clean Water Act 33 USC 1368, Executive Order 11738, and Environmental Protection Agency regulations 40 CFR Part 15, which prohibit the use under nonexempt federal contracts, grants, or lands of facilities included in the EPA List of Violating Facilities. Violations shall be reported to the State/county agency and to the US EPA Assistant Administrator for Enforcement (EN-329).

It is not listed in the non-procurement portion of the General Services Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders 12549 and 12689. Endorsement of this Contract certifies its exclusion status and that of its principals. PROVIDER shall immediately notify Board of any delinquent federal debt, and in the event of such delinquent debt, the Government wide commercial purchase card shall not be authorized as a method of payment under the Contract. In the event that PROVIDER is placed on the excluded party list at any time, BOARD or DCDJFS shall have the right to terminate this Contract immediately without additional payment for any services rendered. PROVIDER shall reimburse Board for any loss, costs, or expenses resulting from PROVIDER's inclusion on the excluded parties list or PROVIDER's delinquent federal debt.

It shall report any suspected public assistance fraud to the Fraud and Benefit Recovery Unit of the Ohio Department of Job and Family Services.

It will comply with "Rights to Inventions" clause 37 C.F.R. part 401 pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

It will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented by DOL regulations (29 C.F.R. part 3).

It will comply with sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C 3701-3708) as supplemented by DOL regulations (29 C.F.R. part 5).

**26. NOTICES**

All notices which may be required by this contract or by operation of any rule of law shall be sent via United States certified mail, return receipt requested, and/or personally delivered to the following individuals at the following addresses and shall be effective on the date received:

<b>PROVIDER:</b>	<b>Delaware County Job and Family Services</b>
Bridget Lorenz Lemberg	Robert A. Anderson
Lab Director/Toxicologist	Director
Forensic Fluids Laboratories, Inc.	Delaware County Job and Family Services
225 Parsons Street	145 N. Union St., 2 <sup>nd</sup> Floor
Kalamazoo, MI 49007	Delaware, Ohio 43015

**27. GOVERNING LAW**

This contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this contract shall be filed in and heard before the courts of Delaware County, Ohio.

**28. SEVERABILITY**

If any item, condition, portion, or section of this contract 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 contract and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and be complied with.

**29. SUBCONTRACTORS**

Subcontractors or subcontracting for the confidential oral drug screening, confirmation, and reporting services under this agreement is not permitted.

**30. ENTIRE AGREEMENT**

This contract, along with all of its attachments, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements relating to the subject

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matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

**31. SIGNATURES**

Any person executing this contract in a representative capacity hereby warrants that he/she has authority to sign this contract or has been duly authorized by his/her principal to execute this contract on such principal’s behalf.

**32. EFFECT OF SIGNATURE**

The signatures of the Parties below indicate that the signers and the entities that they represent agree to be bound by all the terms and conditions of this contract.

**Appendix II  
Legal Consultations Fees**

Forensic Fluids Laboratories, Inc. will charge only when the toxicologist drives to Delaware County court and DOES NOT testify. Otherwise, testimony will be included in the test kits pricing (free).

Using the IRS Federal Government Mileage chart, Forensic Fluids Laboratories will charge at a rate of \$62.50 cents per mile. Delaware County Department of Job & Family Services is approximately 256 miles from Forensic Fluids Laboratories, Inc.. The rate would be \$160.00 per court hearing.

Forensic Fluids Laboratories, Inc. will not charge for any travel time, lodging, and/or meals.

Vote on Motion	Mrs. Lewis	Aye	Mr. Benton	Aye	Mr. Merrell	Absent
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**6  
RESOLUTION NO. 22-1115**

**IN THE MATTER OF AWARDING BIDS TO SUPPLIERS FOR 2023 SLUDGE THICKENING POLYMERS CHEMICAL SUPPLY CONTRACT FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT, DCRSD CONTRACT #23-01:**

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

WHEREAS, sealed bids for the 2023 Sludge Thickening Polymers Chemical Supply Contract DCRSD Contract 23-01 were received at the Office of the Delaware County Sanitary Engineer at 11:00 a.m. Friday, November 18, 2022; and

WHEREAS, two (2) bids were received; and

WHEREAS, the Sanitary Engineer recommends awarding non-exclusive contracts to both responsive bidders, Tidewater Products, Inc., and Polydyne Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners hereby awards the bids for the 2023 Sludge Thickening Polymers Chemical Supply Contract DCRSD Contract 23-01 to Tidewater Products, Inc., and Polydyne Inc., and directs the Sanitary Engineer to prepare the necessary Notices of Award and contract documents and submit them to the contractors for execution;

BE IT FURTHER RESOLVED that the Delaware County Board of Commissioners hereby approves the following non-exclusive contracts with Tidewater Products, Inc., and Polydyne Inc.:

**2023 SLUDGE THICKENING POLYMERS CHEMICAL SUPPLY CONTRACT  
DCRSD CONTRACT #23-01**

This Agreement is made and entered into on December 19, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Tidewater Products, Inc. (“Contractor”), hereinafter collectively referred to as the “Parties.”

**1 SERVICES PROVIDED BY CONTRACTOR**

1.1 The Contractor will provide and deliver various emulsion polymers (the “Services”) in accordance with the Invitation to Bid and Specifications for 2023 Sludge Thickening Polymers Chemical Supply Contract - DCRSD Contract #23-01 (the “Bid Documents”), which are by this reference fully incorporated herein.

**2 SUPERVISION OF WORK**

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

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

**3 AGREEMENT AND MODIFICATIONS**

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

**4 COMPENSATION**

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

**5 NOTICES**

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

County:

Name: Julie McGill  
Address: 50 Channing St. Delaware, OH 43015  
Telephone: (740) 833-2240  
Email: [jmcgill@co.delaware.oh.us](mailto:jmcgill@co.delaware.oh.us)

Contractor:

Name of Principal in Charge: Adam Karakas  
Address of Firm: P.O. Box 23181  
City, State, Zip: Toledo, OH 43623  
Telephone: (419) 534-9870  
Email: [akarakas@tidewaterproducts.com](mailto:akarakas@tidewaterproducts.com)

**6 PAYMENT**

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

**7 SUSPENSION OR TERMINATION OF AGREEMENT**

- 7.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.
- 7.3 This Agreement shall expire on December 31, 2023, with the option to extend the length of the Agreement for up to three (3) additional one (1) year terms if mutually agreed in a writing signed by both County and Contractor.

**8 INDEMNIFICATION**

- 8.1 The Contractor shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate

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extent caused by any negligent acts, errors or omissions of the Contractor, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

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

## 9 INSURANCE

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

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- 10.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 10.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 10.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, and Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 10.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

**2023 SLUDGE THICKENING POLYMERS CHEMICAL SUPPLY CONTRACT  
DCRSD CONTRACT #23-01**

This Agreement is made and entered into on December 19, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 ("County"), and Polydyne Inc. ("Contractor"), hereinafter collectively referred to as the "Parties."

**1 SERVICES PROVIDED BY CONTRACTOR**

- 1.1 The Contractor will provide and deliver various emulsion polymers (the "Services") in accordance with the Invitation to Bid and Specifications for 2023 Sludge Thickening Polymers Chemical Supply Contract - DCRSD Contract #23-01 (the "Bid Documents"), which are by this reference fully incorporated herein.

**2 SUPERVISION OF WORK**

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer ("Sanitary Engineer") as the agent of the County for this Agreement.
- 2.2 The Sanitary Engineer shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement



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**3 AGREEMENT AND MODIFICATIONS**

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

**4 COMPENSATION**

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

**5 NOTICES**

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

County:

Name: Julie McGill  
Address: 50 Channing St. Delaware, OH 43015  
Telephone: (740) 833-2240  
Email: [jmcgill@co.delaware.oh.us](mailto:jmcgill@co.delaware.oh.us)

Contractor:

Name of Principal in Charge: Boyd Stanley  
Address of Firm: 1 Chemical Plant Rd.  
City, State, Zip: Riceboro, GA 31323  
Telephone: (800) 848-7659 Option 2  
Email: [Bids@polydyneinc.com](mailto:Bids@polydyneinc.com)

**6 PAYMENT**

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

**7 SUSPENSION OR TERMINATION OF AGREEMENT**

- 7.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.
- 7.3 This Agreement shall expire on December 31, 2023, with the option to extend the length of the Agreement for up to three (3) additional one (1) year terms if mutually agreed in a writing signed by both County and Contractor.

**8 INDEMNIFICATION**

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

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subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

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

## 9 INSURANCE

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

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- 10.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
  
- 10.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
  
- 10.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
  
- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, and Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
  
- 10.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
  
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

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

**7  
RESOLUTION NO. 22-1116**

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CDM SMITH, INC. FOR DESIGN SERVICES RELATED TO THE EAST ALUM CREEK INTERCEPTOR REHABILITATION PROJECT:**

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with CDM Smith, Inc. for design services related to the East Alum Creek Interceptor Rehabilitation Project;

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

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into on December 19, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 ("County"),

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and CDM Smith Inc., a Massachusetts corporation with offices in 445 Hutchinson Avenue, Suite 820, Columbus, Ohio 43235 (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

**1 SERVICES PROVIDED BY CONSULTANT**

- 1.1 The Consultant will provide professional design services for the County’s East Alum Creek Interceptor Rehabilitation Project (the “Services”).
- 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 more fully defined in, and shall be rendered by the Consultant in accordance with, the Consultant’s Fee Proposal dated March 25, 2022, attached hereto as Exhibit A and, by this reference, incorporated herein.

**2 SUPERVISION OF SERVICES**

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the agent of the County for this Agreement.
- 2.2 The Sanitary Engineer or her designee shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

**3 AGREEMENT AND MODIFICATIONS**

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

**4 FEES AND REIMBURSABLE EXPENSES**

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal noted in Section 1.3.
- 4.2 Total compensation under this Agreement shall not exceed Forty-Nine Thousand Seven Hundred Ninety Dollars and Zero Cents (\$49,790.00) 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.

**NOTICES**

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

Sanitary Engineer:

Name: Delaware County Sanitary Engineer’s Office  
Attn: Julie McGill

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: jmcgill@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Frederic J. Smith, P.E.

Address of Firm: 445 Hutchinson Ave., Suite 820

City, State, Zip: Columbus, Ohio 43235

Telephone: (614) 847-8340

Email: smithfj@cdmsmith.com

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**5 PAYMENT**

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

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

- 6.1 The Consultant shall commence Services upon written order from the Sanitary Engineer and shall complete the work according to the schedule in Exhibit A, assuming prompt replies to the Consultant's request for data, meetings and decisions by the County.
- 6.2 Consultant shall not proceed with any "If Authorized" tasks without written authorization from the Sanitary Engineer.
- 6.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

**7 SUSPENSION OR TERMINATION OF AGREEMENT**

- 7.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 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.

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

- 8.1 In the event that significant changes to the scope of the Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only take effect if approved in a writing signed by both Parties in accordance with Section 3.1.

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

**9 OWNERSHIP**

- 9.1 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
- 9.2 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. Consultant shall maintain sole and exclusive ownership of any of its own intellectual property that predates this Agreement.
- 9.3 This section does not require unauthorized duplication of copyrighted materials.

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

- 10.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or sub-consultants assigned to the Services as contemplated at the time of executing this Agreement.
- 10.2 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.

**11 INDEMNIFICATION**

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

## 12 INSURANCE

- 12.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 12.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 12.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 12.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 12.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 12.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

## 13 MISCELLANEOUS TERMS AND CONDITIONS

- 13.1 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.
- 13.2 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.**
- 13.3 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.
- 13.4 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.
- 13.5 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

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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.

- 13.6 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.
- 13.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 13.8 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.
- 13.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 13.10 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.
- 13.11 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.

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

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

**8**  
**RESOLUTION NO. 22-1117**

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DLZ OHIO, INC. FOR DESIGN SERVICES RELATED TO THE SCIOTO HILLS SEWER REHABILITATION PROJECT:**

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with DLZ Ohio, Inc. for design services related to the Scioto Hills Sewer Rehabilitation Project;

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

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into on December 19, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and DLZ Ohio, Inc., 6121 Huntley Road, Columbus, Ohio 43229 (“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 County’s Scioto Hills Sewer Rehabilitation Project (the “Services”).
- 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 more fully defined in, and shall be rendered by the Consultant in accordance with, the Consultant’s Fee Proposal dated November 14, 2022, attached hereto as Exhibit A and, by this reference, incorporated herein.

**2 SUPERVISION OF SERVICES**

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the agent of the County for this Agreement.
- 2.2 The Sanitary Engineer or her designee shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

**3 AGREEMENT AND MODIFICATIONS**

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

**4 FEES AND REIMBURSABLE EXPENSES**

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal noted in Section 1.3.
- 4.2 Total compensation under this Agreement shall not exceed Thirty-nine Thousand Five Hundred Dollars and Zero Cents (\$39,500.00) 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 by U.S. Certified Mail on the Parties to the attention of the individuals listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

Sanitary Engineer:

Name: Delaware County Sanitary Engineer’s Office  
Attn: Julie McGill

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: jmcgill@co.delaware.oh.us

Consultant:

Name of Principal in Charge: James Toto

Address of Firm: 6121 Huntley Road



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City, State, Zip: Columbus, Ohio 43229  
 Telephone: (614) 888-0040  
 Email: jtoto@dlz.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 Sanitary Engineer for Services performed to date in accordance with the Consultant's Fee Schedule.
- 6.2 Invoices shall be submitted to the Sanitary Engineer by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

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

- 7.1 The Consultant shall commence Services upon written order from the Sanitary Engineer and shall complete the Services no later than December 31, 2023.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written authorization from the Sanitary 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 Sanitary 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/ADDITIONS IN SCOPE OF SERVICES**

- 9.1 In the event that significant changes to the scope of the Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only take effect if approved in a writing signed by both Parties in accordance with Section 3.1.

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

**10 OWNERSHIP**

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 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 sub-consultants assigned to the Services as contemplated at the time of executing this Agreement.

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

## **12 INDEMNIFICATION**

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

## **13 INSURANCE**

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company 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 subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

## **14 MISCELLANEOUS TERMS AND CONDITIONS**

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, 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.

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- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the Services to which the Agreement relates.

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

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

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

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

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

**9**  
**RESOLUTION NO. 22-1118**

**IN THE MATTER OF CERTIFYING TO THE COUNTY AUDITOR SANITARY SEWER  
CAPACITY CHARGES FOR 1651 DAVENTRY LANE, POWELL, OHIO 43065:**

It was moved by Mr. Benton, seconded by Mrs. Lewis to certify the Sanitary Sewer Capacity Charges as follows:

WHEREAS, the owner of 1651 Daventry Lane, Powell, Ohio 43065 has requested to make a tap connection to

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the Delaware County sewer system; and

WHEREAS, the owner of 1651 Daventry Lane, Powell, Ohio 43065 has requested to pro-rate the charges over a 5 year period by certifying the charges to the tax duplicate, in accordance with Delaware County policy; and

WHEREAS, the Sanitary Engineer recommends approval of the connection and the 5 year pro-rated charge;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Delaware, Ohio approves certifying the capacity charges as follows:

**1651 Daventry Lane, Powell, Ohio 43065**

In the amount of \$4,050.00 with a \$419.89 finance charge (pro-rated over a 5 year period), making a total of \$4,469.89 for placement on the tax duplicate. Bi-annual payment being \$446.99.

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

**10  
RESOLUTION NO. 22-1119**

**IN THE MATTER OF APPROVING DECREASES OF APPROPRIATION, SUPPLEMENTAL APPROPRIATIONS AND AN ADVANCE OF CASH FOR THE REGIONAL SEWER DISTRICT:**

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

**Decrease Appropriation**

66711900-5410	Capital Development/Bldg & Improve > \$25,000	\$5,924,679.87
66711900-5415	Capital Development/Sewer Construction	\$1,897,744.31

**Supplemental Appropriation**

44911445-5402	Evans Farm Commercial TIF/Easements	\$3,396.00
44911445-5410	Evans Farm Commercial TIF/Bldg & Improve \$25,000	\$5,921,283.87
44911445-5415	Evans Farm Commercial TIF/Sewer Construction	\$1,897,744.31

**Advance of Cash:**

<b>From:</b>	<b>To:</b>	
66711900-8500	44911445-8400	\$7,822,424.18

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

**11  
RESOLUTION NO. 22-1120**

**IN THE MATTER OF APPROVING GMP AMENDMENT NO. 1 TO THE AGREEMENT WITH PETERSON CONSTRUCTION COMPANY FOR PROGRESSIVE DESIGN-BUILD SERVICES FOR THE DELAWARE COUNTY OLENTANGY ENVIRONMENTAL CONTROL CENTER HEADWORKS AND AERATION UPGRADES PROJECT:**

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

WHEREAS, on November 30, 2020, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 20-1069 approving an agreement with Peterson Construction Company, for Progressive Design-Build services for the Delaware County Olentangy Environmental Control Center Headworks and Aeration Upgrades Project (the "Agreement"); and

WHEREAS, the Sanitary Engineer recommends approval of GMP Amendment No. 1 to the Agreement:

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following GMP Amendment No. 1 to the Agreement with Peterson Construction Company:

**Design-Build Contract Amendment**

For Use with DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder – Lump Sum (2010 Edition) and DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for A Guaranteed Maximum Price (2010 Edition)

Amendment Number: 1	Amendment Effective Date: (if blank, use the date when executed by both parties)
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Project: OECC Headworks and Aeration Upgrades	Design-Builder’s Project No:
	Date of Agreement:
Owner: Delaware County Board of Commissioners	Design-Builder: Peterson Construction

Scope of Amendment:  
The Owner and Design-Builder mutually agree to amend the Agreement in accordance with the attached Appendix and the following exhibits, incorporated therein:

- OECC Headworks and Aeration Upgrades Guaranteed Maximum Price (GMP) Letter Per Article 6.6 of the Standard Form of Agreement Between Owner and Design-Builder.
- GMP Estimate Cost Breakdown (Fees with Allowances, Assumptions and Exclusions)
- Contract Provisions for Non-Federal Entity Contracts under Federal Awards

**By executing this Amendment, Owner and Design-Builder agree to modify the Agreement as stated above. Upon execution, this Amendment becomes a Contract Document issued in accordance with DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder, (2010 Edition).**

**Appendix to Design-Build Contract Amendment**

The Owner and Design-Builder mutually agree to amend the Agreement by adding the following paragraphs 6.6.1 (6.6.1.1, 6.6.1.2) and 9.3 (9.3.1) to the Agreement:

**6.6.1 GMP Amendment**

**6.6.1.1** Design-Builder guarantees that it shall not exceed the GMP of \$46,340,329, as set forth in the GMP letter dated November 5, 2022, and the GMP estimate cost breakdown, dated October 29, 2022 (collectively, the “GMP Exhibit”), attached hereto and, by this reference, incorporated herein. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general conditions costs, as set forth in the GMP Exhibit (“General Conditions Cap”). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said General Conditions Cap and the GMP may be adjusted in accordance with the Contract Documents.

**6.6.1.2** The GMP includes a Contingency, which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

**9.3 OWDA Representatives**

**9.3.1** The Design-Builder acknowledges that the Owner has secured, or is in the process of securing, funding for the Work through the Ohio Water Development Authority (“OWDA”). Representatives of OWDA shall have access to the Work whenever it is in preparation or progress, and the Design-Builder shall provide proper facilities for such access and inspection.

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The Owner and the Design-Builder further mutually agree to amend the Agreement by adding the “Contract Provisions for Non-Federal Entity Contracts under Federal Awards,” which is also attached hereto and, by this reference, incorporated herein.

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

12

13

RESOLUTION NO. 22-1121

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RETURNING CONSTRUCTION BOND FOR LIBERTY GRAND DISTRICT SECTION 7:

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

WHEREAS, the roadway construction has been completed for the project known as Liberty Grand District Section 7 (the “Project”); and

WHEREAS, as the result of the Engineer’s recent field review of the Project, the Engineer has determined that only minor remedial work remains, which can be accomplished during the subsequent one year maintenance period; and

WHEREAS, the Engineer recommends that, in accordance with the Owner’s Agreement, the maintenance bond be set at \$102,600.00 (10% of the original construction estimate) and that the Project be placed on the required one year maintenance period; and

WHEREAS, M/I Homes of Central Ohio, LLC (the “Principal”) has provided a maintenance bond in the amount of \$102,600.00 as surety to cover the one year maintenance period; and

WHEREAS, the Engineer also recommends approval to return the construction performance bond to the Principal;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves establishing a maintenance bond for the Project and returning the construction bond for the Project to the Principal.

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

14

RESOLUTION NO. 22-1122

IN THE MATTER OF APPROVING A DEVELOPER’S AGREEMENT FOR BERLIN FARM WEST:

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

WHEREAS, the Engineer recommends approving the Developer’s Agreement for Berlin Farm West;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Developer’s Agreement for Berlin Farm West as follows:

**DEVELOPER’S AGREEMENT**  
**PROJECT NUMBER: 22064**

THIS AGREEMENT made and entered into this 19th day of December, by and between the COUNTY OF DELAWARE (acting through its BOARD OF COUNTY COMMISSIONERS), hereinafter called the COUNTY, and M/I HOMES OF CENTRAL OHIO, LLC, hereinafter called the OWNER, is governed by the following considerations, to wit:

- 1) The OWNER is constructing a development known as Berlin Farm West (the “Development”), which will include a new roadway access to Berlin Station Road and contribute to the need for improvements to Berlin Station Road or other roadways in the vicinity of the Development which shall be constructed by the COUNTY (the “Improvements”).
- 2) On or before June 1, 2024, the OWNER shall pay to the COUNTY Three Hundred Fifty Two Thousand Dollars and No Cents (\$352,000.00), mutually agreed to be the OWNER’S proportional share of, and contribution toward, the cost and expense of the Improvements. OWNER further agrees that such contribution may be used as determined by the COUNTY for improvements to Berlin Station Road, or any other public roadway in the vicinity thereof, benefitting the Development.
- 3) The OWNER may provide a bond, irrevocable letter of credit, or other approved financial warranty

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in the amount of **Three Hundred Fifty Two Thousand Dollars and No Cents (\$352,000.00)**, payable to the **BOARD OF COUNTY COMMISSIONERS**, to insure the faithful performance of this **AGREEMENT**. Said financial warranty will be released and returned to the **OWNER** within thirty (30) days of the receipt of payment as required in Section 2 hereof.

4) To the extent the **OWNER**, either directly or through its agents or contractors, performs any work within the **COUNTY**'s right-of-way, 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 work.

5) 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 suspend or terminate any permit for access to or work within the **COUNTY** right-of-way.

6) 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**.

7) 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 access the Improvements stipulated herein, subject to the issuance of a right-of-way work permit.

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

**15**  
**RESOLUTION NO. 22-1123**

**IN THE MATTER OF APPROVING A COOPERATIVE AGREEMENT WITH LIBERTY TOWNSHIP AND THE CITY OF POWELL FOR THE EXTENSION OF A SHARED USE PATH ALONG HOME ROAD (C.R.124):**

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

**COOPERATIVE PROJECT AGREEMENT  
BETWEEN  
DELAWARE COUNTY, LIBERTY TOWNSHIP AND THE CITY OF POWELL  
FOR  
THE EXTENSION OF A SHARED USE PATH  
ALONG HOME ROAD (C.R. 124)**

This **Agreement** is made and entered into this 19<sup>th</sup> day of December, 2022, by and among the Delaware County Board of Commissioners ("County"), the Liberty Township Board of Trustees ("Township"), the City of Powell ("City"), and the Delaware County Engineer ("Engineer").

**WITNESSETH:**

**WHEREAS**, the Township, the City, and the County desire to cooperate on a joint project to extend a shared use path adjacent to Home Road (CR 124), between Sawmill Parkway (CR 609) and Steitz Road (CR 125), together with related transportation improvements (the "Project"); and

**WHEREAS**, the Township has obtained an award of \$200,000.00 from the State of Ohio, through Senate Bill 310, which will be administered by the Ohio Department of Natural Resources (ODNR) Office of Real Estate & Land Management (REALM), to be used toward construction of the Project;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises, covenants and obligations hereinafter stated, the parties mutually agree as follows, to wit:

**Article 1 – Description of Project**

1.1 **Scope and Limits.** The Project will consist of constructing a 10-foot wide paved path along Home Road for a distance of approximately 1700 feet, beginning at the west line of the Beautiful Savior Lutheran Church property and extending to the western of two driveways on Home Road to Liberty High School. The path will meet a 10-foot wide path constructed by the County and Delaware County Transportation Improvement District as part of the DEL-CR124-3.78 Home Road and Sawmill Parkway Improvements to form a continuous connection to Sawmill Parkway and points farther east. The Project will also include a pedestrian hybrid-activated crosswalk beacon, commonly known as a HAWK signal, at the intersection of Home Road and Northway Drive, and other incidental traffic, drainage and site improvements necessary to complete the Project.

1.2 **Estimated Construction Cost:** As of the date of this Agreement, the Engineer's estimated construction cost of the Project is \$360,000.00

**Article 2 – Project Costs**



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- 2.1 **Township Share.** The Township shall enter into separate agreements for, and pay all costs associated with, acquiring necessary land, locating or relocating utilities, and constructing the Project, except as noted herein.
- 2.2 **County Share.** The County, by a separate agreement through its Trail Assistance Program, shall reimburse the Township \$22,500 toward the construction of the Project.
- 2.3 **City Share.** The City shall reimburse the Township \$11,250 or 50 percent, whichever is less, for the cost of the pedestrian crossing, including signs, pavement markings and the HAWK signal located at the intersection of Home Road and Northway Drive.
- 2.4 **Ohio Department of Natural Resources.** By separate agreement, the Ohio Department of Natural Resources (ODNR) will provide \$200,000 toward the cost of the Project through an award under the SFY 2021-22 State Capital Budget, project ID "CX" through fund 7035, line item C725E2.
- 2.5 **Preservation Parks of Delaware County.** By separate agreement, Preservation Parks of Delaware County (PPDC) will provide \$60,000 toward the cost of the Project on a reimbursement basis through the award of a Community Multi-Use Trail Improvement Grant.
- 2.6 **Other Sources.** The City and Township may pursue jointly or individually with consent of the other Party, any funding assistance available from other sources and shall apply any grants or funding assistance obtained specifically for the Project to the Project generally and not as a replacement for its share of the Project.

**Article 3 – Design and Construction Engineering**

- 3.1 **Engineer Supervision.** The Engineer shall act in general supervision and direction of the Project as provided in R.C. 5543.01, 5543.09 and 5543.10. The Engineer shall keep an accurate record of all Project costs and expenses and shall provide documentation of the accounting of such costs and expenses as requested by the County, City or Township.
- 3.2 **Surveys, Plans, Profiles, Cross Sections, Estimates and Specifications.** The Engineer shall prepare surveys, plans, profiles, cross sections, estimates and related documents for the Project. The Engineer shall coordinate with the Township and City, including furnishing copies of surveys, plans, profiles, cross sections, estimates and related documents during the design to the Township and City, to make such modifications as are desired by the Township and City, provided changes as are acceptable to the Engineer and meet the required current standards for roadway design and construction.
- 3.3 **Assistance to the Engineer.** If requested by the Engineer pursuant to R.C. 305.15, the County shall contract with qualified consulting engineer(s) to assist the Engineer in supervising, inspecting and testing construction of the Project with any costs paid from General Funds appropriated to the Engineer.

**Article 4 – Right of Way Acquisition**

- 4.1 **Township to Acquire Necessary Right of Way:** The Township shall pay all costs associated with appraisal, negotiation, closing and purchase of all real property required for the Project. If requested by the Township, the Engineer shall assist with the procurement of appraisal and negotiation services or otherwise assist with the acquisition of such property. In the event that contracts for the purchase of property cannot be negotiated with the owners of such property, the Township shall proceed with appropriation of such property in accordance with R.C. Chapter 163.

**Article 5 – Utility Relocation**

- 5.1 The Engineer shall coordinate for the relocation of necessary utilities for the Project, as required, and notify the Township of any costs expected to be incurred by the Township for such work.

**Article 6 – Construction Contract**

- 6.1 After all necessary real property has been acquired, the Engineer shall complete all necessary plans, specifications and estimates for the Project and shall transmit the same to the Township, at which time the Township shall proceed to contract for construction as stated in R.C. 5573.06.
- 6.2 The Engineer shall assist the Township with advertising and bidding of the construction contract at the earliest possible date after approval of this Agreement.

**Article 7 – Operation and Maintenance of the Project**

- 7.1 The County will maintain the Project, including the path and completed HAWK signal and will pay all costs associated with supply of electrical energy and ongoing maintenance and repair. The City grants the County access to the pedestrian signal within the City's right of way for future maintenance and repairs.



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**Article 8 – Miscellaneous Terms & Conditions**

- 8.1 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 8.2 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.
- 8.3 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.
- 8.4 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 8.5 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 to be effective and to be complied with.
- 8.6 Parties Responsible for Their Own Actions: The Parties are governmental entities/political subdivisions and lack authority to indemnify. The Parties, agree to be and shall be individually and solely responsible for their own negligence, actions, inactions, and/or omissions and/or the negligence, actions, inactions, and/or omissions of their respective boards, board members, officials, officers, employees, agents, representatives, and/or volunteers, resulting from the performance of this Agreement.
- 8.7 Termination: Any Party may terminate this Agreement for any or no reason on thirty (30) days advance written notice to the other.
- 8.8 No County/Township/City Funds: No actual funds are to be exchanged between the Parties in connection with this Agreement.

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

**16**

**RESOLUTION NO. 22-1124**

**IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS, ESTIMATE AND SETTING THE BID DATE FOR THE PROJECT KNOWN AS THE ENGLISH #346 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

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

WHEREAS, the County Engineer has prepared, and recommends approval of, the Plans, Estimate, Bid Specifications and Bid Opening Date and Time for the English #346 Watershed Drainage Improvement Project;

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

Section 1. The Board hereby approves the plans, specifications and estimate for the project known as the English #346 Watershed Drainage Improvement Project.

Section 2. The Board hereby authorizes the County Engineer to advertise for and receive bids on behalf of the Board in accordance with the following Advertisement for Bids:

**Public Notice  
Advertisement for Bids**

Bids shall be submitted electronically through the [www.bidexpress.com](http://www.bidexpress.com) web service until 10:00 am on Tuesday, January 17, 2023 at which time they will be publicly received and read aloud, for the project known

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as:

**O.R.C. 6131 Drainage Improvement Project  
English #346 Drainage Improvement**

All proposals shall be submitted electronically through the web service [www.bidexpress.com](http://www.bidexpress.com). The bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

**THE ENGINEER'S CONSTRUCTION ESTIMATE FOR THE PROJECT IS \$104,762.00 PER O.R.C. 6131.40 NO BIDS SHALL BE ACCEPTED THAT EXCEED THE ENGINEER'S CONSTRUCTION ESTIMATE.**

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from [www.bidexpress.com](http://www.bidexpress.com). All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at [www.co.delaware.oh.us](http://www.co.delaware.oh.us) and may be accessed by selecting "Public Notices and Bids."

The Owner requires that all work associated with the project be completed before April 14, 2023. The estimated commencement of work date is February 1, 2023.

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

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

**17**

**RESOLUTION NO. 22-1125**

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

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

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

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

Permit #	Applicant	Location	Type of Work
UT22-0210	COLUMBIA GAS	CARRIAGE ROAD	GAS
UT22-0211	HORIZON	WOODTOWN ROAD	FIBER OPTIC CABLE
UT22-0212	SPECTRUM	ATTUCKS DRIVE	CABLE

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

**18**

**RESOLUTION NO. 22-1126**

**IN THE MATTER OF APPROVING A SOFTWARE MAINTENANCE AGREEMENT BETWEEN COURTVIEW JUSTICE SOLUTIONS, INC., D/B/A EQUIVANT AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS, ON BEHALF OF THE DELAWARE COUNTY COMMON PLEAS COURT, GENERAL DIVISION, THE DELAWARE COUNTY COMMON PLEAS COURT, DOMESTIC RELATIONS DIVISION, THE DELAWARE COUNTY COMMON PLEAS COURT, JUVENILE/PROBATE DIVISION, THE DELAWARE COUNTY CLERK OF COURTS, AND THE DELAWARE COUNTY PUBLIC DEFENDER FOR THE CASE MANAGEMENT SYSTEM USED BY EACH OF THESE ENTITIES:**

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

WHEREAS, the Delaware County Common Pleas Court, General Division, the Delaware County Common Pleas Court, Domestic Relations Division, the Delaware County Common Pleas Court, Juvenile/Probate Division, the Delaware County Clerk of Courts, and the Delaware County Public Defender, and staff

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recommend approval of a software maintenance agreement between Courtview Justice Solutions, Inc., D/B/A Equivant and the Board of Delaware County Commissioners, on behalf of the Delaware County Common Pleas Court, General Division, the Delaware County Common Pleas Court, Domestic Relations Division, the Delaware County Common Pleas Court, Juvenile/Probate Division, the Delaware County Clerk of Courts, and the Delaware County Public Defender for the Case Management System used by each of these entities;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves a software maintenance agreement between Courtview Justice Solutions, Inc., D/B/A Equivant and the Board of Delaware County Commissioners, on behalf of the Delaware County Common Pleas Court, General Division, the Delaware County Common Pleas Court, Domestic Relations Division, the Delaware County Common Pleas Court, Juvenile/Probate Division, the Delaware County Clerk of Courts, and the Delaware County Public Defender for the Case Management System used by each of these entities, as follows:

**SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement ("Agreement") is entered into as of December 19, 2020 ("Effective Date") by and between CourtView Justice Solutions Inc. d/b/a equivant, with offices at 4825 Higbee Avenue NW, Suite 101, Canton, Ohio 44718 ("equivant"), and the Board of Commissioners, Delaware County, Ohio ("Board"), whose principal offices are located at 91 North Sandusky Street, Delaware, Ohio 43015 on behalf of the Delaware County Common Pleas Court, General Division ("Gen. Div."), whose principal offices are located at 117 North Union Street, 500 Level, Delaware, Ohio 43015, Delaware County Common Pleas Court, Domestic Relations Division ("DR Div."), whose principal offices are located at 117 North Union Street, 400 Level, Delaware, Ohio 43015, the Delaware County Juvenile and Probate Court ("Juv/Prob"), whose offices are located at 145 North Union Street, Ground Floor, Delaware, Ohio 43015, the Delaware County Clerk of Courts ("Clerk"), whose principal offices are located at 117 North Union Street, 300 Level, Delaware, Ohio 43015, and the Delaware County Public Defender's Office ("Public Defender"), whose principal offices are located at 10 Court Street, Delaware County, Ohio 43015 (Gen. Div., DR Div., and Juv/Prob collectively "Court")(Board, Court, Clerk, , and Public Defender collectively "Customer"), and describes the terms and conditions pursuant to which equivant shall provide software maintenance services to Customer for certain Software (as defined below) (equivant and Customer collectively "Parties," individually "Party").

**Whereas**, equivant and Customer are parties to a Software License Agreement pursuant to which Customer has licensed certain software products ("Software") from equivant. Software expressly excludes software licensed by a third party;

**Whereas**, the Software paid-up license fee includes a warranty without charge as set forth in the Software License Agreement. In addition, support and maintenance ("Maintenance") for the Software is available. Maintenance includes bug fixes and telephone support and may include, if they are made available by equivant, software updates and enhancements; and

**Whereas**, the Parties wish to set forth the terms and conditions upon which the Parties have agreed Maintenance will be provided by equivant to the Customer for the Software. Except as expressly provided in this Agreement, equivant does not provide Maintenance for third party software that is licensed by a party other than equivant.

**Therefore** intending to be legally bound, the Parties hereby mutually agree to the following terms:

1. **TERM**

Maintenance provided under this Agreement shall commence on January 1, 2023 and shall have an initial term of twelve (12) months through December 31, 2023 ("Initial Term").

2. **RENEWAL**

Upon written agreement of the Parties, the term of this Agreement may be renewed for additional one (1) year periods ("Subsequent Term") 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, unless terminated as set forth below.

3. **SCOPE OF MAINTENANCE SERVICES**

equivant will provide the Maintenance as described in the Maintenance Terms attached hereto and labeled as Exhibit A.

equivant will provide tier one support for third party software purchased from equivant, tier two and three support and revisions and upgrades will be provided by the manufacturer of such third party software. Tier one, tier two and tier three support is defined as:

**Tier I:** Is the initial support level responsible for basic customer reported issues. It is synonymous with first line support and denotes use support. A Tier I (equivant) customer care specialist will gather the customer's information and determine the customer's issue by analyzing the symptoms and will attempt to identify the root cause of the underlying problem. If the root cause is a basic use issue the assigned customer care specialist will

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attempt to remediate the issue before escalating the issue to a higher level. If the reported issue is a technical issue the assigned customer care specialist will escalate the issue to a higher level.

**Tier II:** This is a more in-depth technical support level provided by personnel with additional experience and knowledge of the product. Manufacturer technicians providing Tier II support are responsible for: helping Tier I customer care specialist solve basic use problems, for handling basic technical issues, for investigating escalated issues by confirming the validity of the reported issue and identifying known solutions related to these more complex issues. If an issue is new and/or the assigned technician cannot determine a solution, they are responsible for escalating this issue to the Tier III technical support group.

**Tier III:** This is the highest level of technical support and is provided by manufacturer technicians with extensive experience and knowledge of the product for handling the most difficult and advanced problems. Often the Tier III technical support group includes the staff that developed and tested the product.

4. **PROPRIETARY PROPERTY**

All software development, design, documentation, and programs necessary to operate and maintain the systems described herein that were produced by equivalent shall remain the proprietary property of equivalent. Restriction of this proprietary property does not limit the Customer from making such copies of programs, documentation, and software-related materials for internal use. Except as otherwise required by law, disclosure of such materials to third parties or other contractors is strictly forbidden without the express written consent of equivalent.

5. **CUSTOMER RESPONSIBILITY FOR ENVIRONMENT**

To operate the supported software, equivalent will provide Customer with a definition of minimum requirements for the Customer's environment, infrastructure and related applications, which include, but are not limited to, Customer's operating system, database tools, and other support tools. equivalent will provide Customer with at least ninety (90) days written notice of changes to those minimum requirements. Customer must meet those minimum requirements or equivalent may decline to provide Maintenance. equivalent has no obligation to upgrade the supported software because of Customer's changes to its environment, infrastructure and related applications, including, but are not limited to, Customer's operating system, database tools and other supported tools.

6. **SOFTWARE MAINTENANCE FEE – PAID UP LICENSE**

In consideration of the Maintenance services to be provided for the Initial Term, Customer shall pay to equivalent the amount shown on the Software Maintenance Fee Schedule attached hereto as Schedule 1 as the "Total Delaware County" amount. For each Subsequent Term, equivalent reserves the right to change the annual Maintenance fee and shall provide Customer written notice of the change as a part of the Parties negotiations for a Subsequent Term.

7. **CONTRACT MAXIMUM**

It is expressly understood and agreed that the total amount to be paid under this Agreement shall not exceed the maximum of \$94,732.

8. **ADDITIONAL SOFTWARE – PAID UP LICENSE**

In the event the Customer requires maintenance for additional Software ("Additional Software"), the Parties may mutually agree in writing to modify this Agreement to include the Additional Software on Schedule 1 and make any other changes to this Agreement, including its schedules and exhibits, necessary for coverage of the Additional Software. The Software Maintenance Fee due under this Agreement shall also be modified in writing to include a prorated amount of the annual maintenance fee for the Additional Software covering the term remaining under then current term of this Agreement. The Maintenance Fee for this initial period of coverage shall be in an amount equal to twenty two percent (22%) of the non-discounted license fee paid for the Additional Software. For the first Subsequent Term, the amount due for the Additional Software shall be the full value of the 22% of the non-discounted cost of the license fee. Thereafter, any change in the amount of the annual Maintenance Fee due shall be provided as set out in this Agreement.

9. **OTHER FEES AND EXPENSES**

Onsite Maintenance shall be provided only upon request by the Customer. If onsite maintenance is requested, Customer shall reimburse equivalent for reasonable travel expenses of equivalent's employees or agents in providing the onsite Maintenance, including meals during the period of travel. Reimbursement shall be limited to those items that are reimbursable under the then current Delaware County Employee Travel and Expense Reimbursement Policy ("Policy"), shall not include alcohol, and shall be capped at the rates for reimbursement listed in such Policy. Travel expenses shall be billed and paid as the expenses

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are incurred. Onsite labor shall be provided on an hourly rate basis at the then current rates. Reimbursed travel expenses shall be invoiced and paid in the same manner as Maintenance.

10. **PAYMENT TERMS**

- a. To receive payment, equivant shall issue Proper Invoices, as defined below, to the Clerk. Invoices shall be submitted to:

Jennifer Tubaugh  
Chief Deputy Clerk of Courts  
Delaware County Clerk of Courts  
110 North Sandusky St., 300 Level  
Delaware, Ohio 43015  
Email: [jtubaugh@co.delaware.oh.us](mailto:jtubaugh@co.delaware.oh.us)

- b. A "Proper Invoice" means an invoice on company letterhead that is clearly headed with the word "Invoice" and includes a sequential invoice number. Proper Invoices shall be itemized and show detail of all Maintenance and/or services provided or to be provided and all other fees and costs as outlined in Exhibit A. A Proper Invoice shall also clearly and prominently show a payment due date.
- c. Customer shall have at least thirty (30) days after the date of receipt of a Proper Invoice to pay such invoice. The date of the warrant issued in payment shall be considered the date payment is made.
- d. Payment shall not be initiated by the Customer before a proper invoice is received. Defective invoices shall be returned to equivant noting deficiencies and areas for correction. When such notification of defect is sent, the required payment date shall be at least thirty (30) days after receipt by the Customer of a corrected and Proper Invoice.
- e. If a Proper Invoice remains unpaid by the Customer for at least ninety (90) days after receipt by the Customer, equivant may suspend Maintenance. Any such suspension shall occur only upon thirty (30) days advance written notice to Customer of the intent to suspend Maintenance. Reinstatement of Maintenance following such suspension requires all overdue payments to be paid in-full.
- f. equivant reserves the right after the Court has received a Proper Invoice to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the payment due date as shown on the Proper Invoice.

11. **DEFAULT AND TERMINATION**

- a. The Customer shall have the right to terminate Maintenance upon delivery of written thirty (30) day notice to equivant. All software maintenance fees are billable annually, in advance and are non-refundable.
- b. The Parties may mutually agree in writing to terminate this Agreement.
- c. Either party may terminate this Agreement if: (i) the other party fails to perform a material obligation of this Agreement, and if such failure remains uncured 30 days after receipt of written notice from the non-breaching Party specifying the failure; or (ii) a Party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors.
- d. equivant may terminate this Agreement if a Proper Invoice remains unpaid by the Customer for at least ninety (90) days after receipt of the Proper Invoice by the Customer. Such termination shall be effective upon thirty (30) days advance written notice to Customer.
- e. In the event that Maintenance is terminated by equivant pursuant to this section, equivant shall have no continuing obligations to the Customer of any nature whatsoever with respect to Maintenance. Furthermore, termination by equivant pursuant to the provisions hereof shall be without prejudice to any right or recourse available to equivant, and without prejudice to equivant's right to collect any amounts, which remain due to it hereunder.
- f. The Parties, without limitation, retain and reserve and may exercise any available administrative, contractual, equitable or legal actions or remedies.

12. **LIMITED WARRANTIES**

- a. Software. equivant warrants for a period of ninety (90) days following the date of delivery of any software under this Agreement that it will substantially operate according to the documentation and product literature provided by equivant. If it is determined by Customer that the software does not substantially operate according to such documentation provided by equivant, equivant may, at its option and expense apply commercially reasonable efforts to designing, coding and implementing programming changes to the source code to correct reproducible errors or correcting misstatements and omissions in the User's Guide and code documentation. Customer shall report all errors or other

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defects in the software to equivant immediately upon their discovery. It is acknowledged that the Software is inherently complex and may contain errors and equivant cannot and does not guarantee to correct all such errors. The remedies set forth in this section constitute Customer's sole and exclusive remedy for breach of this Warranty. equivant does not warrant Third Party Software. equivant will transfer any warranty provided by the licensor of the Third Party Software to Customer. Third Party Software is software that is not proprietary to equivant.

- b. Services. equivant warrants that the services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar services. In the event of any breach of the foregoing warranty, provided Customer has delivered to equivant timely notice of such breach as hereinafter required, equivant shall, at its own expense, in its discretion either (1) re-perform the non-conforming services and correct the non-conforming deliverables to conform to this standard; or (2) refund to Customer that portion of the fees received by equivant attributable to the non-conforming services and/or deliverables. No warranty claim shall be effective unless Customer has delivered to equivant written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming services or tender of the non-conforming deliverables. The remedy set forth in this section is the sole and exclusive remedy for breach of the foregoing warranty.
- c. **NO OTHER WARRANTIES. EQUIVANT MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING MAINTENANCE AND SUPPORT. EQUIVANT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.**

13. **LIMITATION OF LIABILITY**

- a. Customer hereby agrees that equivant's total liability to Customer for any and all liabilities, claims or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the aggregate, exceed fees paid to equivant hereunder during the previous 12-month period. The Parties acknowledge and agree to the foregoing liability risk allocation. Any claim by Customer against equivant relating to this Agreement must be made in writing and presented to equivant within six (6) months after the date on which this Agreement expires or is otherwise terminated.
- b. In no event shall either party be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss and notwithstanding any failure of essential purpose of any limited remedy.

14. **INDEMNITY**

- a. equivant agrees to defend, indemnify, and hold harmless the Customer, including the Board, Court, Clerk, and Public Defender, and Delaware County, Ohio, and all of their respective boards, officers, officials, directors, employees, volunteers, agents, and/or representatives (collectively "Indemnified Parties") from and against any and all third party actions, claims, suits, and/or demands and any judgments, awards, damages, losses, costs, fines, penalties, fees, and expenses resulting therefrom, including, but not limited to reasonable attorney's fees, as well as the reasonable costs related thereto (hereinafter collectively referred to as "Damages"), to the extent such Damages result directly from the gross negligence or willful acts or omissions of equivant or any of its boards, officers, officials, directors, employees, volunteers, agents, and representatives occurring in the performance of equivant's obligations hereunder; provided, such defense and payments are conditioned on the following: (1) that equivant shall be notified in writing by Customer within 5 business days following its receipt of any such claim, and (2) that equivant shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise. equivant shall not be responsible for any Damages or liability resulting, in whole or in part, from the negligence or willful misconduct of the Indemnified Parties.
- b. equivant 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 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 directly out of the actions or omissions of equivant or any of its boards, officers, officials, directors, employees, volunteers, agents, and/or representatives.

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15. **INSURANCE**

equivalent 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). 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).

Prior to commencement of this Agreement, equivalent shall present to the Customer current certificates of insurance for the above required policies 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.

The Customer, including the Board, Court, Clerk, and Public Defender, and Delaware County, Ohio shall be named as "Additional Insured" on the above listed policies of insurance.

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

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 in respect to the Customer and any insurance maintained by the Customer shall be excess to the above required insurance and shall not contribute to it.

The insurer shall provide thirty (30) days written notice to the Customer 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 policy renewal, a new certificate of insurance will be provided to the Customer.

During the life of the Agreement, the Customer may request and equivalent shall timely produce additional certificate(s) of insurance.

In addition to the rights and protections provided by the insurance policies as required above, the Customer shall retain any and all such other and further rights and remedies as are available at law or in equity.

16. **WORKERS COMPENSATION INSURANCE**

equivalent shall carry and maintain throughout the term of the Agreement Worker's Compensation Insurance as required by Ohio law and any other state/country in which work will be performed. equivalent shall be responsible for any and all premiums for such policy(ies). At any time throughout the life of the Agreement the Customer may request proof of such insurance. Proof of such insurance shall be promptly provided upon request.

17. **LICENSES**

equivalent certifies and warrants that it and/or its employees have obtained and maintain current all approvals, licenses, including operator licenses, certifications, and/or other qualifications (collectively "Licenses") necessary and/or required by law to perform this Agreement and to conduct business in the state of Ohio. equivalent 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.

18. **CERTIFICATION REGARDING FINDINGS FOR RECOVERY**

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

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Signature

Date

\_\_\_\_\_  
Title

19. **CERTIFICATION REGARDING PERSONAL PROPERTY TAXES**

equivalent, 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



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20. **INDEPENDENT CONTRACTOR**

equivalent 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.

equivalent 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 services and/or deliverables rendered and/or received under or pursuant to this Agreement.

equivalent and/or its officers, officials, directors, employees, representatives, agents, and/or volunteers are not entitled to any benefits enjoyed by employees of the Customer, including the Board, Court, Clerk, and Public Defender, or Delaware County, Ohio.

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

The Customer, including the Board, Court, Clerk, and Public Defender, and Delaware County, Ohio (for purposes of this section collectively "County") are public employers as defined in R.C. § 145.01(D). The County has classified equivalent 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 equivalent and/or any of its officers, officials, directors, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. equivalent 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. equivalent has five (5) or more employees. As a result, it does not need to complete or have any of its employees complete an OPERS Independent Contractor Acknowledgement Form ("Form").

22. **RETENTION OF RECORDS**

For a minimum of three (3) years after termination of this Agreement, regardless of reason, or as otherwise required by any applicable law, regulation, rule, or records retention schedule, whichever requires the longest retention period, equivalent shall retain and maintain all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, reports, documents and all other information or data relating to all matters covered by this Agreement (collectively "Records"). If an audit, litigation, prosecution, or other action (collectively "Action") is initiated during the Initial Term or any Subsequent Term of this Agreement, equivalent shall retain and maintain the Records until the Action is concluded and all issues are resolved or the applicable retention period has expired, whichever is later.

23. **ACCESS TO RECORDS**

Upon thirty (30) day written notice and during regular business hours (8:00 AM to 5:00 PM, M-F prevailing Eastern Time), equivalent shall make available to the Customer or its authorized representatives, within a reasonable period of time, Records related to this Agreement and Maintenance. The Customer or its authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records.

24. **AUDITS**

equivalent agrees to fully cooperate with any audit of expenditures and/or records of service delivery conducted in association with this Agreement. equivalent agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority that is in any way associated with this Agreement and is attributable to equivalent or the Maintenance. equivalent agrees to reimburse the Customer the amount of any such audit exception, but only limited to resulting from overpayment by Customer.

25. **EQUAL OPPORTUNITY/NON-DISCRIMINATION/CIVIL RIGHTS**

In fulfilling the obligations and duties of this Agreement, equivalent certifies and agrees as follows:

- a. equivalent, all subcontractors, and/or any person acting on behalf of equivalent or any subcontractor shall comply with any and all applicable federal, state, and/or local laws prohibiting discrimination and providing for equal opportunity.
- b. equivalent, all subcontractors, and/or any person acting on behalf of equivalent or any subcontractor shall not in any way or manner discriminate on account of race, color, religion, sex, age, disability, handicap, sexual orientation, gender identity, or military status as defined in R.C. § 4112.01, national origin, or ancestry.

equivalent shall ensure that applicants are hired and that employees are treated during employment without regard to any of the above listed factors. Such action shall include, but not be limited to the

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following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

equivalent agrees to post in conspicuous places, available to employees and applicants for employment, all employment notices required by law and notices stating that equivalent complies with all applicable federal and state non-discrimination laws.

equivalent shall incorporate the foregoing requirements of this section in all of its contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

**26. COUNTY POLICY**

equivalent shall be bound by, conform to, comply with, and abide by current applicable Delaware County policies, including, but not limited to, the Contractor Safety Policy, Computer Use and CyberSecurity Policy, Social Media Policy, Internet Use Policy, and policies of the Court, Clerk, and/or Public Defender (collectively "County Policy") and shall require any and all of its boards, board members, officers, officials, directors, employees, representatives, agents, subcontractors, and/or volunteers performing work under this Agreement and/or for or on behalf of the Customer to comply with County Policy and shall be responsible for such compliance. The Board may, upon written notice terminate this Agreement for failure of equivalent or any of its employees or subcontractors to comply with County Policy. Copies of County Policy are available upon request or certain County Policies are available online at:

<https://humanresources.co.delaware.oh.us/policies/>.

The Customer, including the Board, Court, Clerk, and/or Public Defender, reserves the authority to change, amend, replace, enact, repeal, and/or rescind County Policy at any time and without notice.

**27. DRUG FREE/SMOKE FREE ENVIRONMENT**

equivalent agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments. equivalent 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 in any way.

**28. GENERAL TERMS**

- a. Neither Party may sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, except in the event of sale of assets, merger or consolidation. Notwithstanding the foregoing, equivalent may without violation of this paragraph engage the services of independent contractors to assist in the performance of its duties hereunder.
- b. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- c. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in a signed writing to be effective. Delay or failure by either Party to exercise any right hereunder, or to enforce any provision of this Agreement will not be considered a waiver thereof and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single waiver will constitute a continuing or subsequent waiver, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.
- d. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner. If any term, condition or provision in this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the Parties shall work in good faith to agree to such modification that will to the maximum extent possible preserve the original intention of said term, condition or provision. If the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- e. This Agreement shall be governed by the laws of the State of Ohio, without regard to its laws relating to conflict or choice of laws. Subject to Paragraph g. below, the parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. Federal courts in the State of Ohio. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.
- f. Any communication or notice permitted under the terms of this Agreement or required by law must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) on the delivery

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date on the return receipt when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a Party at its address for notices. Each Party's address for notices is stated below. Such address may be changed by a notice delivered to the other Party in accordance with the provisions of this Section.

**Customer (including Board, Court, Clerk, and Public Defender)**

Natalie Fravel  
Clerk of Courts  
Delaware County Clerk of Courts Office  
117 N. Union St., 300 Level  
Delaware, Ohio 43015  
Tel: (740) 833-2515  
Email: [nfravel@co.delaware.oh.us](mailto:nfravel@co.delaware.oh.us)

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Copy to:

Christopher D. Betts  
Assistant Prosecuting Attorney  
Delaware County Prosecuting Attorney's Office  
145 N. Union St., 3rd Floor  
P.O. Box 8006 Delaware, Ohio 43015  
Email: [cbetts@co.delaware.oh.us](mailto:cbetts@co.delaware.oh.us)

**equivant**

General Manager  
equivant  
4825 Higbee Ave. NW, Suite 101  
Canton, Ohio 44718  
Tel: (330) 470-4280  
Fax: (330) 494-2483  
Email: [generalmanager@equivant.com](mailto:generalmanager@equivant.com)

Copy to

Connie Morrison  
Contract Manager  
equivant  
4825 Higbee Ave. NW, Suite 101  
Canton, Ohio 44718  
Email: [connie.morrison@equivant.com](mailto:connie.morrison@equivant.com)

- g. The Parties will work together to resolve any disputes involving this Agreement and shall seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of a dispute ("Dispute"). If the Dispute has not been resolved after such time, the Parties will escalate the issue to more senior levels. If the Parties are unable to resolve any Dispute at the senior management level, then the Parties retain and may, without limitation, exercise any and all available administrative, contractual, equitable or legal remedies.

Nothing herein shall prevent either party from seeking a preliminary or permanent injunction to preserve the status quo or prevent irreparable harm during the arbitration process.

- h. Neither Party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the Party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a Party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.
- i. This Agreement and any Schedules or Exhibits attached thereto contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede any and all prior or contemporaneous proposals, discussions, agreements, Customer issued purchase order or document of like intent or purpose, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof. It is expressly agreed that if Customer issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for Customer's internal use only, and no terms, conditions or provisions contained therein shall have any effect on the rights, duties or obligations of the Parties under, or in any way modify, this Agreement, regardless of any failure by equivant to object to such terms, conditions or provisions. This Agreement sets forth the sole and entire understanding between equivant and Customer with respect to the subject matter.
- j. The following exhibits are attached to this Agreement and by this reference incorporated into and made a part of this Agreement:
- Schedule 1 – Software Maintenance Fee Schedule
  - Exhibit A – Maintenance Terms

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- k. Customer is a political subdivision and tax exempt. equivant shall not charge the Customer any tax and agrees to be responsible for all tax liability that accrues as a result of this Agreement and the services provided pursuant to this Agreement. Proof of exemption shall be provided upon request.
- l. Consistent with R.C. § 307.86(B)(2), the purchase consists of services related to information technology, such as programming services, that are proprietary or limited to a single source. As a result, this Agreement is not required to be competitively bid.
- m. This Agreement may only be amended in writing signed by the Parties.
- n. 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.
- o. This Agreement may be executed in counterparts.
- p. This Agreement shall be deemed to have been drafted by both equivant and the Customer and no purposes of interpretation shall be made to the contrary.
- q. 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.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound, have entered into this Agreement as of the Effective Date.

**SCHEDULE 1  
SOFTWARE MAINTENANCE FEE SCHEDULE**

<u>Software</u>	<u>Licenses</u>	<u>January 1, 2023 to December 31, 2023</u>
<b>Common Pleas Court and Clerk of Courts</b>		
CourtView Case Management	35	\$32,602.00
eAccess single portal included with CMS	1	\$0.00
eAccess additional portal	1	\$1,654.00
JusticeFiling	1	\$2,619.00
ePayment -Web Deployment	1	\$100.00
CourtView Dashboards	5	\$507.00
Ohio Tax Lien	1	\$0.00
Ingegration for eFiling	1	\$2,354.00
<b>Subtotal Common Pleas Court / Clerk of Courts</b>		<b><u>\$39,836.00</u></b>
<b>Public Defender's Office</b>		
CourtView Case Management	2	\$1,379.00
<b>Subtotal Public Defender's</b>		<b><u>\$1,379.00</u></b>
<b>Juvenile and Probate Courts</b>		
CourtView Case Management	50	\$40,346.00
Banked CourtView CMS	5	\$1,210.00
CourtView Dashboards	55	\$5,536.00
CourtView Ohio DPS eCitation Interface	1	\$6,425.00
<b>Subtotal Juvenile &amp; Probate Courts</b>		<b><u>\$53,517.00</u></b>
<b>Total Delaware County</b>		<b><u>\$94,732.00</u></b>

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**Exhibit A**

**MAINTENANCE TERMS**

**1. SUPPORT SERVICES**

Customer will authorize and identify a reasonable number of contacts who may initiate support with equivalent. These named users must be technically capable and familiar with the products covered under this Agreement. Customer will perform basic troubleshooting before contacting equivalent to eliminate issues caused by other variables such as applications, power, hardware, security, infrastructure, and environment. equivalent reserves the right to decline support to Customer named users not authorized to initiate support.

equivalent will provide support after confirming Customer has been unable to resolve the issue through its own troubleshooting. Once the reported problem can be reproduced and documented, and resolution identified such as assistance provided over the phone, application working as documented, configuration change, or programming change, the ticket will be closed. If a programming change is required, the ticket will remain open until the updated fix is delivered in a future release.

Maintenance includes bug fixes and telephone support and may include, if they are made available by equivalent, software updates.

**2. CORRECTION OF DEFECTS**

In the event the Customer encounters an error and/or malfunction ("Defect") in the equivalent Software because it is not conforming to documentation provided by equivalent, it shall communicate the circumstances and any supporting information to equivalent. Upon receipt, equivalent will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of equivalent and the Customer, there exists a Defect that does not constitute a serious impediment to the normal intended use of the equivalent Software, equivalent will correct the Defect and distribute the correction to the Customer in accordance with equivalent's normal software revision schedule.
- b. In the event that, in the mutual and reasonable opinion of equivalent and the Customer, there exists a Defect that does constitute a serious impediment to the normal intended use of the equivalent Software, equivalent will take such steps as are reasonably required to correct the Defect promptly.

**3. SOFTWARE REVISIONS AND NEW VERSIONS**

- a. equivalent Software may be revised by equivalent as a result of (i) emergency correction of Defect, (ii) periodic correction of Defects and/or (iii) the release of upgrades or improvements or modifications designed to improve the performance of the equivalent Software and/or to increase the capabilities of the equivalent Software (hereafter "Revisions").
- b. Revisions will be provided at no additional charge during the term of the Software Maintenance Agreement.
- c. New Versions ("New Versions") of the equivalent Software may be issued by equivalent from time to time (excluding 3rd party software). A New Version substantially changes the architecture and/or coding structure of the application, and the New Version is not written as an add-on to the current software code base. equivalent will, from time to time, release new products (including New Versions) and/or modules, which equivalent will make available to Customer at the then-current price(s).
- d. All Revisions and New Versions will be transmitted to the Customer electronically unless otherwise mutually agreed. The Customer shall be solely responsible for executing the appropriate instructions in order to transfer the Revisions or New Versions onto its system unless otherwise mutually agreed in writing.
- e. If Customer reports a Defect to equivalent that can be resolved through upgrading to a New Revision, Customer must upgrade to the New Revision and equivalent is not obligated to correct

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the Defect through remediation of the older version unless otherwise mutually agreed in writing.

- f. equivalent Software is designed as standard products and not as customized systems. equivalent recognizes the need for some Customer customization; however, equivalent reserves the right to control the design, performance, and integration of equivalent products and, as a result, may reject Customer requests for modifications or enhancements that are inconsistent with equivalent's product strategy.
  
- g. equivalent will use commercially reasonable efforts to modify the equivalent Software in order to maintain its existing functionality and provide functionality required as a result of changes to the law, regulations, or rules of the Customer's State jurisdiction. A change to the law, regulations, or rules of the Customer's State jurisdiction that requires new functionality is an enhancement. equivalent, at its sole discretion, may elect to add such enhancements to the product as a Revision. If Customer requires such enhancement prior to equivalent decision, if any, to add to the product, the Customer will be required to pay for such additional services at equivalent's then current time and materials rate. In either case, the Customer shall timely notify equivalent in writing of all requested legislative updates. The notice shall contain a summary of the modifications, identifying the applications and functions to be modified as well as detailed specification of the required changes. The Customer shall also provide a complete text, including effective date, of the legislation and/or order mandating the modifications. equivalent shall then prepare a detailed functional specification for approval by Customer and the timeline required for implementation. Nothing in this provision requires equivalent to undertake extraordinary efforts to complete the legislative updates or provide new functionality except as additional services as described in section 7 below. Customer agrees to cooperate with other customers in the jurisdiction to agree upon appropriate specifications.

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**4. TECHNICAL LITERATURE**

equivant shall make available to the Customer technical literature that equivalent considers relevant to the equivalent Software and its use within the scope of Customer's operations.

**5. REMOTE DIAGNOSTIC ACCESS**

The Customer shall provide appropriate remote access capabilities by which equivalent may, with the permission of the Customer, remotely access the equivalent Software for the purpose of remote diagnostics and support.

**6. PROPER USE**

- a. The Customer agrees that all reasonable effort shall be taken to ensure that neither the equivalent Software nor data files are misused.
- b. In the event that the Customer or its agents misuses the equivalent Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the equivalent Software, although equivalent is not obligated to correct such misuse, equivalent may attempt to correct the situation, if possible, at Customer's expense.
- c. In the event that diagnostic assistance is provided by equivalent, which, in the reasonable opinion of equivalent, relates to problems not caused by a Defect in the equivalent Software, such assistance shall be at the Customer's expense.

**7. ADDITIONAL SERVICES**

- a. The Customer may desire to have additional modifications or minor enhancements performed; the fees for these services shall be in accordance with equivalent's then current time and materials rates. Specific services may include requirements analysis, preparation of functional or programming specifications, software development, testing, documentation, installation, data conversion, training, and help desk support. equivalent shall provide an estimate of cost prior to performing any of the above services. equivalent shall only perform these modifications within the scope of this Agreement (if no additional cost), an amendment to this Agreement, or under a separate agreement.
- b. Additional support outside the scope of the support services described in this Agreement may be available to the Customer upon request. These services shall be performed on a time and materials basis.

**8. RESPONSE TIMES AND AVAILABILITY**

- a. Definition. The Customer Support Department is the primary means of communication between the Customer and equivalent regarding all equivalent software issues. Customer Support provides the most efficient means to track, manage, and resolve all equivalent software issues. The following table provides information on equivalent's categorization of issues.

Priority	Criteria
<p><b><u>Urgent</u></b>  Extremely Severe Business Impact</p>	<p>Issue results in broad disruption or degradation of production environment services (not caused by the Customer's hardware or environment) causing a severe business impact to the Customer, and for which no acceptable workaround exists, including where:</p> <ul style="list-style-type: none"> <li>• A core business function is prevented from being carried out; or</li> <li>• An issue results in a disruption or degradation for multiple core business functions that affect one or more of the Customer's business groups.</li> </ul>
<p><b><u>High</u></b>  Serious Business Impact</p>	<p>An error or Software issue related to a core system or business function that causes a serious business impact to the Customer by impeding the normal intended use of the software but allowing processing to continue in a restricted manner, and for which there is no known system workaround.</p>



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Priority	Criteria
<p><b><u>Normal</u></b> Moderate Business Impact</p>	A software operational error related to a core system or business function that causes a moderate to low business impact to the Customer but does not cause a serious impediment to the normal intended use of the software, and for which a system workaround may exist; or questions about how to use the application.
<p><b><u>Low</u></b> Little or No Business Impact</p>	System functionality is largely correct except for minor, display or cosmetic errors with non-core functions of the software that causes little or no business impact to the Customer. Includes requests for documentation changes or corrections.

b. Response Time. equivant will respond as quickly as possible to each request, but uses the response time targets for Average First Reply Time, during the defined hours of operation, provided in the table below. First Reply Time is defined as the time it takes an equivant Customer Care Agent to respond to Customer’s request for assistance.

	Average First Reply Time	Average Resolution Time Target
Urgent	1 hour	As soon as possible, but no more than 24 hours
High	8 business hours	48 hours (not including development or release time)
Normal	2 business days	5 business days (not including development or release time)
Low	2 business days	Mutually agreed time or Scheduled for future release

c. Resolution Time. Resolution time will vary depending on the severity and complexity of the reported problem. Resolution time is defined as the time it takes equivant to sufficiently remedy the problem or return the system to operational status. Resolution may mean that a temporary fix has been provided to correct a problem until a permanent solution can be delivered. Average Resolution Time targets are provided in the table above. Elapsed time for development effort is not included in Resolution time.

d. Hours of Operation. equivant shall be available for support services Monday through Friday, 8 A.M. to 5 P.M. Eastern Time, except for equivant-observed holidays, which may be revised from time to time.

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

**19  
RESOLUTION NO. 22-1127**

**IN THE MATTER OF APPROVING A SERVICE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLP, ATTORNEYS AT LAW:**

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

WHEREAS, the Deputy County Administrator recommends approval of the Contract for Services between the Delaware County Board of Commissioners and Fishel Downey Albrecht & Riepenhoff LLP, Attorneys at Law;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Contract for Services between the Delaware County Board of Commissioners and Fishel Downey Albrecht & Riepenhoff LLP, Attorneys at Law:

**CONTRACT FOR SERVICES FOR DELAWARE COUNTY, OHIO**

**THIS AGREEMENT**, made this 19<sup>th</sup> day of December, 2022, by and between the Delaware County Commissioners, hereinafter "County" and Fishel Downey Albrecht & Riepenhoff LLP, Attorneys at Law, New Albany, Ohio, hereinafter "Attorneys."

WITNESSETH:

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**WHEREAS**, the County is desirous of securing the services of the Attorneys to assist and represent the County in matters of human resource personnel management, civil service, and public sector issues, labor relations, and negotiations; and

**WHEREAS**, the results of the decisions regarding such matters have a very significant fiscal and operational impact on the County; and

**WHEREAS**, the County has determined that certain legal, technical, and professional assistance will enable them to participate more effectively in these processes; and

**WHEREAS**, Fishel Downey Albrecht & Riepenhoff LLP is experienced and willing to perform the above services, wherein there is an agreement specifying the rights and duties of each party;

**NOW, THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows.

**ARTICLE I SCOPE OF WORK**

The Attorneys will perform services in assisting the County as may be instructed by the County, including advice and services in order for the County to carry out their human resource management, civil service administration, labor relations programs and other matters. Such services to the County include:

- A. To provide necessary assistance, research, and analysis with respect to the specific problems that develop in matters that come before the County and to advise and/or represent the County in matters as directed by the County;
- B. To advise the County as to the implications of both economic and non-economic issues raised in both formal and informal bargaining sessions, along with the implications of the existing personnel practices and collective bargaining agreements, if any;
- C. To advise the County and participate in both formal and informal bargaining sessions with the representatives of the various employee organizations that may represent employees with the County; and
- D. To provide any other necessary representation to the County's management personnel and elected officials throughout specific negotiating periods and, at the request of the County, on other matters relating to the County's labor relations program, or civil service.

**ARTICLE II CONSIDERATION AND TERM OF CONTRACT**

The compensation of the Attorneys shall be on the basis of an hourly rate of two hundred ten dollars (\$210) per hour for all time expended by attorneys on behalf of the County and eighty-five dollars (\$85) per hour for all time expended by the Law Clerks/Paralegals on behalf of the County. The term of the contract shall be for a period beginning January 1, 2023 and ending December 31, 2023. The Attorneys shall be compensated for all necessary and reasonable direct costs incurred exclusive of normal administrative costs. The Attorneys shall be compensated for all actual hours of work performed for the County including those hours for consultation, assistance, research, and preparation.

The Attorneys shall bill for services and costs on a monthly basis with compensation to be payable within thirty (30) calendar days after billing. The Attorneys shall provide the County with monthly billings setting forth, in itemized detail, all time charges and reasons therefore, along with all necessarily incurred disbursements and expenses and reasons therefore.

This Agreement may be canceled by either party upon notice, in writing, delivered upon the party thirty (30) days prior to the effective date of cancellation. If such cancellation should be by the County, the County will be obligated to pay for the amount of work completed by the Attorneys. The parties further agree that should the Attorneys become unable for any reason to complete such work called for by virtue of this Agreement, that such work as the Attorneys have completed to the date of their inability to continue the terms of this Agreement shall become the property of the County as full discharge of Attorneys' liability hereunder without obligation for additional payment.

The parties expressly agree that this Agreement shall not be assigned by either party. The Agreement and any modifications, amendments, or alterations, shall be governed, constructed, and enforced under the laws of Ohio. The obligations of the County under this Agreement shall be subject to the applicable provisions of the Ohio Revised Code.

**ARTICLE III CONTRACT CONSTRUCTION AND ADMINISTRATION**

The Agreement constitutes the entire understanding between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

If any term or provision of this Agreement or the application thereof to any person or circumstances should, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Notwithstanding any provisions herein contained, it is expressly understood and agreed that the County shall

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not be construed or held to be a partner, associate, or joint venturer of the Attorneys in the conduct of the provisions of this Agreement. The Attorneys shall at all times have the status of an independent contractor without the right or authority to impose tort or contract liability on the County for contracts entered into by the Attorneys with third parties.

The County agrees to make available to the Attorneys all necessary records in the custody of the County and the assistance of all appropriate department employees, as the Attorneys may need for carrying out the work under this Agreement within legal limitations.

**ARTICLE IV NON-DISCRIMINATION**

The attorneys shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin or disability. The attorneys shall take affirmative action to ensure that applicants and employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, sexual orientation, or disability.

The implementation of this Contract will be carried out in strict compliance with all federal, state, or local laws regarding discrimination in employment.

In the event the attorneys are determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law, this Contract may be canceled, terminated or suspended in whole or in part by County and attorneys may be declared ineligible for future contracts with the County.

**ARTICLE V PROFESSIONAL LIABILITY INSURANCE**

Throughout the life of this Agreement, the Attorneys agree to maintain, current and without lapse, professional liability insurance in an amount adequate to protect it and the County against any and all liability arising from the professional services provided under the Agreement.

**ARTICLE VI INDEMNITY**

To the fullest extent permitted by law, the attorneys shall indemnify, save and hold the County, its officers, agents, servants, and employees free and harmless of all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney’s fees, arising from any accident or occurrence related in any manner to the attorney’s performance of this contract. The attorneys shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the County by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney’s fees. No employee of the attorneys shall at any time be considered an agent or employee of the County, except as expressly set out in this Contract.

The attorneys shall carry such bodily injury and property damage liability insurance as will protect it and the County against claims for personal injury, including death or property damage, which may arise from operations under this Contract. The attorneys will also provide proof of coverage by the Bureau of Workers Compensation upon request.

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

20, 21, 22, 23

24

**RESOLUTION NO. 22-1128**

**IN THE MATTER OF DELEGATING TEMPORARY AUTHORITY TO THE COUNTY ADMINISTRATOR:**

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

WHEREAS, pursuant to section 305.30 of the Revised Code, the Delaware County Board of Commissioners (the “Board”) may delegate specific executive or discretionary authority to the County Administrator for contracting on behalf of the Board, allowing and paying claims, performing personnel functions, performing Board functions in the event of a disaster or emergency, and performing additional duties as the Board may determine by resolution; and

WHEREAS, due to the cancelation of regular sessions of the Board at the end of the current calendar year and prior to the Board’s meeting on January 12, 2023, the Board wishes to specifically authorize the County Administrator to perform certain duties of the Board necessary for continued efficient operation of county government;

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

Section 1. The Board hereby authorizes the County Administrator, pursuant to section 305.30 of the Revised

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Code, from December 23, 2022 through January 11, 2023, to review and approve the following: supplemental appropriations; transfers of appropriations; reductions in appropriations; transfers of funds; advances of funds; repayments of advances; reclassifications of advances; continuations of advances; establishing new funds; establishing new organization keys; renaming organization keys; and approval of purchase requests over \$5,000 for the Commissioners' departments.

Section 2. The authority granted herein shall be in addition to the authority delegated in Resolution No. 22-995, which shall remain in full force and effect.

Section 3. This Resolution shall take effect immediately upon adoption.

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

**25**

**RESOLUTION NO. 22-1129**

**IN THE MATTER OF DELEGATING AUTHORITY TO THE DIRECTOR OF THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES:**

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

WHEREAS, Ohio Administrative Code Section 5101:9-6-82 provides for the inter-county adjustment of any state or federal county family services agency allocation; and

WHEREAS, counties have requested such adjustments to best meet the needs of their constituents, due to the limited allowable uses of each fund and the nuances of the random moment sampling process on a county's funding stream; and

WHEREAS, any unspent allocations within a county at the end of a fiscal year revert back to the state for use by the State Department of Job and Family Services; and

WHEREAS, a county family services agency must make such inter-county adjustment requests to the Ohio Department of Job and Family Services and include with such request a resolution authorizing such from that county's board of county commissioners; and

WHEREAS, in accordance with Ohio Administrative Code Section 5101:9-6-82(F), a board of county commissioners may pass a resolution assigning authority to another party to serve as their designee and therefore grant that party authority to sign the inter-county adjustment agreement on behalf of the county for a specific period of time; and

WHEREAS, the Delaware County Department of Job and Family Services provides services and supports daily operations through various contracts, agreements, and memoranda of understanding; and

WHEREAS, these various contracts, agreements, and memoranda of understanding include Workforce Investment contracts and agreements; On the Job Training and other Training and work subsidies to employers; Individual Training Accounts; PRC contracts and agreements for work related activities and employer subsidies; Children Services Individual Child Care Agreements and Memoranda of Understanding to document responsibilities for referral processes and core services with various community partners; and

WHEREAS, the Ohio Attorney General, in Opinion No. 2004-031, dated August 25, 2004, affirmed that "a Board of County Commissioners may, by resolution pursuant to R.C. 329.04(A)(7) and (B) or R.C. 329.05, assign to the County Department of Job and Family Services authority for the County Director of Job and Family Services to enter into contracts and agreements necessary to perform these powers and duties.";

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

Section 1. The Director of the Delaware County Department of Job and Family Services is hereby authorized to serve as the Delaware County Board of Commissioners' designee with authority to sign inter-county adjustment agreements on behalf of Delaware County until December 31, 2023.

Section 2. The Director of the Delaware County Department of Job and Family Services is hereby authorized to develop and enter into service plans, contracts, agreements, and memoranda of understanding for the following: workforce investment activities, on the job training and other training and work subsidies to employers, individual training accounts, PRC plan, agreements for work related activities and employer subsidies, children services individual child care, and referral process and core services with community partners.

Section 3. In the absence of the Director of the Delaware County Department of Job and Family Services the Director may authorize a designee of the Delaware County Department of Job and Family Services to exercise the authority delegated in Sections 1 and 2 of this Resolution.

Section 4. This Resolution shall take immediate effect upon adoption and shall supersede any prior resolutions

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delegating authority as set forth herein.

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

**ADMINISTRATOR REPORTS**  
None

**COMMISSIONERS' COMMITTEES REPORTS**

**Commissioner Benton**

-on Wednesday there is a LandBank meeting  
-congratulation to Commissioner Lewis/ took her oath of office today

**Commissioner Lewis**

-none

**RESOLUTION NO. 22-1130**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING OR IMMINENT LITIGATION AND CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:**

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

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

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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.

Section 2. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Section 3. The Board hereby finds and determines that the information listed in Section 2 is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

Section 4. The Board hereby finds and determines that the executive session held pursuant to Section 2 is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

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

**RESOLUTION NO. 22-1131**

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

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

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

**RECESS/RECONVENE 1:30PM**

**SOIL AND WATER CONSERVATION DISTRICT**

**1:30P.M. VIEWING FOR DRAINAGE PETITION FOR VIENOT #23 WATERSHED**

The Delaware County Commissioners, with staff members from the Delaware County Engineer’s Office and the Delaware County Soil and Water Conservation District, conducted an overview of the proposed improvement through the use of video technology.

On September 19, 2022, Ma’a Negra, LLC, and others, filed a petition with the Clerk of the Delaware County Board of Commissioners (the “Board”) requesting construction of a drainage improvement known as the Vienot #23 Drainage Improvement, generally described and located as follows: *improve the drainage, both surface and subsurface to a good and sufficient outlet, by replacing, repairing, or altering the existing improvements as required and/or creating new surface and subsurface drainage mains or laterals, as requested, in Delaware County, Concord and Delaware Townships, within the Vienot #23 watershed and generally following, but not limited to, the course and termini of the existing improvements.*

There being no further business, the meeting adjourned.

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Gary Merrell

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Barb Lewis

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Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners