

COMMISSIONERS JOURNAL NO. 78 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 27, 2023

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

Present:
Gary Merrell, Vice President
Barb Lewis, Commissioner

Absent:
Jeff Benton, President

1
RESOLUTION NO. 23-242

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 23, 2023:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 23, 2023; and

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

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

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

2
PUBLIC COMMENT
-None.

3
RESOLUTION NO. 23-243

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0324 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0324:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0324, memo transfers in batch numbers MTAPR0324 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Zoll (P2301092)	Supplies	10011303-5201	\$10,000.00
PR Number	Vendor Name	Line Description	Line Account Amount
R2302660	B & C COMMUNICATIONS INC	VESTA 9-1-1 SYSTEM UPGRADE	21711326 - 5450 \$373,051.00
R2302672	RF VALVES INC	AIR RELEASE VALVES	66211900 - 5260 \$10,302.00
R2302683	COMMISSIONERS	2023 CENTRAL COST ALLOCATION	66211900 - 5380 \$54,0515.00
R2302687	LEXIPOL LLC	LRMS SELF PACED COURSE	10011303 - 5305 \$15,162.45
R2302708	BEAR ENVIRONMENTAL LLC	NON-HAZARDOUS MATERIAL DISPOSAL.	66211900 - 5328 \$5,620.00
R2302709	B L ANDERSON LLC	FOUR VFDS NEEDED FOR ACWRF CLARIFIER SPEED	66211900 - 5260 \$11,344.00
R2302711	FISCAL OFFICER,ORANGE TOWNSHIP	TIF REIMBURSEMENT OLENTANGY CROSSING	44411439 - 5289 \$11,390.00

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

4
RESOLUTION NO. 23-244

IN THE MATTER OF PURCHASING A REPLACEMENT COMMUNICATION EQUIPMENT SHELTER, AND RELATED EQUIPMENT AND INSTALLATION SERVICES, FOR THE ASHLEY MEDIC STATION 5 TELECOMMUNICATIONS TOWER SITE:

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

WHEREAS, the Delaware County Director of Emergency Communications recommends the purchase of a replacement communication equipment shelter, and related equipment and installation services, for the Ashley Medic Station 5 telecommunications tower site; and

WHEREAS, the shelter and related equipment and installation services are available for purchase through the State of Ohio’s cooperative purchasing program (the “Program”); and

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

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

Section 1. The Board hereby approves the purchase of the shelter, equipment, and services from Motorola Solutions, Inc., a state-approved vendor under the Program, in accordance with the proposal and pricing quote both dated March 8, 2023, at the total cost not to exceed \$390,000.

Section 2. The purchase approved in Section 1 of this Resolution shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index STS073, Contract # 573077-0, which are, by this reference, fully incorporated herein and of which the purchase order approved herein shall be made a part.

Section 3. The Board hereby approves a purchase order in the amount of \$390,000 to Motorola Solutions, Inc., from Fund Number 21411306.

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

**5
RESOLUTION NO. 23-245**

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND COMPRODUCTS, INC., DBA B&C COMMUNICATIONS, FOR THE VESTA 9-1-1 HARDWARE REFRESH:

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

WHEREAS, the Delaware County Director of Emergency Communications recommends approval of a services agreement by and between the Delaware County Board of Commissioners and Comproducts, Inc., DBA B&C Communications, for the Vesta 9-1-1 Hardware Refresh;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following services agreement by and between the Delaware County Board of Commissioners and Comproducts, Inc., DBA B&C Communications, for the Vesta 9-1-1 Hardware Refresh:

**SERVICES AGREEMENT
Vesta 9-1-1 Hardware Refresh**

This Agreement is made and entered into on March 27, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and ComProducts, Inc., dba B&C Communications, 1740 Harmon Avenue, Suite F, Columbus, Ohio 43223 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide the products, equipment and services necessary for the County’s Vesta 9-1-1 Hardware Refresh (the “Services”).
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the Contractor’s Quote BC3460906B, dated March 10, 2023 (the “Proposal”), which is attached hereto and, by this reference, incorporated herein.
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Emergency Communications (the “Director”) as the agent of the County for this Agreement.

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- 2.2 The Director shall have authority to review changes to, and order commencement or suspension 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 for Services provided under this Agreement shall be in accordance with the Proposal, consisting of those items attributable to the County in the Proposal.
- 4.2 Total compensation under this Agreement shall not exceed \$373,051.00 without subsequent modification pursuant to Section 3.1.
- 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 PAYMENT

- 5.1 Compensation shall be paid in accordance with the Proposal, based on invoices submitted by the Contractor in accordance with the attached invoice terms and conditions, which are incorporated herein.
- 5.2 Invoices shall be submitted to the Director by the Contractor on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The Director may require additional documentation to substantiate said invoices, and the Contractor shall promptly submit documentation as requested to substantiate said invoices.
- 5.3 The County shall pay invoices within thirty (30) days of receipt.

6 COMMENCEMENT, COMPLETION, DELAYS AND EXTENSIONS

- 6.1 The Contractor shall commence Services upon written order from the Director and shall complete the Services promptly in accordance with the Proposal.
- 6.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Director may grant such an extension provided that all other terms of the Agreement are adhered to.

7 SUSPENSION OR TERMINATION OF AGREEMENT

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

8 INDEMNIFICATION

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

9 INSURANCE

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

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

10 MISCELLANEOUS TERMS AND CONDITIONS

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

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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.
- 10.12 Competitive Bidding: This Agreement is not subject to any requirement of competitive bidding, pursuant to section 128.03(F) of the Revised Code.

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

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RESOLUTION NO. 23-246

IN THE MATTER OF APPROVING THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY COMMON PLEAS COURT, JUVENILE DIVISION, AND THE DELAWARE COUNTY PUBLIC DEFENDER'S OFFICE REGARDING FUNDING FOR AN ATTORNEY FOR THE JUVENILE DIVISIONS' CASA PROGRAM:

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

WHEREAS, the County Juvenile/Probate Court Judge and Staff recommend approval of the Memorandum of Understanding by and between the Delaware County Board of Commissioners, the Delaware County Common Pleas Court, Juvenile Division, and the Delaware County Public Defender's Office regarding funding for an attorney for the Juvenile Divisions' CASA Program;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Memorandum of Understanding by and between the Delaware County Board of Commissioners, the Delaware County Common Pleas Court, Juvenile Division, and the Delaware County Public Defender's Office regarding funding for an attorney for the Juvenile Divisions' CASA Program;

**MEMORANDUM OF UNDERSTANDING
REGARDING FUNDING FOR AN ATTORNEY
FOR THE DELAWARE COUNTY COMMON PLEAS COURT,
JUVENILE DIVISIONS' CASA PROGRAM**

This Memorandum of Understanding ("MOU") is entered into this March 27, 2023 by and between the Delaware County Board of Commissioners ("Board"), whose principal place of business is located at 91 North Sandusky Street, Delaware, Ohio 43015, the Delaware County Common Pleas Court, Juvenile Division ("Court"), whose principal place of business is located at 145 North Union Street, Ground Floor, Delaware, Ohio 43015, and the Delaware County Public Defender's Office ("Public Defender"), whose principal place of business is located at 10 Court Street, Delaware, Ohio 43015 (individually "Party," collectively, "Parties").

1. PURPOSE:

This MOU states the terms and conditions under which the Court will transfer funds it receives from Ohio CASA to the Public Defender for the Public Defender to contract and pay for the services of independent contractors to serve as attorneys for the Court's CASA program.

2. TERM:

The term of this MOU shall be effective on and be inclusive of the date the last Party signs this MOU and continue through December 31, 2023, unless otherwise terminated as provided in this MOU.

3. RENEWAL:

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This MOU may be renewed for any term as agreed to in writing and signed by the Parties (each a "Renewal Term").

4. SCOPE OF SERVICES

The Court expects to receive \$46,800 in grant moneys from Ohio CASA to fund independent contractors to serve as attorneys for the Court's CASA program. The Court desires that these funds be used for such attorneys and in accordance with the terms and conditions of the grant. However, to avoid any conflict of interest or appearance of impropriety, the Court agrees, upon receipt of an invoice, to transfer any grant funds it receives from Ohio CASA for this purpose to the Public Defender for the Public Defender to contract and pay for CASA attorneys.

A. Court Responsibilities

- i. During the term of this MOU, the Court shall, upon receipt of an invoice from the Public Defender, transfer to the Public Defender grant funds it receives from Ohio CASA for the purpose of funding independent contractors to serve as attorneys for the Court's CASA program. Such funds are to be used by the Public Defender to pay the costs of such attorneys.
- ii. The Court shall apply for and, if approved, administer the Ohio CASA grant.
- iii. In addition to the funding, the Court shall provide the Public Defender with all terms and conditions of the Ohio CASA grant.
- iv. Once transferred, the Court shall have no further responsibility for the use and/or management of the grant funds, except as requested by the Court and/or as required by Ohio CASA, to receive signed written documentation from the Public Defender evidencing use of the grant funds for the intended purpose of paying for attorneys for the Court's CASA program and that such funds were used in accordance with the terms and conditions of the grant. As required, the Court will forward any such documentation it receives from the Public Defender to Ohio CASA.

B. Public Defender Responsibilities

- i. The Public Defender shall use the Ohio CASA grant funds it receives from the Court pursuant to this MOU to contract and pay for the services of independent contractors to serve as attorneys for the Court's CASA program.
- ii. The Public Defender shall be responsible for contracting for attorneys for the Court's CASA program and shall retain all responsibility, control, and management over the contracts and contracted attorneys.
- iii. The Public Defender shall provide the Court the name(s), bar number(s), and address(es) of attorneys contracted for the Court's CASA program.
- iv. The attorneys shall be compensated through the Ohio CASA grant at a rate not to exceed \$60.00 per hour for both in and out of court services. The Public Defender shall be solely responsible for any difference between this rate and any higher rate of compensation.
- v. As services are rendered by the attorneys, the Public Defender shall invoice the Court for the services of the attorneys, not to exceed the total amount of grant funding the Court receives from Ohio CASA for contracting for the attorneys for the Court's CASA program.
- vi. The Public Defender shall be responsible for and comply with all terms and conditions of the Ohio CASA grant.
- vii. The Public Defender, as requested by the Court and/or as required by Ohio CASA, shall provide to the Court signed written documentation evidencing use of the grant funds for the intended purpose of paying for attorneys for the Court's CASA program and that such funds were used in accordance with the terms and conditions of the grant.

5. NO GUARANTEE OF FUNDING

The Public Defender fully understands and acknowledges that funding for this MOU is contingent upon the Court's receipt of grant funding from Ohio CASA for attorneys for the Court's CASA program. As a result, the Court cannot and does not guarantee any funding to the Public Defender under this MOU. If the Court does not receive funding from Ohio CASA to fund this MOU or such funding is less than the amount the Court expects to receive, the Court shall immediately provide written notice of such fact to the Public Defender. The Parties shall then either agree to immediately terminate this MOU or mutually work together to consider other possible means of proceeding with the purposes of this MOU. In no event shall the Court be responsible for any contract or the continuation of any contract held by the Public Defender for the services of an attorney for the Court's CASA program.

6. NO COURT OR BOARD FUNDS

The Public Defender fully understands and acknowledges that no Court or Board moneys will fund this MOU or be used to pay for attorneys for the Court's CASA program. The full extent of the Board's and/or Court's financial responsibility under this MOU is limited to moneys it receives from Ohio CASA and no Court or Board funds will be used for the purposes of this MOU.

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7. CONTRACT MAXIMUM

The maximum amount payable pursuant to this Agreement is \$46,800. It is understood by the Parties that the actual amount paid may be less or \$0.00, based upon if the Court receives grant moneys from Ohio CASA to fund this MOU or a lesser amount than anticipated.

8. PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS

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

To the extent permitted by law, the Public Defender shall hold harmless the Board and/or the Court and be solely responsible for the negligence, actions, inactions, and/or omissions of the attorneys it contracts with pursuant to this MOU. In no event shall the Court or Board be responsible for the negligence, actions, inactions, and/or omissions of any attorney contracted for a) with funds provided for by this MOU or b) by the Public Defender.

9. INSURANCE

In any contract the Public Defender holds for services of an attorney for the Court's CASA program, at a minimum, the Public Defender shall require the attorney to carry and maintain throughout the term of such contract, without lapse, the following insurance:

- A. Commercial General Liability Insurance**, including coverage for bodily injury and/or property damage, 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).
- B. Professional Liability Insurance** (Errors and Omission Insurance) covering the attorney and his/her employees for services provided pursuant to the contract with the Public Defender 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).
- C. Workers' Compensation Insurance**, as applicable, as required by Ohio law.

Prior to commencing services, the contract shall require the attorney to present to the Public Defender current certificates of insurance for the above required policies of insurance. The insurance company needs to be identified on the certificates 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 must 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 Parties to this MOU and Delaware County, Ohio ("County") shall all be named as additional insureds on all of the above required policy(ies) of insurance and such designation shall appear on the certificates of insurance.

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

The above required insurance coverage shall be primary insurance as respects the Parties to this MOU and the County, and any insurance maintained by these Parties will be excess to the above required insurance and shall not contribute to it.

If there is any change in insurance carrier or liability amounts and/or upon renewal, the attorney shall be required to provide the Public Defender with a new certificate of insurance within seven (7) calendar days of change or renewal.

The Public Defender shall retain for the term of this MOU and three (3) thereafter or in accordance with the applicable records retention schedule, whichever requires the longer retention period, all certificates of insurance provided by the attorney. The Public Defender shall present copies of such certificates to the other Parties to this MOU upon request.

10. LICENSE

Any attorney contracted by the Public Defender pursuant to this MOU shall have and maintain throughout the term of the contract all approvals, licenses, certifications, permits, and/or other qualifications or prerequisites ("Licenses") necessary to practice law in the State of Ohio and fully perform the contract. All such Licenses shall be operative and current and shall not have been revoked

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or be currently suspended for any reason. Proof of such Licenses shall be promptly provided to the Public Defender and/or Court upon request.

11. TERMINATION

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

A. Convenience:

Any Party may terminate this MOU at any time and for any reason, including, but not limited to, lack of funding, by giving at least 7 days advance notice, in writing, to the other Parties.

The Parties may mutually terminate this MOU at any time and for any reason upon the signed written agreement of the Parties.

B. Breach or Default:

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

Termination under this section will relieve the Parties of any and all further obligations under this MOU, except the Public Defender shall be entitled to receive funds from the Court for services of an attorney under contract with the Public Defender, where such services were pursuant to a contract entered pursuant to this MOU, the services were rendered prior to the date of termination, and the Court has grant funds available for such purpose. The Parties, without limitation, retain all such other and further rights and remedies as are available to them at law or in equity.

12. WAIVER

The waiver of any requirement of this MOU or any occurrence of breach or default is not and shall not be interpreted as a waiver of any other requirement or future occurrences of breach or default.

13. NOTICES

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

BOARD

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

Email: tdavies@co.delaware.oh.us

COURT

Katie Stenman
Court Administrator
Delaware County Common Pleas Court
Juvenile Division
145 North Union Street, 3rd Floor
Delaware, OH 43015

Email: kstenman@co.delaware.oh.us

PUBLIC DEFENDER

Carlos Crawford
Delaware County Public Defender
Delaware County Public Defender's Office
10 Court Street
Delaware, Ohio 43015

Email: ccrawford@co.delaware.oh.us

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14. AUDIT

The Public Defender agrees to submit to audit and accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority. The Public Defender agrees to reimburse the Court the amount of any identified audit exception.

15. RECORDS RETENTION

For a minimum of three (3) years after termination of this MOU or any Renewal Term or as otherwise required by any applicable law, regulation, rule, or records retention schedule, whichever requires the longest retention period, the Public Defender shall retain and maintain all books, records, documents, papers, invoices, receipts, payrolls, personnel records, reports, documents and all other information or data relating to all matters covered by this MOU (collectively "Records"). If an audit, litigation, prosecution, or other action (collectively "Action") is initiated during the term of this MOU or any Renewal Term, the Public Defender 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.

16. ACCESS TO RECORDS

At any time during regular business hours (M-F, 8:00AM-5:00PM) and with reasonable notice, the Public Defender shall make available to the Board and/or Court or their authorized representatives, at no cost and within a reasonable period of time, any and/or all Records. The Board and/or Court or their authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records.

17. ASSIGNMENT

This MOU and/or any of the rights or responsibilities it contains may not be assigned or transferred.

18. SUBCONTRACTING

Except as provided in this MOU, the Public Defender may not subcontract any portion of this MOU.

19. DRUG FREE ENVIRONMENT

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

20. ANTI-DISCRIMINATION

The Public Defender warrants and agrees as follows:

- A. That in selecting attorneys to contract with pursuant to this MOU or in the performance of any selected attorney's work, the Public Defender shall not discriminate against any person by reason of race, color, religion, sex, sexual orientation, transgender status or gender identity, age, disability or military status as defined in R.C. § 4112.01, national origin, or ancestry.
- B. The Public Defender shall make a good faith effort to ensure that in the performance of this MOU and providing services as a CASA attorney no contracted attorney discriminates against any person by reason of race, color, religion, sex, sexual orientation, transgender status or gender identity, age, disability or military status as defined in R.C. § 4112.01, national origin, or ancestry.
- C. The Public Defender shall comply with all federal, state, and/or local discrimination laws and shall not discriminate.

21. GOVERNING LAW AND VENUE

This MOU will be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this MOU will be filed in and heard before an appropriate court in Ohio having proper jurisdiction and venue. The Parties hereby irrevocably consent to that applicable law, venue, and jurisdiction.

22. HEADINGS

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

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23. DRAFTING

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

24. SEVERABILITY

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

25. COUNTERPARTS

This MOU may be executed in counterparts.

26. SIGNATURES

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

27. NO THIRD PARTY BENEFIT

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

28. ENTIRE CONTRACT

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

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

**7
RESOLUTION NO. 23-247**

IN THE MATTER OF APPROVING AN AGREEMENT WITH PETERSON CONSTRUCTION COMPANY FOR CMAR SERVICES FOR THE ALUM CREEK WATER RECLAMATION FACILITY POST TREATMENT PROJECT:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Peterson Construction Company for CMAR Services for the Alum Creek Water Reclamation Facility Post Treatment Project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Peterson Construction Company:

This Agreement is made as of the date set forth below between the Delaware County Board of Commissioners, and the Construction Manager in connection with the Project.

Project Number:	
Project Name:	Alum Creek WRF Post Treatment Improvements
Site Address:	7767 Walker Wood Blvd. Lewis Center, Ohio 43035, Delaware County
Owner ("County"):	Delaware County
Address:	91 North Sandusky Street Delaware, Ohio 43015
Contracting Authority:	Delaware County Board of Commissioners
Project Manager:	Brad Stanton
Construction Manager ("CM"):	Peterson Construction Company
CM's Principal Contact:	Robert Knapke
Address:	18817 S.R. 501 North Wapakoneta, Ohio 45895
Architect/Engineer ("A/E"):	MS Consultants, Inc.
A/E's Principal Contact:	Adam Bittinger
Address:	2221 Schrock Road Columbus, Ohio 43229

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ARTICLE 1 - SCOPE OF WORK; CONSTRUCTION BUDGET

- 1.1 The CM shall perform and provide all of the Work described in the Contract.
- 1.2 The Total Compensation Budget is \$4,000,000
- 1.3 The Construction Budget is \$3,500,000.

ARTICLE 2 - PRECONSTRUCTION STAGE COMPENSATION

2.1 The Preconstruction Stage Compensation is **\$25,000.00**, which is the sum of the (1) Preconstruction Fee, (2) Preconstruction Stage Personnel Costs, and (3) Preconstruction Stage Reimbursable Expenses. The County shall pay the Preconstruction Stage Compensation to the CM in exchange for the CM’s proper, timely, and complete performance of the Preconstruction Services.

2.2 Preconstruction Fee. The CM’s Preconstruction Fee is \$5,000.00 and is subject to the following allocation:

Project Stage/Task	Associated Fee	Portion of Total Fee
Program Verification	\$1,000	20%
Schematic Design	\$1,000	20%
Design Development	\$1,000	20%
Construction Documents	\$1,000	20%
GMP Proposal and Amendment	\$1,000	20%
Total Preconstruction Fee	\$5,000	100%

2.3 Preconstruction Stage Personnel Costs. The CM’s Preconstruction Stage Personnel Costs shall not exceed \$17,000.00, and shall be paid on an hourly basis according to the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

2.4 Preconstruction Stage Reimbursable Expenses. The CM’s Preconstruction Stage Reimbursable Expenses shall not exceed \$3,000.00, and shall be paid according to the **Preconstruction Stage Reimbursable Expenses Schedule** attached as **Exhibit B**.

ARTICLE 3 - CONSTRUCTION STAGE COMPENSATION

3.1 As described in the General Conditions, the parties will establish the Contract Sum, Contract Times, Milestones, and other commercial terms relevant to the Construction Stage through at least one **GMP Amendment**, the form of which is attached as **Exhibit D**.

3.2 The CM shall propose the amount of the CM’s Construction Stage Personnel Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the CM’s Construction Stage Personnel Costs shall not exceed \$234,000.00.

3.2.1 The CM’s Construction Stage Personnel Costs shall be based upon the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A**.

3.3 The CM shall propose the amount of the General Conditions Costs portion of the Cost of the Work as a part of the proposed GMP Amendment; provided, however, that the General Conditions Costs shall not exceed \$299,700.

3.3.1 A detailed description of the items of Work included in the General Conditions Costs portion of the Cost of the Work is set forth in the **General Conditions Costs Description** attached as **Exhibit C**.

3.4 The CM shall propose the amount of the CM’s Contingency as a part of the proposed GMP Amendment; provided, however, that the CM’s Contingency shall not exceed an amount equal to 1.5 percent of the Cost of the Work identified by the CM in the proposed GMP Amendment.

3.4.1 Shared-Savings Change Order. Unless otherwise provided in the GMP Amendment, no more than 30 days before final payment to the CM, the parties shall execute a Change Order to reduce the Contract Sum by an amount equal to (1) 100 percent of the funds then remaining in the CM’s Contingency plus (2) an associated reduction of the CM’s Fee in an amount equal to 4.0 percent of the amount by which the Contract Sum is reduced on account of return of the CM’s Contingency.

3.5 The CM shall propose the amount of the CM’s Fee as a part of the proposed GMP Amendment; provided, however, that the CM’s Fee shall not exceed an amount equal to 4.0 percent of the Cost of the Work plus the CM’s Contingency, both as identified by the CM in the proposed GMP Amendment.

3.6 If the parties cannot agree on a Contract Sum, the County may terminate the Contract for convenience. If the County thereafter decides to pursue the Project using the Multiple-Prime Contract, or General Contractor, with Construction Manager Adviser project-delivery method and to enter into a related construction-management agreement with the CM, the CM’s Fee under that contract shall not exceed 4.0 percent. The County is not obligated to offer or enter into a Construction Manager Adviser contract with the CM for the

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Project.

ARTICLE 4 – KEY PERSONNEL

4.1 The CM's key personnel for the Project are:

- 4.1.1** Ty Bergfeld, Project Manager;
- 4.1.2** Brad Rethman, Lead Scheduling Engineer;
- 4.1.3** Doug Crusey, Lead Estimator;
- 4.1.4** John Schmiedebusch, General Superintendent.

4.2 The CM's key personnel are authorized to act on the CM's behalf with respect to the Project and all matters concerning the Project.

ARTICLE 5– CONSULTANTS

5.1 The CM's Consultants for the Project are:

- 5.1.1** Electrical Sub-Consultant:
Woolace Electric
1978 County Road 22A
Stryker, Ohio 43557

5.2 The CM may provide a portion of the Work through one or more Consultants, provided, however, the CM will remain responsible for all duties and obligations of the CM under the Contract.

- 5.2.1** If the CM engages a Design-Assist Firm, that entity **(1)** will be considered a Consultant under the Contract during the Preconstruction Stage and **(2)** before that entity performs any Work during the Construction Stage, it shall be subject to all Applicable Law and Contract provisions concerning the prequalification, bidding, selection, and engagement of Subcontractors and shall enter into a Subcontract with the CM.

5.3 By appropriate written agreement, the CM shall require each Consultant, to the extent of the Consultant's portion of the Work, to be bound to the CM by the terms of the Contract, and to assume toward the CM all of the obligations and responsibilities which the CM assumes toward the County.

- 5.3.1** The CM shall not retain any Consultant on terms inconsistent with the Contract.
- 5.3.2** All agreements between the CM and a Consultant shall identify the County as the agreement's intended third-party beneficiary.
- 5.3.3** The County's receipt and approval of a copy of the agreement between the CM and a Consultant is a condition precedent to the County's obligation to pay the CM on account of the Consultant's services.

5.4 The County has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

5.5 The CM shall obtain the County's written approval before engaging any Consultant not named above. The CM shall not employ any Consultant against whom the County has a reasonable objection. The County's approval or disapproval of any Consultant, however, will not relieve the CM of the CM's full responsibility for the performance of the Work.

5.6 The CM shall not remove any Consultant from the Project or reduce the extent of any Consultant's participation in the Work without the County's prior written consent. The CM shall not permit any Consultant to replace any previously identified team member except with the County's prior written consent unless the Consultant ceases to employ that person. On notice from the County, the CM shall immediately and permanently remove from the Project any Consultant or person under a Consultant's control whose performance is not satisfactory to the County.

5.7 The County may communicate with any Consultant either through the CM or directly with the Consultant, but the County may not modify the contract between the CM and any Consultant.

5.8 The CM hereby assigns to the County each Consultant's agreement provided that the assignment is effective only after the County terminates the Contract and only for those agreements which the County accepts by notifying the Consultant and CM in writing. The County may re-assign accepted agreements.

ARTICLE 6– GENERAL PROVISIONS

6.1 Escalation of Personnel Cost Rates.

- 6.1.1** The CM may adjust the rates set forth in the **Personnel Costs Rate Schedule** attached as **Exhibit A** in accordance with the CM's normal salary-review practices, but **(1)** not before the date one year after the date of the Agreement, **(2)** not more than once in any one-year period thereafter, and **(3)** not in excess of five percent per annual increase.
- 6.1.2** No rate increase will **(1)** apply to any Work performed before the County receives written

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notice of the increase from the CM, or (2) result in an increase in a previously established fixed or not-to-exceed fee such as under (a) Sections 0 and 0 of this Agreement, (b) a GMP Amendment, or (c) as the parties may agree upon from time to time in connection with all or any part of the Work.

6.2 Effectiveness.

6.2.1 It is expressly understood by the CM that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Delaware County Auditor first certifies that there is a balance in the County’s appropriation not already encumbered to pay existing obligations.

6.2.2. Subject to Section 0, the Contract shall become binding and effective upon execution by the County and CM.

6.2.2.1 If the CM is a joint venture, (1) each individual joint venturer shall (a) sign the Agreement in its own name and (b) be a party to the Contract, and (2) the Contract, Performance Bond, and Payment Bond shall be binding on and apply to all joint venturers jointly and severally.

6.2.2.2 If the CM is a limited liability company, which the Contracting Authority reasonably believes to be a special purpose or similar entity, the Contracting Authority may in its discretion require the limited liability company and each member of the limited liability company to (1) sign the Agreement in its own name and (2) be a party to the Contract. In that case, the Contract, the Performance Bond, and the Payment Bond shall be binding on and apply to the limited liability company and to all of its members jointly and severally.

6.2.3. This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

6.3 Representations.

6.3.1 The CM represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the CM shall immediately repay to the County any funds paid under this Contract.

6.3.2 The CM, by signature on this Agreement, certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

ARTICLE 7– ENUMERATION OF DOCUMENTS

7.1 The Contract Documents constitute the substance of the Contract, and include this Agreement, the GMP Documents, final Drawings, final Specifications, Addenda if any, Contracting Definitions, General Conditions, Project Manual, and Modifications if any.

7.2 This Agreement includes the following documents:

7.2.1 Personnel Costs Rate Schedule attached as Exhibit A;

7.2.2 Preconstruction Stage Reimbursable Expenses Schedule attached as Exhibit B;

7.2.3 General Conditions Costs Description attached as Exhibit C;

7.2.4 GMP Amendment form attached as Exhibit D; and

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

8
RESOLUTION NO. 23-248

**IN THE MATTER OF APPROVING A SOFTWARE AS A SERVICE (SAAS) AGREEMENT WITH
ADVANCED ENTERPRISE SYSTEMS CORPORATION FOR UTILITY CLOUD ASSET
MANAGEMENT SOFTWARE:**

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Advanced Enterprise Systems Corporation for Utility Cloud Asset Management Software;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio hereby approves the following agreement with Advanced Enterprise Systems Corporation:

SAAS SERVICES ORDER FORM

3/21/2023

Customer
Delaware County Regional Sewer District
P.O. Box 614

Contact:
Erik McPeek
Deputy Director

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Lewis Center, OH 43035

emcpeek@co.delaware.oh.us
(740) 833-2240

Thank you for the opportunity to serve you. Please feel free to contact me directly with any questions, comments or concerns. To accept this order, please **print and sign this document, or fill out via DocuSign**, as well as print and initial the pages of the terms and conditions document, and return via email to Cathy Merrifield cathy.merrifield@utilitycloud.us

Software as a Service (SaaS) Invoicing Start Date: 3/31/2023

SaaS Services: Utility Cloud Operations Management System (the “Service(s)”).

Invoicing Frequency: Annually

Term: The term of this Agreement shall remain effective until the three-year anniversary of the Effective Date. Term will auto renew for three years unless cancelled prior to the end of the renewal term.

Professional Services: AESC will use commercially reasonable efforts to provide Customer the professional services described in this document (the “Professional Services”), and Customer shall pay AESC the fees set forth in this document in accordance with the terms therein.

Product List:

	List Price (\$)	Term (years)	Subtotal	Discount (\$)	Total
Premium Subscription	25,000	3	75,000	-	75,000
Includes: Inspections & work orders, maps, form builder, in-app analytics, off-line work, ESRI integration, advanced custom reporting, open API, Inventory module, and standard business intelligence.					
Premium Implementation	25,000	1	25,000	-	25,000
Implementation Includes: Manual asset import, form configuration, trigger configuration, user training, standard reports, custom report build, integration discovery workshop, work history import (last 3 years), and form import (legacy system). Milestones for implementation will be set upon execution of contract					
8 Additional 5 User Pack(s)	40,000	3	120,000	(20,000)	100,000
Total	90,000		220,000	(20,000)	200,000

Services Fees:

	Year 1	Year 2	Year 3	Total
Annual Subscription Fee	65,000	55,000	55,000	175,000
Implementation Fee	25,000			25,000
Total	90,000	55,000	55,000	200,000

Pricing presented above valid until: 3/31/2023

Users seats included: 50

SAAS SERVICES AGREEMENT

This SaaS Services Agreement (“Agreement”) is entered into on this 31st day of March, 2023(the “Effective Date”) between Advanced Enterprise Systems Corporation (“AESC”), and the Customer listed above (“Customer”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

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

**9
RESOLUTION NO. 23-249**

IN THE MATTER OF APPROVING MODIFICATION NO. 1 TO THE ENGINEERING AGREEMENT WITH MS CONSULTANTS, INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR THE PACKAGE PLANT UPGRADES PROJECT:

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

WHEREAS, on December 21, 2020, the Delaware County Board of Commissioners (the “Board”) adopted Resolution No. 20-1162 approving an agreement with MS Consultants, Inc., for professional design services for the Package Plant Upgrades Project (the “Agreement”); and

WHEREAS, the Sanitary Engineer recommends approval of Modification No. 1 to the Agreement;

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NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Modification No. 1 to the Agreement with MS Consultants, Inc.:

**MODIFICATION NO. 1
To
ENGINEERING AGREEMENT**

**FOR INCORPORATING THE PROFESSIONAL ENGINEERING SERVICES
FOR**

Delaware County Regional Sewer District, Package Plants Upgrade Project

1. **DATE:** March 27th, 2023
2. **OWNER:** Delaware County Board of Commissioners
3. **ORIGINAL AGREEMENT:** December 21st, 2020
4. **CONSULTANT:** ms consultants, inc.
5. **CONTRACT CLAUSES TO BE MODIFIED HEREIN:**

Additional Design Services:

- Exhibit B – Scope of Services
 - Phase 2 – Detailed Design
 - Revise: Task 1 – Final Design
- Table B - Revise: Phase 2 and 3 Fee Summary

Construction Services:

- Exhibit B – Scope of Services
 - Add: Phase 4 – Construction Services
- Table B: Phase 2 and 3 Fee Summary
 - Add: Phase 4 – Basic Services
 - Add: As-Authorized Construction Services
 - Revise: Contingency

6. **REASON FOR MODIFICATION**

Additional Design Services:

The following provides a summary of the additional services, in Phase 2 Basic Services, required per additional design requests by the Delaware County Regional Sewer District.

- Lower Scioto WRF
 - Ferric feed (BV)
 - Review of existing pump and ability to feed to basement
 - Spec the spare shelf (assume same as existing)
 - Detail for changes to pipe manifold to direct feed one of the pumps to dewatering
 - Site plan to show pipe to dewatering basement
 - Detail to show connection to suction side of centrifuge pipe
 - Specification for yard piping
 - Pulsair system (BV)
 - Evaluating compressor sizing (may be smaller than currently provided)
 - Coarse bubble diffusers (BV)
 - Spec for the diffusers
 - Determine how many/grid needed and what demand that will place on the blowers
 - Air piping specs (BV)
 - Compressed air mixing system
 - Dry screw positive displacement blowers
 - Flexible membrane disc diffusers
 - Submersible pumps
 - Additional electrical design associated with all above revisions (ms)
- Tartan Fields WRF (ms)
 - Replacement of influent screen
 - Replacement of aeration tank influent & effluent piping to address hydraulic issues and corrosion
 - Complete rework of aeration tank design for redundancy

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- Reuse of existing mixers and IMLR pumps from OECC and Scioto Reserve
- Additional effluent weir box
- Concrete rehab of EQ tank walls
- Replacement of sludge blower
- Addition of telescopic valve in sludge tank
- Replacement of non-potable water booster pump
- General (ms & BV)
 - Continued progress meetings and project management due to the increased design duration. The original agreement assumed 12 months for design services

Summary of additional fee associated with each item above:

Lower Scioto WRF:	\$54,000.00 (including ms electrical)
Tartan Fields WRF:	\$28,800.00
General:	\$9,400.00
 Total:	 \$92,200.00
 Remaining in Contingency:	 (\$1,145.00)
 Total <u>Additional Design Services</u> Fee Request:	 \$91,055.00

Construction Services:

The existing Contract contains services through the bidding phase of the project. The County has requested that ms consultants provide Construction Services as part of the project. Construction Services will be split into two categories: basic services and as-authorized services. Basic services consist of engineering services during construction, which is reviewing submittals, providing responses to RFIs, generating RFPs and Field Orders, attending construction progress meetings in a support capacity, and providing record drawings. As-authorized services will consist of full construction administration services, which is leading all construction kick-off and progress meetings, providing meeting minutes, reviewing pay applications and change orders, preparing contract modifications, and performing construction closeout duties.

8. **MODIFICATION IN AGREEMENT**

Additional Design Services:

**Exhibit B – Scope of Services
Phase 2 – Detailed Design, Task 1 – Final Design ADD:**

Item X: Add additional progress meetings associated with an extended design period as well as additional Project Management requirements.

Item Y: Provide design services for the Tartan Fields WRF and Lower Scioto WRF as described in Section 7 of this Contract Modification No. 1.

**Exhibit B – Scope of Services
Project Schedule:**

Revise the Project Schedule to state Phase 2 - Detailed Design phase will be completed in Q2 of 2023 and Phase 3 – Bid Phase will commence 1 month from the completion of Phase 2.

Construction Services: (Begins on following page)

Construction Services:

**Exhibit B – Scope of Services ADD:
Phase 4 – Construction Services**

Basic Services:

Task 1 – Progress Meetings

- A. The Consultant shall attend construction progress meetings for both anticipated construction contracts. One progress meeting for each Contract is assumed per month. Construction is anticipated to last two (2) years, resulting in 48 progress meetings, half of which will be virtual. Subconsultants will attend meetings on an as-needed basis. Eight (8) progress meetings have been assumed for subconsultants on LSWRF related work. The County will be responsible for preparing all agendas, minutes, and leading each meeting.

Task 2 – Submittal (Shop Drawing) Review

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- A. The Consultant shall review and approve or provide comments to the Contractor related to all submittals and shop drawings provided by the Contractor for each construction contract. The Consultant has reviewed the technical specifications and assumes one hundred and fifty-five (155) submittals and/or shop drawings will be reviewed for both contracts combined. The Consultant will utilize the County's construction administration system (Procore) to manage submittals and upload their responses to the Contractor.

Task 3 – Requests for Information (RFIs)

- A. The Consultant will provide necessary clarifications and interpretations to questions from the Contractor related to the contract documents as appropriate for the orderly completion of the work. The County will receive RFIs from the Contractor, and if necessary based on the technical nature of the work, forward them to the Consultant for response. Such clarifications and interpretations will be consistent with the intent of the project. Thirty (30) RFIs have been assumed for both contracts. RFIs will be issued through the County's construction administration system. The County will be responsible for developing the formal paperwork and issuing the RFIs.

Task 4 – Field Orders (FOs)

- A. When a change in contract price is not expected, the Consultant will provide necessary clarifications and plan revisions as appropriate for the orderly completion of the work. Field Orders will be developed in response to RFIs or as directed by the Owner. Fifteen (15) field orders requiring plan revisions have been assumed. The County will be responsible for developing the formal paperwork and issuing the field orders.

Task 5 – Requests for Proposals (RFPs)

- A. When a change in contract price is expected based on an RFI, differing site conditions, etc., the Consultant will provide necessary responses and plan revisions as appropriate for the orderly completion of the work. The County will be responsible for developing the necessary paperwork and issuing the RFP. The County will receive and review the cost proposal from the Contractor to perform the work. Ten (10) RFPs have been assumed as part of both contracts, combined.

Task 6 – Site Visits

- A. Together with the County, visit the project site to assess potential revisions to the plans based on differing site conditions. Any resulting revisions will then be incorporated into a Field Order or RFP, which are included in Tasks 4 and 5 above.
- B. For post construction or work which has already been installed, visit the project site with the County to observe any apparent defects in the work, assist the County in consultations and discussions with the Contractor concerning warranty correction of any such defects, and make recommendations regarding replacements of defective work, if present.
- C. Total number of site visits assumed for the project, during construction, is ten (10).

Task 7 – Record Drawings

- A. The Consultant shall complete record drawings of the finished project based on "as-built" measurements, changed construction details, and additions to the plans furnished by the Contractor and Owner's On-Site Project Representative. Upon completion, Consultant will provide the County with two (2) full-size and two (2) half-size prints on bond paper. The project documents will also be delivered electronically, including basemaps and sheets in AutoCAD format and PDFs of the plans.

As-Authorized Services

Task 8 – Progress Meetings (As-Authorized)

- A. In addition to the services provided in Task 1, the Consultant will prepare all agendas, minutes, and lead each meeting.

Task 9 – Requests for Information (As-Authorized)

- A. In addition to the services provided in Task 3, the Consultant will receive and review all RFIs, prepare the necessary paperwork in addition to their responses as attachments (from Task 3), and upload the documents to the Contractor.

Task 10 – Field Orders (As-Authorized)

- A. In addition to the services provided in Task 4, the Consultant will prepare the necessary paperwork in addition to their developed attachments, and upload the documents to the Contractor.

Task 11 – Requests for Proposals (As-Authorized)

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- A. In addition to the services provided in Task 5, the Consultant will receive and review the Contractor’s proposal and either authorize the work with the approval of the Owner or negotiate with the Contractor to receive a revised price for authorization.

Task 12 – Change Orders and Contract Modifications (As-Authorized)

- A. As a result of approved RFPs or Owner directed changes, the Consultant will receive and review change proposals. The Consultant will provide any necessary comments to the Contractor prior to finalizing the documents. The Consultant will make a recommendation to the Owner to approve the change proposal in whole, deny it in whole, or partially approve the proposal. Subsequently, the Consultant will prepare appropriate change order documents to modify the contract. The change order documents will include all necessary information included from a previous RFP, or include a detailed scope of work including necessary drawing changes if the change order did not result from a previous RFP.

Task 13 – Pay Applications (As-Authorized)

- A. The Consultant will receive and review all pay applications for both Contracts. The Owner’s Field Representative will provide a monthly pencil copy of all work installed, including quantities, to the Consultant for their review. The Consultant will provide comments regarding each pay application, as necessary, back to the Contractor within ten (10) calendar days of receipt. Upon completion and approval of each pay application, the Consultant will sign the necessary documents and provide copies to the Owner for their signature and payment to the Contractor. Forty (40) pay applications have been assumed, for both contracts combined.

Task 14 – Contract Closeout (As-Authorized)

- A. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner’s objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner’s use or occupancy of the Work following Substantial Completion. The site visit associated with this work is in addition to the site visits included in Task 6.
- B. Contractor’s Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Construction Administrator’s review of record documents shall be to check that Contractor has submitted all pages.

Task 15 – Start-Up and Commissioning Services

- A. Consultant will assist the County and Contractor during commissioning of the new facilities. Services will include the following:
 - a. On-site assistance of new processes which includes answering Contractor and Owner’s operations staff questions, monitoring equipment, processes, systems, process troubleshooting, and reviewing data either collected from SCADA or field analysis. Forty (40) hours have been assumed for this task.
 - b. Remote process specialist assistance for the Owner’s operations staff for the aeration system at LSWRF to discuss with Owner staff operational issues. Sixteen (16) hours have been assumed for this task.
 - c. Attendance at demonstration, startup, and/or training for equipment at both LSWRF and TFWRF. Two-Hundred and Forty (240) hours have been assumed for this task, including one-hundred and ninety-two hours (192) at LSWRF.

Contract Modification No. 1 – Summary of Additional Fees

Phase 2 – Additional Design Services	\$92,200.00
Phase 4 – Construction Basic Services	\$504,245.00
Phase 4 – Construction As-Authorized Services	\$184,650.00
Contingency – Modification No. 1	\$100,000.00
 Total:	 \$881,095.00

Table B: Phase 2 and 3 Fee Summary REVISED:

<u>Tasks</u>	<u>Fees</u>
PHASE 1 REMAINING FUNDS	(\$56,000.00)
PHASE 2 BASIC SERVICES	\$913,855.00

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PHASE 2 MODIFICATION 1 – ADDITIONAL DESIGN SERVICES	\$92,200.00
PHASE 3 BASIC SERVICES	\$20,000.00
PHASE 4 MODIFICATION 1 – CONSTRUCTION BASIC SERVICES	\$504,245.00
PHASE 4 MODIFICATION 1 – CONSTRUCTION AS-AUTHORIZED SERVICES	\$184,650.00
CONTINGENCY (ADDED PER MODIFICATION NO. 1)	\$100,000.00
PHASES 2 THRU 4 TOTAL	\$1,758,950.00

IN WITNESS WHEREOF, the parties hereunto have caused this Modification No. 1 to be executed, as of the date and year first above written, by affixing the signature of the duly authorized officer of **ms consultants, inc.** and by the Delaware County Commissioners.

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

10

RESOLUTION NO. 23-250

IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS AND ESTIMATES AND SETTING THE BID DATES FOR THE PROJECTS KNOWN AS 2023 DELAWARE COUNTY ROAD IMPROVEMENT PROGRAM AND DEL-CR605-0.00 SHOULDER PAVING AND SAFETY IMPROVEMENTS:

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

WHEREAS, the County Engineer has prepared plans, specifications and estimates for the projects known as 2023 Delaware County Road Improvement Program and DEL-CR605-0.00 Shoulder Paving and Safety Improvements (collectively, the “Projects”);

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 estimates for the Projects.

Section. The Board hereby authorizes the County Engineer to advertise for and receive bids for the Projects on behalf of the Board, in accordance with the following advertisements for bids:

2023 Delaware County Road Improvement Program:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com web service until 10:00 am on Tuesday, April 18, 2023, at which time they will be publicly received and read aloud, for the project known as:

**2023 Delaware County Road Improvement Program
Resurfacing of Various County and Township Roadways**

All proposals shall be submitted electronically through the web service 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 Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from 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 and may be accessed by selecting “Public Notices and Bids.”

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

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4115 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

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

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DEL-CR605-0.00 Shoulder Paving and Safety Improvements:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com web service until 10:00 am on Tuesday, April 25, 2023 at which time they will be publicly received and read aloud, for the project known as:

**DEL-CR605-0.00
Shoulder Paving and Safety Improvements**

All proposals shall be submitted electronically through the web service 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 Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from 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 and may be accessed by selecting "Public Notices and Bids."

The Owner requires that all work associated with the project be completed before November 21, 2023. The estimated commencement of work date is May 8, 2023.

Bidders must be pre-qualified as a Contractor by the Ohio Department of Transportation.

This is a Federal-Aid project and the Federal Equal Employment Opportunity regulations listed in the proposal shall govern. There is a 7% Disadvantaged Business Enterprises (DBE's) participation goal on this contract.

This is a prevailing wage contract in accordance with the U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution. Bidders shall comply with all applicable provisions.

Disadvantaged Business (DBE) Requirement. DBE participation goals (Subcontracts, materials, supplies) have been set on this project for those certified as DBE's in accordance with the TEA - 21 (1998) and 49 CFR, Part 26, and qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code (O.R.C.). The DBE goal designation is stated at the beginning of the project proposal, following the project identification.

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

Delaware Gazette Advertisement Dates: March 31, 2023; April 7, 2023 and April 14, 2023

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

**11
RESOLUTION NO. 23-251**

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

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

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

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

Permit #	Applicant	Location	Type of Work
UT2023-0056	SPECTRUM	BERLIN STATION ROAD	BURY CABLE
UT2023-0057	BREEZELINE	ANCHOR ROAD	DIRECTIONAL BORE
UT2023-0058	PIKE ENGINEERING	WYDNBEND BLVD	INSTALLING TRANSFORMER

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

12

RESOLUTION NO. 23-252

IN THE MATTER OF ACCEPTING IMPROVEMENTS WITHIN THE PROJECT KNOWN AS GOLF COURSE ROAD IMPROVEMENTS AT ROLLING HILLS SUBDIVISION:

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

WHEREAS, on March 28, 2022, the Board of County Commissioners (the "Board") entered into an Owner's Agreement with Romanelli & Hughes Building Company (the "Owner") for the project know as Golf Course Road Improvements at Rolling Hills Subdivision (the "Improvements"); and

WHEREAS, the County Engineer has inspected the Improvements and finds them to be constructed in accordance with approved plans; and

WHEREAS, the County Engineer recommends the Board accept the Improvements in accordance with the Owner's Agreement and release the bond being held as construction surety to the Owner;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio hereby accepts the Improvements made for Golf Course Road at Rolling Hills Subdivision in accordance with the Owner's Agreement and releases the bond being held as construction surety to the Owner.

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

13

RESOLUTION NO. 23-253

IN THE MATTER OF APPROVING OWNER'S AGREEMENTS FOR ORANGE SUMMIT COMMUNITIES SECTION 1/RAIL TIMBER WAY AND CLARKSHAW MOORS SECTION 6 PHASE B:

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

WHEREAS, the Engineer recommends approving the Owner's Agreements for Orange Summit Communities Section 1/Rail Timber Way and Clarkshaw Moors Section 6 Phase B;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner's Agreements for Orange Summit Communities Section 1/Rail Timber Way and Clarkshaw Moors Section 6 Phase B:

Orange Summit Communities Section 1/ Rail Timber Way:

OWNER'S AGREEMENT

**PROJECT NUMBER:
22043**

THIS AGREEMENT, executed on this 27th day of March, 2023, between Hyatts Shanahan Developer, LLC, hereinafter called "**OWNER**" and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as Orange Summit Communities Sec 1/Rail Timber Way further identified as Project Number 22043 is governed by the following considerations to wit:

Said OWNER is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this AGREEMENT.

OPTIONS:

1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved

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financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 2 for this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **Fifty Thousand Dollars and No Cents (\$50,000.00)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to ten percent (10%) of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless Delaware County and all Townships and/or Villages within and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

Should the OWNER 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**.

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In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants the **OWNER** or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$1,287,600.00
CONSTRUCTION BOND AMOUNT	N/A
MAINTENANCE BOND AMOUNT	\$128,800.00
INSPECTION FEE DEPOSIT	\$50,000.00

Clarkshaw Moors Section 6 Phase B:

**OWNER'S
AGREEMENT**

PROJECT NUMBER: 22093

THIS AGREEMENT, executed on this 27th day of March, 2023 between **ROCKFORD HOMES, INC**, hereinafter called "**OWNER**" and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as Clarkshaw Moors Sec 6 Ph B further identified as Project Number 22093 is governed by the following considerations to wit:

Said **OWNER** is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 1 for this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **Eighteen Thousand Nine Hundred Dollars and No Cents (\$18,900.00)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to ten percent (10%) of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or

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construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless **Delaware County and all Townships and/or Villages** within and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the **County**.

Should the OWNER 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**.

In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants the **OWNER** or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$236,400.00
CONSTRUCTION BOND AMOUNT	\$236,400.00
MAINTENANCE BOND AMOUNT	\$23,700.00
INSPECTION FEE DEPOSIT	\$18,900.00

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

14

RESOLUTION NO. 23-254

IN THE MATTER OF APPROVING A COOPERATION AGREEMENT BETWEEN DELAWARE COUNTY AND THE CITY OF WESTERVILLE FOR RESURFACING OF AFRICA ROAD AND OLD WORTHINGTON ROAD:

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

**COOPERATION AGREEMENT
BY AND BETWEEN
THE CITY OF WESTERVILLE
AND
DELAWARE COUNTY
FOR RESURFACING OF AFRICA ROAD AND OLD WORTHINGTON ROAD**

This Agreement is made and entered into this 27th day of March, 2023 by and between the Delaware County Board of Commissioners, 91 North Sandusky Street, Delaware, Ohio 43015 (the "County"), and the City of Westerville, 21 S. State St., Westerville, Ohio 43081 (the "City"), hereinafter referred to individually as "Party" or collectively as the "Parties".

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1 AUTHORITY

- 1.1 Pursuant to section 9.482 of the Revised Code, a political subdivision may enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.

2 PURPOSE

- 2.1 The City and County desire to make improvements to CR 21 (Africa Road) and CR 13 (Old Worthington Road), including resurfacing the pavement from State Route 750 to Parkmoor Drive on Africa Road and from 0.07 miles north of Worthington Road to State Route 750 on Old Worthington Road (the "Project").
- 2.2 This Agreement shall establish the terms and conditions whereby the Parties will cooperate to undertake the Project.

3 NOTICES

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

3.1.1 County:

Robert Riley, PE, SE
Chief Deputy Engineer
50 Channing Street
Delaware, OH 43015
email: rriley@co.delaware.oh.us

3.1.2 City:

Nate Lang, City Engineer
City of Westerville
64 East Walnut St.
Westerville, Ohio 43081
email: Nate.Lang@westerville.org

4 MANAGEMENT OF PROJECT

- 4.1 The County, acting through the County Engineer will design, administer bidding and award of the construction contract and manage the construction of the Project, and shall coordinate the same with the City's Engineer, allowing reasonable opportunity for the City's Engineer to provide comments and approvals of plans, specifications, and estimates for the Project.

5 ESTIMATED COSTS

- 5.1 The estimated costs of the project are as follows:

5.1.1	Total Cost of Project:	\$227,600
5.1.2	County Share:	\$150,100
5.1.3	City Share:	\$ 77,500

- 5.2 The City and County acknowledge that the estimated costs are based on the County Engineer's opinion of probable construction costs, and that the cost sharing as specified above shall apply to the actual work performed in accordance with the plans and specifications for the Project at the awarded contract unit price, and that the share for any lump sum contract items shall be apportioned pro rata based upon the amount of work performed within the City and County jurisdictions as determined and agreed upon by the Parties.

6 COST PARTICIPATION

- 6.1 The County shall pay all construction estimates due to the Contractor upon completion of the work, including partial estimates.
- 6.2 The City shall reimburse the County for all project costs relating to the construction of the Project situated within the City municipal corporation limits.
- 6.3 The County Engineer shall keep an accurate record of the project costs and submit an invoice to the City for the City's share of the Project cost at the completion of the work, including any necessary supporting documentation to substantiate the costs or the calculation/allocation thereof of the City's share.

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6.4 The City shall pay the invoice within 30 days of receipt of the invoice.

7 PERSONNEL

7.1 The Parties each agree to maintain control over their respective personnel, and this Agreement shall not be construed to alter the employment relationship each Party has with its respective personnel. Each Party shall be responsible for the compensation, benefits, and liabilities of its respective personnel and hereby agrees to release the other Party from any responsibility therefor. Any employees of County or City shall not be entitled to any additional compensation or employment benefits from the other political subdivision and no claim of joint employer status or liability shall be made on account of or arising from any incident in which a provider's employee may be involved.

8 EQUIPMENT AND FACILITIES

8.1 Each Party to this Agreement shall be responsible for providing its own equipment and facilities for work performed by that Party. The third-party contractor retained to complete the Project shall be responsible for providing its own equipment and facilities. In no way shall this Agreement be construed to require the sale or donation of equipment under the ownership and control of either Party of this Agreement.

9 RECORDS

9.1 The Parties agree that each shall maintain public records concerning this Agreement, pursuant to the laws of the State of Ohio pertaining to public records. Delaware County, as project manager, shall maintain public records concerning the Project.

10 TERM

10.1 This Agreement shall take immediate effect upon approval by all Parties hereto and shall continue in full force and effect until final completion of the Project, unless and until modified, superseded, or terminated in accordance with this Section, or unless one or both of the Parties at any time determines not to proceed with the Project.

10.2 This Agreement may only be amended in writing with the mutual consent and agreement of the Parties.

11 LEGAL CONTINGENCIES

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

12 INSURANCE AND LIABILITY

12.1 The Parties are both political subdivisions and lack authority to indemnify.

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

12.3 The Parties are political subdivisions and are entitled to all immunities and defenses provided by law. To the extent that Chapter 2744 of the Revised Code applies to the operation of a political subdivision, it applies to each Party that is subject to this Agreement and to its employees when they are rendering a service outside the boundaries of their respective Party under this Agreement.

13 MISCELLANEOUS TERMS & CONDITIONS

13.1 Entire Agreement: This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.

13.2 Governing Law and Disputes: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio.

13.3 Headings: The subject headings of the Sections and Subsections in this Agreement are included for

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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.

- 13.4 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.
- 13.5 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

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

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RESOLUTION NO. 23-255**

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS:

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

Supplemental Appropriation

40311458-5375	Radnor Twp #2015-1/Election and Settlement Services	100.00
44411439-5375	Olent Cross Redev Tax Equiv/Election and Settlement Services	2,500.00
44611442-5375	Orange Road Tax Equiv/Election and Settlement Services	500.00
45111446-5375	Slate Ridge II TIF/Election and Settlement Services	10,000.00
45611452-5375	OSU Medical Home Rd TIF/Election and Settlement Services	6,000.00
52111140-5375	BR DI Midway Gardens/Election and Settlement Services	100.00
52211141-5375	BR DI Chadwick/Election and Settlement Services	500.00
52311142-5375	BR DI Hardin/Election and Settlement Services	500.00
52411143-5375	BR DI Roof/Election and Settlement Services	500.00

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

Other Business:

RESOLUTION NO. 23-256

IN THE MATTER OF SETTING DATE, TIME, AND PLACE FOR THE VIEW AND FINAL HEARING FOR THE VACATION OF A SECTION OF FRANKLIN STREET IN THE UNINCORPORATED VILLAGE OF LEWIS CENTER, ORANGE TOWNSHIP, DELAWARE COUNTY, OHIO AND THE DISCONTINUANCE OF THE RAILROAD CROSSINGS WITHIN SUCH SECTION OF FRANKLIN STREET:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") is a party in Case No. 19-180-RR-UNC before the Public Utilities Commission of Ohio ("PUCO"), in the matter of the Joint Petition of Norfolk Southern Railway Company and CSX Transportation, Inc., to close the Franklin Street crossings in Orange Township, Delaware County, Ohio; and

WHEREAS, on March 22, 2023, PUCO issued an entry ordering the Board to, within thirty days, adopt a resolution discontinuing the use of the Franklin Street crossings and closing them to vehicles and pedestrians; and

WHEREAS, pursuant to section 4907.475 of the Revised Code, the discontinuance and closure as ordered shall be made by resolution as provided by sections 5553.01 to 5553.07 of the Revised Code; and

WHEREAS, pursuant to section 5553.04 of the Revised Code, when the Board is of the opinion that it will be for the public convenience or welfare to vacate a public road, it shall so declare by resolution, which resolution shall set forth the general route and termini of the road, or part of the road, to be vacated; and

WHEREAS, pursuant to section 5553.05 of the Revised Code, the Board shall fix a date when it will view the proposed vacation, and also a date for a final hearing thereon;

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

Section 1. The Board hereby declares that it is of the opinion that it will be for the public convenience or welfare to vacate a section of Franklin Street in the unincorporated village of Lewis Center, Orange Township, Delaware County, Ohio. This opinion is based solely on the order from PUCO in Case No. 19-180-RR-UNC to discontinue the railroad crossings within such section and close the crossing to vehicles and pedestrians. The section of Franklin Street to be vacated shall be that section of Franklin Street currently encumbered by the railroad right-of-way.

Section 2. The Board shall view the proposed vacation on **Monday, April 17, 2023, at 1:30 P.M.**, starting in the vicinity of the intersection of Franklin Street and 2nd Street in Lewis Center, Ohio. The Board shall conduct a final hearing on the proposed vacation on **Thursday, April 20, 2023, at 10:00 A.M.**, at the Commissioners’ Hearing Room located at 91 North Sandusky Street, Delaware, Ohio 43015.

Section 3. The Clerk of the Board is hereby directed to give notice of the view and final hearing by publication in the Delaware Gazette once a week for two consecutive weeks. The Clerk is also directed to send written notice of the hearing by first class mail at least twenty days before the date of the public hearing to owners of property abutting upon that portion of the road to be vacated, and to the director of natural resources. Such notice shall be mailed to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list.

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

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ADMINISTRATOR REPORTS

Aric Hochstettler, Deputy Administrator

- Attended an interested party meeting for House Bill 264 (revision to imminent domain) last Thursday.
- Attended an airport working group meeting with Monica Conners last week. There will be a forthcoming agreement for a feasibility study with the City of Delaware.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis

- Attended the Health District’s Health Advisory Council meeting last Thursday.

Commissioner Merrell

- Attended the Legislative meeting last with Senator Brenner and Representative Lear.
- Attended the CCAO Board meeting last Friday.
- Attended Berlin High School’s ‘Adams Family’ play over the weekend. The play was very well done.
- Spoke at the ribbon cutting for the newest Delaware County District Library in Liberty Township.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners