

**COMMISSIONERS JOURNAL NO. 79 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 30, 2023**

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

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

**1
RESOLUTION NO. 23-914**

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 26, 2023:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 26, 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 Aye

**2
PUBLIC COMMENT**

**3
RESOLUTION NO. 23-915**

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1027:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1027 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2304334 (Outsider)	Job and Family Production Services	22311611-5312	\$5,850.00
P2304421 (Staples)	Office Supplies	40111402-5201	\$5,800.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>
R2305022	WARREN, RONALD B	REFUND UNCLAIMED INHERITANCE	78011118 - 5319	\$ 5,020.69
R2305023	HERTAN, SHARON A	REFUND UNCLAIMED INHERITANCE	78011118 - 5319	\$ 5,020.69

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

**4
RESOLUTION NO. 23-916**

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE PRE HOSPITAL CARE BOARD:

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

Transfer of Appropriation	Amount
From:	To:
10011160-5260	10011160-5320
Comm Pre Hospital Care Board/ Inventoried Tools	Comm Pre Hospital Care Board/ Software Licenses
	11,800.00

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

**5
RESOLUTION NO. 23-917**

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**IN THE MATTER OF APPROVING A CONTRACT WITH VISU-SEWER OF OHIO LLC FOR THE
SCIOTO HILLS SEWER REHABILITATION PROJECT FOR THE DELAWARE COUNTY
REGIONAL SEWER DISTRICT:**

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

WHEREAS, the Sanitary Engineer recommends approving the contract with Visu-Sewer of Ohio LLC for the Scioto Hills Sewer Rehabilitation Project;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Visu-Sewer of Ohio LLC:

**AGREEMENT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND
CONTRACTOR
SCIOTO HILLS SEWER REHABILITATION PROJECT**

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

(Owner) and Visu-Sewer of Ohio LLC, 6508 Taylor Road SW, Reynoldsburg, Ohio 43068

(Contractor).

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

ARTICLE 1 - WORK

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

Sanitary sewer pipe rehabilitation including cleaning and televising approximately 6,658 LF of 8” sanitary sewer, installing cured-in-place lining in approximately 4,733 LF of 8” sanitary sewer, and installing 48 cured-in-place lateral liners.

ARTICLE 2 - THE PROJECT

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

Sanitary sewer pipe rehabilitation in Scioto Hills subdivision.

ARTICLE 3 - ENGINEER

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

The Design Engineer is DLZ Ohio, Inc.

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

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

ARTICLE 4 - CONTRACT TIMES

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

4.02 Dates for Substantial Completion and Final Payment-
Substantial Completion – 365 days from Notice to Proceed
Final Payment/Completion – 425 days from Notice to Proceed

4.03 Liquidated Damages-\$1,000/day

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ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

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

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

- a. 92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
- b. 92 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 15.02.B.5 of the General Conditions and less 50 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

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

ARTICLE 7 - INTEREST

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

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages CF-1 to CF-9, inclusive).
2. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (page BF-X, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (Bidding Forms, inclusive).
3. Contract bond (pages BF-13 to BF-14, inclusive).
4. Legal and Fiscal Officers (page CF-10, inclusive).
5. Certificate of Insurance (pages CF-11 inclusive).
6. Addenda (number 1, inclusive).
7. Construction Drawings bearing the following general title: Scioto Hills Sewer Rehabilitation Project
8. Specifications and Standard Drawings as listed in the table of contents of the Project Manual- Scioto Hills Sewer Rehabilitation Project
9. Supplementary Conditions (if needed).
10. General Conditions (pages 1-64, inclusive).
11. The following documents, which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice of Award
 - b. Notice to Proceed
 - c. Work Change Directive(s).
 - d. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

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C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented by change order, as provided in Paragraph 3.04 of the General Conditions.

E. This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.

F. In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.

ARTICLE 10 – INSURANCE

10.1 Insurance Coverage

Contractor shall maintain insurance as described in the General Conditions and Supplementary Conditions.

10.2 Additional Insureds

The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsection 10.1. Contractor shall require all of its subcontractors to provide like endorsements.

10.3 Proof of Insurance:

Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 10.2. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

ARTICLE 11 – INDEMNIFICATION; COMPLIANCE WITH WORK AGREEMENTS

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

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

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

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

D. The Contractor shall, in all material respects, comply with the terms and conditions of the Work Agreements, including, without limitation, the following: (1) Contractor shall comply in all material respects, at its sole cost, with all applicable federal, state and local laws, rules, and regulations, including but not limited to all applicable OSHA and Ohio PERRP standards and requirements, which are applicable to the Work or any portion of the Work; (2) Contractor shall clean up and remove all construction debris from the lands subject to the Work Agreements promptly after completion of the Work; and (3) Contractor shall indemnify, defend, and

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hold harmless the owners of lands subject to the Work Agreements, and such owners' heirs, successors, assigns, employees, beneficiaries, agents, lessees, contractors, and subcontractors (the "Indemnitees"), from any and all liens, claims, demands, costs (including but not limited to attorney fees, accountant fees, engineer fees, consultant fees, and expert fees), expenses, damages, losses, and causes of action for damages because of injury to persons (including death) and injury or damage to or loss of any property (real or personal) arising from or caused by the Contractor's negligence and/or willful misconduct, to the extent such losses were not caused by the negligence or willful misconduct of the Indemnitees.

ARTICLE 12 - MISCELLANEOUS

12.01 Terms

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

12.02 Assignment of Contract

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

12.03 Successors and Assigns

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

12.04 Severability

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

Other Provisions

12.05 Findings for Recovery

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

12.06 [NOT USED]

12.07 Contractor agrees to the following:

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

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

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

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on October 30, 2023 (which is the Effective Date of the Agreement).

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

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6

RESOLUTION NO. 23-918

IN THE MATTER OF APPROVING CHANGE ORDER NO. 01 TO THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND NICKOLAS M. SAVKO & SONS, INC., FOR THE BERLIN BUSINESS PARK FORCE MAIN PROJECT:

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

WHEREAS, the Delaware County Board of Commissioners entered into an agreement with Nickolas M. Savko & Sons, Inc., on September 8, 2022, for the Berlin Business Park Force Main Project; and

WHEREAS, Change Order No. 01 authorizes a reduction in the overall contract price in the amount of \$464,490.35 due to unused funds; and

WHEREAS, the Sanitary Engineer recommends approval of Change Order No. 01;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves Change Order No. 01 to the Agreement between the Delaware County Board of Commissioners and Nickolas M. Savko & Sons, Inc., for the Berlin Business Park Force Main Project.

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

7

RESOLUTION NO. 23-919

IN THE MATTER OF AWARDING A BID TO AND APPROVING A CONTRACT WITH ELITE EXCAVATING CO. OF OHIO, INC., FOR THE PACKAGE PLANT UPGRADES PROJECT - FORCEMAIN FOR THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:

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

WHEREAS, sealed bids for the Package Plant Upgrades Project – Forcemain, Contract 3-2023, were received at www.bidexpress.com at 10:00 a.m. Wednesday, September 27, 2023; and

WHEREAS, one (1) bid was received, with Elite Excavating Co. of Ohio, Inc., submitting the apparent lowest and best bid; and

WHEREAS, the Sanitary Engineer recommends awarding a contract to Elite Excavating Co. of Ohio, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners hereby awards the bid for the Package Plant Upgrades Project – Forcemain, Contract 3-2023, to Elite Excavating Co. of Ohio, Inc., directs the Sanitary Engineer to prepare the necessary Notice of Award and contract documents, and approves the following agreement with Elite Excavating Co. of Ohio, Inc.:

AGREEMENT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS AND CONTRACTOR FOR DCES CONTRACT 3-2023: PACKAGE PLANT UPGRADES PROJECT - FORCEMAIN

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

(Owner) and Elite Excavating Co. of Ohio, Inc.

(Contractor).

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

ARTICLE 1 - WORK

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

Construction of the 12-inch sanitary forcemain to serve the proposed Scioto Reserve Pump Station (by others) as well as the 6-inch sanitary forcemain to serve the Lower Scioto Water Reclamation Facilities effluent being conveyed to the Scioto Reserve Country Club’s golf course for irrigation purposes.

ARTICLE 2 - THE PROJECT

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

PACKAGE PLANT UPGRADES PROJECT – FORCEMAIN CONTRACT

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ARTICLE 3 - ENGINEER

3.01 The Project is **designated to** the Delaware County Sanitary Engineer (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. **All inquiries and correspondence shall be directed to ms consultants, inc. at katfisher@msconsultants.com**

The Design Engineer is ms consultants, inc.

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

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

ARTICLE 4 - CONTRACT TIMES

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

4.02 Dates for Milestones, Substantial Completion, and Final Payment:

- **Fifteen (15) months from Notice to Proceed – Substantial Completion**
- **Sixteen (16) months from Notice to Proceed – Final Completion**

4.03 Liquidated Damages-\$1,000/day

ARTICLE 5 - CONTRACT PRICE

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

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

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

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

- a. 92 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
- b. 98 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

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

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6.03 Final Payment

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

ARTICLE 7 - INTEREST

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

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (00 52 00, inclusive).
2. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid (00 41 00, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (Bidding Forms, inclusive).
3. Contract bond (00 43 00, inclusive).

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4. Legal and Fiscal Officers (00 54 01, inclusive).
5. Certificate of Insurance (00 62 16 inclusive).
6. Addenda (numbers 1 to 3, inclusive).
7. Construction Drawings bearing the following general title: PACKAGE PLANT UPGRADES PROJECT – FORCEMAIN CONTRACT
8. Specifications and Standard Drawings as listed in the table of contents of the PACKAGE PLANT UPGRADES PROJECT – FORCEMAIN CONTRACT
9. Supplementary Conditions (00 73 00, inclusive).
10. General Conditions (00 72 00, inclusive).
11. The following documents, which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice of Award
 - b. Notice to Proceed
 - c. Work Change Directive(s).
 - d. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented by change order. as provided in Paragraph 3.04 of the General Conditions.

E. This Agreement, along with the Contract Documents, shall constitute the entire understanding and agreement between the Owner and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended as provided in this Agreement.

F. In the event of a conflict between the Contract Documents, the documents shall have precedence according to the order listed in Paragraph 9.01.A of this Agreement, document number one having precedence, and so on.

ARTICLE 10 – INSURANCE

10.1 Insurance Coverage
Contractor shall maintain insurance as described in the General Conditions and Supplementary Conditions.

10.2 Additional Insureds

The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsection 10.1. Contractor shall require all of its subcontractors to provide like endorsements.

10.3 Proof of Insurance:

Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 10.2. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

ARTICLE 11 – INDEMNIFICATION

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury

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to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 12 - MISCELLANEOUS

12.01 Terms

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

12.02 Assignment of Contract

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

12.03 Successors and Assigns

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

12.04 Severability

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

Other Provisions

12.05 Findings for Recovery

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

12.06 Contractor agrees to the following:

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

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

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

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on October 30, 2023 (which is the Effective Date of the Agreement).

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

8

RESOLUTION NO. 23-920

IN THE MATTER OF APPROVING A PRODUCTION AGREEMENT WITH SMARTBILL LTD. FOR QUARTERLY PRINTING, MAILING AND PROVIDING DIGITAL IMAGES OF SEWER BILLS:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with SmartBill Ltd. for Quarterly Printing, Mailing and Providing Digital Images of Sewer Bills;

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

PRODUCTION AGREEMENT

This Production Agreement ("Agreement") is made and entered into this 1st day of November 2023 ("Effective Date"), by and between SMARTBILL, LTD., an Ohio corporation ("SmartBill"), and Delaware County Board of Commissioners ("Client", and collectively with SmartBill, Ltd., "Parties"; Client and SmartBill may each be generically referred to as a "Party"). In consideration of the mutual promises and covenants contained below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Scope of Production Agreement. SmartBill agrees to provide to Client the "**Services**" set forth in Schedule 1 attached hereto and incorporated herein by this reference, and Client agrees that SmartBill shall be Client's sole and exclusive provider of goods and/or services of the type or nature of the Services during the Term (as defined below). During the Term, Client agrees to furnish all data and documentation requested by SmartBill to perform the Services. Client requires and shall purchase, and SmartBill agrees to produce, a minimum quarterly quantity of twenty-one thousand (21,000) statements ("**Minimum Commitment**") based upon the rates and terms provided herein. In the event that Client does not fulfill the Minimum Commitment for a given quarter, Client shall pay to SmartBill a "**Minimum Processing Fee**" equal to the product of (i) the difference between the Minimum Commitment and the actual number of statements ordered by Client for the relevant quarter, multiplied by (ii) the effective per statement rate.

Section 2. Fees. Client agrees to pay SmartBill fees for the Services as set forth in Schedule 2 attached hereto and incorporated herein by this reference ("**Fees**", which Fees are subject to adjustment as set forth below). SmartBill will invoice Client for the Services provided each quarter on or before the 15th day of the subsequent month, provided that SmartBill may immediately provide the invoice following the conclusion of each quarter ("**Invoice**"). Invoices are due upon receipt, and will be considered past due if not paid in full within thirty (30) days of receipt. A late fee will be assessed on Invoices not paid within thirty (30) days of receipt as set forth in Section 3 below ("**Late Fee**"). SmartBill will not increase the Fees for a period of twelve (12) months from the Effective Date ("**Initial Pricing Period**"). SmartBill may increase the Fees following the Initial Pricing Period at the discretion of SmartBill upon written notice to Client, provided that (i) SmartBill may increase the Fees no more than one (1) time during any twelve (12) month period following the Initial Pricing Period (each such twelve (12) month period, a "**Pricing Period**") and (ii) SmartBill may not, during any Pricing Period, increase the Fees by more than ten percent (10%) of the Fees in effect during the preceding Pricing Period. The fees contained in this agreement shall not exceed \$25,000 in the one-year term if total scope of contract remains the same. In the event that Client terminates this Agreement as permitted herein by providing a termination notification, then Client will be responsible for paying for all Fees accrued and Services rendered between the termination notice date and the termination effective date.

Section 3. Late Payment Fees. The Late Fee will equal one and one-half percent (1.5%) each thirty (30) days on the amounts due under the relevant unpaid Invoices, accruing as follows: (i) one and one-

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half percent (1.5%) of the entire unpaid Invoice amount shall accrue immediately following the thirtieth (30th) day after receipt of such Invoice; and (ii) following the 30th day after receipt of the unpaid Invoice, daily at the corresponding rate of one thirtieth (1/30) of one and one-half percent (1.5%) or five hundredths of one percent (0.05%).

Section 4. Term. The term of this Agreement shall commence on the Effective Date and continue for a period of two (2) years. The term of this Agreement shall commence on the Effective Date of November 1, 2023 and continue thru October 31, 2025 (“**Term**”); provided, however that this Agreement may be terminated in accordance with certain other provisions set forth in this Agreement.

Section 5. Postage. Client shall deposit a permanent postage deposit with SmartBill in the amount specified on Schedule 3 (“**Postage Deposit**”) no later than ten (10) days after the Effective Date. SmartBill may, in its sole discretion, adjust the Postage Deposit amount due to changes in Client’s volume, postage usage, postal rates or payment history, or any other reason deemed appropriate by SmartBill, so long as Client is provided advance written notice of such adjustment. Upon termination of this Agreement, SmartBill shall return the Postage Deposit to Client after Client has paid for all Services and postage provided to or on the behalf of Client in performance of the Services. If this Agreement is terminated due to a default by Client, upon such a termination SmartBill may apply any of the Postage Deposit or any other Client’s funds that SmartBill holds against any sums that Client owes SmartBill. IF CLIENT FAILS TO MAINTAIN THE DEPOSIT AT THE REQUIRED LEVELS, OR IF CLIENT FAILS TO TIMELY PAY ALL INVOICES AS SPECIFIED IN SECTION 2, SMARTBILL MAY IMMEDIATELY SUSPEND ITS PERFORMANCE OF ALL ITS DUTIES, SERVICES, AND OBLIGATIONS UNDER THIS AGREEMENT UNTIL THE DEPOSIT IS PROPERLY PAID AND MAINTAINED AND ALL OUTSTANDING INVOICES ARE PAID.

Section 6. Expenses. Client will reimburse SmartBill for all costs and expenses associated with the performance of Services for Client, such as costs and expenses associated with, freight, delivery service and other required supplies in connection with providing the Services (“**Expenses**”).

Section 7. Termination. Upon breach or default with respect to any term contained herein by a Party, regardless of whether such term is material or not (“**Default**”), the non-Defaulting Party may send the Defaulting Party a notice of such Default (“**Notice of Default**”). If such noticed Default remains uncured for thirty (30) days after the Defaulting Party’s receipt of the Notice of Default, this Agreement shall be terminated unless the non-Defaulting Party agrees or specifies otherwise in writing. Neither Party may terminate this Agreement unless (i) such Party terminates this Agreement pursuant to this Section after the other Party Defaults or (ii) such Party provides appropriate notice of nonrenewal pursuant to Section 4 in order to end the Term of this Agreement. Examples of Default include, but are not limited to, the: (a) failure of Client to pay for all goods and/or Services as provided in this Agreement; (b) non-Appropriation of funds by [authorizing agent]; (c) any other Default by Client or SmartBill with respect to any term or condition of this Agreement.

Section 8. Force Majeure. Other than any obligation to pay money, neither Party shall be responsible for delays or failures in performance resulting from acts or occurrence beyond the reasonable control of such Party, including, without limitation, the following: fire, explosion, power failure, flood, earthquake, or other act of god; war, revolution, civil commotion, terrorism, or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts (“**Force Majeure**”). In such Force Majeure, the Party affected shall be excused from such performance, on a day-to-day basis. Likewise, such other Party not directly affected by such Force Majeure shall also be excused from performance of its obligations on a day-to-day basis to the extent such party’s obligations relate to the other Party’s performance interfered with by the Force Majeure.

Section 9. Confidentiality. SmartBill agrees that any and all data, reports and documentation supplied by Client or its affiliates or third parties on Client’s behalf that are non-public and confidential shall, subject to the disclosure required for the performance of SmartBill’s obligations hereunder, not be intentionally or recklessly disclosed or otherwise disseminated by SmartBill without the consent of Client.

Section 10. WARRANTIES/DISCLAIMER OF WARRANTIES. SmartBill shall provide all goods and/or Services in accordance with the terms specifically set forth in Schedule 1. The parties hereto agree that this Agreement is only for the production of those goods and/or Services set forth in Schedule 1. ALL WARRANTIES NOT EXPRESSLY PROVIDED IN THIS AGREEMENT ARE HEREBY DISCLAIMED. CLIENT EXPRESSLY ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY OTHER STATEMENT NOT CONTAINED IN THIS AGREEMENT AND THAT THIS WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE GOODS AND SERVICES TO BE PROVIDED TO CLIENT. THE STATED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

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Section 11. Limitation of Liability. The liability of SmartBill with respect to any failure to provide the goods and/or Services as required under this Agreement shall be limited to the processing and service fees actually paid to SmartBill for the defective goods or services. The liability of SmartBill with respect to any Default hereunder shall be limited to the Fees actually paid to SmartBill for the good and services claimed to be in Default. **SMARTBILL IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFIT OR INCOME.** Client has accepted this restriction on its right to recover incidental and consequential damages as a part of its bargain with SmartBill. Client acknowledges that SmartBill's Fees would be higher if SmartBill were required to bear the risk of responsibility for these damages.

Initial: Delaware County Board of Commissioners [REDACTED] SmartBill [REDACTED]

Section 12. Governing Law and Jurisdiction. Except to the extent governed by applicable federal law, this Agreement shall be interpreted under and governed by the laws of the State of Ohio, and any dispute between the Parties, whether arising under this Agreement or from any other aspect of the parties' relationship, shall be governed by and determined in accordance with the substantive laws of the State of Ohio, regardless of conflicts of laws. The Parties agree that the exclusive venue for disputes between them shall be the Common Pleas Courts of Ohio, and each party hereby waives any objection it might have to the personal jurisdiction of or venue in such courts and waives any right to file or remove any such action or claim to federal court.

Section 13. Severability. If any provision of this Agreement is deemed invalid or unenforceable for any reason whatsoever, such provision will be fully severable; this Agreement shall be construed and enforced as if such invalid, or unenforceable provision were not a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Agreement. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be automatically as part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 14. Waiver; Modification of Agreement. No waiver, amendment or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representative of both Parties hereto. Failure by either Party to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Further, to the extent that a provision is waived in strict accordance with the above guidelines, no waiver of any provision of this Agreement shall constitute a waiver of any other provision or term not expressly waived in writing and signed by authorized representative of both Parties hereto, nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

Section 15. Notice. All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight, delivery services or by electronic mail. Mailed notices will be effective on the other Party upon receipt. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party. Addresses for notice purposes are as follows:

SmartBill: SmartBill, Ltd.
1050 O'Neill Drive
Hebron, OH 43025
Facsimile: 740-928-5438
Email: robh@smartbillcorp.com

Client: Delaware County Regional Sewer District
50 Channing Street
Delaware, OH 43015
Facsimile: 740-833-2239
Email: RDeWitt@co.delaware.oh.us

Section 16. Entire Agreement. This Agreement and its exhibits and schedules constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the production of goods and Services for Client by SmartBill, and supersede all prior and contemporaneous understandings or agreements of the Parties. **NO PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, NOR IS ANY PARTY RELYING ON ANY REPRESENTATION OR WARRANTY OUTSIDE THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

Section 17. Attorney Fees. Each party shall bear their own costs of bringing an action including court costs and attorney fees subject to an Offer of Judgment made under the Ohio Rules of Civil Procedure.

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SmartBill shall have the right to seek attorney fees in an action brought to recover fees owed for services provided that are not subject to dispute.

Section 18. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of all the successors and assigns of the Parties hereto. The Parties hereto execute this Agreement through their duly authorized officers, as of the day and year first written above.

Section 19. Authority to Bind. SmartBill and Client warrant that the person executing this Agreement has full and legal authority to execute this Agreement for and on behalf of its respective legal entity it is purporting to bind to the terms of this Agreement, as well as the full legal ability to bind such legal entity to the terms contained in this Agreement.

Section 20. No Partnership or Joint Venture. No agency, partnership, joint venture or other relationship is intended hereby, and neither party shall be deemed the agent, servant, employee, partner or joint venturer of the other party. Client and SmartBill shall not, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement, there shall not be deemed to have occurred a merger or any joint enterprise between Client and SmartBill.

Section 21. Cooperation of Parties. Each party agrees to cooperate in good faith with the other party in all aspects of accomplishing the intent of this Agreement, including but not limited to signing documents and taking other actions as may be reasonably necessary or proper for such purpose.

Section 22. Headings. Headings or captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof.

Section 23. Interpretation. All provisions herein shall be construed in all cases as a whole according to its fair meaning, neither strictly for nor against either Client or SmartBill and without regard for the identity of the party initially preparing the same. Titles and captions are inserted for convenience only and shall not define, limit or construe in any way the scope or intent of this Agreement. References to sections are to sections as numbered in this Agreement unless expressly stated otherwise.

Section 24. Counterparts. This Agreement may be signed in multiple counterparts which, when duly delivered and taken together, shall constitute a binding Agreement between all parties.

Section 25. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

Section 26. Joint and Several Liability. If any party consists of more than one person or entity, the liability and responsibilities of each such person or entity with respect to this Agreement shall be joint and several.

Section 27. Extension of Performance Deadline if Non-Business Day. If the date for performance of any obligation of the parties to this agreement falls on a non-Business Day, then the performance of the relevant obligation shall become due on the next Business Day following such date.

Section 28. Legal Counsel. Client and SmartBill acknowledge that they have been represented, or have had the opportunity to be represented, by counsel of their own choice. Neither Client nor SmartBill is relying upon any legal advice from the other party’s counsel regarding the subject matter hereof. Both parties acknowledge that they understand the terms and conditions of this Agreement and the terms and conditions of all other documents and agreements executed in connection herewith and that they sign the same freely. Neither Client nor SmartBill shall deny the enforceability of any provision of this agreement or any of the other documents or agreements executed in connection herewith on the basis that it did not have legal counsel.

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

**9
RESOLUTION NO. 23-921**

**IN THE MATTER OF CERTIFICATION OF DELINQUENT ACCOUNTS TO THE COUNTY
AUDITOR FOR ACCOUNTS TO BE ASSESSED TO PAYABLE YEAR 2024 TAXES:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to certify to the County Auditor the delinquent accounts for placement on the tax duplicate:

WHEREAS, the Delaware County Board of Commissioners (the “Board”) owns and operates a Sewer District as authorized by Chapter 6117 of the Revised Code; and

WHEREAS, section 6117.02 of the Revised Code authorizes the Board to set rates and charges for the

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sanitary services provided by the Sewer District; and

WHEREAS, when any of the sanitary rates or charges are not paid when due, the Board may certify the unpaid rates or charges, together with any penalties, to the County Auditor, who shall place them upon the real property tax list and duplicate against the property served by the connection; and

WHEREAS, pursuant to Resolution No. 16-720, the Board has established that delinquent accounts will be certified after they are more than ninety days past due and the amount exceeds \$25.00; and

WHEREAS, staff has determined that there are delinquent accounts that meet this criteria, and

WHEREAS, staff recommends collection of the unpaid rates and charges by certifying these delinquent accounts to the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners certifies the delinquent accounts in the amount of \$189,108.44 to the County Auditor for the 2024 real property tax list and duplicate.

(Itemized listing of delinquent accounts available for review at the Commissioners’ Office until no longer of administrative value).

**2024 Sewer Tax Assessments
To be certified by the Board of Commissioners on 10/30/2023**

Breakdown of Assessments by Treatment Plant:

66211900-4108-11903 – OECC	\$64,370.67
66211900-4108-11904 – Alum Creek	\$104,704.88
66211900-4108-11905 – Lower Scioto	\$5,279.42
66211900-4108-11912 - Package Plants	\$14,753.47
Total Assessments	\$189,108.44

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

10
TIFFANY MAAG,
DIRECTOR OF ENVIRONMENTAL SERVICES AND REGIONAL SEWER DISTRICT
MONTHLY SANITARY APPROVAL UPDATE

11
RESOLUTION NO. 23-922

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RELEASING CONSTRUCTION BOND FOR OLENTANGY FALLS EAST SECTION 4, LIBERTY GRAND DISTRICT SECTION 8 PHASE A, AND LIBERTY GRAND DISTRICT SECTION 8 PHASE B:

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

WHEREAS, the roadway construction has been completed for the projects known as Olentangy Falls East Section 4, Liberty Grand Section 8 Phase A, and Liberty Grand District Section 8 Phase B (the “Projects”); and

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

WHEREAS, the Engineer recommends that, in accordance with the Owner’s Agreement, the maintenance bond be set at ten percent (10%) of the original construction estimate for each of the Projects and that the Projects be placed on the required one year maintenance period; and

WHEREAS, Rockford Homes, Inc. and M/I Homes of Central Ohio, LLC (the “Owners”) have provided maintenance bonds in the required amounts as surety to cover the one year maintenance period; and

WHEREAS, the Engineer also recommends that, in accordance with the Owner’s Agreements, the construction bonds being held as surety for the Projects be returned to the Owners;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners accepts the maintenance bonds in the amounts of 182,500.00, \$75,100.00 and \$13,200.00 for the Projects, places the Projects on the required one year maintenance period, and returns the construction bonds being held for the Projects to the Owners.

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

RESOLUTION NO. 23-923 WAS NOT UTILIZED.

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12

RESOLUTION NO. 23-924

IN THE MATTER OF ACCEPTING THE ROADS, APPROVING RECOMMENDED SPEED LIMITS, ESTABLISHING STOP CONDITIONS, AND RELEASING THE SURETIES FOR HARLEM ESTATES AND EVANS FARM SECTION 3:

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

WHEREAS, the Engineer has reviewed the roadway construction of the roads in Harlem Estates and Evans Farm Section 3 (the “Subdivisions”), finds them to be constructed in accordance with the approved plans, and recommends that the following roadways within the Subdivisions be accepted into the public system:

Harlem Estates:

- An addition of 0.293 mile to township road number 1850, Harlem Estates Court

Evans Farm Section 3:

- An addition of 0.192 mile to township road number 1851, Briarwood Lane

WHEREAS, the Engineer also recommends that 25 mile per hour speed limits be established throughout the Subdivisions; and

WHEREAS, the Engineer recommends that the following stop conditions be established within the Subdivisions:

- On township road number 1850, Harlem Estates Court, at its intersection with county road 17, Harlem Road
- On township road number 1851, Briarwood Lane, at its intersection with county road number 10, S. Old State Road

WHEREAS, the Engineer requests approval to return the cash being held as maintenance surety to AV Investments, LLC and 3 Pillar Homes;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby accepts the Engineer’s recommendations stated herein and accepts the roads, approves speed limits and stop conditions, and releases maintenance sureties in accordance with the Engineer’s recommendations stated herein.

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

13

RESOLUTION NO. 23-925

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
UT2023-0174	CHILLICOTHE TELEPHONE	PLUMB & ROME CORNERS	FIBER OPTICS
UT2023-0180	DEL-CO WATER	CHESHIRE RD	WATER LINE RELOCATION
UT2023-0181	AEP	REED PKWY & LACKEY OLD ST	ROAD BORE
UT2023-0182	AEP	SHANNAHAN RD	REPLACE POLES
UT2023-0183	SPECTRUM	MCKENNA RD	BURY CABLE
UT2023-0184	THAYER COMMUNICATIONS	RAIL TIMBER WAY	FIBER OPTIC
UT2023-0185	SPECTRUM	MILLER PAUL RD	ROAD BORE

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

14

RESOLUTION NO. 23-926

IN THE MATTER OF APPROVING A SUPPLEMENT TO AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND TERRACON CONSULTANTS, INC. FOR UNDERGROUND STORAGE TANK CLOSURE:

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

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WHEREAS, the Director of Finance recommends the approval of a supplement to an agreement between the Delaware County Board of Commissioners and Terracon Consultants, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Supplement to Agreement for Services with Terracon Consultants, Inc., for underground storage tank closure:

**SUPPLEMENT TO AGREEMENT FOR SERVICES
CHANGE TO
SCOPE OF SERVICES AND FEES**

This SUPPLEMENT to AGREEMENT FOR SERVICES to the original Agreement for Services (original Agreement dated 06/05/2023) is between Delaware County OH ("Client") and Terracon Consultants, Inc. ("Consultant") for additional or changed Services to be provided by Consultant for Client on the Project, as described in the Agreement for Services. This Supplement is incorporated into and part of the Agreement for Services.

1. Scope of Services. The scope of the additional or changed Services are described in the Scope of Services section of the Consultant's Supplemental Proposal, unless Services are otherwise described below or in Exhibit B to this Supplement (which section or exhibit are incorporated into the Supplement).

Per Client request, Consultant has been requested to provide brownfield status information regarding a property located at 1405 U.S. Highway 23 North, Delaware, Delaware County, Ohio 43015. As part of the Brownfield status summary letter, Consultant will order and review an environmental regulatory database from Environmental Data Resources, LLC (EDR) and provide the Client a summary of federal and state Brownfields database listings, as well as a summary of site-specific information, identified in the database report.

2. Compensation. Client shall pay compensation for the additional or changed Services performed at the fees stated in the Supplemental Proposal unless fees are otherwise stated below or in Exhibit C to this Supplement (which section or exhibit are incorporated into the Supplement).

Lump Sum Fee of \$375.00.

All terms and conditions of the Agreement for Services shall continue in full force and effect. This Supplement is accepted and Consultant is authorized to proceed.

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

**15
RESOLUTION NO. 23-927**

IN THE MATTER OF APPROVING A LEASE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS, DELAWARE COUNTY, OHIO AND THE DELAWARE SOIL AND WATER CONSERVATION DISTRICT:

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

WHEREAS, the Delaware County Soil and Water Conservation District will be moving its administrative offices into the recently renovated Byxbe Building, which will improve customer service and consolidate operations with other county departments and agencies; and

WHEREAS, the Soil and Water Conservation District agrees to lease their respective office space within the Byxbe Building through the Delaware County Commissioner's Office;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following lease agreement:

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated October 30th, 2023, is made and entered into between Board of County Commissioners, Delaware County, Ohio, hereinafter referred to as "Lessor" and the Delaware Soil and Water Conservation District, hereinafter referred to as "Lessee":

WITNESSETH:

1. LEASED PREMISES: In consideration of the rents, terms, provisions and covenants of this Lease, Lessor hereby leases, lets, and demises to Lessee the offices Lessor has designated for Lessee's use, and access to and use of common spaces, including parking, being parts of the real property consisting of 17.75 acres, more or less, known as 1610 State Route 521, Delaware, Ohio (referred to as the "Leased Premises")

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improved with a 139,484+ square foot facility (the "Building"), other outbuildings and superstructures, and paved parking areas of which the Lessee will utilize 3.0% of the total square footage within the Building.

2. TERM: Subject to and upon the conditions set forth below, the term of this Lease shall commence as of November 1 2023, the "Commencement Date" and shall terminate October 31, 2025. Two-year extensions to this agreement will be offered to the Lessee thereafter.

3. RENT. Lessee shall pay to Lessor the sum of Eighteen Thousand Four Hundred Eighty Dollars (\$18,480) which will be billed in quarterly installments and due on or before the 1st business day of each quarter during year one of the term for this lease encompassing the period from November 1, 2023, through October 31, 2024. During the second year of the lease, Lessee shall pay to Lessor the sum of Nineteen Thousand Thirty- Four Dollars (\$19,034) which will be billed in quarterly installments on or before the 1st business day of each quarter for the period from November 1, 2024, through October 31, 2025.

4. USE: Lessee warrants and represents to Lessor that Lessee shall use and occupy the Leased Premises in accordance with any local zoning regulations for the property.

5. JANITORIAL SERVICE; TRASH; GROUNDS AND PARKING AREAS: Lessor shall furnish their own janitorial services and shall provide for proper and lawful disposal of the trash generated. Lessor shall be responsible for snow and ice removal from the Leased Premises. Lessor shall be responsible for the care and maintenance of the grounds, including but not limited to all grassed areas and parking areas.

6. UTILITIES, TAXES, AND ASSESSMENTS: Lessee shall pay for 3.0% of all utilities for the Leased Premises and these costs will be included with the quarterly invoice issued by the Lessor to the lease payments on the Leased Premises. Lessor shall pay real estate taxes or assessments, if any, relating to its use and occupancy of the Leased Premises as they become due and payable.

7. REPAIRS AND MAINTENANCE:

(a) Lessor will make any improvements, replacements, or repairs of any kind or character to the Leased Premises during the term of this Lease. Lessor shall operate and shall maintain, repair, and replace as appropriate to maintain in good repair all portions of the Leased Premises, including structural components and the roof, and the mechanical systems and the equipment within and serving the Leased Premises, as well as the furnishings located on or about the Leased Premises.

(b) Lessee shall not allow any damage to be committed on any portion of the Leased Premises. At the termination of this Lease, by lapse of time or otherwise, Lessee shall deliver the Leased Premises to Lessor in as good condition as existed at the commencement date or completion date of this Lease, ordinary wear and tear excepted.

8. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS: Lessee, at Lessee's expense, shall comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having jurisdiction relating to the use, condition, and occupancy of the Leased Premises.

9. LESSOR IMPROVEMENTS: Lessor does not anticipate making any improvements to the Leased Premises.

10. ALTERATIONS AND IMPROVEMENTS: Lessee may not make any alterations, physical additions, or improvements to the Leased Premises without the written consent of the Lessor. If the Lessor grants consent, then the Lessee shall be responsible for all costs of any alterations, physical additions, or improvements to the Leased Premises. Any alterations, physical additions, or improvements to the Leased Premises shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease, to the extent that the alterations, physical additions, or improvements cannot be removed without causing damage to the Leased Premises. Lessor, at its option, may require Lessee to remove any physical additions and/or repair any alterations in order to restore the Leased Premises to the condition existing at the time Lessee took possession, all costs of removal and/or alterations to be borne by Lessee.

11. CONDEMNATION:

(a) If, during the term (or any extension or renewal) of this Lease, all or a substantial part of the Leased Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which they are then being used, this Lease shall terminate. Lessee shall be entitled to an award of its damages, including the value of its lease and any improvements to the Leased Premises Lessee has made at its expense. Lessor shall be entitled to an award for the physical taking of the property.

(b) In the event a portion of the Leased Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and this Lease is not terminated as provided in subparagraph (a) above, Lessor shall, at Lessor's sole risk and expense, restore and reconstruct the building and other improvements on the Leased Premises to the extent necessary to make it reasonably tenantable.

12. LIABILITY INSURANCE: Lessee agrees that, at its own cost and expense, it shall procure and continue in force, in the names of Lessor and Lessee, general liability insurance against any and all claims for

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injuries to persons or damage to property occurring in, about, or upon the Leased Premises, including all damage from signs, fixtures or other appurtenances, now or hereafter erected upon the Leased Premises, during the term of this Lease. Such insurance shall at all times be in an amount not less than One Million Dollars (\$1,000,000) per claim on account of bodily injury to or death of one (1) person and Three Million Dollars (\$3,000,000) annual aggregate claims on account of bodily injuries or death of persons, and One Hundred Thousand Dollars (\$100,000) for property damage in any one (1) accident. Such insurance shall be written by a company or companies reasonably acceptable to Lessor and authorized to engage in the business of general liability insurance in the State of Ohio, and a certificate of all such policies procured by Lessee in compliance herewith shall be delivered to Lessor at least fifteen (15) days prior to the time such insurance is required to be carried by Lessee, and thereafter at least fifteen (15) days prior to the expiration of any such policy.

13. **FIRE AND CASUALTY:** Payments, if any, due from Lessee to Lessor shall not be abated due to any fire or casualty, but all payments for damages to the Leased Premises shall be used to restore the Leased Premises, as may be elected by Lessor.

14. **PROPERTY INSURANCE:** Lessor, at Lessor's cost and expense, shall at all times during the term of this Lease maintain a policy or policies of insurance with the premiums paid in advance, issued by and binding upon some solvent insurance company, or self-insurance or group self-insurance, insuring the building against all risk or direct physical loss in an amount equal to one hundred percent (100%) of the full replacement cost of the building structure and its improvements as of the date of the loss.

15. **LIABILITY:** Lessor shall not be liable to Lessee's or any subtenant's employees, agents, invitees, licensees or visitors, or to any other person, for any injury to person or damage to property on or about the Leased Premises caused by any person or entity other than Lessor, or caused by the building and improvements located on the Leased Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Leased Premises.

16. **QUIET ENJOYMENT:** Lessor warrants that it has full right to execute and to perform this Lease and to grant the estate demised and that Lessee, performing the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease as well as any extension or renewal thereof. Lessor shall not be responsible for the acts or omissions of any third party that may interfere with Lessee's use and enjoyment of the Leased Premises.

17. **LESSOR'S RIGHT OF ENTRY:** Lessor shall have the right, at all reasonable hours, to enter the Leased Premises for the following reasons: emergency, inspection, maintenance, repair, determining Lessee's or any subtenant's use of the Leased Premises, or determining if an act of default under this Lease has occurred.

18. **SUBLEASE:** Lessee shall not sublet or assign all or any part of the Leased Premises without the Lessor's prior written consent, which Lessor may grant or withhold in its sole discretion. In the event of any subletting, Lessee, nevertheless, shall remain fully responsible and liable for compliance with all of its obligations under the terms, provisions, and covenants of this Lease.

Any subtenants that occupy parts of the Leased Premises shall conduct their business and control their agents, employees, invitees and visitors in such a manner as is lawful, reputable and will not create any nuisance, and shall comply with the terms and conditions stated herein. Neither Lessee nor its subtenants shall commit, or suffer to be committed, any waste on the Leased Premises, nor shall Lessee or its subtenants permit the Leased Premises to be used in any way which would be extra hazardous on account of fire or otherwise

19. **DEFAULT BY LESSEE:** The following shall be deemed to be events of default by Lessee under this Lease:

- (a) Lessee shall fail to pay when due any payment required pursuant to this Lease, and the failure is not cured within thirty (30) days after written notice to Lessee;
- (b) Lessee shall fail to comply with any term, provision or covenant of this Lease, other than the payment of money, and the failure is not cured or Lessee has not begun taking action to cure within forty-five (45) days after written notice to Lessee; or
- (c) Lessee shall do or permit to be done any act that results in a lien being filed against the Leased Premises, which lien is not removed or bonded within 120 days after Lessee has actual notice of the lien.

20. **REMEDIES FOR LESSEE'S DEFAULT:** Upon the occurrence of any event of default set forth in this Lease, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand:

- (a) Terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to surrender the Leased Premises, Lessor may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel, or remove Lessee and any other person who may be occupying all or any part of the Leased Premises without being liable for prosecution of any claim for damages. Lessee agrees to pay on demand the amount of all loss and damage, including attorney fees, which Lessor may suffer by reason of the termination of

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the Lease under this subparagraph, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.

(b) Enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Lessee and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, and relet the Leased Premises on behalf of Lessee and receive directly the rent by reason of the reletting. Lessee agrees to pay Lessor on demand any deficiency that may arise because of any reletting of the Leased Premises; further, Lessee agrees to reimburse Lessor for any expenditure made by it for maintaining the building in a usable manner, including remodeling or repairing in order to relet the Leased Premises.

(c) Enter upon the Leased Premises, by picking or changing locks if necessary, without being liable for prosecution of any claim for damages, and do whatever Lessee is obligated to do under the terms of this Lease. Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in effecting compliance with Lessee's obligations under this Lease; further, Lessee agrees that Lessor shall not be liable for any damages resulting to Lessee from effecting compliance with Lessee's obligations under this subparagraph caused by the negligence of Lessor or otherwise.

(d) Terminate this Lease as an expiration of this Lease.

21. **WAIVER OF DEFAULT OR REMEDY:** Failure of Lessor to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Lessor shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth in paragraph 21 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by Lessor to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions, and covenants contained in this Lease.

22. **ACTS OF GOD:** Lessor shall not be required to perform any covenant or obligation in this Lease, or be liable in damages to Lessee, so long as the performance or non-performance of the covenant or obligation is delayed, caused by, or prevented by an act of God or force majeure.

23. **EARLY TERMINATION:** Either party may terminate this Lease by providing one-hundred eighty (180) days written notice to the other party.

24. **SUCCESSORS:** This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. It is hereby covenanted and agreed that should Lessor's interest in the Leased

Premises cease to exist for any reason during the term of this Lease, then notwithstanding the happening of such event this Lease nevertheless shall remain unimpaired and in full force and effect and Lessee hereunder agrees to attorn to the then owner of the Leased Premises.

25. **DEFINITIONS:** The following definitions apply to the terms set forth below as used in this Lease:

(a) "Abandon" means the vacating of all or a substantial portion of the Leased Premises by Lessee, whether or not Lessee is in default of the rental payments due under this Lease.

(b) An "act of God" or "force majeure" is defined for purposes of this Lease as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of Lessor and which by the exercise of due diligence Lessor is unable, wholly or in part, to prevent or overcome.

(c) The "commencement date" shall be the date set forth in paragraph 2. The "commencement date" shall constitute the commencement of this Lease for all purposes, whether or not Lessee has actually taken possession.

(d) "Real property tax" means all school, city, state and county taxes and assessments including special district taxes or assessments.

26. **MISCELLANEOUS:** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraph. If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease, and such other provisions shall continue in full force and effect. This Lease shall not be recorded, but upon the request of either party, the parties will prepare, execute, and record a memorandum of lease.

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Lessee hereby certifies that it is not subject to any unresolved finding for recovery issued by the Ohio Auditor of State. Lessee further certifies that it is, and shall for the life of this Lease Agreement remain, in full compliance with all applicable Federal, State, and Local laws, rules, regulations, and orders related to non-discrimination and equal opportunity employment.

27. NOTICE: All payments required to be made by Lessee shall be payable to Lessor at the address set forth below, and any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set out below:

LESSOR:
Board of County Commissioners Delaware County, Ohio
91 North Sandusky Street
Delaware, OH 43015

LESSEE:
Delaware Soil and Water Conservation District
1610 State Route 521
Delaware, OH 43015

28. ENTIRE AGREEMENT AND LIMITATION OF WARRANTIES: IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE. IT IS LIKEWISE AGREED THAT THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED, OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BOTH LESSOR AND LESSEE.

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

ADMINISTRATOR REPORTS

None

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis

-Welcome To Brandy Wilson, New Deputy Clerk To The Board Of Commissioners

Commissioner Merrell

-On Thursday Attended The Regional Planning Meeting That Took Place At The Byxbe Campus

-On Friday Attended The Local Legislative Update Meeting

Commissioner Benton

-On Friday Participated In The CEBCO Meeting

-On Friday Attended The Local Legislative Update Meeting; Discussions Starting On Property Tax Appraisal Value Calculations

-Will Attended A Ribbon Cutting For The Byxbe Campus Later Today

-1:00PM Land Bank Meeting Later Today

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton