

COMMISSIONERS JOURNAL NO. 82 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 28, 2025

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

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

1
RESOLUTION NO. 25-300

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS
FROM REGULAR MEETING HELD APRIL 24, 2025:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on April 24, 2025; 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. 25-301

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES,
AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0425, MEMO TRANSFERS IN
BATCH NUMBERS MTAPR0425:

It was moved by Mr. Merrell, seconded by Mr. Benton, to approve Then and Now Certificates, payment of warrants in batch numbers CMAPR0425, memo transfers in batch numbers MTAPR0425, and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO’ Increase			
P2501427 Hazen and Sawyer	Regional Sewer Plant Work	66611900-5410	\$130,000.00

PR Number	Vendor Name	Line Description	Account	Amount
R2502879	ALPHA GROUP OF DELAWARE	JANITORIAL SERVICE	10011105 - 5325	\$ 26,337.84
R2502971	EPS	EMS STATION 5 DAMAGE 3-15-25	60111901 - 5370	\$ 6,044.32
R2502972	HAZEN AND SAWYER PC	TREATMENT PLANT AND EPA PERMITTING SUPPORT	66211900 - 5301	\$ 25,000.00

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

4
RESOLUTION NO. 25-302

IN THE MATTER OF ACKNOWLEDGING RECEIPT OF ANNEXATION PETITION FROM
AGENT FOR THE PETITIONER, MICHAEL R. SHADE, ATTORNEY-AT-LAW, REQUESTING
ANNEXATION OF 43.616 ACRES OF LAND IN DELAWARE TOWNSHIP TO THE CITY OF
DELAWARE:

It was moved by Mr. Benton, seconded by Mr. Merrell, to acknowledge that on April 22, 2025, the Clerk to the Board of Commissioners received a petition requesting annexation of 43.616 acres of land from Delaware Township to the City of Delaware.

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

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5
RESOLUTION NO. 25-303

IN THE MATTER OF APPROVING A LETTER OF SUPPORT FOR HAROLD WOLFORD’S
VETERANS HALL OF FAME NOMINATION:

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

To: The Office of Ohio State Senator Andrew Brenner
From: The Delaware County Board of Commissioners
Date: April 28, 2025
Re: Letter of Support for Harold Wolford’s Veterans Hall of Fame Nomination

We, the Delaware County Board of Commissioners, are writing to express our support for State Senator Andrew Brenner’s nomination of Delaware County resident Harold Wolford to the Ohio Department of Veteran Services Hall of Fame.

We are very familiar with the outstanding record of service to our nation, our county and our military veterans that Harold has built. Each year we are pleased to host his Vietnam War Veterans Day ceremony in the Veterans Memorial plaza outside our Historic Courthouse. We also participate in the “Operation: Forever Grateful” veterans dinner that Harold founded and continues to organize each year at the Delaware County Fair: It is a truly moving event, bringing together our veterans for an inspiring evening each fall.

The care that Harold takes to ensure that our veterans are remembered and honored is, of course, reflective of his own distinguished military record with the U.S. Army: Recipient of the National Defense Service Medal and badges for marksmanship and sharpshooting. He has served for many years as the president of our local Vietnam Veterans of America Chapter 1095.

We fully support Harold’s nomination to the Ohio Department of Veteran Services Hall of Fame and respectfully ask that the selection committee sees fit to add his name to the honor roll of those who have sacrificed so much for our nation.

Jeff Benton	Barb Lewis	Gary Merrell
Delaware County Commissioner	Delaware County Commissioner	Delaware County Commissioner

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

6
RESOLUTION NO. 25-304

IN THE MATTER OF APPROVING A STUDENT INTERNSHIP POLICY FOR THE
DEPARTMENTS UNDER THE DIRECTION OF THE BOARD OF COMMISSIONERS:

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

WHEREAS, the Delaware County Board of Commissioners and its management staff have recognized the need to periodically review and revise policies and procedures to meet new requirements, provide clarification, and better serve the County’s employees and the public;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby adopts the following Delaware County Student Internship Program Policy:

Delaware County Board of Commissioners				
Subject	Effective	Supersedes	This Sheet	Total
Student Internship Program	April 28, 2025	New	1	4

- 1.0

Purpose

The purpose of this policy is to provide guidance regarding the Board of Commissioners Student Intern Program; provide a program policy statement; establish administrative regulations governing the program to Department Directors and other supervisory personnel regarding proper administration of the program.
- 2.0

Scope

All departments under the direction of the Delaware County Board of Commissioners.
- 3.0

Distribution

All departments under the direction of the Delaware County Board of County Commissioners.
- 2.0

Policy

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Policy Statement

It shall be the policy of the Delaware County Board of Commissioners to provide internship opportunities, when possible, to students actively pursuing an educational degree program at the college/university level and, at times, for students that are seeking an internship experience at the high school or career center level. The purpose of the internship program shall be to provide the opportunity for students actively pursuing an educational degree program to gain meaningful, practical work experience directly related to their respective field of study.

Student interns should be assigned responsible duties and assignments and should not be used to perform routine clerical tasks on a regular basis.

The nature of the internship program requires the student to work while pursuing their academic studies. The work experience provided through the internship should augment the student's educational experience. In return for the opportunity to gain practical work experience, student interns shall be expected to perform duties or become involved with projects or assignments that are directly related to their field of study / coursework and to demonstrate responsibility/accountability in producing a quality work product.

Program Requirements

- A. Intern positions shall be formally authorized in the approved annual appropriation measure and approved by the department director and the County Administrator within the available appropriations.
- B. If the intern is under the age of 18 years, then the parent or guardian must co-sign the County's authorization and waiver documents prior to the student beginning the internship experience. In most cases, a student intern at the high school level will not be eligible for employment or payment for their experience and will be classified as a volunteer for Delaware County, in accordance with the Delaware County Volunteer Handbook.
- C. For a candidate to be eligible for an internship, the candidate must be actively pursuing a degree program that is directly related to the nature of the intern position available with Delaware County. Furthermore, the candidate must be continuously enrolled at a college/university, or high school / career center when applicable, during the time the individual is employed or volunteering as an intern, with the exception of summer or other academic breaks and the exception referenced in paragraph (K) below. Continued employment or volunteer status with Delaware County as an intern shall be contingent upon continuous enrollment at the college/university level or high school / career center level.
- D. When paid, all intern positions shall fall into the category of seasonal or temporary, as defined by Rule 123:1-47-01 of the Ohio Administrative Code and shall be so designated in the approved annual appropriation measure and approval of the Department Director and County Administrator:
 - a. Seasonal Appointment – An appointment where an employee works a certain regular season or period of each year performing some work or activity limited to that season or period of the year.
 - b. Temporary Appointment – An appointment for a limited period of time, fixed by the appointing authority and approved by the County Administrator for a period not to exceed one hundred twenty days, except as allowed in section 124.30 of the Revised Code.

Interns shall follow all applicable requirements as a Delaware County employee, including policies, procedures and guidelines.

- E. When unpaid, the student intern will be classified as a volunteer with Delaware County following all applicable volunteer requirements, policies, procedures and guidelines as outlined in the volunteer handbook and all other applicable policies, procedures and guidelines.
- F. The very nature of the internship program requires the student to work or volunteer while actively pursuing their academic studies. Therefore, internship positions should be part- time of for a fixed period of time as outlined in this policy.
- G. All paid internship positions shall be in the "Unclassified" service, which means that those individuals serving in such positions shall serve at the pleasure of the Appointing Authority and shall have no property rights to the position. These individuals may be separated from employment at any point in their service with Delaware County and shall have no appeal rights regarding such termination or separation.
- H. All unpaid internship positions shall be volunteer in nature, which means that those individuals serving as a volunteer shall serve at the pleasure of the Appointing Authority and shall have no property rights to the position. These individuals may be separated from the volunteer position at any

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point during their volunteer service with Delaware County and shall have no appeal rights regarding such termination or separation.

- I. The recruitment and selection of student interns must be accomplished in accordance with the process and procedures established by the Delaware County Human Resources best practices for recruitment and onboarding for both paid and unpaid internship opportunities.
- J. The hours that a student intern may work will be flexible based upon the student's academic schedule. Paid Interns and their immediate supervisors will utilize the automated timekeeping system to account for all hours worked. The intern and their immediate supervisor shall agree on an established work schedule. Such work schedule may be determined based upon the intern's academic quarter/semester class schedule and/or based upon the needs of the County. The intern's immediate supervisor shall be responsible/accountable for monitoring the intern's work schedule and verifying the accuracy of the recorded work or volunteer time. Expectations of the generally agreed upon work schedule should be documented by the intern's supervisor.
- K. An individual's employment or volunteer status (when classified as an unpaid intern) as an intern shall normally end upon the end of the academic semester, quarter, or graduation. However, the intern may continue for no longer than one academic quarter or semester following graduation if permitted. As stated previously, the nature of the Student Intern Program is to allow the student the opportunity to work or volunteer (when classified as an unpaid intern) while actively pursuing their academic studies. It is not the purpose of the Student Intern Program to provide a transitional or permanent source of employment after graduation. Any student intern interested in employment with Delaware County may apply for an open advertised position for consideration through the recruitment process.
- L. Paid and unpaid interns are not eligible to accrue vacation leave and are ineligible to receive holiday pay or personal leave. Per the Ohio Revised Code / Ohio Administrative Code, a paid student intern may accrue sick leave.
- M. If a student intern is eligible for payment for work performed, the intern shall be paid in accordance with the County's Compensation Management System.
- N. The supervisor must ensure the internship primarily benefits the intern and aligns with educational or professional development objectives. The intern should not displace regular employees or perform essential job functions typically handled by staff. Supervisors must provide meaningful learning opportunities, mentorship, and oversight, ensuring compliance with applicable labor laws and organizational guidelines.
- O. Before onboarding a paid or unpaid intern, the department must receive approval through the standard onboarding processes through Human Resources, the Department Director and County Administrator to verify compliance with internship criteria.

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

7
RESOLUTION NO. 25-305

IN THE MATTER OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS ACCEPTING AND APPROVING THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES SUBGRANT AGREEMENT WITH OHIO DEPARTMENT OF CHILDREN AND YOUTH FOR THE DELAWARE COUNTY CHILD SUPPORT ENFORCEMENT AGENCY:

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

WHEREAS, a Subgrant Agreement has been prepared in accordance with sections 307.98, 5101.21 and 5160.30 of the Ohio Revised Code; and

WHEREAS, the Director of the Child Support Enforcement Agency recommends approval of the Subgrant Agreement;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following Subgrant Agreement:

**OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES SUBGRANT AGREEMENT
G-2627-11-6129**

RECITALS:

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This Subgrant Agreement is entered into between the Ohio Department of Job and Family Services (hereinafter referred to as "ODJFS"), the Ohio Department of Children and Youth (hereinafter referred to as "DCY"), and the Delaware County Board of County Commissioners (hereinafter referred to as "Board"), in accordance with the Ohio Revised Code (ORC) Sections 307.98, 5101.21 and 5160.30.

The intent of this Subgrant Agreement is to establish between ODJFS, DCY, and the Board the relationship of two "pass-through entities" and a "subrecipient" as those terms are used in 2 CFR 200, promulgated by the United States Office of Management and Budget (OMB).

This Subgrant Agreement is applicable to all subawards by ODJFS and DCY to Delaware County for the operation of the Delaware Child Support Enforcement Agency (CSEA) that is a standalone agency and performs all duties assigned to a child support enforcement agency. It is not applicable to subawards relating to any duties assigned to a county department of job and family services (CDJFS) under ORC Section 329.04, or to any duties assigned to a public children services agency (PCSA), nor is it applicable to subawards funded or authorized by the Workforce Innovation and Opportunity Act (WIOA), ORC Chapter 4141, the Wagner-Peyser Act, or any other funds for which the United States Department of Labor is responsible for direct or indirect oversight. Subawards subject to this Subgrant Agreement include subawards of grant awards to the State of Ohio by the United States Department of Health and Human Services (DHHS) and the United States Department of Agriculture (USDA). Subawards subject to this Subgrant Agreement are not for research and development purposes.

DEFINITIONS:

- A. "County family services agency" means a county department of job and family services (CDJFS), a public children services agency (PCSA) and a child support enforcement agency (CSEA), as designated by the board of county commissioners in ORC Section 307.981. County family services agency also means a joint CDJFS formed by a written agreement entered into between boards of county commissioners as described in ORC Section 329.40.
- B. "Departments" means ODJFS and DCY relative to this three-way Subgrant Agreement.
- C. "Family services duty" means a duty state law requires or allows a county family services agency to perform including all financial and administrative functions associated with the performance of those duties. Family services duty does not include duties or activities funded or authorized by the Workforce Innovation and Opportunity Act (WIOA), ORC Chapter 4141, the Wagner-Peyser Act, or any other funds for which the United States Department of Labor is responsible for direct or indirect oversight.
- D. "Financial assistance" means all cash, reimbursements, allocations of funds, cash draws, and property provided by ODJFS to a county family services agency. All requirements in this Subgrant Agreement related to financial assistance also apply to any money used by the county to match state or federal funds.
- E. "State and federal laws" include all federal statutes and regulations, appropriations by the Ohio General Assembly, the ORC, uncodified law included in an Act, the Ohio Administrative Code (OAC) rules, any Treasury State Agreement or state plan, Office of Management and Budget (OMB) Uniform Guidance, circulars, or any other materials issued by OMB that a federal statute or regulation has made applicable to state and local governments, and any Governor's Executive Orders to the extent that they apply to counties. The term "state and federal laws" not only includes all state and federal laws existing on the effective date of this Subgrant Agreement, but also those state and federal laws that are enacted, adopted, issued, effective, amended, repealed, or rescinded on or after the effective date of this Subgrant Agreement.
- F. "Subgrantee" has the same meaning as "county grantee," as that term is defined in ORC Section 5101.21 (A) (1).
- G. "Subgrant agreement" has the same meaning as "grant agreement," as that term is defined in ORC Section 5101.21 (A)(6).

THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED IN THIS SUBGRANT AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

**ARTICLE I. PURPOSE OF THE
SUBGRANT/SUBGRANT DUTIES**

- A. The purpose of the Subgrant and this Subgrant Agreement is to establish the terms, conditions, and requirements governing the administration and use of the financial assistance received by or used by the Delaware County CSEA.
- B. This Subgrant Agreement is entered into by the Board on behalf of Delaware County and of the

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Delaware County CSEA (hereinafter collectively referred to as "Subgrantee").

ARTICLE II. STATUTORY AUTHORITY OF ODJFS

As a pass-through entity under 0MB 2 CFR 200 (Uniform Guidance) ODJFS may:

- A. Provide financial assistance to the Subgrantee in accordance with this Subgrant Agreement and state and federal laws.
- B. Provide annual financial, administrative, or other incentive awards to the Subgrantee subject to ORC Section 5101.23.
- C. Monitor the Subgrantee to obtain reasonable assurance that the financial assistance provided pursuant to this Subgrant is used in accordance with all applicable conditions, requirements, and restrictions.
- D. Provide information on current and any subsequent changes to the terms and conditions of the grant awards addressed by the funding provided under this Subgrant Agreement.
- E. Provide technical assistance and training to assist the Subgrantee in complying with its obligations under state and federal law and this Subgrant Agreement.
- F. Take action to recover funds that are not used in accordance with the conditions, requirements, or restrictions applicable to the family services duties for which these funds are awarded. Any ODJFS enforcement action against the Subgrantee will be taken in accordance with ORC Section 5101.24, unless another section provides authority for a different action. If ODJFS takes an action authorized by ORC Section 5101.24, ODJFS will provide written notice to the Board, the county auditor, and the CDJFS director. The entity against which any action is taken may request an administrative review in accordance with ORC Section 5101.24, except as provided by Section 5101.24 (E).

ARTICLE III. RESPONSIBILITIES OF SUBGRANTEE

As a subrecipient of the state of Ohio under 0MB 2 CFR 200 (Uniform Guidance), Subgrantee must:

- A. Ensure that the funds included in this Subgrant Agreement are used, and the family services duties for which the grants are awarded are performed in accordance with conditions, requirements and restrictions established by the Departments and state and federal laws, as well as the federal terms and conditions of the grant award.
- B. Monitor its subgrantees to obtain reasonable assurance that the financial assistance provided pursuant to this Subgrant is used in accordance with all applicable conditions, federal and state requirements, and restrictions under 0MB 2 CFR 200, including the provision of timely audits subject to the threshold requirements of 45 CFR 75.501, 2 CFR 400.1 and 2 CFR 200.501.
- C. Utilize a financial management system that meets the requirements established by ODJFS and use the ODJFS designated software programs to report financial and other data according to the standards established by ODJFS. Subgrantee will provide to ODJFS all program and financial reports and updates in accordance with the timeliness schedules, formats and other requirements established by ODJFS.
- D. Promptly reimburse ODJFS the amount the Subgrantee is responsible for, pursuant to action ODJFS takes under ORC Section 5101.24 (C), of funds the department pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty.
- E. Promptly reimburse the Departments the amounts of any cash overdrafts or excessive cash draws paid to Subgrantee by ODJFS.
- F. Take prompt corrective action if the Departments, the Ohio Auditor of State, any federal agency, or other entity authorized by federal or state law to determine compliance with the conditions, requirements, and restrictions applicable to a family services duty for which this Subgrant is awarded determines compliance has not been achieved. Correct action includes, but is not limited to, paying amounts resulting from an adverse finding, sanction, or penalty.
- G. Where Subgrantee identifies reimbursements or other payments due the Departments, promptly notify ODJFS and request direction as to the manner in which such payments shall be made. Where the Departments identifies reimbursements or other payments due to the Departments and ODJFS notifies Subgrantee, payment shall be made in the manner specified by the Departments.
- H. Make records available to the Departments, the Auditor of the State, federal agencies, and other

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authorized governmental agencies for review, audit and investigation.

- I. Provide and ensure the existence and availability of local non-federal funds for the purpose of matching any federal funding for allowable operating expenses incurred by Subgrantee. Subgrantee must also ensure that any matching funds, regardless of their source, that Subgrantee manages are clearly identified and used in accordance with federal and state laws and the requirements of this Subgrant Agreement.
- J. Maintain documentation of all subgrant related activity in accordance with the requirements of OAC Section 5101:9-9-21, 5101:9-9-21.1 and 5101:9-9-29.
- K. Comply with all requirements of state and federal laws which are required by OAC Section 5101:9-4-04 to be included in a county written code of standards of conduct and with all additional requirements and prohibitions specified in that administrative rule.
- L. Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.); all provisions required by the implementing regulations of the Department of Agriculture and Department of Health and Human Services; Department of Justice Enforcement Guidelines, 28 CFR 50.3 and 42; and Department of Agriculture, Food and Nutrition Services (FNS) directives and guidelines to the effect that, no person shall on the grounds of race, color, national origin, sex, age, disability or political beliefs or association, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS.
- M. Immediately take measures to incorporate paragraph L above, into existing agreements and contracts and shall incorporate the above language in all future agreements and contracts with other entities. Subgrantee shall require all entities with which it sub-grants and contracts with to incorporate Sections Land A, above, in all its existing agreements and contracts that are funded in whole or in part with funds from the U.S. Department of Agriculture or Health and Human Services, and shall further require those entities to incorporate the language in all future agreements and contracts with other entities.
- N. Post and require all entities with which it sub-grants and contracts to post the most recent version of the AD- 475A and/or AD-475B "And Justice for All" poster.
- O. Subgrantee shall determine eligibility for the Early Childhood Education Grant in compliance with state regulations. If requested by DCY, Subgrantee may receive preschool student information from Ohio school districts.

ARTICLE IV. EFFECTIVE DATE OF THE SUBGRANT

- A. This Subgrant Agreement will be in effect from July 1, 2025, through June 30, 2027, unless this Subgrant Agreement is suspended or terminated pursuant to ARTICLE VII prior to the above termination date.
- B. In addition to Article IV-A above, it is expressly understood by the Departments and Subgrantee that this Subgrant Agreement will not be valid and enforceable until, pursuant to ORC Section 126.07, the State of Ohio Director of the Office of Budget and Management first certifies there is a balance in the appropriation not already allocated to pay current obligations.

ARTICLE V. AMOUNT OF GRANT/PAYMENTS

- A. The total amount of the Subgrant for State Fiscal Years (SFY) 2026 and 2027 and grant specific terms and conditions such as, but not limited to, the applicable period of performance, will be provided to Subgrantee in formal notices. The Departments will provide this funding expressly to perform the Subgrant activities described in ARTICLE I of this Subgrant Agreement. This amount will be determined by the methodology required by OAC Chapter 5101:9-6. ODJFS will notify Subgrantee of revisions to subgrant amounts and terms through the issuance of supplementary notices as changes arise.
- B. Subgrantee will limit cash draws to the minimum amount needed for actual, immediate requirements in accordance with the Cash Management Improvement Act, 31 CFR 205, 45 CFR 75, 2 CFR 400 and ODJFS requirements including Chapter 7 of the Fiscal Administrative Procedures Manual. Subgrantee agrees that amounts submitted as the basis for claims for reimbursement will not exceed the amount of actual cash expenditures for lawfully appropriate purposes under the terms of the subaward in question.
- C. Subgrantee understands that availability of funds is contingent on appropriations made by the

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Ohio General Assembly or by funding sources external to the State of Ohio, including federal funds. If at any time the Departments' Director determines that state or federal funds are insufficient to sustain existing or anticipated spending levels, said Director may reduce, suspend, or terminate any allocation, reimbursement, cash draw, or other form of financial assistance as the Director determines appropriate. If the Ohio General Assembly or the external funding source fails at any time to continue funding the Departments for the payments due under this Subgrant Agreement, this Subgrant Agreement will be terminated as of the date funding expires without further obligation of ODJFS or the State of Ohio.

- D. In all circumstances under which budgetary information is maintained or is required to be maintained for a grant, Subgrantee must be able to reconcile budgetary expenditures to actual costs when required by the Departments.
- E. As a subrecipient of federal funds, Subgrantee hereby specifically acknowledges its obligations relative to all federal funds provided under this Subgrant Agreement pursuant to OMB 2 CFR 200, 2 CFR 300, 2 CFR 400, as well as 45 CFR 75, 45 CFR 95, and 45 CFR 96, including but not limited to, the following federal rules:
 - 1. Standards for financial management systems: Subgrantee and its subgrantee(s) will comply with the requirements of 2 CFR 200 Subparts (D) and (E), 45 CFR 75.302, and 2 CFR 400.1, including, but not limited to:
 - a. Fiscal and accounting procedures.
 - b. Accounting records.
 - c. Internal control over cash, real and personal property, and other assets.
 - d. Budgetary control to compare actual expenditures or outlays to budgeted amounts.
 - e. Source documentation; and
 - f. Cash management.
 - 2. Period of performance and availability of funds: Pursuant to 2 CFR 200.309, 2 CFR 200.343, 45 CFR 75.309, and 2 CFR 400.1, Subgrantee and its subgrantee(s) may charge to the Federal award only costs resulting from obligations incurred during the funding period specified in the notices under Article V-A, above, unless notified by ODJFS that carryover of these balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated in a timely manner in accordance with federal and state law and specifications by ODJFS, not to exceed 90 days.
 - 3. Cost sharing or matching: Pursuant to 2 CFR 200.306, 45 CFR 75.306, 2 CFR 200 and 2 CFR 400.1, cost sharing or matching requirements applicable to the Federal program must be satisfied by allowable costs incurred or third-party in-kind contributions and must be clearly identified and used in accordance with all applicable federal and state laws. For Federal programs in which state funds are made available to use as matching funds, the Subgrantee is required to use, in addition to the amounts required under ORC Section 5101.16, additional local funds for matching funds in the event that the state funding allocated for that purpose is exhausted.
 - 4. Program income: Program income must be used as specified in 2 CFR 200.307, 45 CFR 75.307, 2 CFR 200 and 2 CFR 400.1.
 - 5. Real property: If Subgrantee is authorized to use Subgrant funds for the acquisition of real property, title, use, and disposition of the real property will be governed by the provisions of 45 CFR 200.311, 45 CFR 75.318, 2 CFR 200 and 2 CFR 400.1.
 - 6. Equipment: Title, use, management (including record keeping, internal control, and maintenance), and disposition of equipment acquired by Subgrantee or its subgrantee(s) with Subgrant funds, will be governed by the provisions of 2 CFR 200.313, 45 CFR 75.320, 2 CFR 200 and 2 CFR 400.1.
 - 7. Supplies: Title and disposition of supplies acquired by Subgrantee or its subgrantee(s) with Subgrant funds will be governed by the provisions of 2 CFR 200.314, 45 CFR 75.321, 2 CFR 200 and 2 CFR 400.1.
- F. Subgrantee expressly certifies that neither it, nor any of its principals, is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

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ARTICLE VI. AUDITS OF SUBGRANTEE

- A. Subgrantee agrees to provide for timely audits as required by OMB 2 CFR 200. Subject to the threshold requirements of 45 CFR 75.501, 2 CFR 400.1, and 2 CFR 200.501, Subgrantee must ensure that the county of which they are a part has an audit with a scope as provided in 2 CFR 200.514 that covers funds received under this Subgrant Agreement. Costs of such audits are allowable as provided in 2 CFR 200.425. Subgrantee must send one (1) copy of the final audit report to the ODJFS Office of Fiscal and Monitoring Services, Audit Resolution Section, at 30 East Broad Street, 37th. Floor, Columbus, Ohio 43215, within two (2) weeks of the Subgrantee's receipt of any such audit report.

- B. Subgrantee has additional responsibilities as an auditee under 45 CFR 75.508, et seq., and OMB Omni- Circular, 2 CFR 200.508, et seq., that include, but are not limited to:
 - 1. Proper identification of federal awards received.
 - 2. Maintenance of required internal controls.
 - 3. Compliance with all state and federal laws, and regulations, and with all provisions of contracts, grant agreements, or subgrant agreements that pertain to each of its federal programs.
 - 4. Procuring or otherwise arranging for the audit required by this Article in accordance with 2 CFR 200.509, and ensuring it is properly performed and submitted when due in accordance with 2 CFR 200.512.
 - 5. Preparation of appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510.
 - 6. Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with 2 CFR 200.511; and
 - 7. Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Article. Subgrantee must take prompt action to correct problems identified in an audit.

**ARTICLE VII. SUSPENSION AND TERMINATION,
BREACH AND DEFAULT**

- A. This Subgrant Agreement may be terminated in accordance with any of the following:
 - 1. The parties may mutually agree to a termination by entering into a written termination agreement that is signed by the Departments' Director and the Board, and the termination agreement is adopted by resolution of the Board. An agreement to terminate is effective on the later of the date stated in the agreement to terminate, the date it is signed by all parties, or the date the termination agreement is adopted by resolution of the Board.
 - 2. Any of the parties may terminate after giving ninety (90) days written notice of termination to the other parties by registered United States mail, return receipt requested. The effective date is the later of the termination date specified in the termination notice or the 91st day following the receipt of the notice by the other party.
 - 3. Either of the Departments may immediately terminate this Subgrant Agreement if there is a loss of federal or state funds, a disapproval of the Subgrant Agreement by a federal administrative agency, or illegal conduct affecting the operation of the Subgrant Agreement. In the event of such a termination, the Departments will send a notice to the Board and other county signatories to this Subgrant Agreement, specifying the reason for the termination and the effective date of the termination.

- B. Pursuant to ORC Section 5101.24, 45 CFR 75.371, 2 CFR 200 and 2 CFR 400.1, the Departments may take any or all of the following actions if Subgrantee, or any of its subgrantee(s): materially fails to comply with any term of an award, state and federal laws, an assurance, a State plan or application, a notice of award, this Subgrant Agreement, or any other applicable rule.
 - 1. Temporarily withhold cash payments pending correction of the deficiency by the Subgrantee or its subgrantee(s) or more severe enforcement action.
 - 2. Disallow all or part of the cost of the Subgrant activity or action not in compliance.

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- 3. Wholly or partly suspend or terminate the current award for the Subgrantee or its subgrantee(s)' Subgrant activity.
 - 4. Withhold further awards for the Subgrant activity; or
 - 5. Take any other remedies that may be legally available, including the additional remedies listed elsewhere in this Subgrant Agreement.
- C. Subgrantee, upon receipt of a notice of suspension or termination, will do all of the following:
- 1. Cease the performance of the suspended or terminated Subgrant activities under this Subgrant Agreement.
 - 2. Take all necessary steps to limit disbursements and minimize costs that include, but are not limited to, the suspension or termination of all contracts and subgrants correlated to the suspended or terminated Subgrant activities.
 - 3. Prepare and furnish a report to ODJFS, as of the date Subgrantee received the notice of termination or suspension, that describes the status of all Subgrant activities and includes details of all Subgrant activities performed and the results of those activities; and
 - 4. Perform any other tasks that ODJFS requires.
- D. Upon breach or default by Subgrantee of any of the provisions, obligations, or duties embodied in this Subgrant Agreement, the Departments will retain the right to exercise any administrative, contractual, equitable, or legal remedies available, without limitation. A waiver by the Departments of any occurrence of breach or default is not a waiver of subsequent occurrences. If one of the Departments or the Subgrantee fails to perform any obligation under this Subgrant Agreement and the failure is subsequently waived by the other parties, the waiver will be limited to that particular occurrence of a failure and will not be deemed to waive failures that may subsequently occur.

ARTICLE VIII. NOTICES

- A. Notices to the Departments from Subgrantee that concern this award, termination, suspension, breach, default, or other formal notices regarding this Subgrant Agreement will be sent to the ODJFS Deputy Director of Fiscal and Monitoring Services at 30 East Broad Street, 31st Floor, Columbus, Ohio 43215.
- B. Notices to the Subgrantee from the Departments concerning any and all matters regarding this Subgrant Agreement, including changes in the amount of funding or in the source of federal funding, will be sent to the Board and other county signatories to this Subgrant Agreement.
- C. All notices in accordance with Section A of this ARTICLE VIII will be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (*e.g.*, certified mail).

ARTICLE IX. AMENDMENT, ADDENDA, AND
SUBGRANTS

- A. **Amendment:** This document, along with any related addenda, constitutes the entire agreement between the Departments and Subgrantee with respect to all matters herein. Otherwise, only a document signed by both parties may amend this Subgrant Agreement. The Departments and Subgrantee agree that any amendments to laws or regulations cited herein will result in the correlative modification of this Subgrant Agreement without the necessity for executing written amendments. Any written amendment to this Subgrant Agreement will be prospective in nature.

If one of the Departments notices a need for correction of erroneous terms and conditions, ODJFS will immediately send Subgrantee an amended Subgrant Agreement for signature. If Subgrantee notices a need for correction of erroneous terms and conditions, it will immediately notify ODJFS.
- B. **Addenda:** ODJFS will provide information concerning changes to the requirements of this Subgrant Agreement in addenda thereto. Any addenda to this Subgrant Agreement will not need to be signed. Any draw of the funds following the receipt of an addendum will constitute acceptance of changes specified therein.
- C. **Subgrants**
 - 1. Any subgrants made by Subgrantee to another governmental entity, university, hospital, other nonprofit, or commercial organization will be made in accordance with 2 CFR 200, 2 CFR 200.201, 45 CFR 75.352 and 2 CFR 400.1 and will impose the requirements of 45 CFR 75 and 2 CFR 400, as applicable, as well as federal and state law. Any award of a subgrant to another entity shall be made by means of a county subgrant agreement which

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requires the entity awarded the county subgrant to comply with all conditions requirements and restrictions applicable to Subgrantee regarding the grant that Subgrantee subgrants to the entity, including the conditions, requirements, and restrictions of ORC Section 5101.21.

2. Debarment and Suspension: As provided in 2 CFR 200, 2 CFR 200.205, 45 CFR 75.212 and 2 CFR 400.1, Subgrantee, its principals, and its subgrantee(s) must not make any award or permit any award at any time to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. Prior to making any such award or permitting any such award, Subgrantee must confirm that the party to which the award is proposed to be made is not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.
3. Procurement: While Subgrantee and its subgrantee(s) must use their own documented procurement procedures, the procedures must conform to all applicable federal laws, including, as applicable, 2 CFR 200, 2 CFR 200.320, 2 CFR 400.1, 2 CFR 416.1 and 45 CFR 75.327 through 45 CFR 75.335. In the event of conflict between federal, state, and local requirements, the most restrictive must be used.
4. Monitoring: Subgrantee must manage and monitor the routine operations of Subgrant supported activities, including each project, program, subgrant, and function supported by the Subgrant, to ensure compliance with all applicable federal and state requirements, including 2 CFR 200, 2 CFR 200.328, 45 CFR 75.342, 2 CFR 400.1 and OAC Section 5101:9-1-88. If Subgrantee discovers that subgrant funding has not been used in accordance with state and federal laws, Subgrantee must take action to recover such funding.
5. Duties as Pass-through Entity: Subgrantee must perform those functions required under state and federal laws as a subrecipient of the Departments under this Subgrant Agreement and as a pass-through entity of any awards of subgrants to other entities.

ARTICLE X. MISCELLANEOUS PROVISIONS

- A. Limitation of Liability: To the extent permitted by law, ODJFS agrees to be responsible for any liability directly relating to any and all acts of negligence by ODJFS. To the extent permitted by law, Subgrantee agrees to be responsible for any liability directly related to any and all acts of negligence by Subgrantee. In no event shall any party be liable for any indirect or consequential damages, even if the Departments or Subgrantee knew or should have known of the possibility of such damages.
- B. This Subgrant Agreement will be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Subgrant Agreement be found unenforceable by operation of statute or by administrative or judicial decision, the remaining portions of this Subgrant Agreement will not be affected as long as the absence of the illegal or unenforceable provision does not render the performance of the remainder of the Subgrant Agreement impossible.
- C. Nothing in this Subgrant Agreement is to be construed as providing an obligation for any amount or level of funding resources or other commitment by the Departments to the Board, to any county signer required by ORC Section 5101.21 (B), or to any county family services agency that is not specifically set forth in state and federal law. Nothing in this Subgrant Agreement is to be construed as providing a cause of action in any state or federal court or in an administrative forum against the State of Ohio, the Departments, or any of the officers or employees of the State of Ohio or the Departments.
- D. Subgrantee agrees that no agency, employment, joint venture, or partnership has been or will be created between ODM and Subgrantee. Subgrantee further agrees that, it 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 funds received pursuant to this Agreement. Subgrantee agrees that it is for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio tax law, Workers Compensation law, and Unemployment Insurance law.
- E. Risk Assessment. In accordance with 2 CFR 200.331 and 2 CFR 200.207, the Departments as a pass-through entity evaluate Subgrantee's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward. If deemed required, Subgrantee agrees to comply with specific conditions and monitoring requirements posed by the Departments to ensure proper accountability and compliance with program requirements and achievement of performance goals.
- F. Counterpart. This Agreement may be executed in one, or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail courier or electronic mail, all of which together shall constitute

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one and the same agreement.

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

8
RESOLUTION NO. 25-306

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND BKM CONSTRUCTION, LLC, FOR MAINTENANCE, REPAIRS, REMOVAL, AND REPLACEMENT OF CONCRETE AT VARIOUS COUNTY BUILDINGS:

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

WHEREAS, the Director of Facilities recommends approval of an agreement between the Delaware County Board of Commissioners and BKM Construction, LLC, for maintenance, repairs, removal, and replacement of concrete at various County buildings;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners approves, and authorizes the following agreement with BKM Construction, LLC, for maintenance, repairs, removal, and replacement of concrete at various County buildings:

SERVICES AGREEMENT

This Agreement is made and entered into on April 28, 2025, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and BKM Construction, LLC, 237 Curtis Street, Delaware, Ohio 43015 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 **SERVICES PROVIDED BY CONTRACTOR**

- 1.1 The Contractor shall perform maintenance, repairs, removal, and replacement of concrete at various County buildings (the “Services”). The Contractor shall perform the Services in a workmanlike manner.
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the Contractor’s nine (9) proposals, dated August 12, 2024, September 19, 2024, and February 3, 2025 (collectively, the “Proposals”), all 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 Facilities (the “Director”) as the agent of the County for this Agreement.
- 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 Contractor’s Proposals.
- 4.2 For all Services, the lump sum fee shall be \$72,152.58.
- 4.3 Total compensation under this Agreement shall not exceed \$72,152.58 without subsequent modification.
- 4.4 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 periodically, but no more than once per month, based on invoices submitted by the Contractor in accordance with the Proposals and approved by the Director.

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- 5.2 Invoices shall be submitted to the Director by the Contractor on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may 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 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS**
- 6.1 The Contractor shall commence Services upon written order from the Director and shall complete the Services promptly, diligently, in a workmanlike manner, and in accordance with the Contractor's Proposals.
- 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.
- 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**

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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 <https://humanresources.co.delaware.oh.us/policies/>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 10.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall 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. 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 the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

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

9
RESOLUTION NO. 25-307

IN THE MATTER OF APPROVING A FIRST EXTENSION OF A SERVICES AGREEMENT
BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND UNIVERSAL
PROTECTION SERVICE, LLC DBA ALLIED UNIVERSAL SECURITY SERVICES, LLC, FOR

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UNIFORM ARMED SECURITY SERVICES:

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

WHEREAS, the Director of Facilities recommends approval of an agreement between the Delaware County Board of Commissioners and Universal Protection Service, LLC dba Allied Universal Security Services, LLC, for uniform armed security services;
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners approves, and authorizes the following agreement with Universal Protection Service, LLC dba Allied Universal Security Services, LLC, for uniform armed security services:

FIRST EXTENSION OF SERVICES AGREEMENT
Uniformed Armed Security

This First Extension of the Services Agreement dated on or about March 9, 2023 (the “Agreement”) is made and entered into on April 28, 2025, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (the “County”), and Universal Protection Service, LLC, dba Allied Universal Security Services, LLC, 630 Morrison Rd., Unit 110, Gahanna, OH 43230 (the “Contractor”) (hereinafter collectively referred to as the “Parties”).

ARTICLE 1 – EXTENSION AND AMENDMENT

Pursuant to Sections 3.1 and 7.2 of the Agreement and Paragraph A of the Specifications incorporated therein, the Parties mutually agree to extend the Agreement for the first of three possible one-year renewal periods and to amend the Agreement as follows:

- A. Section 4.2 of the Agreement shall be amended to increase the maximum total compensation from \$1,300,000 to \$2,000,000.
- B. Section 7.2 of the Agreement shall be amended to extend the termination date of the Agreement to April 30, 2026.

ARTICLE 2 – REMAINING PROVISIONS

All other terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

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

10
RESOLUTION NO. 25-308

IN THE MATTER OF CERTIFICATION OF DELINQUENT ACCOUNTS TO THE COUNTY
AUDITOR FOR ACCOUNTS TO BE ASSESSED TO PAYABLE YEAR 2026 TAXES:

It was moved by Mr. Benton, seconded by Mr. Merrell, 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 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 \$179,327.98 to the County Auditor for the 2026 real property tax list and duplicate.

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

2026 Sewer Tax Assessments
To be certified by the Board of Commissioners on 4/28/2025

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Breakdown of Assessments by Treatment Plant:

66211900-4108-11903 – OECC	\$59,278.10
66211900-4108-11904 – Alum Creek	\$101,254.37
66211900-4108-11905 – Lower Scioto	\$6,325.24
66211900-4108-11912 - Package Plants	\$12,470.27
Total Assessments	\$179,327.98

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

11
MONTHLY SANITARY APPROVAL UPDATE

12
RESOLUTION NO. 25-309

IN THE MATTER OF APPROVING THE DRAINAGE MAINTENANCE PETITION AND
MAINTENANCE ASSESSMENTS FOR ASHFORD OF BERKSHIRE:

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

WHEREAS, on April 28, 2025, a Ditch Maintenance Petition for Ashford at Berkshire (the “Petition”) was filed with the Board of Commissioners of Delaware County (the “Board”); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within Ashford of Berkshire, 8.4 acres in Berkshire Township; and

WHEREAS, the petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the real estate taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program;

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$96,456.43 and a detailed cost estimate is attached. The drainage improvements are being constructed for the benefit of the lot(s) being created in the subject site. The developed area of 8.4 acres will receive benefits (cost) of the project on a per-acre basis. The basis for calculating the assessment for each lot is, therefore, \$11,482.91 per acre. An annual maintenance fee equal to 2% of this basis (\$229.66) will be collected for each developed acre. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year’s assessment for all of the lots in the amount of \$1,929.14 has been paid to Delaware County.

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

13
RESOLUTION NO. 25-310

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

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

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

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

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PERMIT#	APPLICANT	LOCATION	TYPE OF WORK
UT2025-0096 UT2025-0097 UT2025-0098 UT2025-0099 UT2025-0100	CROWN CASTLE FRONTIER COLUMBIA GAS CINCINNATI BELL CINCINNATI BELL	OLD HOME RD LIBERTY RD MAIZE VIEW DR VARIOUS HOME RD	NEW HDPE DUCT NEW SERVICE DROP INSTALL GAS MAIN FIBER OPTIC CABLE FIBER OPTIC CABLE

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

14
RESOLUTION NO. 25-311

IN THE MATTER OF APPROVING AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH WOOLPERT INC. FOR DEL-CR 10-2.91, SOUTH OLD STATE ROAD WIDENING (PHASE 2):

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

WHEREAS, pursuant to Resolution 22-220, adopted on March 28, 2022, the Delaware County Board of Commissioners (the “Board”) declared the necessity for South Old State Road Widening (Phase 2), and entered into an agreement with Woolpert, Inc. for required engineering services associated with the widening (the “Agreement”); and

WHEREAS, Woolpert, Inc. has completed preliminary engineering for the proposed widening under the direction of the County Engineer pursuant to the Agreement; and

WHEREAS, the County Engineer has negotiated a scope of work and fee to perform detailed design of the widening and recommends modifying the Agreement for such purpose;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Amendment No. 2 to the Agreement:

AMENDMENT NO. 2
PROFESSIONAL SERVICES AGREEMENT
DEL-CR 10-2.91

This Amendment No. 2 to the Agreement dated March 28, 2022, is made and entered into this 24TH day of April, 2025, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Woolpert Inc., One Easton Oval, Suite 400, Columbus, Ohio 43219 (“Consultant”) (hereinafter collectively referred to as the “Parties”).

ARTICLE 1 – AMENDMENT

Pursuant to Section 3.1 of the Agreement, the Parties mutually agree to amend the Agreement as follows:

- A. Section 4.2 of the Agreement shall be modified to increase the maximum total compensation to One Million One Hundred Forty Thousand Five Hundred Ninety-Five Dollars and Zero Cents. (\$1,140,595.00).
- B. Section 7.1 of the Agreement shall be modified to extend the date for the completion of Services to December 31, 2025.

ARTICLE 2 – REMAINING PROVISIONS

All other terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

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

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ADMINISTRATOR REPORTS

CA Davies – Nothing to report.

DCA Huston – Nothing to report.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Benton – attended the CEBCO retreat and Peace Officers graduation last week. He also attended the Main Street Awards Banquet. OWU will be making announcement about the new library. Gave reminder of State of the County tomorrow.

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Commissioner Merrell – Nothing to report.

Commissioner Lewis – Delaware County Transit Authority receives award, she attended the Emergency Planning Committee meeting, Community Corrections Planning Board meeting and a Regional Planning meeting last week.

17
RESOLUTION NO. 25-312

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

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

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

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

- (1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and
- (2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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

Section 1. The Board hereby adjourns into executive session for consideration of Pending or Imminent Litigation.

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

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RESOLUTION NO. 25-313

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

Recessed at 10:17 a.m. / Reconvene at 1:00 p.m.

19
RESOLUTION NO. 25-314

IN THE MATTER OF APPROVING A CUSTOMER SUPPLY AGREEMENT BETWEEN
FREEPOINT ENERGY SOLUTIONS AND THE DELAWARE COUNTY BOARD OF
COMMISSIONERS FOR ELECTRICITY GENERATION:

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

WHEREAS, the Director Facilities recommends approving the Customer Supply Agreement with Freepoint Energy Solutions for Electricity Generation;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Customer Supply agreement with Freepoint Energy Solutions for Electricity Generation.

Freepoint Energy Solutions

MARKETING DISCLOSURE

This Marketing Disclosure is meant to provide you with a summary of the Agreement and not to be a substitute for

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reading the Agreement in full. Please refer to the rest of the Agreement for a full disclosure of all the applicable terms and conditions. Please make sure you have requested all necessary clarifications from your broker before signing up.

Price during Initial Term	The Price is \$ /kWh. The Price includes the Cost Components marked as included in the Price and may change to reflect the True-up as set forth in Section 3, the Additional Charges set forth in Section 6 and Regulatory Charges as set forth in Section 7 of the Terms and Conditions hereof. Commercial activity tax is included in the Price.
Price after expiration of Initial Term	After the expiration of the Initial Term, the Price per kWh will be market-based as determined by Seller based on various factors, including competitors' prices, applicable industry charges, wholesale market conditions, electricity supply sources plus a margin. This Price and other Terms and Conditions of the Agreement may change month to month, without prior notice.
Length of the Agreement	For each account covered by this Agreement, the Initial Term is estimated to begin on the Estimated Start Date, and will end on the Service End Date, specified on the attached "Facility Attachment." The Estimated Start Date is dependent upon the relevant Utility performing all required enrollment processes and the actual start date will occur only after Seller has received confirmation from the Utility that the enrollment processes have been completed. After the Initial Term, the Agreement may continue on a month-to-month basis until terminated with 30 days' notice. Please refer to the Facility Attachment and sections 2 and 3 of the Terms and Conditions for more details.
Process customer may use to rescind the Agreement without penalty	If you consume seven hundred thousand (700,000) kWhs per year or less of electricity for nonresidential use and are not part of a national account involving multiple facilities, you are a Protected Class Customer. If you are a Protected Class Customer, you will have seven (7) calendar days following the postmark date on the Utility's confirmation notice to rescind the contract by contacting the Utility. Please refer to Section 21 for more details.
Non-Recurring Charges	Early Termination Fee: If the Agreement is terminated prior to the end of the Initial Term, you may be liable for a Termination Payment. The Termination Payment is calculated as the positive difference, if any, between the contract Price less the market price, multiplied by the remaining volumes of electricity that would have been delivered during the Initial Term had the contract not been terminated; <i>plus</i> the costs incurred by us to terminate any related hedge or trading positions or to enforce any rights related to the termination. Please refer to Section 9 and Section 22 of the Agreement for details. Late Payment Fee: If the account(s) is/are billed by the Utility, you will incur a late charge as provided by the Utility tariff for any billed amount that is not paid in full by the due date determined by the Utility. If the account(s) is/are billed by us, you will incur a late charge equal to the lesser of 1.50% per month or the maximum permitted by law for any billed amount that is not paid in full within twenty-one (21) days after the billing date. Please refer to Section 4 of the Terms and Conditions for more details. Returned Check Fee: \$35 for each returned check.
Utility Charges	Your Utility will continue to provide your electric distribution service and will charge you delivery and other service charges. In the event of a power outage, Customer should contact the relevant Utility.

ELECTRICITY SUPPLY AGREEMENT

This coversheet (the "**Coversheet**") together with the Terms and Conditions, the Facility Attachment, the Contract Summary (if required by the applicable Law) and any addenda hereto constitute the Electricity Supply Agreement (collectively, this "**Agreement**") entered into by and between Freepoint Energy Solutions LLC ("**Seller**") and the customer party identified below ("**Customer**"), effective as of the date this Agreement is executed by Seller (the "**Effective Date**").

Customer Information:

Customer Name (legal entity name): (Required)	DBA (if applicable):
Customer Contact: Name: (Required)	Title: (Required)
Phone: (Required)	Email: (Required)
	Fax:

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Address for Notices: Street: _____ City: _____ State: _____ Zip: _____ (Required) (Required) (Required) (Required)			
Electricity Supply Selection:			
Price: \$ _____/kWh	Cost Components Included in the Price (check if included): <input type="checkbox"/> Energy <input type="checkbox"/> Capacity <input type="checkbox"/> Ancillary Services <input type="checkbox"/> Balancing Congestion <input type="checkbox"/> Renewables <input type="checkbox"/> Line Losses <input type="checkbox"/> MLC <input type="checkbox"/> ARR <input type="checkbox"/> Administrative Fee		
Estimated Start Date: see Facility Attachment	Term: _____ months		
Broker: _____			

Customer shall provide Seller with financial and other information as Seller may request to satisfy applicable know-your-customer rules and to complete its credit review and other contracting processes. Seller reserves the right to not enter into this Agreement in its sole discretion including if: (i) information provided by Customer or its representative (broker/agent) to Seller is incomplete or inaccurate, (ii) the Price listed was not authorized by Seller or rates have changed based on market conditions, (iii) transfer of Customer account(s) is denied or significantly delayed by the relevant Utility, or (iv) Customer does not meet Seller’s credit approval criteria. Seller may use the contact information provided above to contact Customer including by e-mail, automatically dialed calls, text messages or calls that use artificial or prerecorded voice regarding any billing, service or account-related matter.

Customer hereby agrees to purchase its full requirements of electricity from Seller for each of the Facilities listed on the Facilities Attachment and authorizes Seller to become its electricity supplier, obtain Customer Data from the Utility and take whatever actions are required to switch all relevant electric accounts to Seller. The undersigned represents and warrants that each of the following is true and accurate: (i) I am an authorized representative of Customer, (ii) I have the authority to make decisions on behalf of Customer regarding its electricity supplier, (iii) none of the Facilities for which it is purchasing electricity from Seller is a residence and the electricity purchased hereunder will not be used for a residential purpose, and (iv) Customer is in agreement and will comply with all terms and conditions of this Agreement.

This Agreement shall not become binding and effective until it is executed or verbally authorized via TPV by Customer and executed by Seller.

Customer:		FREEPOINT ENERGY SOLUTIONS LLC	
Signature: _____	Date: _____	Signature: _____	Date: _____
Name: _____		Name: _____	
Title: _____		Title: _____	

ELECTRICITY SUPPLY AGREEMENT
Facility Attachment

This Facility Attachment supplements and forms a part of this Agreement.

Customer Name:

Facilities							
Utility Name	Account Number	Service Address	Estimated Start Date*	Service End Date	Bill Option**	PLC	Tax Exempt %***

*The Service Start Date is estimated to occur on the first meter read date during or after the month specified above. However, this is an estimated start date and the actual start date will occur only after the enrollment processes are completed by the Utility.

**For Dual Billing, Seller will generate a separate invoice for the Seller Charges either as Account Level Billing or as Summary Billing. If no selection is made or if no Dual Billing Address is provided, Seller will use Account Level Billing.

☐ Account-Level Billing – each Facility will have a separate invoice generated and sent to each Facility’s service address, unless a Dual Billing Address or e-mail address is provided herein.

☐ Summary Billing – one invoice for all Facilities sent to the Dual Billing Address or e-mail address, if provided.

Dual Billing Address: Street: _____ City: _____

State: _____ Zip: _____

☐ Please check this box if you wish to receive invoices by mail.

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***Tax exemption certificate needs to be provided by Customer to receive the applicable tax exemption on its electricity invoices.

Forecasted Volume

Month	Summary Forecasted Volume (kWh)

By signing below or by verbal authorization via TPV, Customer confirms that all information set forth in this Facility Attachment is true, complete and accurate.

Customer:		FREEPOINT ENERGY SOLUTIONS LLC
Signature:	Date:	Signature: Date
Name:		Name:
Title:		Title:

ELECTRICITY SUPPLY AGREEMENT
Terms and Conditions

1. **Overview.** These Terms and Conditions supplement and form a part of the Agreement between Seller and Customer. Seller agrees to sell and Customer agrees to buy the quantity of electricity supply meeting Customer's full requirements at each Facility. Title and risk of loss to electricity shall pass from Seller to Customer at the relevant Delivery Point(s). Seller will arrange for the delivery of electricity by the relevant Utility to each Facility. As a condition precedent to Seller entering into this Agreement, Customer shall satisfy Seller's contracting, credit, and applicable know-your-customer/anti-money laundering requirements.
2. **Term.** Seller shall endeavor to start deliveries of electricity to the Facility(ies) on or after the Estimated Start Date. However, Customer acknowledges that (i) the Service Start Date is dependent upon the relevant Utility confirming to Seller that it has completed all required enrollment processes and (ii) if enrollment processes are completed by a Utility after the Estimated Start Date, the Service Start Date will occur as soon as practicable after the enrollment processes are completed by the Utility, without Seller incurring any liability for such delayed start. The initial term of this Agreement will run from the Service Start Date through the Service End Date (the "**Initial Term**"), unless earlier terminated; provided, however, if the number of months in the "Term" of the Electricity Supply Selection table does not match up with the number of months from the Estimated Start Date through the End Date listed on the Facility Attachment, the number of months, beginning with the Service Start Date, will be utilized in determining the Initial Term. At the end of the Initial Term, the term of this Agreement shall automatically continue on a month-to-month basis at market based pricing as per Section 3 below, unless and until terminated by either Party upon providing the other Party with 30 days' prior Notice. Notwithstanding the foregoing, in no event shall the Initial Term and any automatic renewals thereof exceed the total of ten (10) years.
3. **Customer Charges.** For each billing cycle during the term, the amount to be charged to Customer by Seller for each Facility shall be the sum of (i) the Commodity Charges, (ii) the amount assessed by Seller for any Cost Components for such billing cycle that are not indicated as being included in the applicable Price for such Facility, (iii) all applicable Taxes (except for any Taxes that are expressly included in the Price), (iv) Annual Fiscal Assessment, and (v) any costs and charges assessed pursuant to Sections 6 or 7 hereof (collectively, the "**Seller Charges**"). After the expiration of the Initial Term, the Price per kWh will be market-based as determined by Seller based on various factors, including competitors' prices, applicable industry charges, wholesale market conditions, electricity supply sources plus a margin, and may change monthly without prior notice to Customer. The Price does not include the costs of distribution and other services provided by the relevant Utility (the "**Utility Charges**").
4. **Billing and Payment.** With respect to each Facility, Customer may receive one consolidated bill from the relevant Utility each bill cycle for both the Utility Charges and the Seller Charges (the "**Utility Consolidated Billing**" or "**UCB**") and the bill will be sent to the billing address on file with the Utility. In such case, Customer agrees to remit payment for all amounts reflected on such invoice directly to the Utility in accordance with the Utility's payment terms. Alternatively, if the Utility does not provide consolidated billing, Customer will, each bill cycle, receive one bill from the Utility for the Utility Charges (payable to the Utility) and a second bill from Seller for the Seller Charges (payable to Seller) (the "**Dual Billing**"). In such case, Customer agrees to remit payment of all amounts reflected on Seller's invoice directly to Seller no

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later than twenty-one (21) days after the billing date. All payments to Seller are to be mailed to PO Box 733615, Dallas, TX 75373-3615. Seller reserves the right to pass through charges or fees incurred by Seller to process ACH or credit/debit card payments. If selected by Customer, any and all amounts due and payable pursuant to this Agreement may be processed via autopay. All invoices will include amounts for applicable Taxes. Depending on the bill format, charges assessed pursuant to Sections 6 or 7 hereof may appear on Customer's bill as a line item or Price adjustment. Regardless of billing method, invoices may cover multiple Facilities where applicable. If on Dual Billing and if an email address is provided, Seller will provide the invoice by email, unless Customer specifically opted to receive invoices by mail. Unpaid balances on Customer's account(s) not received by the due date specified on the invoice will be subject to a late charge of the lesser of 1.50% per month or the maximum permitted by Law (the "**Interest Rate**"). Seller will charge a \$35 return check fee for all returned checks. Seller is not responsible for notifying Customer of any failed or returned payments. Seller may apply any credit balance on a particular Facility to a balance owed on any other Facility supplied by Seller. Seller will include or cause to be included on any subsequent bill from Seller, adjustments related to previous billings, including estimates, billing or meter read errors, or other errors or omissions. If Customer disputes the Seller Charges on any bill, Customer must pay any undisputed portion of the bill by the applicable due date. If the unpaid, disputed portion of the bill is subsequently resolved in favor of Seller, the Interest Rate will be applied to such unpaid amounts. Customer will be responsible for the costs of all collection activity, including reasonable attorneys' fees and disbursements incurred by Seller in enforcing the terms of this Agreement.

5. **Taxes.** Customer shall pay all applicable Taxes associated with sales under, and/or performance of, this Agreement. The Price does not include gross receipts Tax or applicable state and local sales Tax, unless otherwise expressly set forth herein. Seller may collect Taxes from Customer by including them on any invoice. Where the Customer claims to be tax exempt, Customer shall provide written evidence of any tax exemption to Seller and each relevant Utility. Seller will recognize a lawful tax exemption on a prospective basis only after Customer provides proper documentation to Seller. Customer shall be liable for any Taxes and associated interest or penalties assessed against Seller by any third party due to Customer's failure to timely provide or properly and accurately complete any such evidence.
6. **Change in Usage.** Customer shall provide Seller with timely Notice of any change in the attributes or use of any Facility (including any event) that is likely to result in a load change of 100% or more (the "**Load Change Percentage**") as compared to the Forecasted Volume. Examples of such changes may include equipment outages, shutdowns or replacements, on-site generation, openings or closings, and/or changes in operating hours. Customer shall be responsible for payment of the costs, charges and/or losses incurred by Seller resulting from such change including additional ISO or Utility charges (collectively, "**Additional Charges**").
7. **Regulatory Change.** If there is a Regulatory Change which causes Seller to incur new or modified fees, costs or charges ("**Regulatory Charges**"), Seller reserves the right to pass through the Regulatory Charges to Customer without markup. For the avoidance of doubt, the Parties agree that a change in the rate classification of a Facility will be deemed a Regulatory Change. The changes described in this Section may impact any or all of the charges described in this Agreement, including any Cost Component specified on the Coversheet, whether described as "fixed," "variable," "included in the Price," "passed through" or otherwise.
8. **Early Termination.** If an Event of Default occurs and is continuing with respect to Customer, Seller shall have the right to designate an early termination date (the "**Early Termination Date**") to accelerate all amounts owing between the Parties and to liquidate and terminate any or all Transactions (each, a "**Terminated Transaction**") under this Agreement. Seller shall give prior Notice to Customer if required by the applicable Law. In addition to the other remedies specified herein, upon the termination of the Agreement with respect to a Facility hereunder, Seller shall be permitted to switch Customer to receive Default Service at such Facility. Seller's sales of electricity supply to Customer at each Facility shall be treated as separate transactions (each, a "**Transaction**") under this Agreement. Subject to Seller's rights and remedies hereunder (including Section 9 below), Customer may terminate this Agreement by giving 30-day prior Notice to Seller (unless a different notice period is required by the applicable Law) and shall pay any amounts owed hereunder in connection with such termination and for the electricity supplied up to the Effective Termination Date.
To the extent permitted by applicable law, Seller can terminate this Agreement or a Facility from this Agreement, at no cost to Seller, if: required/allowed by law; the Utility is unable to service a Facility; a legislative or Regulatory Change materially alters Seller's ability to perform this Agreement; Customer owns or uses any on-site generation or battery storage capabilities, not disclosed on or before the Effective Date, at any Facility during the Initial Term hereof; Customer is or becomes sanctioned; or performance under this Agreement would result in a violation of sanctions by any person, including Seller. To the extent permitted by applicable law, Customer will be given thirty (30) calendar days prior notice of termination and an opportunity to cure; this thirty (30) notice and cure period applies to termination by Seller for the specific events listed in this paragraph and does not apply to any Event of Default.
9. **Termination Payment Calculation.** On an Early Termination Date, Seller shall close out each Terminated Transaction so that each such Terminated Transaction is canceled and shall calculate and aggregate the Termination Payment for all Terminated Transactions. The Parties agree that a Terminated Transaction will become effective after the Facility drop has been processed by the applicable Utility and the Facility is no longer supplied under the Agreement and, in case there are multiple Terminated Transactions, the effective termination date will be whichever occurs last (the "Effective Termination Date"). In determining the Termination Payment, Seller (i) need not actually enter into replacement transactions, (ii) may utilize the Forecasted Volume or any other Customer-related information it deems relevant to determine the quantity of electricity to be purchased by Customer for the remaining term of any Terminated Transactions, and (iii) may consider, among other valuations, any settlement prices of New York Mercantile Exchange electric energy futures contracts, internal curves, quotations from leading dealers in electric energy swap contracts, and other bona fide party bids and offers, which may include, on an arms' length basis, offers from Seller's affiliates, all adjusted for the remainder of the applicable term and basis differentials. Customer shall pay the Termination Payment to Seller within three (3) Business Days of Customer's receipt of Notice with the amount thereof from Seller and shall include interest accrued at the Interest Rate from the Early Termination Date until paid, provided that Seller may set off the amount of any Collateral provided by Customer and held by it under this Agreement against the amount of the Termination Payment. Irrespective of whether a Termination Payment is owed hereunder, Customer shall pay to Seller the Seller Charges incurred up to the Effective Termination Date. Seller will refund any Collateral surplus after Customer's obligations to

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Seller have been paid in full. Customer acknowledges and stipulates that the payment obligations set forth herein are difficult to estimate and represent a reasonable approximation of the anticipated harm or loss to Seller as a result of an Event of Default with respect to Customer. Seller reserves all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which it has or may be entitled to (whether by operation of law or otherwise).

10. **Credit.** If, at any time during the term of this Agreement, Seller determines that (a) Customer has failed to timely pay any amounts due under this Agreement, or (b) Seller has reasonable grounds for insecurity with respect to Customer or Customer's creditworthiness, Seller may require that Customer provide (in addition to any Collateral previously provided) Collateral for its obligations under this Agreement. Customer hereby grants to Seller, as security for the payment and performance of Customer's obligations under this Agreement, a first priority continuing lien and security interest in and to any Collateral (and proceeds and products thereof) that Customer has or may deliver to Seller.
11. **Limitation of Liability; Disclaimer of Warranties.** EXCEPT WITH RESPECT TO REMEDIES OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, LIABILITY HEREUNDER IS LIMITED TO DIRECT DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT THE TERMINATION PAYMENT WILL CONSTITUTE DIRECT DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR ANY BUSINESS INTERRUPTION DAMAGES. EACH PARTY AGREES THAT IT HAS A DUTY TO MITIGATE DAMAGES AND COVENANTS THAT IT WILL USE COMMERCIALY REASONABLE EFFORTS TO MINIMIZE ANY DAMAGES IT MAY INCUR AS A RESULT OF THE OTHER PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT. CUSTOMER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO PARTICIPATE AS A PLAINTIFF IN A CLASS ACTION LAWSUIT AGAINST SELLER IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EXPRESSLY DISCLAIMS AND NEGATES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO ELECTRICITY SOLD BY SELLER, CUSTOMER IS RESPONSIBLE FOR ANY CLAIMS ARISING FROM ANY ACT OR INCIDENT OCCURRING AT OR AFTER DELIVERY OF ELECTRICITY TO CUSTOMER. TO THE FULLEST EXTENT ALLOWED BY THE APPLICABLE LAW, CUSTOMER HEREBY WAIVES ITS RIGHTS UNDER ALL LAWS, RULES, REGULATIONS AND ORDERS PERTAINING TO RETAIL ELECTRICITY SUPPLY, INCLUDING RIGHTS RELATED TO CONTRACT RESCISSION, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, SPANISH LANGUAGE, RECORD KEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES.
12. **Governing Law.** This Agreement and the rights and duties of the Parties under this Agreement are governed by the internal Law of the State of Ohio without regard to conflict of law principles. To the maximum extent possible under the Law, article 2 of the Uniform Commercial Code will apply to the electricity sold under this Agreement. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.
13. **Assignment.** Customer may not assign this Agreement or any of its rights or obligations hereunder without Seller's prior written consent which shall not be unreasonably withheld. Seller may assign this Agreement and its rights and obligations hereunder upon Notice to Customer. Any assignee hereof shall be subject to all the provisions and conditions of this Agreement as applicable to its assignor to the same extent as though such assignee were an original Party to this Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Any assignment in violation of this Section shall be void.
14. **Force Majeure.** Notwithstanding any other provision of this Agreement, if a Party is unable to carry out any obligation under this Agreement due to Force Majeure (other than a payment obligation relating to performance provided prior to or during the Force Majeure, which shall not be excused for Force Majeure), this Agreement will remain in effect but such obligation will be suspended for the duration of the Force Majeure, provided: (i) the claiming Party notifies the other Party as soon as practicable in writing of the particulars of the Force Majeure; (ii) suspension of performance is of no greater scope and duration than required by the Force Majeure; and (iii) the claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days or more where Customer is the declaring Party, then Seller may terminate this Agreement with respect to the Facilities adversely affected by the Force Majeure upon 15 days' prior Notice to Customer. It is expressly agreed by the Parties that the ability of Seller to sell the products and services provided hereunder at a greater price, and the ability of Customer to purchase the products and services provided hereunder for a lower price, than the price specified herein shall not constitute an event of Force Majeure. Seller is not responsible for transmitting or distributing electric energy. In the event of a power outage, Customer should contact the relevant Utility.
15. **Representations.** Each Party represents and warrants to the other Party that (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; (ii) it has the power and authority to sign and perform this Agreement and, with respect to Customer only, to bind each Facility to the terms and conditions of this Agreement; (iii) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; (iv) it intends to be legally bound by this Agreement and has caused the Agreement to be executed by its duly authorized officer or representative as of the date shown on the Coversheet; (v) it is not Bankrupt; (vi) it has knowledge and experience in business matters that enable it to evaluate the merits and risks of entering into this Agreement; and (vii) all information provided by it to the other Party is true, correct and complete in all material respects. In connection with the negotiation and execution of this Agreement, Customer represents and warrants to Seller that: (a) Seller is not acting as a fiduciary, commodity trading advisor or other advisor for Customer; (b) Customer understands the risks associated with this Agreement, has consulted with its own independent advisors and has made its own decisions with respect hereto based upon its own judgment and not upon any advice of Seller; (c) Seller has not made any representations to it concerning the advisability of entering into this Agreement or any addenda hereto; (d) none of the Facilities for which it is purchasing electricity from Seller is a residence; (e) for all purposes that may impact its electricity usage, Customer will operate the

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Facilities in the same or substantially the same manner as it has in the last twelve (12) months preceding the date when the Agreement has become effective; and (f) it is entering this Agreement as principal and not as agent for any other party.

16. **Confidentiality.** Both Parties agree to keep all terms and provisions of this Agreement, and all communications in connection herewith, including pricing and other terms offered to Customer, confidential and to not disclose them to any third parties without the prior written consent of Seller, except as otherwise required by Law (including Ohio's open records laws) or judicial process. Customer hereby authorizes Seller to obtain from the Utility any account-related information including its account name, account number, billing address, billing and payment history, service address, telephone number, standard offer service type, rate classification, meter readings, historical usage information (including historical interval meter data) and peak electricity demand (individually and collectively, the "**Customer Data**"). Seller may disclose any Customer Data to the Utility, a third party energy consultant, broker or third party service provider who has provided services to Seller in connection with this Agreement and their respective agents, Seller's affiliates or prospective purchasers of all or part of its business, who have agreed to keep such information confidential, or as required by Law or judicial process.
17. **Notices.** The Parties will send all notices relating to this Agreement in writing by electronic mail, U.S. mail, overnight courier, or hand delivery (each, a "**Notice**"), provided that Seller may communicate or inquire about operational decisions by telephone. The Notices shall be delivered, with respect to Customer, to the address specified on the Coversheet. Customer agrees to inform Seller if any of the contact information provided herein changes. The Notices shall be delivered, with respect to Seller, as follows:
 Freepoint Energy Solutions LLC
 3050 Post Oak Blvd, Suite 1330
 Houston, TX 77056
 Attention: Freepoint Retail Operations
 Our website: www.freepointsolutions.com
 Email: customerrelations@Freepointsolutions.com

Notice by electronic mail or hand delivery will be deemed received by close of the Business Day on the day it was transmitted or delivered (if transmitted or delivered after that close, it will be deemed received by the close of the next Business Day). Notice by overnight courier will be deemed received by close of the Business Day on the day delivered. Notice by U.S. mail will be deemed received by the close of the third Business Day after the date of mailing. A Party may change its address or contact information by providing Notice to the other Party in accordance herewith. Customer shall keep its contact information updated and provide Seller with prior Notice of any changes.

18. **Miscellaneous.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous agreements or representations affecting the subject of this Agreement. Sections 5, 9, 11, 12 and 18 hereof and all provisions in this Agreement regarding payments shall survive the termination or expiration hereof until the expiration of the applicable statute of limitations. This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same Agreement. Each Party may assume that all notices and emails sent from the other Party have been sent by an authorized representative of such other Party. Subject to the rights that may accrue to any successors or permitted assignees of the Parties, no provision of this Agreement is to be construed as creating any rights enforceable by a third party, and all third party beneficiary rights are expressly negated. Customer agrees that compensation owed to any third party brokers and/or consultants representing Customer in connection with this Agreement may be included in the Price, and the Customer shall be solely responsible for any compensation to such third party brokers and/or consultants and Customer expressly releases Seller from any contribution and/or Claims related to, or in connection with, such third party brokers' and/or consultants' compensation. Any provision or section hereof declared or rendered unlawful by a court or regulatory agency or deemed unlawful because of a change in Law will not otherwise affect the remaining lawful obligations that arise under this Agreement. Except as otherwise provided in this Agreement, the rights, powers, remedies, and privileges provided in this Agreement are cumulative and not exclusive of any rights, power, remedies, and privileges provided by Law. No waiver by Seller of any breach of this Agreement by Customer is effective unless expressly made in writing, and any such waiver is effective only in that instance and only for the purpose expressly stated in writing and (not to be construed as a waiver of any other breach. As used in this Agreement, the term "including" means "including without limitation." Any fee, charge, Cost Component or cost that is expressed in \$ per MWh may be converted to \$ per kWh for purposes of billing or any other calculation made hereunder. Customer acknowledges that Seller and its Affiliates are in the business of buying and selling electricity and related products within the various markets for their own respective accounts and that (i) such participation in such markets may affect the relevant market prices used to determine charges hereunder and (ii) nothing in this Agreement restricts Seller or any of its Affiliates from participating in activities that may affect market prices. Customer will not (a) withhold payment for any reason (subject to its right to dispute invoices); (b) resell any portion of the electricity purchased from Seller to any third party or (c) own or use any on-site generation or thermal or battery storage capabilities at any Facility during the term hereof. This Agreement and all sales of electricity hereunder form a single integrated agreement between the Parties.
19. **Acknowledgements.** Each Party agrees, understands and acknowledges that: (a) this Agreement is a "forward contract" and a "master netting agreement" as defined in the United States Bankruptcy Code (the "**Code**"); (b) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of a commodity; (c) Seller is not a "utility" as defined in the Code; (d) commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Customer's Utility; and (e) Customer's Utility, and not Seller, is responsible for responding to outages, leaks or emergencies should they occur.
20. **Conversion Option.** At any time during the Initial Term (but not more frequently than once during any six-month period), Customer may request Seller to provide new price quotes for its full electricity supply requirements or a part thereof, for the remaining Initial Term, a part thereof or an extended term (the "**Conversion Option**"). Seller shall endeavor to provide Customer non-binding quotes for the Conversion Option, provided that Seller does not guarantee staff availability for execution of any Conversion Option at a specific price or for a specific term, and provided further that

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Seller shall not be liable for failure to provide price quotes or execute any specific addendum therefor. No agreement for a Conversion Option will be deemed to exist between the Parties unless and until an addendum to this Agreement or superseding electricity supply agreement is executed and delivered by the Parties. For the avoidance of doubt, the Parties agree that if no such addendum or superseding agreement is entered into by the Parties, the Parties' respective rights and obligations will remain governed by and subject to the terms and conditions of this Agreement.

21. **Special Provisions for Facilities located in Ohio.** Seller is licensed as a competitive retail electric service provider by the Commission under Certificate No. 16-1130E. The Utility may charge Customer switching fees for each Facility. Customer has the right to request from Seller, twice within a twelve-month period, up to twenty-four months of Customer's payment history without charge. For each Facility, the Utility will be sending to Customer a confirmation notice of the transfer of service. The failure by Customer to pay the Utility Charges may result in Customer being disconnected in accordance with the relevant Utility tariff. Notwithstanding any provision to the contrary in this Agreement, the Price will not include costs or charges related to Transmission and will include the commercial activity tax. In the event of any dispute, complaint or other concern Customer may have concerning this Agreement or our services, please contact Customer Service as follows:

Freepoint Energy Solutions LLC

Our website: www.freepointsolutions.com

Customer Service Toll Free Number: 1-800-982-1670

Customer Service Fax Number: 1-713-583-9087

Customer Service Hours: Business Days from 8:00AM to 5:00PM central time

Customer Service Email: CustomerRelations@freepointsolutions.com

As used in this Agreement, the following terms have the meanings set forth below:

"Commission" means the Public Utilities Commission of Ohio.

"Protected Class Customer" means a commercial or industrial Customer that consumes seven hundred thousand (700,000) kWhs per year or less of electricity for nonresidential use and is not part of a national account involving multiple Facilities in one or more states.

"Utility" means the electric distribution company providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners or operators that manage the internal distribution system serving the building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

The following terms in this Section 21 shall be applicable only if Customer is a Protected Class Customer. Customer will have seven (7) calendar days following the postmark date on the Utility's confirmation notice to rescind this Agreement by contacting the Utility. Please contact Seller's Customer Service department at the number specified below for information concerning how to contact the Utility. If you have a complaint and it is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service). Notwithstanding any provision to the contrary in the Agreement, the failure of the Customer to make, when due, any payment required to be made by it pursuant to this Agreement or to otherwise satisfy any agreed-upon payment arrangement shall not constitute an Event of Default under the Agreement unless such failure is not cured within fourteen (14) calendar days after Seller delivers written notice thereof to such Customer. If the Customer changes the location of a Facility outside of the Utility's service territory, the Customer may terminate the Agreement with respect to such Facility without penalty. The formula for a variable price during the Initial Term is equal to the Price, as indicated on the Coversheet, plus any incremental change in Capacity costs during the term of the Agreement. The relevant components for the Capacity costs are the price for applicable load zone, capacity tags (as defined by the applicable Utility) and capacity factors (zonal scaling factor and forecast pool requirement). All values are posted and updated by PJM in accordance with the OATT and FERC on its website at <https://www.pjm.com/markets-and-operations/rpm.aspx>. The welcome package that will be provided to Customer around the time of Customer's enrollment contains materials regarding the approximate generation resource mix and environmental characteristics of the electricity supplied to Customer in connection with this Agreement. Seller is prohibited from disclosing Customer's social security number and/or account number(s) without Customer's consent except in connection with Seller's own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.52 of the Ohio Revised Code, or to assign this Agreement to another competitive retail energy provider. If Customer switches back a Facility to the Utility, Customer may or may not be served under the same rates, terms, and conditions that apply to other customers served by the Utility. Seller does not offer budget billing for the generation portion of any invoice.

22. **Definitions.** As used in this Agreement, the following terms have the stated meanings, provided that capitalized terms in this Agreement not defined in this Section will have the meaning ascribed thereto elsewhere in this Agreement (all definitions apply to singular and plural forms):
- a. **"Administrative Fee"** means a fee charged by Seller for the electricity supply provided under this Agreement.
 - b. **"Ancillary Services"** means those applicable ancillary services required to facilitate delivery of Energy as set forth in the applicable ISO Open Access Transmission Tariff.
 - c. **"Annual Fiscal Assessment"** means a fee assessed by the Public Utility Commission for maintaining and administering the Public Utilities Commission and the Ohio Consumers' Counsel.
 - d. **"ARR"** means auction revenue rights and associated congestion credits as allocated by PJM and received by Seller.
 - e. **"Balancing Congestion"** means the charges or credits imposed by the ISO when real-time constraints on the transmission system create an imbalance between real-time and day-ahead market load.
 - f. **"Bankrupt"** means with respect to a Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

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- liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.
- g. **"Business Day"** means any day other than a Saturday, a Sunday or a day on which commercial banking institutions in Houston, Texas or New York, New York are authorized or required by Law to be closed.
 - h. **"Capacity"** means the unforced capacity obligations as specified in the PJM Reliability Assurance Agreement.
 - i. **"Claim"** means all claims, demands, suits or actions of every name and nature, threatened or filed before or after this Agreement is terminated, both at law and in equity, and whether groundless, false, or fraudulent, whether directly or indirectly related to the subject matter of an indemnity contained in this Agreement, and any and all resulting losses, damages, penalties, fines, costs and expenses (including attorneys' fees and expenses and court costs) however incurred.
 - j. **"Collateral"** means, with respect to a Party, cash margin, letter of credit or other credit support or collateral provided to secure such Party's obligations under this Agreement, each in a form, from a bank, and in an amount acceptable to the Party requesting the Collateral.
 - k. **"Commodity Charges"** means a portion of Customer's electricity bill for each Facility which shall be equal to Customer's Energy Usage at such Facility multiplied by the applicable Price, unless otherwise specified herein or in any addenda hereto.
 - l. **"Contract Value"** means with respect to each Terminated Transaction, as of the Early Termination Date, the product of (a) the Price, and (b) the Remaining Usage (as reasonably determined by Seller based on its present value).
 - m. **"Costs"** means, and shall include (at the election of Seller but without duplication), any brokerage fees, commissions and other transactional and/or administrative costs, losses and expenses incurred by Seller as a result of Seller's maintaining and/or terminating any hedges or other risk management contracts and/or entering into new arrangements to replace the Terminated Transactions, and any out-of-pocket expenses incurred by it, including attorneys' fees and expenses, by reason of the enforcement and protection of its rights under this Agreement or any Terminated Transaction.
 - n. **"Cost Component"** means the relevant electricity supply costs stated on the Coversheet or any addenda hereto which may be included in the Price as indicated on the Coversheet or any addenda hereto.
 - o. **"Default Service"** means default electric energy service as required by Law to be provided by the relevant Utility for any Facility.
 - p. **"Delivery Point"** means the load zone associated with each Facility.
 - q. **"Early Termination Amount"** means, with respect to a Terminated Transaction, the positive value (if any) resulting from the Contract Value less the Market Value, as reasonably determined by Seller and discounted to present value as of the Early Termination Date.
 - r. **"Energy"** means the electrical energy at a specific ISO load zone, calculated based on costs that will include the LMP.
 - s. **"Energy Usage"** means Customer's metered energy usage for each Facility measured in kWh, as reported by the Utility for the applicable period or as reasonably estimated by Seller.
 - t. **"Estimated Start Date"** means the date specified on the Facility Attachment.
 - u. **"Event of Default"** means: (a) the failure of a Party to make timely payments of any amounts due under this Agreement or a Party becomes Bankrupt; (b) any representation or warranty made by a Party in this Agreement proves to be false or misleading when made or repeated; (c) a Party fails to perform its obligations hereunder and (to the extent not excused by Force Majeure) such failure is not cured within five (5) days of receiving the other Party's Notice thereof; or (d) with respect to Customer only, (A) the failure by Customer to utilize Seller as its sole supplier of electric energy for any of the Facilities specified in this Agreement (including having one or more Facilities disconnected from utility service by any Utility); (B) one or more Facilities fail to enroll; (C) Customer fails to provide Collateral within two (2) Business Days of receiving Seller's written demand therefor; (D) a Transfer Event occurs with respect to Customer or (E) Customer seeks to repudiate the Agreement.
 - v. **"Facility"** means each electric account meter located at each service address specified to receive electricity supply pursuant to this Agreement as set forth on the Coversheet or any Facility Attachment.
 - w. **"Force Majeure"** means an event (a) not within the reasonable control of the Party, (b) not caused by the negligence of the claiming Party, and (c) which, in the claiming Party's exercise of due diligence, the claiming Party is unable to overcome or for which the claiming Party is unable to obtain commercially reasonable substitute performance. Notwithstanding the foregoing, Force Majeure includes: (a) an event of Force Majeure affecting any relevant Utility or ISO; (b) a suspension, curtailment, or service interruption by the Utility or ISO or (c) a cyber incident affecting network security or computer systems, applications or data, including hacker and/or denial of service attacks, or propagation of malicious code affecting the claiming Party, the Utility or the ISO.
 - x. **"Forecasted Volume"** means the Customer's expected electricity consumption for each month of the Initial Term as set forth on any Facility Attachment or addenda hereto or as reasonably determined by Seller based on historical usage information.
 - y. **"ISO"** means the applicable independent system operator.
 - z. **"Law"** means any constitution, law, statute, regulation, rule, protocol, tariff, procedure, exchange rule, decision, writ, order, decree, or judgment, or any interpretation thereof by any court, government agency, regulatory body, instrumentality or other jurisdictional authority.
 - aa. **"Line Losses"** means the loss of energy in the transmission of electricity from generation resources to load; including Transmission, distribution, deration, and/or unaccounted for energy where applicable.
 - bb. **"LMP"** means the real time locational marginal price for the Facility's applicable load zone, which is published by PJM for each settlement interval and expressed in \$/MWh, provided that the LMP may be converted to \$/kWh for billing purposes.
 - cc. **"Market Value"** means with respect to each Terminated Transaction, as of the Early Termination Date, the product of (i) the Remaining Usage and (ii) the market price(s) at which such Remaining Usage is commercially available to Seller (all, with respect to (i) and (ii), as reasonably determined by Seller based on their present value).
 - dd. **"MLC"** means marginal loss credits and associated transmission loss credits as received by Seller.

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- ee. "NSPL" means the Facility's network service peak load as defined by PJM and its value on the Effective Date will be as set forth on the Facility Attachment or as reported by the applicable Utility (if no value is included in the Facility Attachment).
- ff. "Party" or "Parties" means Seller and/or Customer, individually or together, as the case may be.
- gg. "PJM" means PJM Interconnection L.L.C., the regional transmission organization.
- hh. "PLC" means the Facility's peak load contribution as defined by PJM and its value on the Effective Date will be as set forth on the Facility Attachment or as reported by the applicable Utility (if no value is included in the Facility Attachment).
- ii. "Price" means, during the Initial Term, the unit price specified on the Coversheet or any addenda hereto, and, after expiration of the Initial Term, the market based price determined by Seller in accordance with Section 3 hereof.
- jj. "Regulatory Change" means the introduction of any new, or any change in, Law, rates, charges, Capacity obligations, PLC or NSPL determinants, load profiles, network transmission obligations, demand response programs, resource or fuel adequacy programs, renewable portfolio standards or other renewable energy requirements, Utility or ISO/RTO operations, market structure, congestion zone design, Utility and/or ISO/RTO tariffs, rules or protocols.
- kk. "Remaining Usage" means the electricity supply which would have been provided by Seller under each Terminated Transaction during the remaining term of the Transaction had such Transaction not been terminated, as reasonably determined by Seller.
- ll. "Renewables" means the mix of renewable energy sources that Seller is required by Law to meet under the renewable portfolio, renewable electricity and similar standards or requirements applicable in the state and other jurisdictions in which the Facility is located.
- mm. "Service End Date" means, with respect to each Facility, the meter read date occurring during the month specified on the Facility Attachment or if a meter read date is not scheduled by the Utility during such month, the meter read date occurring immediately thereafter.
- nn. "Service Start Date" means, with respect to each Facility, the date when the applicable Utility has completed all required enrollment processes enabling Seller to start the delivery of electricity to the Facility.
- oo. "Taxes" means all tax, duties, fees, levies, premiums or any other charges of any kind relating to the sale, purchase or delivery of electricity, including gross receipts, sales, consumption, or commercial activity tax.
- pp. "Termination Payment" means, with respect to a Terminated Transaction, (i) the Early Termination Amount (if any) plus (ii) all of Seller's Costs.
- qq. "TPV" means a Seller approved and third party verified recording.
- rr. "Transfer Event" means, with respect to Customer: (A) Customer merges or otherwise consolidates with another entity and the creditworthiness of the merged or consolidated entity (as reasonably determined by Seller) is either (i) inferior to Customer's or (ii) equal to or greater than Customer's but such entity fails to assume in writing all of Customer's obligations under this Agreement; or (B) Customer sells all or substantially all of its assets to another person.
- ss. "Transmission" means network transmission service and enhancement defined in the applicable ISO Open Access Transmission Tariff.

(Copy of fully executed agreement on file with the Commissioners' Office until no longer of administrative value)

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

There being no further business, the meeting adjourned.

Jeff Benton

Barb Lewis

Gary Merrell

Jennifer Walraven, Clerk to the Commissioners