

COMMISSIONERS JOURNAL NO. 47 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 13, 2005

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

Present: Glenn A. Evans, Kristopher W. Jordan, James D. Ward

PUBLIC COMMENT

RESOLUTION NO. 05-808

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 9, 2005 AS CONTAINED IN THE COUNTY’S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the resolutions and records of the proceedings from regular meeting held June 13, 2005 as contained in the county’s official electronic recordings of the proceedings.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-809

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0610:

It was moved by Mr. Evans, seconded by Mr. Ward to approve payment of warrants in batch numbers CMAPR0610, and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO's			
Floyd Browne & Assoc.	Phase I Borings/12 Cell Tower	41111421-5410	\$ 5,708.75
Increases			
Squire, Sanders & Dempsey	Legal Services	10011102-5301	\$ 2,000.00
Scott Scriven & Wahoff	Legal Services	23711630-5301	\$ 10,000.00
Vouchers			
Scott Scriven & Wahoff	Legal Services	23711630-5301	\$ 10,554.43
WM J Shaffer	Ceiling Tile License Agency	40111402-5410	\$ 11,587.00
Rockwood Builders	FY04 Fairground ADA RR	23111709-5365	\$ 35,078.24
Maximus	Software Training Program	40111402-5450	\$ 35,914.04
Memo Transfers			
To:	From:		
Commissioners	Child Support Enforcement	Rent for June 2005	\$ 7,417.02
10011101-4233	23711630-5380		
Commissioners	Child Support Enforcement	Indirect Cost	\$ 5,227.34
10011101-4233	23711630-5380	for June 2005	

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05 -810

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Court of Common Pleas is requesting that Scott Ritter attend a Gang Investigation Seminar in London, Ohio September 20, 2005, at the cost of \$50.00.

The Auditor’s Office is requesting that Kevin Case attend an On-line Network Fundamentals Course July 5-8, 2005, at the cost of \$1,195.00.

The Auditor’s Office is requesting that Kevin Case attend an On-line Window XP Course July 18-22, 2005, at the cost of \$2,095.00.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 05-811

IN THE MATTER OF APPROVING THE TREASURER’S REPORT:

It was moved by Mr. Evans, seconded by Mr. Ward to approve the Treasurer’s Report.

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(Copy available for review at the Commissioner’s office until no longer of administrative value.)

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-812

IN THE MATTER OF APPROVING PLATS FOR MLSM SUBDIVISION AND FOREST TRAIL
SUBDIVISION:

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

MLSM Subdivision

Situated In The State Of Ohio, County Of Delaware, Township Of Concord, Located In Part 4 (South Tier) Of Phillip Slaughter’s Virginia Military Survey No. 1441, Being Part Of A 70.640 Acre Tract Described In Deed To Concord Land, Llc, An Ohio Limited Liability Company, Recorded Official Record Volume 505, Page 2155, All References Being To The Records Of The Recorder’s Office, Delaware County, Ohio. Cost \$9.00.

Forest Trail Subdivision

Situated In The Township Of Harlem, County Of Delaware, State Of Ohio And Being Part Of Farm Lot A, Quarter-Township 2, Township 3, Range 16, Of The United States Military Lands. Being A Subdivision Of 5.005 Acres, Being All Of An Original 5.005 Acre Tract Owned By Timothy J. Loudermilk And Francis J. Rocco As Recorded In Official Records Volume 563, Page 1583 In The Delaware County Recorder’s Office. Cost \$6.00.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-813

IN THE MATTER OF ACCEPTING MAINTENANCE BONDS FOR OLDEFIELD ESTATES AND HARBOR
POINTE SECTION 5:

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

Oldefield Estates

The roadway construction has been completed for the referenced subdivision and, as the results of The Engineer’s recent field review, he has determined that minor remedial work will be required during the 2005 construction season.

In accordance with the Subdivider’s Agreement, The Engineer recommends that the maintenance bond be set at **\$170,570** for the duration of the one year maintenance period. A Bond in that amount is available. He also request approval to return the Bond being held as construction surety to the developer, M/I Schottenstein Homes. A letter authorizing the cancellation of the construction bond is available for your approval.

Harbor Pointe Section 5

The roadway construction has been completed for the referenced subdivision and, as the results of The Engineer’s recent field review, he has determined that minor remedial work will be required during the 2005 construction season.

In accordance with the Subdivider’s Agreement, The Engineer recommends that the maintenance bond be set at **\$57,000** for the duration of the one year maintenance period. A Bond in that amount is available. He also request approval to return the Bond being held as construction surety to the developer, M/I Schottenstein Homes. A letter authorizing the cancellation of the construction bond is available for your approval.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05 -814

IN THE MATTER OF APPROVING THAT ACTION BE TAKEN AGAINST THE BOND OF NEW GREEN
HIGHLANDS DEVELOPMENT FOR CONSTRUCTION OF WOODS OF DORNOCH SECTION 4:

It was moved by Mr. Ward, seconded by Mr. Evans to approve taking action against the bond of New Green Highlands Development:

Woods of Dornoch Section 4

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In November, 2003, your Board entered into an agreement with New Green Highlands Development, the developer for the above referenced project. In September, 2004, a construction punchlist was sent to the developer outlining items that needed to be completed to place the project on the required one-year maintenance period. The Engineer requested that this work be finalized by June 26, 2005. As of this date, they have failed to complete items necessary for that transition. Therefore, The Engineer is requesting approval to take action against the construction surety should they fail to perform the required work by the June 26, 2005 deadline.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 05 -815

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

It was moved by Mr. Evans, seconded by Mr. Ward to approve the following work permits:

Permit #	Applicant	Location	Type of Work
U05090	SBC	Tussic Street Road	Relocate conduit
U05108	Verizon	Concord Road	Placement of telephone cable

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-816

SETTING BID OPENING DATE AND TIME FOR THREE MULTI-PURPOSE DUMP BODIES :

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

NOTICE

Sealed bids will be received by the Delaware County Commissioners at the **office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015** for Three Multi-Purpose Dump Bodies. Said bid shall be based upon pricing per the specifications available at the Office of the Delaware County Engineer. Bids will be received until **10:00 a.m. on Tuesday, July 5, 2005**, at which time said bids shall be opened. An award shall be made at the discretion of the Delaware County Commissioners, and all bidders shall be notified accordingly.

All bids shall meet the General Specifications which may be obtained at the Delaware County Engineer’s Office, 50 Channing Street, Delaware, Ohio 43015. Delivery shall be made within 90 days of bid award.

Bids shall be submitted in a sealed envelope and marked “SEALED BID FOR MULTI-PURPOSE DUMP BODIES”.

This Invitation to Bid is hereby made a part of the specifications. The Delaware County Commissioners reserve the right to reject any and/or all bids.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-817

IN THE MATTER OF ACCEPTING AND AWARDING THE BID AND APPROVING THE CONTRACT WITH SHELLY AND SANDS FOR THE DENT ROAD BRIDGE REPLACEMENTS PROJECT:

It was moved by Mr. Evans, seconded by Mr. Ward to accept the following Bid and approving the following contract:

Dent Road Bridge Replacement Project-Bid Opening of June 8, 2005

As the result of the referenced bid opening, The Engineer recommends that a bid award be made to Shelly and Sands of Columbus, Ohio, the low bidder for the project. A copy of the bid tabulation is available for your information.

CONTRACT

AGREEMENT, made and entered into this 13th day of June 2005, by and between the **DELAWARE COUNTY COMMISSIONERS**, Delaware County, Ohio, and hereinafter designated as **FIRST PARTY**, and **SHELLY AND SANDS**, hereinafter designated as **SECOND PARTY**.

WITNESSETH, that said **SECOND PARTY**, for and in consideration of the sum of **FIVE HUNDRED NINETY-**

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SEVEN THOUSAND FOURTEEN DOLLARS AND SIXTY CENTS (\$597,014.60), based on unit prices on the attached **Bid Blank**, to be paid as hereinafter specified, hereby agrees to furnish unto said **FIRST PARTY**, all the necessary material, labor and equipment required to complete the project known as **DENT ROAD BRIDGE REPLACEMENTS PROJECT**, in accordance with plans, **drawings**, general specifications, Invitation to Bid for same hereto attached; which plans, drawings, general specifications and Invitation to Bid are hereby declared to be a part of this **Contract**.

SAID SECOND PARTY further agrees to furnish said materials and to do the said work and labor promptly, in a good, substantial and workmanship manner, under the direction of the **Delaware County Engineer**. Work is to be completed on or before **November 23, 2005**.

THE SECOND PARTY hereby agrees to hold the **County** free and harmless from any and all claims for damages, costs, expenses, judgments or decrees, resulting from any operations of said **SECOND PARTY**, his sub-contractors, agents or employees.

SECOND PARTY further agrees to pay the **Prevailing Wage Rate** in accordance with **Section 4115 of the Ohio Revised Code** and to furnish the **Delaware County Engineer** a certified copy of the Contractor's payroll. Contractor is also responsible providing any changes in the Prevailing Wage rates as furnished by the Delaware County Engineer during the course of this project to any and all Subcontractors employed by the Contractor.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 05-818

IN THE MATTER OF APPROVING AN ANNUAL MAINTENANCE CONTRACT WITH VERIZON NORTH FOR THE 9-1-1 EMERGENCY TELEPHONE SYSTEM EQUIPMENT:

It was moved by Mr. Ward, seconded by Mr. Evans to adopt the following Resolution:

WHEREAS, the Delaware County CML Technologies Emergency 9-1-1 telephone system was purchased in 1997; and,

WHEREAS, the Board of Commissioners desire to maintain this system in continuous operation to ensure the ability of our residents to request emergency assistance; and

WHEREAS, Verizon installed and has maintained maintenance on this system continually since 1997;

NOW THEREFORE, BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby approve renewing a maintenance contract with Verizon North for continued support of the 9-1-1 Emergency Telephone system for one year at a cost of \$33,179.52.

BE IT FURTHER RESOLVED: That the Board of Commissioners approve the purchase order and voucher for account 21411306, Object Code 5325 in the amount of \$33,179.52.

Agreement

- 1. Scope of Agreement.** Subject to the terms and conditions of this Agreement, Verizon will provide Customer, either directly or in conjunction with such subcontractors as it may select, the equipment, installation services, and/or the maintenance services (hereinafter collectively the "System") as described in this Agreement and as further described in a Statement of Work and any Exhibit attached hereto.
 - 1.1 For Equipment Sale and Installation Services: Verizon will provide and, if applicable, install the equipment as set forth in the applicable quote and the Equipment and Installation Services Exhibit.
 - 1.2 For Maintenance Services: Verizon will provide the maintenance services as set forth in the applicable quote and the Call Center Software Maintenance and Support Exhibit, the EMC Support Services Exhibit, the Maintenance Services Exhibit and/or the Managed Network Solutions Exhibit.
 - 1.3 For Professional Services: Verizon will provide the professional services as set forth in the applicable quote and the Professional Services Exhibit.

All applicable Statements of Work and Exhibits attached hereto are incorporated herein and made a part of this Agreement.

2. Fees and Payment.

2.1 Customer will pay all fees for the System as set forth on Pages 2 and 3 of this Agreement and the applicable quote, subject to additions and deductions made by written Change Order(s). Customer is responsible for

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applicable taxes, shipping, handling, telecommunication surcharges and other charges applicable to the equipment and/or services provided under this Agreement. Customer agrees either to pay to Verizon the amount of all applicable taxes (as determined by tax authorities) or to provide upon execution of this Agreement evidence of exemption acceptable to Verizon.

2.2 Payments are due within thirty (30) days of receipt of the invoice ("Due Date") and any payment not received by the Due Date shall be subject to a late payment charge of the lesser of one and one-half percent (1.5%) per month and the maximum amount allowed by law. Late payment charges will be assessed monthly against the amount due. Should Customer dispute an amount invoiced, Customer shall pay the undisputed portion of that invoice and promptly notify Verizon in writing of the amount and nature of the dispute and the parties shall cooperate to resolve the dispute pursuant to Section 15 of this Agreement. Verizon reserves the right to suspend or terminate any or all Services or terminate the provision, installation or repair of any or all equipment subject to this Agreement immediately if Customer is more than sixty (60) days overdue for payments that have not been disputed in good faith.

2.3 The down payment listed on Page 2 of this Agreement shall be paid at execution of this Agreement. The balance due shall be paid in accordance with the terms of this Section unless otherwise specified in a Statement of Work.

2.4 E-Rate Funding

2.4.1 If Customer seeks E-Rate funding under the federal Universal Service Fund from the Universal Service Administrative Company ("USAC") with respect to the Services and/or equipment provided pursuant to this Agreement, then:

- 2.4.1.1 Customer shall be solely responsible for applying for and securing any E-Rate funding, and for ensuring the accuracy and integrity of all data and information submitted in connection with such application; and
- 2.4.1.2 Verizon shall have no liability arising from any assistance it provides Customer in connection with such application and Customer shall hold Verizon harmless with respect to any such assistance or information provided to Customer.

2.4.2 If for any reason Customer fails to qualify for or secure E-Rate funding or otherwise becomes ineligible for such funding, or if such funding is withdrawn or canceled, or if payment of any Verizon charges is denied by USAC, Customer shall nevertheless be obligated to pay one-hundred percent (100%) of the charges associated with the Services and/or equipment provided pursuant to this Agreement that are not paid to Verizon from E-Rate funding.

3. Term and Termination. This Agreement shall be effective as of the date first set forth above and shall continue in full force and effect until terminated in accordance with this Agreement.

3.1. Either party may, upon written notice, immediately suspend its performance of and/or terminate the affected service or equipment order to which the deficiency pertains in the event the other party (i) fails to perform material terms of this Agreement and (a) such failure is not cured within thirty (30) calendar days following receipt of a default notice in writing from the other party, or (b) if such failure cannot reasonably be cured during that time and the defaulting party fails to use commercially reasonable efforts to cure such breach as soon as practicable, but in any event within ninety (90) calendar days following written notice; (ii) engages in fraud, criminal conduct or willful misconduct in connection with the business relationship of the parties; or (iii) becomes insolvent, ceases doing business in the ordinary course, enters bankruptcy proceedings or effects an assignment for the benefit of creditors. In the event Verizon terminates this Agreement pursuant to this Section 3.1, Customer shall promptly pay Verizon for the System and any services provided up to the date of termination. In the event Customer defaults under this Agreement, Customer's down payment shall be non-refundable.

3.2. Either party may terminate this Agreement or a Statement of Work, in whole or in part, upon thirty (30) days prior written notice to the other party. If this Agreement or a Statement of Work is terminated by Customer pursuant to this Section, or if an order under this Agreement is cancelled by Customer, Verizon shall have no further responsibility under this Agreement, Statement of Work or such order, as applicable, and Customer shall promptly pay Verizon:

- 3.2.1. for all equipment and services provided up to the date of termination or cancellation, as applicable;
- 3.2.2. for all expenses incurred up to the date of termination or cancellation, as applicable, including but not limited to the costs of terminating purchase orders, return of equipment, removal of equipment and other contractual obligations made by Verizon to meet its obligations under this Agreement or Statement of Work, plus a restocking fee of twenty-five percent (25%) of the cost of any equipment cancelled or returned.

3.3. Where multiple Statements of Work are associated with this Agreement, the termination of one or fewer than all of the Statements of Work shall only affect the terminated Statement(s) of Work. The remaining Statement(s) of Work shall remain in effect.

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3.4. Verizon reserves the right to suspend performance under this Agreement or a Statement of Work if required, in Verizon's sole discretion, by regulation, statute, judicial action or other applicable legal requirement.

3.5. Verizon reserves the right to amend the rates, terms and conditions of Service under this Agreement to be effective upon the commencement of any renewal term and without formal amendment of this Agreement by providing Customer written notice thereof prior to the expiration of the then-current term. If Customer is unwilling to accept such amended rates, terms and conditions, Customer shall provide Verizon written notice thereof prior to the expiration of the then-current term, in which event the Service shall terminate upon expiration of the then-current term.

3.6. Termination of this Agreement shall not relieve either party of its respective obligations to comply with all terms of this Agreement that expressly call for performance prior or subsequent to the termination date, including without limitation the parties' respective obligations to protect proprietary and confidential information.

4. Purchase Order. The parties acknowledge that a Customer purchase order or similar document is intended solely to evidence Customer's intention to purchase equipment and/or services set forth therein. Except with respect to a provision in a Customer purchase order or similar document evidencing an intent to be bound by the terms and conditions of an Agreement between Customer and Verizon, the terms and conditions of such Customer purchase order or similar document shall be disregarded and of no force or effect, it being agreed that the terms and conditions of the Agreement between Customer and Verizon shall govern.

5. Leasing Option. Customer may finance the System or any portion thereof in a separate transaction through a third party leasing company ("Lessor") approved by Verizon, may assign its rights and obligations with respect to payment under this Agreement to the Lessor, and/or may cause the Lessor to issue a purchase order in a form acceptable to Verizon. Customer shall have the right to enforce Verizon's obligations under this agreement and shall remain responsible for performance of all of its obligations under this Agreement, including payment in full.

6. Risk of Loss. If Verizon installs the System, risk of loss or damage to the System passes to Customer on delivery of the System (including portions thereof) to Customer's site. If Verizon does not install the System, risk of loss or damage to the System (or portions thereof) passes to Customer upon delivery to the carrier.

7. Title and Security Interest. Until full payment has been rendered, Customer grants Verizon a purchase money security interest in the System, agrees to execute all documents necessary to perfect that interest and, to the extent permitted by law, grants Verizon a special power-of-attorney for the purpose of executing the necessary documents. Upon final payment, title shall pass to Customer and Verizon will release its security interest. Customer will not grant or convey to any other person or entity a security interest in, or permit placement of a lien on, the System unless and until Customer has paid Verizon in full for such System.

8. Software. Software provided in conjunction with the System is licensed to Customer under the license provided by the software publisher or by the equipment manufacturer with which the software is provided. Customer shall, if required, execute a separate software license agreement in a form satisfactory to the software publisher or equipment manufacturer.

9. Customer Responsibilities. Customer will:

9.1. Allow Verizon access for installation, inspection, testing, maintenance and repair of the System and performance of any required activity.

9.2. Provide suitable building facilities for the System in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes.

9.3. Provide necessary heating, cooling, humidity and dust control as required by manufacturer specifications.

9.4. Remove existing equipment or cable that interferes with System installation.

9.5. Identify and disclose to Verizon concealed equipment, wiring or conditions that might be affected by or might affect the installation of the System. Customer shall defend and hold Verizon harmless from any claim, damage or liability resulting from a failure to disclose this information.

9.6. Authorize Verizon, at Customer's expense, to make service requests upon third parties for System interconnection requirements, including obtaining telephone service for testing where necessary.

9.7. Designate trash deposit points on each floor on which the System is to be installed where Verizon will place waste for removal by Customer.

9.8. Cooperate with Verizon's requests for assistance in testing or installation.

9.9. Be responsible for providing adequate back-up of data and for restoring data to repaired equipment.

9.10. If the System is to be connected to the public network, be solely responsible for selection, implementation and maintenance of security features for defense against unauthorized long distance calling, and for payment of long distance, toll and other telecommunications charges incurred through use of the

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System.

9.11. Immediately notify Verizon of any anticipated delay in building availability or inability to meet any of the above listed requirements.

10. Changes In/Additions to System.

10.1 Customer may order additional equipment, installation and/or maintenance services pursuant to a written Amendment, Customer purchase order or similar document, and such order shall be governed by this Agreement, including without limitation Section 4, and shall reference this Agreement.

10.2 Customer shall also have the right, by written notice, to propose changes in the System under this Agreement and any Statement of Work ("Change Orders") and Verizon shall comply to the extent it deems feasible and reasonable. If Verizon determines that such changes cause an increase or decrease in the cost of or time required for performance, Verizon shall advise Customer and such adjustments shall be reflected in a written Change Order. Should Verizon encounter, in installing the System, any concealed or unknown condition not expressly set forth in the applicable Statement of Work, which condition affects the price or schedule for installation of the System, the price and/or the schedule shall be equitably adjusted by Change Order to cover all costs, including but not limited to labor, equipment, materials and tools necessary to carry out the change.

10.3 No Change Order shall become effective as a part of this Agreement and the applicable Statement of Work, and no changes in the System shall be initiated, until the Change Order is mutually agreed upon in writing. Verizon shall not be obligated to consider or accept any Change Order that results in a decrease of more than twenty percent (20%) in the total price of the System. Verizon may also propose changes in or additions to the System, and may proceed with such changes upon execution by Customer and Verizon of a written Change Order.

11. Warranty. Verizon warrants that it will perform the services provided under this Agreement in a good and workmanlike manner. Unless otherwise set forth in an Exhibit, all manufacturers' warranties for equipment provided hereunder are passed through to Customer and warranty claims shall be presented by Customer directly to the manufacturer.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES FROM VERIZON, UNLESS OTHERWISE STATED IN AN EXHIBIT. OTHERWISE VERIZON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. VERIZON SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO VERIZON'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. VERIZON MAKES NO WARRANTY FOR USE OF THE SYSTEM AS A COMPONENT IN LIFE SUPPORT SYSTEMS OR DEVICES, PUBLIC SAFETY SYSTEMS, OR WITH RESPECT TO THE PERFORMANCE OF ANY SOFTWARE OR FIRMWARE.

12. Limitation of Liability. EXCEPT FOR PAYMENTS OWED UNDER THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING A PARTY'S NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, LOST PROFITS (ACTUAL OR ANTICIPATED), UNAVAILABILITY OF ALL OR PART OF THE SYSTEM, OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 13, VERIZON'S ENTIRE LIABILITY FOR ANY OTHER DAMAGE WHICH MAY ARISE HEREUNDER, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING VERIZON'S NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO THE PURCHASE PRICE OF THE EQUIPMENT OR SERVICES GIVING RISE TO THE CLAIM. VERIZON SHALL BEAR NO LIABILITY FOR USE OF EQUIPMENT OR SERVICES PROVIDED UNDER THIS AGREEMENT IN CONNECTION WITH LIFE SUPPORT SYSTEMS OR DEVICES OR PUBLIC SAFETY SYSTEMS. IN ADDITION, VERIZON SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY OR COMPATIBILITY OF THE SYSTEM WITH THIRD-PARTY PRODUCTS OR SYSTEMS THAT CUSTOMER MAY UTILIZE IN CONJUNCTION WITH THE SYSTEM OR TO WHICH CUSTOMER MAY CONNECT THE SYSTEM.

13. Indemnification.

13.1 Except as provided below, Verizon will defend, indemnify and hold harmless Customer against any suit,

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action or proceeding ("Claim") alleging that equipment supplied to Customer by Verizon hereunder infringes a valid U.S. patent or copyright, except as provided below, and Verizon agrees to pay all reasonable litigation and settlement costs and attorney's fees incurred by Customer in connection with any such Claim. If the use of any equipment supplied to Customer by Verizon hereunder is enjoined or subject to a Claim as described above, Verizon may, at its option and expense, procure for Customer the right to use the equipment or relevant component, replace the equipment or relevant component with an equivalent, non-infringing equipment or relevant component, or modify the equipment or relevant component so that it becomes non-infringing. In the event that none of the foregoing options is commercially reasonable, Verizon will remove the infringing equipment and refund the purchase price for the equipment less depreciation for such use. Depreciation shall be calculated on a straight-line basis, assuming a useful life of five (5) years. Verizon shall have no obligation (a) for any costs, fees or expenses incurred by Customer without Verizon's prior written consent, (b) with respect to any Claim arising out of "music on hold" or similar service, or (c) for any indirect, special, consequential or incidental damages arising out of any Claim. This indemnity shall not apply to any Claim, or portion thereof that arises from (i) any negligent or willful act or omission by or attributable to Customer; (ii) use or operation of the equipment supplied to Customer by Verizon pursuant to this Agreement in combination with equipment or services not supplied to Customer by Verizon under this Agreement; (iii) any addition to or modification of the equipment supplied to Customer by Verizon hereunder by Customer or its other contractors; (iv) use of other than the current unaltered release of any software used in the equipment; or (v) any equipment, system, product or service of Customer which otherwise infringed the U.S. patent or copyright asserted against Customer prior to the supply of the equipment to Customer by Verizon under the Agreement. The foregoing states the entire obligation of Verizon to Customer and is Customer's sole and exclusive remedy with respect to any claim of infringement of any intellectual property right of any kind, and Verizon disclaims all other warranties and obligations with respect to any such Claims.

13.2

13.3 Verizon shall defend, indemnify, and hold harmless the Customer against all claims and liabilities for direct damages imposed on the Customer for bodily injuries, including death, and for damages to real or tangible personal property to the extent caused by the negligent or otherwise tortious acts or omissions of Verizon, its agents or employees in the course of performance of this Agreement.

13.4 Katz Patents. Notwithstanding anything in this Agreement to the contrary, Verizon and its subsidiaries shall not be liable to Customer or indemnify Customer for any allegation, assertion, or claims of patent infringement, including contributory infringement or inducement to infringe, of any patents either owned, assigned, or licensable now or hereafter by Ronald A. Katz or Ronald A. Katz Technology Licensing, L.P. or by his or its successors or assigns, or on which Ronald A. Katz is listed as an inventor ("Katz Patents").

Customer releases Verizon and its subsidiaries and its and their employees, officers, and directors from any and all liability for all allegations, assertions, claims, losses and damages (whether stated in contract or tort, including but not limited to all claims for patent and copyright infringement) arising from, in connection with, related to, or as a result of any claim of infringement, including contributory infringement or inducement to infringe, of any Katz Patents related to equipment and/or services provided by Verizon to Customer under this Agreement, whether alone or in combination with other devices, products, software, services and/or materials whether provided by Customer, Verizon, or others.

Verizon shall not be responsible for determining whether Customer requires a license to any Katz Patents, obtaining any such license on their behalf, or paying any fees relating to any such licenses.

To the extent there is any contradiction in terms as between this sub-section and any other (sub-)section of this Agreement, the terms of this sub-section shall take precedence

13.5 The indemnification obligations set forth in this Section 13 are contingent upon (1) the indemnitee providing the indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification, (2) the indemnitee granting the indemnitor the right to control the defense of the same, and (3) the indemnitee's full cooperation with the indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein, however, shall restrict the indemnitee from participating in the defense of the claim, demand, and/or cause of action at its own cost and expense with counsel of its own choosing. No settlement may be entered into by the indemnitor on behalf of the indemnitee that includes obligations to be performed by the indemnitee (other than payment of money that will be fully paid by the indemnitor under Sections 13.1- 13.3 above) without indemnitee's prior written approval.

14. Confidentiality. Except as required by law or regulation, each party (the "receiving party") shall keep confidential and not disclose, directly or indirectly, to any third party any Confidential Information, as defined below, received from the other party (the "disclosing party") without the prior written consent of a duly authorized officer of the disclosing party. The disclosing party shall conspicuously mark its tangible Confidential Information as Proprietary or Confidential at the time of disclosure to the receiving party. Confidential Information that is disclosed orally will be identified by the disclosing party as Confidential Information at the time of disclosure to the receiving party. Each party shall use, copy and disclose the Confidential Information of the disclosing party solely for purposes of performing this Agreement. All

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Confidential Information of a party shall be and shall remain the property of such party. A party shall deliver to the disclosing party, upon written request by the disclosing party, all Confidential Information of the disclosing party then in the receiving party's possession or control, directly or indirectly, in whatever form it may be (including, without limitation, magnetic media) or certify its destruction to the disclosing party. Each party shall take all necessary and reasonable action, by instruction, agreement or otherwise, with its employees, consultants, subcontractors, affiliates, and representatives to satisfy its obligations hereunder. The receiving party's obligations hereunder with respect to confidentiality, non-disclosure and limitation of use of Confidential Information shall be for the term of the Agreement plus one (1) year. For purposes of this provision, a third party shall not include an entity which has a need to know the Confidential Information and which owns, is owned by, or is under common ownership with a party to this Agreement.

14.1 Nothing in this Agreement shall prevent either party from using or disclosing any Confidential Information that: (i) has become generally available to the public, other than through any improper action of such party, (ii) is already in the possession of the receiving party and not subject to an existing agreement of confidence between the parties, (iii) is received from a third party without restriction and without breach of this Agreement, (iv) is independently developed by the receiving party as evidenced by its records, or (v) is disclosed pursuant to a valid law, rule, regulation, subpoena, demand, or order of a court or other governmental body or any political subdivision thereof of competent jurisdiction (collectively "demand"); provided, however, that the receiving party shall first have given notice to the disclosing party (unless prohibited by the terms of such request or requirement or such notice is otherwise prohibited by law) about the demand in order to permit the disclosing party to seek reasonable protective arrangements.

14.2 For purposes of this Agreement, the term "Confidential Information" shall include, without limitation, all trade secrets of a party and all other information and material that relates or refers to the plans, policies, finances, corporate developments, products, pricing, sales, services, procedures, intra-corporate transactions, suppliers, prospects and customers of a party, as well as financial information relating to such suppliers, prospects and customers, and any other similar confidentiality information and material which such party does not make generally available to the public. By way of illustration, but not limitation, Confidential Information includes all computer software (including object code and source code), computer software and data base technologies, systems, structures and architectures, and the processes, formulae, compositions, improvements, inventions, discoveries, concepts, ideas, designs, methods and information developed, acquired, owned, produced, or practiced at any time by a party, and all non-public information relating to the business of such party.

15. Alternate Dispute Resolution (ADR). Any controversy, claim, or dispute ("Disputed Claim") arising out of or relating to this Agreement, except for claims relating to indemnity, infringement, or confidentiality obligations or matters relating to injunctions or other equitable relief (together "Equitable Claims"), shall be first subject to a thirty (30) day negotiation period between the parties in which each party shall disclose to the other party all such documents, facts, statements and any other information which are reasonably requested by the other party and are relevant to the dispute in question. Should such negotiations fail to resolve the dispute within thirty (30) calendar days, Disputed Claims shall be resolved by binding arbitration of a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be based upon this Agreement and applicable law. The decision of the arbitrator shall be reduced to writing, shall be final and binding except for fraud, misconduct, or errors of law, and judgment upon the decision rendered may be entered in any court having jurisdiction thereof. In all arbitrations, the arbitrator must give effect to applicable statutes of limitation subject to limitation of actions terms set forth in this Agreement, and shall not be afforded any authority to award relief in excess of what this Agreement provides or to order consolidation or class arbitrations. The arbitrator shall have no authority to award punitive damages in any Disputed Claim. The parties agree that any such claims arising under this Agreement must be pursued on an individual basis in accordance with the procedure noted above. Even if applicable law permits class actions or class arbitrations, the ADR procedure agreed to herein applies and the parties waive any rights to pursue any claim arising under this Agreement on a class basis. The arbitration shall be held in a mutually agreed to location, and shall be final and binding on both parties. Each party will bear its own costs of arbitration but shall split equally the fees of the arbitration and the arbitrator.

16. Hazardous Substances. Except as disclosed to and acknowledged in writing by Verizon, Customer certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Verizon is to perform services under this Agreement. If during such performance Verizon employees or agents encounter any such substance, Customer agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lowest exposure limit for the protection of workers. Verizon may suspend performance under this Agreement until the removal or containment has been completed and approved by the appropriate governmental agency and Verizon. Performance obligations under this Agreement shall be extended for the period of delay caused by said cleanup or removal. Customer's failure to remove or contain hazardous substances shall entitle Verizon to terminate this Agreement without further liability, in which event Customer shall permit Verizon to remove any equipment that has not been accepted, shall reimburse Verizon for expenses incurred in performing this Agreement until termination (including but not limited to expenses associated with

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such termination, such as removing equipment, terminating leases, demobilization, etc.), and shall complete payment for any portion of the System that has been accepted.

17. Force Majeure. Neither party shall be liable for any delay or failure in performance under this Agreement arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, fire, flood, explosion, riot, embargo, acts of the Government in its sovereign capacity, labor disputes, unavailability of equipment or parts from vendors, or changes requested by Customer. The affected party shall provide prompt notice to the other party and shall be excused from performance to the extent of such caused delays or failures, provided that the party so affected shall use reasonable efforts to remove such causes of such delays or failures and both parties shall proceed whenever such causes are removed or cease. If performance of either party is prevented or delayed by circumstances as described in this section for more than ninety (90) days, either party may terminate the affected Service or Statement of Work. Notwithstanding the foregoing, Customer shall not be relieved of its obligation to make any payments, including any late payment charges as provided in Section 2.2, above, that are due to Verizon hereunder.

18. Assignment. Neither party may, without the prior written consent of the other party, assign or transfer its rights or obligations under this Agreement; consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Verizon may, without prior notice, assign this Agreement, in whole or in part, to any Verizon affiliate or to any successor entity upon the merger, reorganization, consolidation or sale of all or substantially all of Verizon's assets associated with the equipment or Services provided pursuant to this Agreement. For purposes of this Section, "affiliate" shall mean a person or entity that directly or indirectly controls, is controlled by, or is under common control with Verizon. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect.

19. Governing Law. This Agreement shall be governed by the substantive laws of the State of Ohio, without regard to its choice of law principles. Any actions filed under, or related to, or pursuant to this Agreement shall be filed in the Courts of Delaware County, Ohio.

20. Non-Waiver/Severability. Either party's failure to enforce any of the provisions of this Agreement or to exercise any right or option is not a waiver of any such provision, right, or option, and shall not affect the validity of this Agreement. Any waiver must be written and signed by the parties. If any provision of this Agreement or the provision of any Service or equipment under the terms hereof is held to be illegal, invalid, or otherwise prohibited under applicable law or regulation in any State or jurisdiction, then this Agreement shall be construed as if not containing such provision or not requiring the provision of such invalid, illegal, or prohibited Service or equipment in such State or jurisdiction.

21. Publicity. Except as required by law, the parties shall keep this Agreement confidential and shall not disclose this Agreement or any of its terms without the other party's written consent. Neither party shall use any trademark, trade name, trade dress or any name, picture or logo which is commonly identified with the other party or its affiliates, or from which any association with such party or its affiliates may be inferred or implied, in any manner, including but not limited to advertising, sales promotions, press releases or otherwise, without the prior written permission of such party. Notwithstanding any contrary term in this Agreement, the parties may issue or permit issuance of a press release or other public statement concerning this Agreement.

22. Notices. All notices or other communication given or required by either party to the other under this Agreement shall be deemed to have been properly given if hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile with confirmation of receipt or by overnight courier. Such notices and communications shall be deemed effective upon receipt. If to Verizon, notices should be sent to Verizon National Contract Repository, 700 Hidden Ridge, MC:HQW02L25, Irving, TX 75038, and if to Customer to the address specified on the cover sheet. Such address may be changed by either party by notice sent in accordance with this Section.

23. Limitation of Actions. A party may bring no action or demand for arbitration arising out of this Agreement more than two (2) years after the cause of action has accrued. The parties waive the right to invoke any different limitation on the bringing of actions under state law.

24. Independent Contractor Relationship; No Agency. Each party understands and agrees that it and its personnel are not agents or employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Each party shall be responsible for compliance with all laws, rules and regulations including, but not limited to employment, hours of labor, working conditions, workers' compensation, payment of wages, and payment of taxes associated with its performance under this Agreement. Each party shall hold harmless and defend the other against any liabilities, claims, losses and damages (including costs, expenses and reasonable attorneys' fees) arising out of its failure to comply with any such laws, rules or regulations.

25. Interpretation. The Agreement shall not be construed or interpreted for or against any party hereto because that party drafted or caused that party's legal representative to draft any of its provisions.

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26. **Headings.** The Section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Agreement.

27. **Modifications.** This Agreement may only be amended, changed, waived or modified in a written document that is signed by both parties.

28. **Entire Agreement.** This Agreement, together with any Statement of Work hereunder and any Exhibit hereto, constitutes the entire agreement between the parties pertaining to the subject matter herein and supercedes all prior oral and written proposals, correspondence and memoranda with respect thereto, and no representations, warranties, agreements or covenants, express or implied, of any kind or character whatsoever with respect to such subject matter have been made by either party to the other, except as expressly set forth in this Agreement. In the event of a conflict between this Agreement, a Statement of Work or an Exhibit, this Agreement shall prevail.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-819

IN THE MATTER OF ACCEPTING RECOMMENDATIONS FROM THE THREAT, RISK, NEEDS
COMMITTEE FOR EXPENDITURES OF THE FY05 STATE HOMELAND SECURITY GRANT:

It was moved by Mr. Ward, seconded by Mr. Evans to adopt the following Resolution:

WHEREAS, the Board of Commissioners approved the acceptance of the FY05 State Homeland Security grant for \$306,960.00, and;

WHEREAS, these grant funds will provide public safety forces throughout the County the ability to better mitigate, plan, respond and recover from a Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) Incident, and;

WHEREAS, the Threat, Risk, Needs (TRN) Committee recommends to the Board that these funds be used to extend the employment of a “grants coordinator” within the Office of Homeland Security and Emergency Management, purchase an armored tactical vehicle for the Delaware Tactical Unit (DTU), purchase additional Personal Protective Equipment and communications equipment for the Countywide 800 MHz Radio system, and;

WHEREAS, these Federal funds were identified following the Terrorist events of “9/11” specifically for use at the local level;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners approve the recommendation by the TRN Committee to expend these grant funds as indicated for the purpose of improving the overall response capability within the County to CBRNE incidents.

BE IT FURTHER RESOLVED: That the Board of County Commissioners approve the appropriation of these funds and rename Account 21511312 to FY05 SHSG as follows:

Account 21511312	-	5001 - \$ 27,636.40
		5102 - \$ 276.36
		5120 - \$ 3,744.73
		5131 - \$ 400.73
		5201 - \$ 1,791.78
		5238 - \$ 1,750.00
		5260 - \$ 85,210.00
		5450 - <u>\$186,150.00</u>
	TOTAL:	\$306,960.00

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-820

IN THE MATTER OF APPROVING A GRANT APPLICATION FOR A BYRNE MEMORIAL GRANT FOR
JUVENILE DRUG COURT:

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

Grant # 200-C01-JG-T133

Source: Byrne Memorial Grant/Office of Criminal Justice Services
Grant Period: January 1, 2006 to December 31, 2006

Grant Request Amount: \$ 88,211.00

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Local Match:	\$ 29,404.00
Total Grant Amount:	\$117,614.00

The Byrne Memorial Grant Program funds the Juvenile Drug Court Initiative in Delaware County. The Juvenile Drug Court Initiative is aimed at reducing recidivism by substance abusing offenders while increasing their educational achievement and employability. The project provides for one fully funded full-time Drug Court Clinician to provide assessment and counseling to Drug Court participants and their families. The project also provides for a partially funded full-time Drug Court Probation Officer who monitors probation and treatment compliance. The grant also partially funds the Drug Court Coordinator position.

The local match funding comes from Department of Youth Services Subsidy. General Fund dollars are not required to provide the matching funds for this grant. All staff members paid from this grant are informed that their positions are grant funded and that continued employment is contingent upon continued grant funding.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-821

IN THE MATTER OF APPROVING A GRANT APPLICATION FOR A BYRNE MEMORIAL GRANT FOR A JUVENILE COURT DIVERSION PROGRAM:

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

Grant # 2005-C01-JG-T1330	
Source:	Byrne Memorial Grant/Office of Criminal Justice Services
Grant Period:	January 1, 2006 to December 31, 2006
Grant Request Amount:	\$108,220.00
Local Match:	\$ 36,074.00
Total Grant Amount:	\$144,293.00

The Byrne Memorial Grant Program funds the Delaware County Juvenile Diversion Program. The primary goal of the Delaware County Juvenile Diversion Program is to prevent first-time misdemeanor and status offenders from committing a subsequent offense. The secondary goal of this program is to prevent first-time misdemeanor and status offenders from spending time in detention or on probation. The project provides for one fully funded full-time Diversion Officers who is responsible for the direct supervision of youth that participate in the program. The project also provides for a fully funded full-time Diversion Clinician who conducts education groups and completes assessment tools. Additionally, the grant fully funds one part-time Community Service Specialist who is responsible for the development and oversight of a community service program specifically tailored to Diversion eligible juveniles. Finally, the grant partially funds a School Liaison who addresses truancy and other school related behavior issues.

The local match funding comes from Department of Youth Services Subsidy. General Fund dollars are not required to provide the matching funds for this grant. All staff members paid from this grant are informed that their positions are grant funded and that continued employment is contingent upon continued grant funding.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-822

IN THE MATTER OF APPROVING A GRANT APPLICATION FOR A FEDERAL TITLE II FORMULA GRANT FOR JUVENILE COURT TREATMENT COURT:

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

Grant # 2005-JJ-DA1-0065	
Source:	Title II Formula Grant/Ohio Department of Youth Services
Grant Period:	January 1, 2006 to December 31, 2006
Grant Request Amount:	\$20,659.20
Local Match:	\$ 0.00
Total Grant Amount:	\$20,659.20

Funds for the Federal Title II Formula Grant Program are provided through the Ohio Department of Youth Services and the Governor’s Council on Juvenile Justice. This grant funds a portion of the Juvenile Treatment Court Magistrate and Family Advocate Services for the families of youth involved in the Juvenile Court.

The Delaware County Juvenile Treatment Court intervenes with juvenile offenders whose involvement with the criminal justice system is the result of substance abuse and/or mental health issues. The goal of the Juvenile

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Treatment Court is to rehabilitate juvenile offenders with substance abuse and/or mental health issues by increasing accountability and providing treatment services. The desired outcomes are: the reduction of criminal activity in the community and a lower incidence of out-of-home placements and DYS commitments for youth with substance abuse and mental health issues.

No local match funding is required. General Fund dollars are not required to provide matching funds for this grant. All staff members paid from this grant are informed that their positions are grant funded and that continued employment is contingent upon continued grant funding.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 05-823

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

Gina Alexander’s start date as an Income Maintenance Worker III, with the Department of Job and Family Services, has been changed to June 20, 2005.

Sandy Lewis will be working as an Interim Appointment Clerk with the Code Compliance Department; effective date June 13, 2005.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-824

IN THE MATTER OF APPROVING THE SANITARY SUBDIVIDER’S AGREEMENT FOR DELAWARE TREATMENT FACILITIES :

It was moved by Mr. Ward, seconded by Mr. Evans to accept the following Sanitary Subdivider’s Agreement:

SUBDIVIDER AGREEMENT
SEWER TAP RETENTION AGREEMENT

This Agreement executed this 13th day of June, 2005, by and between DELAWARE TREATMENT FACILITIES, LLC, an Ohio limited liability company with an address of 470 Olde Worthington Road, Suite 100, Westerville, Ohio 43082 (hereinafter “Developer”) and the DELAWARE COUNTY BOARD OF COMMISSIONERS, 101 North Sandusky Street, Delaware, Ohio 43015, a political subdivision duly organized and validly existing under and by virtue of the laws of the State of Ohio (hereinafter the “County”).

RECITALS:

WHEREAS, the Developer has plans to develop certain areas within Delaware County;

WHEREAS, the Developer needs these areas within Delaware County to be served by centralized sewer;

WHEREAS, the Developer is willing to acquire and convey to the County the real property necessary for the construction of a new lift station, to upgrade an existing lift station and the extension of two force mains;

WHEREAS, the Developer intends to acquire, improve, lease or sell real property in the County to be served by such sewer facilities;

WHEREAS, the Developer is willing to construct such sewer facilities in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, the Developer is willing to convey ownership of such sewer facilities, in accordance with the terms and conditions set forth in this Agreement, to the County; and

WHEREAS, for good and valuable consideration, the receipt of which are hereby mutually acknowledged, the Developer will retain a certain number of single family equivalent sanitary sewer capacity for the conveyance of said sewer facilities;

NOW THEREFORE, the County and the Developer agree to the terms and conditions of the Agreement as follows:

SECTION I
SCOPE OF WORK

Developer agrees to prepare the drawings, plans, specifications, shop drawings, samples, product submittals and

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selection of contractors and subcontractors (collectively, the “Design Plans”) for the construction of a lift station at Alum Creek (1,700 gallons per minute) and the construction of approximately 28,000 feet of 16” force main to the Peachblow lift station (to be upgraded to 3,000 gallons per minute) and approximately 23,000 feet of 24” force main to the Walker Woods Wastewater Treatment Plant (collectively, the “Improvements”). The Design Plans will be incorporated into this Agreement as Addendum A when approved by the County. The Improvements will serve the area mutually agreed upon by the parties and described in Addendum B that is attached hereto (the “Service Area”). The Developer also will complete construction of the new lift station and force mains and upgrade the existing Peachblow station.

**SECTION II
COMMENCEMENT AND COMPLETION OF WORK**

A condition precedent to this Agreement is the approval by the County of the design professionals and Design Plans. The Developer may begin construction only after acceptance of the Design Plans by the County. The Developer further agrees not to change the Design Plans after acceptance without the prior written approval of the County. If Addendum A is not executed within one year after execution of this Agreement, this Agreement and any Addendum shall become null and void, unless extended by written mutual agreement. If Addendum B is not executed within thirty days after execution of this Agreement, this Agreement and any Addendum shall become null and void, unless extended by written mutual agreement. If the parties are unable to obtain the necessary regulatory approvals and permits for the Improvements, this Agreement and any Addendum shall become null and void, unless extended by mutual written agreement. The Developer waives any and all claims that it may have against the County if the Addendums are not executed or the parties cannot obtain the necessary regulator approvals and permits.

The Developer will complete the Improvements within four (4) years from the date of acceptance by the County of the Addendum A to this Agreement. An extension of the time for completion of the work may be given to the Developer by the County, so long as the Developer has used its best efforts in completing construction as set forth in this Agreement. The Developer or County will not be in breach of this Agreement in the event of delays caused by Force Majeure, including but not limited to Acts of Gods or other circumstances not reasonably within the control of the Developer or the County.

**SECTION III
CONSTRUCTION AND MAINTENANCE BONDS**

The Developer will execute a bond, certified check, irrevocable letter of credit or other approved financial warranty in a form acceptable to the County equal to the estimated cost of construction of the Improvements to insure faithful performance of this Agreement. Such bond shall expire upon the completion by the Developer, and acceptance by the County, of the Improvements.

Within thirty (30) days following completion of construction, and prior to the conveyance and dedication contemplated by Section XI of this Agreement, the Developer will furnish to the County a two (2) year maintenance bond, or other approved financial warranties, equal to ten (10) percent of the total construction cost.

**SECTION IV
LOCATION AND EASEMENTS**

The Developer (on behalf of the County) or the County shall purchase or enter into a mutually agreeable lease or purchase for all land and obtain all easements and rights-of-way necessary to complete construction of the Improvements and shall immediately convey such land, easements and rights-of-way to the County. The County will approve the form of deed of lease, easement or right-of-way and will be named grantee therein. If the Developer is unable to obtain such land, easements or rights-of-way, the County may utilize its power of eminent domain to acquire said land, easements and rights-of-way for the construction of the Improvements including any easements necessary for force main extensions or for the completion of the Improvements. When the deed is recorded after acquisition by the County, the County will grant a license to the Developer so that it may complete the Improvements. The Developer will be responsible for the purchase price for any acquisition of land, easements or rights-of-way by the County and for any and all related fees or costs directly related to the Improvements, which are incurred by the County, including transfer and legal fees.

**SECTION V
INTENTIONALLY LEFT BLANK**

**SECTION VI
COMPLIANCE WITH LAWS**

Developer shall abide by all legal restrictions and obligations of the locality where the work is located, and any federal, state, county regulation or law applicable to the performance of its obligations under this Agreement, including, but not limited to, any Prevailing Wage Laws. During construction, the Developer shall comply will all rules and regulations of the Sanitary Engineer and shall conform to all procedures established by the County

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regarding submission of shop drawings, product submittals, construction schedules, inspections and other matters incident thereto.

The Developer shall give all notices and shall solely and without qualification be responsible for all construction methods and results, use of equipment and personnel, safety of employees, officers and other persons, protection of public and private property, and compliance with all federal, state and local laws applicable to the performance of any obligation under this Agreement. The County is not responsible for monitoring the Developer's compliance with any laws and regulations.

**SECTION VII
UTILITIES**

Developer shall, at its expense, obtain all necessary utility services incident to the construction and continued operation of the Improvements. The County may direct the Developer to purchase any equipment related to the utility services that it deems necessary and appropriate, and the Developer will convey and dedicate such equipment pursuant to Section XI of this Agreement. If the County believes that it can obtain more favorable utility rates than those obtained by the Developer, the County will obtain all necessary utility services and the Developer will reimburse the County for any utility user charges through construction until the County accepts dedication of the Improvements for operation and maintenance. The utility user charges shall be paid by Developer throughout construction until the County accepts dedication of the Improvements for operation and maintenance. Developer shall not be responsible for user charges for such utility services provided after acceptance of the dedication by the County.

**SECTION VIII
ENGINEER AND COUNTY INSPECTIONS AND QUALITY CONTROL**

The Developer shall have a competent representative, as determined by the County, who is familiar with the project on site during construction. The representative shall be capable of reading the approved Design Plans. The Developer shall give the County timely notice of readiness of the Improvements for inspections, tests or approvals. The County and its representatives have complete access to the construction site at all times prior to dedication and conveyance and may require the Developer to perform any inspections, tests or approvals they deem necessary during construction and at any time prior to dedication and conveyance.

The County shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding the County against work by the Developer that does not conform to the requirements of this Agreement. At any time, if the County determines that construction is not proceeding pursuant to the Design Plans, it may provide verbal or written notice that construction be stopped until the Developer repairs or modifies any portion of the Improvements not acceptable to the County. The County may, within seven day's verbal or written notice to the Contractor, correct and remedy any deficiency in construction. To the extent necessary to complete corrective and remedial action, the County may exclude the Developer and its contractors and subcontractors, from the construction site, take possession of any tools, appliances, construction equipment and machinery at the construction site and incorporate in the work any materials and equipment stored at the site or elsewhere. In the event the County exercises the rights and remedies specified in this section, the County will be entitled to an appropriate decrease in sewer tap credits and unlimited remedies, including any direct, indirect and consequential cost of the County relating to exercising its rights and remedies hereunder.

**SECTION IX
FEES AND TAXES**

The Developer is responsible for all construction permits and licenses required to build the Improvements and will pay all taxes and charges necessary to build the Improvements. With respect to inspection fees, upon execution of this Agreement, the Developer shall deposit with the County the sum of \$240,000.00 estimated to be necessary to pay the cost of inspection by the County of the Improvements. The County shall in its sole discretion inspect, as necessary, the Improvements being installed or constructed by the Developer and shall keep accurate records of the time spent by its employees and agents in such inspections for which the County shall be reimbursed from charges against said deposit. At such time as said fund has been depleted, as a result of charges against the same at the rate of \$60.00 per hour for time spent by the County or its staff, the Developer shall make an additional deposit to said fund to cover the discrepancy. On completion of all Improvements provided herein and acceptance of the same by the County, any unused portions of the inspection fund shall be repaid to the Developer less an amount equal to \$0.75 per foot of sewer line which will be deducted to cover a reinspection.

**SECTION X
LIABILITY AND INDEMNIFICATION**

From the execution of this Agreement until conveyance and dedication of the Improvements to the County, the Developer will properly safeguard against any or all damages or injury to the public and to any contractor, subcontractor, officer, employee or agent of the Developer and shall be responsible for any damage or injury arising from or relating to its performance under this Agreement. Developer shall indemnify and save harmless the County and its officials, employees or agents from all claims, suits, actions and proceedings for damages,

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including consequential and incidental damages to persons or property, costs, expenses and attorneys' fees that arise from or are sustained during the construction of the Improvements as a consequences of any action or omission of the County or the Developer, or any contractor, subcontractor, officer, employee or agent of Developer or from any material, method or explosives used by Developer in the completion of said construction.

Further, the Developer shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.

Further, the Developer shall assign any claims that it has against any of its contractors relating to their performance and work product to the County, provided that Developer shall not be prohibited from pursuing its own claims against any of its contractors relating to their performance and work product..

Except for the consideration to be provided to the Developer hereunder, the County will not have any obligation to pay or cause payment to any contractor, subcontractor, supplier or any other persons or organizations furnishing or performing work in connection with the Improvements.

**SECTION XI
CONVEYANCE AND DEDICATION**

Immediately following completion of construction, Developer shall convey and dedicate the Design Plans and the Improvements, including any and all real or personal property, rights, easements, privileges, and appurtenances comprised therein, to the County, free of any and all liens, mortgages, claims and encumbrances thereto. Upon certification in writing from Developer and the County that all construction is completed in accordance with the Design Plans, and final inspection by the County, the County shall, by Resolution, accept such dedication and shall thereafter assume all responsibility for the operation and the maintenance of the Improvements. The County shall be responsible for damages to person or property sustained as a consequence of any action or omission of the County, its officers, contractors, employees or agents or as a consequence of the negligence of the County, its officers, contractors, employees or agents in the operation and management of the Improvements following the acceptance of the dedication.

**SECTION XII
WARRANTY**

Developer, for a period of two (2) years after conveyance and dedication of each phase of the Improvements by the County as set forth in Section XI herein, shall be responsible for defective materials and workmanship. All materials used in construction of the Improvements will be of good quality and new, unless specifically provided in the plans, specifications, shop drawings and product submittals. All warranties for equipment installed as part of the construction shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the dedication. Upon conveyance and dedication, the Developer will assign any warranties that it has received in connection with construction to the County.

**SECTION XIII
REIMBURSEMENT THROUGH SEWER CAPACITY RETENTION**

As reimbursement for Developer's conveyance of the Improvements to the County, following dedication and conveyance, the County and the Developer agree that the Developer will retain 2,200 single-family sewer taps within the Delaware County sewer district. For a period of five years after acceptance of the dedication of the Improvements by the County, the Developer may use or sell 2,200 taps in the Delaware County Sewer District provided that no more than 440 taps may be used or sold by the Developer in any one year during the five-year period. After the five-year period, should the Developer fail to sell or use the 2,200 taps, the Developer shall have an additional two years beyond the initial five-year period to sell the remaining taps. If any taps remain at the expiration of the aforementioned additional two-year period, all remaining taps shall revert to the County.

**SECTION XIV
ADDENDUM**

Execution of the Addendum to this Agreement will obligate the Developer to construct the Improvements in accordance with the Design Plans submitted to and approved by the County and as set forth in this Agreement. Except as provided herein, the County and the Developer further agree not to change the Design Plans after the execution of the Addendum, without the written mutual agreement of the County and the Developer. The County agrees that the Developer will not be responsible for any changes required by the County to the Design Plans that exceed, in the aggregate, five percent (5%) of the total costs of the Improvements.

**SECTION XV
BREACH**

Developer agrees that any violations of or noncompliance with any of the provisions and stipulations of this

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Agreement or any Addendums hereto shall constitute a breach of the contract and the County shall have the right to stop work forthwith and act against the performance bond for the purpose of proper completion of the Improvements, in addition to any other remedy available at law or equity.

County agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of the contract and the Developer shall have the right to act against the County for any and all legal actions available to the Developer under this Agreement and at law.

SECTION XVI
BINDING EFFECT

Developer and the County, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants contained in this Agreement. The Developer may not assign this Agreement absent prior written consent of the County.

SECTION XVII
INSURANCE

Until conveyance of the Improvements to the County, the Developer agrees to maintain insurance with respect to the Improvements and their operation in amounts sufficient to protect the interests of the County and the Developer.

SECTION XVIII
AMENDMENT

This Agreement may be amended by written instrument signed by both parties.

SECTION XIX
EFFECT OF PARTIAL INVALIDITY

The invalidity of any portion of this Agreement or amendment to this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

SECTION XX
GOVERNING LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio. The venue for any disputes arising under this Agreement will be the Delaware County Common Pleas Court.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 05-825

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. Jordan, seconded by Mr. Evans to adjourn into Executive Session at 9:35AM.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 05-826

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Ward, seconded by Mr. Evans to adjourn out of Executive Session at 10:20AM.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

There being no further business the meeting adjourned.

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Glenn A. Evans

Kristopher W. Jordan

James D. Ward

Letha George, Clerk to the Commissioners