

COMMISSIONERS JOURNAL NO. 55 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MARCH 3, 2011

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

Present:  
Dennis Stapleton, President  
Ken O’Brien, Vice President  
Tommy Thompson, Commissioner

RESOLUTION NO. 11-203

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 28, 2011:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on February 28, 2011; 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   Mr. Thompson   Aye   Mr. Stapleton   Aye   Mr. O'Brien   Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 11-204

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0302A:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0302A and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO’ Increase</b>			
Got Co Carpet Care	Willis Building Clean Up	60111901-5370	\$6,000.00

<b>PR Number</b>	<b>Vendor Name</b>	<b>Line Desc</b>	<b>Line Account</b>	<b>Amount</b>	<b>Line Number</b>
R1103135	KARDEXREMSTAR INC	MOBILE SHELIVING RECORDS CENTER	40111402 - 5450	\$5,885.00	0001
R1103139	BOARD OF DEVELOPMENTAL DISABILITIES	COUNTY HOME	10011501 - 5350	\$60,000.00	0001
R1103140	CARR SUPPLY INC	REPLACEMENT PARTS AT OECC	66211903 - 5250	\$8,015.35	0001
R1103141	VOSS BROS SALES & RENTAL INC	HEAVY DUTY COMMERCIAL Z MOWER	66611904 - 5450	\$13,106.00	0001
R1103147	CARBON ENTERPRISES INC	TO REPLENISH THE MEDIA	66211903 - 5201	\$6,036.00	0001

Vote on Motion   Mr. Stapleton   Aye   Mr. Thompson   Aye   Mr. O'Brien   Aye

RESOLUTION NO. 11-205

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

Environmental Services is requesting that parking expenses be paid for Joe Scherler, Joseph Amato, Ross Bigelow and Duane Matlack to attend the previously approved Ohio Building Officials Association Conference (and seminar) in Columbus, Ohio from March 6 to March 8, 2011 at an additional cost of \$65.00 from org key 10011301.

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Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

**RESOLUTION NO. 11-206**

**IN THE MATTER OF APPROVING THE FIBER OPTIC CABLE ACQUISITION AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY AND DELAWARE FIBER LINK PARTNERS, LLC:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Whereas, the County Auditor recommends approval of The Fiber Optic Cable Acquisition Agreement between the Board of County Commissioners of Delaware County and Delaware Fiber Link Partners, LLC.;

Now Therefore Be It Resolved, that The Board Of Commissioners approve The Fiber Optic Cable Acquisition Agreement between the Board of County Commissioners of Delaware County and Delaware Fiber Link Partners, LLC.

**Further Be It Resolved**, that the Board of Commissioners approve a Purchase Order to Delaware Fiber Link Partners, LLC in the amount of \$665,000 (10011102-5450) and a payment to Delaware Fiber Link Partners, LLC in the amount of \$332,500 (10011102-5450).

**FIBER OPTIC CABLE ACQUISITION AGREEMENT**

This Fiber Optic Cable Acquisition Agreement ("Agreement") is made and entered into as of the 3<sup>rd</sup> day of March, 2011, by and between the **Board of County Commissioners of Delaware County**, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter called ("County") and **Delaware Fiber Link Partners, LLC**, an Ohio limited liability company, whose address is 5255 State Route 95, Mount Gilead, Ohio 43338, hereinafter called ("DFLP") (hereinafter referred to collectively as the "Parties").

**WITNESSETH**

WHEREAS, County has a need for 144 strands of fiber optic cable as described in Exhibit A and the County's RFP ("Specifications"), attached hereto and incorporated herein by reference; and

WHEREAS, DFLP currently owns or is constructing a jointly owned fiber and conduit system owned by various parties; and

WHEREAS, DFLP is willing and able to provide for the County's fiber optic cable needs upon the terms, conditions and covenants hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree and contract as follows:

**1. Scope.** DFLP agrees to provide to the County the fiber optic cable as described in Exhibit A and in conformance with the Specifications (hereinafter, the "Fiber"). Any additions or subtractions to the fiber optic cable acquisition as described in Exhibit A will require a mutually acceptable written addendum to this agreement.

**2. Acquisition.** The County shall receive ownership of 144 fiber optic strands as part of a jointly owned fiber cable further described in Exhibit A and all rights associated therewith, including but not limited to, use of the conduit system described in Exhibit A, subject to the Indefeasible Right of Use Agreement ("IRU"). This Agreement is contingent upon execution of both the IRU and Master Maintenance Agreement.

**3. Maintenance.** Maintenance of the Fiber shall be provided pursuant to the Master Maintenance Agreement.

**4. Time Schedule.** Unless County exercises its termination rights pursuant to this Agreement, DFLP agrees to provide the Fiber by December 1, 2011.

**5. Consideration and Payment.** The County shall pay DFLP a total of Six Hundred Sixty-Five Thousand Dollars (\$665,000), payable in two installments. The first installment shall be Three Hundred Thirty-Two Thousand Five Hundred Dollars (\$332,500) and shall be due and payable and non-refundable upon execution of this Agreement. The second installment shall be Three Hundred Thirty-Two Thousand Five Hundred Dollars (\$332,500) and shall be due and payable within thirty (30) days of DFLP certifying to the County, in writing, that the Fiber is complete, tested, available for use, and free from any lien or other encumbrance.

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**6. Inspection.** County reserves the right to have a representative inspect the Fiber or DFLP's working files related to the Fiber.

**7. Warranty.** DFLP warrants to County that all materials and equipment furnished shall be new unless otherwise specified, and that the Fiber shall be of good quality, free from defects and faults, and in conformance with the Specifications. DFLP's warranties shall extend for twelve (12) months from the date of the certification provided in Section 5 of this Agreement. Failure on the part of County to discover or reject materials or equipment furnished by DFLP or any of its subcontractors or suppliers that are not in accordance with the requirements of this Agreement shall not be construed to imply acceptance of such materials or equipment. Payment or acceptance of part or all of the Fiber by County shall not be construed to be acceptance of the materials or equipment that is not in accordance with this Agreement.

**8. Independent Contractor.** DFLP is an independent contractor. Persons engaged by DFLP to perform under this Agreement shall be employees of subcontractors of DFLP, and shall not for any purpose be considered employees or agents of County. DFLP assumes full responsibility for the actions of such persons and shall be responsible for their supervision, daily direction and control, payment of compensation (including withholding of income and social security taxes), workers' compensation, disability benefits, and the like.

**9. Termination.** Either party has the right to terminate this agreement if either party is in material breach of the terms of this agreement.

**10. Indemnification.** DFLP shall indemnify, protect, and hold harmless County, its directors, officers and employees for all loss, damage or expense by reason of any accidents, injuries or damage to person or property of any and all persons, associations or corporations, which loss, damage or expenses arises out of the performance of this Agreement by DFLP, its employees, agents, subcontractors, or any other person or entity for whom DFLP is liable.

**11. Assignment.** Pursuant to Section 5, upon payment of second installment, DFLP shall assign this Agreement to Consolidated Electric Cooperative, Inc. DFLP shall have no other rights of assignment except as stated in this Section 11.

**12. Conflict of Interest.** No personnel of DFLP may voluntarily acquire a personal interest that conflicts with their responsibilities under this Agreement. Additionally, DFLP will not knowingly permit any public official or public employee who has any responsibility related to this Agreement to acquire an interest in anything or any entity under DFLP's control if such an interest would conflict with that official's or employee's duties. DFLP will disclose to County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. DFLP will take all legal steps to ensure that such a person does not participate in any action under this Agreement, unless County has determined that, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

**13. Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a messenger service) addressed as follows:

To DFLP at:  
Delaware Fiber Link Partners, LLC  
Attention: CIO  
5255 State Route 95  
Mount Gilead, OH 43338

To County at:  
Delaware County  
Attention: IT Director  
10 Court Street  
Delaware, OH 43015

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may, by similar notice given, change the address to which future notices or other communications shall be sent.

**14. Governing Law.** This Agreement shall be subject to and governed by the laws of the state of Ohio. All claims and disputes relating to this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

**15. Compliance with Laws.** DFLP agrees to comply with all applicable federal, state, county, and municipal laws, regulations and ordinances applicable to DFLP in performance of this Agreement.

**16. Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or

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taken in the manner and to the full extent permitted by law.

**17. Non-Discrimination.** DFLP hereby certifies that it is, and will continue to be, in compliance with all applicable laws and regulations regarding non-discrimination and equal opportunity employment.

**18. Findings for Recovery.** DFLP hereby certifies that it is not subject to an unresolved finding for recovery issued by the Ohio Auditor of State.

**19. Campaign Finance.** DFLP hereby certifies that all applicable persons listed in R.C. 3517.13(I)(3) or (J)(3) are in compliance with the campaign finance contribution limitations in R.C. 3517.13(I)(1) or (J)(1).

**20. Homeland Security.** DFLP certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, DFLP agrees to make such certification by completing the declaration of material assistance/non-assistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and “No” being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.

**21. Headings.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

Vote On Motion                      Mr. Thompson    Aye            Mr. O'Brien            Aye            Mr. Stapleton            Aye

**RESOLUTION NO. 11-207**

**IN THE MATTER OF APPROVING A MASTER MAINTENANCE AGREEMENT FOR FIBER OPTIC CABLE AND LEASED FIBER ASSETS BETWEEN CONSOLIDATED ELECTRIC COOPERATIVE AND DELAWARE COUNTY:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Whereas, the County Auditor recommends approval of a Master Maintenance Agreement For Fiber Optic Cable And Leased Fiber Assets Between Consolidated Electric Cooperative And Delaware County;

Now Therefore Be It Resolved that The Board Of Commissioners approve Master Maintenance Agreement For Fiber Optic Cable And Leased Fiber Assets Between Consolidated Electric Cooperative And Delaware County.

Further Be It Resolved, that the Board of Commissioners approve a Purchase Order to Consolidated Electric Cooperative in the amount of \$5,000 (10011102-5325).

**Master Maintenance Agreement for Fiber Optic Cable and Leased Fiber Assets  
Between Consolidated Electric Cooperative and Delaware County**

THIS MASTER MAINTENANCE AGREEMENT (“Agreement”) is made as of the 3rd day of March, 2011, by and between Consolidated Electric Cooperative, Inc. (“CEC”), an Ohio corporation having a principal place of business located at 5255 State Route 95, Mount Gilead, Ohio 43338; and Delaware County, a political subdivision of the State of Ohio, having its principal place of business located at 101 North Sandusky Street, Delaware, Ohio 43015 (“County”) (hereinafter referred to collectively as the “Parties”).

RECITALS

WHEREAS, Delaware Fiber Link Partners, a subsidiary of CEC, and the County have executed a Fiber Optic Cable Acquisition Agreement for the creation of the Delaware Fiber Link, consisting of a jointly owned fiber optic cable, 144 strands of which shall be owned and operated by the County; and

WHEREAS, CEC and County agree that the warranted life of the fiber cable shall be 20 years and that, should replacement of the fiber cable become necessary and the Parties agree to continue the joint fiber cable arrangement, the Parties shall share the replacement cost of the fiber cable and installation in proportion to its ownership; and

WHEREAS, CEC operates a telecommunications fiber optic cable (the “Cable”) and conduit system (the “Leased Assets”), which are leased through the jointly executed Indefeasible Right of Use Agreement required by the Fiber Optic Cable Acquisition Agreement, (where “Cable” and “Leased Assets” are collectively known as the “System”) within a certain geographical area (the “Service Area”); and

WHEREAS, County requires telecommunications fiber optic cable and/or conduit and fiber handholes within the Service Area and such services can be provided on the spare and/or joint use capacity of CEC’s System or Leased Assets; and

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WHEREAS, subject to the terms and conditions set forth below, CEC and County agree that joint use of a fiber cable in the Leased Assets require limited access and stringent maintenance practices to protect the continuity of data transmissions;

NOW THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Agreement, the Parties agree as follows:

General. The purpose of this Agreement is to establish a fair and equitable agreement that includes, but is not limited to, maintenance items, schedules, payment arrangements, and basic expectations of each party. The intent of this Agreement is to provide the framework of expectations for System maintenance. This Agreement is intended to be modified as necessary and mutually accepted by both Parties to facilitate continuity of the System for the life of the Fiber Optic Cable Acquisition Agreement and/or Indefeasible Right of Use Agreement.

CEC shall maintain the System, so that at all times the System performs as designed and within manufactured specifications. Inspection and maintenance of the fiber optic components of the System shall be conducted by CEC or its subcontractors unless prior arrangements have been made between CEC and County. Maintenance may be performed at regularly scheduled periods or during emergency periods. County shall at all times cooperate with CEC and shall make County facilities and the System available for CEC's performance of maintenance on the System.

Parties shall provide forty-eight (48) hours notice for scheduled maintenance activities (except for cable marking activities), including fiber splicing and connectivity activities, to Agreement contacts. Fiber splice case access and splicing can be handled by the contractor of choice of each party, but access to the System must follow protocols established by this Agreement to ensure continuity and proper treatment of the System.

Each party shall be responsible for its pro-rata share of the costs associated with scheduled maintenance of the System, as provided in the Indefeasible Right of Use Agreement. If while conducting this maintenance, CEC discovers that damage to the System has occurred as a result of actions of the County, then the County shall compensate the CEC for the necessary repairs to the System. CEC shall perform such maintenance on a time-and-materials basis at the rates then in effect at the time services are performed.

Emergency maintenance activities shall commence per the Restoration Priority timeline. County shall be notified of emergency maintenance activities as soon as practical. Emergency maintenance and materials shall be assessed by CEC separately, and County shall compensate CEC on a pro-rata basis, as provided in the Indefeasible Right of Use Agreement. Where possible, if damage results from a third-party then CEC shall first attempt to recover repair costs from third-party prior to assessing costs on a pro-rata basis.

Payments. County shall pay for maintenance as costs are incurred in an amount not to exceed \$5,000 for the first calendar year of operation. CEC shall submit to County itemized invoices on CEC letterhead, subscribed by an authorized CEC official and shall provide any additional documentation necessary to substantiate invoiced costs. County shall make payment on invoices within thirty (30) days of receipt thereof. An annual maintenance budgetary estimate shall be provided by CEC to County on or before September 30<sup>th</sup> of each year this Agreement remains in effect for County's following fiscal year.

Emergency Maintenance Personnel. An Emergency Maintenance contractor shall be engaged following the Restoration Priority timeline. The preferred first available contractor shall be employed as needed to fulfill the intent of this Agreement.

Restoration Priority.

In the event that there is critical failure or outage of fiber continuity for any lit fiber on the System, CEC shall, within four (4) hours after receiving a report of any such failure, interruption, or impairment, have personnel on-site who shall take corrective measures in the following order of preference:

All fibers identified as public safety or 911 services-related shall be repaired first.

All fibers identified as critical healthcare facility services-related shall be repaired second.

All fibers identified as critical community services-related shall be repaired third.

All fibers identified as priority by contract shall be repaired fourth.

All other active fibers shall be repaired fifth.

All non-active fibers shall be repaired last.

Fibers within the System that are not in use at the time of the reported failure or are otherwise deemed non-critical by the CEC shall be scheduled for repair or corrective measures within Seventy-Two (72) hours after receiving a report of failure, interruption or impairment.

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Agreement Contacts.

Scheduled Maintenance. The following individuals shall be notified prior to scheduled maintenance activities:

Consolidated Electric Cooperative:	Delaware County
CIO	IT Director
5255 State Route 95	10 Court Street
Mount Gilead, OH 43338	Delaware, OH 43015
419-949-2941 office	740-833-2060 help desk
419-564-9121 cell	740-513-8898 cell

Emergency Maintenance. The following individuals shall be notified as soon as possible during an emergency maintenance event:

Consolidated Electric Cooperative:	Delaware County
CIO	IT Director
5255 State Route 95	10 Court Street
Mount Gilead, OH 43338	Delaware, OH 43015
419-949-2941 office	740-833-2060 help desk
419-564-9121 cell	740-513-8898 cell

Termination. Termination of this Agreement shall coincide with the complete termination of the Indefeasible Right of Use Agreement.

Other Terms and Conditions. To the extent there is no conflict with the other Sections of this Agreement, the terms and conditions of the Indefeasible Right of Use Agreement, along with all Attachments thereto, are hereby fully incorporated into this Agreement as if fully set forth herein.

Special Provisions. This Agreement is contingent upon execution of both the Fiber Optic Acquisition Agreement and Indefeasible Right of Use Agreement.

Vote On Motion                      Mr. O'Brien                      Aye                      Mr. Thompson                      Aye                      Mr. Stapleton                      Aye

RESOLUTION NO. 11-208

IN THE MATTER OF APPROVING AN INDEFEASIBLE RIGHT OF USE AGREEMENT BETWEEN  
CONSOLIDATED ELECTRIC COOPERATIVE, INC. AND DELAWARE COUNTY IN CONNECTION WITH  
THE DELAWARE FIBER LINK:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Whereas, the County Auditor recommends approval of an Indefeasible Right Of Use Agreement Between Consolidated Electric Cooperative, Inc. And Delaware County In Connection With The Delaware Fiber Link;

Now Therefore Be It Resolved that The Board Of Commissioners approve an Indefeasible Right Of Use Agreement Between Consolidated Electric Cooperative, Inc. And Delaware County In Connection With The Delaware Fiber Link.

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT ("Agreement") is made as of the 3rd day of March, 2011, by and between Consolidated Electric Cooperative, Inc. ("CEC"), an Ohio corporation having a principal place of business located at 5255 State Route 95, Mount Gilead, Ohio 43338; and Delaware County, a political subdivision of the State of Ohio, having its principal place of business located at 101 North Sandusky Street, Delaware, Ohio 43015 ("County") (hereinafter referred to collectively as the "Parties").

RECITALS

WHEREAS, Delaware Fiber Link Partners, a subsidiary of CEC, and the County have executed a Fiber Optic Cable Acquisition Agreement for the creation of the Delaware Fiber Link, consisting of a jointly owned fiber optic cable, 144 strands of which shall be owned and operated by the County; and

WHEREAS, CEC and County agree that the warranted life of the fiber cable shall be 20 years and that, should replacement of the fiber cable become necessary and the Parties agree to continue the joint fiber cable arrangement, the Parties shall share the replacement cost of the fiber cable and installation in proportion to its ownership; and

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WHEREAS, CEC operates a telecommunications fiber optic cable (the "Cable") and conduit system (the "Leased Assets") (where "Cable" and "Leased Assets" are collectively known as the "System") within a certain geographical area (the "Service Area"); and

WHEREAS, County requires telecommunications fiber optic cable and/or conduit and fiber handholes within the Service Area and such services can be provided on the spare and/or joint use capacity of CEC's System or Leased Assets; and

WHEREAS, subject to the terms and conditions set forth below, CEC desires to lease the System or Leased Assets to County, and County desires to lease such facilities; and

WHEREAS, the lease of the System or Leased Assets shall constitute an Indefeasible Right of Use (IRU), said fiber optic cable and/or conduit and handholes for the Term of the lease;

NOW THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Agreement, the Parties agree as follows:

1. Lease of Assets. CEC hereby leases to County assets described in the Attachments A to this Agreement and such Attachments as may be added, altered, or removed, and agreed upon, from time to time.
  2. Term. The term (the "Term") of this Agreement shall be set forth in the Attachments A to this Agreement. This Agreement may sooner terminate on (i) the date that CEC's (or its successors' or assigns') legal ability to operate the System in the Service Area either terminates or is legally impaired, or (ii) the date this Agreement terminates pursuant to Sections 11, 15, or 16 hereof.
  3. Consideration and Payments. Consideration for this Agreement shall be as set forth in the Fiber Optic Cable Acquisition Agreement. County does not owe CEC any additional payments under this Agreement.
  4. Use of Facilities. County shall not use the Leased Assets in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction, or any franchise, license, agreement or certificate related to the System or CEC's franchises, unless the validity thereof is being contested in good faith and by appropriate proceedings (but only so long as such proceedings and County's use of the System does not, in CEC's reasonable opinion, involve any risk of the sale, forfeiture, or loss of the System, franchises, pole attachment or conduit agreements, or any part thereof or any interest therein). County shall not do or permit anything to be done with respect to the Leased Assets that would invalidate or conflict with any insurance policies maintained by CEC or County covering the Leased Assets.
- County shall have the right to interconnect the System to County's network at the pre-existing splice points and such other points as are mutually agreed upon at County's sole cost and expense (even if splicing performed by CEC). Upon County's request, CEC shall consult with County regarding the location of the interconnection points with CEC during the design, engineering and permitting phases of construction. If County requests that CEC interconnect the System, County agrees to compensate CEC at a charge of CEC's cost, plus fifteen percent (15%).
5. Performance and Maintenance. Performance and maintenance of the System shall be in accordance with the Master Maintenance Agreement.
  6. Title. All rights, title and interest in all the Leased Assets provided by CEC hereunder shall at all times remain exclusively with the CEC. All right, title and interest in all facilities and associated equipment paid for and provided by County shall at all times remain exclusively with County. Except as expressly provided elsewhere in this Agreement, CEC shall retain full operating control and shall continue to hold and be solely responsible for all operating authority of the System and of CEC's facilities.
  7. Liens and Encumbrances. Neither party, directly or indirectly, shall create or impose any lien on the property of the other or on the rights or title relating thereto or any interest therein or in this Agreement. Each party shall promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of the other party.
  8. Representations and Covenants Regarding Authorizations.
    - (a) County hereby represents, warrants and covenants to CEC as follows:
      - (i) County is duly organized and validly existing under the laws of the State of Ohio and has full power and authority to execute, deliver and perform the terms of this Agreement.
      - (ii) There is no litigation, proceeding or governmental investigation to which County is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.
    - (b) CEC hereby represents warrants and covenants to County as follows:

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(i) CEC is duly organized and validly existing under the laws of the State of Ohio and has full power and authority to execute, deliver and perform the terms of this Agreement.

(ii) There is no litigation, proceeding or governmental investigation to which CEC is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.

(iii) CEC has or shall use its best commercial efforts to obtain and maintain all rights, licenses, franchises, governmental regulatory approvals, authorizations, rights-of-way, and other agreements and permissions necessary for the use of the poles, conduit, cable, wire, or other physical plant facilities, as well as any other such rights, licenses, authorizations, right-of-way, and other agreements, easements, or permissions necessary for the installation and use of the Leased Assets. CEC shall be solely liable for all costs related thereto.

9. Compliance with Law. Each party shall perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations imposed by any governmental authority.

10. Relocation of the Facilities. County recognizes that, from time to time, CEC may elect or be required to relocate the System. When such relocation is a requirement by law or existing contract or by loss of right-of-way, CEC and County shall share all costs incurred to relocate the System, subject to the proportions specified in the Attachments hereto. CEC shall use commercially reasonable efforts to effect any relocation in a manner that shall not cause any material interruption to County's use of the System.

11. Condemnation and Casualty.

(a) Condemnation. If all or any portion of the Leased Assets are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, County shall be entitled to terminate this Agreement with respect to the Leased Assets affected. In such event, both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation by either joint or separate awards for the economic value of their respective interests in the System and shall equitably share any awards as their economic interests appear.

(b) Casualty. If all or any portion of the Leased Assets are made inoperable and beyond feasible repair due to a Casualty or other Force Majeure Event (as the term is defined in Section 19 below), County shall be entitled to terminate this Agreement with respect to the Leased Assets affected by such casualty or other event. In such event, both Parties shall be entitled to seek to recover the economic value of their respective interests in the Leased Fibers (i) under any insurance policy carried by either party or any third party, or (ii) in either joint or separate actions, from any third party which may be legally responsible for causing such casualty. The Parties shall equitably share any recoveries as their economic interests appear. This section shall not apply to any short-term failure, interruption or impairment that, based upon an assessment of the CEC, can be repaired.

12. Proprietary Information. Each party acknowledges that in the course of the performance of this Agreement, it may have access to and/or may receive from the other party privileged and proprietary information claimed to be unique, secret and confidential, and which constitutes the exclusive property or trade secrets of the other, and the Parties acknowledge that they are in a confidential relationship with each other. Confidential information may be presented in documents that may or may not be marked with a restrictive notice, or, otherwise tangibly designated as proprietary or during oral discussions. Each party agrees to maintain the confidentiality of the proprietary information and to use the same degree of care as it uses with regard to its own proprietary information to prevent the disclosure, publication or unauthorized use of the proprietary information. Neither party may duplicate or copy proprietary information of the other party other than to the extent necessary for legitimate business uses in connection with this Agreement. A party shall be excused from these nondisclosure provisions if the proprietary information has been or is subsequently, made public by the other party or is independently developed by such party or if the other party gives its express, prior written consent to the disclosure of the proprietary information or if the disclosure is required by law or regulation. Notwithstanding anything to the contrary in this Agreement, this provision shall survive the termination or expiration of this Agreement.

13. LIMITATION OF LIABILITY/DISCLAIMER/HOLD HARMLESS

(a) EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 13 OF THIS AGREEMENT AND EXCEPT TO THE EXTENT CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

(b) EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE 13., NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY



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DISCLAIMED.

(c) COUNTY AGREES TO WAIVE ANY POTENTIAL CLAIMS COUNTY MAY HAVE AGAINST CEC FOR ANY LOSS OR INTERRUPTION IN SERVICE THROUGH OR IN CONNECTION WITH THE COUNTY FIBER.

(d) THE FOLLOWING TERMS AND PROVISIONS OF THIS SECTION 13.D. APPLY NOTWITHSTANDING ANY OTHER TERMS AND PROVISIONS OF THIS AGREEMENT TO THE CONTRARY.

(i) County shall not disturb, disrupt, change, interrupt, shut down, or affect in any way CEC access to, use of, and service from CEC's existing fiber optic network at any time during the Term.

(ii) In the event that County disturbs, disrupts, changes, interrupts, shuts down, and, or, affects in any way CEC's access to, use of, or service from CEC's existing fiber optic network at any time during the Term, County, at its sole cost and expense, shall repair and, or, correct any damage and the cause(s) of each such disturbance, disruption, change, interruption, and other effect(s). Further, County warrants, represents, and guarantees to CEC that: County shall make any and all such repair(s) and, or, correction(s) within 24 hours; and, County shall restore to CEC any disturbed, disrupted, changed, interrupted, and, or, other affected access, use, and service within 24 hours after the same occurs. Unless the Parties otherwise agree or unless the circumstances or the aforesaid 24-hour requirement require otherwise: any work done by County on or affecting CEC's existing fiber optic network and, or, the County Fibers shall be done on a Saturday or Sunday; and, a designated representative of CEC shall be present to observe and monitor such work.

(iii) In the event that County breaches any of the provisions of this Agreement, including but not limited to those contained in this section 13.d.: this Agreement shall terminate immediately; and, County shall be liable to CEC for any and all damages at law and, or, remedies in equity.

(iv) For purposes of this section 13.d., "County" shall include its Commissioners, employees, independent contractors hired by it, and agents.

(e) NOTWITHSTANDING ANY OTHER TERMS AND PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, CEC SHALL INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, LAWSUITS, COSTS, JUDGMENTS, EXPENSES OR ANY OTHER LIABILITIES WHICH 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, CAUSED IN WHOLE OR PART BY THE NEGLIGENT ACT OR OMISSION OF CEC, ANY SUBCONTRACTOR, ANY PERSON DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANY PERSON FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

14. Provision of Insurance Coverage. Each party or its affiliates shall, at its own expense, secure and maintain in force, throughout the Term of this Agreement, general liability insurance, with competent and qualified issuing insurance companies, including the following coverages: product liability, hazard of premises/operations (including explosion, collapse and underground coverages); independent contractors, products and completed operations (extending for two years after the termination of this Agreement); blanket contractual liability (covering the liability assumed in this Agreement); personal injury (including death); and broad form property damage in policy or policies of insurance such that the total available limits to all insured shall not be less than \$2,000,000 combined single limit for each occurrence and \$2,000,000 aggregated for each annual period. Such insurance may be provided in policy or policies, primary and excess, including the so-called umbrella or catastrophe forms. Policies required by this Section shall be endorsed to show the other Party, its parent and affiliates and its directors, officers, agents, servants, employees and independent contractors as additional insured and shall require the insurance companies to provide notice at least thirty (30) days prior to the effective date of any cancellation or modification of such policies.

15. Events of Default. Each of the following events shall constitute an event of default (whether any such event shall be voluntary or involuntary or occur by operation of law or pursuant to any judgment, decree, order, rule or regulation of any court or administrative or governmental body):

(a) The failure of either party to carry and maintain insurance in compliance with all provisions of Section 14 hereof;

(b) The failure of either party to perform or observe any material covenant or agreement to be performed or observed by it hereunder, and such failure shall continue substantially unremedied for a period of thirty (30) days after written notice is given to the defaulting party;

(c) A court or governmental authority of competent jurisdiction enters an order appointing, with or without consent by either party, a custodian, receiver, trustee, intervener, or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or

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approving a petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of either party, or if any such petition shall be filed against either party and shall not be dismissed within sixty (60) days thereafter, or an order shall have been issued granting either party a suspension of payments under applicable law and any such order is not dismissed within sixty (60) days thereafter; or

(d) Either party ceases to have any of the material franchises, licenses, agreements, certificates, concessions, permits, rights or privileges required for the conduct of its business and operations which loss is not remedied by the obtaining of a replacement franchise, license, agreement, certificate, concession, permit, right or privilege within sixty (60) days of the loss thereof, if such loss would have a material adverse effect upon the ability of the party suffering such loss to perform its obligations or enjoy its rights hereunder.

16. Remedies. Upon the occurrence and during the continuance of any event of default, the non-defaulting party may, at its option, declare this Agreement to be in default and may, in addition to any other remedies provided herein, terminate this Agreement. No remedy is intended to be exclusive, but each shall be cumulative and in addition to and may be exercised concurrently with any other remedy available to CEC or County at law or in equity.

17. Disconnecting from the System. County shall pay any costs associated with disconnecting from the System, and shall ensure that the System is left in the condition that existed prior to the use of the Leased Assets, except for depreciation.

18. Force Majeure Events. Neither party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or if any other government, including state and local governments having or claiming jurisdiction over such party, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; or strikes, lock-outs, work stoppages or other labor difficulties (collectively, "FORCE MAJEURE EVENTS").

19. Obligations of County. In addition to the obligations of County set forth elsewhere in this Agreement, County shall:

(a) have full and complete control, responsibility and liability for the signals distributed over the fiber optic components (if applicable) of the System leased by County or for its benefit;

(b) have full and complete control, responsibility and liability for the purchase, installation, construction and maintenance of the terminals and peripheral equipment connected to capacity on the fiber optic components of the System leased by County;

(c) employ its own employees, agents and/or independent contractors in the handling, storage, retrieval, processing transmitting and/or receiving of any electronic signals distributed over the fiber optic components of the System leased by it;

(d) provide all commercial or other power supplies for the operation of the fiber optic components of the System, terminals and peripheral equipment or facilities used with or connected to the System and located on County's, or its customer's premises;

(e) have full and complete control, responsibility and liability for operating and maintaining any operating authority from any federal, state or local governmental body or agency that relates to the activities of County under this Agreement, including County's lease of channel capacity on the fiber optic components of the System; and

(f) maintain all books and records relating to the fiber optic components of the System.

20. Interest. All payments due from either party to the other under the terms of this Agreement which are not paid when due shall bear interest from the due date until paid at an interest rate equal to the lesser of 1-1/2% per month or the maximum lawful rate permitted by law.

21. Assignment. County shall have the right, with the consent of CEC, to assign, in whole or in part, this Agreement. Assignment shall require execution of a Master Maintenance Agreement between the assignee and CEC. Nothing in this Section or in this Agreement shall be construed to restrict County's lease or provision of telecommunications services, circuits, or capacity via the Cable to third parties or require CEC's consent therefor.

22. Miscellaneous.

(a) Demarcation Point. A point on one side of which is County's responsibility for liabilities, ensuring

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connections, and paying for and installing equipment, termed Premise Side; the other side of the Demarcation Point shall be termed Network Side. CEC shall specify points of demarcation based on the needs of the County.

(b) Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

(c) Captions; Gender. Article and Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Whenever used herein the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

(d) Governing Law and Binding Effect. This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Ohio. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Delaware County, Ohio. This Agreement shall bind and inure to the benefit of each of the Parties and their successors and permitted assigns.

(e) Waivers and Amendments. This Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be affected, except by an instrument in writing adopted, in the case of an amendment, by each party and, in the case of a waiver, consent or discharge, by the party against whom enforcement of such instrument is sought. Any consent by either party to, or waiver of, a breach by the other party shall not constitute a waiver or consent to any subsequent or different breach. If either party shall fail to enforce a breach of this Agreement by the other party, such failure to enforce shall not be considered consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

(f) Relationship Not a Partnership or an Agency. The Relationship between County and CEC shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between them.

(g) Notices. All notices, requests, demands, statements, reports and other communications under this Agreement shall be in writing and deemed to be duly delivered, if delivered in person, by overnight courier or by certified or registered mail:

Consolidated Electric Cooperative:  
CIO  
5255 State Route 95  
Mount Gilead, OH 43338  
419-949-2941 office  
419-564-9121 cell

Delaware County  
IT Director  
10 Court Street  
Delaware, OH 43015  
740-833-2060 help desk  
740-513-8898 cell

Either party hereto may change its mailing address by giving notice to the other pursuant to the provisions of this paragraph.

(h) Disclaimers. There are no agreements, warranties or representations, express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for a particular purpose or use, except those expressly set forth herein.

(i) Entire Agreement. This Agreement, taken together with the Fiber Optic Cable Acquisition Agreement and Master Maintenance Agreement executed this same date, including the attachments, exhibits, schedules and annexes hereto, which are hereby incorporated by reference and made a part of this Agreement as if they were fully set forth herein, constitutes the entire agreement between CEC and County with respect to the subject matter hereof and supersedes all prior agreements and understandings between them as to such subject matter, and there are no restrictions, agreements, arrangements or undertakings, oral or written, between CEC and County relating to the transactions contemplated hereby which are not fully expressed or referred to herein.

(j) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being

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enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

(k) Certifications. CEC hereby certifies that all applicable persons listed in section 3517.13(J)(1) of the Revised Code are in compliance with section 3517.13(J)(3) of the Revised Code. CEC certifies that it is and, for the life of this Agreement shall remain, in compliance with all applicable federal, state, and local laws and regulations regarding non-discrimination and equal opportunity employment. CEC certifies that it does not provide material assistance to terrorist organizations and that a properly executed Declaration of Material Assistance/Non-Assistance is attached hereto and, by this reference, incorporated herein.

23. Special Provisions. This Agreement is contingent upon execution of both the Fiber Optic Acquisition Agreement and Master Maintenance Agreement. IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement on the dates indicated below.

**ATTACHMENT A-1**

1. Leased Asset.
  - a. Joint use of a conduit from DataCenter.bz to a CFN manhole at the southwest corner of Green Meadows Drive and Orange Road in Lewis Center, Ohio. The leased conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/3 of the CFN conduit maintenance and System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
2. Term.
  - a. The IRU for this segment shall remain in effect for the life of this agreement or life of the conduit, whichever is less or unless other arrangements are mutually agreed upon.

**ATTACHMENT A-2**

1. Leased Asset.
  - a. Joint use of a conduit from a CFN manhole at the intersection of Green Meadows Drive and Orange Road in Lewis Center to a manhole at US 23 and Greif Parkway in Delaware, Ohio. The leased conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the CFN conduit maintenance and System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
2. Term.
  - a. The IRU for this segment shall remain in effect for the life of this agreement or life of the conduit, whichever is less or unless other arrangements are mutually agreed upon.

**ATTACHMENT A-3**

1. Leased Asset.
  - a. Joint use of a conduit and fiber handholes from the CFN manhole at US 23 and Greif Parkway following US 23 north past Peachblow Road to Glenn Parkway near Delaware Health Center. The conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
  - b. Exclusive use of a 1.25" fiber conduit from the CFN manhole at US 23 and Greif Parkway following US 23 north past Peachblow Road to the southeast corner of Glenn Parkway and Ohiohealth Boulevard under the same maintenance arrangement as item (a).
2. Term.
  - a. The IRU for this segment shall remain in effect for the life of this agreement or life of the conduit, whichever is less or unless other arrangements are mutually agreed upon.

**ATTACHMENT A-4**

1. Leased Asset.
  - a. Joint use of a conduit and fiber handholes along and starting at the southeast corner of Glenn Parkway and Ohiohealth Boulevard from the south to approximately 1,200 feet north of Sycamore Dr. on the east side of Glenn Parkway in Delaware, Ohio.. The conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the System maintenance and/or relocation and other expenses incurred over the life of the Agreement.

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- 2. Term.
- a. The IRU for this segment shall remain in effect for a minimum of 20 years. Beyond the initial term of this Agreement, this Attachment shall be dissolved unless other arrangements are mutually agreed upon.

ATTACHMENT A-5

- 1. Leased Asset.
  - a. Joint use of a conduit and fiber handholes from approximately 1,200 feet north of Sycamore Drive, north through a private easement to Berlin Station Road, east through a private easement past the Norfolk Southern tracks, north through a private easement to Curve Rd., east through road right-of-way to a manhole between two sets of CSX tracks, northwest through a private easement to a fiber handhole at Glenn Road and Mill Run Crossing in Delaware, Ohio. The conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
  - b. Exclusive use of a 1.25” fiber conduit in the same path described above in item (a), under the same maintenance arrangement as item (a).
- 2. Term.
  - a. The IRU for this segment shall remain in effect for the life of this agreement or life of the conduit, whichever is less or unless other arrangements are mutually agreed upon.

ATTACHMENT A-6

- 1. Leased Asset.
  - a. Joint use of a conduit and fiber handholes from Glenn Road and Mill Run Crossing, north paralleling Glenn Road in a private easement to the northeast corner of the Meijer parking lot, east through Glenwood Commons, to a fiber handhole located on the east side of Mill Run Crossing northwest of 820 Sunbury Road, Delaware, Ohio. The conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
  - b. Exclusive use of a 1.25” fiber conduit in the same path described above in item (a), under the same maintenance arrangement as item (a).
- 2. Term.
  - a. The IRU for this segment shall remain in effect for the life of this agreement or life of the conduit, whichever is less or unless other arrangements are mutually agreed upon.

ATTACHMENT A-7

- 1. Leased Asset.
  - a. Joint use of a conduit and fiber handholes from the east side of Mill Run Crossing northwest of 820 Sunbury Road, Delaware, Ohio, west along the south side of US 36 to a fiber handhole on the southeast corner of US 36 and Norfolk Southern tracks (440 E. William Street, Delaware, Ohio). The conduit shall house a single joint use fiber cable of which, 144 fiber strands shall be owned by Delaware County. The County shall be responsible for 1/2 of the System maintenance and/or relocation and other expenses incurred over the life of the Agreement.
- 2. Term.
  - a. The IRU for this segment shall remain in effect for a minimum of 20 years. Beyond the initial term of this Agreement, this Attachment shall be dissolved unless other arrangements are mutually agreed upon.

Vote On Motion                      Mr. Stapleton    Aye    Mr. O'Brien    Aye    Mr. Thompson    Aye

**RESOLUTION NO. 11-209**

**IN THE MATTER OF DONATING PERSONAL PROPERTY NOT NEEDED FOR PUBLIC USE TO THE VILLAGE OF CENTERBURG, OHIO:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

WHEREAS, Delaware County currently owns certain personal property, specifically two (2) Federal Vista 48” light bars (the “Property”) for use on Sheriff’s Office vehicles; and

WHEREAS, the Sheriff has determined that the Property is not needed for public use; and

WHEREAS, pursuant to section 307.12(D) of the Revised Code, the Board of County Commissioners (the “Board”) may sell or donate county personal property to any political subdivision of the state without advertisement or public notification, regardless of the property’s value; and

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WHEREAS, the Village of Centerburg has informed the Sheriff’s Office that it has a need for the Property;

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

Section 1. The Board hereby approves the donation of the Property to the Village of Centerburg, State of Ohio.

Section 2. Pursuant to section 307.12(D) of the Revised Code, the Board makes no determination of the value of the Property, and the Property shall be donated upon the condition that is accepted “as is.”

Section 3. The Clerk of the Board shall provide a certified copy of this Resolution to the Village of Centerburg.

Vote On Motion                      Mr. Thompson    Aye            Mr. O'Brien            Aye            Mr. Stapleton            Aye

RESOLUTION NO. 11-210

IN THE MATTER OF DECLARING COUNTY PERSONAL PROPERTY OBSOLETE, UNFIT, OR NOT  
NEEDED FOR PUBLIC USE AND SETTING THE TIME AND DATE FOR A PUBLIC AUCTION:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

WHEREAS,            Delaware County has personal property not needed for public use, or is obsolete or unfit for use which it was acquired; and

WHEREAS,            Delaware County may sell such property at public auction or to any political subdivision of the state in accordance to the Ohio Revised Code, Section 307.12.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Delaware County, State of Ohio, declare the following personal property unfit or not needed for public use and offer the following surplus property for sale to political subdivisions or for public auction on Saturday, April 16, 2011 at 11:00am to be held at the Delaware County Fairgrounds, 236 Pennsylvania Avenue:

Office furniture, including but not limited to; desks, chairs, tables, book cases, file cabinets, shelves, office panels and work surfaces. Office equipment, including but not limited to; computers (no hard drives), monitors, printers, computer accessories, fax machines, and copiers. Building equipment, including but not limited to; CCTV and security equipment, light fixtures, and light bulbs.

Vote on Motion    Mr. Thompson    Aye            Mr. Stapleton            Aye            Mr. O'Brien            Aye

RESOLUTION NO. 11-211

IN THE MATTER OF APPROVING THE FINAL FOURTH QUARTER REPORT FOR THE MENTAL  
HEALTH GRANT FOR ADULT COURT SERVICES :

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

Grant #	2009-JG-C01-6596
Source:	Ohio Office of Criminal Justice Services
Grant Period:	January 1, 2010 to December 31, 2010
Federal Grant Amount:	\$ 30,00.00
Local Match:	\$ 5,000.00
Local Match – City:	<u>\$ 5,000.00</u>
Total Grant Amount:	\$40,000.00

The Grant is a unique collaboration between Delaware Common Pleas and Municipal Court to initiate a mental health court docket. The courts will share a probation officer, and docket coordinator. The dockets primary purpose is to reduce the amount of time offenders with significant mental health issues spend in jail. The mental health docket will not only reduce the use of the Delaware County Jail, it will reduce the impact on many social service agencies in the county.

Vote on Motion    Mr. Thompson    Aye            Mr. Stapleton            Aye            Mr. O'Brien            Aye

RESOLUTION NO. 11-212

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

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The Director of Job and Family Services recommends accepting the resignation of Elizabeth Blatt from Job and Family Services; effective February 25, 2011.

Therefore Be It Resolved, that the Board of Commissioners accept the resignation of Elizabeth Blatt from Job and Family Services; effective February 25, 2011.

Vote On Motion                      Mr. O'Brien                      Aye                      Mr. Thompson                      Aye                      Mr. Stapleton                      Aye

RESOLUTION NO. 11-213

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION AND A SUPPLEMENTAL APPROPRIATION FOR THE PROSECUTOR'S OFFICE FOR THE DRUG PROSECUTOR:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Transfer Of Appropriation

From:	To:	
23212103-5101	23212103-5001	\$525.13
JAG Drug Pros/Insurance	JAG Drug Pros/Compensation	

Supplemental Appropriations

23212103-5001	JAG Drug Pros/Compensation	\$ 8.70
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After receiving an extension on the drug prosecutor grant we have finally approached the end in which all funds will be exhausted. The JAG Drug Prosecutor grant will have exhausted all funds by the March 11, 2011 pay date. To be able to exhaust all grant funds the Prosecutor's Office request that the reallocation of funds and supplemental appropriations be approved.

Vote On Motion                      Mr. Stapleton                      Aye                      Mr. O'Brien                      Aye                      Mr. Thompson                      Aye

RESOLUTION NO. 11-214

IN THE MATTER OF ESTABLISHING GUIDELINES FOR THE CONDUCT OF COMMISSIONERS WORK SESSIONS:

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

WHEREAS, the Board of Commissioners (the "Board") finds that informal presentation and deliberation of pending and prospective county projects would be beneficial for the Board, county employees, county elected officials and the citizens of Delaware County by allowing for the free exchange of ideas in a public setting relative to such projects; and

WHEREAS, the Board finds that informal work sessions, separate from the Board's regular sessions, would be the most constructive manner of presenting and deliberating pending and prospective county projects; and

WHEREAS, the Board finds that holding informal work sessions will allow the Board's regular sessions to operate more efficiently by focusing on the Board's official actions, rather than informal discussion of pending and prospective county projects; and

WHEREAS, the Board deems it necessary to set forth guidelines for the conduct of informal work sessions;

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

Section 1. The Board may, from time to time and as the Board deems necessary, hold informal work sessions, separate from the Board's regular sessions, to allow for the presentation and deliberation of pending and prospective county projects. The Board shall not take any official action at work sessions.

Section 2. Any Delaware County elected official or department director may request to make a presentation of a pending or prospective county project or issue at a Board work session. Requests shall be submitted via phone or e-mail to the Clerk of the Board and will be assigned to a work session on a first in first out basis as time allows

Section 3. The Board's work sessions are public meetings, subject to the Open Meetings Act, and shall be open to the public at all times. The Board's work sessions shall be exempt from the Board's Rules Governing Public Comment, and no public comment shall be permitted at the Board's work sessions.

Section 4. Pursuant to Resolution No. 09-04, the Clerk of the Board is hereby directed to maintain a full record of the Board's work sessions by electronic means, except that only the audio of Board work sessions shall be recorded and shall constitute the official minutes of the work sessions. Work sessions will not be broadcast by

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live streaming. Minutes taken from Board work sessions shall be subject to approval, in accordance with section 305.11 of the Revised Code.

Vote on Motion   Mr. O'Brien        Aye       Mr. Thompson   Aye       Mr. Stapleton    Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien  
-At Tuesday's 911 Board Meeting, The 911 Board Asked For The Commissioners To Share Future Funding Ideas  
-Who Should Attend The CEBCO Meeting

Commissioner Thompson  
-No Reports At This Time

Commissioner Stapleton  
-Friday CORSA Meeting; Appointed To The Board; 61 Counties Are A Part Of The Group  
-Senate Bill 5 Out Of Committee  
-Buckeye Valley Pancake Breakfast

County Administrator  
-Update On Possible Flooding Concerns If Additional Rain Happens This Weekend Could Be Serious

RESOLUTION NO. 11-215

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; FOR PENDING OR IMMINENT LITIGATION AND TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES :

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn into Executive Session at 10:38AM.

Vote on Motion   Mr. Thompson   Aye       Mr. Stapleton    Aye       Mr. O'Brien       Aye

RESOLUTION NO. 11-216

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 11:22AM.

Vote on Motion                Mr. Stapleton    Aye       Mr. Thompson   Aye       Mr. O'Brien       Aye

There being no further business, the meeting adjourned.

1:30PM WORK SESSION

DELAWARE COUNTY TRANSFER STATION  
DEFERENTIAL RESPONSE  
MOU WITH DKMM  
OTHER BUSINESS TO COME BEFORE THE BOARD

\_\_\_\_\_  
Ken O'Brien

\_\_\_\_\_  
Dennis Stapleton



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Tommy Thompson

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Jennifer Walraven, Clerk to the Commissioners