

COMMISSIONERS JOURNAL NO. 59 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 3, 2013

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

Present:
Ken O'Brien, President
Gary Merrell, Commissioner

Absent:
Dennis Stapleton, Vice President

RESOLUTION NO. 13-572

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 30, 2013:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on May 30, 2013; 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. Merrell Aye Mr. Stapleton Absent Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 13-573

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0531:

It was moved by Mr. Merrell, seconded by Mr. O'Brien to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0531, and Purchase Orders as listed below:

PR	Vendor Name	Line Desc	Line Account	Line Amount	Line
DITCH CONSTRUCTION/SERVICE AND CHARGES					
R1304164	B & K LEHNER EXCAVATING LLC	HARDIN DITCH	40311435-5328	\$47,107.50	0001
CAPITAL OUTLAY					
R1304103	STANDARD PLUMBING & HEATING CO INC	HVAC COURTHOUSE- HVAC PROJECT	40111402-5410	\$134,732.00	0001
R1304104	VAUGHN INDUSTRIES LLC	ELECTRICAL - COURTHOUSE HVAC PROJECT		\$24,000.00	0001

Vote on Motion Mr. Stapleton Absent Mr. Merrell Aye Mr. O'Brien Aye

RESOLUTION NO. 13-574

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR MICROSOFT OFFICE UPGRADE:

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

Supplemental Appropriations

10011102-5320	Commissioners General/Data Processing Services	150,000.00
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Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Absent

RESOLUTION NO. 13-575

IN THE MATTER OF APPROVING A SERVICES CONTRACT BETWEEN THE DELAWARE

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**COUNTY BOARD OF COMMISSIONERS AND NEW HORIZONS CLC OF COLUMBUS FOR
CUSTOMER SITE CLASSES ON MS OFFICE APPLICATIONS:**

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

Whereas, the County Auditor recommends approval of contract with New Horizons CLC of Columbus for Customer Site Classes on MS Office Applications;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve a contract with New Horizons CLC of Columbus for Customer Site Classes on MS Office Applications:

SERVICES CONTRACT

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 3rd day of June, 2013 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and New Horizons CLC of Columbus, 460 Polaris Parkway, Suite 150, Westerville, Ohio 43082 (“Contractor”) (hereinafter collectively referred to as the “Parties”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Data Center Director as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

Customer Site Classes held at Delaware County offices on MS Office Applications (Word, Excel, PowerPoint, Outlook, and Access): up to 12 people, per day/training session pricing of \$856.00, and not to exceed a total of \$24,000.

Section 4 – Compensation

The County shall pay the contractor for the services provided and as incurred, not to exceed \$856.00 per day/training session.

Section 5 – Payment

Compensation shall be paid based on invoices in accordance with the Proposal. Invoices shall be submitted to the Administrator by the Contractor on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Term

This Agreement shall be in effect upon execution of this Agreement until December 31st, 2013 or until the services have been completed, whichever occurs first.

Section 7 – Insurance

- 7.1 **General Liability Coverage:** Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 **Workers’ Compensation Coverage:** Contractor shall maintain workers’ compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 7.5 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 7.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Liability and Warranties

To the fullest extent permitted by law, neither party shall be liable to the other for any incidental, indirect or

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consequential damages arising out of or connected in any way to the Work or this Agreement. This mutual waiver shall include, but not be limited to, loss of profit, loss of business or income, or any other consequential damages that either party may have incurred from any cause of action whatsoever.

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

Section 9 – Suspension or Termination of Agreement

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

Section 10 – Change in Scope of Work

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 **Prohibited Interests:** Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 11.2 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 11.3 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 11.5 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 **Non-Discrimination/Equal Opportunity:** Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

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Contractor certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 11.8 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

The County is a public employer as defined in R.C. § 145.01(D). The County has classified Contractor as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System (“OPERS”) for or on behalf of Contractor for services and/or deliverables rendered and/or received under or pursuant to this Agreement. Contractor acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. In support of being so informed and pursuant to R.C. § 145.038, Contractor agrees to and shall complete an OPERS Independent Contractor Acknowledgement Form (“Form”). The Form is attached hereto and by this reference is incorporated as a part of this Agreement. The County shall retain the completed Form and immediately transmit a copy of it to OPERS.

Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mr. Stapleton Absent

RESOLUTION NO. 13-576

IN THE MATTER OF AMENDING THE CHILD PLACEMENT SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ENA, INC. DBA NECCO:

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

Whereas, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations, and

Whereas, the Director of Job & Family Services recommends approval of the following contract amendment;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract amendment for Child Care Placement providers:

ENA, Inc. DBA NECCO

AMENDMENT TO CONTRACT
For
Child Placement and Related Services
AMENDMENT NO. 1

This is to amend the Contract for Child Placement and Related Services between the Delaware County Department of Job and Family Services, a department of the Delaware County Commissioners, and ENA, Inc. DBA NECCO Center, entered into on the first day of July, 2012.

- I. Article IV. Reimbursement for Placement Services: Changes the maximum amount reimbursable under the contract from \$5,000 to \$15,000.00.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Absent

RESOLUTION NO. 13-577

IN THE MATTER OF APPROVING THE SANITARY SEWER CONSTRUCTION PLANS FOR THE COURTYARDS OF POWELL, PHASE 1 AND 2:

It was moved by Mr. Merrell, seconded by Mr. O’Brien to approve the following sanitary sewer construction plans for Courtyards Of Powell, Phase 1 And 2 for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer plans for Courtyards Of Powell, Phase 1 And 2 for submittal to the Ohio EPA for their approval.

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Therefore be it resolved, that the Board of Commissioners approves sanitary sewer plans for Courtyards Of Powell, Phase 1 And 2 for submittal to the Ohio EPA for their approval.

Vote on Motion Mr. Merrell Aye Mr. Stapleton Absent Mr. O'Brien Aye

RESOLUTION NO. 13-578

IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS, ESTIMATE AND SETTING THE BID DATE FOR THE PROJECT KNOWN AS TIP FLOOR REPAIRS TO THE SOLID WASTE TRANSFER STATION, CONTRACT NO. DCES 13-02:

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

Whereas , the Delaware County Board of Commissioners entered into an Agreement with S&ME Inc. (formerly known as BBC&M) on January 23, 2012 to complete design services for the Delaware County Solid Waste Transfer Facility; and

Whereas, the plans, specifications and estimates are completed; and

Whereas, the construction cost of the Improvement is estimated to be \$281,923.20.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The plans, specifications and estimates for the project known as TIP FLOOR REPAIRS TO THE SOLID WASTE TRANSFER STATION are hereby approved, and;

Section 2: The Director of Environmental Services is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Invitation to Bid:

**PUBLIC NOTICE
ADVERTISEMENT FOR BIDS**

**DELAWARE COUNTY
Tip Floor Repairs to the
Solid Waste Transfer Facility
CONTRACT NO. DCES 13-02**

Sealed Bids for the Tip Floor Repairs to the Solid Waste Transfer Facility will be received by the County of Delaware, Ohio at the Office of the Delaware County Regional Sewer District, 50 Channing Street (South Wing), Delaware, Ohio until **2:00 PM** local time on **Friday, June 28, 2013**, and then at said Office publicly opened and read aloud.

THE CONTRACT DOCUMENTS may be examined at the following location:
Delaware County Regional Sewer District
50 Channing Street (South Wing)
Delaware, Ohio 43015

A CD may be obtained free of charge containing specifications, bid forms and contract documents in PDF format on or after May 30, 2013 at 12:00 P.M at the Delaware County Regional Sewer District office, 50 Channing Street (South Wing), Delaware, Ohio 43015.

Bids shall be submitted in a sealed envelope marked "**Sealed Bid for Tip Floor Repairs**". Each Bid must be accompanied by a Bid Guaranty in the form of a Bid bond or certified check (made payable to the Delaware County Board of Commissioners) in accordance with Section 153.54 of the Ohio Revised Code. Bid security furnished in bond form shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

Engineers estimate for the project: \$281,923.20.

The County reserves the right to reject any and all Bids, in whole or in part, to waive any informality in any or all Bids, to accept the Bid it deems most favorable to the County after the Bids have been examined and checked, and subject to the approval of the County Commissioners.

Prospective Bidders may call or send questions to the attention of Eric Kletrovetz, Lead Project Engineer, Tel:(740) 833-2240, Fax:(740) 833-2239, ekletrovetz@co.delaware.oh.us

A **MANDATORY** pre-Bid conference will be held on **Thursday, June 20, 2013** at **5:30 P.M.** at the Delaware County Solid Waste Transfer Station, 888 US 42 North, Delaware, Ohio 43015.

No Bid shall be withdrawn for a period of sixty (60) days after being publicly opened and read.

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Vote on Motion Mr. Stapleton Absent Mr. Merrell Aye Mr. O'Brien Aye

RESOLUTION NO. 13-579

IN THE MATTER OF REJECTING ALL BIDS FOR THE PROJECT KNOWN AS ALUM CREEK WATER RECLAMATION FACILITY ROOF REPLACEMENT CONTRACT NO. DCES 13-01:

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

Whereas, Delaware County received bids for the Alum Creek Water Reclamation Facility Roof Replacement Project on April 24, 2013; and

Whereas, Delaware County reserves the right to reject any and all bids, in whole or in part, to waive any defect in any or all bids; and

Whereas, all the bids were determined to be incomplete.

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners reject all bids received for the Alum Creek Water Reclamation Facility Roof Replacement Project DCES 13-01.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Absent

RESOLUTION NO. 13-580

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND HIGH VOLTAGE MAINTENANCE CORPORATION FOR THE ALUM CREEK WATER RECLAMATION FACILITY SWITCHGEAR AND TRANSFORMER TESTING:

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

WHEREAS the Division of Environmental Services has determined that contract services with High Voltage Maintenance Corporation are necessary to perform testing on the Switchgears and Transformers at the Alum Creek Water Reclamation Facility; and

WHEREAS, the Division of Environmental Services has determined that High Voltage Maintenance Corporation is competent in performing the work contemplated in the proposed service agreement.

THEREFORE be it resolved that the Board of County Commissioners execute the following service agreement for contract services with High Voltage Maintenance Corporation 5100 Energy Drive Dayton, Ohio 45414.

ALUM CREEK WATER RECLAMATION FACILITY SWITCHGEAR AND TRANSFORMER TESTING

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 3rd day of June, 2013 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and High Voltage Maintenance Corp. 5100 Energy Drive Dayton, Ohio 45414 (“Contractor”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

Contractor agrees to furnish, unto the County, Alum Creek Water Reclamation Facility Switchgear and Transformer Testing in accordance with the Scope of Services attached hereto (Exhibit “A”) and, by this reference, hereby made part of this Agreement (hereinafter “the Scope”). Contractor shall perform the Work in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Section 4 – Compensation

The Contractor agrees that invoices for the Scope of Services in Section 3 of this agreement shall be supplied to the Division of Environmental Services within ten (10) calendar days after the completion of the work. The County shall not be responsible for expenses attributable to the errors or neglect of the Contractor. The value of this agreement shall not exceed \$16,000.00 in billable services to the County. In the event that the Contractor exceeds this value, the Contractor will be liable for all charges over and above the contract limit as stipulated herein.

Section 5 – Payment

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Compensation shall be paid only after the Switchgear and Transformer Testing has been performed. Billing shall be invoiced on time and material basis per 0.65 multiplier applied to the Class II Standard rates in accordance with the Fee Schedule attached hereto (Exhibit "B") . Invoices shall be submitted to the Administrator by the Contractor on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Contractor shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Term

The agreement shall be in effect upon execution of contract to December 31st 2013.

Section 7 – Insurance

- 7.1 **General Liability Coverage:** Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 **Workers' Compensation Coverage:** Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 **Self Insurance:** Contractor may maintain self insurance coverage for any and all insurance requirements, in whole or in part, as provided herein.
- 7.5 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insured's with respect to all activities under this Agreement, to the extent of Contractor's negligent acts or omissions, in the policies required by Subsections 7.1 and 7.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 7.6 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 7.4. Certificates of insurance shall provide that if such certificate is canceled prior to the expiration date thereof, written notice shall be provided to the County. Cancellation of any certificate shall not relieve the Contractor of the insurance requirements provided herein.

Section 8 – Liability and Warranties

To the fullest extent permitted by law, neither party shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Work or this Agreement. This mutual waiver shall include, but not be limited to, loss of profit, loss of business or income, or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, the Contractor shall indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting there from, to the proportionate extent caused by any negligent acts, errors or omissions of the Contractor, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable, provided the Contractor is given reasonable notice regarding such claim and has the sole right to select and direct counsel and settle the claim.

Neither party shall be liable for damages caused by delay in performance, and the remedies of the parties set forth herein exclusive. In no event shall a party's liability to the other exceed \$500,000 under this Agreement.

Contractor warrants the proper performance of the services for a period of one (1) year from the completion of the services. The warranty set forth herein is the sole and exclusive warranty given by Contractor with respect to the services and is in lieu of and excludes all other warranties, express or implied, arising by operation of law or otherwise, including without limitation, merchantability and fitness for a particular purpose, whether or not the purpose or use has been disclosed to Contractor.

Section 9 – Suspension or Termination of Agreement

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

Section 10 – Change in Scope of Work

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In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 **Prohibited Interests:** Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 11.2 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 11.3 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 11.5 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 **Non-Discrimination/Equal Opportunity:** Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Contractor certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 11.8 **Independent Contractor:** The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

FURTHERMORE Let it be resolved that the Board of County Commissioner's approve the purchase order with the following allocations: \$16,000.00 from Org Key 66211904-5325

Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mr. Stapleton Absent

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RESOLUTION NO. 13-581

IN THE MATTER OF APPROVING A BWC / SELF INSURED SAFETY GRANT POLICY FOR DELAWARE COUNTY:

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

Whereas, the Assistant County Administrator /Director of Administrative Services recommends approval of the BWC Self Insured Safety Grant Policy;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the BWC Self Insured Safety Grant.

DELAWARE COUNTY

Subject	Effective	Supersedes	This Sheet	Total
BWC Self Insured Safety Grant	06/01/2013		1	1

1.0 Purpose

Delaware County was granted the ability to self insure its workers’ compensation program with the State of Ohio on 9/1/2008. The State of Ohio does not allow self insured employers to receive safety grants from State funds. Due to this restriction, the County has decided to allow departments to apply for safety grants from the County’s workers’ compensation budget.

2.0 Scope

This policy pertains to all departments within the jurisdiction of the Delaware County Commissioners authority for workers’ compensation funds.

3.0 Distribution

To all departments covered by the County’s workers’ compensation program.

4.0 Definitions

- A. Safety Grant – Funding provided from the County’s workers’ compensation budget for goods and/or services designed to reduce or prevent injuries to County Employees.
- B. Safety Grant Review Board - Auditor’s Department designee, the County Administrator’s designee, The Workers’ Compensation Coordinator, The Administrative Services Director and a Prosecutor’s office designee.
- C. Safety Grant application – a letter requesting funding, potential injury prevention and cost saving by investing in procedures or equipment.

5.0 Policy

Any County department covered by the County’s workers’ compensation program shall be able to apply for a safety grant that once could have been issued by the State of Ohio through the Safety Intervention Grants program, the Workplace Wellness Grant Program or the Drug-Free safety program grant program.

- 1. Safety grants will be awarded for goods and/or services designed for the prevention of injuries and illnesses, in order to reduce the number and severity of workplace injuries and illnesses.
- 2. A Safety Grant Review Board consisting of an Auditor’s Department designee, the County Administrator’s designee, The Workers’ Compensation Coordinator, The Administrative Services Director and a Prosecutor’s office designee will be formed to review submitted requests for Safety Grant Funding.
- 3. When determining whether to award a grant, consideration will be given to how much the intervention will increase safety for County employees and the cost savings in injury prevention.

Please describe how your proposed use of safety grant money will result in accident prevention and cost reduction.

- A. The application letter needs to be in writing, detailing the need, scope and amount of funding requested. The Safety Grant Review Board will use your application letter to approve or deny the request for the

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safety grant. Therefore, the information provided in this application letter must describe the significance of the problem and the effectiveness of the proposed solution.

- B. The approval criteria will be as follows; based on the need, potential injury prevention and funds available in the workers' compensation fund while maintaining an adequate reserve balance.
- C. The Safety Grant Review Board will recommend to the County Commissioners to approve or deny the application for safety grant based on available data and available funding.

Vote on Motion Mr. Stapleton Absent Mr. O'Brien Aye Mr. Merrell Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

- Genoa Township Police Chief Taylor Is Retiring

Commissioner O'Brien

-Attended And Participated In A Regional Planning Meeting

-Attended And Participated In A DKMM Executive Committee Meeting; Full Board Meeting This Week

Tim Hansley, County Administrator

-Memorial Golf Tournament In Dublin

RESOLUTION NO. 13-582

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PROMOTION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR PENDING OR IMMINENT LITIGATION:

It was moved by Mr. Merrell, seconded by Mr. O'Brien to adjourn into Executive Session at 9:45AM.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Absent

RESOLUTION NO. 13-583

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Merrell, seconded by Mr. O'Brien to adjourn out of Executive Session at 10:58AM.

Vote on Motion Mr. Merrell Aye Mr. Stapleton Absent Mr. O'Brien Aye

There being no further business, the meeting adjourned.

Gary Merrell

Ken O'Brien

Dennis Stapleton