

COMMISSIONERS JOURNAL NO. 60 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD FEBRUARY 27, 2014

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

Present:  
Gary Merrell, President  
Dennis Stapleton, Vice President  
Ken O’Brien, Commissioner

RESOLUTION NO. 14-193

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 24, 2014:

It was moved by Mr. Stapleton, 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 February 24, 2014; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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              Aye              Mr. O'Brien              Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 14-194

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0226, MEMO TRANSFERS IN BATCH NUMBERS MTAPR:0226:

It was moved by Mr. Stapleton, seconded by Mr. O’Brien to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0226, memo transfers in batch numbers MTAPR0226 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO’ Increase			
Various Vendors PO	Job and Family For Board and Care Program	22511607-5350	\$ 78,833.00

PR #	Vendor Name	Line Desc	Line Account	Line Amount
<b>JOB AND FAMILY SERVICES</b>				
R1402708	ADRIEL SCHOOL INC	RESIDENTIAL TREATMENT	22511607 - 5342	\$ 50,000.00
R1402730	ENA INC	RESIDENTIAL TREATMENT	22511607 - 5342	\$ 51,753.00
R1402748	DELAWARE AREA CAREER CENTER	ABLE	22411601 - 5348	\$ 25,200.00
R1402771	TREASURER,STATE OF OHIO	VOIP COLLABOR8	22411605 - 5301	\$ 35,000.00
R1402777	JOB & FAMILY SERVICES,HANCOCK	COLLABOR8 PHONE SERVICE	22411601 - 5330	\$ 8,500.00
R1402778	BOARD OF DEVELOPMENTAL DISABILITIES	LOCAL CLUSTER DC	22511607 - 5342	\$ 16,476.01
R1402779	BOARD OF DEVELOPMENTAL DISABILITIES	LOCAL CLUSTER CL	22511607 - 5342	\$ 6,283.29
R1402782	NORTH CENTRAL JOBS FOR OHIO GRADUATES	JOBS FOR OHIO GRADUATES	22311611 - 5348	\$110,000.00
<b>PERMANENT IMPROVEMENT</b>				
R1402751	UNIVERSAL ENTERPRISES INC	AC INSTALL JAIL	40111402 - 5410	\$ 28,598.00

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R1402752	BKM CONSTRUCTION LLC	REMOVE CURB LAW LIBRARY	40111402 - 5328		\$ 6,200.00	
ENVIRONMENTAL SERVICES						
R1402762	HILLIARD LAWN & GARDEN LLC	LAWN MOWER FOR LOWER SCIOTO	66211905 - 5450		\$ 13,919.00	
R1402772	ROTORK CONTROLS INC	ROTORK UNITS FOR CLARIFIERS AT ALUM CREEK	66611904 - 5450		\$ 14,386.00	
Vote on Motion	Mr. Stapleton	Aye	Mr. Merrell	Aye	Mr. O'Brien	Aye

RESOLUTION NO. 14-195

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The County Administrator is requesting that Commissioner O’Brien, Commissioner Merrell, Commissioner Stapleton, Teri Morgan, Jenna Jackson, Gus Comstock, Seji Kille, Dawn Huston and Tim Hansley attend the MORPC State of the Region Luncheon in Columbus, OH on April 17, 2014 at the cost of \$650.00 (fund number 21011113).

Vote on Motion	Mr. O'Brien	Aye	Mr. Merrell	Aye	Mr. Stapleton	Aye
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RESOLUTION NO. 14-196

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING A NECESSITY AND THE INTENT OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO APPROPRIATE PROPERTY:

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

WHEREAS, the Board of Delaware County Commissioners (the “Board”) deems it necessary to construct a highway improvement to Lewis Center Road, Big Walnut Road and Africa Road in Delaware County, Ohio (the “Improvement”); and

WHEREAS, the Board has determined that additional land is necessary for the Improvement and that the Board and property owners were unable to agree on the terms of conveyance through good faith negotiations;

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

Section 1. The Board deems it necessary, and it is hereby declared to be the intention of the Board, to appropriate the following property necessary for the Improvement:

<u>Property Owner</u>	<u>Interest to be Appropriated</u>
Gary W. Hardison and Rhonda L. Hardison	14-SH and 14-T

The Board further finds that it is necessary and the Board’s intention to take immediate possession of the interests described herein for the purpose of making or repairing roads that shall be open to the public without charge. The parcel identifiers listed above are taken from the approved right-of-way plans and highway construction plans for the Improvement, which are, by this reference, fully incorporated herein and are on file and available for inspection or copying at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015.

Section 2. The Board hereby directs the Delaware County Prosecuting Attorney to commence the appropriation proceedings on behalf of the Board.

Section 3. This Resolution shall take effect and be in force immediately upon passage.

Vote on Motion	Mr. Merrell	Aye	Mr. O'Brien	Aye	Mr. Stapleton	Aye
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RESOLUTION NO. 14-197

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IN THE MATTER OF AWARDING A CONTRACT TO H&H ENVIRONMENTAL, FOR THE  
DELAWARE COUNTY ASBESTOS ABATEMENT 2014 WITH FUNDING FROM THE DELAWARE  
COUNTY RESIDENTIAL DEMOLITION – MOVING OHIO FORWARD 2014 GRANT:

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

WHEREAS, Ohio Regional Development Corp. solicited quotes from licensed asbestos hazard abatement contractors on behalf of Delaware County; and

WHEREAS, bids were opened on January 31, 2014, from and in the amount of:

H&H Environmental	\$7,529.00
North American Environmental Services	\$7,720.00
Page Excavating	\$9,914.00
Hina Environmental	\$11,389.00
Ohio Technical Services	\$13,720.26
Bull Construction	\$15,600.00
AHC Environmental	\$19,557.00; and

WHEREAS, the Economic Development Director, and the Ohio Regional Development Corporation reviewed the bids and recommend the bid submitted by H&H Environmental as the lowest and best bid; and

NOW, THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. The Board hereby awards the contract to and approves the contract with H&H Environmental in the amount of \$7,529.00.

Section 2. That this resolution shall take effect and be in force immediately after its passage.

CONTRACT

THIS AGREEMENT made this 27th day of February 2014, by and between H&H Environmental hereinafter called the "Contractor" and Delaware County hereinafter called the "Owner".

WITNESSETH, that the Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work.

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services including utility and transportation services, and perform and complete all work required for the asbestos abatement of the project; namely, Delaware County Asbestos Abatement 2014, all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price.

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for Asbestos Abatement–7 sites in Delaware, OH, for the sum not to exceed Seven Thousand five hundred twenty nine dollars (\$7,529.00).

ARTICLE 3. Contract.

The executed contract documents shall consist of the following:

- a. This Agreement
- b. General Conditions
- c. Scope of work
- d. Invitation for Bids
- e. Instructions to Bidders
- f. Signed copy of Bid
- g. Required Forms (attached)

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

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

RESOLUTION NO. 14-198

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IN THE MATTER OF APPROVING TRANSFER OF FUNDS AND TRANSFER OF  
APPROPRIATIONS FOR JOB AND FAMILY SERVICES:

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

Appropriation Transfers	
From	To
22411601-5305 JFS Income Maintenance/Training & Staff Dev	22411606-5301 JFS Social Services/Contracted Professional Services
	\$ 6,000.00
22311611-5801 Workforce Investment Act/Transfers	22311614-5801 TANF OWIP/Transfers
	\$ 10,000.00
Fund Transfers	
From	To
10011110-5801 General Fund-Human Services/Transfers	22311611-5801  Workforce Investment Act/Transfers
	\$ 115,000.00
10011110-5801 General Fund-Human Services/Transfers	22411601-4601  JFS Income Maintenance
	\$ 305,000.00
Vote on Motion	Mr. O'Brien      Aye      Mr. Merrell      Aye      Mr. Stapleton      Aye

RESOLUTION NO. 14-199

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLAN FOR  
COURTYARDS AT GRANDSHIRE:

It was moved by Mr. Stapleton, seconded by Mr. O’Brien to approve the following sanitary sewer improvement plan for Courtyards at Grandshire for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer improvement plans for Courtyards at Grandshire for submittal to the Ohio EPA for their approval.

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer improvement plans for Courtyards at Grandshire for submittal to the Ohio EPA for their approval.

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

RESOLUTION NO. 14-200

RESOLUTION FOR ACCEPTING A SANITARY SEWER EASEMENT:

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

WHEREAS, the County Sewer District staff has determined that an exclusive easement (more particularly described on the attached exhibit) is necessary for the purpose of construction, operation and maintenance of public and/or private sanitary sewers and sanitary service connections, together with ingress and egress thereto; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby accepts the following easement.

(Full copy of exhibit available in the Commissioners’ Office until no longer of administrative value)

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**EASEMENTS FOR SANITARY SEWER PURPOSES**

KNOW ALL MEN BY THESE PRESENTS, Epcon Sawmill, LLC, herein referred to as Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to them by the Board of County Commissioners of Delaware County, Ohio, herein referred to as Grantee, whose address is 101 North Sandusky Street, Delaware, Ohio, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey, and release to said Grantee, its successors and assigns, forever, a perpetual 20-foot-wide exclusive sanitary sewer easement over the area described in Exhibit A attached hereto, together with ingress and egress thereto.

Said exclusive sanitary sewer easement shall be solely for construction, operation, and maintenance of public and/or private sanitary sewers and sanitary service connections.

Right angle, or near right angle utility crossings to the sanitary sewer line and Permanent Sanitary Sewer Easement are permitted. Any other utility crossing shall be permitted only if approved in writing by the Delaware County Sanitary Engineer.

No buildings, sheds, decks, pools, or other structures shall be constructed above or below ground within the limits of the Permanent Sanitary Sewer Easement, unless said structure is approved in writing by the Delaware County Sanitary Engineer.

Any landscaping features, such as trees, fences, retaining walls, etc., within the sanitary sewer easement area(s) shall be reviewed by the Delaware County Sanitary Engineer's Office prior to installation. Any landscaping features placed within the exclusive sanitary sewer easement may be removed at any time by the Delaware County Sanitary Engineer or its representatives. The cost of restoration shall be the responsibility of the Grantor, or Grantor's heirs, successors, or assigns.

The addition of any dirt, soil, fill, or other changes to the ground cover above the sanitary sewer and/or within the sanitary sewer easement shall be subject to approval of the Delaware County Sanitary Engineer. If it is determined that the height of dirt, soil, fill, or other earthwork above the sanitary sewer is detrimental to the structural integrity of the sanitary sewer, the Delaware County Sanitary Engineer reserves the right to require that said earthwork be graded to such a level that will, in his or her opinion, not jeopardize the structural integrity of the sanitary sewer.

TO HAVE AND TO HOLD said easements and right-of-way unto the Grantee, its successors and assigns forever.

And the said Grantor for itself and their heirs, successors, and assigns, hereby covenants with said Grantee, its successors and assigns, that it is the true and lawful owner of said premises as recorded in the Delaware County Recorder's Office in Deed Book 1237, Page 1875 and is lawfully seized of the same in fee simple, and has good right and full power to grant, bargain, sell, convey, and release the same in the manner aforesaid, and that the same are free and clear from all liens and encumbrances

whatsoever and that it will warrant and defend the same against all claims of all persons whomsoever. Such easements are granted in perpetuity.

The Grantor has executed this instrument on this 16<sup>th</sup> day of December, 2013.

**Epcon Sawmill, LLC**

By:   
Joel D. Rhoades, Vice President

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SANITARY SEWER EASEMENT  
0.545 ACRE

Situate in the State of Ohio, County of Delaware, City of Powell, lying in Farm Lots 28 and 29, Quarter Township 4, Township 3, Range 19, United States Military Lands, being on, over and across that 2.830 acre tract conveyed to Epcor Sawmill LLC by deed of record in Official Record 1237, Page 1875, and Lots 170 and 171 of "Wyandotte Springs", a subdivision of record in Plat Book 5, Page 127, as conveyed to Epcor Sawmill LLC by deed of record in Official Record 1237, Page 1426, (all references refer to the records of the Recorder's Office, Delaware County, Ohio) being more particularly described as follows:

Beginning, for reference, in the southerly right-of-way line of Grey Oaks Drive, of record in Plat Cabinet 2, Slide 647A-647C, being the common corner of said 2.830 acre tract and Lot 3112 of "Murphy's Park Section 5", a subdivision of record in Plat Cabinet 3, Slide 552;

Thence South 02° 52' 00" West, with the line common to said 2.830 acre tract and said Lot 3112, a distance of 0.98 feet to the TRUE POINT OF BEGINNING;

Thence South 02° 52' 00" West, continuing with said common line, a distance of 21.65 feet to a point;

Thence across said 2.830 acre tract and Lots 170 and 171, the following courses and distances:

South 70° 20' 15" West, a distance of 115.20 feet to a point;  
South 02° 30' 24" West, a distance of 115.26 feet to a point;  
South 02° 43' 57" West, a distance of 351.06 feet to a point;  
North 87° 16' 03" West, a distance of 215.00 feet to a point;  
North 02° 43' 57" East, a distance of 20.00 feet to a point;  
South 87° 16' 03" East, a distance of 195.00 feet to a point;  
North 02° 43' 57" East, a distance of 321.06 feet to a point;  
North 87° 16' 03" West, a distance of 195.00 feet to a point;  
North 02° 43' 57" East, a distance of 20.00 feet to a point;  
South 87° 16' 03" East, a distance of 194.96 feet to a point;  
North 02° 30' 24" East, a distance of 118.62 feet to a point; and  
North 70° 20' 15" East, a distance of 136.94 feet to the TRUE POINT OF BEGINNING, containing 0.545 acre, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 9/30/13  
Heather L. King  
Professional Surveyor No. 8307

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

RESOLUTION NO. 14-201

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND WAGE WORKS FOR THE ADMINISTRATION OF DELAWARE COUNTY'S FLEXIBLE SPENDING ACCOUNT PROGRAM:

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

Whereas, the Assistant County Administrator/ Director of Administrative Services recommends approving the Agreement With Wage Works For The Administration Of Delaware County's Flexible Spending Account Program;

Therefore Be it Resolved, the Board of Commissioners approve Agreement Between The Delaware County Board Of Commissioners And Wage Works For The Administration Of Delaware County's Flexible Spending Account Program;

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ORDER FORM

Client:

Delaware County  
Att: Cindi Blair  
10 Court Street, Delaware, 01143015

Terms and Conditions of Service:

- 1. Term: 5/1/2014- 12/31/2016
- 2. General Terms and Conditions of Service: You are purchasing the service(s) listed below and, in doing so, acknowledge and agree to WageWorks' General Terms and Conditions of Service attached hereto as Exhibit A, unless otherwise provided herein.
- 3. Fees: Client shall pay all Fees via ACH Debit. All payments are due net 30 days from the date of invoice.

CLIENT ACH Information if Client wishes WageWorks to issue ACH Debit:

Bank Name:  
Bank Address:  
ABA Routing No. (9 digits):  
Direct Deposit Account No:  
Finance Contact Email:

- 4. Funding: If applicable, Client shall provide all Funding pursuant to the terms and conditions set forth in the Funding Agreement, which are incorporated herein by reference.
- 5. Service Charge: A service charge of 1.5% per month shall be applied to any overdue amounts.

Service: Flexible Spending Account Services (FSA)

- 1. Monthly Service Fees: The FSA "Monthly Service Fee" is \$4.38 per participant per month (PPPM) subject to a monthly minimum of \$0.00.
- 2. Annual Renewal Fee: \$80.00
- 3. Additional Services:

Service Name	Description	Price
Non-discrimination Testing Session- Standard Package	Each non-discrimination testing session which includes: Section 125 Key Employee Concentration Test, Section 129 More than 5% owners test (Dependent Care FSA) and Section 129 55% Average Benefits Test (Dependent Care FSA test). Additional fee of \$150 per hour for testing services that exceed four (4) hours.	\$0.00
FSA - Plan Document and Summary Plan Description	FSA Plan Document and Summary Plan Description Priced per plan.	\$0.00

EXHIBIT A  
General Terms and Conditions

- 1. **Parties**; This agreement is between you, the client, as identified on the Order Form and/or Funding Agreement, and WageWorks, Inc. ("Wage Works").
- 2. **Term**: The term of the provision of each Service is set forth on the applicable Order Form. These General Terms and Conditions of Service shall remain in effect for so long as WageWorks provides Services pursuant to any Order Form.
- 3. **Fees**; Payment: You shall pay WageWorks the fees ("Fees") listed in the relevant Order Form pursuant to the payment method set forth therein (unless otherwise specified). All undisputed Fees shall be paid net thirty (30) days from the invoice date (unless otherwise specified). You must submit written notice to WageWorks and provide supporting documentation as to any Fees you dispute within thirty (30) days from the date of the invoice. WageWorks shall provide a written response within thirty (30) days of receipt of the notice. Upon resolution, you shall pay any and all outstanding amounts due and owing within five (5) business days of such resolution. All services not set forth in the Order Form that are required as a result of legislative changes or otherwise may be subject to additional fees.

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4. **Services:** These General Terms and Conditions of Service govern WageWorks' provision of services to you, the client, and shall be read in conjunction with each Order Form, which identifies the services ("Services") purchased by you, as well as each Funding Agreement. Some of these terms and conditions may not be applicable to you or the purchased Services.

5. **Changes:** WageWorks may amend these General Terms and Conditions of Service at any time by: (i) posting revised General Terms and Conditions of Service at <https://www.wageworks.com/ccridian/tenns/> and/or (ii) sending information regarding the amendment to your designated contact via email and/or in writing. You are responsible for regularly reviewing this site to obtain timely notice of such amendments. You shall be deemed to accept the amended General Terms and Conditions of Service by your continued receipt of Services if you do not notify WageWorks of your good faith objection within thirty (30) days after such amended terms and conditions have been posted. If WageWorks does not agree to waive the amended terms and conditions to which you object, either party shall have the right to immediately terminate Services without penalty. In addition, due to the regulated nature of the Services provided, legislative and/or regulatory changes may necessitate modification of the provision of Services (including performance guarantees). WageWorks shall use commercially reasonable efforts to provide you with sixty (60) days' prior written notice, to the extent practicable, of any such legislative or regulatory changes that will impact the provision of Services. You shall be deemed to accept the provision of Services, as modified, by your continued receipt of Services if you do not notify WageWorks of your good faith objection within thirty (30) days after receipt of WageWorks' notice. If you object and the parties are not able to reach a good faith agreement regarding the modification of Services, either party shall have right to terminate Services without penalty. Except as set forth herein, these General Terms and Conditions of Service, as well as those set forth in any Order Form or Funding Agreement, may not be amended except in writing signed by both parties.

6. **Termination for Cause:** Either party may terminate a Service with cause upon thirty (30) days' prior written notice to the defaulting party if such material breach is not cured within that period, if curable. Either party may terminate a Service immediately if either party (i) voluntarily files for bankruptcy; (ii) declares insolvency; (iii) takes action to commence winding down its business; or (iv) is named as a defendant in any involuntary bankruptcy or insolvency proceeding. Upon termination of a Service, all rights and licenses granted to you with respect to that Service shall immediately terminate. You shall be responsible to pay all amounts due and owing upon termination. You shall have the ability to access and download your records and reports via WageWorks' website up through the date of termination.

7. **Confidentiality and Privacy:** Each party acknowledges that performance of Services may involve access to and disclosure of Confidential Information that belongs to the other party. "Confidential Information" means any non-public confidential or proprietary information, including, without limitation, business and financial information; policies and procedures; operations; customer and potential customer names; suppliers and vendor names; trade secrets; trade dress; patent applications; inventions disclosures; and, with respect to Plan participants and beneficiaries, personal identification information. Confidential Information does not, however, include any information that: (i) was publicly available or released to the public domain at any time prior to disclosure by one party, (ii) becomes publicly known or generally available after disclosure by one party through no wrongful action or inaction of the other party, (iii) information that is in the party's possession or known by the party at any time prior to the time of disclosure; (iv) is rightfully disclosed to the party by a third party that is not subject to any restrictions; or (v) a party can demonstrate was independently developed by that party without use of the other party's Confidential Information. No Confidential Information shall be disclosed to any third party other than representatives of such party who have a "need to know" such Confidential Information, provided that such representatives are informed of the confidentiality provisions hereof and agree to abide by them. In the event a party is required by law to disclose Confidential Information, the disclosing party shall immediately notify the other party in writing, describing the circumstances of and extent of the disclosure. The parties acknowledge that compliance with the provisions of the foregoing paragraphs are necessary to protect their businesses and goodwill and that any actual or prospective breach will irreparably cause damage to them, for which money damages may not be adequate. Therefore, the parties agree that if one of them breaches, or attempts to breach, the confidentiality obligations set forth herein, the other party shall be entitled to obtain temporary, preliminary and/or permanent equitable relief, without bond, to restrain such breach, together with any and all other legal and equitable remedies available under applicable law or set forth herein.

In addition to any confidentiality obligations set forth herein, any personally identifiable information (e.g., name, address, age, and social security number) collected or obtained by WageWorks in the course of performing Services (the "Privacy Restricted Data") will be collected, stored, maintained, accessed, used and disclosed in accordance with any applicable federal, state and local privacy laws that govern the collection, storage, maintenance, access, use or disclosure of such Privacy Restricted Data (the "Privacy Laws"). WageWorks shall, at all times, perform Services so as not to cause you to be in violation of the Privacy Laws. WageWorks shall be fully responsible for any collection, access, use and disclosure of Privacy Restricted Data that is based on its actions or inactions that are in violation of any Privacy Laws. WageWorks shall notify you as soon as administratively practicable of any breaches of security that may result or may have resulted in the unauthorized collection, access, use or disclosure of Privacy Restricted Data that is, or may be, in violation of any Privacy Laws. WageWorks shall make all reasonable efforts to assist you in relation to the investigation and remedy of any such breach of security and any resulting claim, allegation, action, suit, proceeding or litigation with respect to WageWorks' unauthorized collection, access, use or disclosure of Privacy Restricted Data that is in violation of any Privacy Laws. WageWorks shall be responsible for the cost of its violation of any Privacy Laws with respect to the Privacy Restricted Data, including, without limitation, remedial activity, notification of Plan participants and beneficiaries,



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and fines and/or penalties.

**8. Disposition of Data:** WageWorks shall keep and archive records of information and data regarding you and your Plan(s) that it obtains in connection with the provision of Services hereunder (collectively "Service Records") for the longer of seven (7) years or the period required by applicable law. Upon termination of all Order Forms, each party, upon the request of the other, will return or destroy all copies of all of the others Confidential Information in its possession or control (unless impracticable), except to the extent such Confidential Information must be retained pursuant to applicable law or party's document retention policy.

**9. Intellectual Property:** WageWorks owns and shall retain all right, title and interest (including, without limitation, all intellectual property rights) in and to all software, web pages, documents, processes, and other information, equipment and materials used in connection with the provision of Services hereunder, including, without limitation, those developed by WageWorks for use by you, participants and beneficiaries (the "WageWorks System"). WageWorks grants you, as well as the participants and beneficiaries, a limited, non-exclusive, non-transferable license to access and use the WageWorks System during the applicable term, solely and exclusively: (i) in accordance with these General Terms and Conditions of Service and any instructions, user guides, and policies made available by WageWorks; and (ii) for the purpose of receiving the Services provided by WageWorks. Without limiting the generality of the foregoing, you shall not, (i) without WageWorks' prior written consent, disclose or provide access to the WageWorks System to any unauthorized third parties, or (ii) duplicate the Wage Works System (or any associated materials) or use the same in connection with any other benefits program (including your programs). All other rights, license and title in and to the WageWorks System not expressly granted hereunder shall remain the property of WageWorks.

**10. Limitation of Remedies.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS, LOSS OF DATA OR COST OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT BETWEEN THE PARTIES, THE WAGeworks SYSTEM OR THE SERVICES PERFORMED THEREUNDER UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN ADDITION, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR PRIVACY, WAGeworks SHALL ONLY BE LIABLE TO YOU FOR ANY DIRECT DAMAGES IN AMOUNT EQUAL TO (A) ACTUAL DAMAGES OR (B) THE FEES PAYABLE TO WAGE WORKS FOR THE SERVICE(S) GIVING RISE TO THE CLAIM DURING THE PLAN YEAR IN WHICH THE EVENT OCCURS, WHICHEVER IS LESS.

**11. Warranty Disclaimer:** WageWorks warrants that the Services will be performed in accordance with generally accepted industry practices and with reasonable skill and care. THE WAGeworks SYSTEM AND SERVICES ARE PROVIDED "AS IS" WITHOUT ANY FURTHER WARRANTY OF ANY KIND (EXPRESS OR IMPLIED) INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

**12. Notices:** All notices shall be made in writing and delivered (i) in person, (ii) by certified mail, return receipt requested, (iii) by traceable overnight delivery or (iv) by electronically confirmed facsimile or electronic mail, followed immediately by U.S. Mail to Wage Works at 1100 Park Place, 4th Floor, San Mateo, CA 94403, Attn: General Counsel, or to you at the address listed on the Order Form. A signed receipt shall be obtained where a notice is delivered in person. Notice will be effective upon delivery.

**13. General Provisions:**

Governing Law: Any claims arising under or related to the provision of Services shall be governed by the laws of the State of Ohio, without regard to its conflicts of laws principles.

Plan Administrator: Fiduciary: You acknowledge and agree that you are the "plan administrator" and "fiduciary" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (to the extent such law applies) of any and all employee benefit plans or programs (each a "Plan" or, collectively, the "Plans") sponsored by you, and that WageWorks is an independent contractor engaged to perform the agreed upon Services.

Taxes; Regulatory Fees: You shall be responsible for, and shall promptly pay or reimburse WageWorks for any taxes, as well as any benefit or plan-related charge, surcharge or assessment, imposed as a result of the provision of Services by WageWorks.

Maintenance: WageWorks reserves the right to perform routine system (both web and IVR) maintenance during off-hours (normally between 9 PM and 5 AM ET). Any longer maintenance period will be posted on WageWorks' website.

Publicity. WageWorks shall be permitted to use your name and logo in sales presentations and in any filings with the Securities and Exchange Commission, and shall be permitted to reference your name in any of its earnings calls.

Subcontractors. WageWorks utilizes subcontractors to perform certain Services. WageWorks shall be liable for the

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acts or omissions of its subcontractors. For clarification, HSA custodians and/or trustees are not subcontractors of WageWorks.

Massachusetts Data Security Regulations (201 CMR 17.00). WageWorks certifies that it has in place and shall maintain during the provision of Services, a written comprehensive security program that is in compliance with the provisions of 201 CMR 17.00, Ct seq., at <http://www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf>.

Tennessee Insurance Code, Sections 56-6-403 through 56-6-409. WageWorks certifies that it shall provide Services in compliance with the provisions of Sections 56-6403 through 56-6-409 of the Tennessee Insurance Code at <http://www.lexisnexis.com/holtopics/tncode/>, as applicable.

Escheatment. You shall be solely responsible for compliance with all escheatment obligations.

Assignment. WageWorks may not assign any of its rights and obligations in connection with the provision of Services without your prior written consent. You may not assign any of your rights and obligations hereunder without the prior written consent of WageWorks. These General Terms and Conditions of Service shall be binding upon and shall inure to the benefit of a party's authorized successors and assigns.

Force Majeure. Neither party shall be liable in any way for any delay or any failure of performance of a Service, or for any loss or damage related thereto, due to any cause beyond its reasonable control, including, without limitation, acts of nature, terrorism, civil unrest, war (whether declared or not) or the Government, earthquakes, fire, floods, degradation or disruption of any communication service not under a party's control, loss of electrical power, congestion, failure or other inability to access the Internet or disruption in the financial markets or the banking system, provided prompt notice thereof is given to the other party.

Waiver. Any waiver of any provision set forth herein, or any Order Form and/or Funding Agreement, shall be effective only if in writing and signed by both parties. Failure of either party to insist on performance of any term or condition, or to exercise any right or privilege, shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

Severability. If any provision in these General Terms and Conditions of Service, an Order Form and/or Funding Agreement is held to be invalid or unenforceable, such provision shall be deemed deleted and the remaining provisions shall continue in full force and effect.

Survival. The following Sections shall survive the termination of all Order Forms: Effect of Termination, Intellectual Property, Warranty, Indemnification, Limitation of Liability, Confidentiality, Privacy, Records Maintenance and Disposition, Escheatment, Notices, Governing Law, Disputes, Entire Agreement and Survival.

**14. Entire Agreement:** These General Terms and Conditions of Service and any related Order Form and/or Funding Agreement constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior understandings and agreements relating to such subject matter. In case of a conflict between these General Terms and Conditions of Service and an Order Form or Funding Agreement, the Order Form or Funding Agreement shall prevail. Any conflict between an Order Form and a Funding Agreement, the Funding Agreement shall prevail. In addition to the foregoing, these General Terms and Conditions of Service, and any Order Form and/or Funding Agreement, shall prevail over any additional or different provisions in any purchase order, acceptance notice, or other similar document issued by you, which provisions shall be of no force or effect.

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) is made and entered into by and between You, as our Client, and WageWorks, Inc. (and its subsidiaries), as your service provider, pursuant to the Service Agreement entered into by and between us on even date herewith. This Agreement is incorporated by reference into the Service Agreement, supersedes any prior Business Associate Agreement we have been party to and reflects the Omnibus HITECH Act Final Regulations as of January 25, 2013.

### **Definitions**

Unless otherwise defined, terms used in this Agreement have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information or the HIPAA Security Standards ("HIPAA Privacy & Security Rules"), found at 45 CFR Parts 160-164.

- (a) Agreement means this Business Associate Agreement.
- (b) Business Associate means WageWorks, Inc. and its subsidiaries.
- (c) Covered Entity means You.
- (d) HITECH Act means the HITECH Act of the American Recovery and Reinvestment Act of 2009 (Title XIII, Subtitle D of P.L. 111-5), enacted February 17, 2009 (codified at 42 USC § 17921 et seq.).
- (e) Service Agreement means the Order Form(s) and General Terms and Conditions of Service.

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**Obligations and Activities of Business Associate**

- (a) Use or Disclosure of Protected Health Information. Business Associate agrees not to use or disclose Protected Health Information, other than as permitted or required by this Agreement or as required by Law.
- (b) Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Duty to Report Violations. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including, where there is a breach of Protected Health Information, the identities of any individual whose Protected Health Information was breached.
- (e) Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- (f) Access to Secretary. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of Health and Human Services, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy & Security Rules.
- (g) Access to Individuals. Business Associate agrees to provide individuals with access to their Protected Health Information, as held in a Designated Record Set by Business Associate, in order to meet the requirements under 45 CFR 164.524.
- (h) Amendment of Protected Health Information. Business Associate agrees to make any amendment(s) to Protected Health Information it holds in a Designated Record Set, as directed by the Covered Entity pursuant to 45 CFR 164.526.
- (i) Accounting of Disclosures. Business Associate agrees to document and provide a description of any disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for a list of disclosures of Protected Health Information in accordance with 45 CFR 164.528. Business Associate agrees to provide such information to Covered Entity, or to an individual at the direction of the Covered Entity, in order for Covered Entity to comply with the accounting requirements in 45 CFR 164.528.
- (j) Covered Entity's Right to Restrict. Business Associate agrees to comply, upon communication by Covered Entity, with any restrictions to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (k) HIPAA Security Standards. Business Associate agrees to comply with the HIPAA Privacy & Security Rules with respect to any Electronic Protected Health Information that Business Associate holds on behalf of the Plan.
  - 1. Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement.
  - 2. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required in the HIPAA Privacy & Security Rules.
  - 3. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such information.
  - 4. Business Associate agrees to report to Covered Entity any security incident under the HIPAA Privacy & Security Rules of which it becomes aware, including the identities of any individual whose Electronic Protected Health Information was breached.
- (l) Responsibilities If Security Breach. Business Associate shall notify Covered Entity immediately if there is a breach by either Business Associate or one of its agents of unsecured protected health information, as

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defined in, and consistent with, the HITECH Act and any regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. Such notification shall:

1. Be made in writing to the Covered Entity's Privacy Officer.
2. Be made within ten (10) days of discovery.
3. Include the names of the individuals whose information was breached, the circumstances surrounding the breach, the date of the breach and date of discovery, the information breached, any steps the individuals should take to protect themselves, the steps Business Associate (or its agent) is taking to investigate the breach, mitigate losses, and protect against future breaches, and a contact person for more information.

If requested by Business Associate, Covered Entity shall allow Business Associate to approve the content of any notification in advance.

If requested by Covered Entity, Business Associate shall notify the individuals involved, or the media or the US Department of Health and Human Services, as applicable, <sup>iii</sup> with the HITECH Act, and regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. For purposes of this provision, Business Associate is considered an independent contractor of Covered Entity.

**Permitted Uses and Disclosures by Business Associate**

- (a) Disclosures Generally. Except as otherwise provided in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (b) To Carry Out Covered Entity Obligations. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.
- (c) Management & Administration.
  1. Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate
  2. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are: (a) required by law or (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Data Aggregation & De-Identification. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity or to de-identify Protected Health Information. Once information is de-identified this Business Associate Agreement shall not apply.
- (e) Required By Law. Business Associate may use or disclose Protected Health Information as required by law.

**Term and Termination**

- (a) Term. This Agreement shall remain in effect for the term of the applicable Service Agreement. Upon termination of the Service Agreement, Business Associate will retain no copies of the Protected Health Information and will return or destroy the same. If such return or destruction is not feasible, Business Associate will continue to extend the protections afforded to Protected Health Information hereunder. This provision also applies to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity is authorized to terminate this Agreement and the Service Agreement.
- (c) Survival. The rights and obligations of Business Associate under this Agreement will survive the termination of this Agreement.

**Miscellaneous**

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- (a) Compliance with Laws and Regulations. The HITECH Act requires federal agencies to establish rules and regulations regarding the privacy and security of Protected Health Information. Business Associate will ensure that its privacy and security procedures are compliant with the HITECH Act and any rules and regulations issued thereunder with respect to Covered Entity's Protected Health Information. The parties agree to amend this Agreement to comply with applicable requirements of the HITECH Act, where necessary.
- (b) Relationship of Parties. The parties intend that Business Associate is an independent contractor and not an agent of Covered Entity.

FUNDING AGREEMENT

Client:

Delaware County  
Cindi Blair  
10 Court Street, Delaware, OH 43015

This Funding Agreement is entered into as of January 1, 2014 by and between Delaware County ("Client") and WageWorks, Inc. ("WageWorks") in connection with the provision of Services as set forth in the Order Form. Capitalized terms used herein shall have the same meaning as set forth in the General Terms and Conditions referenced in the Order Form in Exhibit A, unless otherwise provided herein.

Client acknowledges and agrees that any Funding submitted by Client to WageWorks under this Funding Agreement (i) is not subject to any restrictions; and (ii) shall not be segregated or set aside in a trust or escrow account by WageWorks. Client further agrees to pay WageWorks the entire amount delivered or deliverable to Participants in any Plan, regardless of whether Client collects sufficient payroll deductions from the Participants.

- 1. Funding Method. Client has elected to pay all Funding via Wire / ACH Credit. If notified by WageWorks of insufficient Funding, Client shall provide additional Funding to WageWorks within one (1) business day via electronic funds transfer.
- 2. Payment Information.

WAGeworks ACH CREDIT ACCOUNT INFORMATION

FSA, HRA Account Information (\*\*Do not send Fees to Account\*\*): Union Bank of California  
350 California Street, 10th Floor  
San Francisco, CA 94104  
Account Name: WageWorks FSA/HRA Deposits Account  
Account Number: 3120004394  
ABA Routing #: 122000496

- 2. FSA, HRA Funding Arrangement
  - a. *Ongoing Funding.* Client shall initiate an ACH credit, electronic funds transfer or wire to WageWorks' designated account to ensure that WageWorks receives the full amount withheld by Client from all participants' salaries in connection with the Plan within three (3) business days after each payroll date. On the first business day of each week, WageWorks shall notify Client via email that an on-line report that contains the prior week's Plan transaction history is available for download via WageWorks' Web site. The invoice reminder notice and report is for the Client's informational purposes only. The method by which Client will provide funds to Wage Works is described above.
  - b. *Reconciliation.* At the close of each plan year, the remaining Funding shall be reconciled and returned to Client (less any amounts owed to WageWorks) as soon as administratively practicable, but in no event later than ninety (90) days after the completion of any Run-out Period and any ancillary manual claims settlement.

*\*The initial Funding provided by Ceridian to Wage Works on Client's behalf consists of monies held by Ceridian as a prefund. Client acknowledges and agrees that such amounts shall be deducted from any amount that would otherwise be returned by Ceridian to Client upon termination of Ceridian services and completion of Ceridian's reconciliation of Client's account.*

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

ADMINISTRATOR REPORTS

Tim Hansley

- Wanted some direction for a response for the Fair Board for fiber
  - Commissioner Merrell supports it as long as it isn't used for private gain
  - Commissioner Stapleton supports the idea; thinks it would be a positive for Agricultural Society for for use of the Fairgrounds

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-Commissioner O’Brien would like to know how it would be used and has some concerns about gambling/hacking on the network

COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Stapleton  
-No reports

Commissioner O’Brien  
-Attended and participated in the Family and Children First Council Executive meeting yesterday. It was a lengthy meeting but productive as far as getting frank facts about the budget and spending. Auditor Kaitsa attended as well as Assistant Director of DCJFS, Sue Ware. Both were very helpful presenting their ideas about funding. Decisions about the fiscal agent for the Council will be upcoming.  
-Regional Planning Committee meets tonight with a light agenda

Commissioner Merrell  
-Facilities discussion made a lot of progress.

RESOLUTION NO. 14-202

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

It was moved by Mr. Stapleton, seconded by Mr. O’Brien to adjourn into Executive Session at 9:57 AM.

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

RESOLUTION NO. 14-203

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Stapleton, seconded by Mr. O’Brien to adjourn out of Executive Session at 12:15 PM.

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

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

\_\_\_\_\_  
Ken O’Brien

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