

COMMISSIONERS JOURNAL NO. 65 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD OCTOBER 24, 2016

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

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

9:40 AM Public Hearing By The Board Of County Commissioners Of The County Of Delaware, Ohio With Respect To The Proposed Issuance By The County Of Its Health Care Facilities Refunding Revenue Bonds, Series 2016 (Sarah Moore Community)

1
 RESOLUTION NO. 16-1066

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 20, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 20, 2016; 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 Mrs. Lewis Aye Mr. Benton Aye

2
 PUBLIC COMMENT

3
 ELECTED OFFICIAL COMMENT
 Rodney Myers, Berkshire Township Trustee: 36/37 & 71 Interchange

4
 RESOLUTION NO. 16-1067

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1021:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1021 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Account	Amount
R1605253	GILCO	SCFM METERS FOR AIR SCRUBBER AND DIGESTER BLOWER	66211904 - 5260	\$8,030.25
R1605256	ROTORK CONTROLS INC	PARTS TO REPLACE PCB/LCD UNITS ON WAS/RAS, VIEWING SCREENS AND SLUDGE PUMP ACTUATORS (line 1)	66211911 - 5201	\$8,756.00
R1605256	ROTORK CONTROLS INC	SHIPPING (line 2)	66211911 - 5331	\$200.00
R1605279	STANTEC CONSULTING INC	PROF SERVICES - TARTAN FIELDS WWTP BASIS OF DESIGN / UPGRADE EVALUATION	66211906 - 5301	\$24,850.00

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

5
 RESOLUTION NO. 16-1068

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Emergency Medical Services Department is requesting that Lt. Bryan Russell attend a Buckeye Fire & EMS Conference in Columbus, Ohio on October 27, 2016 at no cost.

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

6

RESOLUTION NO. 16-1069

SETTING DATE AND TIME FOR VIEWING AND PUBLIC HEARING FOR CONSIDERATION OF THE LIBERTYDALE DRAINAGE IMPROVEMENT PETITION FILED BY LIBERTYDALE HOMEOWNERS ASSOCIATION (NICO FRANANO AND OTHERS):

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

WHEREAS, on September 15, 2016, the Clerk of this Board gave notice to the Board of County Commissioners and the County Engineer of Delaware County, Ohio, on the filing with her of a petition signed by Libertydale Homeowners Association (Nico Franano and Others) to:

1. To repair, replace, or alter the existing improvement as required and to maintain the improvement on engineer plan as requested by this petition.
2. In Delaware County, Liberty Township, in Libertydale Section 1 and 2 generally following the existing course and terrain of the improvement shown on engineer plan (exhibit c)

WHEREAS, the proper bond has been filed with the clerk, approved, conditioned for the payment of costs of notices, plus any other incidental expenses, except the cost incurred by the Engineer in making his preliminary reports, if the prayer of this petition is not granted, or if the petition is for any cause dismissed, unless the Board decides to pay the Engineer’s cost from the bond in accordance with Section 6131.09 of the Revised Code;

THEREFORE, BE IT RESOLVED, BY THE Board of County Commissioners, that the **Monday December 12, 2016 at 1:30PM**, in the vicinity between 2885 and 2865 Lexington Drive, Powell, Ohio 43065, be and the same is hereby fixed as the time and place for the view thereon, and

BE IT FURTHER RESOLVED, That **Thursday March 9th, 2017 at 10:00AM** at the Office of the Board of County Commissioners, 101 North Sandusky Street Delaware, Ohio be and the same is hereby fixed as the time and place for the first hearing on the petition, and

BE IT FURTHER RESOLVED, that notice of said view and hearing be given, as required by law.

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

7

RESOLUTION NO. 16-1070

IN THE MATTER OF RE-BIDDING THE PROJECT KNOWN AS DRAINAGE IMPROVEMENT PROJECT – WINDING CREEK:

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

WHEREAS, the Board, by Resolution 16-951, approved plans, specifications and estimates for the Contract for the Drainage Improvement Project – Winding Creek, and advertise for bids; and,

WHEREAS, one bid was received for the Contract for the amount of \$209,088.84, which is \$138,176.96 over the Engineer’s Estimate.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that the County Engineer 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**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, November 15, 2016, at which time they will be publicly received and read aloud, for the project known as:

**Drainage Improvement Project
 Winding Creek**

All proposals shall be submitted electrically through the web service www.bidexpress.com. The bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

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The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from www.bidexpress.com. All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at www.co.delaware.oh.us and may be accessed by selecting "Bids and Notices"

THE ENGINEERS CONSTRUCTION ESTIMATE FOR THE PROJECT IS \$70,911.88. PER O.R.C. 6131.40 NO BIDS SHALL BE ACCEPTED THAT EXCEEDS THE ENGINEER'S CONSTRUCTION ESTIMATE.

The Owner requires that all work associated with the project be completed before Part 1- March 15, 2017/ Part 2 May 1, 2017. The estimated commencement of work date is November 23, 2016.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates: October 28 & November 4, 2016

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

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RESOLUTION NO. 16-1071

IN THE MATTER OF APPROVING OWNER'S AGREEMENTS FOR LIBERTY TRACE SECTION 2 AND LIBERTY TRACE SECTION 3, PHASE A:

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

Liberty Trace Section 2

OWNER'S AGREEMENT
PROJECT NUMBER: 16052

THIS AGREEMENT, executed on this 24th day of October, 2016 between **PULTE HOMES OF OHIO, LLC**, hereinafter called '**OWNER**' and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **LIBERTY TRACE SECTION 2**, further identified as Project Number 6012 is governed by the following considerations to wit:

Said **OWNER** is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 2 for this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **FIFTY-EIGHT THOUSAND DOLLARS (\$58,000)** estimated to be necessary to pay the cost of inspection by the

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Delaware County Engineer. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless **Delaware County and all Townships and/or Villages** within Delaware County and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the **County**.

Should the OWNER become unable to carry out the provisions of this AGREEMENT, the **OWNER'S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.

In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants the **OWNER** or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$1,444,700
CONSTRUCTION BOND AMOUNT	\$ N/A
MAINTENANCE BOND AMOUNT	\$ 144,500
INSPECTION FEE DEPOSIT	\$ 58,000

Liberty Trace Section 3 Phase A

OWNER'S AGREEMENT
PROJECT NUMBER: 6012

THIS AGREEMENT, executed on this 24th day of October, 2016 between **PULTE HOMES OF OHIO, LLC**, hereinafter called "**OWNER**" and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **LIBERTY TRACE SECTON 3, PHASE A**, further identified as Project Number 6012 is governed by the following considerations to wit:

Said **OWNER** is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 1 for this project.

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The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **FORTY-FIVE THOUSAND DOLLARS (\$45,000)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless **Delaware County and all Townships and/or Villages** within Delaware County and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the **County**.

Should the OWNER become unable to carry out the provisions of this AGREEMENT, the **OWNER'S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.

In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants the **OWNER** or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$1,039,100
CONSTRUCTION BOND AMOUNT	\$1,039,100
MAINTENANCE BOND AMOUNT	\$ 103,910
INSPECTION FEE DEPOSIT	\$ 45,000

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

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IN THE MATTER OF ACCEPTING ROADS, APPROVING RECOMMENDED SPEED LIMITS, ESTABLISHING STOP CONDITIONS, AND RELEASING SURETY FOR ESTATES OF GLEN OAK SECTION 5, PHASE B:

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

Whereas, The Engineer has reviewed the roadway construction of the roads within the subdivision known as Estates of Glen Oak Section 5, Phase B (“Project”) and finds them to be constructed in accordance with the approved plans; and

Whereas, it is therefore the recommendation of The Engineer that the roadways within the Project be accepted into the public system as follows:

- An extension of 0.16 mile to Township Road Number 1433, Scarlet Avenue
- An extension of 0.08 mile to Township Road Number 1641, Blue Stem Drive
- Aster Avenue, to be known as Township Road Number 1655

Whereas, The Engineer also recommends that 25 mile per hour speed limits be established throughout the Project; and

The Engineer further recommends that stop conditions be established at the following intersections:

- On Township Number 1655, Aster Avenue, at its intersection with Township Road Number 1641, Blue Stem Drive
- On Township Road Number 1655, Aster Avenue, at its intersection with Township Road Number 1433, Scarlet Avenue

Whereas, The Engineer also requests approval to return the Bond being held as maintenance surety to the owner, Pulte Homes of Ohio LLC.

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

10
RESOLUTION NO. 16-1073

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN SAILENDRA P. PATEL AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR DEL-CR10-0.90:

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

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Sailendra P. Patel for the project known as DEL-CR10-0.90

Now Therefore Be It Resolved that:

Section 1. The Delaware County Board of Commissioners approve the contract of sale and purchase with Sailendra P. Patel for the project known as DEL-CR10-0.90 as follows:

**CONTRACT OF SALE AND PURCHASE
 VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 24th day of October, 2016, Sailendra P. Patel unmarried, whose address is 8321 S. Old State Rd. Lewis Center, Ohio 43035 hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
 Par. 126 WD, CH, S
 DEL-CR10-0.90, S. Old State Road Widening

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of **Forty Five Thousand and 00/100 Dollars less \$1 for ROE, Forty Four Thousand Nine Hundred Ninety Nine, (\$45,000.00 - \$1.00 = \$44,999.00)** which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

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- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER's covenants herein; and,
- (D) For expenses related to the relocation of the SELLER, their family, and business; and,
- (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration

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less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.
13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, 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.
17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Section 2. The Board approves a Purchase Order and Voucher for the above contract.

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

11

RESOLUTION NO. 16-1074

**IN THE MATTER OF APPROVING REAL ESTATE ACQUISITION SERVICES AGREEMENT
BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND MS CONSULTANTS,
INC. FOR SOUTH OLD 3-C ROAD:**

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

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Whereas, Section 305.15 of the Revised Code provides that a Board of Commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

Whereas the County Engineer recommends approval of an agreement with MS consultants, Inc. for real estate acquisition services for South Old 3-C Road.

Now, Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the agreement with MS Consultants, Inc. for real estate acquisition services for South Old 3-C Road as follows:

DELAWARE COUNTY OHIO
Real Estate Acquisition Services Agreement
South Old 3-C Road, DEL-CR24-0.07

Section 1-Parties to the Agreement

This Agreement is made and entered into this 24th day of October, 2016 by and between the Delaware County Board of Commissioners, Delaware County, Ohio ("County"), and the firm of MS consultants, Inc., 2221 Schrock Road, Columbus, Ohio 43229 ("Consultant").

Section 2-Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for performance of the Work performed under this Agreement. The Administrator shall have the right to issue Notice to Proceed, Notice to Suspend or Notice to Resume Work under this Agreement within the dates to which this Agreement is effective and shall have general supervision of the Work.

Section 3-Basic Services of Consultant

The duties of the Consultant shall encompass the following tasks within Delaware County for the project known as S. Old 3-C Road Improvements, DEL-CR24-0.07.

- A. Acquisition or 64 parcels (including Project Management)
- B. Title updates as needed prior to closings
- C. Formal Closings
- D. Mail out closings

Section 4 – Payment for Professional Services

4.1 The County agrees to pay the Consultant as compensation for professional services as listed in Section 3, an amount not too exceed One Hundred Fifty Thousand Dollars (\$150,000)

4.2 The actual cost plus reimbursable expenses as incurred by the Consultant in the performance of the portion of the work outlined in Section 3 of this Agreement, shall not exceed the amount stipulated in Section 4.1 without an amendment to the Agreement duly authorized by the County.

4.3 Payment for services performed shall be due and payable monthly, based on the actual time and expenses incurred by the Consultant in the performance of the services on the project.

Section 5–Payment

5.1 Notwithstanding any provision in this contract to the contrary, the maximum obligation of the County under this contract is limited to the amount of \$150,000. Unless the County appropriates and authorizes the expenditure of additional funds pursuant to proper modification of this contract, the Consultant's duties and obligations to perform additional services under this contract shall be considered ended December 31, 2017.

Payment of invoices submitted to the County by the Consultant shall be made by the County within thirty (30) days of the date the County receives the invoice. If the maximum obligation of the County provided herein is changed properly, then the new amount will control the continuation of the duties and obligations of the Consultant to perform additional services.

5.2 County shall provide all criteria and full information as to County's requirement for the Project; designate a person to act with authority on County's behalf in respect of all aspects of the Consultant's submissions; and give prompt written notice to Consultant whenever County observes or otherwise becomes aware of any defect in the work.

Section 6-Time of Schedule and Completion

6.1 After notification from the County to proceed, the Consultant shall, to the extent possible, schedule activities to meet specific project dates as requested by the County.

Section 7-Insurance

7.1 General Liability Coverage: Consultant 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.

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7.2 Automobile Liability Coverage: Consultant 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: Consultant 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. Consultant 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, Consultant, 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 in accordance with 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. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 - Indemnification

The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or part by any negligent acts, errors or omissions of the Consultant, 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.

As the County's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Consultant and not against any of the Consultant's employees, officers or directors.

The Consultant's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the work, and the Consultant shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the County, including but not limited to, claims for loss of use, loss of profits and loss of markets.

Section 9 - Termination of Agreement

The County reserves the right to terminate this Agreement at any time for reasons identified in this Agreement or for any other reasons, for the convenience of the County. Upon termination of the Agreement, the County will provide written notice to the Consultant to terminate all work at which time the Consultant shall terminate all work associated with this Agreement and submit a final invoice for the portion of the work completed to date. The County shall not be responsible for payment for any work performed after the date of termination.

Section 10 - Change in Scope of Work

In the unforeseen event that substantial changes to the scope of work as defined in Section 3 are required during performance of work under this Agreement, 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.

Section 11 - Ownership of Documents

Upon completion or termination of the Agreement, the Consultant shall provide copies, if requested, to the County of all documents as part of this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed written or electronic work produced exclusively as part of this Agreement. This section does not require unauthorized duplication of copyrighted materials.

Section 12 - Change of Key Consultant Staff

The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Work as contemplated at the time of executing this Agreement.

Section 13 - Miscellaneous Terms & Conditions

13.1 Prohibited Interests: Consultant 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. Consultant 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 project, without the prior express written consent of County.

13.2 Independent Contractor: The Parties acknowledge and agree that contractor is acting as an

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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. Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.

13.3 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 Findings for Recovery: Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

13.9 Non-Discrimination/Equal Opportunity: Consultant 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. Consultant 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.

Consultant 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.

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

13.10 Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 1(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(1)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

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

12
RESOLUTION NO. 16-1075

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATIONS FOR VETERAN SERVICE:

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

Supplemental Appropriations		
10062601-5001	Veteran Service/Compensation	755.00
10062601-5120	Veteran Service/County Share OPERS	225.00

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

13
RESOLUTION NO. 16-1076

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN GENOA TOWNSHIP, THE CITY OF DELAWARE AND DELAWARE COUNTY REGARDING USE OF FREQUENCIES FOR ACTIVATING TORNADO SIREN:

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

**AGREEMENT REGARDING USE OF FREQUENCIES
 FOR ACTIVATING TORNADO SIREN**

This Agreement by and between the Genoa Township, the City of Delaware, Ohio (City) and Delaware County Ohio together "The Parties", witnesseth:

By mutual agreement of the Parties and for good and valuable consideration, receipt of which is hereby acknowledged by all Parties, it is hereby agreed that:

- 1) Genoa Township, Ohio desires to utilize the signal generated by the City of Delaware Early Warning System on frequency I54.355MGH; or any successor, to activate its Genoa Township Tornado Siren as an Early Warning System.
- 2) The City agrees to allow Genoa Township to utilize the radio frequency set forth above to activate its tornado siren upon the terms set forth herein.
- 3) Genoa Township agrees to forever release and absolve the City of Delaware and Delaware County from any and all liability resulting from the operation or non-operation of the City's Tornado Siren System for whatever reason and for whatever cause.
- 4) Delaware County has reviewed and approves the terms of this agreement.

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

14
RESOLUTION NO. 16-1077

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE BOARD OF DELAWARE COUNTY COMMISSIONERS AND PST SERVICES, INC. FOR EMERGENCY MEDICAL SERVICES BILLING SERVICES:

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

Whereas, the Director of Emergency Medical Services recommends approval of the agreement with PST Services, Inc. For Emergency Medical Services Billing Services;

Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the agreement with PST Services, Inc. For Emergency Medical Services Billing Services:

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (this "MA") is effective the latest date in the signature block below (the "Effective Date") between PST Services, Inc. ("Service Provider") and Delaware County ("Client"), consisting of the MA Terms and Conditions and all Exhibits, Schedules, and Amendments. The Client's Request for Proposal ("RFP") and Service Provider's proposal submitted in response thereto shall be

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incorporated by reference into this MA. This MA governs all the Services described on a Service Schedule that is included in this MA during the term.

Subject to the terms and conditions of this MA, Client agrees to purchase from Service Provider, and Service Provider agrees to provide Client with, the service(s) listed in the table below (individually, a “Service” and collectively, the “Services”). The description of each Service provided under this MA and any additional terms and conditions relating to such Service are set forth in the Service Schedule referenced in the table below and attached hereto.

SERVICES	SERVICE SCHEDULE
Scope of Services – Emergency Medical Services	Service Schedule 1

This MA is executed by an authorized representative of each party.

DELAWARE COUNTY

Client:
10 Court Street
Delaware, Ohio 43015
Attention: President

yes / invoices sent to above address

PST SERVICES, INC.

Attention: Service Provider:
5995 Windward Parkway
Alpharetta, Georgia 30005
Attention: President
With a copy to the General Counsel at the same address

Contract Number: RMS148210

MA TERMS AND CONDITIONS

1. TERM

- 1.1. This MA will begin on the Effective Date and continues until termination or expiration of each Schedule or amendment attached hereunder, unless earlier terminated as set forth herein.
- 1.2. Further, this MA will remain in force so long as there is an active Service Schedule(s).

2. SERVICES

- 2.1. Responsibilities.
 - 2.1.1. Service Provider will perform the Services set forth on the applicable Service Schedule(s) on behalf of Client.
 - 2.1.2. Service Provider agrees to perform the Services in accordance with all material applicable laws, rules and regulations, including applicable third-party payer policies and procedures.
 - 2.1.3. Client will provide Service Provider with the necessary data in the proper format to enable Service Provider to properly furnish the Services and any information set forth in the Service Schedule(s) on a timely basis and in a format reasonably acceptable to Service Provider (the “Client Responsibilities”). Client authorizes, to the extent necessary, and directs Service Provider to release any or all necessary data and information (including, without limitation, “Individually Identifiable Health Information” as such term is defined in 45 C.F.R. § 160.103) received by Service Provider. Further, Client shall obtain all necessary consents and agreement from patients to ensure that Service Provider can comply with all applicable federal and state laws and regulations in providing the Services including, but not limited to, HIPAA (as defined herein), and the Telephone Consumer Protection Act (47 U.S.C. Section 227) and related regulations, as well as similar state laws and regulations governing telephone communications with consumers. Client shall ensure that all information it provides to Service Provider may be used by Service Provider for telephone contacts, including obtaining and maintaining a record of the consent Client has obtained from patients to receive telephone contacts from or on behalf of Client.
- 2.2. Operating Procedures.
 - 2.2.1. Client acknowledges (i) that the Services or obligations of Service Provider hereunder may be dependent on Client providing access to data, information, or assistance to Service Provider from time-to-time (collectively, "Cooperation"); and (ii) that such Cooperation may be essential to the performance of the Services by Service Provider. The parties agree that any delay or failure by Service Provider to provide the Services hereunder which is caused by Client's failure to provide timely Cooperation, as reasonably requested by Service Provider, shall not be deemed a breach of Service Provider's performance obligations under this MA. Therefore, Client hereby acknowledges that such variables are specifically excluded from

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Service Provider's liability under this MA.

2.2.2. Client acknowledges that Service Provider has every incentive to perform the Services in a timely and proficient manner, but the timing and amount of collections generated by the Services are subject to numerous variables beyond Service Provider's control including, without limitation, (i) the inability of third parties or systems to accurately process data, (ii) the transmission of inaccurate, incomplete or duplicate data to Service Provider, (iii) untimely reimbursements or payer bankruptcies, (iv) late charge documentation submissions by Client, or (v) managed care contract disputes between payers and Client. Therefore, Client hereby acknowledges that such variables are specifically excluded from Service Provider's liability under this MA.

2.2.3. Service Provider will be the sole provider of the Services to Client.

3. PAYMENT

- 3.1. Lockbox. An electronic lockbox will be maintained in Client's name at a bank designated by Client. All cash receipts will be deposited into the lockbox. Service Provider will have no ownership rights in the lockbox and will have no right to negotiate or assert ownership of checks made payable to Client. Client will be responsible for all fees associated with such lockbox.
- 3.2. Invoicing Terms. Beginning on the Commencement Date (as defined in each Service Schedule), Client will pay all fees and other charges in U.S. dollars within 30 days after the invoice date. Prior to the Commencement Date, Client further agrees to establish an automatic electronic funds debit arrangement for paying Service Provider's invoices.
- 3.3. Late Payments. Service Provider may charge Client interest on any overdue fees, charges, or expenses at a rate equal to the lesser of 1.5% per month or the highest rate permitted by law.
- 3.4. Suspension of the Services. Service Provider reserves the right to suspend performance of the Services (i) for nonpayment of sums owed to Service Provider that are 30 days or more past due, where such breach is not cured within ten days after notice to Client, or (ii) if such suspension is necessary to comply with applicable law or order of any governmental authority.
- 3.5. Fee Change. Either party may request a fee change in the event of a material change in legislation, Client's business or other market conditions which result in a material change in either the cost associated with Service Provider's provision of the Services or Service Provider's anticipated revenues under this MA. In addition, Service Provider may request a fee change in the event (i) Client fails to disclose to Service Provider information relating to Client's practice, which information, if disclosed prior to the Effective Date, would have led Service Provider to propose a higher fee or (ii) any of the information provided by Client to Service Provider upon which the practice assumptions set forth in any applicable Service Schedule are based, is or becomes inaccurate. In the event either party requests a change in the Fee, the requesting party will provide the non-requesting party with ninety (90) days' prior written notice (the "Notice Period") of the requested change (the "Notice") and such fee change will be effective at the end of the Notice Period. If the non-requesting party provides the requesting party written notice during any such Notice Period that any such fee change request is unacceptable to the non-requesting party, the Agreement will terminate at the end of the Notice Period and the Fee in place at that time will remain in effect until the end of the Workout Period, if any.

4. GENERAL TERMS

4.1. Confidentiality and Proprietary Rights

4.1.1. Use and Disclosure of Confidential Information. Each party may disclose to the other party confidential information. Except as expressly permitted by this MA, neither party will: (i) disclose the other party's confidential information except (a) to its employees or contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this MA, or (b) to the extent required by law following prompt notice of such obligation to the other party, or (ii) use the other party's confidential information for any purpose other than performing its obligations under this MA. Client will not disclose nor cause its employees, agents and representatives to disclose to anyone Service Provider's business practices, trade secrets or Confidential Information, except as legally required. Each party will use all reasonable care in handling and securing the other party's confidential information and will employ all security measures used for its own proprietary information of similar nature. Notwithstanding the foregoing, Client agrees that Service Provider may de-identify Client information consistent with the HIPAA Privacy Rule and use Client information and data from transactions received or created by Service Provider for statistical compilations or reports, research and for other purposes (the "Uses"). Such Uses shall be the sole and exclusive property of Service Provider.

4.1.2. Use and Disclosure of Billing Software

- (a) Client agrees that the software Service Provider uses to perform the Services (the "Billing System") is proprietary and confidential and that Service Provider is the sole owner or

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licensee of the Billing System. All report formats and reports generated by the Billing System are produced and will be made available to Client for internal operational purposes only.

- (b) Client will not disclose or cause its employees, agents and representatives to disclose to anyone the Billing System or any information it receives about the Billing System, except as legally required.

4.1.3. Period of Confidentiality. The restrictions on use, disclosure and reproduction of confidential information set forth in Section 4.1, which are a “trade secret” (as that term is defined under applicable law) will be perpetual, and with respect to other confidential information such restrictions will remain in full force and effect during the term of this MA and for three years following the termination of this MA. Following the termination of this MA, each party will, upon written request, return or destroy all of the other party’s tangible confidential information in its possession and will promptly certify in writing to the other party that it has done so.

4.1.4. Injunctive Relief. The parties agree that the breach, or threatened breach, of any provision of this Section 4.1 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, the breached party will be entitled to seek injunctive relief to prevent the other party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section 4.1.4 will limit any other remedy available to either party.

4.1.5. Retained Rights. Client’s rights in the Services will be limited to those expressly granted in this MA. Service Provider and its suppliers reserve all intellectual property rights not expressly granted to Client. All changes, modifications, improvements or new modules made or developed with regard to the Services, whether or not (i) made or developed at Client’s request, (ii) made or developed in cooperation with Client, or (iii) made or developed by Client, will be solely owned by Service Provider or its suppliers. Service Provider retains title to all material, originated or prepared for Client under this MA. Client is granted a license to use such materials in accordance with this MA. For purposes of clarification, all data used in the reports prepared by Service Provider in the performance of Services or Client, and all rights and interests therein, shall be the sole property of Client. The form of the reports, work product, including processes and templates used to prepare such reports shall be the sole property of Service Provider.

4.2. Termination.

4.2.1. Termination for Default. Either party may terminate this MA by providing 30 days prior written notice of termination to the other party, if the other party (i) materially breaches this MA and fails to remedy or commence reasonable efforts to remedy such breach within 15 days, and materially cure within 45 days, after receiving notice of the breach from the terminating party, (ii) materially breaches this MA in such a way that cannot be remedied, (iii) commences dissolution proceedings or (iv) ceases to operate in the ordinary course of business.

4.2.2. Termination for Payment Default. Service Provider may terminate this MA immediately if Client defaults on its payment obligations under this MA and such payment default is not cured within ten days of written notice from Service Provider.

4.2.3. Termination by Service Provider.

- (a) Service Provider may immediately terminate this MA without incurring any liability to Client if Service Provider does not receive the clean test file or completed implementation discovery packet within three months of the Commencement Date of a Service Schedule and Client will pay Service Provider for all expenses incurred prior to the termination date; or
- (b) If Service Provider uses third-party software to provide the Services, Client agrees to execute additional documents other than the MA, including but not limited to nondisclosure or proprietary material documentation that is reasonably required by Service Provider or any other third-party software licensor. If Client is unwilling to sign such additional documentation, Service Provider may terminate this MA 90 days after Service Provider presented the documentation to Client.

4.2.4. Termination by Client. Client may terminate this MA immediately if Service Provider fails to cure any material breach of the “Business Associate Agreement” (set forth on Exhibit A to this MA) within 30 days of Service Providers receipt of written notice from Client specifying the breach.

4.2.5. No Cause Termination. After the initial Schedule Term, either party may terminate this MA at any time and for any reason or no reason upon 90 days prior written notice to the other party.

4.2.6. Termination Procedures – Service Provider Billing System. In the event this MA or any Service Schedule is terminated or expires, Client will notify Service Provider in writing no later than ten business days prior to the expiration or termination of the Service Schedule of its choice of either the option set forth in sub-Section (a) below or the option set forth in sub-Section (b) below as a means of transferring its accounts receivable from

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Service Provider to another provider of billing services (except as otherwise set forth in sub-Section (c) below, in which case only the procedures set forth in sub-Section (b) will apply).

- (a) **Workout Period.** Upon the effective date of termination/expiration, Service Provider shall cease to enter new patient and charge data into the Billing System on behalf of Client, but will continue to perform the Services identified in the applicable Service Schedule at the then-current rates hereunder, for a period of 90 days with respect to all of Client's accounts receivable arising from charges rendered prior to the termination date (such period hereinafter referred to as the "Workout Period"). After the Workout Period, Service Provider will discontinue processing such accounts receivable, and after full payment of all fees owed (1) deliver to Client a final list of accounts receivable and (2) provide reasonable transitional services, as set forth on Exhibit C to this MA. After completion of the above, Service Provider will have no further obligations to Client, except as expressly set forth in this MA. The parties agree that all applicable terms and conditions of this MA will be in full force and effect until the end of the Workout Period.
- (b) **No Workout Period.** For Client's accounts receivable for which Service Provider receives a Fee based on a percentage of the Net Collections, Client shall pay Service Provider, on or before the effective date of termination/expiration, a one-time fee equal to the average monthly invoice for the six (6) months immediately preceding the effective date of such termination multiplied by one and one-half (1.5) (the "Services Rendered Fee"). With respect to Client's accounts receivable for which Service Provider receives a Fee based on a set dollar amount, no additional fees shall be owed to Service Provider as of the effective date of termination/expiration. Upon the effective date of termination/expiration of this MA or Service Schedule, Service Provider shall be immediately relieved of its obligation to provide any further Services on behalf of Client. After full payment of all fees owed, including but not limited to the Services Rendered Fee, Service Provider will deliver to Client a final list of accounts receivable and provide reasonable Transitional Services, as set forth on Exhibit C to this MA. After completion of the above, Service Provider will have no further obligations to Client, except as expressly set forth in this MA. The Services Rendered Fee does not limit the rights and remedies Service Provider may have against Client arising out of any breach of this MA.
- (c) **Default Selection.** If (i) this MA is terminated by Service Provider pursuant to the terms set forth in Section 4.2.2, or (ii) Client fails to make the above-required selection in the allotted time, only the procedures set forth in Section 4.2.6(b) will apply with regards to any termination/expiration transition.

4.2.7. **Survival of Provisions.** Those provisions of this MA that, by their nature, are intended to survive termination or expiration of this MA will remain in full force and effect, including, without limitation, the following Sections of this MA: 3 (Payment), 4.1 (Confidentiality), 4.3 (Limitation of Liability), 4.6.3 (Books and Records), and 4.10 – 4.26 (Governing Law – Entire Agreement).

4.3. **Limitation of Liability.**

4.3.1. **Total Damages.** Service Provider's total cumulative liability in connection with, or related to this MA will be limited to the sum of fees paid by Client to Service Provider for itself and/or the affected Practice during the 12-month period preceding the date of the claim, as applicable, whether based on breach of contract, warranty, tort, product liability or otherwise. Service Provider will have no liability for the inability of third parties or systems beyond the control of Service Provider.

4.3.2. **Exclusion of Damages.** IN NO EVENT WILL SERVICE PROVIDER BE LIABLE TO CLIENT UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

4.3.3. **Material Consideration.** THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE A MATERIAL CONDITION FOR THEIR ENTRY INTO THIS MA.

4.4. **Internet Disclaimer.** CERTAIN PRODUCTS AND SERVICES PROVIDED BY SERVICE PROVIDER UTILIZE THE INTERNET. SERVICE PROVIDER DOES NOT WARRANT THAT SUCH SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. SERVICE PROVIDER DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM SERVICE PROVIDER'S OR CLIENT'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CLIENT'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ACCORDINGLY, SERVICE PROVIDER DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE ABOVE EVENTS.

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- 4.5. Civil Monetary Fine or Penalty. Service Provider will pay any civil or monetary fine or penalty and interest (but not overpayments) assessed against Client by Medicare, Medicaid or other third-party health insurance provider arising out of Service Provider's sole negligence or willful misconduct in the performance of its obligations under this MA. Overpayments received by Client are the sole responsibility of Client.
- 4.6. Insurance. Service Provider agrees to, at its own expense, maintain policies of commercial general liability insurance, self-insurance, or captive insurance with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 annual aggregate, professional errors and omissions liability insurance with \$1,000,000 per claim and \$3,000,000 annual aggregate, and statutory workers compensation and employers liability coverage with \$1,000,000 limit each accident or disease. Service Provider shall, at the written request of Client, furnish a certificate of insurance evidencing the maintenance in full force of such insurance. Additionally, Service Provider will use reasonable efforts to provide Client with 30 days advance written notice of cancellation of such insurance coverage, prior to policy expiration. Service Provider or its affiliates' use of self-insurance or captive insurance is deemed to satisfy all insurance requirements under this MA. The parties acknowledge and agree that this Section supersedes any insurance provision set forth in Client's RFP.
- 4.7. Audits.
- 4.7.1. Internal Audit by Client. Client may use its own internal resources ("Internal Auditors") to perform audits of Service Provider's accuracy and correctness of the accounting and internal controls performed and maintained by Service Provider. Service Provider will provide the Internal Auditors with information that the Internal Auditor determines to be reasonably necessary to perform and complete the audit procedures. Client agrees that an audit conducted under this section will be conducted at such times and in a manner that avoids undue disruption of Service Provider's operations.
- 4.7.2. Third-Party Audit by Client. Client may engage, at its own expense, independent, external, third-party auditors ("Third-Party Auditors") to perform audits of Service Provider's accuracy and correctness of the accounting and internal control performed and maintained by Service Provider. If Client engages Third-Party Auditors, who perform, or are associated with a group who performs, billing and accounts receivable management services substantially similar to any of the Services identified on any Service Schedule to this MA, such Third-Party Auditors may not visit Service Provider's processing facility or audit the actual billing and collection process. Service Provider will provide the information that the Third-Party Auditors determine to be reasonably necessary to perform and complete all audit procedures. The Third-Party Auditors shall execute Service Provider's "Confidentiality Agreement", substantially in the form attached hereto as Exhibit B, prior to the start of the audit. Client agrees that an audit conducted under this section will be conducted at such times and in a manner that avoids undue disruption of Service Provider's operations.
- 4.7.3. Books and Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(v)(I)(i) and (ii), for a period of four years after the Services are furnished, the parties agree to make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this MA and such books, documents, and records as may be necessary to verify the nature and extent of the Services with a value or cost of \$10,000 or more over a twelve month period.
- 4.8. Warranties
- 4.8.1. Service Provider.
- (a) Prior to the Commencement Date. Unless Service Provider provided Services prior to the Commencement Date of any Service Schedule, Client will be responsible for all matters related to Client's practice prior to the Commencement Date, including, but not limited to, Client's billings, collections, third party reimbursements, accounts receivable and credit balances.
- (b) Disclaimer of Warranties. Service Provider disclaims any warranties or representations pertaining to the timing and amount of collections generated by the Services. Client acknowledges and agrees that Client is solely responsible for refunding any overpayments and processing any unclaimed property payments. Service Provider will provide Client with written notice of unresolved credit balances of which Service Provider becomes aware (such as overpayments or unclaimed property).
- 4.8.2. Client.
- (a) Charges and Information.
- (i) Client represents and warrants that it will forward to Service Provider (pursuant to the applicable Service Schedule[s]) only charges for which Client is entitled to bill. Client agrees to monitor and to refrain from knowingly submitting false or inaccurate information, charges, documentation or records to Service Provider and to ensure that the documentation provided by Client or

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an agent of Client to Service Provider supports the medical services provided by Client. Client acknowledges and agrees it has an obligation to report and correct any credible evidence of deficiencies on the part of Client. Client also acknowledges that Service Provider does not make a determination of medical necessity for any claims.

(ii) Client acknowledges and agrees that Service Provider is not a collection agency. Client represents and warrants that any debt or account referred to Service Provider pursuant to this MA is not in default or delinquent or has not been written off as bad debt. If any accounts are found to be written off, in default or otherwise delinquent, Client agrees to immediately recall those accounts from Service Provider's responsibility under this MA.

(b) Release of Information. Client represents and warrants that Client has obtained a release of information and insurance assignment of benefits from all individuals for whom Client is submitting charges to Service Provider for the provision of the Services and will immediately notify Service Provider if such release of information and insurance assignment of benefits is changed or revoked or if such individual refused/failed to execute such documents. Client further agrees to provide a copy of such signed documents upon Service Provider's request. The term "individuals" in this Section refers to the individual physicians/practitioners, or group members, on whose behalf the Client is directing Service Provider to submit claims.

4.9. Business Associate. The parties agree to the obligations set forth in Exhibit A.

4.10. Exclusion From Federal Healthcare Programs. Each party warrants that it is not currently listed by a Federal agency as excluded, debarred, or otherwise ineligible for participation in any Federal health care program. Each party agrees that it will not employ, contract with, or otherwise use the services of any individual whom it knows or should have known, after reasonable inquiry, (i) has been convicted of a criminal offense related to health care (unless the individual has been reinstated to participation in Medicare and all other Federal health care programs after being excluded because of the conviction), or (ii) is currently listed by a Federal agency as excluded, debarred, or otherwise ineligible for participation in any Federal health care program. Each party agrees that it will immediately notify the other in the event that it, or any person in its employ, has been excluded, debarred, or has otherwise become ineligible for participation in any Federal health care program. Each party agrees to continue to make reasonable inquiry regarding the status of its employees and independent contractors on a regular basis by reviewing the General Services Administration's List of Parties Excluded from Federal Programs and the HHS/OIG List of Excluded Individuals/Entities.

4.11. Governing Law. This MA is governed by and will be construed in accordance with the laws of the State of Ohio, exclusive of its rules governing choice of law and conflict of laws and any version of the Uniform Commercial Code. Each party agrees that exclusive venue for all actions, relating in any manner to this MA will be in a court of competent jurisdiction located in Delaware County, Ohio.

4.12. Claims Period. Any action relating to this MA and any claim for damages, including, but not limited to, a claim for recurring damages arising out of the same cause or event, other than collection of outstanding payments, must be commenced within six months after the date upon which the cause of action occurred.

4.13. Assignment and Subcontracts. Neither party will assign this MA without the prior written consent of the other party, which will not be unreasonably withheld, delayed or conditioned. Service Provider may, upon notice to Client, assign this MA to any affiliate or to any entity resulting from the transfer of all or substantially all of Service Provider's assets or capital stock or from any other corporate reorganization. Service Provider may subcontract its obligations under this MA.

4.14. Severability. If any part of a provision of this MA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this MA will not be affected.

4.15. Notices. All notices relating to the parties' legal rights and remedies under this MA will be provided in writing and will reference this MA. Such notices will be deemed given if sent by: (i) postage prepaid registered or certified U.S. Post mail, then five working days after sending; or (ii) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its address set forth on the cover page hereto, or to such other address as may be designated by that party by notice to the sending party.

4.16. Waiver. Failure to exercise or enforce any right under this MA will not act as a waiver of such right.

4.17. Force Majeure. Except for the obligation to pay money, a party will not be liable to the other party for any failure or delay caused in whole or in material part to any cause beyond its sole control, including but not limited to fire, accident, labor, dispute or unrest, flood, riot, war, rebellion, insurrection, sabotage, terrorism, transportation delays, shortage of raw materials, energy, or machinery, acts of God or of the civil or military authorities of a state or nation, or the inability, due to the aforementioned causes, to obtain necessary labor or facilities.

4.18. Amendment. This MA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties. To avoid doubt, this MA may not be amended via electronic

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mail or other electronic messaging service.

- 4.19. No Third Party Beneficiaries. Except as specifically set forth in a Service Schedule, nothing in this MA will confer any right, remedy, or obligation upon anyone other than Client and Service Provider.
- 4.20. Relationship of Parties. Each party is an independent contractor of the other party. This MA will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither party has any power to bind the other party or to assume or to create any obligation or responsibility on behalf of the other party or in the other party's name.
- 4.21. Non-solicitation of Employees. During the term of this MA and for a period of 12 months following the termination of this MA, each party agrees not to employ, contract with for services, solicit for employment on its own behalf or on behalf of any third party, or have ownership in any entity which employs or solicits for employment, any individual who (i) was an employee of the other or its parent, affiliates or subsidiaries at any time during the preceding 12 months and (ii) was materially involved in the provision or receipt of the Services hereunder without the prior written consent of the other party. Notwithstanding the foregoing, upon any termination of this MA, Client may rehire any individual who was employed by Client on the Effective Date, and who was hired by Service Provider on or after such date. Each party agrees that the other party does not have an adequate remedy at law to protect its rights under this Section and agrees that the non-defaulting party will have the right to injunctive relief from any violation or threatened violation of this Section.
- 4.22. Publicity. The parties may publicly announce that they have entered into this MA and describe their relationship in general terms, excluding financial terms. The parties will not make any other public announcement or press release regarding this MA or any activities performed hereunder without the prior written consent of the other party.
- 4.23. Construction of this MA. This MA will not be presumptively construed for or against either party. Section titles are for convenience only. As used in this MA, "will" means "shall," and "include" means "includes without limitation." The parties may execute this MA in one or more counterparts, each of which will be deemed an original and one and the same instrument.
- 4.24. Conflict Between MA and Schedules. In the event of any conflict or inconsistency in the interpretation of this MA (including its Service Schedules and all Amendments executed hereunder), such conflict or inconsistency will be resolved by giving precedence according to the following order: (a) the Amendment, (b) the Client's RFP, excluding the Sample Contract which is replaced in its entirety by the MA; (c) the Service Schedule, (d) the MA Terms and Conditions and Exhibits, (e) other documents incorporated by reference.
- 4.25. Section Headings. The Section headings used herein are for convenience only and shall not be used in the interpretation of this MA.
- 4.26. Authority. Service Provider and Client represent and warrant that they have the full power and authority to enter into this MA, that there are no restrictions or limitations on their ability to perform this MA, and that the person executing this MA has the full power and authority to do so.
- 4.27. Entire Agreement. This MA, including Service Schedules, Exhibits, Amendments, and documents incorporated by reference, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.

**EXHIBIT A
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into by and between Service Provider ("Business Associate") and Client ("Covered Entity"). Business Associate and Covered Entity may be individually referred to as a "Party" and, collectively, the "Parties" in this Agreement. This Agreement shall be incorporated into and made part of the Underlying Agreement (as defined below).

STATEMENT OF PURPOSE

Pursuant to the Underlying Agreement, Business Associate provides services to Covered Entity and Covered Entity discloses certain information, including PHI (as defined below), to Business Associate. The purpose of this Agreement is to protect the privacy and provide for the security of such PHI in compliance with the Privacy Rule and Security Rule.

SECTION 1: DEFINITIONS

"Electronic Protected Health Information" or "Electronic PHI" will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.

"Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

"Protected Health Information" or "PHI" will have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

"Security Rule" will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C

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“Underlying Agreement” will mean the applicable written services agreement(s) between Covered Entity and Business Associate under which Covered Entity may disclose PHI to Business Associate.

Capitalized Terms. Capitalized terms used in this Agreement and not otherwise defined herein will have the meanings set forth in the Privacy Rule and the Security Rule which definitions are incorporated in this Agreement by reference.

SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

2.2 Permitted Uses of PHI by Business Associate. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

2.3 Permitted Disclosures of PHI by Business Associate. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this Agreement), and that the person agrees to notify Business Associate of any instances in which it is aware that the confidentiality of the information has been breached.

2.4 Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services for the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. Business Associate may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

SECTION 3: OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Appropriate Safeguards. Business Associate will use appropriate administrative, physical, and technical safeguards to comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this Agreement. Except as expressly provided in the Underlying Agreement or this Agreement, Business Associate will not assume any obligations of Covered Entity under the Privacy Rule. To the extent that Business Associate is to carry out any of Covered Entity’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. Business Associate will report to Covered Entity any use or disclosure of PHI not permitted under this Agreement, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more than fourteen (14) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). “Unsuccessful Security Incidents” will include, but not be limited to, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate’s notification to Covered Entity of a Breach will comply with the requirements set forth in 45 C.F.R. § 164.404.

3.3 Business Associate’s Agents. Business Associate will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are no less restrictive than those that apply through this Agreement to Business Associate with respect to such PHI.

3.4 Access to PHI. To the extent Business Associate DRAFT agrees in the Underlying Agreement to maintain any PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity pursuant to 45 C.F.R. § 164.524, within ten (10) business days of Business Associate’s receipt of a written request from Covered Entity; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity.

3.5 Amendment of PHI. To the extent Business Associate agrees in the Underlying Agreement to maintain any PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526 within ten (10) business days of Business Associate’s receipt of a written request from Covered Entity.

3.6 Documentation of Disclosures. Business Associate will document disclosures of PHI and information

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related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.7 Accounting of Disclosures. Business Associate will provide to Covered Entity, within twenty (20) business days of Business Associate's receipt of a written request from Covered Entity, information collected in accordance with Section 3.6 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.8 Governmental Access to Records. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, Business Associate will cooperate with Covered Entity's efforts to mitigate a harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by this Agreement.

3.10 Minimum Necessary. Business Associate will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

SECTION 4: CHANGES TO PHI AUTHORIZATIONS

Covered Entity will notify Business Associate fifteen (15) days, if practicable, prior to the effective date of (1) any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, (2) any changes in, or revocation of, permission by an Individual to use or disclose PHI, or (3) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522. Covered Entity will make such notification to the extent that such limitation, restriction, or change may affect Business Associate's use or disclosure of PHI.

SECTION 5: TERM AND TERMINATION

5.1 Term. The term of this Agreement will commence as of the Effective Date, and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach by the other Party of this Agreement, such Party may terminate this Agreement immediately if cure is not possible. Otherwise, the non-breaching party will provide written notice to the breaching Party detailing the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such thirty (30) day cure period, the non-breaching Party may terminate this Agreement and the affected underlying product or service if the breaching party does not cure the breach or if cure is not possible.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this Agreement for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, at Covered Entity's expense, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate.

5.3.2 If it is infeasible for Business Associate to return or destroy the PHI upon termination of the Underlying Agreement or this Agreement, Business Associate will: (a) extend the protections of this Agreement to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3.3 The respective rights and obligations of Business Associate under Section 5.3 of this Agreement will survive the termination of this Agreement and the Underlying Agreement.

SECTION 6: COOPERATION IN INVESTIGATIONS

The Parties acknowledge that certain breaches or violations of this Agreement may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

SECTION 7: COMPLIANCE WITH LAW

Business Associate will comply with all applicable federal privacy and security laws governing PHI, as they may be amended from time to time.

SECTION 8: AMENDMENT

This Agreement may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. In addition, if any relevant provision of the Privacy Rule or the Security

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Rule is amended in a manner that changes the obligations of Business Associate or Covered Entity that are embodied in terms of this Agreement, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Agreement to give effect to such revised obligations.

SECTION 9: GENERAL

This Agreement is governed by, and will be construed in accordance with, the laws of the State that govern the Underlying Agreement. Covered Entity will not assign this Agreement without the prior written consent of Business Associate, which will not be unreasonably withheld. All notices relating to the Parties' legal rights and remedies under this Agreement will be provided in writing to a Party, will be sent to its address set forth in the Underlying Agreement, or to such other address as may be designated by that Party by notice to the sending Party, and will reference this Agreement. Nothing in this Agreement will confer any right, remedy, or obligation upon anyone other than Covered Entity and Business Associate.

**EXHIBIT B
CONFIDENTIALITY AGREEMENT**

Service Provider and Delaware County ("Client") have entered into an agreement whereby Service Provider provides certain services (the "Services") to Client (the "Master Services Agreement"). Client has entered into a contractual relationship with _____ [*insert name of person/entity performing the audit*]_____ ("Recipient") and instructs Service Provider to allow Recipient to review certain information in Service Provider's possession regarding Client's business and accounts receivable billing and collections performed by Service Provider ("Client Proprietary Information"). Therefore, in consideration of the mutual covenants and conditions contained in this Confidentiality Agreement (the "Confidentiality Agreement"), Recipient and Client agree as follows:

A. During the course of Recipient's examination and review of Client Proprietary Information, Recipient may be exposed to or review certain proprietary information regarding Service Provider ("Service Provider Proprietary Information"). Service Provider Proprietary Information refers to any and all data and information relating to the business of Service Provider which has value to Service Provider and is not generally known by its competitors or the public, including, without limitation, financial information, inventions, methods, techniques, actual or potential customers and suppliers, the Master Services Agreement, Service Provider's business practices or other trade secrets or confidential information of Service Provider, all report formats, and existing and future products and computer systems and software. Recipient acknowledges and agrees that all Service Provider Proprietary Information and all physical embodiments thereof are confidential to Service Provider and are and will remain the sole and exclusive property of Service Provider. All Service Provider Proprietary Information acquired by Recipient will be kept strictly confidential and will not be disclosed to any other person or entity (including any entity affiliated with or any division of Recipient).

B. Service Provider Proprietary Information does not include information which (i) is publicly known or which becomes publicly known through no act or failure to act on the part of Recipient; (ii) is lawfully obtained by Recipient from any third party entitled to disclose such information; (iii) is in the lawful possession of Recipient prior to such information having been disclosed to Recipient by Service Provider; or (iv) is independently developed by Recipient.

C. Recipient further agrees that during Recipient's engagement by Client and for a period of one (1) year following any termination of Recipient's engagement for whatever reason, Recipient will not, directly or indirectly, on Recipient's own behalf or in the service of, or on behalf of any other individual or entity, divert, solicit or hire away, or attempt to divert, solicit or hire away, to or for any individual or entity, any person employed by Service Provider, whether or not such employee is a full-time employee, temporary employee, leased employee or independent contractor of Service Provider, whether or not such employee is employed pursuant to written agreement and whether or not such employee is employed for a determined period or at-will.

D. Recipient acknowledges that great loss and irreparable damage would be suffered by Service Provider if Recipient should breach or violate the terms of this Confidentiality Agreement. In the event Recipient breaches or violates this Confidentiality Agreement, Recipient agrees that Service Provider would not have an adequate remedy at law and, therefore, that Service Provider would be entitled to a temporary restraining order and permanent injunction to prevent a breach of any of the terms or provisions contained in this Confidentiality Agreement, in addition to any monetary damages that may be available at law or equity. Recipient's obligations under this Confidentiality Agreement will survive indefinitely.

E. Recipient represents and warrants that (i) it has the full power and authority to enter into this Confidentiality Agreement, and (ii) the person executing this Confidentiality Agreement has the full power and authority to do so.

**EXHIBIT C
TRANSITION SPECIFICS**

Upon termination or expiration of this MA, for any reason, Service Provider agrees to provide the following assistance to Client or Client's designated agent to transfer Service Provider's responsibilities under this MA and Service Schedule to Client or Client's designated agent ("Transitional Services"):

Patient information will be provided via a write-protected CD.

Detailed specifications

Detailed specifications will be provided to Client or Client's designated agent.

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Technical and Operational contacts

Service Provider Support contacts will be provided to answer questions regarding the specifications document and operational requirements. Questions may be presented by Client or its designee.

Test CD

A test CD will be provided containing 100 patient accounts and their associated transaction activity.

Final CD

A final CD will include all debit and credit balance accounts residing in the active AR. Zero balance accounts will be provided up to the age of two years (based on the date the account was placed on the system).

Patient demographic and transaction information is included.

Utility File Codes

Listings will be provided to Client or its designee for the following files: Change codes, description and CPT Referring physician code, name and NPI (if available) performing physician, code and name Location of service, code and description Transaction codes and description

**SERVICE SCHEDULE 1
SCOPE OF SERVICES – EMERGENCY MEDICAL SERVICES**

The MA Terms and Conditions and this Service Schedule apply to all services rendered by Service Provider under this Service Schedule.

1. TERM

1.1. Initial Term of Schedule. The initial term of this Service Schedule is three years (the "Schedule Term") beginning December 1, 2016 (the "Commencement Date").

1.2. Automatic Renewal. This Service Schedule will automatically renew for one year terms unless (i) either party delivers to the other written notice of termination at least 90 days prior to the expiration of the then-current term, or (ii) as otherwise set forth in the MA.

2. SCOPE OF SERVICES

2.1. Scope. Service Provider will provide practice management services as specified below based on information provided by Client for professional ambulance services rendered by Client in accordance with the terms of the MA and this Service Schedule.

2.2. Responsibilities. Each party agrees to perform its respective responsibilities identified below in a timely and diligent manner. Client acknowledges and agrees that Service Provider's performance of the Services described herein is dependent upon Client's performance of its responsibilities as set forth in this Service Schedule.

2.2.1. Service Provider Responsibilities. Service Provider shall have managerial responsibilities over all business support services as they relate to the billing of EMS provided by Client, subject to Client's ultimate control. In order for Service Provider to provide the necessary business support services on behalf of Client, the following operating policies shall be used with respect to Client's Emergency Medical Services ("EMS"):

- (a) Billing Responsibilities. Service Provider shall be responsible for billing for all EMS provided by Client. Service Provider shall be responsible for implementing and providing the on-going support needed to support the billing and collection activities required by Client. Service Provider shall provide those billing and collection services that are customarily necessary for an EMS, including but not limited, to the following items:
- (i) Process all demographic and charge information entered into the billing system based on the information provided by Client, including the schedule of EMS fees;
 - (ii) Process all required insurance forms whether submitted electronically or on hard copy. Insurance claims shall be submitted at least weekly based on the availability of information received from the Client;
 - (iii) Provide all HCFA-1500 universal claim forms needed to submit claims for EMS services provided by the Client;
 - (iv) Print and mail patient statements for accounts with patient balances greater than \$5.00. Mail up to three statements according to the schedule set forth by the Client, to patients for fees not reimbursed by third-party payments including deductibles, co-payments and non-covered services for which the Client maintains appropriate waiver documentation. Client shall specify if residents receive a balance due statement and if unpaid patient balance due amounts are written-off or forwarded to a collection agency for further activity;
 - (v) Receive from Client's lockbox, notification of payment and original remittance advices, and all other billing correspondence, as appropriate;

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- (vi) Enter all remittance information, including, contractual adjustments for third-party payers with which the Client participates (based upon an approved list provided by the Client), and submit secondary insurance claims as necessary;
 - (vii) For a period of one year, maintain a paper or electronic copy of explanation of benefit statements (“EOBs”) received from third-party payers. At the end of one year, all EOBs will be returned to Client when requested or may be destroyed by Service Provider;
 - (vii) Evaluate appropriate documentation of any request by a patient, third-party, or referring physician for an adjustment to a patient's bill, and coordinate findings with Client;
 - (ix) Follow coding and billing standards as established by organizations recognized as experts in coding and billing including, but not limited to, the American Medical Association (AMA);
 - (x) Recommend and assist Client in establishing fees for new services;
 - (xi) Provide perpetual updates to master HCPCS coding and descriptions, and maintain current database of ICD codes and edits; and
 - (xii) Assist with designing for the Client all necessary forms, fee slips, insurance authorizations, etc., for processing. Costs of actual forms, etc. will be the responsibility of Client.
- (b) Collection Responsibilities. In undertaking these responsibilities, Service Provider shall:
- (i) Answer all patient and third-party payer inquiries. In some cases, additional data will be requested from Client. Responses to all patient inquiries shall be made within 24 hours whenever possible;
 - (ii) Pay for all telephone costs for patient and third-party payer inquiries and follow-up;
 - (iii) Pursue balances with any third-party payer as follows:
 1. Monitor the balances and follow-up either in writing or by telephone, as appropriate, when payments are overdue.
 2. Monitor all payments received against anticipated payments. Discrepancies noted shall be reviewed and, when appropriate, contact will be made by telephone, in writing, or in person with the third-party payer to request claim review.
 3. Monitor payment patterns for each third-party payer at least monthly to identify any third-party payer with large amounts of pending open claims. Appropriate action shall be taken with the third-party payer to expedite prompt payment.
 4. In the event any claim is denied by any third-party payer for reasons other than a patient's insured status, Service Provider shall use its commercially reasonable efforts to resubmit a clean claim in a timely manner. In the event a claim is denied as a result of improper coding or other act attributable to Service Provider, Service Provider shall pursue a timely appeal of the denied claim.
 5. Follow up with the third-party payer on assigned claims based upon the appropriate strategy for working with such third-party payer.
 - (iv) Pursue balances with patients by attaching notes on statements at pre-determined intervals using language approved by Client; and
 - (v) Amounts due from a third-party or patient, that have not been collected after the activities described above and that have aged greater than 120 days, will be considered uncollectable. Service Provider will provide pertinent demographic and transactional detail to the Client identifying uncollectable accounts monthly. Unless otherwise instructed by the client, Service Provider will write-off the identified accounts as bad debts and will cease collection efforts associated with those accounts.
- (c) Credentialing Responsibilities with Third-Party Payers. Service Provider shall be responsible for: Completing all necessary paperwork and submitting applications to establish provider numbers. Service Provider has no control and cannot be held responsible for the individual timeframes or actual acceptance by payers. Service Provider will assist in follow-up activities to gain approval; and Providing necessary credentialing information to new payers or updates to existing payers.
- (d) Reporting Responsibilities. Service Provider shall be responsible for making periodic reports to Client on the current status of all active patient accounts. In undertaking these responsibilities, Service Provider shall:
- (i) Produce monthly activity and summary reports as follows:
 1. Fire/EMS Executive Summary - of the EMS for current month and year to date produced by:
 - a. Number of transports and gross charges/receipts by level of service delivered;
 - b. Drop off location; and
 - c. Payer Category Analysis.
 2. Financial Summary - of charges, write-offs and payments of the EMS for current month and year to date analyzed by:
 - a. Current charges and payments received;
 - b. Payer Category Analysis; and

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- c. Summary aging of accounts receivable and adjustments and write-offs.
 - (ii) Provide off-site back up of all active data files; and
 - (iii) Provide additional reports reasonably requested by the Client.

- (e) **Implementation.** Service Provider shall be responsible for implementing the billing and collection services on behalf of Client. In undertaking such implementation, Service Provider shall:
 - (i) Assign an account manager to Client who shall be responsible for the following:
 - 1. Act as primary contact with the personnel of Client;
 - 2. Serve as the liaison with the Service Provider employees assigned to perform services for Client;
 - 3. Communicate regularly with the key management of Client to review all activities with respect to the billing and collection services;
 - 4. Work closely with Client to ensure a smooth transition and implementation; and
 - (ii) Review both its procedures and the procedures of Client and recommend and implement approved changes for improvements of collections; and
 - (iii) Maintain knowledge about prevalent government and third-party payer regulations and guidelines to assist Client in conformance with such regulations.

2.2.2. **Client Responsibilities.** In order for Service Provider to undertake the billing and collection services, Client will:

- (a) Subject to the terms of the Agreement, appoint Service Provider as its lawful attorney-in-fact for the sole purpose of billing and collecting, in the name of Client and on Client's behalf, from patients, insurance companies, Medicare, Medicaid and all other third-party payers, all charges resulting from the provision of equipment, devices and supplies provided to patients and for all services rendered to patients, including, but not limited to, technical and ancillary services and all professional medical service or EMS provided by Client.
- (b) Cause the personnel of Client to timely submit to Service Provider the name of the patient when available, a paper copy of the Patient Care Report or an electronic extract when available, the date of service, a description of the nature, and the extent of services provided and any supporting medical information necessary to obtain payment or reimbursement. Service Provider shall rely on the truth and accuracy of such information and shall not in any event be required to verify medical treatment information submitted to Service Provider by the Client. Furthermore, Client shall use its best efforts to procure all necessary consents to all assignments and obtain all other approvals, consents, and signatures necessary for Service Provider to collect payment for reimbursement on behalf of Client;
- (c) Assist Service Provider with establishing dialog with transport hospitals means to gather patient demographic and insurance data from transport hospitals when requested, or provide copies of the hospital face sheet if other means of capturing this data are not available.
- (d) Be solely responsible for securing or causing to be secured from or on behalf of patients whose accounts are covered under this Service Schedule, any and all necessary consents for the release of information to third parties as contemplated by this Service Schedule, and any and all necessary assignments of insurance benefits and benefits due from and rights to payment or reimbursement by any other third party. Client shall notify Service Provider in the event that assignment was not obtained;
- (e) Supply complete and accurate patient charge information;
- (f) Provide to Service Provider a schedule of professional fees charged for services rendered by Client's EMS. Service Provider shall make revisions to the fee schedule from time to time upon at least 10 days prior written notice from Client to the effective date of any such revision. Service Provider shall continue to bill at the rates then in effect until receipt of such notice. Fee schedule revisions must include an effective date for the new charges;
- (g) Establish adequate controls to assure that all charges are captured, batched and reconciled with batch totals;
- (h) Provide all input forms;
- (i) Provide medical expertise regarding reimbursement of medically necessary services of Client arising from third-party payer disputes or patient inquiries;
- (j) Be responsible for all medical decisions concerning patient care; and
- (k) When refunds are necessary, write a check to Service Provider's refund account for refunds to be sent to the patient or third-party payer based upon information provided by Service Provider.

3. SERVICE FEES

- 3.1. For business support services rendered under this Service Schedule Service Provider shall be paid a service fee equal to 4.90% of the net revenue of Client, in accordance with Section 4 of the Agreement. Net revenue shall mean cash receipts arising from the provision of patient services and related activities less refunds. In the event that the total revenue for Service Provider in a month does not exceed \$500.00, Service Provider shall be paid a minimum service fee of \$500.00 for that month.

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3.2. All service fees are exclusive of all federal, state and local taxes, including sales taxes, assessed on or due in respect of any Services performed by Service Provider under the Agreement, for which taxes Client shall be solely responsible, unless Client submits proof of tax exempt status. Client shall reimburse Service Provider for all those costs and expenses of Client paid by Service Provider or any subsidiary or affiliate of Service Provider Group on behalf of Client in connection with the provision of Services

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

15
RESOLUTION NO. 16-1078

IN THE MATTER OF APPROVING CHANGE ORDER NO. 2 WITH POLYDYNE, INC:

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

Whereas, Polydyne, Inc. is currently under contract to supply various emulsion polymers for the Sewer District (DCES Contract 14-02); and

Whereas, the contract allows for a second one (1)-year extension; and

Whereas, there is no change in contract price, and

Whereas, the Sanitary Engineer recommends approving Change Order No. 2 to extend the existing contract with Polydyne, Inc. until February 23, 2018

THEREFORE BE IT RESOLVED that the Delaware County Board of Commissioners approve Change Order No. 2 to extend the contract with Polydyne Inc. and authorize the Sanitary Engineer to sign the Change Order document.

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

16
RESOLUTION NO. 16-1079

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER’S AGREEMENT FOR COURTYARDS AT BRADFORD COURT:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider’s Agreement;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approve the Sanitary Sewer Subdivider’s Agreement for Courtyards at Bradford Court.

SANITARY SEWER AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 24th day of October 2016, by and between **Epcon Communities, Inc.**, hereinafter called “Developer”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”) as evidenced by the **Courtyards at Bradford Court Sanitary Sewer Improvement Plan** and its corresponding Subdivision Plat or Sanitary Easements on the corresponding parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

The Developer is to construct, install or otherwise make all public improvements (the “Improvements”) shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **The Courtyards at Bradford Court**, dated **August 17, 2016**, and approved by the County on **August 25, 2016**, all of which are a part of this Agreement. The Developer shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **62** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. Capacity is not guaranteed until the final Subdivision Plat or Sanitary Easement(s) is recorded. If the final Subdivision Plat or Sanitary Easement(s) is not recorded prior to expiration of the reservation deadline as set forth herein, the Developer agrees and acknowledges that capacity shall not be guaranteed.

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SECTION III: FINANCIAL WARRANTY

Offsite Construction:

The Developer shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of Offsite Construction of Courtyards at Bradford Court (**\$26,724.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Regulations of Delaware County, Ohio.

The Developer shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Developer further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **Courtyards at Bradford Court Sanitary Sewer Improvement Plan**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Developer shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Courtyards at Bradford Court (\$8,453.06)**. The Developer shall also deposit with the Delaware County Sanitary Engineer the sum of **\$20,550.00** estimated to be necessary to pay the cost of inspection for **Courtyards at Bradford Court** by the Delaware County Sanitary Engineer. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Developer and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$1200.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour
CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer or his or her staff, the Developer shall make an additional deposit of \$1200.00 to the fund. Upon completion of all Improvements provided herein and acceptance of Improvements by the County, any unused portions of the inspection fund shall be repaid to the Developer less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the Developer shall pay the cost of any third party inspection services for **Courtyards at Bradford Court** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Developer shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Developer, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Developer, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Developer shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Developer when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Developer must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Developer shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Developer shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Developer shall, during the construction and maintenance periods, comply with all rules and

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regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

The Developer shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Developer shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Developer and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

SECTION VI: EASEMENTS

The Developer shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Developer. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Developer shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Developer shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Developer become unable to carry out the provisions of this Agreement, the Developer's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

The Developer, for a period of five (5) years after acceptance of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements.

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Developer or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

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RESOLUTION NO. 16-1080

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IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER’S AGREEMENT FOR LIBERTY TRACE SECTION 3 PHASE A:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider’s Agreement;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approve the Sanitary Sewer Subdivider’s Agreement for Liberty Trace Section 3 Phase A.

SUBDIVIDER’S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 24th day of October 2016, by and between **PULTE HOMES OF OHIO, LLC**, hereinafter called “Subdivider”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”) as evidenced by the **LIBERTY TRACE SECTION 3 PHASE A** Subdivision Plat filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the “Improvements”) shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **LIBERTY TRACE SECTION 3 PHASE A**, dated **8/26/2016**, and approved by the County on **9/15/2016**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **31** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. Capacity is not guaranteed until the final Subdivision Plat is recorded. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

PHASE A

OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$114,695.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 2 for this project.

Initials _____

Date _____

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

OFFSITE

The SUBDIVIDER shall execute Bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of OFFSITE construction (**\$179,099.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **LIBERTY TRACE SECTION 3 PHASE A**.

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SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **LIBERTY TRACE SECTION 3 PHASE A (\$10,282.79)**. The Subdivider shall also deposit with the Delaware County Sanitary Engineer the sum of **\$23,503.52** estimated to be necessary to pay the cost of inspection for **LIBERTY TRACE SECTION 3 PHASE A** by the Delaware County Sanitary Engineer. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$600.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour
CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer or his or her staff, the Subdivider shall make an additional deposit of \$600.00 to the fund. Upon completion of all Improvements provided herein and acceptance of Improvements by the County, any unused portions of the inspection fund shall be repaid to the Subdivider less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **LIBERTY TRACE SECTION 3 PHASE A** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

The Subdivider shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Subdivider shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

SECTION VI: EASEMENTS

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite

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easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

1. "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.
2. An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
3. An itemized statement showing the cost of the Improvements.
4. An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
5. Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

The Subdivider, for a period of five (5) years after acceptance of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements.

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

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RESOLUTION NO. 16-1081

9:40AM PUBLIC HEARING BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELAWARE, OHIO WITH RESPECT TO THE PROPOSED ISSUANCE BY THE COUNTY OF ITS HEALTH CARE FACILITIES REFUNDING REVENUE BONDS, SERIES 2016 (SARAH MOORE COMMUNITY) IN ONE OR MORE SERIES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000:

It was moved by Mr. Benton, seconded by Mr. Merrell to open the hearing.

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

RESOLUTION NO. 16-1082

IN THE MATTER OF CLOSING THE HEARING BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELAWARE, OHIO WITH RESPECT TO THE PROPOSED ISSUANCE BY THE COUNTY OF ITS HEALTH CARE FACILITIES REFUNDING REVENUE BONDS, SERIES 2016 (SARAH MOORE COMMUNITY) IN ONE OR MORE SERIES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000:

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It was moved by Mr. Merrell, seconded by Mr. Benton to close the hearing.

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

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RESOLUTION NO. 16-1083

A RESOLUTION DETERMINING THE NECESSITY OF AND AUTHORIZING THE ISSUANCE AND SALE OF ONE OR MORE SERIES OF HEALTH CARE FACILITIES REFUNDING REVENUE BONDS, SERIES 2016 (SARAH MOORE COMMUNITY) OF THE COUNTY OF DELAWARE, OHIO IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF A BASE LEASE AND A LEASE IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT WITH RESPECT TO SAID BONDS; AND AUTHORIZING OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS:

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

WHEREAS, pursuant to the authority contained in the laws of the State of Ohio ("State"), including without limitation, Chapter 140 of the Ohio Revised Code ("Act"), the County of Delaware, Ohio ("Issuer"), a county and political subdivision duly organized and validly existing under and by virtue of the Constitution and the laws of the State, is authorized and empowered, among other things: (i) to acquire, construct, improve and equip "hospital facilities" as defined in the Act ("Hospital Facilities"), and to acquire real estate and interests therein, including without limitation, improvements situated thereon comprising hospital facilities; (ii) to issue its revenue bonds for the purpose of (a) paying the "costs of hospital facilities", as defined in the Act, (b) refunding obligations previously issued for such purpose, (c) paying for the reimbursement of all moneys advanced or applied by a hospital agency or others or borrowed from others for the payment of any item or items of "costs of hospital facilities", and (d) paying all other necessary or incidental expenses thereto and to the issuance of such revenue obligations; (iii) to enter into lease agreements with a "nonprofit hospital agency", as defined in the Act, to provide for revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) to secure those revenue bonds by the pledge and assignment of its rights under such lease agreements, by a pledge and lien on certain revenues and by an absolute and irrevocable assignment of certain funds; and (v) to enact this Bond Resolution, to enter into the Base Lease, the Lease and the Bond Purchase Agreement (all as hereinafter defined and collectively referred to herein as the "Issuer Documents"), and to execute and deliver certain other documents and instruments upon the terms and conditions provided herein and therein; and

WHEREAS, Sarah Moore Health Care Center, Inc. (the "Corporation") has requested the Issuer to issue revenue bonds in one or more series (initially anticipated to be one series) pursuant to the Act styled County of Delaware, Ohio Health Care Facilities Refunding Revenue Bonds, Series 2016 (Sarah Moore Community) (the "Bonds") for the purpose of (i) current refunding all of the Issuer's outstanding \$8,905,000 Adjustable Rate Demand Health Care Facilities Revenue Refunding and Improvement Bonds (The Sarah Moore Home Project), Series 2007 (the "Prior Bonds") and (ii) pay costs of issuing the Bonds. The proceeds of the Prior Bonds were used to (i) finance and refinance the acquisition, construction, installation, equipping, furnishing and improvement of the Corporation's health care and senior living facilities currently known as Sarah Moore Community, located at 26 North Union Street, Delaware, Ohio 43015 (the "Project") and (ii) pay costs of issuing the Prior Bonds; and

WHEREAS, the Issuer has determined that the issuance of the Bonds under the circumstances and upon the terms hereinafter set forth, will further the public purpose of better providing for the health and welfare of the residents of the Issuer and the State by enhancing the availability, efficiency and economy of Hospital Facilities and the services rendered by the Corporation so that Hospital Facilities and the services rendered thereby are available to or for the service of the general public without discrimination by reason of race, creed, color or national origin, and

WHEREAS, on October 10, 2016 a notice of public hearing was published in *Delaware Gazette*, setting forth a general, functional description of the type and use of the facilities to be refinanced, the maximum principal amount of the Bonds, the initial owner, operator or manager of the facilities and the location of the facilities, among other things; and

WHEREAS, this Board has conducted a public hearing on the date hereof regarding the issuance by the Issuer of the Bonds and the Project to be refinanced thereby; and

WHEREAS, this Board has determined to authorize such Bonds and to award the sale thereof to Huntington Public Capital Corporation or an affiliate thereof (the "Original Purchaser"); and

WHEREAS, pursuant to the hereinafter defined Base Lease, the Issuer will acquire a leasehold interest in the Project, and will sublease the Project to the Corporation, which has authority to operate the Project as Hospital Facilities; and

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WHEREAS, it is necessary in connection with the issuance of such Bonds for the purpose of refinancing of the Project to provide for the authorization of the Issuer Documents and certain other documents in connection with the issuance of the Bonds.

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

SECTION 1. For the purpose of better providing for the health and welfare of the people of the Issuer and the State of Ohio by enhancing the availability, efficiency and economy of Hospital Facilities and facilitating the financing of Hospital Facilities to be available to or for the service of the general public without discrimination by reason of race, creed, color or national origin, this Board, hereby determines that the Bonds shall be issued pursuant to Section 140.06, Ohio Revised Code, in the maximum aggregate principal amount of \$8,000,000 for the purposes set forth in the preambles hereto. Such bonds shall be designated "County of Delaware, Ohio Health Care Facilities Refunding Revenue Bonds, Series 2016 (Sarah Moore Community)" (or such other designation as shall be acceptable to the individuals executing the Bonds). The Bonds shall be issued in one or more series (initially anticipated to be one series) in the form and denomination and shall be executed, dated, issuable in the principal amount, subject to redemption prior to maturity on the dates and at the prices, bear interest at the rate or rates, and payable on the dates as hereafter provided in the Bond Purchase Agreement hereinafter authorized.

SECTION 2. In addition to the words and terms defined in the recitals and elsewhere in this Bond Resolution, the words and terms defined in this Bond Resolution shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Lease or in the Bond Purchase Agreement, each as hereinafter defined.

Any reference herein to the Issuer, or to any officer or official or employee thereof, shall include those succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference to a section or provision of the Internal Revenue Code of 1986, as amended (the "Code"), the Ohio Constitution or the Act or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in this Bond Resolution, except as otherwise herein permitted, or shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer, a Holder or the Corporation under the Lease.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, any pronoun shall be deemed to cover all genders, and the terms "herein", "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Resolution and not solely the portion hereof in which any such word is used.

SECTION 3. The Bonds shall be initially issued as one fully registered Bond, sold to and registered in the name of the Original Purchaser, dated as of the date of its initial delivery to the Original Purchaser, numbered R-1 and in the form attached to the Bond Purchase Agreement. The Bonds shall mature not later than thirty-one (31) years from the date of initial delivery thereof (subject to all provisions herein for amortization and redemption). Upon any transfer and surrender of the Bonds in accordance with the provisions of the Bond Purchase Agreement, the Issuer shall execute and deliver a new Bond in exchange therefor as provided in the Bond Purchase Agreement.

The principal of the Bonds shall be payable in accordance with the amortization schedules to be set forth in the Bonds or the Bond Purchase Agreement hereinafter authorized, provided that the final installment of the principal of the Bonds shall be paid no later than final maturity date referenced above.

Interest from the date of issuance of the Bonds on the outstanding principal amount of the Bonds shall be payable on each Interest Payment Date commencing on the date specified in the Bond Purchase Agreement. Interest on the outstanding principal balance of the Bonds shall initially be payable from the date of issuance in accordance with the provisions of the Bond Purchase Agreement.

The interest rate on the Bonds shall not exceed the Maximum Rate as defined in the Bond Purchase Agreement. Each installment shall be applied first to interest due and the balance to repayment of principal. All principal and interest shall be paid in full on or before the final maturity date of the Bonds. The Bonds shall be subject to prepayment, redemption and mandatory tender as provided in the Bond Purchase Agreement and the Lease.

All Bond Service Charges shall be payable in lawful money of the United States of America at the principal office of the Holder, in accordance with the Bond Purchase Agreement.

The Bonds shall be executed on behalf of the Issuer by at least two members of the Board of County Commissioners (the "Board"), provided that such signatures may be a facsimile. In case any officer whose

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signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

SECTION 4. Anything in this Bond Resolution, the Bonds or any other Issuer Document to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of the faith and credit of the Issuer, the State or any political subdivision thereof, and the Holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by the Board of the Issuer, any successor thereto, or the Issuer, the State or the taxing authority of any political subdivision thereof for the payment of Bond Service Charges thereon. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Revenues (as defined in the Bond Purchase Agreement) and any other moneys paid by or on behalf of the Corporation. Nothing in the Bonds or the Issuer Documents, however, shall be deemed to prohibit the Issuer from using, of its own volition, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms or conditions of or its obligations under the Issuer Documents or the Bonds.

SECTION 5. The members of this Board, and their successors, are hereby authorized and directed to do all the acts and things required of them by the provisions of the Bonds and the Bond Purchase Agreement hereinafter authorized to the end that full and complete performance of all of the terms, covenants and agreements of the Bonds and Bond Purchase Agreement shall be effected, including taking all actions necessary to complete the sale of the Bonds under the "Blue Sky" laws of any jurisdiction; provided that the Issuer shall not be required to submit to service of process in connection with any such "Blue Sky" action in any state except Ohio.

SECTION 6. This Board hereby determines that the leasing of the Project from the Corporation and the subleasing of the Project to the Corporation, which will operate the Project, providing health care to the general public without discrimination by reason of race, creed, color or national origin is undertaken for and will serve the public purpose of better providing for the health and welfare of the people of the Issuer and the State of Ohio by enhancing the availability, efficiency and economy of Hospital Facilities and the services rendered thereby.

SECTION 7. At least two members of this Board be and they are hereby authorized and directed to execute and enter into, on behalf of the Issuer a Base Lease (the "Base Lease") with the Corporation to acquire a leasehold interest in the Project. The Base Lease shall be substantially in the form presented to this Board and on file with the Clerk, subject to such changes, insertions and omissions as may be approved by this Board, which approval shall be conclusively evidenced by the execution of said Base Lease as aforesaid. It is hereby determined that such Base Lease will promote the public purpose stated in Section 140.02, Ohio Revised Code, and the Issuer will be duly benefited thereby.

SECTION 8. At least two members of this Board be and they are hereby authorized and directed to execute and deliver on behalf of the Issuer a Lease (the "Lease") with the Corporation. The Lease shall be substantially in the form presented to this Board and on file with the Clerk, subject to such changes, insertions and omissions as may be approved by this Board, which approval shall be conclusively evidenced by the execution of said Lease. It is hereby determined that such Lease will promote the public purpose stated in Section 140.02, Ohio Revised Code, and the Issuer, will be duly benefited thereby.

SECTION 9. At least two members of this Board be and they are hereby authorized and directed to execute and deliver on behalf of the Issuer a Bond Purchase Agreement (the "Bond Purchase Agreement") among the Issuer, the Corporation and the Original Purchaser, providing for the sale of the Bonds to the Original Purchaser, substantially in the form heretofore presented to this Board and on file with the Clerk, so long as the terms of purchase contained therein are within the guidelines established in Sections 1 and 3 of this Bond Resolution.

SECTION 10. This Board, for and on behalf of the Issuer, hereby covenants that it will restrict the use of the proceeds of the Bonds hereby authorized in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Code and the regulations prescribed thereunder. Any member of this Board or any other officer having responsibility with respect to the issuance of said Bonds is authorized and directed to give appropriate certifications on behalf of the Issuer, in the form of an arbitrage certificate and/or a tax regulatory agreement, on the date of delivery of said Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Section 148 and regulations thereunder.

SECTION 11. The appropriate officers of the Issuer, be and they hereby are authorized to execute and deliver on behalf of the Issuer such other certificates, documents, assignments and instruments in connection with the issuance and sale of the Bonds as may be required, necessary or appropriate, including, without limitation, any documents which are necessary or appropriate in order to provide that the Bonds constitute "qualified 501(c)(3) bonds" under the Code. Such documents, including the ones specifically authorized hereby, shall be subject to such changes, insertions and omissions as may be approved by the appropriate officers of this Board, which approval shall be conclusively evidenced by the execution thereof as aforesaid.

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SECTION 12. This Board, as the "applicable elected representative" of the Issuer, for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, hereby approves the issuance of the Bonds in the maximum aggregate principal amount of \$8,000,000 pursuant to Chapter 140 of the Ohio Revised Code, the proceeds of which Bonds will be used for the purposes described in the preambles hereto. The initial owner, operator or manager of the Project is presently anticipated to be the Corporation or one or more affiliates or joint venture partners of the Corporation.

SECTION 13. It is found and determined that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Bond Resolution were taken in an open meeting of this Board or any of its committees and that all deliberations of this Board and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

SECTION 14. This Bond Resolution shall be in full force and effect immediately upon its adoption.

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

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ADMINISTRATOR REPORTS

- Director Mike Frommer hosted a conference last week in which people from two other states attended. Congratulations on representing the county as you did.
- Last Thursday ODOT held an informational meeting about the 36/37 & I71 interchange.
- Received a copy of a letter that was sent to the County Clerk of Courts complimenting a job well done to one of her employees at the BMV office.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Benton

- Will be attending an Orange Township Business Association meeting tomorrow morning.
- The Galena Brick Trail will have a grand opening on Wednesday at noon.

Commissioner Benton

- Attended the CCAO Board meeting on Friday.
- Also voted on Friday at the Board of Elections offices. It was very well handled.

Commissioner Lewis

- Plans of voting early also
- Would like to announce that we have a work session at 1:30 PM for the Economic Development Department followed by a presentation from Community Action.

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RESOLUTION NO. 16-1084

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. Merrell, seconded by Mr. Benton to adjourn into Executive Session at 10:17 AM.

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

RESOLUTION NO. 16-1085

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn out of Executive Session at 11:12 AM.

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

There being no further business, the meeting adjourned.

1:30PM WORK SESSION

- 1. Bob Lamb, Director of Economic Development**
-Economic Development Strategic Action Plan

- 2. Rochelle Twining, Executive Director Community Action Organization of Delaware, Madison, Union, Champaign, Logan & Shelby Counties**
-Update on Community Action Organization

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Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners