

COMMISSIONERS JOURNAL NO. 66 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MARCH 27, 2017

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

Present:  
Jeff Benton, President  
Gary Merrell, Vice President

Absent:  
Barb Lewis, Commissioner

**1**  
RESOLUTION NO. 17-286

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 20, 2017:

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 March 20, 2017; 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                      Absent                      Mr. Benton                      Aye

**2**  
PUBLIC COMMENT

**3**  
ELECTED OFFICIAL COMMENT

**4**  
RESOLUTION NO. 17-287

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0324:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0324 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount
R1702840	DELAWARE COUNTY BANK & TRUST CO	LOCK BOX SERVICES 5/1/17- 12/31/17	66211901 - 5328	\$9,000.00

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

**5**  
RESOLUTION NO. 17-288

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Emergency Medical Services Department is requesting that Lt. Jen Ransom attend an EPC- Emergency Pediatric Care class in Columbus, Ohio from April 8-9, 2017 at the cost of \$125.00 (fund number 10011303).

The Dog and Kennel Department is requesting that Charles Jones attend an Euthanasia Course at the Wyandot County Humane Society May 9-10, 2017; at the cost of \$150.00 (fund number 20411305).

The Regional Sewer District is requesting that Mike Frommer and Tiffany Maag attend an OWEA Joint Section Meeting in London, Ohio on April 13, 2017 at a total cost of \$84.00 from fund 66211902.

The Code Compliance Department is requesting that John Hickman, Dave Diehl, Greg Miller and Fred Fowler

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attend a Central Ohio Code Officials Association Fire Retardant Treated Wood Seminar in Westerville, Ohio on April 19, 2017 at no cost.

The Code Compliance Department is requesting that Bill Johnson and Fred Fowler attend an Ohio E.M.A. Cost Documentation and Damage Assessment Workshop in Delaware, Ohio on April 11, 2017 at no cost.

The Code Compliance Department is requesting that Bill Johnson, Ric Irvine, Joseph Amato and Fred Fowler attend an Ohio E.M.A. Damage Assessment Workshop in Delaware, Ohio on April 11, 2017 at no cost.

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

**6**

**RESOLUTION NO. 17-289**

**SETTING DATE, TIME AND PLACE FOR A VIEWING AND THE FINAL HEARING BY THE COMMISSIONERS FOR THE HAVEN’S 503 DRAINAGE IMPROVEMENT PETITION PROJECT:**

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

Whereas, the Board of Commissioners of Delaware County on June 16, 2014, held a public hearing and determined the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for the reconstruction and improvement of the Haven’s 503 Drainage Improvement Petition Project, and

Whereas, at that time the Delaware County Commissioners directed the Delaware County Engineer to proceed with the preparation of plans, reports, and schedules for the completion of the Drainage Improvement project, and

Whereas, the Delaware County Engineer has notified the Commissioners that the plans, reports, and schedules for the construction of the Haven’s 503 Drainage Improvement Petition Project are being finalized for their review and consideration.

Therefore be it Resolved, the Board of County Commissioners of The County of Delaware have fixed that **Monday April 24, 2017, at 1:30PM** (in the vicinity of approximately 100 feet East of 526 Peachblow Road, on the North side of the road, Delaware, Ohio 43015) is the time and place for the view thereon, and that **Monday May 1, at 1:30PM** 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 final hearing by the Commissioners on the report of the County Engineer.

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

**7**

**RESOLUTION NO. 17-290**

**IN THE MATTER OF SETTING THE BID DATE FOR THE DEL-TR149-2.57 IMPROVEMENT RE-BID:**

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

WHEREAS, the Board approved plans, specifications, estimates for the Improvement known as DEL-TR149-2.57, Klondike Road over Steel Cryder Ditch and authorized the County Engineer by resolution #17-146; and,

WHEREAS, all bids received by the County Engineer were more than 10 percent in excess of the Engineer’s estimated cost and no award can be made in accordance with Section 5555.61 of the Revised Code; and,

WHEREAS, the County Engineer has revised the plans, specifications and estimates for the Improvement and estimates the cost to construct the improvement as revised to be \$758,000;

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

Section 1. The revised plans, specifications and estimates for said improvement are hereby approved.

Section 2. The County Engineer is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Public Notice:

**Public Notice  
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, April 18, at which time they will be publicly received and read aloud, for the project known as:

**DEL-TR 149-02.57  
Klondike Road Bridge Replacement Project**

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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.

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 Owner requires that all work associated with the project be completed before August 11, 2017. The estimated commencement of work date is May 1, 2017.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

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: March 31, 2017

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

**8  
RESOLUTION NO. 17-291**

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

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

Whereas the below requests to perform work within the right-of-way have been reviewed and approved by the Delaware County Engineer;

Now Therefore Be It Resolved, that the following permits are hereby approved by The Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U17-035	Columbia Gas	Clarkshaw Moors	Install gas main
U17-036	Columbia Gas	Clarkshaw Moors Section 2	Install gas main
U17-037	Columbia Gas	Schoen Lake Dr	Tie into gas main
U17-038	AT&T	Sawmill Parkway	Road bore
U17-039	Consolidated Electric	Bale Kenyon Road	Install fiber optic cable

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

**9  
RESOLUTION NO. 17-293**

**IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN MARCUS B. WUEBKER AND JULIE A. WUEBKER AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR DEL-CR24-0.07:**

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

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Marcus B. Weubker and Julie A. Wuebker for the project known as DEL-CR24-0.07.

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the contract of sale and purchase with Marcus B. Weubker and Julie A. Wuebker for the project known as DEL-CR24-0.07 as follows:

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

**WITNESSETH:** On this 27th day of March, 2017, Marcus B. Wuebker and Julie A. Wuebker, whose address is 5741 S. Old 3C Highway, Westerville, Ohio 43082, 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)  
102-WD, 102-T  
DEL-CR24-0.07

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 **Fifteen Thousand, Six Hundred Thirty-Five Dollars (\$15,635.00)** 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:
  - (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.

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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 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

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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.

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

**10**

**RESOLUTION NO. 17-293**

**IN THE MATTER OF AMENDING THE CHILD PLACEMENT SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND PROVIDER THE VILLAGE NETWORK:**

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

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

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

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

**First Amendment  
To  
Contract for the Provision of Child Placement  
And Related Services  
Between  
The Village Network**

This First Amendment of the Contract For The Provision of Child Placement And Related Services is entered into this 27<sup>th</sup> day of March, 2017 by and between the Delaware County, Ohio Board of County Commissioners (hereinafter "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, the Delaware County, Ohio Department of Job and Family Services, a Title IV-E Agency, (hereinafter "Agency") whose address is 140 North Sandusky Street, 2<sup>nd</sup> Floor, Delaware, Ohio 43015, and The Village Network (hereinafter "Provider") whose address is 2000 Noble Drive, Wooster, Ohio 44691 (hereinafter collectively the "Parties.).

**WHEREAS**, the Parties entered into the Contract for the Provision of Child Placement and Related Services on December 22, 2016.

**WHEREAS**, the parties agree to the addition of certain provisions to the Contract (collectively, "Provisions").

**NOW THEREFORE**, the Parties agree as follows:

- 1. The Parties agree to amend the Agreement to add the following Provisions:
  - A. The contract service period shall be extended thru March 31, 2018.
  - B. Per Diem rates shall be adjusted as depicted in the attached rate schedule and shall be effective April 1, 2017 thru March 31, 2018.

2. Signatures

Any person executing this First Amendment in a representative capacity hereby warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal's behalf.

3. Conflicts

In the event of a conflict between the terms of the Contract and this First Amendment, the terms of the First Amendment shall prevail.

4. Terms of Agreement Unchanged

All terms and conditions of the Contract not changed by this First Amendment remain the same, unchanged, and in full force and effect.

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

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**11****RESOLUTION NO. 17-294****IN THE MATTER OF APPROVING A SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND FRONTIER COMMUNICATIONS OF AMERICA INC. FOR DELAWARE COUNTY'S WALKER WOODS TREATMENT PLANT:**

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

Whereas, the Director of Facilities recommends approval of the services agreement between the Delaware County Board Of Commissioners And Frontier Communications Of America Inc.;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the services agreement between the Delaware County Board Of Commissioners And Frontier Communications Of America Inc. For Delaware County's Walker Woods Treatment Plant:

**The Frontier Services Agreement**

The Frontier Services Agreement ("FSA") is effective March 27, 2017 by and between Frontier Communications of America, INC. on behalf of itself and its affiliates, which provide Equipment and Services identified in the Schedules ("Frontier"), and Delaware County whose primary address is 7776 Walker Woods Blvd., Lewis Center, Ohio 43035 ("Customer").

**1. Provision of Services and Equipment**

a. Frontier will provide and the Customer agrees to pay for the communications, installation and maintenance services (collectively "Service"), and/or purchase or lease equipment ("Equipment"), described in this FSA and Schedules executed by Customer.

b. Customer acknowledges that certain Services may be governed by tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between this FSA and an applicable tariff, the tariff shall control except with respect to pricing, early termination charges or cancellation charges for which this FSA shall control.

c. Frontier will provide, maintain and repair the Frontier owned facilities and equipment used to provide the Services ("Frontier(s) Network"), up to and including the point at which Frontier's Network is made available for interconnection to Customer's premises equipment or inside wiring. Customer shall provide Frontier reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any Frontier Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by Frontier for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing Frontier to act on the Customer's behalf related to the Services and auxiliary third party services.

d. Only authorized agents and representatives of Frontier may perform maintenance work with respect to Frontier's Network. Any repair, alteration, configuration or servicing of Frontier's Network, Services or Equipment by Customer or third parties without the written consent of Frontier is a material breach of this FSA and cause for termination at Frontier's option.

e. If Frontier is unable to commence performance hereunder due to circumstances within Customer's control, any related costs incurred by Frontier, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse Frontier for all costs incurred for installation, maintenance and repair if: (i) Frontier's Network is altered, maintained or repaired by any party other than Frontier, without Frontier's prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by anyone other than Frontier (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to Frontier's Network.

f. Customer will provide (i) suitable building facilities (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of Frontier's Network in accordance with manufacturer's documentation and Frontier's installation standards, more fully described in the applicable Schedule; and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.

g. The Services or Equipment may be connected with the services or facilities of other carriers. Frontier may, when authorized by Customer and as may be agreed to by Frontier, act as Customer's agent for ordering facilities provided by other carriers to allow such connection of Customer's locations to Frontier's Network or to the network of an underlying carrier or service.

h. Customer is responsible for all charges billed by other carriers or third parties. Frontier shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by Frontier. Customer is responsible to provide equipment compatible with the Service or Equipment and Frontier's Network, and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and Frontier's installation standards.

i. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for ensuring that all of Customer's data are adequately secured, documented and backed-up at all times. Frontier and its contractors are not responsible or liable for data loss for any reason.

j. Frontier will manage the Frontier Network in Frontier's sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment. Frontier will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or

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disruption in Service. Frontier reserves the right to suspend Service for emergency maintenance to Frontier's Network without notice to Customer. Customer shall designate a primary contact for receipt of such notice.

k. Customer represents and warrants that its use of the Service and Equipment will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this FSA and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities with respect to such use.

l. Except as expressly identified in a Schedule, Customer and its employees shall be the only permitted end-user of the Services and leased Equipment. Customer shall not resell or bundle the Services or leased Equipment, nor permit any third party to access the Services or leased Equipment in exchange for compensation of any kind.

## **2. Term**

The term of this FSA will commence as of the date identified in the introductory paragraph above or the date the FSA is executed by both Parties, whichever is later (the "Effective Date") and will continue through the Service Term with respect to any Service or Equipment provided pursuant to this FSA. Customer will purchase the Services, or lease Equipment, identified in each Schedule for the period of time stated in the Schedule (the "Service Term"). Unless otherwise stated in the Schedule, the Service Term and billing for the Service, will begin upon the earlier of (i) Customer's use of the applicable Service(s) or Equipment or (ii) five (5) days following Frontier's installation of such Service(s) or Equipment, and such date is deemed the commencement of the applicable Service Term. If neither party provides the other with written notice of its intent to terminate a Service at least sixty (60) days prior to expiration, the Service Term of each Service will automatically renew for additional one-year periods, subject to the terms and conditions of this FSA and at the then applicable one-year term rate, excluding promotional rates. If the parties agree to negotiated renewal terms, such terms will not be effective unless and until documented in writing and executed by both parties.

## **3. Payment**

a. Customer shall pay all charges set forth in the Schedules and in applicable tariffs during the Service Term. Frontier will invoice Customer any non-recurring charges ("NRC"), monthly recurring charges ("MRC"), and usage based charges.

b. In addition to the applicable charges set forth in the tariffs and Schedules, Customer shall pay all applicable federal, state or local sales, use, privilege, gross receipts, utility, value added, excise or other taxes (excluding taxes based on Frontier's net income), or any charges in lieu thereof, and any applicable surcharges or fees, whether government mandated or Frontier initiated including but not limited to Primary Interexchange Carrier Charge, Federal Pre-Subscribed Line Charge, Carrier Cost Recovery Surcharge, E-911, and Universal Service and Local Number Portability, in the amounts applicable at the time of billing. Customer shall also be responsible for third party charges and penalties incurred as a result of Customer's use of the Services or Equipment. Notwithstanding the forgoing, if Customer believes it, or the Services it receives and uses, are exempt from any tax, Customer will provide Frontier with a properly executed exemption certificate in a form acceptable to Frontier that evidences the exemption claimed.

c. All payments shall be due within thirty (30) days of the invoice date and, in addition to and not in lieu of any other remedies Frontier may have hereunder or under the law as a result of Customer's failure to pay, late payments shall be subject to a late payment fee of the lesser of one and one-half percent (1.5%) per month or the maximum allowed by law. In the event Customer disputes any invoiced amount, Customer will pay all charges not disputed, and notify Frontier of the dispute in writing, providing an explanation of the basis for the dispute. If Frontier does not receive notice of a payment dispute by Customer within ninety (90) calendar days after the date of an invoice, such invoice will be final and not subject to further challenge. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. Frontier reserves the right to immediately suspend or terminate any or all Services or the installation or lease of any or all Equipment if Customer is overdue more than thirty (30) days for payments that have not been disputed in good faith.

## **4. Cancellation and Early Termination Charges**

a. If Customer cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, Customer shall pay a cancellation charge equal to the NRC and one (1) month of MRC for the Service, plus the total costs and expenditures of Frontier in connection with establishing the Service prior to Frontier's receipt of notice of cancellation, including but not limited to any Equipment restocking fees.

b. Following installation, Customer may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to Frontier. All unpaid amounts shall be due upon termination of any Service identified in a Schedule for any reason. In addition, and unless otherwise specifically provided in the applicable Schedule, if any Service or Equipment is terminated by Customer for any reason other than breach by Frontier or by Frontier due to Customer's breach, then Customer shall pay Frontier a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.

c. Customer agrees that Frontier's damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

## **5. Limitation of Liability and Warranty Provisions**

a. The liability of Frontier and its affiliates related to this FSA or the Service or Equipment provided under this FSA, shall in no event exceed the limitations of liability set forth in the applicable tariffs, or regulatory rule or order. If there is no applicable tariff, regulatory rule or order, the total amount paid for the applicable Service or Equipment during the prior 12 months. In cases of an Outage, Frontier's liability shall be limited to 1/720 of the MRC for each hour after Frontier is notified of the Outage. An "Outage" is an interruption in Service or use of the Equipment caused by a failure of Frontier's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside Frontier's direct control. Notwithstanding the above, Frontier will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of Frontier. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.

b. IN NO EVENT WILL FRONTIER OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. FRONTIER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR



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INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.

c. Frontier warrants that Frontier's Network will be maintained in good working order. If any Service does not function substantially in accordance with applicable Service specifications as a result of Frontier's failure to maintain Frontier's Network (excluding degradation related to the acts or omissions of Customer or anyone using the Services, a force majeure event, or scheduled maintenance), Frontier's sole obligation is to repair the affected Service at Frontier's expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND FRONTIER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO FRONTIER'S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION. FRONTIER DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

d. *This FSA shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by Frontier. Customer agrees that Frontier has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of Frontier's Services and/or the Equipment provided under this FSA will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.*

e. Customer agrees that the Services and Equipment, and Frontier's performance hereunder are subject to the terms, conditions and restrictions contained in any applicable agreements (including software or other intellectual property license agreements) between Frontier and Frontier's vendors.

f. No action, regardless of form, arising out of this FSA or the Schedules may be brought more than two (2) years after the cause of action has arisen or charges have been billed whichever is earlier. The parties hereby waive the right to invoke any different limitation on the bringing of actions provided under applicable law.

#### **6. Indemnification**

Intentionally omitted.

#### **7. Confidentiality**

a. The Parties acknowledge that Delaware County is a political subdivision of the State of Ohio legally bound to comply with the Ohio public records law and that, unless otherwise clearly allowed by law to be an exception to the public record law and confidential, all aspects of this FSA are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws.

b. Customer and Frontier may disclose to each other information that is confidential in nature. In order to receive confidential treatment, all such information (hereafter "Information") shall be either (i) clearly marked as confidential if written, or clearly identified as confidential if oral or (ii) reasonably understood by the recipient, based on the nature of the Information or the circumstances of disclosure, to be confidential or proprietary to the discloser. Except as required by law or regulation, Customer and Frontier agree not to disclose any Information to any third party and to keep Information in a secure place available only to employees, affiliates, contractors or agents who are subject to obligations of confidentiality no less restrictive than those set forth herein, and who need to know the Information for purposes of the business dealing between Customer and Frontier, and to use Information only in connection with such business dealings. This Section is enforceable by injunction.

c. Information will lose its confidential status if obtained legitimately from a third party without restriction or upon the expiration of five (5) years from delivery of each item of Information. Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between Customer and Frontier.

d. Notwithstanding anything herein to the contrary, Frontier shall have the right to include Customer's name in a public list of current customers who use Frontier's services, provided Frontier does not make any representation with respect to Customer and does not attribute any endorsements to Customer, without Customer's prior written consent. In addition, Frontier may publicly identify Customer as a new customer of Frontier or an existing customer obtaining expanded or additional services from Frontier, as the case may be.

#### **8. Breach**

a. **Breach by Customer:** If Customer fails to make any payment when due and such failure continues for five (5) days after notice, or Customer fails to comply with any other term or condition of this FSA or any Schedule and such failure continues for thirty (30) days after notice, then Frontier may either suspend the applicable Schedule (or any portion thereof) until the breach is remedied, terminate the applicable Schedule (or any portion thereof), or terminate this FSA and all Schedules. Notwithstanding the foregoing, Frontier may immediately suspend Services and, after giving notice to Customer with an opportunity to respond appropriate to the circumstances and Customer's failure to respond, Frontier may terminate any or all Services, retrieve Frontier Network elements from the service location and Equipment for which title has not transferred to Customer, in the following circumstances: (i) in the event of unauthorized, unlawful or improper use or abuse of the Frontier Network or Service; (ii) if, in the reasonable judgment of Frontier, Customer's use of the Frontier Network or Service has or will damage or have an adverse effect on Frontier's Network, its personnel, property or service; (iii) such action is necessary to meet the exigencies of an emergency; or (iv) a court or other governmental authority having jurisdiction issues an order prohibiting Frontier from furnishing the Equipment or Services to Customer.

b. **Breach by Frontier:** If Frontier has not remedied any breach within thirty (30) days after Frontier's receipt of written notice from Customer of such breach (providing reasonable detail), Customer may terminate the Service which is the subject of such breach. This is Customer's exclusive remedy for a breach by Frontier.

#### **9. Force Majeure**

In no event will Frontier or its affiliates be liable for any delay in performance directly or indirectly caused by events beyond their control, including, but not limited to: acts or omissions of Customer, its agents, employees or contractors; acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; terrorism; cyber security events; labor disputes or shortages; and inability to obtain material, power, equipment or transportation.

#### **10. Assignment**

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This FSA may not be assigned by either party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that Frontier may assign this FSA to any successor to the business of Frontier by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with Frontier. Frontier may subcontract portions of the work to be performed hereunder to provision the Services or Equipment.

**11. Work Site Conditions**

a. If asbestos, or material containing asbestos, or any other hazardous or toxic materials are discovered during work pursuant to this FSA, Frontier will suspend its work for a reasonable period of time to permit Customer to engage a qualified firm to remove and dispose of the asbestos or other toxic or hazardous materials from the site. Such suspension may result in an equitable adjustment to the charges identified in the related Schedule, based on any increase in costs incurred by Frontier.

**12. Title and Risk of Loss**

a. Risk of loss or damage for Frontier Network elements installed at a Customer designated service location shall pass to Customer at time of delivery to Customer.

b. Any Frontier Network elements or Equipment installed at Customer's premises or location where Services or Equipment will be installed (which is leased or for which title has not transferred to Customer) remain the personal property of Frontier or Frontier's assignee, notwithstanding that it may be or become attached to or embedded in realty, and upon termination of this FSA or any Schedule (in whole or in part), all Frontier property shall be returned to Frontier in the same condition as installed, normal wear and tear excepted. Customer will not tamper with, remove or conceal any Frontier identifying plates, tags or labels. In the event Frontier property is not returned to Frontier in accordance with this Section, Customer will be billed for and pay to Frontier an amount equal to the retail value of the Frontier property, except to the extent such failure is caused by the negligence or willful misconduct of Frontier or its agents.

**13. Competition**

Customer recognizes the availability of competitive alternatives for receiving the Services and Equipment provided under this FSA, and has freely elected to enter into this FSA in order to receive the benefits it offers.

**14. Government Regulation**

To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, this FSA shall at all times be subject to changes, modifications, orders and rulings by the FCC and/or state public utilities commission or other regulatory agency. Frontier reserves the right to suspend, modify or terminate any Service without liability where any statute, regulation and/or ruling, including modifications thereto, by any regulatory agency (including the FCC), legislative body or court of competent jurisdiction, (i) prohibits, restricts or otherwise prevents Frontier from furnishing such Service, or (ii) has a material negative impact on Frontier's performance hereunder or the benefits provided by this FSA. If provision of any Service pursuant to this FSA is subject to advance approval of the FCC and/or any state public utilities commission, this FSA shall not become effective with respect to such Service until after receipt by Frontier of written notice of such approval.

**15. Governing Law**

This FSA shall be governed by and construed according to the laws of the State in which Services or Equipment are being provided hereunder without regard to its conflicts of laws provisions. Any related litigation may be brought in any State or Federal courts of competent jurisdiction within such State. Customer and Frontier consent to personal jurisdiction in such courts.

**16. No Waiver**

If either party fails, at any time, to enforce any right or remedy available to it under this FSA, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

**17. Severability**

A declaration by any court, or other binding legal source, that any provision of this FSA or any Schedule is illegal and void, will not affect the legality and enforceability of any other provisions of this FSA, unless the provisions are mutually dependent.

**18. Notice**

All notices provided pursuant to this FSA will be in writing and delivered by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, or by regular mail and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of certified US Mail), or on the next day after the sending of the notice if sent overnight mail, or three (3) days after mailing if by regular mail to the address of the party designated to receive such notice.

**19. Independent Relationship**

Each party understands and agrees that it and its personnel are not employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times.

**20. Dispute Resolution**

Except as otherwise specifically provided in or permitted by this FSA, all disputes arising in connection with this FSA shall first be resolved through good faith negotiation. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, then each party may seek resolution by exercising any rights or remedies available at law or in equity. Customer and Frontier agree that each may only bring claims against the other in an individual capacity and not as a plaintiff or class member in any purported class, representative, or private attorney general proceeding.

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**21. Authorization and Entire Agreement**

Each party represents that the person executing this FSA is authorized to enter into this FSA on its behalf. This FSA and any Schedules executed by the parties constitute the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior oral and written proposals, correspondence and memoranda with respect thereto. This FSA may not be modified, amended or supplemented except by written agreement signed by an authorized representative of each party. Notwithstanding anything otherwise stated, a Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and of no effect or application toward this FSA.

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

**12****RESOLUTION NO. 17-295**

**IN THE MATTER OF APPROVING THE FIRST AMENDMENT TO THE CONTRACT FOR GLOBAL POSITIONING SYSTEM (GPS) ELECTRONIC MONITORING SERVICES AND EQUIPMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, DELAWARE COUNTY ADULT COURT SERVICES AND 3M ELECTRONIC MONITORING, INC. FOR DELAWARE COUNTY ADULT COURT SERVICES:**

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

Whereas, the Court of Common Pleas and Adult Court Services Director recommend approval of the following first amendment for Global Positioning System (GPS) Electronic Monitoring Services and Equipment;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following first contract amendment for Global Positioning System (GPS) Electronic Monitoring Services and Equipment:

**First Amendment To  
Contract for Global Positioning System (GPS) Electronic Monitoring Services and Equipment Between  
Delaware County Adult Court Services  
And  
3M Electronic Monitoring, Inc.**

This First Amendment is made and entered in this 27th day of March, 2017, by and between the Delaware County Board of Commissioners, Delaware County Adult Court Services ("County") and 3M ELECTRONIC MONITORING, INC. ("3M EM") (collectively "Parties").

The Parties entered into a contract effective May 19, 2014 ("the Contract")

The term of the Contract is set to expire on April 1, 2017 and the Parties mutually desire to extend the term of the Contract and add additional products; and

The terms and conditions of the Contract permit the Contract to be extended and its terms and conditions amended by mutual agreement of the Parties.

The Parties therefore mutually agree as follows:

Pursuant to Renewal section 3.2 of the Contract, the Contract is renewed for an additional one (1) year term to April 1, 2018.

Pursuant to the Renewal section 3.2 of the Contract, the two tables in Attachment C of the Contract, the Table of Replacement Costs and the Table of Optional Equipment and Accessories are deleted in their entirety and replaced with the following:

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Lease Equipment	Daily Lease Fee
3M™ One-Piece Offender Tracking Device 4 (TD4)	\$3.65
3M™ Two-Piece Offender Tracking Device (XT)	\$4.35

Optional Equipment & Accessories	Daily Lease Fee or Purchase Price
3M™ Beacon (Functions with 3M™ One-Piece Device 4 (TD4))	\$0.25 per day/per offender
Optional Cellular Voice Communication	\$0.75 per day /per unit
3M™ Multi Unit Charger	\$300.00 (Purchase Price)
Car Charger for 3M™ One-Piece Device 4 (TD4)	\$25.00 (Purchase Price)

Lost, Stolen, Damaged	Replacement Costs
3M™ One-Piece GPS Tracking Device 4 (TD4)	\$1,050.00
3M™ Beacon (Functions with 3M™ One-Piece Device 4 (TD4))	\$300.00
3M™ Two-Piece Active GPS Offender Tracking Device (XT)	\$1,000.00

- 3. Signatures: Any person executing this First Amendment in a representative capacity warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal's behalf.
- 4. Conflicts: In the event of a conflict between the terms of the Contract and this First Amendment, the terms of this First Amendment shall prevail.
- 5. Terms of Contract Unchanged: All terms and conditions of the Contract not changed by this First Amendment remain the same, unchanged, and in full force and effect and the County shall attach this amendment to the original of this Contract.

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

**13**

**RESOLUTION NO. 17-296**

**IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE SANITARY SEWER OWNER'S AGREEMENT FOR OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL:**

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

Whereas, the Board of County Commissioners approved the original Owner's Agreement on September 26, 2016 per resolution 16-957;

WHEREAS, the Sanitary Engineer recommends approval of Amendment No. 1;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approve Amendment No. 1 to the Owner's Agreement for Olentangy Local School District Fourth High School.

**AMENDMENT NO. 1 TO OWNER'S AGREEMENT**  
**DELAWARE COUNTY SANITARY ENGINEER**

This AMENDMENT NO. 1 to the Original Agreement, approved on September 26, 2016, by Resolution No. 16-957, is made and entered into this 27th day of March, 2017, by and between **OLENTANGY LOCAL SCHOOL DISTRICT**, hereinafter called "Owner", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County"), and shall amend by substitution, replace, and supersede the Original Agreement.

**RECITALS**

WHEREAS, the Original Agreement approved capacity for 42.52 single family residential equivalent connections for the Olentangy Local School District Fourth High School which was based on a student count of 1,800, and,

WHEREAS, the Sanitary Engineer recommends amending the Original Agreement to reflect a revised student count equivalent to the other three Olentangy Local School District High Schools (1,600 students), and,

WHEREAS, the Sanitary Engineer recommends amending the Original Agreement to reflect the resulting capacity of 37.79 single family residential connections for the Olentangy Local School District Fourth High School,

NOW, THEREFORE, in light of the Recitals set forth herein, which are deemed to be an integral part of

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this Amendment, the OWNER and the COUNTY mutually agree to the following:

**SECTION I: INTRODUCTION**

This Agreement is entered into by and between **OLENTANGY LOCAL SCHOOL DISTRICT**, hereinafter called "Owner", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the **OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL** Subdivision Plat or Sewer Easement(s) Recorded on Said Development 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 Owner 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 **OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL**, dated **7/19/2016**, and approved by the County on **8/18/2016**, all of which are a part of this Agreement. The Owner shall pay the entire cost and expense of the Improvements.

**SECTION II: CAPACITY**

There are **37.79** 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 Sewer Easement(s) is recorded. If the final Subdivision Plat or Sewer Easement(s) is not recorded prior to expiration of the reservation deadline as set forth herein, the Owner agrees and acknowledges that capacity shall not be guaranteed.

**SECTION III: FEES**

It is further agreed that upon execution of this Agreement, the Owner 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 the **OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL (\$5287.00)**. The Owner shall also deposit with the Delaware County Sanitary Engineer the sum of **\$12084.56** estimated to be necessary to pay the cost of inspection for the **OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL** 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 Owner 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 Owner 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 Owner 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 Owner shall pay the cost of any third party inspection services for the **OLENTANGY LOCAL SCHOOL DISTRICT FOURTH HIGH SCHOOL** as required by the County.

**SECTION IV: 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 Owner 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 Owner, 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 Owner, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Owner 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 Owner when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Owner must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Owner shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request.

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If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Owner 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 Owner 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 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.

**SECTION V: EASEMENTS**

The Owner 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 Owner. 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 VI: 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 Owner 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 Owner 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 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. 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 Owner, 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 VII: SIGNATURES**

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

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

**14**

**RESOLUTION NO. 17-297**

**IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR THE REGIONAL SEWER DISTRICT:**

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

**Transfer of Appropriation**

<b>From:</b>	<b>To:</b>	
66211910-5328	66211910-5201	\$7,000.00
Scioto Hills /Maintenance & Repair Services	Scioto Hills/Parts & Equipment	

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

**15**

**RESOLUTION NO. 17-298**

**IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR THE CENTER AT POWELL CROSSING:**

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval.

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans.

THEREFORE BE IT RESOLVED, that the Board of Commissioners approve the sanitary sewer improvement plans for The Center at Powell Crossing for submittal to the Ohio EPA for their approval.

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

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**ADMINISTRATOR REPORTS**

Ferzan Ahmed, County Administrator  
 -Introduced Larry Long, Former Executive Director of CCAO  
 -Attended the CORSA renewal on Thursday  
 -MORPC would like to take a tour of Delaware County around the first of June, so it was suggested that they hold their Executive Committee meeting here then take a tour of the suggested Competitive Advantage Projects in the county

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**COMMISSIONERS' COMMITTEES REPORTS**

Commissioner Merrell  
 -Joe DiGenova has always been a class act. He will be greatly missed

Commissioner Benton  
 -Attended the CORSA renewal last week  
 -ODOT District 6 will be holding an Open House this week  
 -Auglaize County came to visit the command staff of the County's EMS department  
 -Attended Joe DiGenova's funeral services on Friday  
 -There will be an investment committee meeting this Thursday before the commissioner session

There being no further business, the meeting adjourned.

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Gary Merrell

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MINUTES FROM REGULAR MEETING HELD MARCH 27, 2017

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Barb Lewis

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Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners