

COMMISSIONERS JOURNAL NO. 67 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MAY 18, 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  
 Barb Lewis, Commissioner

10:00 AM Public Hearing For Consideration Of The Norris Run Full Watershed Drainage Improvement Petition

**1**  
 RESOLUTION NO. 17-517

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 15, 2017:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on May 15, 2017; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

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

**2**  
 PUBLIC COMMENT

**3**  
 ELECTED OFFICIAL COMMENT  
 Major Balzer, Delaware County Sheriff's Office (on behalf of Sheriff Martin), Peace Officers Memorial Day

**4**  
 RESOLUTION NO. 17-518

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0517:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0517 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO' Increase</b>			
Washington Auto Parts	Auto Parts/Repair of County Vehicles	10011106-5228	\$ 40,000.00
PNC Bank	Procurement card for Sewer District	66211904-5300	\$ 10,000.00

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

**5**  
 RESOLUTION NO. 17-519

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Court of Common Pleas is requesting that Laurie Winbigler attend a National Association of Pretrial Conference and training in Pittsburg, PA from September 10-13, 2017 at the cost of \$1270.00 (fund number 25622303).

The Emergency Medical Department is requesting that Josh Harper attend a Management of EMS class in Emmitsburg, Maryland from September 25-October 6, 2017 at the cost of \$296.00 (fund number 10011303).

The Emergency Medical Department is requesting that Captain Joe Farmer attend an ITLS International

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Conference in Quebec City, Canada from November 3-5, 2017 at the cost \$400.00 (fund number 10011303).

The Emergency Medical Department is requesting that Lt. Jessica Carnes and Seth Riddlebarger attend an Advanced Life Support for HazMat Incidents course in Emmitsburg, Maryland from December 11-22, 2017 at the cost of \$592.00 (fund number 10011303).

The Dog Shelter is requesting that Daniel James attend a National Animal Control & Humane Officer training in Dublin, Ohio from June 5-9, 2017 at the cost of \$525.00 from the Dog & Kennel Fund.

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

**6**

**RESOLUTION NO. 17-520**

**IN THE MATTER OF ACCEPTING THE TREASURER’S REPORT FOR THE MONTH OF APRIL 2017:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to accept the Treasurer’s Report for the month of April 2017.

(Copy available for review at the Commissioners’ Office until no longer of administrative value.)

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

**7**

**RESOLUTION NO. 17-521**

**IN THE MATTER OF AMENDING RESOLUTION NO. 16-1222 (IN THE MATTER OF APPROVING RESOLUTION ESTABLISHING MEETING DAYS FOR THE BOARD OF COMMISSIONERS FOR YEAR 2017 OR UNTIL OTHERWISE CHANGED BY BOARD ADOPTION):**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following amendment:

Whereas, Resolution No. 16-1222 addresses scheduling for those wishing to come before the Board; and

Whereas, the Board wishes to change the time notification schedule for those wishing to come before the Board;

Therefore, be it resolved that Resolution No. 16-1222 shall be amended to require that all those wishing to come before the Board must provide the purpose of such and schedule a time with the Clerk of the Board **by Noon on the Monday preceding the Monday session and on Thursday at Noon preceding the Thursday session.** An agenda item may be scheduled during regular session whereas the Board may allow presentation and discussion of an appropriate matter not previously scheduled.

All other provisions of Resolution No. 16-1222 not amended herein shall remain in full force and effect.

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

**8**

**RESOLUTION NO. 17-522**

**IN THE MATTER OF DECLARING MAY AS BUILDING SAFETY MONTH IN DELAWARE COUNTY:**

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

Whereas, Delaware County’s continuing efforts to address the critical issues of safety, energy efficiency and sustainability in the built environment give us confidence that our structures are safe and sound, and;

Whereas, our confidence in the integrity of these buildings is achieved through the commitment of vigilant guardians -- building officials, fire prevention officials, architects, engineers, builders, contractors, laborers and others in the construction industry—who work to ensure the safe and efficient construction of buildings, and;

Whereas, the building officials from Delaware County, the City of Delaware, the City of Powell, the Village of Sunbury, the City of Dublin, the City of Columbus, the City of Westerville and the State of Ohio, plumbing officials from the Delaware General Health District as well as the fire prevention officials from Ashley, Battle Run, Berlin Township, B.S.T. & G., Columbus, Concord Township, Delaware City, Fort Morrow, Genoa Township, Harlem Township, Liberty Township, Orange Township, Porter/Kingston, Radnor Township, Scioto Township, Tri-Township, Washington Township, Westerville and Worthington administer codes to protect Americans in the buildings where they live, learn, work, worship, play, and;

Whereas, the International Codes are used by the State of Ohio in providing a basis for the Ohio Building Code,

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the Residential Code of Ohio, the Ohio Mechanical Code, the Ohio Plumbing Code and the Ohio Fire Code; these codes provide safeguards to protect the public from natural disasters such as snowstorms, tornadoes, floods and earthquakes; and;

Whereas, Building Safety Month is sponsored by the International Code Council, to remind the public about the critical role of our community’s largely unknown guardians of public safety – our local code officials – who assure us of safe, efficient and livable buildings that are essential to our community’s success, and;

Whereas, “Code Officials – Partners in Community Safety and Economic Growth” the theme for Building Safety Month 2017, encourages all communities to raise awareness of the importance of building safety and resilient construction; fire prevention; disaster mitigation, and new technologies in the construction industry. Building Safety Month 2017 encourages appropriate steps everyone can take to ensure that the places where we live, learn, work, worship and play are safe, and recognize that countless lives have been saved due to the implementation of building safety codes by local and state agencies, and;

NOW THEREFORE BE IT RESOLVED, the Delaware County Board of Commissioners do hereby designate May as building safety month and we urge all county residents and those doing business in Delaware County to work with our building officials and fire officials on achieving building safety and sustainability.

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

**9**  
**RESOLUTION NO. 17-523**

**IN THE MATTER OF APPROVING THE AGREEMENT FOR SOFTWARE LICENSING BETWEEN THE BOARD OF DELAWARE COUNTY COMMISSIONERS, DELAWARE COUNTY EMS AND IMAGETREND, INC. FOR PATIENT CARE REPORTING (PCR)/BILLING SOFTWARE:**

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

Whereas, the Director of Emergency Medical Services recommends approval of the agreement for Software Licensing Agreement Between The Board Of Delaware County Commissioners, Delaware County EMS And Imagetrend, Inc. For Patient Care Reporting (PCR)/Billing Software;

Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the agreement for Software Licensing Agreement Between The Board Of Delaware County Commissioners, Delaware County EMS And Imagetrend, Inc. For Patient Care Reporting (PCR)/Billing Software:

**AGREEMENT**

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "IMAGETREND"), and the Delaware County Board of Commissioners, for and on behalf of Delaware County EMS (hereinafter "CLIENT").

**R E C I T A L S**

WHEREAS, IMAGETREND owns the software system known SOFTWARE; and WHEREAS, CLIENT desires to obtain the license of the Software mentioned above; and

WHEREAS, IMAGETREND is willing to provide CLIENT with a non-exclusive license of the Software on the terms and conditions contained herein;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. DEFINITIONS.**

“Authorized personnel” means employees of CLIENT that use the Software in the scope of their employment, or CLIENT’s contractors where the contractor’s services must necessarily require access to the Software. Personnel who intend to: reverse engineer, disclose, or use or acquire for any purpose not in the scope of the personnel’s employment or necessary for contractor services, any Confidential Information are not Authorized Personnel.

“Confidential information” means the proprietary products and trade secrets of IMAGETREND and/or its suppliers, including, but not limited to, computer software, code, technical parameters, price lists, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed by CLIENT pursuant to this AGREEMENT which is deemed confidential under existing state and/or federal law.

“Custom Development” means that CLIENT contracts IMAGETREND through a signed and accepted Statement of Work to customize the software. Each CLIENT shall have the non-exclusive license to utilize such software. Such software may then become a part of the core product and be distributed. Custom Development may require ongoing support and/or hosting and shall be subject to support and/or hosting fee increases. IMAGETREND maintains ownership of all Custom Development.

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“ePCR” means an Electronic Patient Care Report.

“ImageTrend Elite Data Marts” means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

“ImageTrend Elite Reporting Tools” means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

“Incident” means any time the CLIENT sends a vehicle to a potential or actual patient.

“License” means an unlimited use license of the software, without rights for resale, for the duration of the contract, defined as Software as a Service (SaaS) which expires when this AGREEMENT expires.

“Licensed Information” means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

“Reference” means referral in the promotion of IMAGETREND’S software to other potential CLIENTS.

“Run(s)” means an incident where the CLIENTS sends a vehicle to a potential or actual patient.

“Software” means the computer program(s) in machine readable object code form listed in Exhibit “A”, including the executable processing programs comprising the various modules from the Software and the Licensed Information.

“Statement of Work” means the technical document which outlines mutually agreed upon system specification for Custom Development and associated costs, payment terms and acceptance procedures. This document requires CLIENT acceptance and signature prior to beginning work.

“Support” means interactive telephone and e-mail support, computer based online training, product upgrades and enhancements, along with defect corrections, delivered from IMAGETREND’s offices.

“Upgraded Version” means the Licensed Software and/or Licensed Information to which updates, enhancements, corrections, installations of patches or other changes have been made. The exterior form of the Updated Version is reflected by changes to the version numbers.

#### SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be one year(s) from signature date, subject to Section 13 of this AGREEMENT. This AGREEMENT shall be subject to automatic annual renewal unless terminated by either party as provided in Section 13, below.

#### SECTION 3. GRANT OF LICENSE.

##### A. NON-EXCLUSIVE USE LICENSE.

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to CLIENT and CLIENT agrees to accept a non-transferable and non-exclusive use license of the Software for the term of this Agreement. During the term of the AGREEMENT, the CLIENT shall have access to the Software, which will be installed on servers at the IMAGETREND hosting facility and subject to the Service Level Agreement attached as Exhibit B. CLIENT expressly acknowledges that all copies of the Software and/or Licensed Information in any form provided by IMAGETREND to CLIENT hereunder are the sole property of IMAGETREND and/or its suppliers, and that CLIENT shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this AGREEMENT.

##### B. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools as included and detailed in Exhibit A. This AGREEMENT does not give the CLIENT the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is available via separately-priced  
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product and service offerings from IMAGETREND. This Section 3.B, is subject to the Non-Exclusive Use License as covered in Section 3.A and terms of this AGREEMENT.

##### C. PROTECTION OF SOFTWARE AND LICENSED INFORMATION.

CLIENT agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

CLIENT shall not nor shall CLIENT permit any third-party to, copy or duplicate the Software or any part thereof

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except for the purposes of system backup, testing, maintenance, or recovery. CLIENT may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of IMAGETREND are reserved. IMAGETREND reserves all rights which are not expressly granted to CLIENT in this AGREEMENT.

CLIENT shall not, nor shall CLIENT permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this AGREEMENT.

**D. DATA OWNERSHIP AND DATA PROTECTION.**

All CLIENT data collected with IMAGETREND Software remains at all times the property of the CLIENT. IMAGETREND will not to use or make available any personally identifiable information other than for administering the CLIENT's account and collecting usage statistics in order to improve our products and services specifications. During the term of this AGREEMENT and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by CLIENT's and others on IMAGETREND's website and acknowledges that all such information is confidential. CLIENT shall have access to creative tools within the Elite Software platform. Use of these features is conditioned upon assignment to IMAGETREND of all copyrights in any work created within and using the Elite software platform, the terms of use for such creative tool features will prompt all users upon first use to agree to terms of use; those terms are hereby incorporated as part of this AGREEMENT and valid whether accepted before or after execution of this AGREEMENT. Please contact IMAGETREND for a copy of these terms prior to final acceptance of this AGREEMENT, if necessary.

**E. CLIENT DATA.**

Within thirty (30) days after the expiration of this AGREEMENT, the termination of this AGREEMENT, or IMAGETREND is no longer in business, IMAGETREND will deliver to the CLIENT its data, in machine readable format, on appropriate media, at the CLIENT's option. If the CLIENT wants the data to be delivered in a medium other than tape or CD, IMAGETREND shall do its best to accommodate the CLIENT, provided the CLIENT shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by IMAGETREND in accommodating this request.

**SECTION 4. SOFTWARE ABSTRACT.**

A. The IMAGETREND Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database. CLIENT shall not use IMAGETREND Software to integrate patient information from a clinical encounter associated with a patient incident requiring emergency medical care by the emergency transport crew with flight information relating to an emergency transport crew dispatch to produce an encounter record indicative of the patient's clinical encounter.

B. The IMAGETREND Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMSIS). The dataset was adopted by IMAGETREND for State and local regulatory authorities as required by NEMSIS. The NEMSIS data schema and elements are the sole work of the NEMSIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMSIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMSIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.

**SECTION 5. SERVICES PROVIDED BY IMAGETREND.**

**A. SUPPLY OF SOFTWARE AND LICENSED INFORMATION.**

IMAGETREND shall provide CLIENT software and services as detailed in Exhibit A.

**B. MODIFICATIONS, IMPROVEMENTS AND ENHANCEMENTS.**

During the terms of this AGREEMENT and any extensions under Section 2, IMAGETREND will provide CLIENT with error corrections, bug fixes, patches or other updates to the Software in object code form, to the extent available in accordance with IMAGETREND's release schedule. If CLIENT desires to add new functions or make enhancements to the Software, CLIENT must, for additional consideration, negotiate with IMAGETREND to develop new functions or improvements to the existing Software. All such error corrections, bug fixes, patches, updates, or other improvements or modifications shall be the sole property of IMAGETREND.

**C. IMPLEMENTATION SERVICES**

1. IMAGETREND shall provide CLIENT with initial services such as the system configuration and installation into the IMAGETREND hosting infrastructure.

2. "Train-the-trainer" training for administrators as detailed in Exhibit A. Additionally, online training

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videos and user guides in electronic format will be made available.

**SECTION 6. MAINTAINENCE AND SUPPORT.**

- A. Application use support as detailed in Service Level Agreement Exhibit B.
- B. Server hosting environment is monitored and supported 24/7. Emergency support information is available on the IMAGETREND Support site for emergency purposes. Non-emergency related contact may be charged to the CLIENT.
- C. Maintenance of IMAGETREND software, which includes scheduled updates and new releases, as well as defect correction as needed, is included. Specific out-of-scope system enhancement requests will be reviewed with the CLIENT and subject to approval if additional charges are necessary.

**SECTION 7. FEES.**

- A. Except as otherwise provided in this AGREEMENT, IMAGETREND shall offer the Products and the Services at the prices set forth on Exhibit A.

(i) IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.

- B. The fees for this contract are as detailed in the attached Exhibit A.
- C. At any time during this AGREEMENT, the CLIENT may contract with IMAGETREND for additional software and services not covered in this AGREEMENT with fees to be negotiated on an item-by-item basis. The CLIENT may contract Custom Development by IMAGETREND for additional fees as outlined and agreed to in a signed and accepted Statement of Work.
- D. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule.

**SECTION 8. PROTECTION AND CONFIDENTIALITY.**

**A. ACKNOWLEDGEMENT.**

CLIENT hereby acknowledges and agrees that the Software and Licensed Information provided hereunder constitute and contain valuable proprietary products and trade secrets of IMAGETREND and/or its suppliers, embodying substantial creative efforts and confidential information, ideas and expressions. Accordingly, CLIENT agrees to treat (and take precautions to ensure that its authorized personnel treat) the Software and Licensed Information as confidential in accordance with the confidentiality requirements and conditions set forth below. CLIENT acknowledges and agrees that CLIENT shall not permit any non-Authorized User from accessing the Software made available to the CLIENT.

**B. MAINTENANCE OF CONFIDENTIAL INFORMATION.**

Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to CLIENT, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of CLIENT, subsequent to the receipt of the information by CLIENT.

**C. SURVIVAL.**

This Section 8 shall survive the termination of this AGREEMENT or of any license granted under this AGREEMENT.

**SECTION 9. WARRANTIES.**

**A. PERFORMANCE.**

IMAGETREND warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than IMAGETREND and its agents make any unauthorized amendment or change to the Software in any manner.

**B. OWNERSHIP.**

IMAGETREND represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to CLIENT.

**C. LIMITATIONS ON WARRANTY.**

All of IMAGETREND's obligations under this Section 9 shall be contingent on CLIENT's use of the Software in accordance with this AGREEMENT and in accordance with IMAGETREND's instructions as provided by IMAGETREND in the Licensed Information, and as such instructions may be amended, supplemented, or

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modified by IMAGETREND from time to time. IMAGETREND shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

The express warranties provided herein are the only warranties made by IMAGETREND with respect to the Software and supersede all other express or implied warranties, including, but not limited to, any warranties of merchantability and warranties for any special purpose.

**SECTION 10. LIMITATION OF LIABILITY.**

Unless otherwise provided in this Section 10, CLIENT's exclusive remedy for any damages or losses arising out of IMAGETREND's breach of warranties shall be, at IMAGETREND's option, either (i) immediate release from the AGREEMENT; or (ii) repair of the Software.

**SECTION 11. INDEMNIFICATION.**

A. Indemnification. Subject to Section 11(B), IMAGETREND shall, at its own expense, indemnify and defend CLIENT against any claim by a third party that the IMAGETREND Software as used in compliance with this Agreement infringes a valid U.S. patent issued prior to the Effective Date, Berne Convention copyright or U.S. trade secret (a "Claim"), provided that CLIENT: (i) provides IMAGETREND with prompt written notice of the Claim; and (ii) permits IMAGETREND to exclusively defend, compromise, settle or appeal such Claim. CLIENT shall provide IMAGETREND with full information, assistance and cooperation, at IMAGETREND's expense, to enable IMAGETREND to defend, compromise, settle and/or appeal such Claim and shall not settle or compromise any Claim without IMAGETREND's prior written consent. The obligations of this Section 11(A) apply to any and all settlements or compromises which may in any way estop or prejudice IMAGETREND's defense of the Claim, including all alternative dispute resolution forums, administrative forums and judicial forums. The previous sentence specifically contemplates, but is not limited to, post-grant proceedings (including inter partes review, covered business method review, post-grant review, and others) before the United State Patent and Trademark Office, Article 337 proceedings before the United States International Trade Commission, judicial proceedings before any court with jurisdiction, or otherwise. The provisions set forth in this Section 11(A) shall not prohibit the participation of CLIENT with IMAGETREND in the defense or appeal of any Claim should CLIENT choose to participate, at its own expense (such expense not being indemnified by IMAGETREND) and with attorneys of its own choice, provided that IMAGETREND shall have sole control and authority with respect to any such defense, compromise, settlement, appeal or similar action related to the Claim. IMAGETREND shall pay any final award of damages assessed against CLIENT resulting from a Claim defended by IMAGETREND pursuant to this Section 11(A), including any awarded costs or attorneys' fees, or any settlement amount agreed to by IMAGETREND.

B. Exclusions. IMAGETREND shall have no obligation to CLIENT under Section 11(A) if the alleged infringement or violation is based upon:

- i. Use of the IMAGETREND Software other than as set forth herein and in the then-current version of the Documentation; or
- ii. Any modification, configuration, implementation, or alteration to or of the IMAGETREND Software performed by anyone (including CLIENT) other than IMAGETREND or its subcontractors, agents or assignees; or
- iii. IMAGETREND's compliance with CLIENT's designs, specifications, modification instructions, configuration instructions, or implementation instructions if IMAGETREND is unable to follow such designs, specifications, modification instructions, configuration instructions, or implementation instructions without infringement or violation; or
- iv. Combination, operation or use with software, hardware, information, data, or other materials, not approved or supplied by IMAGETREND, if infringement (including, without limitation, contributory infringement) would have been avoided by use without such software, hardware, information, data, or other materials; or
- v. Use of a superseded or altered release of the IMAGETREND Software if the infringement would have been avoided by use of the current unaltered release of the IMAGETREND Software; or
- vi. Use of the IMAGETREND Software after IMAGETREND's notice to cease use of the IMAGETREND Software due to a claim of infringement.

C. Remedies. Notwithstanding anything to the contrary in the foregoing, should CLIENT's right to continue to use the IMAGETREND Software pursuant hereto be subject to a claim that it infringes or misappropriates a valid patent or copyright or other intellectual property right, or if IMAGETREND reasonably believes such a claim may arise, IMAGETREND may fulfill its obligations under this Section 11 by, in IMAGETREND's sole discretion and at no cost to CLIENT:

- i. Procuring for CLIENT the right or license to continue to use the IMAGETREND Software;
- ii. Modifying the IMAGETREND Software to render it non-infringing but substantially functionally

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equivalent to the IMAGETREND Software prior to such modification; or

iii. If the alternatives described in clauses (i) and (ii) of this Section 11(C) are not commercially practicable, IMAGETREND may terminate the License(s) to the IMAGETREND Software, in which case IMAGETREND may refund to CLIENT any fees paid under this Agreement by CLIENT to IMAGETREND for unused use of or support for the allegedly infringing

IMAGETREND Software. For the purposes of this Section 11(C)(iii), the fees with respect to unused use of allegedly infringing IMAGETREND Software that is licensed for a onetime or up-front License fee shall be the unamortized value of such one-time or up-front License fee actually paid by CLIENT to IMAGETREND under this Agreement for such allegedly infringing IMAGETREND Software, as depreciated on a three-year straight line schedule beginning on delivery of such allegedly infringing IMAGETREND Software to CLIENT. Upon such refund, CLIENT shall return such allegedly infringing IMAGETREND Software and CLIENT's right to use such IMAGETREND Software shall cease.

D. Effect. THIS SECTION 11 STATES IMAGETREND'S AND ITS SUPPLIERS' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT AND/OR MISAPPROPRIATION, WHETHER SUCH ACTION, CLAIM OR PROCEEDING IS BASED ON BREACH OF WARRANTY OR ANY OTHER CAUSE OF ACTION. EXCEPT AS STATED ABOVE, IMAGETREND AND ITS SUPPLIERS DISCLAIM ALL INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY FOR INTELLECTUAL PROPERTY INFRINGEMENT AND/OR MISAPPROPRIATION.

**SECTION 12. INSURANCE REQUIREMENTS.**

IMAGETREND will provide standard insurance coverage as detailed in a Certificate of Insurance, if requested.

**SECTION 13. TERMINATION.**

**A. TERMINATION WITHOUT CAUSE.**

Following the expiration of the original term of this AGREEMENT, either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than sixty (60) days written notice of termination.

**B. CUSTOM DEVELOPMENT TERMINATION**

Either party shall have the right to terminate any Custom Development portion(s) of this AGREEMENT, without cause, by giving not less than thirty (30) days written notice of termination.

**C. TERMINATION FOR CAUSE.**

This AGREEMENT may be terminated by the non-defaulting party by giving not less than thirty (30) days written notice of termination if any of the following events of default occur: (i) if a party materially fails to perform or comply with this AGREEMENT or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 8, above, or makes an assignment in violation of Section 15, below; (iii) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended from time to time, is filed by a party; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

**SECTION 14. COOPERATIVE USE**

Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal laws.

Any orders placed to, or services required from IMAGETREND will be requested by each participating agency. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The CLIENT shall not be responsible for any disputes arising out of transactions made by others. IMAGETREND shall be responsible for correctly administering this Agreement in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

**SECTION 15. NONASSIGNABILITY.**

CLIENT shall not assign this AGREEMENT or its rights hereunder without the prior written consent of IMAGETREND.

**SECTION 16. GOVERNING LAW.**

The parties agree that the law governing this AGREEMENT shall be that of the State of Ohio without regard to its conflict of laws principles.

**SECTION 17. COMPLIANCE WITH LAWS.**

IMAGETREND shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 18. WAIVER.**

Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this



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AGREEMENT or of any subsequent default or breach of the same or a different kind.

**SECTION 19. NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO CLIENT: Delaware County EMS  
10 Court Street  
Delaware, OH 43015  
ATTENTION: Aaron Jennings

TO IMAGETREND: ImageTrend, Inc.  
20855 Kensington Blvd.  
Lakeville, MN 55044  
ATTENTION: Mike McBrady

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 20. FORCE MAJEURE.**

Neither party shall be liable in damages or have the right to terminate this AGREEMENT for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**SECTION 21. ARBITRATION.**

Any dispute between IMAGETREND and CLIENT under this AGREEMENT shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association (Ohio) and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, IMAGETREND and CLIENT shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, who shall preside over any dispute. IMAGETREND and CLIENT shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this AGREEMENT and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any Ohio court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. IMAGETREND and CLIENT shall equally share the cost of the arbitrator(s) fees. Each party shall otherwise bear its own costs and expenses, including attorney fees.

**SECTION 22. INTERPRETATION.**

This AGREEMENT has been negotiated between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing it, or both. Accordingly, any rule or law or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose of the parties and this AGREEMENT.

**SECTION 23. SIGNATOR'S WARRANTY AND ACCEPTANCE BY PERFORMANCE.**

Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT, in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT. CLIENT understands and agrees that if CLIENT accepts any Software, goods, or services from IMAGETREND prior to IMAGETREND receiving a final, mutually signed copy of this AGREEMENT, that CLIENT has accepted this AGREEMENT and all of its terms and conditions.

**SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**EXHIBITS:**

EXHIBIT A – Pricing Agreement  
EXHIBIT B – Service Level Agreement  
EXHIBIT C – HIPAA Business Associate Agreement  
EXHIBIT D – Insurance Certificate  
EXHIBIT E – Tax Exemption Certificate  
(Available in Commissioners' office and EMS Department until no longer of administrative value)

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**EXHIBIT A – PRICING AGREEMENT**

IMAGETREND’s license and annual support are based upon 5,800 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases by more than ten percent (10%) and has a resulting effect of increased support calls to IMAGETREND.

Description	Units	Price	Extended
ImageTrend Elite EMS Setup and Project Management	1	\$ 5,000.00	\$ 5,000.00
ImageTrend Elite Field Site License	1	Included	Included
Billing Integration (Manual Export Tool) <i>ImageTrend NEMISIS v3 XML</i>	1	No Charge	No Charge
CAD Integration (EMS) Vendor: Other	1	\$ 5,000.00	\$ 5,000.00
Visual Informatics – Analytics Setup Fee (includes 1 cube) <i>Cube: EMS Cube</i> <i>Includes: Analytics, Pie Charts, Charting, Widgets</i>	1	\$ 5,000.00	Included
2 Days of Onsite Training In Lakeville, MN (Accelerated Implementation)	1	\$ 2,000.00	\$ 2,000.00
Webinar Training Sessions (2 hour session M-F during ImageTrend’s Standard Business Hours)	4	\$ 250.00	\$ 1,000.00
<b>TOTAL One-Time Fees</b>			<b><u>\$13,000.00</u></b>

Recurring Fees	Units	Price	Extended
ImageTrend Elite EMS Annual SaaS	5,800	\$ 2.00	\$11,600.00
ImageTrend Elite EMS Annual Support	1	Included	Included
ImageTrend Elite EMS Annual Hosting	1	Included	Included
ImageTrend Elite Field Site License Annual Support	1	Included	Included
Billing Integration Annual Support	1	No Charge	No Charge
CAD Annual Support and Hosting	1	\$ 1,750.00	\$ 1,750.00
Visual Informatics Annual SaaS Fee	1	\$ 1,750.00	\$ 1,750.00
<b>TOTAL Recurring Fees</b>			<b><u>\$15,100.00</u></b>

**TOTAL Year 1 \$28,100.00**

Optional*	Units	Price	Extended
Out of Scope billed at \$175/Hour		\$ 175.00	
Onsite Training Sessions @ \$1,000/day		\$ 1,000.00	
Travel per Trainer (for Onsite Training at Client’s Facility Training) @ \$1,750/trainer/trip		\$ 1,750.00	
Webinar Training Sessions (2 hour session M-F during ImageTrend’s Standard Business Hours) \$250/session		\$ 250.00	
FTP Automated Export of the NEMISIS v3 XML and PDF File Annual Support and Hosting How Often: Runs every 10 minutes Client Hosted FTP		\$ 2,500.00	

\*The CLIENT may elect to purchase additional services as set forth in the options identified above at any time during the contract term. The CLIENT shall exercise said options by written notice to IMAGETREND. The prices above are valid for one year from contract signature.

**Payment Terms:**

- a. The above mentioned items will be invoiced upon Contract signature with payment terms of net 30 days.
- b. CLIENT agrees IMAGETREND may, in IMAGETREND’s discretion, cease to provide access, hosting, support or otherwise disable the Software listed in Exhibit A due to CLIENT’s breach of contract, overdue payments, or missed payments.
- c. CLIENT agrees IMAGETREND may charge to CLIENT a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable.

Note: If Client would like to schedule Onsite Training on the weekend, additional fees may apply. Note: ImageTrend is not responsible for any CAD Vendor requirements and any associated fees Note: CAD data will only be available for 60 days in the dispatch database; which may impact CAD Recon Reports

**Pricing escalation factors:**

- a. IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.
- b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.
- a. All hosting fees are based upon anticipated usage and includes 30 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/10GB/month for Storage.

**Statements/Invoices should be mailed to:**

Mike Schuiling  
Delaware County EMS  
10 Court St.  
Delaware, OH 43015  
Phone: 740-833-2190  
Email: mschiling@co.delaware.oh.us

ImageTrend Salesperson Contact: Eric Bambard

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952-469-1589

ebambard@imagetrend.com contracts@imagetrend.com

**EXHIBIT B – SERVICE LEVEL AGREEMENT  
SOFTWARE AS A SERVICE (SAAS) VERSION 4.0**

This agreement exists for the purpose of creating an understanding between IMAGETREND and CLIENT who elect to host the application on IMAGETREND's servers. It is part of our guarantee for exceptional service levels for as long as the system annual support fee is contracted. The Service Level Agreement guarantees your web application's availability, reliability and performance. This Service Level Agreement (SLA) applies to any site or application hosted on our network as SaaS.

1. Hosting at the ImageTrend's Datacenter

IMAGETREND's hosting environment provides 99.9% availability and is comprised of state-of-the-art Blade Servers and SAN storage that are configured with the no single point of failure through software and infrastructure virtualization, blade enclosure redundancies and backup storage policies. Our Compellent SAN has a fiber channel backend, currently hosts 8TB of storage, has dual storage controllers with redundant power supplies and redundant paths to disk, and hot swappable drives. We do offsite replication to disk on a second SAN. Scheduled maintenance and upgrades do not apply to the system availability calculation and all CLIENTs are properly notified of such scheduled occurrences to minimize accessibility interruptions.

**Hardware**

IMAGETREND server hardware is configured to prevent data loss due to hardware failure and utilize the following to ensure a quick recovery from any hardware related problems.

- Independent Application and Database Servers
- Microsoft SQL Server 2012
- Microsoft Windows Server 2012
- Redundant Power Supplies
- Off-Site Idle Emergency Backup Servers (optional)
- Sonicwall VPN Firewall
- Redundant Disk configuration
- Disk Space allocation and Bandwidth as contracted

**Physical Facility**

The IMAGETREND hosting facilities are located in downtown Minneapolis and Chicago with every industry standard requirement for hosting not only being met, but exceeded. Requirements such as power supply and power conditioning, normal and peak bandwidth capacity, security and fail over locations are all part of an overall strategy to provide the most reliable hosting facility possible.

- Redundant, high-speed Internet connections over fiber optics.
- Power protection via an in-line 80kVa UPS with a 150 KW backup diesel generator
- Temperature controlled
- Waterless Fire Protection and Clean agent fire suppression
- Secured site access
- Steel Vault Doors
- 21" concrete walls and ceiling

**Data Integrity**

IMAGETREND applications are backed up daily allowing for complete recovery of data to the most recent backup:

- Daily Scheduled Database and Application Backups.
- Daily Scheduled backup Success/Failure notification to IMAGETREND staff

**2. Application and Hosting Support**

IMAGETREND provides ongoing support as contracted for their applications and hosting services, including infrastructure. This includes continued attention to product performance and general maintenance needed to ensure application availability. Support includes technical diagnosis and fixes of technology issues involving IMAGETREND software. IMAGETREND has a broad range of technical support services available in the areas of:

- Web Application Hosting and Support
- Subject Matter Expert Application Usage Support
- Web Application Development/Enhancement
- Database Administration/Support
- Project Management
- Systems Engineering/Architecture

IMAGETREND offers multi-level technical support, based on level-two user support by accommodating both the general inquiries of the administrators and those of the system users. We will give the administrators the ability to field support for the system as the first level of contact while providing them the option to refer inquiries directly to IMAGETREND.

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IMAGETREND’s Support Team is available Monday through Friday from 7:00 am to 6:00 pm CST via the Support Suite, email or telephone.

Support Suite: [www.imagetrend.com/support](http://www.imagetrend.com/support)  
 Email: [support@imagetrend.com](mailto:support@imagetrend.com)  
 Toll Free: 1-888-730-3255  
 Phone: 952-469-1589

**Online Support**

IMAGETREND offers an online support system which incorporates around-the-clock incident reporting of all submitted tickets to IMAGETREND’s application support specialists. Once a CLIENT submits a support ticket, he or she can track the progress with a secure login to the support application. The system promotes speedy resolution by offering keyword-based self-help services and articles in the knowledgebase, should CLIENTS wish to bypass traditional support services. Ticket tracking further enhances the efforts of Support Desk personnel by allowing IMAGETREND to identify patterns which can then be utilized for improvements in production, documentation, education and frequently asked questions to populate the knowledgebase. The support ticket tracking system ensures efficient workflow for the support desk specialists while keeping users informed of their incident’s status. Support patterns can be referenced to populate additional knowledgebase articles.

**Incident Reporting Malfunctions**

IMAGETREND takes all efforts to correct malfunctions that are documented and reported by the CLIENT. IMAGETREND acknowledges receipt of a malfunction report from a CLIENT and acknowledges the disposition and possible resolution thereof according to the chart below.

Severity Level	Examples of each Severity Level:	Notification Acknowledgement: IMAGETREND Return Call to Licensee after initial notification of an Error	Action Expectation: Anticipated Error resolution notification after IMAGETREND Return Call to Licensee of Notification Acknowledgement of an error.
High/Site Down	- Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted	Within one (1) hour of initial notification during business hours or via <a href="mailto:support.imagetrend.com">support.imagetrend.com</a>	Six hours
Medium	- Minor subsystem failure -Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten	Within four (4) hours of initial notification	24 Business hours
Low	- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed	Same day or next business day of initial notification	Future Release

**Service Requests (enhancements)**

Any service requests that are deemed to be product enhancements are detailed and presented to the development staff, where the assessment is made as to whether these should be added to the future product releases and with a priority rating. If an enhancement request is specific to one CLIENT and deemed to be outside of the original scope of the product, then a change order is written and presented to the CLIENT. These requests are subject to our standard rates and mutual agreement. CLIENTS review and approve the scope, specification and cost before work is started to ensure goals are properly communicated.

Product release management is handled by IMAGETREND using standard development tools and methodologies. Work items including, tasks, issues, and scenarios are all captured within the system. Releases are based on one or more iterations during a schedule development phase. This includes by not limited to: development, architecture, testing, documentation, builds, test and use cases. Submissions of issues or requests are documented within our Product Management system and from there workflow is created to track the path from initial request to resolution.

**Out of Scope**

CLIENT may contract with IMAGETREND for Out of Scope services. This will require a separate Statement of Work and will be billed at IMAGETREND’s standard hourly rate.

**Maintenance and Upgrades**

System/product maintenance and upgrades, if applicable, are included in the ongoing support and warranty as contracted. These ensure continued attention to product performance and general maintenance. Scheduled product upgrades include enhancements and minor and major product changes. Customers are notified in advance of scheduled maintenance. It is the CLIENT’s responsibility to accept all offered updates and upgrades to the system. If the CLIENT does not accept these, CLIENT should be advised that IMAGETREND, at its discretion, may offer limited support for previous versions. All code releases also maintain the integrity of any CLIENT specific configurations (i.e. templates, addresses, staff information, active protocols, etc.) that have been implemented either by IMAGETREND’s implementation staff or the CLIENT’s administrative staff.

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**Escalation**

Our support staff is committed to resolving your issues as fast as possible. If they cannot resolve your issue, they will identify the course of action that they will be taking and indicate when an answer will be available. They in turn will seek assistance from the designated developer. The next level of escalation goes to the Project Manager, who also addresses all operational issues on an ongoing basis and reviews the issue log regularly to assess product performance and service levels. Senior Management will handle issues requiring further discussion and resolution. Any issues to be determined to be of a critical nature are immediately escalated accordingly.

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

**10**

**RESOLUTION NO. 17-524**

**IN THE MATTER OF ACCEPTING SANITARY SEWER IMPROVEMENTS FOR LIBERTY PARK PUMP STATION, SANITARY SEWER AND FORCE MAIN:**

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

Whereas, the construction of new sanitary sewers at the Greens at Northstar 3-2 have been completed to meet sewer district requirements; and

Whereas, the sewer district has received the necessary items required by the subdivider’s agreement; and

Whereas, the Director of Environmental Services recommends accepting sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

<b>Liberty Park Pump Station,</b>	2183feet of 8-Force Main	\$147,422.00
<b>Sanitary Sewer and Force Main</b>	1434’ of 18” Sewer	\$100,520.00
	7- manholes	\$28,000.00
	1 Pump Station	\$689,248.00

Therefore be it resolved, that the Board of Commissioners approve and accept the above sanitary sewers for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 1. The Board hereby approves and accepts the above sanitary sewer improvements for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 2. The Board hereby releases any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed to insure faithful performance for construction of the above sanitary sewer improvements, if applicable.

Section 3. The Board hereby accepts any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed per the requirements of the subdivider’s agreement for the five-year maintenance period for the above sanitary sewer improvements.

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

**11**

**RESOLUTION NO. 17-525**

**IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR NORTH ROAD PARK PHASE 1:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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 North Road Park Phase 1 for submittal to the Ohio EPA for their approval.

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

**12**

**RESOLUTION NO. 17-526**

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**IN THE MATTER OF APPROVING A PARTIAL RELEASE AND VACATION OF SANITARY SEWER EASEMENT FOR LOT 5464 THE HEATHERS AT GOLF VILLAGE, SECTION 1, LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO (OFFICIAL RECORD 1389, PAGE 2609):**

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

Whereas, the Sanitary Engineer has received a request to vacate a portion of an existing sanitary sewer easement located within Lot 5464 of The Heather's at Golf Village, Section 1 Subdivision; and

Whereas, since the time of recording the plat for this project, it has been determined that the platted easement is in conflict with the placement of the building footprint by the developer of said lot; and

Whereas, the Sanitary Engineer has determined that a portion of the sanitary sewer easement can be released and vacated without adversely affecting Delaware County.

Therefore, the Sanitary Engineer recommends approving the following Partial Release and Vacation of Sanitary Sewer Easement.

**VACATION AND RELEASE OF EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS THAT effective this 18<sup>th</sup> day of May, 2017, the undersigned DELAWARE COUNTY BOARD OF COMMISSIONERS, a/k/a Delaware County Commissioners, a political subdivision of the State of Ohio, hereby permanently surrenders, vacates, and releases a portion of that certain Sanitary Sewer Easement granted to it by Pulte Homes of Ohio, LLC by instrument recorded in Deed Book 1389, Page 2609, Recorder's Office, Delaware County, Ohio, such surrendered, vacated, and released portion of the easement being described and depicted on Exhibit A attached hereto. Further, the undersigned hereby authorizes and directs the Delaware County Recorder to record this Vacation and Release of Easement in the County Records.

IN WITNESS WHEREOF, the undersigned has caused this Vacation and Release of Easement to be executed effective the day and year first above stated.

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

**13**  
**RESOLUTION NO. 17-527**

**IN THE MATTER OF SETTING THE BID DATE AND TIME TO RECEIVE BIDS FOR THE LIBERTY SAWMILL SANITARY SEWER EXTENSION IMPROVEMENTS, CONTRACT NO. DCES 17-02, BY THE DELAWARE COUNTY REGIONAL SEWER DISTRICT:**

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

WHEREAS, the Delaware County Regional Sewer District desires to bid the construction of the Liberty Sawmill Sanitary Sewer Extension Improvements, and;

WHEREAS, Sewer District staff has developed the contract documents and technical specifications for the needed construction.

NOW THEREFORE, BE IT RESOLVED that the specifications for the project known as Liberty Sawmill Sanitary Sewer Extension Improvements are hereby approved, and; the Sanitary 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  
DELAWARE COUNTY REGIONAL SEWER DISTRICT  
LIBERTY SAWMILL SANITARY SEWER EXTENSION IMPROVEMENTS  
CONTRACT NO. DCES 17-02

Sealed Bids for the construction of the LIBERTY-SAWMILL SANITARY SEWER EXTENSION IMPROVEMENTS will be received by the County of Delaware, Ohio at the Office of the Delaware County Regional Sewer District, 50 Channing Street (South Wing), Delaware, Ohio until **2:00 PM** local time on **June 14, 2017**, and then at said Office publicly opened and read aloud.

The Bidder shall furnish all labor and material to construct the Liberty Sawmill Sanitary Sewer Extension Improvements. The project consists of the construction of approximately 9,000 feet of 24" sanitary sewer and approximately 200 feet of 10" sanitary sewer from Shale Run Drive to Sawmill Parkway, and the demolition of the existing Golf Village North pump station and removal of 5 existing air release valves.

THE CONTRACT DOCUMENTS may be examined at the following location:

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Delaware County Regional Sewer District  
50 Channing Street (South Wing)  
Delaware, Ohio 43015

A CD may be obtained free of charge containing plans, specifications, bid forms and contract documents in PDF format on or after May 23, 2017 at 12:00 P.M at the Delaware County Regional Sewer District office, 50 Channing Street (South Wing), Delaware, Ohio 43015.

Bids shall be submitted in a sealed envelope marked "Sealed Bid for Construction of the Liberty-Sawmill Sanitary Sewer Extension Improvements." Each Bid must contain the full name of every person or company interested in same. A Bid must be accompanied by Bid security made payable to Owner, in the form of a certified or bank check or a Bid Bond issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions and as may be modified by the Supplementary Conditions. The amount of a cashier's check or certified check must be at least TEN percent (10%) of the Bidder's maximum bid price (in accordance with Ohio Revised Code Chapter 1305). If a Bid Security is issued in the form of a Bid Bond by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions and as may be modified by the Supplementary Conditions and O.R.C. 153.54, it shall be equal to ONE HUNDRED percent (100%) of the Bidder's maximum Bid Price. Bid security furnished in bond form shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

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

The Engineer's Estimate is \$6,049,084

Prospective Bidders may send questions to the attention of Luke Murry, at (614)643-4388 or [Luke.Murry@Stantec.com](mailto:Luke.Murry@Stantec.com)

A pre-Bid conference will be held on **May 31, 2017** at **10:00 A.M.** at the Delaware County Regional Sewer District Office, 50 Channing Street (South Wing), 2<sup>nd</sup> floor Conference Room, Delaware, Ohio 43015. Attendance at this conference is not required to bid but is encouraged.

No Bid shall be withdrawn for a period of sixty (60) days after being publicly opened and read. All Bidders must bid on all items listed on the Bid Form. The successful Bidder shall be required to furnish performance and payment bonds in the amount of 100% of the Contract Price. Carriers must be authorized to do business in the State of Ohio.

The Bid will be advertised on May 23, 2017 and May 30, 2017 in the Delaware Gazette. The Bid will also be posted on the Delaware County website at [www.co.delaware.oh.us](http://www.co.delaware.oh.us) and may be accessed by selecting "Public Notices and Bids".

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

**14**

**RESOLUTION NO. 17-528**

**IN THE MATTER OF ADOPTING THE UPDATE TO THE HOURS OF WORK AND OVERTIME POLICY IN THE DELAWARE COUNTY PERSONNEL POLICY MANUAL:**

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") adopted the Personnel Policy Manual to revise management practices, procedures, and policies to appropriately manage federal, state, and civil service laws and regulations and to administer and set employment standards, and provide for the general management of employees, based upon best practices recommended by the County Risk Sharing Authority; and

WHEREAS, the Board wishes to update Section XIV. Hours of Work and Overtime, specifically Section C. Earned Time-Off – Overtime Exempt Employees; and

WHEREAS, Employees should note the update in their manuals with the understanding that the remainder of the manual remains in full force and effect;

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

Section 1. The Delaware County Personnel Policy Manual, pages 24–25, is hereby amended as follows:

**XIV. HOURS OF WORK AND OVERTIME**

The County will establish the hours of work for all employees. Staff may be required to work days, evenings, nights and/or weekends due to operational needs. Additionally, the County may alter schedules, days off and shifts based upon operational needs. Unless prohibited due to operational needs, the County will meet in advance with

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employees and give at least two weeks advance notice for significant shift and schedule changes.

Due to federal regulations, employees who are not exempt from the overtime provisions of the Fair Labor Standards Act ("FLSA") are prohibited from signing in or beginning work before their scheduled starting time, or signing out/stopping work past their scheduled quitting time except with supervisory approval or in emergency situations. Additionally, non-exempt employees who receive an unpaid lunch period are prohibited from working during their lunch period except with supervisory approval or in emergency situations. Non-exempt employees who work outside their regularly scheduled hours in contravention of this rule shall be paid for all hours actually worked, but may be disciplined accordingly.

Failure to properly sign in or out as required, misrepresenting time worked, altering any time record, or allowing a time record to be altered by others will result in disciplinary action.

Generally, employees not exempt from the overtime provisions of the FLSA shall be compensated for overtime for all hours actually worked in excess of forty in any one work week, regardless of the employee's regularly scheduled work day. Sick leave, vacation leave, personal days, compensatory time, and unpaid leaves shall not be considered hours worked for purposes of overtime compensation. Holiday hours shall be considered as hours worked towards the forty hours required for overtime calculations for non-exempt employees, only if the employee works on the holiday. Overtime shall be compensated at a rate of one and one-half times the employee's regular rate of pay for actual overtime worked.

The County may mandate overtime as a condition of continued employment. Supervisors shall attempt to distribute overtime as equally as practicable among qualified employees within those classifications in which overtime is required. An employee who refuses to work a mandatory overtime assignment may be considered insubordinate and disciplined accordingly. Additionally, the County may authorize or require employees to work a flexible schedule in a work week. For overtime eligible employees, a flexible schedule must occur within a single forty-hour work week.

A partial overtime exemption, or differing work schedule, may apply to certain employees, such as safety forces.

**A. Overtime Exempt Employees**

Employees who are exempt from the overtime provisions of the FLSA are not eligible for overtime payment. The appropriate appointing authority shall determine if an employee is exempt from overtime requirements for purposes of the FLSA. Such exemptions may include employees whose job duties are executive, administrative or professional in nature. At the discretion of the appointing authority, exempt employees may be required to keep track of, and report, their hours without destroying their exempt status.

**B. Compensatory Time – Non-Exempt Employees Only**

Non-exempt employees: At the discretion of the Appointing Authority, certain non-exempt employees may be permitted to take compensatory time-off in lieu of overtime payment. Compensatory time, like overtime, shall accrue at a rate of at one and one-half times the hours actually worked and, for non-safety forces, applies only to hours actually worked in excess of forty (40) in any one work week. Compensatory time must be used within one hundred eighty (180) days of its accrual. Compensatory time will be used on a first-in, first-out basis. Compensatory time not used within the requisite time period will be paid out.

Non-safety force employees may not exceed the maximum accrual cap of two hundred forty (240) hours. Safety forces employees may not exceed the maximum accrual cap of four hundred eighty (480) hours.

The appointing authority may, at its sole discretion, require an employee to use his compensatory time prior to the employee reaching the one hundred eighty (180) day accrual limit. Additionally, the Appointing Authority may choose to pay out an employee's compensatory time. If an employee's compensatory time is paid out, the employee shall receive payment at the employee's regular rate of pay at the time of payment.

**C. Earned Time-Off – Overtime Exempt Employees**

Employees who are exempt from the overtime provisions of the FLSA shall not receive compensatory time. However, if approved by the appointing authority, a bona fide administrative or professional employee may receive earned time off. Earned time off shall not be approved for a bona fide executive employee or a highly-compensated employee as defined by applicable federal regulations, regardless of whether the highly-compensated employee performs the duties or responsibilities of an executive, administrative or professional employee. Earned time off may not be given on a time and one half basis, but may be given as an hour for hour trade for hours worked on a particular project. Earned time off shall not be paid out and shall either be used or lost.

**D. Improper Deductions**

The County intends to comply with all FLSA provisions. Improper deductions that are not in accordance with the FLSA are prohibited. Additionally, improperly classifying individuals as "exempt" from overtime is prohibited. Any deduction that is subsequently determined to be improper, or any exemption status later found to be improper, shall be reimbursed. Any employee who believes that he has had an improper deduction from his



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salary, or who believes he has been improperly classified under the FLSA, shall submit a complaint in writing to their appointing authority or designee who will investigate and see that a written response is provided in a timely manner to ensure a good faith effort to comply with the FLSA.

Rev 5/2017  
Rev 5/14/2014; 10/23/2014 (Effective 12/1/2014)

Section 2. All prior versions of pages 24–25 of the Delaware County Personnel Policy Manual are hereby superseded. All other pages of the Delaware County Personnel Policy Manual not amended by this Resolution shall remain in full force and effect.

Section 3. The Board hereby encourages all county appointing authorities to follow this policy update for the employees under their respective direction and control, and the Board directs the Clerk of the Board to distribute copies of this Resolution to all county offices.

Section 4. This Resolution shall take effect immediately upon adoption.

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

**16  
ADMINISTRATOR REPORTS**

Si Kille, Assistant County Administrator/Fiscal Services Director  
-No reports

**17  
COMMISSIONERS' COMMITTEES REPORTS**

Commissioner Merrell  
-Visited the Franklin County Board of Elections yesterday for a meeting on voting machine funding

Commissioner Lewis  
-The "Donate a Fan Program" has started up again

Commissioner Benton  
-Attended the State of Ohio presentation of the Senior Citizens Hall of Fame yesterday. Colleen Marshall was the MC. She did a fabulous job considering the building lost power several times and we were moved to a different location.

**RECESSED AT 9:58 AM, RECONVIENED AT 10:10 AM**

**15  
RESOLUTION NO. 17-529**

**10:00AM PUBLIC HEARING FOR CONSIDERATION OF THE NORRIS RUN FULL WATERSHED DRAINAGE IMPROVEMENT PETITION FILED BY MARK A. AND LADONNA D. JAMES AND OTHERS:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to open the hearing at 10:10 AM.

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

**15 continued  
RESOLUTION NO. 17-530**

**IN THE MATTER OF APPROVING, FOR A SPECIFIC OCCURRENCE, A SUSPENSION OF RULE 3-SPEAKER REGISTRATION; RULE 4-LIMITATIONS AND RULE 7-PUBLIC COMMENT PROCEDURE FROM THE RULES GOVERNING PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:**

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve, for a specific occurrence, a suspension of Rule 3-Speaker Registration; Rule 4-Limitations; Rule 7-Public Comment Procedure from the Rules Governing Public Comment Before The Board Of County Commissioners Of Delaware County, Ohio

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

**15 continued  
RESOLUTION NO. 17-531**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF THE NORRIS RUN FULL WATERSHED DRAINAGE IMPROVEMENT PETITION FILED BY MARK A. AND LADONNA D. JAMES AND OTHERS:**

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It was moved by Mr. Merrell, seconded by Mrs. Lewis to close the hearing at 10:50 AM.

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

**15 continued**

**RESOLUTION NO. 17-532**

**IN THE MATTER OF GRANTING THE PRAYER OF THE PETITION AND DIRECTING THE DELAWARE COUNTY ENGINEER TO PROCEED WITH PREPARATION OF PLANS, REPORTS, AND SCHEDULES FOR THE NORRIS RUN FULL WATERSHED DRAINAGE IMPROVEMENT PETITION:**

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

Whereas, on December 8, 2016, a Drainage Improvement Petition to The Norris Run Full Watershed Drainage Improvement was filed with the Board of Commissioners of Delaware County (the "Board"); and

Whereas, the Board on Monday March 6, 2017, conducted a view of the proposed improvements; and

Whereas, the Board on Thursday May 18, 2017, held a public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for The Norris Run Full Watershed Drainage Improvement; and

Whereas, after hearing testimony from property owners and the preliminary report of County Engineer, Chris Bauserman, the Board is prepared to issue its findings on the proposed improvements.

Therefore, Be It Resolved, by the Board of Commissioners of Delaware County, Ohio as follows:

Section 1. The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the cost of the proposed improvement will be less than the benefits. Accordingly, the Board hereby grants the prayer of the petition. The hearing on the Petition is hereby adjourned to the date fixed for the filing of the reports, plans, and schedules by the Delaware County Engineer.

Section 2. The Board hereby orders the Delaware County Auditor to transfer \$ Zero from the general revenue funds of the county to the general drainage improvement fund.

Section 3. Upon the transfer of funds ordered in Section 2, the Board hereby orders the Delaware County Engineer to proceed with the preparation of plans, reports and schedules as presented for the proposed Norris Run Full Watershed Drainage Improvement. The Board hereby fixes May 18, 2019 as the date for filing of the engineer's reports, plans, and schedules. Upon filing of this information a public hearing date will be set and proper notification given to property owners in the affected watershed.

Section 4. THE BOARD HEREBY APPROVES ESTABLISHING A NEW ORGANIZATION KEY FOR THE NORRIS RUN FULL WATERSHED DRAINAGE IMPROVEMENT PROJECT 40311460.

Section 5. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

Section 6. Sections 1, 4, 5, and 6 of this Resolution shall take immediate effect upon passage. Sections 2 and 3 of this Resolution shall take effect upon the expiration of the twenty-one day appeal period, provided no appeal has been taken.

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

There being no further business, the meeting adjourned.

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Gary Merrell

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Barb Lewis

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Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners