

**2023 ILLICIT DISCHARGE COMPLIANCE PROGRAM CONTRACT**  
**Between**  
**FRANKLIN COUNTY BOARD OF HEALTH**  
**And**  
**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

This Contract (the “Contract”) entered into by and between Franklin County Board of Health (hereafter referred to as “FCPH”), with its principal address being 280 East Broad Street, Columbus, Ohio 43215, under the approval of Resolution No. \_\_\_\_\_ dated \_\_\_\_\_ 2023 and the Franklin County Board of Commissioners (hereafter referred to as “Board”) for the purpose of enhancing efforts to comply with the Ohio Environmental Protection Agency (“Ohio EPA”) issued the National Pollutant Discharge Elimination System permit (“NPDES Permit”) governing the Franklin County’s municipal separate storm sewer system (“MS4”), the consent decree with the Ohio Environmental Protection Agency filed in *State of Ohio vs. Franklin County Board of Commissioners*, Franklin County Court of Common Pleas Case No. 18CV008695 (“Consent Order”), and the settlement agreement with the Jeff Cox Estate, Karen Cox, the Ohio Environmental Council, and the Buckeye Environmental Network (“Settlement Agreement”) under the approval of Resolution No. \_\_\_\_\_ dated \_\_\_\_\_ 2023.

**WHEREAS**, Ohio EPA issued the NPDES Permit governing Franklin County’s MS4 on December 30, 2014 Permit 4GQ10009\*DG on April 19, 2021. Franklin County, as contemplated by the MS4 NPDES permit, has developed a Stormwater Management Program (“SWMP”), including the following required six minimum measures: public education and outreach; public participation/involvement; illicit discharge detection and elimination (“IDDE”); construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping for municipal operations. The NPDES permit requires the “stormwater program includes best management practices (BMPs) for each minimum measure”;

**WHEREAS**, the Franklin County Stormwater Partnership was initiated on May 27, 2003 with County Resolution No. 503-03. The partnership was formed among the County Drainage Engineer, Economic Development and Planning, Sanitary Engineer, Franklin County Public Health (“FCPH”), Franklin Soil and Water Conservation District and the townships. FCPH leads the IDDE program, providing leadership and legal authority for monitoring Household Sewage Treatment Systems (“HSTSs”) and addressing illicit discharge issues in partnership with the Franklin County Sanitary Engineer and initiating enforcement actions in the Franklin County Environmental Court;

**WHEREAS**, on January 15, 2020, the Consent Order was filed requiring the County, in part, to notify property owners of the requirement to pursue coverage under the Ohio EPA’s General Permit to Discharge Wastewater from HSTSs under the National Pollutant Discharge Elimination System for HSTSs discharging to the County’s MS4 that cannot be eliminated through connection to sanitary sewer or installation of soil absorption systems;

**WHEREAS**, in *Jeffery Cox v. Board of County Commissioners of Franklin County, Ohio*, United States District Court, Southern District of Ohio Case No. 2:18-cv-1631, Judge Graham’s May 21, 2021 decision interpreting the NPDES MS4 permit and the Consent Order held:

Plaintiff argues that the Consent Order does not actually require the elimination of the 2,000 HSTSs making illicit discharges to the MS4. Plaintiff believes that all pre-2007 HSTSs,

even if functioning properly and not “failing,” make illicit discharges. The Court notes, however, that the Consent Order requires the County to submit a schedule for eliminating “all illicit connections” to the MS4 with each of its annual reports. Consent Order, ¶ 14(j). Thus, to the extent Paragraphs 14(b) to (e) do not already require the County to address and eliminate illicit discharges from HSTs, Paragraph 14(j) does;

**WHEREAS**, the County’s Plan and Schedule submitted to and approved by Ohio EPA pursuant to the Consent Order requires the County to notify property owners to seek NPDES permits for replacement discharging HSTs and enforce illicit connection removal from January 18, 2023 through January 15, 2033;

**WHEREAS**, pursuant to Resolution No. 0700-23, the Commissioners approved the Settlement Agreement resulting in the dismissal of Case No. 2:18-cv-1631 (“District Court Action”) and Appeal No. 21-3680 in the United States Court of Appeals for the Sixth Circuit, and agreed, in part, to comply with the Consent Order and make best efforts to secure grants and/or other public funding to assist property owners with elimination, upgrades, or replacements of HSTs, including costs of connecting to sanitary sewers; and

**WHEREAS**, a contract with FCPH will provide the Board of Health with the resources to implement and operate an Illicit Discharge Compliance Program, in addition to the existing IDDE program, to assist the Commissioners in complying with the NPDES permit, the Consent Order, and the Settlement Agreement.

For the mutual considerations herein specified, the Board and FCPH have agreed and do hereby agree as follows:

**Section 1 Administrative and Specifications Requirements**

This Contract consists of the signed Contract including the Contract Terms and Conditions, and **Appendix A Scope of Work**.

**Section 2 Pricing and Delivery of Services**

In consideration for the promises and performance of FCPH upon completion of the work as set forth in **Appendix A “Scope of Work”**, the Board agrees to pay FCPH, an amount not to exceed **\$72,626.99**.

FCPH must provide all services in accordance with the terms and conditions of the Contract prior to receiving payment. FCPH may not perform any work under this Contract prior to award of the Contract.

**Section 3 Term of Contract**

The term of the Contract shall be in effect from November 1, 2023 through December 31, 2023.

**Section 4 Miscellaneous Terms**

**Section 4.01 Standard of Care**

FCPH shall discharge its respective obligations under the Contract with that level of reasonable care which a similarly situated business would exercise under similar circumstances. As an inducement to the Board to enter into this Contract, FCPH represents and warrants the following to the Board:

- (a) It shall execute any and all documents or contracts with third parties in its name and shall not represent itself as conducting business on behalf of the Board.

- (b) It has filed all tax returns (federal, state and local) required to be filed and has paid all taxes shown thereon to be due and all property taxes due, including interest and penalties, if any.
- (c) It is in compliance in all material respects with all laws, regulations and requirements applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, exemptions from, and has accomplished all filings or registrations or qualifications with, any court or governmental authority that are necessary for the transaction of its business.
- (d) If the Contract is grant funded, through a local, state, or federal grant award to the Board, FCPH shall be responsible for compliance with the grant requirements, including any limitations or restrictions on the use of grant funds and any required reporting requirements.

#### **Section 4.02 Affirmative Covenants**

Until the termination or expiration of this Contract, FCPH shall:

- (a) Execute such documents and present all necessary documents to the Board for signature as are reasonably necessary to ensure that the Board receives all services that it is entitled to under the Contract and shall take no action that would revoke to the Board's rights under this Contract;
- (b) Give notice to the Board, within ten (10) days of FCPH learning thereof, of any litigation involving a claim for damages in excess of One Hundred Thousand Dollars (\$100,000) affecting or relating to FCPH or the services required under this Contract.
- (c) Promptly notify the Board if:
  - (i) FCPH learns of the occurrence of any event which constitutes, or, with the passage of time, the giving of notice or otherwise, will constitute, an Event of Default or a default under this Contract or any of its other loan documents, together with a detailed statement by a duly authorized representative specifying the nature thereof and what action FCPH is taking or proposes to take with respect thereto;
  - (ii) FCPH receives any notice of default from, or the taking of any other action by, the holder(s) of any promissory note, debenture or other evidence of indebtedness of FCPH, together with a detailed statement by FCPH's duly authorized representative specifying the notice given or other action taken by such holder(s) and the nature of the claimed default and what action FCPH is taking or proposes to take with respect thereto;
  - (iii) FCPH learns of the existence of any legal, judicial or regulatory proceedings affecting FCPH or any of its properties or assets in which the amount involved is material and is not covered by insurance or which, if adversely determined, would cause a material adverse change in the business, prospects, profits, properties, assets or condition (financial or otherwise) of FCPH; or
  - (iv) There shall occur or exist any other event or condition causing a material adverse change in the business, prospects, profits, properties, assets or condition (financial or otherwise) of FCPH.

#### **Section 4.03 Unresolved Finding for Recovery**

If, after the Contract is awarded it is determined that an "unresolved" finding for recovery had been issued against FCPH prior to the award, the Contract shall be void. FCPH understands that FCPH shall be responsible to the Board for any expenditure against the Contract.

#### **Section 4.04 Ethics**

FCPH, the Board and employees of Franklin County Public Health are bound by the Ethics Laws of Ohio. Any FCPH employee who violates any of these laws will be subject to penalties set forth by law.

**Section 4.05 Subcontracting**

FCPH confirms that it will be the primary contractor who will be performing the work under the Contract. FCPH may use subcontractors for portions of the work under the Contract, but FCPH will remain the primary contractor and will remain liable for all work performed hereunder regardless of whether performed directly by it or by a subcontracted entity. Prior to the Effective Date, FCPH will provide the Board with a list of subcontractors it currently uses. FCPH shall not use any subcontractor who has been subject to action that limits the subcontractor’s right to do business with the local, state, or federal government.

**Section 4.06 Consent to Assign**

FCPH will not assign any of its rights under this Contract unless the Board consents to the assignment, in writing including any assignment through a merger or other corporate reorganization. Any purported assignment made without the Board’s written consent is void and may be subject to termination of the Contract. The Board may assert against an assignee any claim or defense the Board may have against the assignor.

**Section 4.07 Record Keeping**

FCPH will keep all financial records consistent with Generally Accepted Accounting Principles (GAAP). During the period covered by the Contract and is required to provide the Board and any person or agency instrumentally involved in providing financial support for the Contract work access and right to examine any books, documents, papers, or records related to this Contract. Claims documentation may be reviewed through a formal Audit and are not subject to the work access requirements set forth in this paragraph.

**Section 5 Time of Performance**

**Section 5.01 Time of Contract**

The Contract is effective on the later of the Effective date (set forth above in Section 3) or the date upon the signatures of the Franklin County Health Commissioner, however, the Board ratifies any actions taken by FCPH for the IDCP prior to the execution. This Contract will remain in effect until the end date (set forth above in Section 3) or until the Contract is fully performed by both parties or until it terminates in accordance with the termination language of the Contract.

**Section 5.02 Contract Extension and Price Increase**

There are no extension periods provided for in the Contract nor are there any price increases allowed.

**Section 5.03 Contract Extension at the End of the Original Contract Period**

The Contract may only be extended for up to 90 days, at the option of the Board, to allow for a new procurement process to select a vendor for the services, or the completion of any outstanding deliverables under this Contract. Any such extension shall be in accordance with the terms and conditions of this Contract. After the 90 days the Contract is considered expired and no further work can be started or completed after this date. Work completed before this date may be paid for by the Board. However, any work completed after the 90-day extension date shall not be paid for by the Board. This extension does not require the approval of the Board.

**Section 6 Invoicing, Due Date and Taxes**

**Section 6.01 Standard Invoice and Payment**

Upon receipt of a proper invoice and unless otherwise stated, the Board shall make payment in accordance with the terms of Section 6.02. If the Board determines that an invoice is inadequate or insufficient, or

determines that further documentation or clarification is required, the burden of providing the required information or documentation is on FCPH.

A “proper invoice” is defined as being free of defects, discrepancies, errors, or other improprieties. Improper invoices will be returned to FCPH noting the areas of discrepancy. Invoice shall include, at a minimum:

- 1) Name and address of FCPH
- 2) Billing period
- 3) Hours provided as stated in Contract pricing
- 4) Unit cost (must match Contract pricing)
- 5) Remit to address
- 6) Customer service telephone number (and/or e-mail address)

### **Section 6.02 Payment Due Date**

Franklin County normally makes payments within 30-days from the day the invoice is received and acceptance of supplies or services by the Board. The Board will not pay late fees, interest, or other penalties for later payment, unless otherwise stated. Any entity authorized to utilize this Contract, outside the responsibility of the Board, is responsible for all orders, invoices, payment, and/or tracking.

### **Section 6.03 Taxes**

Franklin County Public Health and the Board are exempt from all federal, state, and local taxes. Participating Franklin County agencies will not pay any taxes on supplies or services purchased from a contractor, unless special contract terms and conditions state otherwise. A tax-exempt certificate will be provided on request by the Contractor receiving the award.

## **Section 7 Contract Administration and Reports**

### **Section 7.01 Contract Administration**

The Board will be responsible for the administration of the Contract and will monitor FCPHs performance and compliance with the terms, conditions, and specifications of the Contract. If infraction(s) are observed, such shall be documented and conveyed to FCPH for immediate remedy. Failure of FCPH to rectify the infraction(s) may result in FCPH being deemed in default, wherein, the Board may apply the termination clauses of this Contract.

### **Section 7.02 Out of Scope Work and Contract Modification**

FCPH is not allowed to perform any work that is out of scope. If FCPH believes that the work being requested to be performed is out of scope, it must brought to the attention of the project manager. Any work that is out of scope, if it is determined to be necessary by the Board, must be added to the Scope of Work through a written contract modification that is approved by the Board, which has the sole authority to modify the Contract. Approval of a contract modification under this section by the Board shall be at their sole and complete discretion.

If FCPH knowingly performs work that is out of scope and does so without the proper written authorization from the Board FCPH does so at the their own risk. The Board will not be liable for any cost of the work performed that was out of scope and done without the proper authorization.

### **Section 7.03 – Status Reports**

1. Reports required under the specifications of the Contract will be provided by the required timeframes, in the required format, and those stipulated in the Contract.
2. Upon Request and at no cost to the Board, FCPH shall be required to provide updates and status with regard to milestone and timelines to the Board. Delivery timeframe of such reports will be negotiated when the request is issued by the Board. Failure to provide requested reports, after notification, may be deemed as deficiency and may result in corrective action being taken by the Board.

#### **Section 7.04            Developed Material**

All materials that have been prepared, written, created, or developed pursuant to the specifications in this Contract shall become the property of the Board and may be returned only at its discretion. Furthermore, the Board owns the entire title, right, and interest to said materials including the right to reproduce or distribute said material.

#### **Section 7.05            Quality Assurance**

FCPH is responsible for the quality of the materials developed for the Board under this Contract. The Board reserves the right to inspect and review all deliverables as they are being developed and written.

### **Section 8            Contract Cancellation; Termination; Remedies**

#### **Section 8.01            Contract Cancellation**

The Board may cancel this Contract upon any one of the following events. The cancellation will be effective on the date delineated by the Board.

##### 1) 30-Day Notice Termination

The Board reserves the right to terminate the Contract for convenience by giving FCPH 30-days written notification. If this Contract is terminated for convenience, the Board shall be liable only for payment under the payment provisions of the resulting Contract for goods and services rendered before the effective date of termination.

##### 2) Non-Appropriation of Funds

This Contract is contingent upon the Board receiving funding on an annual basis necessary for the continuation of this Contract in any contract year. In the event that the funds necessary for the continuation of this Contract are not approved for expenditure in any year, this Contract shall terminate on the last day of the fiscal year in which funding was approved, without penalty to the Board. The Board will provide FCPH with written notification within 10 business days after being notified that the funding is no longer approved.

##### 3) Cancellation for Failure to Retain Certification

Pursuant to the requirements as stated in the Contract, all certifications and / or registrations must be maintained for the life of the Contract. Failures to renew and certification(s) or the de-certification by certifying entity, may result in the immediate termination of the Contract.

##### 4) Cancellation for Financial Instability

The Board may cancel this Contract by written notice to FCPH if a petition in bankruptcy or similar proceeding has been filed by or against the Contract.

#### **Section 8.02            Termination for Default**

The Board may, subject to the paragraphs below, by written notice of default to FCPH, terminate this

Contract in whole or in part if FCPH fails to:

- a) Deliver the supplies or to perform the services within the time specified in this Contract or any extension;
  - b) Make progress, so as to endanger performance of this Contract.
- 1) The Board may exercise its right to terminate this Contract under this Section of the Contract if, after receipt of the notice from the Board specifying the failure, FCPH *does not offer a plan to cure* such failure within 10-days (or more if authorized in writing by the Board). This paragraph only requires that FCPH present their plan and timeline in which they intend to cure the failure.
  - 2) If the Board terminates this Contract in whole or in part, for default under this Section 8.02 it may acquire, under the terms and in the manner the Board considers appropriate, supplies or services similar to those terminated, and FCPH will be liable to the Board for any excess costs for those supplies or services. The maximum amount of liability of FCPH shall not exceed the total amount of the fees that have been paid to FCPH as of the termination date of the Contract. However, FCPH shall continue the work not terminated.
  - 3) Force Majeure: Except for defaults of subcontractors at any tier, FCPH shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of FCPH. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of FCPH.
  - 4) If failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of FCPH and subcontractor, and without fault or negligence of either, FCPH shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for FCPH to meet the required delivery schedule.

### **Section 8.03 Actual Liabilities**

Each Party to this Contract shall be responsible for any liability, claim, loss, damage or expenses, including without limitation, reasonable attorney fees, arising from its negligent acts or omissions in connection with its performance of this Contract, or its failure to comply with the terms of this Contract, as determined by a court of competent jurisdiction. Nothing in this section shall be construed as an obligation of the Board to defend, hold harmless, or indemnify any other party, entity, or individual, even for claims that are the result of negligent acts or omissions of the Board.

### **Section 9 Certifications and Affidavits**

#### **Section 9.01 FCPH's Warranty against an Unresolved Finding for Recovery**

Ohio Revised Code (O.R.C.) §9.24 prohibits awarding a contract to any Contractor against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is “unresolved” at the time of the award. By signing this Contract, FCPH warrants that it is not now, and will not become subject to an “unresolved” finding for recovery under O.R.C. §9.24, prior-to the award of any, without notifying the Board of such finding.

If, after the Contract is awarded it is determined that an “unresolved” finding for recovery had been issued against FCPH prior-to the award, the Contract shall be void. FCPH understands that FCPH shall be responsible to the Board for any expenditure against the Contract.

### **Section 9.02                    Suspension and Debarments**

The Board will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person or vendor who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System <https://epls.arnet.gov/>. After the Contract is awarded, FCPH shall notify the Board in the event that FCPH has been suspended or debarred from doing business with the State of Ohio or appears on the Federal List of Excluded Parties Listing System. If it is determined that FCPH has been suspended or debarred from doing business with the State of Ohio or FCPH appears on the Federal List of Excluded Parties Listing System, the Contract shall be void. FCPH acknowledges that FCPH shall be responsible to the Board for any expenditure against the Contract.

### **Section 9.03                    Legal Compliance**

FCPH shall comply with all applicable local, state, and federal laws in the performance of the Services, including but not limited to Title VI and Title VII of the 1964 Civil Rights Act, Equal Employment Opportunity (Executive Order 11246&11375) and as supplemented by 41 CFR part 60, Equal Employment Opportunity (Executive Order 11246&11375) and as supplemented by 41 CFR part 60, the Contract Work Hours and Safety Standards Act (40 U.S.C. 37 et seq.), the Department of Labor’s supplementing regulations (29 CFR Parts 5 and 1926), and applicable state and federal laws regarding drug-free workplaces. FCPH must adopt and implement personnel management policies and procedures that meet the guidelines of the Civil Rights Act and the Rehabilitation Act, and must provide to the Board and/or ODH, upon request, data, statistics, and other information not prohibited by law to enable the Board and/or ODH to ascertain compliance. FCPH will be required to accept full responsibility for payment of all taxes and insurance premiums including, but not limited to; Unemployment Compensation insurance premiums, Workers’ Compensation, all income tax deductions, Social Security deductions, and any other taxes or payroll deductions required for all employees engaged by FCPH in the performance of the work specified in this Contract.

### **Section 9.04                    Non-Discrimination / Equal Opportunity Provisions**

FCPH agrees that in the hiring of employees for the performance of work under the Contract FCPH shall not, by reasons of race, color, religion, sex, age, disability or military status, veteran status, national origin, or ancestry, sexual orientation, or gender identity, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Contract relates. That FCPH or any person acting on behalf of FCPH, shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the Contract on account of race, color, religion, sex, age, disability or military status, veteran status, national origin, or ancestry, sexual orientation, or gender identity.

All contractors who contract with the state or any of its political subdivisions for materials, equipment, supplies, contracts of insurance, or services shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as defined in §122.71 of the Ohio Revised Code. Annually, each such contractor shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity officer of the department of development.



## **Section 9.05 Equity**

We believe that diverse, equitable, inclusive and accessible workplaces have healthier employees, and healthier employees contribute to higher-performing organizations. FCPH advances one goal: equity as the foundation for our daily work. In furtherance of this goal, FCPH encourages its partners to implement Diversity, Equity, Inclusion, and Accessibility (“DEIA”) plans, that seek to recruit diverse workforces, treat all individuals fairly and impartially, appreciate and use the talents and skills of employees of all backgrounds, and prioritize the development and maintenance of facilities, technologies and programs that enable all people to fully participate in the opportunities within the organization.

All partners with an existing DEIA plan, are encouraged to provide a copy to the Board. Any partners without an existing DEIA plan, are encouraged to assess the diversity, equity, inclusion, and accessibility within their organization and identify strategies to advance DEIA in their workplace. Upon completion of the assessment, all partners are encouraged to share the findings and any strategic initiatives with the Board.

## **Section 10 Special Considerations**

### **Section 10.01 Governing Law/Venue**

This Contract shall be governed by the laws of the State of Ohio (regardless of the laws that might be applicable under principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect and performance. For all actions regarding this Contract venue shall be proper in the Court of Common Pleas Civil Division located in Franklin County, Ohio and the parties hereby consent to the jurisdiction of such court.

### **Section 10.02 Entire Contract/Amendment/Waiver**

This Contract and its exhibits and schedules and any documents referred to herein or annexed hereto constitute the complete understanding of the parties. This Contract shall not be changed, modified, terminated or amended except by a writing signed by a duly authorized officer of each party to this Contract. Any waiver must be in writing. Any waiver shall constitute a waiver of such right or remedy only and not of any other right or remedy of the waiving party. For purposes of any amendments or waivers, such amendment and waivers shall only be binding if signed by the Board.

### **Section 10.03 Independent Status of FCPH**

- 1) The parties and their respective partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.
- 2) FCPH shall have no claim against the Board for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or other employee benefits or any kind.

- 3) FCPH, if an individual, shall complete and submit to the Board the most current version of the Independent Contractor/Worker Acknowledgment Form from the Ohio Public Employees Retirement System when submitting a contract for execution.

**Section 10.04 Public Record and Treatment of Confidential and Proprietary Information**

Each party acknowledges that performance of this Contract may involve access to and disclosure of data, rates, procedures, materials, lists, systems and information (collectively "Confidential Information") belonging to the other. Except as set forth in the next paragraph, no Confidential Information shall be disclosed to any third party other than representatives of such party who have a need to know such Information, provided that such representatives are informed of the confidentiality provisions hereof and agree to abide by them. All such Information must be maintained in strict confidence.

Notwithstanding the provisions of the previous paragraph, FCPH understands and agrees that any Confidential Information may become subject to a public information request, and may be releasable under the principles of Ohio law. In the event the Board receives any such request for any Confidential Information, it will promptly notify FCPH of the request to enable FCPH to take whatever action it deems appropriate to seek protection from disclosure.

If FCPH fails to take any action within three (3) days of such notice, the Board may make such disclosure without any liability to FCPH.

**Section 10.05 Notices**

All notices and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered, or sent by overnight express courier, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the address set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision. If either overnight express courier or United States mail delivery is not available or delivery is uncertain, then notices may be given by fax or by e-mail. Notice shall be sent to the following addresses:

If to the Board: Franklin County Board of Commissioners  
373 S. High Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215

If to FCPH: Franklin County Public Health  
Attention: Health Commissioner  
280 East Broad Street  
Columbus, Ohio 43215

**Section 10.06 Off-Shore Activities**

By FCPH's signatures hereto, FCPH affirms that it does not have an offshore presence in a specific country with which the United States has a declaration of war by Congress or the President has authorized war on a specific country.

**Section 10.07 Time of the Essence**

The time limits and timelines set forth herein are of the essence of this Contract. FCPH has reviewed and approved all such time limits and timelines and confirms that all such limits are reasonable periods of time for its performance hereunder.

**Section 10.08 Travel Expenses**

Any travel that FCPH requires to perform its obligations under the Contract will be at FCPH's expense.

**Section 10.09 Publicity**

FCPH will not advertise that it is doing business with the Board or use this Contract as a marketing or sales tool without the prior, written consent of the Board, which consent shall be at the Board's sole and complete discretion.

**Section 10.10 Headings**

The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

**Section 10.11 Survivorship**

All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.

**Section 10.12 Conflicts**

The constitution and laws of the State of Ohio establish the rights and privileges of Franklin County Public Health, a General Health District, political subdivision, and public agency. In the event there is a conflict between any term or condition in this Contract and any Ohio law governing local health districts and political subdivisions, the Ohio law provision shall prevail.

[SIGNATURE PAGE FOLLOWS]

The parties hereto have set their hands and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.  
On behalf of the  
**Franklin County Board of Commissioners,**

\_\_\_\_\_  
Kenneth N. Wilson ,  
County Administrator

\_\_\_\_\_  
Date

Franklin County Public Health

By: \_\_\_\_\_  
Joe Mazzola, Health Commissioner

Date: \_\_\_\_\_

APPROVED AS TO FORM:

G. Gary Tyack  
Prosecuting Attorney  
Franklin County, Ohio

By: *Jeanine Hummer*  
Assistant Prosecuting Attorney First Assistant and Chief Counsel

Date: 11/8/23

**APPENDIX A**

**SCOPE OF SERVICES  
Franklin County Public Health  
Consent Decree/Settlement Agreement  
2023 November/December IDCP Budget Proposal  
Prepared Sept 2023**

**Narrative**

Franklin County Public Health has responsibility and authority to address failing household sewage treatment systems (HSTS). As a part of the Franklin County consent decree with the OEPA and the settlement agreement with the Jeff Cox Estate, this proposed budget supports the efforts to comply with the consent decree, secure grants or other public funding to assist property owner with the elimination, upgrades or replacements of HSTS's including costs of connecting to sanitary sewers.

**Budget**

<b>Personnel Services</b>	<b>FTE</b>	<b>Cost Nov/Dec 23</b>
Division Manager	0.00	\$ -
Supervisor	1.0	\$ 17,780.53
REHS/REHSIT (2 x 1.0 FTE)	2.00	\$ 31,483.76
Environmental Health Technicians	1.0	\$ 14,446.03
Administrative Assistant	0	\$ -
<b>Legal Counsel</b>		
Eastman and Smith		\$ -
<b>HSTS Replacement Funding</b>		\$ -
<b>Administrative Support and Office Supplies</b>		\$ 1,666.67
<b>Training &amp; Conferences</b>		\$ 1,000.00
<b>Sampling</b>		\$ -
<b>Vehicles/Fuel/Maintenance/Insurance</b>		\$ 5,000.00
<b>Communications</b>		\$ 1,250.00
<b>Total</b>		\$72,626.99

**Other Funding**

**Water Pollution Control Funds (WPCLF) if approved by OEPA** \$ 150,000.00

## Budget Justification

### Personnel Services

DIVISION MANAGER:

SECTION SUPERVISOR: Responsible for supervising Water Quality staff in the IDCP; will attend public meetings/hearings and NPDES MS4 meetings; assure performance goals and measures are achieved; and coordinate with the Division Manager.

REGISTERED Environmental Health Specialist/REHS Specialist In Training: Responsible for conducting inspections of approx 2000 non-NPDES HSTS systems, issuing compliance orders to replace HSTS system or connect to sanitary sewer; coordinate with key agencies (e.g., Sanitary Engineering, various sewer districts) to develop and maintain an electronic database of all existing and newly permitted NPDES systems within Franklin County; REHS conduct all field work, inspections, investigations and enforcement of illicit discharges and sewage nuisances to improve water quality in Franklin County. Continue surveying, identifying, and GIS mapping of STS in the county. The O&M program has expanded, with Sanitarians also conducting annual inspections of HSTSs installed since 2015.

EH TECHS: Responsible for conducting observations for off-lot discharging sewage treatment systems (e.g., Aerator Treatment Units). Refer non-functioning systems to Registered Sanitarians for enforcement. These staff will also be making annual observations of the additional HSTSs that have been added to the O&M program.

ADMINISTRATIVE ASSISTANT: Handles administrative functions of Water Quality Section.

### Legal Counsel

For legal interpretations of Board of Health enforcement actions regarding HSTS discharging to the MS4 without an NPDES permitted sewage system, sewage nuisances, and advisement on statutory requirements. Additionally, with the Consent Decree signed with OEPA and the Jeff Cox Estate settlement agreement, there will likely continue to be more legal cases requiring referral.