

VOTE CUYAHOGA COUNTY BOARD OF ELECTIONS

Board Meeting
5-25-2021

**THIS MEETING WAS HELD VIA TELECONFERENCE IN ACCORDANCE WITH
H.B. 197, 133rd G.A. §12 (2020)**

Attending:

Jeff Hastings, Chairman
Inajo Davis Chappell, Board Member/via teleconference
Lisa M. Stickan, Board Member/via teleconference
David Wondolowski, Board Member
Anthony W. Perlatti, Director
Tony Kaloger, Deputy Director

Mark R. Musson, Assistant Prosecutor, Cuyahoga County
Mary Bejjani, Clerk to the Board
Linda Walker, Clerk to the Board

The Cuyahoga County Board of Elections Meeting began at 2:04 p.m. Hereinafter referred to as the CCBOE/Board.

Chairman Hastings noted that all Board Members were in attendance, and Board Members' Davis Chappell and Stickan were present via video conference.

Agenda Item 1: Approval of the minutes from the May 17, 2021, Board Meeting.

Chairman Hastings moved to approve the minutes from the May 17, 2021, Board Meeting. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 2: Certification of the official results of the May 4, 2021, Primary Election

Brian Cleary, Ballot Department Manager, presented information from the Board packet concerning the Certification of the official results of the May 4, 2021, Primary Election.

- Authorization to approve the remake of the optical scan ballots from the May 4, 2021, Primary Election.

Chairman Hastings moved to authorize to approve the remake of the optical scan ballots from the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

- Authorization to approve absentee ballots from the May 4, 2021, Primary Election
Chairman Hastings moved to authorize to approve the absentee ballots from the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

¹ Narrative that is underlined in the CCBOE minutes relates to a motion that was acted on by the Board.

- Authorization to approve provisional ballots from the May 4, 2021, Primary Election. Chairman Hastings move to approve the provisional ballots from the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.
- Acknowledgement of the pre & post test results of the vote tabulation system from the May 4, 2021, Primary Election. Chairman Hastings moved to acknowledge the pre & post test results of the vote tabulation system from the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

Chairman Hastings moved to authorize and approve the certification of the official results of the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 3: Acknowledgement of date, time, and place of the post-election audit for the May 4, 2021, Primary Election.

Brian Cleary, Ballot Department Manager indicated the post-election audit is scheduled for Monday, June 14, 2021, at 9:00 a.m.

Chairman Hastings moved to acknowledge the date, time, and place of the post-election audit for the May 4, 2021, Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 4: Acknowledgement of resignations from, and appointments to elected offices.

Chairman Hastings moved to acknowledge resignations from, and appointments to elected offices. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 5: Acknowledgement of Candidate withdrawal from the August 4, 2021, Special Congressional Primary Election.

Chairman Hastings moved to acknowledge the candidate withdrawal from the August 4, 2021, Special Congressional Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 6: Approval to appoint not less than two precinct election officials for each precinct pursuant to ORC §3501.22 for the August 3, 2021, Special Congressional Primary Election.

Chairman Hastings moved to approve the appoint not less than two precinct election officials for each precinct pursuant to ORC §3501.22 for the August 3, 2021, Special Congressional Primary Election. Board Member Wondolowski seconded. The motion passed unanimously.

Agenda Item 7: Approval to purchase six (6) OPEX Model 72 Mail Rapid Extraction Desks (RED), plus maintenance costs through December 31, 2023, in the amount not-to-exceed \$220,969.64, utilizing Center for Tech and Civic Life (CTCL) Grant Funding.

The transcript of discussions that took place as to the OPEX contract are incorporated by reference into the minutes and are attached hereto.

Chairman Hastings moved to approve the purchase of six (6) OPEX Model 72 Mail Rapid Extraction Desks (RED), plus maintenance costs through December 31, 2023, in the amount not-to-exceed \$220,969.64, utilizing Center for Tech and Civic Life (CTCL) Grant Funding. Board Member Wondolowski seconded the motion. A vote was taken on the motion. Board Members Hastings, Wondolowski, and Stickan voted for the motion. Board Member Davis Chappell voted against the motion. The motion passed.

Agenda Item 8: Approval of vouchers

Chairman Hastings moved to approve the vouchers. Board Member Wondolowski seconded. The motion passed unanimously.

Walk on item: Acknowledgement of Secretary of State Directive 2021-15, “Ballot for August 3, 2021, Special Congressional Primary Election in the 11th and 15th Congressional Districts.”

Chairman Hastings acknowledged a walk-on item received on May 25, 2021, from the Secretary of State, Directive, 2021-15, “Ballot for August 3, 2021, Special Congressional Primary Election in the 11th and 15th Congressional Districts.”

Chairman Hastings moved to acknowledge a walk-on Secretary of State Directive, 2021-15, “Ballot for August 3, 2021, Special Congressional Primary Election in the 11th and 15th Congressional Districts.” Board Member Wondolowski seconded. The motion passed unanimously.

NEW BUSINESS

Voting Equipment Demonstrations

Deputy Director Kaloger reported that the upcoming demonstration of voting equipment is set for Thursday, May 27, 2021. The vendors attending are Clear Ballot, ESS, and Hart. The demonstrations will occur in two sessions, one in the morning and the second in the afternoon. The morning session is open to trainers and election day workers, with additional time being allocated for setting up and closing the equipment. There are currently 35 trainers and election day workers scheduled for the morning session. The afternoon session is open to the public, voter advocacy groups, elected officials, media, and the CCBOE staff. After the demonstrations, participants will be asked to complete a survey regarding their voting equipment experience. Chairman Hastings inquired when a recommendation on the equipment can be anticipated. Director Perlatti indicated a recommendation would be made to the Board in July or August 2021.

CCBOE Employee Performance Evaluations

Director Perlatti stated that CCBOE Employee Performance Evaluations would be completed this year using updated forms with two versions of evaluations. One evaluation form is for supervisory personnel and the other evaluation form are for non-supervisory employees. The revised forms eliminated a number ranking, and were replaced with verbal categories, which include categories of *Consistently above standard, Sometimes above standard, Standard, Needs some improvement, Needs significant improvement*. By eliminating the number rankings, managers and supervisors will focus on each category versus trying to reach an overall ranking of the employee. Employees will also be asked to self-evaluate their own performance. Information and instructions regarding the evaluations were emailed to the staff on May 21, 2021, by Lori Acosta, Human Resources Manager. The self-evaluations will be provided to the employee’s supervisor or manager and be

used as a tool for the manager's evaluation of the employee. The goal is to complete and return the evaluations to Human Resources by the end of June 2021. Chairman Hastings stated the Board Members are also evaluating both the Director and Deputy Director.

Board of Elections Holiday Schedule

Director Perlatti stated Cuyahoga County Council is also meeting at 2:00 p.m. today, May 25, 2021. One of the items on the County Council Agenda is Ordinance 2021-0005, which proposes modifications to the Cuyahoga County Human Resources Personnel Policies and Procedures Manual. The Ordinance addresses two matters in the Policy and Procedures manual. The first matter is the County Employee Poll Worker Program that will be added to the County Employee Handbook. The other matter recognizes Juneteenth, June 19th, as the County's schedule holidays. Other Cuyahoga County agencies, including the Prosecutor's Office, will be following suit with the addition of Juneteenth as a paid holiday. Director Perlatti asked the CCBOE Board to consider adding Juneteenth to the CCBOE schedule of paid holidays. Chairman Hastings clarified that Director Perlatti is proposing a walk-on agenda item, to wit -that the CCBOE Board adopts whatever holiday schedules the Cuyahoga County Council approves. Board Member Stickman stated that it makes sense to have CCBOE's holidays consistent with the County's. Chairman Hastings stated there will still need to be the flexibility on observing certain holidays depending on the CCBOE's operational needs, and those changes will need to be approved by the Board. Director Perlatti agreed and stated if there is an operational conflict, Board Members will be asked to change the observance of holiday. Board Member Wondolowski made a Motion that once County Council approves the schedule for County holidays the CCBOE adopt the same holiday schedule. Chairman Hastings seconded Board Member Wondolowski's motion. The motion passed unanimously.

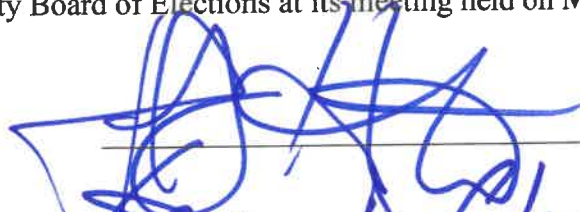
PUBLIC COMMENT

There was no public comment.

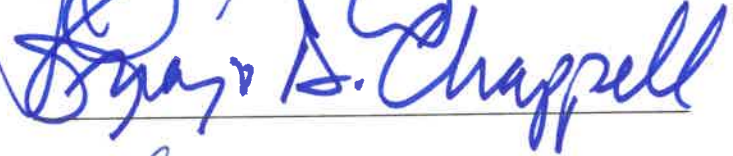
Chairman Hastings moved to adjourn at 2:47 p.m. Board Member Wondolowski seconded. The motion passed unanimously.

Certification: I have reviewed the above minutes and certify that they are an accurate summary of the actions taken by the Cuyahoga County Board of Elections at its meeting held on **May 25, 2021**.

Jeff Hastings, Chairman



Inajo Davis Chappell, Board Member



Lisa M. Stickan, Board Member



David J. Wondolowski, Board Member



Anthony Perlatti, Director



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CUYAHOGA COUNTY
BOARD OF ELECTIONS

IN RE: :
ITEM NO. 7 :
APPROVAL TO PURCHASE :
SIX OPEX MODEL 72 :

Excerpts of proceedings had before the Cuyahoga
County Board of Elections, at the Cuyahoga County
Board of Elections via Zoom and streamed on YouTube,
on Tuesday, May 25, 2021.

BOARD MEMBERS:
Jeffrey Hastings, Chairman
Inajo Davis Chappell, via Zoom
David Wondolowski
Lisa Stickan, via Zoom

ALSO PRESENT:
Anthony Perlatti, Director
Tony Kaloger, Deputy Director
Mark Musson, Esq.

1 PROCEEDINGS

2 *****

3 MR. HASTINGS: On to Fiscal. This
4 has been discussed prior to. We did receive
5 from Ms. Zusy -- do you want to say anything,
6 Director or Kendra, to the Board.

7 MS. ZUSY: I just wanted to say
8 these purchasing six additional OPEX Model 72
9 to utilize free grant money, previously this
10 utilized the CTCL Grant appropriation of
11 purchasing (inaudible).

12 MR. HASTINGS: I will move, to just
13 get through this motion, to approve the
14 purchase of six OPEX Model 72 Mail Rapid
15 Extraction Desks, plus maintenance costs
16 through December 31, 2023, in the amount not
17 to exceed \$220,969.64, utilizing the Center
18 for Tech and Civic Life Grant Funding. If
19 there's a second?

20 MR. WONDOLOWSKI: Second.

21 MR. HASTINGS: Thank you,
22 Mr. Wondolowski. I know last week we received
23 a draft of the contract and we received a
24 final form today. Mark, is there anything you
25 want to comment about the 58 page contract?

1 MR. MUSSON: Yes, there were some
2 issues with the indemnity and the limitation
3 on liability. I'm not sure if you've had a
4 chance to review it or if you guys have any
5 questions. It was kind of a work in progress
6 and there were some communication issues, so
7 we were flying back and forth on laying out
8 some language which was agreeable to both
9 parties. This was what we were able to
10 achieve prior to this meeting. I can kind of
11 walk through those protections, if you'd like.

12 The indemnity, it's a \$220,000 contract
13 for the purchase and maintenance through the
14 end of 2023. So there's an indemnity and a
15 hold harmless and (inaudible) liability that
16 gets a little bit confusing. It's not
17 artfully drafted and there's a couple of
18 different ways we can go with this. But
19 basically, the protections will save the Board
20 and it will defend us from liability or from
21 any claims that results from their conduct.
22 However, the limitation on liability in the
23 damages section carves out the maximum amount.
24 It caps the amount of our damages, which is
25 just our direct damages, not the indemnity

1 liability of a third party, at \$500,000, where
2 it's personal injury or damage to property.

3 It's uncapped where there's a breach of
4 the confidentiality obligations, which
5 primarily protects the contractor, not us.
6 But this covers us for public records law and
7 all the other transparency obligations that
8 the Board has to fulfill.

9 Then gross negligence and willful
10 misconduct, which is also uncapped. I'm not
11 giving a very organized description here. I
12 apologize. But otherwise, the liability is
13 capped at the amount that is paid under the
14 contract, which is some of what you see a lot
15 of the vendors fighting for. They want their
16 exposure to be limited to the amount that
17 they've been paid.

18 The warranty is 30 days, but then the
19 maintenance services kick in, which primarily
20 provides warranty-like services on the
21 equipment through the end of 2023.

22 MR. HASTINGS: We haven't had any
23 operational issues with the (unintelligible)
24 previously?

25 MR. PERLATTI: We have not.

1 MR. HASTINGS: Do they install these
2 or do we just kind of --

3 MR. PERLATTI: Install them.

4 MS. CHAPPELL: I thought these were
5 new. We've used these before?

6 MR. PERLATTI: We currently have
7 three that we obtained last year and now we're
8 adding an additional six to the three that we
9 have. So we'll have nine total.

10 MS. CHAPPELL: I'm not comfortable
11 with this contract language, I'll just tell
12 you that. I mean, I don't know what -- I
13 don't recall if we had one last agreement.
14 We've now got a contributory negligence kind
15 of provision in here. I think the cap on the
16 contract damages is inappropriate. We can't
17 -- I mean, we've already said -- there's
18 language that says you're only liable for
19 actual damages. So why we would have a cap on
20 top of that, we don't really know what it's
21 going to look like.

22 I think, I mean there's a disclaimer
23 even as to the -- I get limiting damages to
24 some extent, but the warranty to disclaim
25 there's no warranty of merchantability or

1 fitness. We're buying this, so it's got to be
2 fit for its intended purposes.

3 Maybe I just got this way too late at
4 the last minute. I think there's actually
5 there's some language that needs to be married
6 up. In the indemnification provision there's
7 language, at least in the last version I saw,
8 where the successful vendor -- the contract
9 parties are defined. So I assume we're
10 talking about the contractor, which is OPEX.
11 Shall agree --

12 (Ms. Chappell video froze.)

13 MR. HASTINGS: She froze up.

14 MS. CHAPPELL: -- around the
15 language that I'm seeing here.

16 MR. HASTINGS: Inajo?

17 MS. CHAPPELL: Yes, I'm sorry?

18 MR. HASTINGS: You froze up for
19 about 15 second there, so I don't know if you
20 said something we didn't hear.

21 MS. CHAPPELL: Okay, I'm sorry. I
22 just said that in the indemnification
23 provision I have a couple concerns. Some of
24 it was, my last comment was around marrying up
25 the language instead of the successful vendor,

1 we actually have defined parties now. So
2 I think you defined OPEX as the contractor.
3 But my concern there was shall agree to
4 indemnify. That sounds like they're agreeing;
5 it's in the future. They are agreeing by
6 reason of signing the contract. Just a little
7 wordsmithing issue there.

8 But my overall concern was, I don't
9 know that we've ever signed a contract, at
10 least I don't recall, where we've agreed to
11 have some kind of contributory negligence
12 provision in it, where somehow, the vendor
13 gets to reduce their liability to the extent
14 our people may or may have not been
15 contributory to it. I just don't recall
16 seeing this kind of language in any prior
17 agreement. So I would be concerned that we're
18 starting to have that kind of preface.

19 Also, I know the language says they're
20 going to indemnify and save us harmless from
21 suits or actions, but normally, we would see
22 claims in there. I mean, in the provision
23 where they want us to be responsible for
24 contributory negligence, they've got claims
25 and liability, and they have it all

1 enumerated. I just am not comfortable with
2 that in the indemnification provision. Not
3 comfortable with the damages cap and not
4 comfortable with the disclaimer of warranties.

5 I got it so late, frankly, I just am
6 not comfortable with it.

7 MR. HASTINGS: So when is the
8 equipment supposed to be delivered.

9 MR. MUSSON: Maybe Tony can help
10 me out here, but I believe we need to place an
11 order to get this on a production schedule
12 (inaudible) --

13 MS. ZUSY: If it were approved
14 today, then it can be available on August 20th
15 delivery.

16 MR. HASTINGS: Then the machines
17 would be available on the 23rd?

18 MS. ZUSY: They'd be ready to be
19 installed on the (inaudible).

20 MR. HASTINGS: This grant money has
21 to be used by a certain date?

22 MS. ZUSY: It does have to be
23 used by June 30th.

24 MR. HASTINGS: June 30.

25 MS. ZUSY: Encumbered.

1 MR. HASTINGS: Encumbered --

2 MS. ZUSY: (Inaudible -- voices
3 talking over each other) can't --

4 MR. HASTINGS: Right and it can't be
5 encumbered until we enter into a contract.

6 MS. ZUSY: That's correct.

7 MR. HASTINGS: Because you won't pay
8 them until we get it delivered and installed.

9 MS. ZUSY: Correct.

10 MR. HASTINGS: I understand Inajo
11 concerns. We did get it, through no fault of
12 anybody, but we got it later this morning. It
13 was 58 pages. This could go back -- I mean,
14 Mark can go back to them and say, hey, the
15 Board Members have these issues. I think
16 Inajo and other members once we've read it can
17 email you about their concerns. If we discuss
18 this at June 14th, that would still give you
19 time? But it's going to push back the
20 delivery date then.

21 MR. MUSSON: Possibly.

22 MS. ZUSY: Yes, and the issues
23 I've had with our new invoicing somebody, I'm
24 not comfortable with that turnaround time, as
25 far as getting it approved in this fiscal.

1 MR. HASTINGS: What's invoice, you
2 mean --

3 MS. ZUSY: That's our new
4 procurement. It's our accounts payable, our
5 general ledger system, the County has. It's
6 (inaudible) take longer than we expect it to
7 (inaudible) through the process.

8 MS. CHAPPELL: Here's my question.
9 Did we have a similar agreement when we
10 purchased the other three? What's wrong with
11 the agreement we had?

12 MS. ZUSY: It was not this
13 lengthy. It was maybe been changed from the
14 --

15 MS. CHAPPELL: Could somebody repeat
16 that, I couldn't hear what she said?

17 MS. STICKAN: I couldn't hear
18 either.

19 MR. MUSSON: We had a number of
20 terms in our invitation to bid, that they took
21 exception to. Previously, we did not go
22 through this process where we provided terms.
23 So we changed in the approach to the
24 procurement that we initially did before.

25 MR. HASTINGS: So was there

1 indemnity language in the first contract?

2 MR. MUSSON: I'd have to double
3 check. I'm sure that there was.

4 MS. CHAPPELL: If there was no cap
5 on damages in the other contract, if the
6 indemnification provision was our basic
7 provision, if they didn't disclaim any
8 warranties with respect to the prior purchase,
9 frankly, I'm for rolling with the prior
10 agreement. But I just feel like, you know,
11 I hate when vendors do that. They get in the
12 door, the relationship's fine and get in the
13 door. The contract's fine, you get in the
14 door and then they get here and then all of
15 the sudden, we have to start giving contract
16 concessions. I'm not comfortable with it,
17 personally.

18 MR. HASTINGS: Did you deal with
19 in-house counsel? Mark, which attorneys did
20 you deal with?

21 MR. MUSSON: Their Chief of Legal
22 Affairs. I'm not sure if it's Attorney of
23 Legal Affairs, but she's Chief --

24 MR. HASTINGS: In house?

25 MR. MUSSON: Yeah, in house.

1 MR. PERLATTI: I think once before
2 we had approved something with some kind of
3 caveat that the Prosecutor's Office was to
4 come up with mutually agreeable assurances.

5 MR. MUSSON: The purely legal --
6 the business end of it has been approved but
7 the legal change will be acceptable and any
8 changes that Inajo (inaudible -- phone
9 ringing) --

10 MR. WONDOLOWSKI: Mark, are you
11 comfortable with the contract?

12 MR. MUSSON: It's not artfully
13 drafted but I think the purchase that's
14 involved and the risk that this type of
15 equipment poses to us, I'm comfortable with
16 it. But I'm just a lawyer, not the
17 policy maker --

18 MR. WONDOLOWSKI: I mean, you brought
19 it to us in the past. I'm not trying to put
20 you on the spot, but I'm asking you are you
21 comfortable with it?

22 MR. MUSSON: I'm comfortable with
23 it, yes.

24 MR. HASTINGS: So what's the concern
25 with this equipment? Is it someone could get,

1 actually, physically hurt, because it deals
2 with slicing and dicing and all that
3 stuff? Is that it?

4 MR. PERLATTI: Yeah.

5 MR. HASTINGS: Brian, why don't you
6 come up. So this could hurt somebody and
7 somebody could get cut?

8 MR. PERLATTI: Yes. I don't think
9 there's a great chance of it, but --

10 MR. CLEARY: Yeah, it's got safety
11 guards and everything on it. But if you were
12 to somehow stick your fingers in it, there are
13 actually points where it could cut you. It
14 does drop in, slice, then come over and slice.
15 There are moving parts if you get your finger
16 in there. (Inaudible) anything's possible,
17 yeah.

18 MR. HASTINGS: That's where the
19 indemnity comes in, the concern that someone
20 can get hurt. It's not going to change our
21 vote here.

22 MR. WONDOLOWSKI: (Inaudible.)

23 MR. HASTINGS: There is a
24 (inaudible) we have that assurance, yes.

25 MR. MUSSON: Some immunity with

1 worker's comp.

2 MR. HASTINGS: Right.

3 MR. MUSSON: So it would be
4 implied with our worker's comp. I don't see a
5 specific safety (inaudible) --

6 MR. HASTINGS: I appreciate your
7 concerns, Inajo, I understand them, certainly.
8 I'm also trying to balance. The staff is
9 saying, hey, if we don't get it passed then,
10 we'll get it in June, I'm concerned we're not
11 going to get it recovered and we'll lose a
12 couple hundred thousand dollars. That's what
13 I'm hearing.

14 MR. MUSSON: Yeah, and I don't
15 want to -- I suspect my comfort level isn't
16 your comfort level and I'm sorry you're put in
17 this position. There's a couple of ways you
18 can (inaudible) --

19 MS. CHAPPELL: I just would hope
20 that you don't bring us inartfully drafted
21 contracts. I'm very disappointed and from my
22 perspective, they really should have -- it
23 should be in final form. It should be drafted
24 appropriately if we're expected to sign off on
25 it. I just have a concern about that. But I

1 understand if you guys need it for timing to
2 move forward, we can just take a vote and I'll
3 just have to be voting my conscience on it.

4 MR. HASTINGS: Well, we've got a
5 motion.

6 MS. STICKAN: I had a question. We
7 can't wait until June? I apologize, I tried
8 to hear. Sometimes it's hard, people are
9 standing in different places there. If we got
10 the order in at the next meeting though, the
11 concern isn't so much missing the deadline,
12 the concern is getting it available, sort of
13 the time frame of when it would be available
14 and up and running? So we can still get it
15 through in June? I guess that's just my
16 question.

17 MR. HASTINGS: Kendra has
18 represented to the Board that if it's passed
19 on June 14th, which is our next meeting, that
20 she's concerned that she can't process through
21 the processing system by June 30th, two and a
22 half weeks, to get it encumbered, and if it's
23 not encumbered, we lose the money.

24 MS. STICKAN: Okay. I guess the
25 question then is, I guess, why was this rushed

1 this morning? I mean, any insight into that;
2 is it just because we were trying to negotiate
3 with the vendor or their counsel?

4 MR. PERLATTI: There had been
5 several back and forth between OPEX and us
6 going back and forth with Mark and counsel,
7 trying to work through these general terms and
8 conditions, I believe.

9 MR. MUSSON: Yes. There was some
10 communication issues that I take
11 responsibility for and I do apologize for the
12 position you've been placed in and
13 I understand the concern. I suggest maybe we
14 can conditionally approve this and iron out
15 these legal terms and conditions in a way that
16 the Board Members are comfortable with.

17 MS. STICKAN: If I can say, I'm not
18 comfortable. If for purposes of the time
19 frame, I would consider that, but I agree with
20 Inajo's comments and concerns also. To have
21 some inartful language as we've discussed, is
22 a problem in a contract of this size. So in
23 the future, I mean, I think as long as we're
24 all on the same page, we can (audio distorted)
25 time today, draft something more comfortable.

1 But I understand, we're up against a time
2 frame too. So maybe in this instance, this is
3 one we can vote to do that. But I do agree
4 with her concerns.

5 MR. HASTINGS: So we can
6 conditionally approve the contract?

7 MR. MUSSON: We can approve the
8 business terms of the contract and then if you
9 are comfortable delegating the authority to
10 negotiate legal terms and conditions that are
11 acceptable to counsel, and I would make sure
12 that the Board Members would have concerns if
13 these legal terms and conditions are
14 comfortable with the final agreement.

15 MR. HASTINGS: All right, what you
16 said. How's that?

17 MR. WONDOLOWSKI: I think it's
18 important to understand, we're represented by
19 the Prosecutor's Office. We're not, although
20 there are attorney's on this Board, the
21 Prosecutor's Office negotiates these
22 agreements, and we have to be conscious of
23 that.

24 MR. HASTINGS: So personally, I know
25 Inajo and I have been here a long time. I

1 haven't had an issue with a contract with an
2 indemnification issue before. I see the
3 unlikely possibility of that occurring with
4 this sort of equipment, but we haven't had any
5 injuries in the last year we've use it, have
6 we?

7 MR. MUSSON: We have not.

8 MR. HASTINGS: So I acknowledge the
9 comments of Ms. Stickan and Ms. Chappell
10 concerning the language, but I'm okay with
11 going ahead with this and approving it
12 conditionally, and allowing you -- approving
13 the business terms and conditions of the
14 contract and authorizing our legal counsel to
15 negotiate further terms and conditions
16 concerning damages, disclaimers and
17 indemnification, including -- go ahead.

18 MR. WONDOLOWSKI: He's going to clean
19 up some of the inartful language.

20 MR. HASTINGS: Right, yes.

21 MR. WONDOLOWSKI: We're not motioning
22 anything else, we're approving the business
23 terms today.

24 MR. HASTINGS: Yes.

25 MR. WONDOLOWSKI: That's black and

1 white, right?

2 MR. HASTINGS: I'm going ahead with
3 -- despite some of the concerns that fellow
4 Board Members had.

5 MS. CHAPPELL: Let me ask you a
6 question.

7 MR. HASTINGS: Go ahead, Inajo.

8 MS. CHAPPELL: What are we calling
9 it? Are we calling it inartful meanings or
10 not just wordsmithing issues? I mean, to say
11 it's inartful language. There's a cap.
12 That's a substantive issue. Are we delegating
13 to our counsel our approval of the cap or a
14 change in terms? I guess, I'm not really sure
15 what we're -- we're approving just the
16 business terms and we are going to allow
17 counsel to determine whether the
18 indemnification provision is sufficient, the
19 cap is sufficient, those things; is that what
20 I'm hearing? Whether there can be a
21 disclaimer of warranties?

22 MR. HASTINGS: That's what you're
23 hearing and I'd agree with you. I don't know
24 that we conditionally approve a contract. We
25 either approve it or don't approve it, based

1 on the language that's in front of us, period.

2 MR. WONDOLOWSKI: We're approving the
3 content here. If it's wordsmithed and they
4 recommend it in a more artful manner, that's
5 fine, but that's, right now, this is what
6 we're reading.

7 MR. HASTINGS: Right, I agree. So
8 I'm going to approve what we have. We have,
9 in fact, what has been sent to us earlier,
10 probably not two hours, is the final contract,
11 right, that we have in front of us here, is
12 the red line version.

13 MR. MUSSON: Correct.

14 MR. HASTINGS: I understand the
15 concerns. I also want to balance staff's
16 concern about getting this money encumbered,
17 not losing the opportunity to spend it and
18 having it delivered at the end of August so we
19 can use it for the election in November.

20 So I made a motion that was seconded by
21 Mr. Wondolowski. We've had some extensive
22 discussion and some very good comments about
23 the indemnification, disclaimer and cap
24 language in here and its insufficiency, but
25 I nevertheless I will move ahead. There is

1 some protection here for the County, so I will
2 move ahead and vote yes on the motion.

3 All those in favor of the motion,
4 signify by saying aye.

5 MR. WONDOLOWSKI: Aye.

6 MR. HASTINGS: Aye.

7 MS. STICKAN: Aye.

8 MR. HASTINGS: All opposed say aye.

9 MS. CHAPPELL: I'm opposed.

10 MS. STICKAN: I had a question. I
11 apologize. We're not going to be negotiate
12 any of these terms then, because I thought
13 that there was going to be some attempt to
14 clean some of this up, we're just agreeing to
15 the business terms. I mean, I just want to be
16 clear.

17 MR. HASTINGS: What we're going to
18 do is approve the contract as submitted to us
19 two hours ago.

20 MS. STICKAN: Okay.

21 MR. HASTINGS: The red lined
22 version, you've had that since last week.

23 MS. STICKAN: Right.

24 MR. HASTINGS: That's the motion.
25 So we're not asking him to change terms and

1 conditions, we're going to vote as presented
2 to us.

3 MS. STICKAN: Okay.

4 MR. HASTINGS: Dave and I have done
5 that, despite some of the very good points
6 both of you have made about some of the
7 conditions of the contract, and Inajo has
8 voted no, so we need your vote, Lisa.

9 MS. STICKAN: I'm going to vote
10 with you, yes, at this point, but I have
11 reservations and I've put them on the record,
12 and I just don't want to be in that position
13 again. I understand the time constraints, so
14 those are my comments for the record.

15 Thank you.

16 MR. HASTINGS: Thank you,
17 Ms. Stickan. So the vote passes 3 to 1, and
18 Ms. Chappell's and Ms. Stickan's comments are
19 certainly part of this record and their
20 concerns are so noted, and I know they're
21 noted by Mr. Musson too. So thank you.

22 *****

23 (End of excerpt.)

24 - - -

25

1 State of Ohio,)
2 County of Lake.) SS:

3
4 C E R T I F I C A T E

5
6 I, Steven Mengelkamp, do hereby certify
7 that I have transcribed the proceedings
8 had before the Cuyahoga County Board of
9 Elections, at the Cuyahoga County Board of
10 Elections via Zoom and streamed on YouTube,
11 on Tuesday, May 25, 2021, and that the
12 foregoing are true and accurate excerpts made
13 to the best of my ability.

14 In re:

15 Item No. 7 - Approval to Purchase Six
16 OPEX Model 72

17
18
19 
20 STEVEN MENGELKAMP
21 COURT REPORTER

22 FINCUN-MANCINI COURT REPORTERS
23 1801 East Ninth Street
24 Suite 1720
25 Cleveland, Ohio 44114
(216) 696-2272
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