

COMMISSIONERS JOURNAL NO. 71 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JULY 22, 2019

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RESOLUTION NO. 19-702

IN THE MATTER OF A TRANSFER OF A LIQUOR LICENSE REQUEST FROM HYOUNG KIM TO TOKYO SUSHI OF POWELL, INC. (DBA TOKYO SUSHI OF POWELL) AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

WHEREAS, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a transfer of a liquor license request from Hyoung Kim to Tokyo Sushi of Powell, Inc. (DBA Tokyo Sushi of Powell), located at 9880 Brewster Lane, Powell, Ohio 43065; and

WHEREAS, the Delaware County Board of Commissioners has found no reason to file an objection;

NOW, THEREFORE, BE IT RESOLVED that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

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RESOLUTION NO. 19-703

IN THE MATTER OF ALLOWING AN APPLICATION TO AMEND THE PETITION FOR THE LANETTA LANE SUBDIVISION DRAINAGE IMPROVEMENT PETITION:

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

WHEREAS, pursuant to Chapter 6131 of the Ohio Revised Code, Lisa Kluchurosky and Others, filed a petition with the Clerk of the Board of Commissioners on April 12, 2019, in favor of certain improvements to the Lanetta Lane Subdivision Watershed Drainage Improvement (the "Petition"); and

WHEREAS, Nancy Peebles was not a petitioner; and

WHEREAS, on July 8, 2019, at the viewing on the Petition, and before the end of the first hearing on the Petition, Nancy Peebles filed an Application for Amendment of the Petition to include 7636 Lanetta Lane, pursuant to section 6131.05 of the Ohio Revised Code; and

WHEREAS, Nancy Peebles, 7636 Lanetta Lane Westerville, Ohio 43082, was listed in the Petition as an owner of land that will be benefited or damaged by the completion of the proposed improvement; and

WHEREAS, the Board of Commissioners, on July 8, 2019, held a view of the proposed improvements, and said viewing would have included areas in the Application for Amendment; and

WHEREAS, no further view of the petitioned for improvements is necessary under section 6131.10 of the Ohio Revised Code; and

WHEREAS, the Board of Commissioners has complied with the notice requirements in section 6131.07 of the Ohio Revised Code; and

WHEREAS, no additional owners of land will be benefited or damaged by allowing the Application for Amendment;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Application for Amendment of the Petition for the Lanetta Lane Subdivision Watershed Drainage Improvement ("the Petition") is hereby allowed, pursuant to section 6131.05 of the Ohio Revised Code.

Section 2. The Petition shall be amended to specifically include, but not be limited to, Nancy Peebles 7636 Lanetta Lane Westerville, Oh 43082.

Section 3. This Amendment does not require additional notice under section 6131.07 of the Ohio Revised Code and does not require an additional view under section 6131.10 of the Ohio Revised Code.

(Application is available in the Commissioner's Office until no longer of Administrative Value).

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

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RESOLUTION NO. 19-704**

IN THE MATTER OF SETTING TERMS FOR MEMBERS OF THE DELAWARE COUNTY TRAIL COMMITTEE:

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

WHEREAS, the Board of County Commissioners formed a committee to create a plan to develop and fund a countywide multipurpose trail system per Resolution No. 16-755; and

WHEREAS, the Board of County Commissioners appointed members to the Delaware County Trail Committee per Resolution No. 16-1005; and

WHEREAS, the Economic Development Coordinator, as Chair of the Delaware County Trail Committee, recommends establishing terms for the committee members;

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

Section 1. The terms of the Delaware County Trail Committee members shall be:

Position	Appointee	Term Ends
Delaware County Regional Planning Commission	Scott Sanders	October 31, 2021
Delaware County Engineer’s Office	Tiffany Jenkins	October 31, 2023
Delaware General Health District	Susan Sutherland	October 31, 2021
Preservation Parks	Matt Simpson	October 31, 2023
Mid-Ohio Regional Planning Commission	Kerstin Carr (Melinda Vonstein as alternate)	October 31, 2023
County Resident	Len Fisher	October 31, 2021

Section 2. This Resolution shall take effect immediately upon adoption.

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

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RESOLUTION NO. 19-705**

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the following permits are hereby approved by the Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U19-113	Team Fishel	Liberty Road	Place buried cable
U19-114	WOW	Big Walnut Road	Excavate to locate existing facilities
U19-115	WOW	Lewis Center Road	Excavate and verify depth and location of facilities
U19-116	Spectrum	Green Meadows Dr	Place buried cable
U19-117	Del-Co Water	Harlem Road	Bore waterline

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

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RESOLUTION NO. 19-706**

IN THE MATTER OF ACCEPTING ROADS, APPROVING RECOMMENDED SPEED LIMITS, AND RELEASING SURETY FOR WOODS OF DORNOCH SECTION 5:

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

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WHEREAS, the Engineer has reviewed the roadway construction of the road within Woods of Dornoch Section 5 (“Subdivision”) and finds it to be constructed in accordance with the approved plans; and

WHEREAS, the Engineer recommends that the following roadway within the Subdivision be accepted into the public system.

- An addition of 0.28 mile to Township Road Number 1230, Maketewah Drive; and

WHEREAS, the Engineer also recommends that 25 mile per hour speed limits be established throughout the Subdivision; and

WHEREAS, the Engineer requests approval to return the Letter of Credit being held as maintenance surety to the owner, Rockford Homes;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby accepts the Engineer’s recommendations stated herein and accepts the road, approves speed limits and releases surety in accordance with the Engineer’s recommendations stated herein.

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

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RESOLUTION NO. 19-707

IN THE MATTER OF APPROVING DITCH MAINTENANCE PETITIONS AND THE DITCH MAINTENANCE ASSESSMENTS FOR OLENTANGY FALLS SECTION 4B AND RESIDENCES AT ORANGE GRAND – SLATE RIDGE:

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

Olentangy Falls Section 4B

WHEREAS, on July 22, 2019, a Ditch Maintenance Petition for Olentangy Falls Section 4B was filed with the Board of Commissioners of Delaware County (the “Board”); and

WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Olentangy Falls Section 4B located off of Hyatts Road in Liberty Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program;

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$82,490.78 for the benefit of the lot(s) being created in this site. 10 lots are created in these plats and each lot received an equal share of the benefits (cost) of the project. The basis for calculating the assessment for each lot is therefore \$8,249.08 per lot. An annual maintenance fee equal to 2% of this basis (\$164.98) will be collected for each lot. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year’s assessment for all of the lots in the amount of \$1,649.80 has been paid to Delaware County, receipt of which is hereby acknowledged.

Residences at Orange Grand – Slate Ridge

WHEREAS, on July 22, 2019, a Ditch Maintenance Petition for Residences of Orange Grand – Slate Ridge was filed with the Board of Commissioners of Delaware County (the “Board”); and

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WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Residences at Orange Grand – Slate Ridge located between Home Road and Green Meadows Drive in Orange Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program;

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$23,702.39 for the benefit of the lot(s) being created in this site. The developed area of 27.4 acres will receive benefits of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$865.05 per acre. An annual maintenance fee equal to 2% of this basis (\$17.30) will be collected for each developed lot. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year’s assessment for all of the lots in the amount of \$474.02 has been paid to Delaware County, receipt of which is hereby acknowledged.

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

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RESOLUTION NO. 19-708

IN THE MATTER OF APPROVING OWNER’S AGREEMENT FOR ENCLAVE AT ABBEY KNOLL:

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Enclave at Abbey Knoll;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreement for Enclave at Abbey Knoll as follows:

OWNER’S AGREEMENT
PROJECT NUMBER: 8010

THIS AGREEMENT, executed on this 22nd day of July, 2019 between **JOSH MORGAN CONSTRUCTION, INC.**, hereinafter called ‘**OWNER**’ and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **Enclave at Abbey Knoll**, further identified as Project Number 8010 is governed by the following considerations to wit:

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

OPTIONS:

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

OWNER hereby elects to use Option 1 for this project.

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

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

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

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

It is further agreed that upon execution of the AGREEMENT, the OWNER shall deposit FIFTY-FOUR THOUSAND DOLLARS (\$54,000) estimated to be necessary to pay the cost of inspection by the Delaware County Engineer. When the fund has been depleted to ten percent (10%) of the original amount deposited, the OWNER shall replenish the account upon notice by the Delaware County Engineer. Upon completion of the maintenance period and acceptance of the improvements by the Delaware County Commissioners, the remaining amount in the fund shall be returned to the OWNER.

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

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

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

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

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

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

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

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

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$1,793,200
CONSTRUCTION BOND AMOUNT	\$ N/A
MAINTENANCE BOND AMOUNT	\$ 179,400
INSPECTION FEE DEPOSIT	\$ 54,000

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

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RESOLUTION NO. 19-709

IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS, ESTIMATE, AND BID OPENING

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DATE AND TIME FOR 2019 DELAWARE COUNTY TRAFFIC SIGNAL IMPROVEMENTS:

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

WHEREAS, the Delaware County Engineer has prepared and recommends approval of the Plans, Specification, and Estimate for, and recommends establishing the Bid Opening Date and Time for, the 2019 Delaware County Traffic Signal Improvements;

NOW, THEREFORE, BE IT RESOLVED that the Board of Delaware County Commissioners approves the Plans, Specification, Estimate and Bid Opening Date and Time for the 2019 Delaware County Traffic Signal Improvements:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, August 13, 2019, at which time they will be publicly received and read aloud, for the project known as:

2019 Delaware County Traffic Signal Improvements

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

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

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

The Owner requires that all work associated with the project be completed before June 30, 2020. The estimated commencement of work date is August 26, 2019.

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

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

Delaware Gazette Advertisement Dates:
July 26, 2019

INFORMATION FOR BIDDERS

LOCATION

Multiple Intersections along S. Old State Road and Lewis Center Road in Orange Township, Delaware County, Ohio.

PROJECT SCOPE

Installation of five traffic signals, sidewalk and curb ramps at various locations along South Old State Road and Lewis Center Road. Pavement planing along with pavement marking and signage modification as specified in the plans.

ODOT SPECIFICATIONS

The State of Ohio, Department of Transportation, Construction and Material Specifications, dated January 1, 2019 and the noted Proposal Notes, Special Provisions, Supplemental Specifications and Standard Construction Drawings shall govern this project unless otherwise directed by the Delaware County Engineer. Copies of the State of Ohio, Department of Transportation, Construction and Material Specifications may be purchased by contacting the Ohio Department of Transportation, Office of Contracts, 1980 West Broad Street, Columbus, Ohio 43223. Phone (614) 466-3778 or 3200: Customer Service.

Within the State of Ohio, Department of Transportation, Construction and Material Specification, wherever the word "State" occurs, it is to mean OWNER. Wherever the word "Department" occurs, it is to mean OWNER. Wherever the words "Director", "Deputy Director" or "Engineer" occur or any other reference to a State of Ohio employee, it is to mean DELAWARE COUNTY ENGINEER.

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CONTRACT SCHEDULE

The Owner requires that all work associated with the project be completed on or before June 30, 2020. The estimated date of commencement is August 26, 2019.

FUNDING

The project is funded by Delaware County. No federal funding is provided for this project.

OWNER:

The owner of the project is the Delaware County Board of Commissioners. The primary point of contact for the owner shall be:

Brian Dilley
Deputy Construction Engineer
50 Channing Street
Delaware, OH 43015
Phone: (740) 833-2400
Fax: (740) 833-2399

Please direct all Pre-Bid questions to the project site on the www.BidExpress.com webservice.

Web: www.DelawareCountyEngineer.org

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

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RESOLUTION NO. 19-710

IN THE MATTER OF DECLARING THE NECESSITY FOR THE IMPROVEMENTS TO HOME ROAD AND SAWMILL PARKWAY INTERSECTION AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH DYNOTEC, INC. FOR THE PREPARATION OF PLANS FOR THE PROJECT KNOWN AS DEL-CR124-3.78; AND DECLARING THE NECESSITY FOR THE IMPROVEMENTS TO BERLIN STATION ROAD PHASE 2 AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH TRANSYSTEMS, INC. FOR THE PREPARATION OF PLANS FOR THE PROJECT KNOWN AS DEL-CR91-3.45:

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

DEL-CR124-3.78 – HOME ROAD AND SAWMILL PARKWAY INTERSECTION IMPROVEMENTS

WHEREAS, section 5555.022 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the improvement and may authorize such improvement; and

WHEREAS, the County Engineer has determined that widening of Home Road to provide additional thru lanes and turn lanes at Sawmill Parkway, along with the widening of Sawmill Parkway to construct turn lanes at Home Road, with the addition of 2 new traffic signals and replacement of existing signals, and the resurfacing of Home Road to 0.02 miles east of Liberty Road and Liberty Road south to the Liberty Township Hall (the "Improvements") are required for the convenience and welfare of the traveling public; and

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

WHEREAS, the County Engineer has received proposals from qualified engineering firms interested in providing professional design services for the Improvements (project known as DEL-CR124-3.78, Home Road and Sawmill Parkway Intersection Improvements); and

WHEREAS, the County Engineer has selected the consulting firm of Dynotech, Inc., to provide the required services for engineering and design of the Improvements, and requests that the Board enter into a Contract with said firm;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The public convenience and welfare require the construction of the Improvements, known as DEL-CR124-3.78, for the improvement of traffic flow.

Section 2: The costs of the Improvements will be paid for from funds appropriated for road and bridge construction, and no special levies or assessments shall be made to pay for the Improvements.

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Section 3: The Board hereby enters into the following Contract, and due compensation will be paid from any funds appropriated for road and bridge construction:

**PROFESSIONAL SERVICES AGREEMENT
DEL-CR124-3.78 ~ Home Road and Sawmill Parkway Intersection Improvements
Contract #E1203**

This Agreement is made and entered into this 22nd day of July, 2019, by and between the **Delaware County Board of Commissioners**, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and **Dynotec, Inc.**, 2931 E. Dublin-Granville Road, Suite 200, Columbus, Ohio 43231, (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Prime Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide “Services” in connection with the following “Project”:
Home Road and Sawmill Parkway Intersection Improvements (DEL-CR124-3.78, PID 1203)
- Improvements on Home Road, Sawmill Parkway and Liberty Road associated with a new Ohio State University Ambulatory Care facility at the intersection of Home Road and Sawmill Parkway. Work consists of traffic signal improvements at Home Road and Sawmill Parkway, 2 new traffic signals, major and minor widening on Home Road, construction of a shared use path and resurfacing. Total length of work = 1.38 mi. on Home Road and 0.54 mi. on Liberty Road.
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be rendered by the Consultant in accordance with the following documents, to be retained and on file with each Party, and by this reference made part of this Agreement:
- 1.3.1 Scope of Services last revised: July 3, 2019
1.3.2 Fee Proposal last revised: June 11, 2019

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as the “Project Manager” and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the Project, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal and other documents enumerated in Section 1.3 and as follows:
- a. For all services described in the Scope of Services and Fee Proposal as “Basic Services”, the lump sum fee shall be **\$281,371**.
- b. For all services described in the Scope of Services and Fee Proposal as “If Authorized Services”, payment shall be made based on a lump sum amount authorized by the Project Manager for each authorized task as specified in the Fee Proposal, the total of which shall not exceed **\$60,550**.
- 4.2 The Project Manager may authorize partial lump sum payments for itemized tasks in “If Authorized Services” with written consent of the Consultant when the Project Manager determines the necessity therefor.
- 4.3 Total compensation under this Agreement shall not exceed **\$341,921.00** without subsequent modification by both Parties.

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- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

- 5.1 "Notices" issued under this Agreement shall be served to the Parties listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

County Engineer:

Name: Delaware County Engineer
Attn: Tiffany Jenkins, P.E.

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: tjenkins@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Jerry F. Mills, P.E.

Address of Firm: 2931 E. Dublin-Granville Road, Suite 200

City, State, Zip: Columbus, Ohio 43231

Telephone: 614-880-7320

Email: jmills@dynotecinc.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer, and shall be based on the calculated percentage of Services performed to date in accordance with the Consultant's Price Proposal.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Project Manager and shall complete the Services by July 1, 2020.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

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- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement.
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

- 12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

13 INSURANCE

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County

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employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

- 14.2 **Independent Contractor**: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 **Governing Law**: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 **Headings**: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 **Waivers**: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 **Severability**: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 **Findings for Recovery**: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 **Authority to Sign**: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 **County Policies**: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 **Drug-Free Workplace**: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 **Non-Discrimination/Equal Opportunity**: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

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Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

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

DEL-CR91-3.45 – BERLIN STATION ROAD IMPROVEMENTS PHASE 2

WHEREAS, section 5555.022 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the improvement and may authorize such Improvement; and

WHEREAS, the County Engineer has determined that minor widening of Berlin Station Road from the CSX Railroad to County Road 20 to a two lane rural ditch, except where a three lane segment at Olentangy Berlin High School entrance requires east and west left turn lanes, along with evaluating the curve radius improvement and curb and gutter section at the “S” located at Dale Ford Road and evaluating a roundabout at the intersection of Piatt Road (the “Improvements”) are required for the convenience and welfare of the traveling public; and

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

WHEREAS, the County Engineer has received proposals from qualified engineering firms interested in providing professional design services for the Improvements (project known as DEL-CR91-3.45, Berlin Station Road Improvements Phase 2); and

WHEREAS, the County Engineer has selected the consulting firm TranSystems, Inc., to provide the required services for engineering and design of the Improvements, and requests that the Board enter into a Contract with said firm;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The public convenience and welfare require the construction of the Improvements, known DEL-CR91-3.45, for the improvement of traffic flow.

Section 2: The costs of said Improvements will be paid for from funds appropriated for road and bridge construction, and no special levies or assessments shall be made to pay for the Improvements.

Section 3: The Board hereby enters into the following Contract, and due compensation will be paid from any funds appropriated for road and bridge construction:

**PROFESSIONAL SERVICES AGREEMENT
DEL-CR91-3.45 ~ Berlin Station Road Improvements Phase 2
Contract #E1307**

This Agreement is made and entered into this 22nd day of July, 2019, by and between the **Delaware County Board of Commissioners**, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and **TranSystems, Inc.**, 400 W Nationwide Boulevard, Suite 225, Columbus, Ohio 43215, (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Prime Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

1.1 The Consultant will provide “Services” in connection with the following “Project”:
Berlin Station Road Improvements Phase 2 (DEL-CR91-3.45, PID 1307)

Improvements on Berlin Station Road from the CSX Railroad to Lackey Old State Road (CR10). Work consists of minor widening of Berlin Station Road from the CSX Railroad to Lackey Old State to achieve a standard 2-lane typical section, except as follows: provide a 3-lane segment at the Olentangy Berlin HS entrance with westbound left turn lanes, design a single lane roundabout at the intersection with Piatt Road (evaluate non-traditional design) and design curve radius improvement at the S-curve near the intersection with Dale Ford Road.

1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.

1.3 Services shall be rendered by the Consultant in accordance with the following documents, to be retained and on file with each Party, and by this reference made part of this Agreement:

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- 1.3.1 Scope of Services last revised: July 3, 2019
1.3.2 Fee Proposal last revised: June 13, 2019

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as the "Project Manager" and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the Project, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal and other documents enumerated in Section 1.3 and as follows:
- a. For all services described in the Scope of Services and Fee Proposal as "Basic Services", the lump sum fee shall be **\$583,848**.
- b. For all services described in the Scope of Services and Fee Proposal as "If Authorized Services", payment shall be made based on a lump sum amount authorized by the Project Manager for each authorized task as specified in the Fee Proposal, the total of which shall not exceed **\$76,399**.
- 4.2 The Project Manager may authorize partial lump sum payments for itemized tasks in "If Authorized Services" with written consent of the Consultant when the Project Manager determines the necessity therefor.
- 4.3 Total compensation under this Agreement shall not exceed **\$660,247.00** without subsequent modification by both Parties.
- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

- 5.1 "Notices" issued under this Agreement shall be served to the Parties listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

County Engineer:

Name: Delaware County Engineer
Attn: Tiffany Jenkins, P.E.

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: tjenkins@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Walid Antonios, P.E.

Address of Firm: 400 W. Nationwide Boulevard, Suite 225

City, State, Zip: Columbus, Ohio 43215

Telephone: 614-433-7800

Email: waantonios@transystems.com

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6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer, and shall be based on the calculated percentage of Services performed to date in accordance with the Consultant's Price Proposal.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Project Manager and shall complete the Services by July 1, 2021.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement.
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
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- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

- 12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

13 INSURANCE

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- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
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- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

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- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

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

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

14
RESOLUTION NO. 19-711

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR THE SHERIFF'S OFFICE:

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

Transfer of Appropriation

From:	To:	
28631336-5450	28631336-5365	500.00
2017 LEAP Grant/Machinery & Equipment	2017 LEAP Grant/Grant Related Services	

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

15
RESOLUTION NO. 19-712

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER'S AGREEMENT FOR NORTHLAKE PRESERVE SECTION 1:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider's Agreement for Northlake Preserve Section 1;

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NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Sanitary Sewer Subdivider’s Agreement for Northlake Preserve Section 1:

SUBDIVIDER'S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 22nd day of July 2019, by and between **MI Homes**, hereinafter called “Subdivider”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”) as evidenced by the **The Northlake Preserve Section 1** Subdivision Plat filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the “Improvements”) shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for Section 1 of **Sanitary Sewer Improvement Plan for Northlake Preserve Sections 1 & 2**, dated **April 24, 2019**, and approved by the County on **May 9, 2019**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **46** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

For on-site improvements the following options for financial warranty apply:

OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$283,961.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 1 for this project.

Initials _____ Date _____

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

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for Section 1 of the **Sanitary Sewer Improvements for Northlake Preserve Sections 1 & 2**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Sanitary Sewer Improvements for Northlake Preserve Section 1 (\$9,938.64)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight percent (8½%) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of **Sanitary Sewer Improvements for Northlake Preserve Section 1 (\$24,136.69)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

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In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Sanitary Sewer Improvements for Northlake Preserve Sections 1 & 2** as required by the County.

SECTION V: CONSTRUCTION

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

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

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

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

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

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

SECTION VI: EASEMENTS

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

SECTION VII: COMPLETION OF CONSTRUCTION

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

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

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.

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- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

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

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

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer. User fee charges will commence the day the sanitary tap is made, regardless of completeness of construction.

SECTION VIII: SIGNATURES

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

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

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RESOLUTION NO. 19-713

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR EVANS FARM SECTION 2 PHASE A PART 1 & PART 2.1 AND EVANS FARM SECTION 2 PHASE A PART 2.2:

It was moved by Mr. Benton, 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 for Evans Farm Section 2 Phase A Part 1 & Part 2.1 and Evans Farm Section 2 Phase A Part 2.2;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the sanitary sewer improvement plans for Evans Farm Section 2 Phase A Part 1 & Part 2.1 and Evans Farm Section 2 Phase A Part 2.2 for submittal to the Ohio EPA for their approval.

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

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RESOLUTION NO. 19-714

IN THE MATTER OF APPROVING THE ALPHA GROUP OF DELAWARE'S PAYMENT OF CAPITAL REPAIRS TO 1000 ALPHA DRIVE FROM THE CAPITAL ACCOUNT ESTABLISHED IN THE LEASE AGREEMENT FOR SAID PROPERTY:

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

WHEREAS, on July 1, 2010, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 10-861, approving a lease agreement between the Board and the Alpha Group of Delaware, Inc. ("Alpha") for the property known as 1000 Alpha Drive, Delaware, Ohio (the "Leased Premises"); and

WHEREAS, the lease agreement provides for the establishment of a capital account for the payment of capital improvements or repairs to the Leased Premises that cost \$5,000.00 or more, subject to approval by the Board; and

WHEREAS, Alpha obtained quotes and made repairs and improvements throughout the building for the facilities on the Leased Premises, with the preferred quotes, repairs, and improvements in an amount more than \$5,000.00, for the following:

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In 2018 updates and repairs were completed throughout the facility. New flooring was installed in two small areas of the building. Two rooftop and one ground air conditioning units and new windows in the main entrance area and along the south side of the building were updated from original to decrease utility costs. Total for 2018 was \$47,999. The Alpha Group received a quote of \$16,402 to update flooring in Administration section of the building. The total amount for all repairs to be transferred is \$64,401; and

WHEREAS, Alpha is seeking the Board’s approval to proceed with the repairs by utilizing the capital account;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves Alpha’s payment of capital repairs for the following:

2018 Capital Improvements

\$5,313.00 - Flooring in ADS and training Room - 04/15/18

\$25,318.21 – New Windows 12/21/18

\$9,919.00 - A/C Rooftop and Ground Unit 12/01/18

\$6,949.00 – A/C Rooftop Unit 01/01/18

\$47,500 –Sub Total

\$16,402 – Flooring upgrade in Admin Building to be completed 7/22/19

for the facilities on the Leased Premises, from the capital account established in the lease agreement in the estimated total amount of \$64,401

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

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ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-Would like Bob Lamb, Economic Development Director to introduce his new staff member, Zach Dowley, to the Commissioners.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Merrell

-Sad to report on the passing of former Commissioner Don Wuertz this past Saturday. Don was a true gentleman.

-Asked former Commissioner Deb Martin to speak about Don Wuertz.

Commissioner Benton

-Don Wuertz was a great gentleman who laid the foundation of the position the County is in today. Our thoughts are with his wife, Karma and daughter, Rachel.

Commissioner Lewis

-Don Wuert’s service to Delaware County was felt even after his retirement. His memory will remain with all who knew him.

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RESOLUTION NO. 19-715

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES; FOR COLLECTIVE BARGAINING:

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

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)–(7) of the Revised Code; and

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

Section 1. The Board hereby adjourns into executive session for consideration of appointment; compensation of a public employee or public official; to consider the purchase of property for public purposes; for collective bargaining.

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

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RESOLUTION NO. 19-716

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn out of Executive Session.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners