

**COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 24, 2020**

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

Present:
Jeff Benton, President
Gary Merrell, Vice President
Barb Lewis, Commissioner

1
RESOLUTION NO. 20-183

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 20, 2020:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on February 20, 2020; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

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

2
PUBLIC COMMENT

Troy Quinlin, Public Affairs Liaison for the Office of Ohio Treasurer Robert Sprague

3
RESOLUTION NO. 20-184

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0221:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0221:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2000874 Meacham Architects	Byxbe campus	42011440-5410	\$82,220.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2002345	OHIO CAT	SERVICE ON GENERATORS AND SWITCHGEAR - RSD	66211900 - 5328	\$6,000.00
R2002351	INFORMATION MANAGEMENT SRVCS	SERVICE DATES 6 12 2020-6 11 2021.	10011103 - 5325	\$7,500.00

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

4
RESOLUTION NO. 20-185

IN THE MATTER OF APPROVING THE RELOCATION AGREEMENT BY AND BETWEEN FRONTIER NORTH, INC., AND DELAWARE COUNTY FOR THE HOME ROAD EXTENSION:

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

WHEREAS, the County Engineer recommends approving the relocation agreement by and between Frontier North, Inc., and Delaware County for the Home Road Extension;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the relocation agreement by and between Frontier North, Inc., and Delaware County for the Home Road Extension as follows:

The County Engineer (the “County”) has requested Frontier North, Inc. (“Frontier”) to perform the following

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work: **To relocate existing buried cable and aerial cables that are located within a private utility easement along US 23 beginning just north of Slate Ridge Drive and continuing north the length of the county project DEL-CR124-7.69 Home Road Extension.**

Frontier has estimated that the cost of this work effort will be \$ **300,146.31**
Balance due Frontier North, Inc. \$ **300,146.31**

Please be advised that Frontier’s Policy requires that the County return this signed agreement, along with full advance payment, before work will be scheduled.

As circumstances warrant during the performance of the work request, an additional advance payment may be required prior to job completion or additional costs billed upon completion of work, when a revised estimate and/or accumulated charges indicate the final expenditures will exceed the above estimate by more than 20%. This would include instances where: **(1)** the County changes the scope of the work, or **(2)** the County’s actions impact Frontier’s ability to perform the work within the bounds of the original estimate.

If the County agrees to these terms, the signed letter of agreement and a check for \$ **300,146.31** made payable to Frontier North, Inc., noted with **51093-2454572** must be returned to Frontier.

Upon receipt of the signed agreement and advance payment, the work order will be released to Frontier’s Construction Department for scheduling.

Please be advised that the price quoted herein is valid for sixty (60) days from the date of this agreement (February 4, 2020) and is **ONLY** an estimate. As stated herein, the county will be billed for the actual cost when the work is completed. If Frontier does not receive this signed agreement and the advance payment within this sixty (60) day period, Frontier will assume that the County does not want the work to be undertaken and the project will be cancelled.

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

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RESOLUTION NO. 20-186

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2020 PAVEMENT MARKINGS CONTRACT:

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

WHEREAS, the Delaware County Engineer has prepared and recommends approval of the Bid Specifications and recommends setting the Bid Opening Date and Time for the 2020 Pavement Markings Contract;

NOW, THEREFORE, BE IT RESOLVED that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for the 2020 Pavement Markings Contract as follows:

**Public Notice
Advertisement for Bids**

Bid shall be submitted electronically through the www.bidexpress.com web service until 10:00 am on Tuesday, March 31, 2020, at which time they will be publicly received and read aloud, for the project known as

**2020 Pavement Markings
Annual Contract**

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 prices of this contract shall be in effect from April 13, 2020 to December 31, 2020. The Board of Commissioners reserves the right to make a non-exclusive award and to issue purchase orders on an as needed basis.

Contract prices shall also be made available for cooperative purchasing by all townships within Delaware County, City of Delaware, the Delaware County Preservations Parks District, and Delaware Soil and Water Conservation District.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4115 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau.

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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 the County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
March 13, 2020

SPECIFICATIONS

**2020 Pavement Markings
Annual Contract**

Delaware County, Ohio

GENERAL

This contract is an agreement to perform installation of pavement markings at various locations within Delaware County when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer (collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to perform all work ordered under this contract promptly as requested by the Owner. Failure to complete the requested work within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

COOPERATIVE PURCHASING PROGRAM

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- All townships within Delaware County
- City of Delaware
- Delaware County Preservations Parks District
- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

NON EXCLUSIVE AWARD

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

CONSTRUCTION AND MATERIAL SPECIFICATIONS

The 2019 ODOT Construction and Material Specifications (CMS) shall govern.

TRAFFIC CONTROL

Temporary traffic control shall conform to the Ohio Manual of Uniform Traffic Control Devices (OMUTCD).

The Contractor shall provide necessary signing, drums, and works to protect the work area. Work on the shoulder shall be in conformance with typical application #3 (TA-3) or typical application #6 (TA-6). The cost of providing signing, drums and all other necessary labor, equipment and materials to conform to these typical applications shall be considered incidental to Item 624, Mobilization and no additional compensation shall be provided.

If the Engineer requires that one lane be closed to traffic, the Contractor shall provide flaggers in accordance with the OMUTCD. Payment shall be made at the contract price bid for Item 614, Maintenance of Traffic –

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One Lane Closure on a Two Lane Highway.

MINIMUM QUANTITIES

The bid blank provides minimum payment quantities for a single purchase order, which may include multiple locations when authorized under the same authorization. Payment shall be made for the minimum quantity for each item of work performed under a single purchase order if the quantity performed is less than the minimum amount listed.

MOBILIZATION

Mobilization shall include the cost of site reconnaissance, site preparation, and mobilizing required equipment and labor to the site, and shall be paid as a single lump sum for each purchase order which may include multiple locations.

PREVAILING WAGE RATES

The Contractor shall pay all laborers, workers and mechanics that are performing work directly related to the installation of the various items, a wage no less than the prevailing rate as determined by the Ohio Director of Commerce at the time the work is performed, in accordance with section 4115.05 of the Ohio Revised Code.

The Contractor shall request, no less than 7 days but not more than 30 days prior to commencement of work on the site, that Delaware County furnish the prevailing wage rates for the classifications of workers who will perform the work. The Contractor shall pay the laborers, workers and mechanics a wage not less than the prevailing wage for the class of work performed. Prevailing wage rates shall be obtained from the Ohio Department of Commerce, Bureau of Labor & Worker Safety website at <http://www.com.ohio.gov/laws>.

The Contractor shall furnish certified copies of the payroll for the laborers, workers and mechanics doing the work no more than 14 days after wages are paid. Delaware County reserves the right to perform audits of the payroll records and worker interviews to determine compliance with the requirements of the Ohio Revised Code and regulations of the Ohio Department of Commerce.

MISCELLANEOUS TERMS AND CONDITIONS

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.

Prohibited Interests: Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder 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 project, without the prior express written consent of County.

Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

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.

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.

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.

Findings for Recovery: Bidder certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

Independent Contractor: The Contractor acknowledge and agrees that Contractor is acting as an

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independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Contractor and Delaware County. Contractor also agrees that, as an independent contractor, Contractor 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. **Contractor shall certify 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.**

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

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RESOLUTION NO. 20-187

IN THE MATTER OF APPROVING PLANS, SPECIFICATIONS, ESTIMATE AND SETTING THE BID DATE FOR THE PROJECT KNOWN AS DEL-CR-21-3.85/DEL-CR72-3.45, AFRICA AND CHESHIRE ROAD WIDENING:

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

WHEREAS, this Board, by Resolution No. 20-96, declared the necessity, approved a Preliminary Legislation Agreement with the Ohio Department of Transportation, and initiated the project known as DEL-CR21-3.85/DEL-CR72-3.345, Africa and Cheshire Road Widening (the "Improvement"); and

WHEREAS, the County Engineer has prepared specifications and an estimate for the Improvement, which includes the resurfacing of Africa Road from Lewis Center Road to Cheshire Road using MORPC funds, and resurfacing Cheshire Road from Old State Road to Africa Road, using CEAO funds; and

WHEREAS, the County Engineer has estimated the construction cost of the Improvement to be \$4,674,000;

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

Section 1: The specifications and estimate for the project known as DEL-CR-21-3.85/DEL-CR-72.3.45 are hereby approved.

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

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, March 24, 2020, at which time they will be publicly received and read aloud, for the project known as:

**DEL-CR21-3.85/
DEL-CR72-3.45
Africa and Cheshire Road Widening**

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 one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

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

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

The Owner requires that all work associated with the project be completed before July 31, 2020. The estimated commencement of work date is April 13, 2020.

Bidders must be pre-qualified as a Contractor by the Ohio Department of Transportation.

This is a Federal-Aid project and the Federal Equal Employment Opportunity regulations listed in the proposal shall govern. There is an 8% Disadvantaged Business Enterprises (DBE's) participation goal on this contract.

This is a prevailing wage contract in accordance with the U.S. Department of Labor Regulations, Title 29,

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Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution. Bidders shall comply with all applicable provisions.

Disadvantaged Business (DBE) Requirement. DBE participation goals (Subcontracts, materials, supplies) have been set on this project for those certified as DBE's in accordance with the TEA - 21 (1998) and 49 CFR, Part 26, and qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code (O.R.C.).

At the beginning of the project proposal, following the project identification, the DBE goal designation is written, i.e.

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:
February 28, 2020
March 6, 2020
March 13, 2020

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

**7
RESOLUTION NO. 20-188**

IN THE MATTER OF APPROVING DEVELOPER’S AGREEMENT FOR SOUTH OLD 3C HIGHWAY CONTRIBUTION:

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

WHEREAS, the Engineer recommends approving the Developer’s Agreement for South Old 3C Highway contribution in conjunction with Arrowhead Lake;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Developer’s Agreement for South Old 3C Highway contribution in conjunction with Arrowhead Lake as follows:

DEVELOPER’S AGREEMENT

THIS AGREEMENT made and entered into this 24th day of February, 2020, by and between the **COUNTY OF DELAWARE** (acting through its **BOARD OF COUNTY COMMISSIONERS**), hereinafter called the **COUNTY**, and **PULTE HOMES OF OHIO LLC**, hereinafter called the **OWNER**, is governed by the following considerations, to wit:

- 1) The **OWNER** is constructing a development known as Arrowhead Lake (the “Development”), which will include a new roadway access to South Old 3-C Highway and contribute to the need for improvements to South Old 3-C Highway or other roadways in the vicinity of the Development which shall be constructed by the **COUNTY** (the “Improvements”).
- 2) On or before October 1, 2020, the **OWNER** shall pay to the **COUNTY** One Hundred Sixty-Five Thousand Eight Hundred Dollars (\$165,800), mutually agreed to be the **OWNER’S** proportional share of, and contribution toward, the cost and expense of the Improvements. **OWNER** further agrees that such contribution may be used as determined by the **COUNTY** for improvements to South Old 3-C Highway, or any other public roadway in the vicinity thereof, benefitting the Development.
- 3) The **OWNER** is to provide a bond, irrevocable letter of credit, or other approved financial warranty in the amount of One Hundred Sixty-Five Thousand Eight Hundred Dollars (\$165,800), payable to the **BOARD OF COUNTY COMMISSIONERS**, to insure the faithful performance of this **AGREEMENT**. Said financial warranty will be released and returned to the **OWNER** within thirty (30) days of the receipt of payment as required in Section 2 hereof.
- 4) To the extent the **OWNER**, either directly or through its agents or contractors, performs any work within the **COUNTY’S** right-of-way, the **OWNER** shall indemnify and hold the **COUNTY** free and harmless from any and all claims for damages of every nature arising or growing out of the work.
- 5) The **OWNER** further agrees that any violation of or noncompliance with any of the provisions as stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **Delaware County Engineer** shall have the right to suspend or terminate any permit for access to or work within the **COUNTY** right-of-way.
- 6) If the **OWNER** should 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**.

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- 7) In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants to the **OWNER** or his agent the right and privilege to access the Improvements stipulated herein, subject to the issuance of a right-of-way work permit.

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

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RESOLUTION NO. 20-189

IN THE MATTER OF APPROVING OWNER’S AGREEMENT FOR NORTHSTAR SECTION 1, PHASE B:

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Northstar Section 1, Phase B;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreement for Northstar Section 1, Phase B:

OWNER’S AGREEMENT
PROJECT NUMBER: 6056

THIS AGREEMENT, executed on this 24th day of February, 2020 between **NATIONWIDE REALTY INVESTORS**, hereinafter called ‘**OWNER**’ and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **NORTHSTAR SECTION 1, PHASE B**, further identified as Project Number 6056 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 2 for this project.

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 **FORTY THOUSAND DOLLARS (\$40,000)** 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**

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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	\$1,594,500
CONSTRUCTION BOND AMOUNT	\$ N/A
MAINTENANCE BOND AMOUNT	\$ 159,450
INSPECTION FEE DEPOSIT	\$ 40,000

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

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RESOLUTION NO. 20-190

IN THE MATTER OF DECLARING THE NECESSITY FOR A RAILROAD GRADE SEPARATION STRUCTURE ON ORANGE ROAD AND APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH GANNETT FLEMING ENGINEERS AND ARCHITECTS, P.C.:

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

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 a grade separation structure carrying the Norfolk & Southern and CSX Railroads over Orange Road extending from the intersection of Green Meadows Drive to Blue Holly Drive including the widening of Orange Road to four lanes with a 10 foot shared use path on both sides of the road, retaining walls with decorative elements, and drainage outlet consisting of gravity sewer or a pump station (collectively the “Improvements”) are required to help with traffic concerns in the area, and recommends that the Board proceed with the Improvements; and

WHEREAS, section 305.15 of the Revised Code provides that when the services of an engineer are required with respect to roads, turnpikes, ditches, bridges, or any other matter, a board of county commissioners may enter into enter with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has selected Gannett Fleming Engineers and Architects, P.C. through a qualifications based selection process, has negotiated a scope and fee for the required engineering services, and recommends entering into an agreement for said engineering services associated with the Improvements;

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

Section 1: The public convenience and welfare require the widening and reconstruction of Orange Road extending from the intersection of Green Meadows Drive to Blue Holly Drive including the widening of

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Orange Road to four lanes with a 10 foot shared use path on both sides of the road, retaining walls with decorative elements, and drainage outlet consisting of gravity sewer or a pump station, and the Improvements known as DEL-TR114-01.93 shall be initiated for such purposes.

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

Section 3: The following agreement is approved for the providing of services for the Improvements:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 24th day of February, 2020, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Gannett Fleming Engineers and Architects, P.C. (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide professional engineering services in connection with the following “Project”: a grade separation structure carrying the Norfolk & Southern and CSX Railroads over Orange Road extending from the intersection of Green Meadows Drive to Blue Holly Drive including the widening of Orange Road to four lanes with a 10 foot shared use path on both sides of the road, retaining walls with decorative elements, and drainage outlet consisting of gravity sewer or a pump station, Project ID DEL-TR114-01.93.
- 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 are defined in and shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Scope of Services and Price Proposal January 21, 2020

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 Scope of Services and Price Proposal noted in Section 1.3.
- 4.2 For all services described in the Scope of Services and Price Proposal, except “If Authorized” tasks, the lump sum fee shall be \$602,068.00, which amount shall not be exceeded without subsequent modification.
- 4.3 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.

Project Manager:

Name: Delaware County Engineer

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Attn: Ryan J. Mraz (Chief Deputy Design Engineer)

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2400

Email: Rmraz@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Joseph Rikk, Jr., P.E.

Address of Firm: 2500 Corporate Exchange Drive, Suite 230

City, State, Zip: Columbus, OH 43231

Telephone: 614-794-9424

Email: Jrikk@gfnet.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 Project Manager and on the calculated percentage of work 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 OF SERVICES, 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 in a timely manner.
- 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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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 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.**

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- 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 Services 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 Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
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RESOLUTION NO. 20-191

IN THE MATTER OF DECLARING THE NECESSITY FOR A BRIDGE REPLACEMENT ON MONKEY HOLLOW ROAD AND APPROVING OF A PROFESSIONAL SERVICES AGREEMENT WITH FISHBECK, THOMPSON, CARR & HUBER, INC.:

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

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 the bridge on Monkey Hollow Road over Big Walnut Creek needs replaced along with a realignment of the roadway approach to accommodate a 55 mph design (collectively called the “Improvements”), which are required for safety of the traveling public, and recommends that the Board proceed with the Improvements; and

WHEREAS, section 305.15 of the Revised Code provides that when the services of an engineer are required with respect to roads, turnpikes, ditches, bridges, or any other matter, a board of county commissioners may enter into enter with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has selected Fishbeck, Thompson, Carr & Hubert, Inc., through a qualifications based selection process, has negotiated a scope and fee for the required engineering services, and recommends entering into an agreement for said engineering services associated with the Improvements;

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

Section 1: The public convenience and welfare require replacement of the bridge on Monkey Hollow Road over Big Walnut Creek along with a realignment of the roadway approach to accommodate a 55 mph design, and the Improvements known as DEL-CR54-0126 shall be initiated for such purposes.

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

Section 3: The following agreement is approved for the providing of services for the Improvements:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 24th day of February, 2020, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Fishbeck, Thompson, Carr & Huber, Inc. (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide “Services” in connection with the following “Project”:
DEL-CR54-0126 (Monkey Hollow over Big Walnut Creek) Bridge Replacement
- 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, by this reference made part of this Agreement:
Scope of Services dated October 3, 2019 and Price Proposal dated December 12, 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.

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4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Scope of Services and Price Proposal noted in Section 1.3.
- 4.2 For all services described in the Scope of Services and Price Proposal, except "If Authorized" tasks, the lump sum fee shall be \$355,627.84, which amount shall not be exceeded without subsequent modification.
- 4.3 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.

Project Manager:

Name: Delaware County Engineer
Attn: Andrew Fortman

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2400

Email: afortman@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Kamran Qadeer, PE

Address of Firm: 1 East Campus View Boulevard, Suite 310

City, State, Zip: Columbus, OH 43235

Telephone: (614) 363-1001

Email: tkyle@fishbeck.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 Project Manager and on the calculated percentage of work 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 OF SERVICES, 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 no later than November 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

**COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
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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.

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

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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.
- 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.

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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 Services 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

11

RESOLUTION NO. 20-192

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

It was moved by Mr. Merrell, seconded by Mrs. Lewis 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
UT20-0025	Team Fishel	Green Meadows Drive	Relocate fiber
UT20-0026	Columbia Gas	Corduroy Road	Install gas main
UT20-0027	Century Link	E. Orange Road	Place cable in ROW
UT20-0028	AEP	S. Old State Road	Replace existing poles
UT20-0029	Spectrum	Bridlespur Lane	Place cable in ROW

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

12

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator
-No reports.

13

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis
-No reports.

Commissioner Merrell
-Attended the CORSA board meeting on Friday. The agreement between CORSA and CCAO is progressing.
-Shared his thoughts on President's Day.

Commissioner Benton
-MORPC will have a meeting about their transportation plan this week.
-The TID will meet on Wednesday.
-The State of the County will be held tomorrow morning.

14

RESOLUTION NO. 20-193

COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 24, 2020

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT; EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE SALE OF PROPERTY AT COMPETITIVE BIDDING; FOR PENDING OR IMMINENT LITIGATION AND CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:

It was moved by Mr. Merrell, seconded by Mrs. Lewis 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

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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; employment; compensation of a public employee or public official; to consider the sale of property at competitive bidding; for pending or imminent litigation and confidential information related to economic development.

Section 2. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Section 3. The Board hereby finds and determines that the information listed in Section 2 is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

Section 4. The Board hereby finds and determines that the executive session held pursuant to Section 2 is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

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

RESOLUTION NO. 20-194

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

**COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 24, 2020**

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners