

COMMISSIONERS JOURNAL NO. 74 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD MAY 10, 2021

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

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

**1:30 P.M. Viewing For Consideration Of The Drainage Improvement Petition For Chancel Gate**

**RESOLUTION NO. 21-382**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MAY 6, 2021:**

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on May 6, 2021; 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 Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**RESOLUTION NO. 21-383**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0507:**

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0507 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Account	Amount
R2103071	COMMERCE CONTROLS INC	RECOVERY OF OECC SYSTEM, BACKUP OF LOWER SCIOTO,	66211900 - 5328	\$10,000.00
R2103072	STRATEGIC BENEFIT DESIGN LLC	2021 CONSULTING SERVICES	60211902 - 5301	\$15,000.00
R2103081	MS CONSULTANTS INC	DESIGN RELATED TO POST AERATION IMPROVEMENTS	66611900 - 5410	\$46,339.00

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

**George Kaitsa, County Auditor**  
**Announcement:**  
**Moody's reaffirming Delaware County's AAA credit rating**

**RESOLUTION NO. 21-384**

**IN THE MATTER OF A NEW LIQUOR LICENSE REQUEST FROM OASIS BEACH LLC AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:**

It was moved by Mrs. Lewis, 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 new D1, D3, D3a and D5 liquor license request from Oasis Beach LLC; 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. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

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**RESOLUTION NO. 21-385**

**IN THE MATTER OF PROCLAIMING MAY 2021 OLDER AMERICANS MONTH IN DELAWARE COUNTY:**

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

WHEREAS, Delaware County includes a growing number of older Americans who have built resilience and strength over their lives through successes and difficulties; and

WHEREAS, Delaware County benefits when people of all ages, abilities, and backgrounds are included and encouraged to share their successes and stories of resilience; and

WHEREAS, Delaware County recognizes our need to nurture ourselves, reinforce our strength, and continue to thrive in times of both joy and difficulty; and

WHEREAS, Delaware County can foster communities of strength by:

- creating opportunities to share stories and learn from each other;
- engaging older adults through education, recreation, and service; and
- encouraging people of all ages to celebrate connections and resilience.

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners do hereby proclaim May 2021 to be Older Americans Month. The Delaware County Board of Commissioners urge every resident to recognize older adults and the people who support them as essential members of our community.

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

**RESOLUTION NO. 21-386**

**IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR THE RECORDER’S OFFICE:**

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

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
10013101-5001	10013101-5201	3,500.00
Recorder/Compensation	Recorder/General Supplies & Equipment	

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

**RESOLUTION NO. 21-387**

**IN THE MATTER OF ACCEPTING THE AWARD OF THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTION SUBSIDY GRANT AGREEMENT FOR COMMUNITY-BASED CORRECTION PROGRAMS NON-RESIDENTIAL FELONY:**

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

WHEREAS, the Delaware County Adult Court Services has been awarded the ODRC Subsidy Grant for Community Based Corrections Program 407 Non-Residential Felony (the “Grant”); and

WHEREAS, the Grant will provide funding for two Intensive Supervision Officers, two Pre-Sentence Investigators and one Electronic Monitoring officer; and

WHEREAS, a local match is not required for the Grant; and

WHEREAS, Commissioner Merrell, as President of the Board of County Commissioners (the “Board”), is listed as the designated official for Delaware County for the Grant; and

WHEREAS, the Board desires uninterrupted compliance with the Grant reporting requirements by maintaining Commissioner Merrell as the designated official;

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

Section 1. The Board hereby accepts the award of the Grant as follows:

Grant #	407
Source:	Ohio Department of Rehabilitation and Correction

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Grant Period:	July 1, 2021 to June 30, 2023
Federal Grant Amount:	\$271,464.00
	\$ 60,000.00
	\$190,000.00
Local Match:	<u>0.00</u>
Total Grant Amount:	\$521,464.00

Section 2. The Board hereby authorizes Commissioner Merrell, as the designated official, to execute reports and administrative documents for the Grant.

Section 3. When reports or administrative documents require execution by the designated official, a copy of the report or documents shall be provided to the Clerk of the Board, along with a copy of this Resolution.

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

**RESOLUTION NO. 21-388**

**IN THE MATTER OF ACCEPTING THE AWARD OF THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTION SUBSIDY GRANT AGREEMENT FOR DELAWARE COUNTY ADULT PROBATION DEPARTMENT:**

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

WHEREAS, the Delaware County Adult Court Services has been awarded the ODRC Subsidy Probation Funding Grant (the “Grant”); and

WHEREAS, the Grant will provide funding for one Probation Officer; and

WHEREAS, a local match is not required for the Grant; and

WHEREAS, Commissioner Merrell, as President of the Board of County Commissioners (the “Board”), is listed as the designated official for Delaware County for the Grant; and

WHEREAS, the Board desires uninterrupted compliance with the Grant reporting requirements by maintaining Commissioner Merrell as the designated official;

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

Section 1. The Board hereby accepts the award of the Subsidy Grant as follows:

Grant #	407
Source:	Ohio Department of Rehabilitation and Correction
Grant Period:	July 1, 2021 to December 31, 2023
Federal Grant Amount:	\$150,000.00
Local Match:	<u>0.00</u>
Total Grant Amount:	\$150,000.00

Section 2. The Board hereby authorizes Commissioner Merrell, as the designated official, to execute reports and administrative documents for the Grant.

Section 3. When reports or administrative documents require execution by the designated official, a copy of the report or documents shall be provided to the Clerk of the Board, along with a copy of this Resolution.

Section 4. The Board hereby approves the Subsidy Probation Funding Grant Agreement by and between the Ohio Department of Rehabilitation and Correction, Division of Parole and Community Services and Delaware County, as follows:

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION  
SUBSIDY GRANT AGREEMENT for DELAWARE  
COUNTY  
Adult Probation Department**

**THIS SUBSIDY PROBATION FUNDING GRANT AGREEMENT** (hereinafter referred to as “Agreement”), pursuant to authority in Section 2301.32 of the Ohio Revised Code (hereinafter referred to as “RC”), is made and entered into by and between the Ohio Department of Rehabilitation and Correction, Division of Parole and Community Services (hereinafter referred to as “Grantor”), located at 4545 Fisher Road, Suite D, Columbus, Ohio and Delaware County (hereinafter referred to as “Grantee”), located at 117 North Union Street,

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Delaware, Ohio. The Grantor and the Grantee are hereinafter collectively referred to as the "Parties" and separately known as the "Party".

**WHEREAS** pursuant to RC 2301.32, as amended by H.B. 166, 133rd General Assembly, the Grantor is authorized to offer a county funding for probation services in lieu of an agreement for the Grantor to provide community control services, provided that the general assembly has appropriated sufficient funds for that purpose

**WHEREAS**, the purpose of this grant is to provide funds to Grantee to enable it to establish and operate full supervision for offenders under community control within its jurisdiction;

**WHEREAS**, Grantee herein accepts funds in lieu of the Grantor providing community control services.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties hereto agree as follows:

**1. Funds:** The Grantor awards to the Grantee a maximum amount of **One Hundred Fifty Thousand dollars (\$150,000.00)** (hereinafter referred to as "Funds"), to be paid in up to eight equal installments of **\$18,750.00**. The Grantor will make payments of Funds by electronic fund transfer to the Grantee's designee. Such payments will be made during the first month of each quarter of the Grantor's fiscal year until the Funds have been expended.

**The program's tax identification number is** 31640065.

**2. Term:** This Agreement is effective as of the signature date of this document and shall terminate on June 30, 2023. The Parties agree that upon the Grantee's previous acceptance of Funds, the Grantor discontinued all supervision duties for offenders under community control within its jurisdiction, to include but not limited to treatment in lieu, judicial release, diversion programs, or other probation supervision. The Parties further agree that Grantee has no obligation to provide community control services for the Grantor unless the Parties enter into a new agreement for Grantor to provide such services to Grantee.

**3. Appropriation:** Grantee understands that availability of Funds is contingent on appropriations made by the Ohio General Assembly's appropriation of the **Community Non-Residential Felony Programs subsidy (407)**. Furthermore, the obligations of the Grantor under this agreement are subject its determination that sufficient funds have been appropriated by the General Assembly to the for the purposes of this agreement and certification of the availability of such funds by the director of budget and management as required by Section 126.07 of the Ohio Revised Code.

**4. Termination:** Grantee may terminate Agreement only upon giving written notice of termination to Grantor by certified US Mail that includes a resolution to the same effect. The effective date of the termination shall be at the end of the state fiscal biennium, **June 30, 2023**. Upon termination, Grantee may be required to refund to the Grantor any Funds awarded to the Grantee which represents funding for Program Services not yet rendered and return equipment, supplies, or other tangible property, as determined by a financial close-out audit completed by the Grantor.

The parties further agree that any termination of this agreement does not allow the Grantor to re-initiate the provision of community control services to the Grantee unless the Parties enter into an agreement for Grantor to provide such services.

**5. Staffing:** None of the persons who will staff and operate the community control services, including those who are receiving some or all of their salaries from the Funds are not to be considered as employees of the Ohio Department of Rehabilitation and Correction.

**6. Dispute Resolution:** The Grantor's Bureau of Community Sanctions shall monitor Program Services during the term of this Agreement. The Grantee and the Chief of the Bureau of Community Sanctions shall attempt to settle any dispute which arises out of or relates to this Agreement, or any breach of this Agreement. If such a dispute or breach is not settled, the Grantee may engage the Grantor's Deputy Director of DPCS for dispute resolution.

**7. Grant Manual:** The Grantee agrees to manage and account for Funds in accordance with the Grantor's "Probation Services Grant Financial Guidelines." These guidelines are attached hereto as Exhibit "A" and incorporated by reference herein. The Grantee shall determine a designee to serve as the fiscal agent to act on behalf of the Grantee and be responsible for fiscal oversight, including monitoring and reviewing the expenditures of Funds every six months. Purchases made with the Funds shall be in accordance with county/state/municipal competitive solicitation requirements.

**8. Program Reporting:** The Grantee shall prepare and submit to the Grantor the following reports:

A. **Expenditures:**

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1. **Bi-annual Expenditure Report:** The bi-annual expenditure report, attached hereto as Exhibit “B” and incorporated by reference herein, shall include financial information for expenditures that relate to Program Services. This report shall be submitted thirty (30) days after the end of each bi-annual period per the probation services financial guidelines. Grantee shall provide supporting documentation of expenditures in the report if requested by the Grantor.
2. **Final Expenditure Report:** The final expenditure report, attached hereto as Exhibit “B” and incorporated by reference herein, is due by **February 15, 2024**. The final year-end expenditure report shall be completed only when all grant funds have been completely expended, or by **February 15, 2024**.

B. **Additional Information:** Grantee shall cooperate with Grantor and provide any additional information as may be required by Grantor in administering the grant program. Failure to comply with any of these report requirements or other instructions or requests for relevant information by the Grantee may result in the withholding of Funds until such time as Grantee so complies.

**9. Compliance:** All expenditures of Funds made by the Grantee shall be governed by the laws of the State of Ohio. If Grantee fails to so comply, the Grantor shall give the Grantee a reasonable period of time to come into such compliance. Grantee’s failure to timely comply may be cause for the Grantor to terminate this Agreement or reduce Funds.

Furthermore, the Funds may be reduced or this Agreement terminated by the Grantor there is a financial or fiscal audit disclosure involving misuse of Funds.

**10. Ohio Ethics and Conflict of Interests:** Grantee certifies that by executing this Agreement, it has reviewed, knows and understands the State of Ohio’s ethics and conflict of interest laws. Grantee further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or any Executive Orders.

Grantee agrees to refrain from promising or giving to any ODRC employee anything of value that could be construed as having a substantial and improper influence upon the employee with respect to the employee’s duties. Grantee further agrees that it will not solicit any ODRC employee to violate ORC 102.03, 2921.42, or 2921.43.

Grantee agrees that Grantee, nor its employees have not nor will they acquire any interest, whether personal, business, direct or indirect, that is incompatible, in conflict with, or would compromise the discharge and fulfillment of Grantee’s functions and responsibilities under this Agreement.

**11. Finding for Recovery:** The Grantee warrants that it is not subject to an “unresolved” finding for recovery under RC 9.24. If the warranty is deemed to be false, this Agreement is void ab initio and the Grantee must immediately repay any Funds to the Ohio Department of Rehabilitation and Correction, or the Ohio Attorney General if the collection is so referred.

**12. Workers’ Compensation:** Grantee shall provide their own workers’ compensation coverage throughout the duration of the Agreement and any extensions thereof. Grantor is hereby released from any and all liability for injury received by the Grantee, its employees or agent while performing tasks, duties, work, or responsibilities as a result of the Program Services under this Agreement.

**13. Equal Employment Opportunity:** Grantee agrees that it is in compliance with the requirements of Ohio Revised Code Section 125.111.

**14. Certification of Funds:** It is expressly understood and agreed by the Parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, RC 126.07, have been complied with, and until such time as all necessary Funds are available or encumbered and, when required, such expenditure of Funds is approved by the Controlling Board of the State of Ohio, and further, until such time that Grantor gives Grantee the approval letter that such Funds are available to Grantee.

**15. Compliance with Laws:** Grantee, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, including any related administrative rules promulgated after the signing of this agreement.

**16. Drug Free Workplace:** Grantee agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

**17. Entire Agreement or Waiver:** This Agreement contains the entire agreement between the Parties and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in

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writing by the Parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties. A waiver by any Party of any breach or default by the other Party under this Agreement shall not constitute a continuing waiver by such Party of any subsequent act in breach of or in default hereunder.

**18. Notices:** All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.

**19. Headings:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

**20. Severability:** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

**21. Controlling Law:** This Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performance hereunder.

**22. Successors and Assigns:** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of Grantor.

**23. Prison Rape Elimination Act:** If the Program Services are residential services, the Grantee shall adopt and comply with the Prison Rape Elimination Act, National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115). The Grantor shall monitor Grantee to ensure such compliance. The Grantor shall ensure that Grantee has been trained on their responsibilities under Grantor’s Policy on sexual abuse and sexual harassment prevention, detection and response.

**24. Execution:** This Agreement is not binding upon Grantor unless executed in full.

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

**RESOLUTION NO. 21-389**

**IN THE MATTER OF APPROVING OWNER’S AGREEMENTS FOR WOODCREST CROSSING SECTION 2 AND WOODCREST CROSSING SECTION 3:**

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

WHEREAS, the Engineer recommends approving the Owner’s Agreements for Woodcrest Crossing Section 2 and Woodcrest Crossing Section 3;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreements for Woodcrest Crossing Section 2 and Woodcrest Crossing Section 3:

**Woodcrest Crossing Section 2**

**OWNER’S AGREEMENT**  
**PROJECT NUMBER: 21047**

**THIS AGREEMENT**, executed on this 10<sup>th</sup> day of May, 2021 between **M/I HOMES OF CENTRAL OHIO, LLC**, hereinafter called ‘**OWNER**’ and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **WOODCREST CROSSING SECTION 2**, further identified as Project Number 21047 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.

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**OWNER** hereby elects to use Option 1 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 **FIFTY-SIX THOUSAND DOLLARS (\$56,000)** 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.

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CONSTRUCTION COST ESTIMATE	\$2,832,400
CONSTRUCTION BOND AMOUNT	\$2,832,400
MAINTENANCE BOND AMOUNT	\$ 283,200
INSPECTION FEE DEPOSIT	\$ 56,000

**Woodcrest Crossing Section 3**

**OWNER'S AGREEMENT  
PROJECT NUMBER: 21048**

**THIS AGREEMENT**, executed on this 10<sup>th</sup> day of May, 2021 between **M/I HOMES OF CENTRAL OHIO, LLC**, hereinafter called '**OWNER**' and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **WOODCREST CROSSING SECTION 3**, further identified as Project Number 21048 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.

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 **THIRTY-TWO THOUSAND DOLLARS (\$32,000)** 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



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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	\$1,065,000
CONSTRUCTION BOND AMOUNT	\$1,065,000
MAINTENANCE BOND AMOUNT	\$ 106,500
INSPECTION FEE DEPOSIT	\$ 32,000

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

RESOLUTION NO. 21-390

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

It was moved by Mrs. Lewis, seconded by Mr. Benton 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
UT21-0097	Del-Co Water	Curtis Road	Install road bores
UT21-0098	RND Construction Company	Worthington Road	Lay electric line
UT21-0099	Spectrum	E. Powell Road	Directional bore & trench road
UT21-0100	Frontier Communications	Peachblow Road	Relocate pedestal
UT21-0101	Frontier Communications	Peachblow Road	Bore, plow & place cable
UT-21-0102	Suburban Natural Gas	Glenmead Section 2	Lay gas mains
UT-21-0103	Suburban Natural Gas	Bowtown Road	Bore across road

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

RESOLUTION NO. 21-391

IN THE MATTER OF APPROVING AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

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**BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO (COUNTY) AND STATE OF OHIO, DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE PROJECT KNOWN AS DEL-CR13-5.02, PID NUMBER 97431, AGREEMENT NUMBER 26251:**

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (hereinafter referred to as the Local Public Agency ("LPA")), has identified the need for the following described project: This project proposes to realign, widen and construct a single lane roundabout at the intersections of CR13 (Worthington Road); CR39 (Romes Corner Road); and CR106 (Lewis Center Road). Federal project funding will be provided by ODOT HSP and CEAO STP funds; and

WHEREAS, the County Engineer recommends approval of the agreement between the LPA and State of Ohio, Department of Transportation (ODOT) for the project known as DEL-CR-13-5.02, PID Number 97431, Agreement Number 26251 as follows:

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

Section 1. The LPA shall cooperate with the Director of Transportation in the described project.

Section 2. The LPA hereby approves the LPA Federal Local-Let Project Agreement with ODOT for the described project, PID Number 97431, Agreement Number 27889, and the County Engineer is hereby empowered on behalf of the LPA to take all actions necessary to complete the above described project.

Section 3. This Resolution is hereby declared to be an emergency measure to expedite the transportation project and to promote transportation safety. Following appropriate legislative action, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

**DEL-CR13-5.02  
PID Number 97431  
Agreement Number 26251**

**CFDA 20.205**

**LPA FEDERAL LOCAL-LET PROJECT AGREEMENT**

1. **THIS AGREEMENT** is made by and between the State of Ohio Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **Delaware County Engineer** acting by and through the **Delaware County Board of Commissioners**, hereinafter referred to as the LPA, **50 Channing Street, Delaware, OH 43015**.

2. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 **DEL-CR13-5.02, PID Number 97431** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are

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incorporated, by reference, in their entirety:

- a. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
- b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
- c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
- e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).

- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be **\$3,444,750** as set forth in Attachment 1. ODOT shall provide to the LPA the following: one hundred percent (100%) of the eligible costs for the PE-ENV phase up to a maximum amount of \$279,240 in ODOT HSP federal funds; one hundred percent (100%) of the eligible costs for the RW phase up to a maximum amount of \$250,000 in ODOT HSP federal funds; one hundred percent (100%) of the eligible costs for the CONS phase up to a maximum amount of \$1,743,160 in ODOT HSP federal funds; and eighty percent (80%) of the eligible costs for the CONS phase up to a maximum amount of \$1,172,350 in CEAO STP federal funds. The total maximum amount in Federal funds is \$3,210,280. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (**option one**: follow its own formally written set of local design standards **or option two**: make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [www.dot.state.oh.us/drrc/Pages/default.aspx](http://www.dot.state.oh.us/drrc/Pages/default.aspx)

- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the Project Design Engineer and serve as the LPA's principal representative for attending to project responsibilities or engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: [www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT](http://www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT)

- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.

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4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [www.dot.state.oh.us/CONTRACT](http://www.dot.state.oh.us/CONTRACT). If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.

5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.

5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criteria with Ohio EPA approval.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.

6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State

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rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
7. ADVERTISING, SALE AND AWARD
- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

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- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30-percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100 percent locally-funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100 percent locally-funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.
8. CONSTRUCTION CONTRACT ADMINISTRATION
- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.
- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed,

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and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.

- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:
- Chris Bauserman, P.E., P.S.  
Delaware County Engineer  
50 Channing Street  
Delaware, OH 43015  
740-833-2400**
- 8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.
- 8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.
- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT

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must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.
- 10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where



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applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

**GOOD FAITH EFFORTS (GFEs)**

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Contractor and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;
- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise  
The Ohio Department of Transportation  
1980 West Broad Street, Mail Stop 3270  
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contractor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation  
Division of Chief Legal Counsel  
1980 West Broad Street, Mail Stop 1500  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

- (a) letter of reprimand;
- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;

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- (c) any steps taken to rectify the situation;
  - (d) the Contractor's record of performance on other projects including, but not limited to:
    - (1) annual DBE participation over DBE goals;
    - (2) annual DBE participation on projects without goals;
    - (3) number of complaints ODOT has received from DBEs regarding the Contractor; and,
    - (4) the number of times the Contractor has been previously sanctioned by ODOT; and,
  - (e) Whether the Contractor falsified, misrepresented, or withheld information.
- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
 

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").
  - (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
  - (c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
  - (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
  - (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
    - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
    - (2) cancellation, termination or suspension of the contract, in whole or in part.
  - (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

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11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE
- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.
12. TERMINATION; DEFAULT AND BREACH OF CONTRACT
- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

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12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.3. In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

**If to the LPA:**

**Chris Bauserman, P.E., P.S.  
Delaware County Engineer  
50 Channing Street  
Delaware, OH 43015**

**If to ODOT:**

**Lori Duguid, P.E., District Six Deputy Director  
Attention: Brian Davidson  
ODOT, District Six  
400 East William Street  
Delaware, OH 43015**

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

**1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system<sup>1</sup>, **and**
- (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

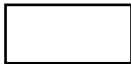
1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

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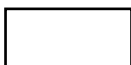
**2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate. 2**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA *does not* currently have, and *does not* intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**3. Direct labor, plus fringe benefits costs calculated using the LPA’s ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate. 3**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**4. Direct labor, plus fringe benefits costs calculated using the LPA’s ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA’s ODOT approved Indirect Cost Rate. 4**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, *and*
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT’s LPA sub recipients, that have aggregate federal awards expenditures from all sources of \$750,000 or more in the non-federal entity’s fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2

- 2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.
- 3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.
- 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

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CFR Part 200.

Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention*: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *State Property Drug-Free Workplace Compliance*: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade*: Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the

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Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. § 1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
  
- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
  
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
  
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
  
- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
  
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
  
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal’s behalf.
  
- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties agree that execution of the contract will occur in the following approved manner: The City will transmit a color scanned copy of the agreement signed by the City and ODOT will return a color scanned copy to the City that includes signatures by both the City and ODOT.

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

**RESOLUTION NO. 21-392**

**IN THE MATTER OF ADOPTING UPDATES TO CERTAIN DELAWARE COUNTY  
COMPENSATION MANAGEMENT SYSTEM WAGE CHARTS:**

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

WHEREAS, Commissioners’ Resolution No. 98-483 established the Delaware County Compensation Management System; and

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WHEREAS, the Board acknowledges the benefit of having skilled, well trained personnel available to meet the needs of customers; and

WHEREAS, in an effort to remain competitive in the marketplace, the County Administrator and the Deputy County Administrator recommend a three percent (3%) increase in the maximum level of the following wage scales; and

WHEREAS, the following wage charts reflect the recommended three percent (3%) adjustment to the maximum level:

<b>PAT</b>			
<b>Level</b>	<b>Min</b>	<b>Max</b>	<b>Increment</b>
<b>1</b>	\$ 12.93	\$ 17.97	Hourly
	\$ 1,034.00	\$ 1,437.78	Bi-weekly
	\$ 26,884.00	\$ 37,382.20	Annually
<b>2</b>	\$ 14.58	\$ 20.27	Hourly
	\$ 1,166.00	\$ 1,621.32	Bi-weekly
	\$ 30,316.00	\$ 42,154.40	Annually
<b>3</b>	\$ 16.33	\$ 22.71	Hourly
	\$ 1,306.40	\$ 1,816.55	Bi-weekly
	\$ 33,966.40	\$ 47,230.28	Annually
<b>4</b>	\$ 17.44	\$ 24.24	Hourly
	\$ 1,394.80	\$ 1,939.47	Bi-weekly
	\$ 36,275.20	\$ 50,440.67	Annually
<b>5</b>	\$ 20.14	\$ 28.01	Hourly
	\$ 1,611.28	\$ 2,240.48	Bi-weekly
	\$ 41,893.28	\$ 58,252.61	Annually
<b>6</b>	\$ 23.27	\$ 32.35	Hourly
	\$ 1,861.20	\$ 2,588.00	Bi-weekly
	\$ 48,391.20	\$ 67,287.96	Annually
<b>7</b>	\$ 24.23	\$ 33.70	Hourly
	\$ 1,938.72	\$ 2,695.79	Bi-weekly
	\$ 50,406.72	\$ 70,090.54	Annually

<b>Building Safety</b>			
<b>Level</b>	<b>Min</b>	<b>Max</b>	<b>Increment</b>
<b>1</b>	\$ 20.46	\$ 28.46	Hourly
	\$ 1,637.16	\$ 2,276.47	Bi-weekly
	\$ 42,566.16	\$ 59,188.25	Annually
<b>2</b>	\$ 24.68	\$ 34.32	Hourly
	\$ 1,974.00	\$ 2,744.85	Bi-weekly
	\$ 51,324.00	\$ 71,366.02	Annually



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<b>3</b>	\$ 26.72	\$ 37.15	Hourly
	\$ 2,137.80	\$ 2,972.61	Bi-weekly
	\$ 55,582.80	\$ 77,287.88	Annually
<b>4</b>	\$ 29.66	\$ 41.25	Hourly
	\$ 2,373.00	\$ 3,299.66	Bi-weekly
	\$ 61,698.00	\$ 85,791.07	Annually
<b>5</b>	\$ 32.07	\$ 44.59	Hourly
	\$ 2,565.36	\$ 3,567.13	Bi-weekly
	\$ 66,699.36	\$ 92,745.46	Annually
<b>6</b>	\$ 36.75	\$ 51.10	Hourly
	\$ 2,940.00	\$ 4,088.07	Bi-weekly
	\$ 76,440.00	\$ 106,289.82	Annually

Environmental Services Engineers				Experience Pay Ranges	
Level	Min	Max	Increment	Years	Pay
<b>1</b>	\$ 26.92	\$ 37.43	Hourly	0-3	\$ 56,150
	\$ 2,153.60	\$ 2,994.58	Bi-weekly	4-6	\$ 63,036
	\$ 55,994	\$ 77,859.10	Annually	7-10	\$ 72,041
<b>2</b>	\$ 32.69	\$ 45.46	Hourly	Years	Pay
	\$ 2,615.20	\$ 3,636.44	Bi-weekly	4-6	\$ 74,160
	\$ 67,995	\$ 94,547.33	Annually	7-10	\$ 79,457
<b>3</b>	\$ 36.78	\$ 51.14	Hourly	Years	Pay
	\$ 2,942.40	\$ 4,091.16	Bi-weekly	7-9	\$ 84,754
	\$ 76,502	\$ 106,370.16	Annually	10-13	\$ 90,051
				14-17	\$ 95,348
				17+	\$ 100,645

Dog Shelter SPECAT			
Level	Min	Max	Increment
<b>1</b>	\$ 15.40	\$ 21.41	Hourly
	\$ 1,232.00	\$ 1,713.10	Bi-weekly
	\$ 32,032.00	\$ 44,540.50	Annually

LTC			
Level	Min	Max	Increment
<b>1</b>	\$ 13.50	\$ 18.77	Hourly
	\$ 1,080.00	\$ 1,501.74	Bi-weekly
	\$ 28,080.00	\$ 39,045.24	Annually

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<b>2</b>	\$ 15.90	\$ 22.11	Hourly
	\$ 1,272.00	\$ 1,768.72	Bi-weekly
	\$ 33,072.00	\$ 45,986.62	Annually
<b>3</b>	\$ 17.33	\$ 24.10	Hourly
	\$ 1,386.40	\$ 1,927.79	Bi-weekly
	\$ 36,046.40	\$ 50,122.52	Annually
<b>4</b>	\$ 17.88	\$ 24.86	Hourly
	\$ 1,430.40	\$ 1,988.97	Bi-weekly
	\$ 37,190.40	\$ 51,713.25	Annually
<b>5</b>	\$ 20.34	\$ 28.28	Hourly
	\$ 1,627.08	\$ 2,262.45	Bi-weekly
	\$ 42,304.08	\$ 58,823.82	Annually
<b>6</b>	\$ 21.39	\$ 29.74	Hourly
	\$ 1,711.20	\$ 2,379.42	Bi-weekly
	\$ 44,491.20	\$ 61,865.01	Annually

<b>SMTS</b>			
<b>Level</b>	<b>Min</b>	<b>Max</b>	<b>Increment</b>
<b>1</b>	\$ 21.68	\$ 30.15	Hourly
	\$ 1,734.40	\$ 2,411.85	Bi-weekly
	\$ 45,094	\$ 62,708.05	Annually
<b>2</b>	\$ 24.72	\$ 34.37	Hourly
	\$ 1,977.60	\$ 2,749.69	Bi-weekly
	\$ 51,418	\$ 71,496.17	Annually
<b>3</b>	\$ 25.44	\$ 35.37	Hourly
	\$ 2,035.20	\$ 2,829.62	Bi-weekly
	\$ 52,915	\$ 73,570.02	Annually
<b>4</b>	\$ 26.78	\$ 37.23	Hourly
	\$ 2,142.40	\$ 2,978.76	Bi-weekly
	\$ 55,702	\$ 77,447.76	Annually
<b>5</b>	\$ 28.84	\$ 40.10	Hourly
	\$ 2,307.20	\$ 3,207.83	Bi-weekly
	\$ 59,987	\$ 83,403.63	Annually
<b>6</b>	\$ 31.25	\$ 43.46	Hourly
	\$ 2,500.00	\$ 3,476.46	Bi-weekly
	\$ 65,000	\$ 90,382.50	Annually

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<b>7</b>	\$ 36.78	\$ 51.14	Hourly
	\$ 2,942.40	\$ 4,091.16	Bi-weekly
	\$ 76,505	\$ 106,380.20	Annually

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby adopts the above wage charts referenced herein under the Delaware County Compensation Management System, effective immediately upon adoption.

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

**ADMINISTRATOR REPORTS**

Mike Frommer, County Administrator

-Spoke to Otterbein University’s President, John Comerford, about a partnership with the University to help connect students and graduates.

**COMMISSIONERS’ COMMITTEES REPORTS**

Commissioner Benton

-Attended a MORPC Executive Committee meeting last Thursday.

Commissioner Lewis

-Will be attending a Housing Coalition meeting this week.

Commissioner Merrell

-Went over the rest of the day’s meeting schedule.

**RESOLUTION NO. 21-393**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; DISCIPLINE, COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:**

It was moved by Mrs. Lewis, seconded by Mr. Benton 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 employment; discipline, compensation of a public employee or public official.

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

**RESOLUTION NO. 21-394**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

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

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

**Recess 11:00 AM/Reconvene 1:30 PM**

**1:30 P.M. Viewing For Consideration Of The Drainage Improvement Petition For Chancel Gate**

The Delaware County Commissioners, with staff members from the Delaware County Engineer’s Office and the Delaware County Soil and Water Conservation District, conducted an overview of the proposed improvement through the use of video technology.

On November 20, 2020, Stephen Corvi and Others, filed a petition with the Clerk of the Delaware County Board of Commissioners (the “Board”) requesting to generally improve the drainage, both surface and subsurface, to a good and sufficient outlet by replacing or repairing, or altering the existing improvement as required and/or creating new surface and subsurface drainage mains or laterals as requested by this petition. In Delaware County, Concord Township, within the Chancel Gate Watershed and generally following, but not limited to the course and termini of the existing improvements.

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For the health, safety and well-being of county residents, in response to the continued threat of COVID-19, and in accordance with orders of the Ohio Director of Health, public participation in the viewing, scheduled for Monday, May 10, 2021, at 1:30P.M. took place only by virtual means.

**Recess 1:54 PM/Reconvene 2:00 PM**

**RESOLUTION NO. 21-395**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:**

It was moved by Mr. Benton, 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

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 of a public employee or public official.

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

**RESOLUTION NO. 21-396**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

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

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

Attendance Commissioners' Hearing Room:

- Michael Frommer, County Administrator
- Dawn Huston, Deputy County Administrator
- Aric Hochstettler, Staff Attorney
- Jennifer Walraven, Clerk to the Board Commissioners
- Sarah Dinovo, Assistant Clerk/Administrative Assistant
- Heather Van Hull, Communications/Legal Assistant Board of Commissioners
- George Kaitsa, County Auditor
- Lee Bodnar, County Engineer
- Clanci Nelson, Deputy Recorder/Fiscal Officer
- Mark Taglione, Adult Court Services' Chief Probation Officer
- Alison Yeager, Director of Communications & Development
- Fara Waugh, Executive Director SourcePoint
- Bret Bacon, Delaware County Soil & Water
- Dan Barr, Delaware County Soil & Water
- Brett Bergefurd, Delaware County Engineer's Office

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

\_\_\_\_\_  
Barb Lewis

\_\_\_\_\_  
Jeff Benton