

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 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
RESOLUTION NO. 21-682

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JULY 29, 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 July 29, 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

2
PUBLIC COMMENT
 -None.

3
RESOLUTION NO. 21-683

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0730 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0730:

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0730, memo transfers in batch numbers MTAPR0730 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Account	Amount
R2103850	PERRY PROTECH INC	COPIER CONTRACT - BOC	10011101 - 5325	\$2,000.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - RECORDS CENTER	10011103 - 5325	\$300.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - FACILITIES	10011105 - 5325	\$300.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - HR	10011108 - 5325	\$800.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - BUILDING SAFETY	10011301 - 5325	\$650.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - EMS	10011303 - 5325	\$850.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - PROSECUTOR	10012101 - 5325	\$5,000.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - DOMESTIC RELATIONS	10023201 - 5325	\$2,750.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - COMMON PLEAS	10025201 - 5325	\$2,050.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - JUVENILE COURT	10027201 - 5325	\$900.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - SHERIFF - LE	10031301 - 5325	\$1,550.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - PUBLIC DEFENDER	10083801 - 5325	\$1,500.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - LAW LIBRARY	20683201 - 5325	\$4,000.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - 911	21411306 - 5325	\$325.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - JFS	22411605 - 5325	\$4,000.00

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

R2103850	PERRY PROTECH INC	COPIER CONTRACT - RECORDER	24113102 - 5325	\$1,300.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - ADULT COURT SERVICES	25622303 - 5325	\$1,800.00
R2103850	PERRY PROTECH INC	COPIER CONTRACT - REGIONAL SEWER	66211900 - 5325	\$850.00
R2103909	BUILTRITE INTERIOR CONSTRUCTION LTD	CONFERENCE ROOM BUILDOUT - PROSECUTOR	40111402 - 5328	\$9,500.00
R2103421	BUILTRITE INTERIOR CONSTRUCTION LTD	FIRE WALL EMS STATION 7	41711436- 5410	\$24,404.00
R2103929	KENNEY JR,DONALD R	REIMBURSEMENT OF 42.52 ERU PER SCIOTO RESERVE	66211900 - 5319	\$25,0868.00

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

4
TREASURER DON RANKEY, JR.
PRESENTATION ON TREASURER’S REPORTS

5
RESOLUTION NO. 21-684

IN THE MATTER OF APPROVING A PROJECT AGREEMENT WITH THE DELAWARE COUNTY TID FOR THE HOME ROAD & SAWMILL PARKWAY IMPROVEMENTS:

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

**PROJECT AGREEMENT
BY AND BETWEEN
THE DELAWARE COUNTY BOARD OF COMMISSIONERS
AND
THE DELAWARE COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
FOR THE HOME ROAD AND SAWMILL PARKWAY IMPROVEMENTS**

AGREEMENT #2021-04

This Agreement is made and entered into this 2nd day of August, 2021, by and between the **Delaware County Board of Commissioners** (hereinafter the “Commissioners”) and the **Board of Trustees of the Delaware County Transportation Improvement District** (hereinafter the “TID”), hereinafter referred to individually as a “Party” and collectively as “the Parties.”

WITNESSETH:

WHEREAS, the Commissioners and the TID approved a Master Intergovernmental Agreement Regarding Cooperation on Transportation Projects (“Master Agreement”) by Commissioners Resolution No. 18-1374 and by TID Resolution 2018-05; and

WHEREAS, the Parties find that there is a reasonable necessity and benefit to the public to jointly undertake the Project described herein, pursuant to, *inter alia*, sections 9.482 and 715.02 of the Revised Code and Chapter 5540 of the Revised Code;

NOW, THEREFORE, in consideration of the mutual promises and covenants described herein, the Parties agree as follows:

Article 1.

Section 1.1. For the purposes of this Agreement, the “Project” shall include the following infrastructure in general conformance with the construction plans on file with the County Engineer: **DEL-CR124-3.78 Home Road & Sawmill Parkway Improvements, Liberty Township**

Article 2. RESPONSIBILITIES OF THE COMMISSIONERS

Section 2.1. The Commissioners have already or, where necessary, shall (a) perform all necessary actions to enact appropriate legislation for the required road; (b) in cooperation with the County Engineer, acquire all necessary land, permits, agreements and rights of way required to construct the Project and prepare all necessary surveys, plans, profiles, cross sections, plans, specifications and estimates; and (c) provide and pay for any necessary design interpretation and bidding assistance of any consulting engineers, surveyors or other professionals retained by the Commissioners to allow the TID to complete the Project.

Section 2.2. The Commissioners shall deposit with the TID the sum of **One Million Six Hundred Thousand Dollars (\$1,600,000.00)** within 30 days of approval of this Agreement to pay for the

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

construction costs of the Project incurred in 2021. Funds will be paid from any funds available for road and bridge construction.

Section 2.3. The Commissioners shall deposit with the TID an additional sum not to exceed **One Million Six Hundred Thousand Dollars (\$1,600,000.00)** not later than February 1, 2022, subject to appropriation and availability of funds, to pay for the remaining construction costs of the Project. Funds will be paid from any funds available for road and bridge construction.

Section 2.4. The performance and provision of items described in Section 2.1, together with payments made under Section 2.2, shall be considered full compensation to the TID for the cost of constructing the Project, including all construction engineering, supervision, testing, legal fees, management, accounting and other expenses incurred by the TID relating to the Project.

Article 3. RESPONSIBILITIES OF THE TID

Section 3.1. The TID shall perform all necessary actions to construct, or cause to be constructed, the Project described in Section 1.1, at the lowest cost which is reasonably required to complete the Project in accordance with the plans, specifications and estimates provided by the County Engineer, and to substantially complete the Project no later than September 1, 2022.

Section 3.2. The TID will retain from any deposits made under this Agreement, as an Administrative Fee for management and supervision of the Project, a sum not to exceed Five Thousand Dollars (\$5,000.00) plus Two Percent (2%) of the amount of any construction contract(s) awarded by the TID for the Project.

Section 3.3. After the costs of all construction engineering, supervision, testing, legal fees, management, accounting and other expenses relating to the Project have been paid, and after deducting any Administrative Fees, the TID shall return any unused funds to the Commissioners within ninety (90) days of completion of the Project.

Article 4. MISCELLANEOUS TERMS AND CONDITIONS

Section 4.1. Except as the context may otherwise foreclose, this Agreement is entered into subject to and in conformance with the Master Agreement, which is fully incorporated into this Agreement by this reference and made a part hereof, as if fully rewritten herein, and the actions of the Parties shall be in conformance therewith.

IN WITNESS WHEREOF this Agreement has been duly executed and delivered for, in the name of, and on behalf of the Commissioners and the TID by their duly authorized officers, all as of the effective date.

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

**6
RESOLUTION NO. 21-685**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH E.L. ROBINSON ENGINEERING FOR THE PROJECT KNOWN AS DEL-SR3-4.60, STATE ROUTE 3 @ LEWIS CENTER ROAD:

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

WHEREAS, pursuant to section 305.15 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from engineering firms interested in providing services for the project known as DEL-SR3-4.60, State Route 3 @ Lewis Center Road; and

WHEREAS, the County Engineer has selected the consulting firm of E. L. Robinson Engineering through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services for engineering and design of the improvements, and requests that the Board enter into Contract with said firm;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Professional Services Agreement:

**PROFESSIONAL SERVICES AGREEMENT
DEL-SR3-4.60 (SR 3 @ Lewis Center Road)**

This Agreement is made and entered into this 2nd day of August, 2021, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 ("County"), and E.L. Robinson Engineering, 950 Goodale Boulevard, Suite 180, Grandview Heights, OH 43212

COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021

(“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

1.1 The Consultant will provide professional design services (the “Services”) in connection with the project known as DEL-SR3-.4.60 (SR 3 @Lewis Center Rd), consisting of the widening and left turn lane improvements to the intersection in Genoa Township, with work to include minor clearing and grubbing, drainage improvements, pavement widening, and pavement markings along with retrofitting for future traffic signal.

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

1.3 Services are further defined in and shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:

Scope of Services and Price Proposal, dated June 1, 2021

2 SUPERVISION OF SERVICES

2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer (the “County Engineer”) as the agent of the County for this Agreement.

2.2 The County Engineer shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

4.1 Compensation for Services provided under this Agreement shall be in accordance with the Scope of Services and Price Proposal noted in Section 1.3.

4.2 For all Services described in the Scope of Services and Price Proposal, the total fee shall be \$289,251.00, which amount shall not be exceeded without subsequent modification.

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

5 NOTICES

5.1 “Notices” issued under this Agreement shall be served by U.S. Certified Mail on the individuals listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

Project Manager:

Name: Delaware County Engineer
Attn: Aaron C. Scheiderer (Project Manager)

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2400

Email: ascheiderer@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Matt Cornett, PE, PTOE

Address of Firm: 950 Goodale Boulevard, Suite 180

City, State, Zip: Grandview Heights, Ohio 43212

Telephone: 614-586-0642

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

Email: mcorbett@elrobinson.com

6 PAYMENT

6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer and on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal.

6.2 Invoices shall be submitted to the County Engineer by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.

6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED, COMPLETION OF SERVICES, DELAYS AND EXTENSIONS

7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") from the County Engineer and shall complete the Services in a timely manner.

7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.

7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the County Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.

8.2 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall not be effective unless and until the modification is approved in a writing signed by both Parties.

10 OWNERSHIP

10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement

10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.

10.3 This section does not require unauthorized duplication of copyrighted materials.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.

11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts,

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

13 INSURANCE

13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.

13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.

13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.

14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021

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

14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.

14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the Services to which the Agreement relates.

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

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

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

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

7
RESOLUTION NO. 21-686

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH EMH&T FOR THE PROJECT KNOWN AS 2021 TRAFFIC SIGNAL COORDINATION:

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

WHEREAS, pursuant to section 305.15 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has determined that there is a need for coordination of traffic signals along the Sawmill Parkway System and S. Old State Road System; and

WHEREAS, the County Engineer has received proposals from engineering firms interested in providing services for the project known as 2021 Traffic Signal Coordination; and

WHEREAS, the County Engineer has selected the consulting firm of EMH&T through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services for engineering and design of the improvements, and requests that the Board enter into a contract with said firm;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Professional Services Agreement:

PROFESSIONAL SERVICES AGREEMENT
2021 Traffic Signal Coordination

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

This Agreement is made and entered into this 2nd day of August, 2021, by and between the **Delaware County Board of Commissioners**, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and **EMH&T**, 5500 New Albany Road, Columbus Ohio 43054, (“Consultant”), each individually referred to herein as a “Party” and collectively referred to as the “Parties.”

Article 1. SERVICES PROVIDED BY CONSULTANT

1.1 The Consultant shall provide professional design services to the County for the project known as 2021 Traffic Signal Coordination, including twenty signals along the Sawmill Parkway System and eight signals along the South Old State System (the “Services”).

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

1.3 The Services shall be more fully described in, and rendered by the Consultant in accordance with, the following documents, to be retained and on file with each Party, and by this reference fully incorporated into this Agreement:

Fee Proposal for Delaware County – Traffic Signal Coordination dated June 30, 2021 (the “Proposal”)

Article 2. SUPERVISION OF SERVICES

2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as the “Project Manager” and agent of the County for this Agreement.

2.2 The Project Manager shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement.

Article 3. AGREEMENT AND MODIFICATIONS

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

Article 4. FEES AND REIMBURSABLE EXPENSES

4.1 Compensation for Services provided under this Agreement shall be in accordance with the Proposal and for a lump sum fee of **\$47,000.00**.

4.2 Total compensation under this Agreement shall not exceed **\$47,000.00** without a subsequent written modification signed by both Parties.

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

Article 5. NOTICES

5.1 Notices issued under this Agreement shall be served by U.S. Certified Mail on the Parties to the attention of the individuals listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit notices.

County Engineer:

Name: Delaware County Engineer
Attn: Michael Love, PE, PTOE

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: mlove@co.delaware.oh.us

Consultant:

Name of Principal in Charge: EMH&T, Inc.
Jason D. Smallwood, P.E.

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

Address of Firm:	5500 New Albany Road
City, State, Zip:	Columbus, Ohio 43054
Telephone:	614-775-4500
Email:	JSmallwood@emht.com

Article 6. PAYMENT

6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer, and shall be based on the calculated percentage of Services performed to date in accordance with the Consultant's Proposal.

6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.

6.3 The County shall pay invoices within thirty (30) days of receipt.

Article 7. NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

7.1 The Consultant shall commence Services upon written notice to proceed from the Project Manager and shall complete the Services by December 31, 2021.

7.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

Article 8. SUSPENSION OR TERMINATION OF AGREEMENT

8.1 The County, upon written notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.

8.2 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of receiving notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

Article 9. CHANGE IN SCOPE OF SERVICES

9.3 In the event that significant changes to the scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall not take effect unless and until approved in a writing signed by both Parties.

Article 10. OWNERSHIP

10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement.

10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.

10.3 This section does not require unauthorized duplication of copyrighted materials.

Article 11. CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.

11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

Article 12. INDEMNIFICATION

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

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

Article 13. INSURANCE

13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage s required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.

13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.

13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.

13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

Article 14. MISCELLANEOUS TERMS AND CONDITIONS

14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021

14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

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

14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.

14.8 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

14.9 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

14.10 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

8
RESOLUTION NO. 21-687

IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND STRAWSER PAVING COMPANY FOR CR 9-0.00, LIBERTY ROAD IMPROVEMENTS:

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

**CR9-0.00TR127, Liberty Road Improvements
Bid Opening of July 13, 2021**

WHEREAS, as the result of the above referenced bid opening, the Engineer recommends that a bid award be made to Strawser Paving Company, the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and Strawser Paving Company for the project known as CR 9-0.00, Liberty Road Improvements;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners awards the bid to and approves the following contract with Strawser Paving Company for the project known as CR 9-0.00, Liberty Road Improvements:

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

CONTRACT

THIS AGREEMENT is made this 2nd day of August, 2021 by and between **Strawser Paving Company, 1595 Frank Road, Columbus, Ohio 43223**, hereinafter called the “Contractor” and the Delaware County Commissioners, hereinafter called the “Owner”.

The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named “**DEL-CR9-0.00, Liberty Road Improvements**”, and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed *One Million Two Hundred Sixty-six Thousand Three Hundred Ninety-Three Dollars and Ten Cents (\$1,266,393.10)*

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation to Bid
- d. Instructions to Bidders
- e. Signed copy of bid
- f. Work Specifications (including all plans, drawings, etc.)
- g. Specifications – General Provisions
- h. Federal and State Requirements

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern except as otherwise specifically stated.

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

**9
RESOLUTION NO. 21-688**

IN THE MATTER OF APPROVING THE OWNER’S AGREEMENT FOR CLARKSHAW MOORS SECTION 5:

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Clarkshaw Moors Section 5;

NOW, THEREFORE, BE IT RESOLVED, that the Delaware County Board of Commissioners approves the Owner’s Agreement for Clarkshaw Moors Section 5:

**OWNER’S AGREEMENT
PROJECT NUMBER: 21072**

THIS AGREEMENT, executed on this 2nd day of August, 2021 between **ROCKFORD HOMES, INC.**, hereinafter called “**OWNER**” and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **CLARKSHAW MOORS SECTION 5**, further identified as Project Number 21072 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:

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

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 **FORTY-TWO DOLLARS AND NO CENTS (\$42,000)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

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

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

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

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

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

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

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

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

EXHIBIT "A"

**COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021**

CONSTRUCTION BOND AMOUNT	\$1,382,900
MAINTENANCE BOND AMOUNT	\$ 138,300
INSPECTION FEE DEPOSIT	\$ 42,000

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

10

RESOLUTION NO. 21-689

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION FOR ROAD AND BRIDGE PROJECTS:

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

Supplemental Appropriation

10040421-5420	Road & Bridge Projects/Road Constructions	\$2,300,000.00
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Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

11

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-No reports.

12

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis

-No reports.

Commissioner Benton

-No reports.

Commissioner Merrell

-Attended the ribbon cutting ceremony at Deer Haven Park yesterday.

13

RESOLUTION NO. 21-690

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT; EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT LITIGATION:

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 appointment; employment; compensation of a public employee or public official; for pending or imminent litigation.

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

RESOLUTION NO. 21-691

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 Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

There being no further business, the meeting adjourned.

COMMISSIONERS JOURNAL NO. 75 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 2, 2021

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners