

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

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

Present:
 Barb Lewis, President
 Gary Merrell, Commissioner

Absent:
 Jeff Benton, Vice President

1
 RESOLUTION NO. 22-331

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 26, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 26, 2022; 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 Absent

2
 PUBLIC COMMENT

-None.

3
 RESOLUTION NO. 22-332

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0429 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0429:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0429, memo transfers in batch numbers MTAPR0429 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
(P2202546) Feecorp, Inc.	Rental Services RSD	66211900-5335	\$20,000.00
(P2202525) MSD	Rental Services RSD	66211900-5335	\$20,000.00
Environmental			

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2202942	STATE INDUSTRIAL PRODUCTS INC	WATER TREATMENT PROGRAM	10011105 - 5325	\$14,000.00

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

4
 RESOLUTION NO. 22-333

IN THE MATTER OF DETERMINING THE SUFFICIENCY OF THE APPLICATION TO ADD CERTAIN PARCELS OF REAL PROPERTY TO THE CONCORD/SCIOTO COMMUNITY AUTHORITY DISTRICT AND TO AMEND THE PETITION FOR ESTABLISHMENT OF THE CONCORD/SCIOTO COMMUNITY AUTHORITY AS A NEW COMMUNITY AUTHORITY AND FIXING THE DATE, TIME, AND PLACE FOR A PUBLIC HEARING UNDER CHAPTER 349 OF THE REVISED CODE:

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

WHEREAS, pursuant to Chapter 349 of the Ohio Revised Code, a petition (the "Petition") for the establishment of the Concord/Scioto Community Authority (the "Authority") was filed with this Board of County Commissioners of Delaware County, Ohio (the "Board") by Triangle Properties, Inc. ("Triangle"), as initial

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

developer of the Authority on February 8, 2007, which Petition this Board approved pursuant to Resolution No. 07-331 on March 22, 2007; and

WHEREAS, pursuant to Resolution No. 07-809, on July 2, 2007 this Board approved the assignment by Triangle of its rights, responsibilities, and duties as statutory developer of the Authority to Concord/Scioto Development, LLC (the "Developer"); and

WHEREAS, the Petition generally described the boundaries of the related new community district (the "District"); and

WHEREAS, the Board is the "organizational board of commissioners," as that term is defined in section 349.01(F) of the Revised Code, for the Authority; and

WHEREAS, on April 20, 2022, the Developer filed an application (the "Application") with the Board requesting that certain parcels of real property controlled by the Developer be added to the District, which application was signed by the City of Delaware, Ohio, as the "proximate city," pursuant to Chapter 349 of the Revised Code; and

WHEREAS, the Application further provides that the addition of such land will be conducive to the public health, safety, convenience and welfare of the District, will be consistent with the development of the District, will not jeopardize the plan of development of the District and that such land to be added to the District is owned by, or under the control through leases of at least seventy-five years' duration, options or contracts to purchase, of the Developer; and

WHEREAS, pursuant to section 349.03(A) of the Revised Code, the Board has reviewed the Application and determined that the Application complies with the requirements of section 349.03 of the Revised Code as to form and substance; and

WHEREAS, the Board has further determined to fix a time and place of a public hearing on the Application, which public hearing shall be held not less than thirty days nor more than forty-five days from the date of the filing of the Application, and that notice of the public hearing shall be given by the Clerk of this Board, all as required by section 349.03(A) of the Revised Code;

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

Section 1. The Board hereby finds and determines that the Application complies with the requirements of section 349.03 of the Revised Code as to form and substance.

Section 2. The Board hereby fixes Thursday, June 2, 2022, at 9:45 AM, at the Commissioners' Hearing Room, 91 North Sandusky Street, Delaware, Ohio, as the date, time, and place of a public hearing on the Application.

Section 3. The Clerk of this Board is directed to give notice of the public hearing on the Application by publication once each week for three consecutive weeks in *The Delaware Gazette*.

Section 4. This Board finds and determines that all formal actions of the Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5. This Resolution shall be in full force and effect immediately upon its adoption.

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

RESOLUTION NO. 22-334

IN THE MATTER OF APPROVING AN AGREEMENT WITH DLZ ARCHITECTURE, INC., FOR A DELAWARE COUNTY JAIL NEEDS ASSESSMENT:

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

WHEREAS, the Delaware County Sheriff and his staff recommend approval of the agreement with DLZ Architecture, Inc., for a Delaware County Jail needs assessment;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the agreement with DLZ Architecture, Inc., for a Delaware County Jail needs assessment:

AGREEMENT FOR ARCHITECTURE AND ENGINEERING SERVICES

This Agreement is entered into as of this 2nd day of May, 2022, (hereinafter referred to as the "effective date of the Agreement"), by and between DLZ Architecture, Inc., hereinafter called "DLZ," located at 6121 Huntley Road, Columbus, Ohio and Delaware County Board of Commissioners, hereinafter called "Client," located at

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

91 North Sandusky Street, Delaware, Ohio.

WITNESSETH

WHEREAS, the Client is authorized to make and enter into all contracts or agreements which it determines are necessary or incidental to the performance of its duties and to the execution of the purposes of and the powers granted by the State of Ohio;

WHEREAS, in accordance with its procurement procedures, the Client has determined that it desires to hire DLZ to perform certain services in connection with Delaware County Jail Needs Assessment, hereinafter called the "Project" as set forth herein; and

WHEREAS, DLZ desires to assist the Client as provided herein;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein set forth, and the undertakings of each party to the other, the Client and DLZ, acting as aforesaid and each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

I. SCOPE OF SERVICES

DLZ shall, in a professional manner, perform the services set forth in Exhibit A, attached to this Agreement.

II. COMPENSATION

- A. DLZ shall be compensated as set forth in Exhibit B for services rendered under this Agreement.
- B. DLZ shall promptly bill Client for all professional fees and expenses incurred on a monthly basis, and Client shall make payment in full to DLZ within 30 days of the date of each invoice.
- C. If the Client does not make payment in full to DLZ within 60 days of the date of an invoice, DLZ may suspend services upon 7 days written notice on the basis of non-performance on the part of the Client. When all payments due have been made, DLZ will continue its services.
- D. Total compensation under this Agreement shall not exceed Forty-five Thousand dollars and Zero Cents (\$45,000.00) without subsequent modification.

III. PERIOD OF PERFORMANCE

DLZ agrees to commence performance of services hereunder upon receipt of a written "Notice to Proceed." Client recognizes that DLZ's work and the completion thereof may be conditioned upon Client's review of DLZ's work and/or the timely performance and completion of certain activities by Client. DLZ shall not be held liable for delays in performance of services hereunder that arise from causes beyond DLZ's reasonable control and without its fault or negligence.

IV. CLIENT RESPONSIBILITY

- A. Client shall identify and coordinate all services to be performed hereunder.
- B. Client will verify that DLZ has a complete understanding of the scope of services to be performed hereunder. Client shall provide DLZ, in a timely fashion, all information reasonably required for the performance of the services by DLZ to be performed hereunder.
- C. Client shall upon execution of the Agreement, designate Delaware County Board of Commissioners, as coordinator of the Project described herein and of the professional services to be performed under this Agreement.
- D. Client shall provide DLZ with reasonable access to the premises necessary for the performance of the services required under this Agreement.

V. INDEPENDENT CONTRACTOR

It is understood and agreed that DLZ shall provide services under this Agreement as an independent contractor and that during the performance of services under this Agreement, DLZ's employees shall not be considered employees of the Client. DLZ 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.

VI. TERMINATION

It is hereby agreed that if either party should fail materially to fulfill its obligations under this

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

Agreement, the other party may notify the breaching party of the intent to terminate the contract, in whole or in part, if the breach is not cured as provided in this Article. Such notice to the breaching party shall be given, in the manner required in Article XII of this Agreement, thirty (30) days prior to the effective date of the intended termination and shall identify the breach to be cured. The breaching party shall have thirty (30) days from receipt of the notice to cure the breach identified in the notice. The failure to cure the breach within thirty (30) days shall entitle the nonbreaching party to terminate the Agreement at the end of thirty (30) days. DLZ shall use reasonable efforts to minimize fees and expenses upon giving or receiving notice of any intended termination. Client shall pay DLZ all fees and expenses accrued for services rendered up to the effective date of any termination.

VII. INSURANCE

During the term of this Agreement DLZ shall maintain, at DLZ’s expense, the following insurance coverage:

A. Workers' Compensation (A)	Coverage A:	Statutory
Employer's Liability (B)	Coverage B:	
	Bodily injury by accident:	\$1,000,000 each accident
	Bodily injury by disease:	\$1,000,000 policy limit
		\$1,000,000 each employee
B. Commercial General Liability	Each occurrence:	\$1,000,000
(Coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract)	General aggregate limit	\$2,000,000
	Products and completed operations aggregate limit:	\$2,000,000
	Personal and advertising injury limit:	\$1,000,000
C. Auto Liability	Each accident:	\$1,000,000
(Coverage shall apply to any auto including owned, hired, and non-owned autos)		
D. Professional Liability	Each claim:	\$2,000,000
	Aggregate:	\$2,000,000

Certificates of Insurance shall be furnished to Client upon request.

Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the Commercial General Liability and Auto Liability policies. DLZ shall require all of its subcontractors to provide like endorsements.

VIII. CHANGES

Changes or amendments to this Agreement may be made only in writing signed by a duly authorized representative of each of the parties. Changes in scope of the project dictated by the Client and changing conditions of law or schedule delays or other events beyond DLZ’s reasonable control will require contract price and/or date of performance revisions to reflect such changes or delays.

IX. ASSIGNMENT AND DELEGATION

Neither party shall assign or delegate this Agreement or any right, duties or obligations hereunder to any person and/or entity without prior express written approval to the other.

X. TRADEMARK AND TRADE NAME

Notwithstanding any other provision of this Agreement, neither party shall have the right to use the trademark or trade name of the other without prior written approval of the other.

XI. STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions attached hereto as Exhibit D are incorporated herein and made a part of this Agreement.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

XII. NOTICES

All notices shall be in writing and be deemed to be given or made when delivered by hand or by regular U.S. mail as follows:

- A. Notices to DLZ shall be addressed to: Eric B. Ratts, AIA, DLZ Architecture, Inc., 6121 Huntley Road, Columbus, Ohio.
- B. Notices to the Client shall be addressed to: Commissioners, Delaware County Board of Commissioners, 91 North Sandusky Street, Delaware, Ohio.

XIII. GENERAL PROVISIONS

- A. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to its subject matter and any prior agreements, understandings, or other matters, whether oral or written, are hereby merged into and made a part hereof, and are of no further force or effect. This agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- B. Conflict: In the event of any conflict, ambiguity or inconsistency between this Agreement and any other document which may be annexed hereto, the terms of this Agreement shall govern.
- C. Waiver: No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this agreement, or to exercise any option of election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be waiver of any prior or subsequent rights or remedy hereunder or at law. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.
- D. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the applications of such term or provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- E. Captions: Captions and paragraph headings are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement.
- F. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- G. Prohibited Interests: DLZ 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. DLZ 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.
- H. Findings for Recovery: DLZ certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- I. Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that they have authority to sign this Agreement or have been duly authorized by their principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- J. County Policies: DLZ shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, and Contractor Safety Policy. DLZ 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 DLZ 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.
- K. Taxes: Delaware County and all boards, departments, officers, and agencies thereof are exempt from all federal, state, and local taxes. As such, Delaware County shall not be invoiced

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

for and shall not pay any taxes. A tax exempt certificate shall be provided to DLZ upon request.

- L. Drug-Free Workplace: DLZ 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. DLZ 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.
- M. Non-Discrimination/Equal Opportunity: DLZ 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.

DLZ 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.

DLZ 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 Absent Mr. Merrell Aye

**6
RESOLUTION NO. 22-335**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH QUALITY MASONRY COMPANY, INC., FOR STEEL SECURITY DOOR IMPROVEMENTS AT THE DELAWARE COUNTY JAIL:

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

WHEREAS, the Director of Facilities recommends approval of an agreement with Quality Masonry Company, Inc., for steel security door improvements at the Delaware County Jail;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners approves the following agreement with Quality Masonry Company, Inc., for steel security door improvements at the Delaware County Jail:

SERVICES AGREEMENT

This Agreement is made and entered into this 2nd day of May, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Quality Masonry Company, Inc., 1001 S. Prospect St., Suite 101, Marion, OH 43302-2351 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will perform steel security door improvements to the Delaware County Jail, 844 US 42 North, Delaware, OH (the “Services”).
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the Contractor’s Proposal, dated revised April 6, 2022, attached hereto and, by this reference, incorporated herein.
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities (the “Director”) as the agent of the County for this Agreement.
- 2.2 The Director shall have authority to review changes, commencement, and suspension of the Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, 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 Contractor's Proposal.
- 4.2 For all Services, the lump sum fee shall be \$49,800.00.
- 4.3 Total compensation under this Agreement shall not exceed \$49,800.00 without subsequent modification.
- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

5 PAYMENT

- 5.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Director.
- 5.2 Invoices shall be submitted to the Director by the Contractor 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 Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 5.3 The County shall pay invoices within thirty (30) days of receipt.

6 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS

- 6.1 The Contractor shall commence Services upon written notice to proceed from the Director and shall complete the Services in accordance with the Contractor's Proposal.
- 6.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Director may grant such an extension provided that all other terms of the Agreement are adhered to.

7 SUSPENSION OR TERMINATION OF AGREEMENT

- 7.1 The County, upon written notice, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor 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.

8 INDEMNIFICATION

- 8.1 The Contractor 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 Contractor, 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.

9 INSURANCE

- 9.1 General Liability Coverage: Contractor 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.
- 9.2 Automobile Liability Coverage: Contractor 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.
- 9.3 Workers' Compensation Coverage: Contractor 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.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

- 9.4 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 9.1 and 9.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 9.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, 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. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

10 MISCELLANEOUS TERMS AND CONDITIONS

- 10.1 Prohibited Interests: Contractor 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. Contractor 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.
- 10.2 Independent Contractor: The Parties acknowledge and agree that Contractor 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. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor 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.**
- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 10.8 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.
- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work 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 Contractor 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.
- 10.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work 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.

Contractor 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 work 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.

Contractor 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.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

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

7
RESOLUTION NO. 22-336

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION AND APPROVING PURCHASE ORDERS FOR ECONOMIC DEVELOPMENT:

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

Supplemental Appropriation
44511441-5715 Creekside Redev Tax Equiv Fd/Principal Payments Notes-Loans 88,361.61

FURTHER, BE IT RESOLVED the Board of Commissioners approves a purchase order to Highdev II LLC for \$75,879.30 (44511441-5715) and a purchase order to Orange Township for \$12,482.31 (44511441-5715).

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

8
RESOLUTION NO. 22-337

IN THE MATTER OF CERTIFICATION OF DELINQUENT ACCOUNTS TO THE COUNTY AUDITOR FOR ACCOUNTS TO BE ASSESSED TO PAYABLE YEAR 2023 TAXES:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to certify to the County Auditor the delinquent accounts for placement on the tax duplicate.

WHEREAS, the Delaware County Board of Commissioners (the "Board") owns and operates a Sewer District as authorized by Chapter 6117 of the Revised Code; and

WHEREAS, section 6117.02 of the Revised Code authorizes the Board to set rates and charges for the sanitary services provided by the Sewer District; and

WHEREAS, when any of the sanitary rates or charges are not paid when due, the Board may certify the unpaid rates or charges, together with any penalties, to the County Auditor, who shall place them upon the real property tax list and duplicate against the property served by the connection; and

WHEREAS, pursuant to Resolution No. 16-720, the Board has established that delinquent accounts will be certified after they are more than ninety days past due and the amount exceeds \$25.00; and

WHEREAS, staff has determined that there are delinquent accounts that meet this criteria; and

WHEREAS, staff recommends collection of the unpaid rates and charges by certifying these delinquent accounts to the County Auditor;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners certifies the delinquent accounts in the amount of \$147,178.76 to the County Auditor for the 2023 real property tax list and duplicate.

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

11

RESOLUTION NO. 22-339

IN THE MATTER OF APPROVING A DRAINAGE MAINTENANCE PETITION FOR HARLEM ESTATES:

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

WHEREAS, on May 2, 2022, a Drainage Maintenance Petition for Harlem Estates (the "Petition") was filed with the Board of Commissioners of Delaware County (the "Board"); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within Harlem Estates located Harlem Road in Harlem Township; and

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

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

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

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

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

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

The cost of the drainage improvements is \$112,317.89 for the benefit of the lots being created in this subdivision. The drainage improvements are being constructed for the benefit of the lot(s) being created in the subject site. The developed area of 11 acres will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$10,210.72. An annual maintenance fee equal to 2% of this basis (\$204.21) will be collected for each lot. We (I) understood that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year's assessment for all of the lots in the amount of \$2,246.31 has been paid to Delaware County.

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

12

RESOLUTION NO. 22-340

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RETURNING THE CONSTRUCTION BOND FOR LIBERTY GRAND DISTRICT 6, PHASE A:

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

WHEREAS, the roadway construction has been completed for the project known as Liberty Grand District 6, Phase A (the "Project"); and

WHEREAS, as the result of the Engineer's recent field review of the Project, the Engineer has determined that only minor remedial work remains, which can be accomplished during the subsequent one year maintenance period; and

WHEREAS, the Engineer recommends that, in accordance with the Owner's Agreement, the maintenance bond be set at \$31,100.00 (10% of the original construction estimate) and the Project be placed on the required one year maintenance period; and

WHEREAS, M/I Homes of Central Ohio, LLC (the "Principal") has provided a maintenance bond in the amount of \$31,100.00 as surety to cover the one year maintenance period; and

WHEREAS, the Engineer also recommends approval to return the construction performance bond to the Principal;

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

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

establishing a maintenance bond for the Project and returning the construction bond for the Project to the Principal.

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

13

RESOLUTION NO. 22-341

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RETURNING THE CONSTRUCTION BOND FOR LIBERTY GRAND DISTRICT 6, PHASE B:

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

WHEREAS, the roadway construction has been completed for the project known as Liberty Grand District 6, Phase B (the "Project"); and

WHEREAS, as the result of the Engineer's recent field review of the Project, the Engineer has determined that only minor remedial work remains, which can be accomplished during the subsequent one year maintenance period; and

WHEREAS, the Engineer recommends that, in accordance with the Owner's Agreement, the maintenance bond be set at \$18,000.00 (10% of the original construction estimate) and the Project be placed on the required one year maintenance period; and

WHEREAS, M/I Homes of Central Ohio, LLC (the "Principal") has provided a maintenance bond in the amount of \$18,000.00 as surety to cover the one year maintenance period; and

WHEREAS, the Engineer also recommends approval to return the construction performance bond to the Principal;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves establishing a maintenance bond for the Project and returning the construction bond for the Project to the Principal.

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

14

RESOLUTION NO. 22-342

IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND THE SHELLY COMPANY, 80 PARK DRIVE, PO BOX 266, THORNVILLE, OHIO 43076 FOR 2022 DEL-COUNTY ROAD IMPROVEMENTS PROGRAM:

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

**2022 Del-County Road Improvements Program
Bid Opening of April 19, 2022**

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

WHEREAS, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and The Shelly Company for 2022 Del-County Road Improvements Program;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners awards the bid to and approves the contract with The Shelly Company for Del-County Road Improvements Program, as follows:

CONTRACT

THIS AGREEMENT is made this 2nd day of May, 2022 by and between The Shelly Company, 80 Park Drive, PO Box 266, Thornville, Ohio 43076, 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 "2022 DEL-County Road

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022**

Improvements Program”, 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 Three Million Four Hundred Sixty-Six Thousand Nine Hundred Forty-Eight Dollars and Seventy-Two Cents (\$3,466,948.72) subject to additions and deductions as provided in the Contract Documents.

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.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two original copies on the day and year first above written.

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

15

ADMINISTRATOR REPORTS

Tracie Davies, County Administrator

- Presented at the One Delaware meeting, along with Rob Platte.
- Will be attending the DCFA meeting on Wednesday.
- Welcome to Tyler Lane our newest member of the Economic Development Department.

Dawn Huston, Deputy Administrator

-No reports.

16

COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Merrell

- Attended the One Delaware presentation.
- Attended the Region 18 OneOhio meeting on Wednesday evening.

Commissioner Lewis

- The Primary Election is officially tomorrow.
- Welcome to Tyler Lane.

17

RESOLUTION NO. 22-343

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES; FOR PENDING OR IMMINENT LITIGATION:

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

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

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

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MAY 2, 2022

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

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

RESOLUTION NO. 22-344

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners