

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

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

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

1
RESOLUTION NO. 22-805

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 19, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on September 19, 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 Aye

2
PUBLIC COMMENT
 -None.

3
RESOLUTION NO. 22-806

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0923:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0923 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
(P2203360) Buckeye Ranch	Medical & Health Related Services	70161605-5342	\$60,000.00
(P2200434) Beems	Maintenance & Repair Supply	10011106-5228	\$15,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2204340	FIFTH ASSET INC	DEBTBOOK SOFTWARE PROGRAM	10011102 - 5320	\$15,000.00
R2204347	DELAWARE AUTO SALES LLC	REPAIR 21-17 3855	60111901 - 5370	\$7,000.00

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

4
RESOLUTION NO. 22- 807

IN THE MATTER OF ADOPTING A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR:

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

WHEREAS, the Board of County Commissioners has passed Resolution No. 07-543 to reduce the real property tax collection rate from 2.8 mills to 1.8 mills, beginning with tax year 2008 for collection in year 2009 and thereafter for a continuing period of time, pursuant to R.C. 5705.313(A); and

WHEREAS, the Board of County Commissioners has passed Resolution No. 22-717 to reduce the real property tax collection rate from 1.8 mills to 1.3 mills, effective only for tax year 2022, collected in 2023, pursuant to R.C. 5705.313(A); and

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

WHEREAS, the Budget Commission of Delaware County, Ohio has certified to this Board its actions in accordance with R.C. 5705.31 and R.C. 5705.34, together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Board, and what part thereof is without, and what part within, the ten mill tax limitation;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delaware County, Ohio, that the amounts and rates as determined by the Budget Commission in its certification are hereby accepted; and

BE IT FURTHER RESOLVED that the following tax levies, within and without the ten mill limitation, are hereby authorized and levied on the tax duplicate of Delaware County at the rates specified herein:

SCHEDULE A

**SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY
BUDGET**

COMMISSION AND COUNTY AUDITOR'S ESTIMATED TAX RATES

DELAWARE COUNTY TAX YEAR 2022	Amount		County Auditor's	
	Approved by	to Be Derived	Estimate of Tax Rate	
FUND	Budget Commission	from levies	to be Levied	
	Inside 10 M.	Outside 10 M.	Inside 10 M.	Outside 10 M.
	Limitation	Limitation	Limit	Limit
General Fund	12,472,293		1.30	
Permanent Improvement Fund	959,407		0.10	
Developmental Disabilities Fund		18,893,422		2.40
9-1-1- Operations Fund		4,799,557		0.68
Senior Citizens		10,123,782		1.30
Debt Service		865,161		0.09
TOTAL	13,431,700	34,681,922	1.40	4.47

BE IT FURTHER RESOLVED that the Clerk of this Board is hereby directed to certify a copy of this Resolution to the Delaware County Auditor.

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

**5
RESOLUTION NO. 22-808**

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE CORONER:

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

Supplemental Appropriation
10030301-5342 Coroner/Medical & Health Related Services 55,000.00

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

**6
RESOLUTION NO. 22-809**

IN THE MATTER OF APPROVING THE FIFTH AMENDED AGREEMENT FOR A COUNTYWIDE EMERGENCY MANAGEMENT AGENCY:

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

WHEREAS, the Director of Delaware County Office of Homeland Security and Emergency Management recommends approving the Fifth Amended Agreement for a Countywide Emergency Management Agency;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners hereby approves the following Fifth Amended Agreement for a Countywide Emergency Management Agency:

**FIFTH AMENDED AGREEMENT FOR A
COUNTYWIDE EMERGENCY MANAGEMENT AGENCY**

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

This Agreement is made and entered into by and among the participating political subdivisions of Delaware County, Ohio, as set forth in this Agreement, in accordance with section 5502.26 of the Revised Code.

RECITALS

WHEREAS, an agreement establishing a countywide emergency management agency was entered into by and among the Delaware County Board of Commissioners and a majority of the political subdivisions within Delaware County in May 1989; and

WHEREAS, the existing agreement was amended in 2002, 2010, 2012 & 2017; and

WHEREAS, the Director of the Delaware County Office of Homeland Security and Emergency Management (“DCOHSEM”) recommends amending the agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the participating political subdivisions hereby agree that the DCOHSEM is hereby authorized to coordinate emergency management activities within Delaware County, subject to the following:

1. The political subdivisions participating in this Agreement shall be as follows: (1) Delaware County; (2) each township located, in whole or in part, within Delaware County, with the exception of Washington Township; and (3) each municipal corporation located entirely within Delaware County. The Cities of Columbus, Dublin, and Westerville have entered into a countywide agreement with Franklin County and do not participate in this Agreement, except on a mutual aid basis. For purposes of this Agreement, a “township” shall be defined as limited to the unincorporated portion of the township, regardless of whether the borders thereof with any municipal corporation are conformed or non-conformed. The Mutual Aid Agreement for Emergency Management, entered into by and between the Delaware County and Franklin County Boards of Commissioners on or about October 3, 2006, is hereby incorporated into this Agreement. Pursuant to the Mutual Aid Agreement, the participating political subdivisions entering into this Agreement agree to provide mutual aid for emergency management, to the extent practicable, in those areas served by Franklin County Emergency Management and Homeland Security, including, but not limited to, those areas within Delaware County.
2. As provided in section 5502.26 of the Revised Code, the chief executive officer of each participating political subdivision entering into this Agreement shall appoint a representative to the Countywide Advisory Group. The Countywide Advisory Group shall appoint a Countywide Executive Committee and shall advise the Countywide Executive Committee on matters pertaining to countywide emergency management. The DCOHSEM shall implement emergency management in Delaware County through the Countywide Executive Committee in accordance with section 5502.26 of the Revised Code and this Agreement.
3. The Executive Committee shall consist of twelve (12) members and shall be appointed as follows:
 - (1) One County Commissioner as selected by the Board of County Commissioners;
 - (3) One representative from the City of Delaware, one representative from the City of Powell, and one representative from the City of Sunbury;
 - (1) One member representing all of the participating villages. The Village representative shall be selected by a majority vote of the mayors or village councils;
 - (3) Three township trustees appointed by a majority vote of the Delaware County Township Trustees Association from among the townships participating in this Agreement;
 - (1) One Sheriff’s Office Representative;
 - (1) One representative from the Delaware Public Health District as determined by the Health Commissioner;
 - (1) One Fire Chief selected by a majority vote of the Fire Chief’s Association of Delaware County; and
 - (1) One Non-Voting Emergency Management Personnel.
4. The Executive Committee shall appoint a director/coordinator of Emergency Management. The director/coordinator shall be responsible for coordinating, organizing, administering, and operating the DCOHSEM, pursuant to the duties imposed upon him/her by sections 5502.21 through 5502.51 of the Revised Code, the DCOHSEM’s program, and subject to the direction and control of the Executive Committee. The director/coordinator shall serve at the pleasure of the Executive Committee. The director/coordinator shall pursue a professional development training program in accordance with rules adopted under section 5502.25 of the Revised Code. The director/coordinator of the DCOHSEM may

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

be an official or employee of any political subdivision entering into the countywide agreement, except that the director/coordinator shall not be the chief executive of any such political subdivision. The director/coordinator of the DCOHSEM shall serve only in the function as appointed by the Executive Committee.

5. The DCOHSEM shall establish a program for emergency management that: (1) is in accordance with sections 5502.21 to 5502.51 of the Revised Code, rules adopted under those sections, local ordinances pertaining to emergency management, the "Robert T. Stafford Disaster Relief and Emergency Assistance Act," 88 Stat. 143, 42 U.S.C. 5121, et. seq., as amended, and all applicable rules and regulations adopted under that act; (2) includes, without limitation, development of an all-hazards emergency operations plan that has been coordinated with all agencies, boards, and divisions having emergency management functions within the county; (3) includes the preparation and conduct of an annual exercise of the county's all-hazards emergency operations plan; and (4) is applicable to all political subdivisions entering into the countywide agreement.
6. The DCOHSEM shall be considered a separate county board and shall receive services in the same manner as other county agencies. All employees of DCOHSEM shall be employees of Delaware County under the appointing authority of the Executive Committee.
7. Each participating political subdivision's share of the expenses of coordinating the emergency management activities within Delaware County shall be paid into a separate distinct fund known as the "Delaware County EMA Fund" by the participating political subdivisions and shall be apportioned on the following basis:
 - a. The Board of County Commissioners shall contribute office space, utilities and one-third (1/3) of the local annual emergency management funding as approved by the Executive Committee for the annual budget.
 - b. The remaining two-thirds (2/3) of the local annual emergency management funding shall be provided by the cities, townships and villages based on each jurisdiction's percentage of the overall population for Delaware County (except for the cities of Columbus, Dublin and Westerville). The municipalities of Columbus, Dublin and Westerville shall not be included in the calculations under Section Seven, as they are covered by Franklin County Emergency Management and Homeland Security. The residential population figures shall be the Delaware County Regional Planning Committee's annual census estimates for the preceding year. Population percentages will only be taken to the second decimal place, rounding up the final digit.
8. Each participating political subdivision agrees to pay into the Delaware County EMA Fund, promptly upon invoice, the amount assessed against it for its allocated share of the budget needed for the operation of countywide emergency management, and for any services performed pursuant to this Agreement.
9. The director/coordinator of the DCOHSEM shall prepare a budget with the approval of the Executive Committee. The budget shall be appropriated by the Delaware County Board of Commissioners. Funds shall be expended only with the approval of the Executive Committee under such resolutions, rules and regulations as it may provide regarding the budget. The resolutions, rules, and regulations shall be shared with the Delaware County Auditor's Office.
10. The Executive Committee shall provide for coordinated input by Emergency Management Program stakeholders in the preparation, implementation, evaluation, and revision of the Emergency Management Program. The Executive Committee shall adopt rules and approve forms to ensure that the process is properly documented and conducted on an ongoing basis.
11. Grants maintained by the DCOHSEM shall be applied, accepted, and expended only under the authority of the eligible applicant outlined in the applicable grant guidance/document.
12. The participating political subdivisions entering into this Agreement agree to render mutual aid to the DCOHSEM and to each other participating political subdivision through the interchange of personnel, equipment, and supplies as necessary to alleviate the effects of emergency situations.
13. This Agreement shall take effect when a majority of the municipal corporations and political subdivisions of Delaware County have executed this Agreement. Any participating political subdivision entering into this Agreement may terminate its participation in this Agreement upon not less than ninety (90) days written notice to the Executive Committee. Any outstanding financial obligations must be forwarded to DCOHSEM. Non-payment could result in collection of the funds through the Delaware County Auditor by reducing that subdivisions annual settlement. This Agreement shall continue in full force and effect unless a majority of the municipal corporations and political subdivisions within Delaware County cease to be participants in this Agreement. Upon the occurrence of any of the above-mentioned conditions, and after the payment of the obligations set forth in Section 7, this Agreement shall terminate. Each participating political subdivision acknowledges that withdrawing from this countywide agreement will obligate it to form and fund its own emergency management agency in compliance with section 5502.271 of the Ohio Revised Code.

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022

IN WITNESS WHEREOF, the participating political subdivisions enter into this Agreement for a continuing term.

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

7
RESOLUTION NO. 22-810

IN THE MATTER OF APPROVING CHANGE ORDER NO. 02 TO THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND BEHELER EXCAVATING, INC. FOR THE LOWER ALUM CREEK RELIEF PUMP STATION AND FORCEMAIN PROJECT, FORCEMAIN CONTRACT TC-142-FM:

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

WHEREAS, on January 21, 2021, the Delaware County Board of Commissioners entered into an agreement with Beheler Excavating, Inc., for the Lower Alum Creek Relief Pump Station and Forcemain Project, Forcemain Contract TC-142-FM; and

WHEREAS, Change Order No. 01 was approved on June 23, 2022; and

WHEREAS, Change Order No. 02 authorizes a reduction in the overall contract price in the amount of \$108,980.95, due to unperformed work; and

WHEREAS, the Sanitary Engineer recommends approval of Change Order No. 02;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves Change Order No. 02 to the Agreement between the Delaware County Board of Commissioners and Beheler Excavating, Inc., for the Lower Alum Creek Relief Pump Station and Forcemain Project, Forcemain Contract TC-142-FM.

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

8
TIFFANY MAAG,
DIRECTOR OF ENVIRONMENTAL SERVICES AND REGIONAL SEWER DISTRICT
MONTHLY SANITARY APPROVAL UPDATE TO BOARD OF COMMISSIONERS

9
RESOLUTION NO. 22-811

IN THE MATTER OF RELEASING THE MAINTENANCE BOND FOR EVANS FARM SECTION 2 PHASE D PART 1 & 2:

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

WHEREAS, the Engineer requests approval to release the maintenance bond to the owners, Evans Farm Land Development Company, LLC, for Evans Farms Section 2 Phase D Part 1 & 2;

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

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

10
RESOLUTION NO. 22-812

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR NELSON FARMS SECTION 3 PHASE A:

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

WHEREAS, Pulte Homes of Ohio has submitted the plat of subdivision for Nelson Farms Section 3 Phase A, including related development plans, and requests approval thereof by the Board of Commissioners of Delaware County;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the plat of subdivision at Nelson Farms Section 3 Phase A:

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

Situated in the State of Ohio, County of Delaware, Township of Liberty, and in Farm Lot 9, Quarter Township 1, Township 3, Range 19, United States Military Lands, containing 16.239 acres of land, more or less, said 16.239 acres being part of that tract of land conveyed as Parcel 1 to Pulte Homes of Ohio, LLC by deed of record in Official Record 1957, Page 254, Recorder’s Office, Delaware County, Ohio. Cost: \$54.00 (\$3.00 per buildable lot)

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

11

RESOLUTION NO. 22-813

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE OF REAL PROPERTY BETWEEN ALICE VANCE AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE PROPERTY KNOWN AS #418-320-01-044-000, 2226 CHESHIRE ROAD, DELAWARE, OHIO 43015:

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

WHEREAS, the County Engineer recommends approval of the contract for sale and purchase with Alice Vance for the property known as #418-320-01-044-000, 2226 Cheshire Road, Delaware, Ohio 43015;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the contract for sale and purchase with Alice Vance for the property known as #418-320-01-044-000, 2226 Cheshire Road, Delaware, Ohio 43015, as follows:

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITH BUILDING(S) & LAND**

PARCEL(S): #418-320-01-044-000
2226 Cheshire Road
Delaware, Ohio 43015

This Agreement is by and between the Delaware County Board of Commissioners (“Purchaser”) and Alice Vance (“Seller”). Purchaser and Seller are referred to collectively in this Agreement as “Parties.”

In consideration of the mutual promises, agreements and covenants herein contained, the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of Three Hundred, Twenty-Five Thousand, Six hundred Dollars (\$325,600.00), which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures, excluding items identified in Exhibit B, (\$320,000.00); (b) any and all damages to any residual lands of Seller; (c) Seller’s covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; (e) relocation moving costs (\$5,600.00). Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all the appurtenances and hereditaments thereunto belonging and with all buildings and improvements now located thereon, and all fixtures of every nature now attached to or used with said land, buildings and improvements including, but not limited to, all heating, hot water, air conditioning, plumbing, attached electrical fixtures with bulbs or tubes, window shades, venetian blinds, curtain and traverse rods, awnings, storm and screen sashes and doors, and shrubbery and trees, excluding items identified in Exhibit B. If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

- 3. Limited Access Parcels - Waiver of Abutters' Rights**
If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.
- 4. Supplemental Instruments**
Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.
- 5. Warranty of Title**
Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.
- 6. Elimination of Others' Interests**
Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.
- 7. No Change in Character of Property**
Seller shall not change the existing character of the land or alter, remove, destroy or change any structure or fixture located on the property described in Exhibit A, excluding items identified in Exhibit B. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property, including structures and fixtures, suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.
- 8. Offer to Sell**
If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.
- 9. Designation of Escrow Agent**
Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.
- 10. Closing Date**
The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 45 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.
- 11. Physical Possession of Structures Occupied by Seller**
Seller shall surrender physical possession of all structures occupied by Seller, or the portions thereof occupied by Seller, to Purchaser not later than 30 days after Purchaser tenders the purchase price to Seller. Seller agrees that Purchaser may withhold in escrow from the purchase price the sum of \$0.00 to ensure that the subject structures will be vacated on or before the 30 days mentioned above and that the subject structures will be surrendered to Purchaser in the same condition as it was in at the time Seller executed this Agreement. If Seller properly vacates and surrenders possession of the subject structures as aforesaid, then said \$0.00 shall be paid immediately to Seller. If the subject structures are not vacated as aforesaid, a rental agreement for the subject structures shall be entered into by the Parties, in which Seller shall be the lessee and Purchaser shall be the lessor, and upon execution of such rental agreement the said \$0.00 shall be paid immediately to Seller; in the event

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022

Seller fails or refuses for any reason to enter into such rental agreement, then Purchaser may retain all or part of the said \$0.00 withheld in escrow to compensate Purchaser for the reasonable amount of rent that Seller owes for holding over possession of the subject structures, plus an amount to pay for any taxes, assessments and for any costs of restoration necessary to put the structures in the same condition as they were at the time Seller executed this Agreement.

12. **Physical Possession of Vacant Land and Structures**

Seller shall surrender physical possession of vacant land and vacant structures to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

13. **Control of Property Occupied by Seller’s Tenant(s)**

Control of property occupied by Seller’s tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller’s tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

14. **Binding Agreement**

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

15. **Multiple Originals**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

16. **Entire Agreement**

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

17. **Amendments and Modifications**

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

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

12
RESOLUTION NO. 22-814

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR
PRELIMINARY ENGINEERING FOR DEL-71-3.55 BIG WALNUT INTERCHANGE:**

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

DELAWARE COUNTY
AGREEMENT NO. 37998

This Agreement No. 37998 entered into this 26th day of September, 2022, by and between Delaware County, acting by and through the Delaware Board of County Commissioners, and Burgess & Niple, Inc., hereinafter referred to as the Consultant, with an office located at 5085 Reed Road Columbus, Ohio 43220.

WITNESSETH:

That the County and the Consultant, for the mutual considerations herein contained and specified, have agreed and do hereby agree as follows:

CLAUSE I - WORK DESCRIPTION

The Consultant agrees to perform all professional services as may be authorized by the County for preparation of the Project Development Process for the new interchange design and widening of Big Walnut Road at I-71 in Delaware County, Ohio, identified as DEL-71-3.55 Phase 1 (PID 110964).

CLAUSE II - INVOICE & PROJECT SCHEDULE

The County and the Consultant agree to the attached Invoice & Project Schedule including the overall Agreement length, and Scheduled Submittal dates and Review Times set out in the Project Schedule.

The Consultant agrees to submit the completed Invoice & Project Schedule transmittal letter together with the updated Invoice & Project Schedule for all billing purposes for all Parts of this Agreement every thirty (30) days as follows:

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

- (a) Signed original transmittal letter and invoice (IPS) and three (3) copies of same.
- (b) Two (2) copies of the updated Project Schedule.

CLAUSE III - PRIME COMPENSATION

The County agrees to compensate the Consultant for the performance of the authorized portions of the Work specified in this Agreement.

Part 1: Planning thru Preliminary Engineering.

Actual costs plus a fixed fee of Eighteen Thousand Three Hundred Thirty- Three Dollars (\$18,333.00). However, the maximum prime compensation shall not exceed Two Hundred Eight Thousand Two Hundred Seventy-Nine. Dollars (\$208,279.00).

The total maximum prime compensation of all Parts which may be authorized for the subject Agreement is Two Hundred Eight Thousand Two Hundred Seventy-Nine (\$208,279).

Prime Compensations, only as agreed and by proper modification of this Agreement and authorized in writing by the County, may be added to or subtracted from under the authority of the Department of Transportation's "Specifications for Consulting Services, 2016 Edition".

CLAUSE IV - INCORPORATION BY REFERENCE

The following documents, or specified portions thereof, are hereby incorporated into and made a part of this Agreement as though expressly rewritten herein:

- (a) The Department of Transportation's "Specifications for Consulting Services, 2016 Edition".
- (b) The attached Final Scope of Services Minutes dated 04/28/2022.
- (c) The Invoice & Project Schedule.
- (d) The most current Office of Budget and Management Travel Policy as published on the State of Ohio Website (<https://budget.ohio.gov/TravelRule>).

CLAUSE V - GENERAL PROVISIONS

Any person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

Additionally, it is expressly understood by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either party until such time as the expenditure of funds is certified by the Director of Budget and Management, pursuant to Section 126.07 of the Ohio Revised Code.

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

13

RESOLUTION NO. 22-815

IN THE MATTER OF APPROVING A PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR DEL-71-3.55 BIG WALNUT INTERCHANGE:

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

DEL-71-3.55 PHS 1
COUNTY-ROUTE-SECTION

110964
PID NUMBER

37970
AGREEMENT NUMBER

LPA FEDERAL ODOT-LET PROJECT AGREEMENT

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

1. PURPOSE

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the Ohio Revised Code (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 **The DEL-71-3.55 Phase 1** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities of ODOT and the LPA for administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:
 - A. Section 5501.03(D) of the ORC
 - B. Sections 153.65 through 153.71 of the ORC
 - C. Section 4733-35-05 of the Ohio Administrative Code
 - D. ODOT's Manual for Administration of Contracts for Professional Services
 - E. ODOT's Specifications for Consulting Services – 2016 Edition
 - F. ODOT's Consultant Prequalification Requirements and Procedures
 - G. State of Ohio Department of Transportation Construction and Material Specifications Manual
 - H. State of Ohio Department of Transportation Construction Administration Manual of Procedures
 - I. 2 CFR Part 200
 - J. Federal Funding Accountability and Transparency Act (FFATA)
 - K. Title 23 Code of Federal Regulations, Part 172 (23 CFR 172) "Administration of Engineering and Design Related Design Related Service Contracts",
 - L. United States Code, Title 23, Section 112 "Letting of Contracts"
 - M. 23 CFR 630.106 Authorization to Proceed
 - N. Title 40 United States Code, Subtitle I, Chapter 11, Sections 1101-1104, commonly called the "Brooks Act." – "Selection of Architects and Engineers"
 - O. 48 CFR Part 31 – Federal Acquisition Regulations
 - P. 23 CFR 636.116 - Organizational Conflict of Interest Requirements for Design-Build Projects
 - Q. 23 CFR 645 - Utilities
 - R. 49 CFR PART 26 - Participation by Disadvantaged Business Enterprises "DBE" in Department of Transportation Financial Assistance Programs

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

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be \$66,471,317.76 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$32,457,054.20 in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with development of the project.

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

4. PROJECT DEVELOPMENT

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

4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, right of way acquisition, utility relocation and other processes as set out in the Department's Design Reference Resource Center, available on ODOT's website (www.dot.state.oh.us/drrc/Pages/default.aspx). Responsibilities for development of the project shall be as follows and further described herein:

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022

LPA ODOT Let Project Responsibility Assignments

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed
Preliminary Engineering	All	X		ODOT to: Provide coordination as needed Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.
	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 4.8.
	Cost Estimates	X		LPA/Consultant shall prepare in Estimator format.
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 4.7 for Environmental Responsibilities.
	Permits	X		LPA will obtain permits needed to construct the project.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
Final Engineering & R/W	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
	R/W Acquisition & Relocation	X		Refer to Section 6 for detailed requirements.
	Utility Relocation	X		Refer to Section 6.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 6.8 for additional details.
	Stage 3 Plans	X		ODOT to review all plans and documents and provide comments.
	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
Construction	Mitigation	X		LPA will coordinate any required mitigation efforts.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

				respond promptly to requests for information or other construction issues.
	Public/Stakeholder Involvement	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this agreement.

4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.

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

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

4.6 Environmental Responsibilities

- A. In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events activities, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act.
- B. If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire a consultant in accordance with Section 5.
- C. ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- D. The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the project.
- E. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act.
- F. The LPA shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- G. The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

4.7 Use of ODOT Consultant Agreements

- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
 - 1. If the LPA chooses to utilize the CEAO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
 - 2. If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

3. Value Engineering. If Value Engineering is required, the Department may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

5. CONSULTANT SELECTION AND ADMINISTRATION

5.1 General Requirements

- A. The LPA must select a consultant/ consultant team that is prequalified by ODOT for all services to be performed by the consultant and subconsultants.
- B. The LPA must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition" as a contract document in all of its consultant contracts.
- C. The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- E. The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. If Federal Funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, Sections 153.65 through 153.71 of the Ohio Revised Code and Section 5.2 below in the selection of consultants, and administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in Sections 5526.01 and 153.65(C) of the Ohio Revised Code, include the practice of engineering (including inspection of construction), the practice of surveying, the practice of architecture including landscape architecture, evaluation of environmental impacts, right-of-way acquisition services and administration of construction contract claims.

5.2 Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds

A. Policies in Selection of Consultants

1. Restrictions Concerning LPA Preferences

The LPA **shall not** offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the LPA. The LPA must make selection decisions on the basis of proposed teams without advance "steering" of teams.

2. Communications Restrictions

Please note the following policy concerning communication between Consultants and the LPA during the announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

- a. Communications which are strictly prohibited:
 - (1) Communication with the LPA: Any marketing or similar discussions of the specific project if the consultant has submitted or plans to submit a letter of interest, or is included as a subconsultant on a submittal by another firm.
- b. Allowable communications include:
 - (1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract. Technical or scope of services questions specific to projects

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

posted with a programmatic group.

- c. When completed selections must be publicly announced.

3. Advertisement

For selection procedures that require public notification, Requests for Letters of Interest “RFLol” must be advertised on the Consultant Services page of ODOT’s website.

4. Disclosure of Selection Information

All selection information including consultant letters of interest shall be available for public disclosure upon completion of the selection.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

- a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- b. In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Refer to Section 5.2.C.1.n. below for additional guidance concerning the use of local presence as a nominal evaluation factor where appropriate.

B. Consultant Selection Processes

The LPA may use any one of five consultant selection processes permitted by 23 CFR 172 and ORC 153.65 – 153.71, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1) and ORC 153.65 – 153.71. These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act or Selection of Architects and Engineers.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 153.71(A). Agreements with total fees less than \$50,000 are eligible for this selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3) and ORC 153.71.

1. Programmatic Selection Process

The Programmatic Selection Process is a one step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content, and a standard Selection Rating Form. The “Programmatic” selection process should be used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

- a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

- b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.
- c. Specialized services for which the LPA has limited experience and performance records for past projects.
- d. Generally any project for which a single submittal does not provide sufficient information to make a well informed selection decision.

The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then “shortlisting” to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

Discussions, if required by the RFLoI, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFLoI.

The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The LPA may directly select a consultants for a project determined by the Director of Transportation to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT’s Consultant Contract Administration.

4. Small Purchase Selection Process

The LPA may directly select consultants without solicitation for projects with an estimated total fee of less than \$50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

- a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented.

In instances where two or fewer consultants are considered qualified, the LPA may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- b. The full amount of any contract modification that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the \$50,000 simplified acquisition threshold.
- c. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT’s Consultant Contract Administration.

5. Special Expertise Selection Process

The LPA may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT’s Consultant Contract Administration.

C. Selection Procedures – Programmatic Selection Process

1. Letter of Interest Content

Requests for Letters of Interest (RFLoI) shall include the following:

- a. Project name from Ellis (County-Route-Section);
- b. A description of the project including the location.
- c. A description of the selection process to be used, including the number of steps (direct selection

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The standard selection rating form included herein should be used for most projects.

- d. Any restrictions on communicating with government officials during the selection process.
- e. Any restrictions concerning suspended or debarred firms.
- f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
- g. The approximate construction cost if available.
- h. Any special provisions or contract requirements associated with the services.
- i. The following notification:

The [LPA] in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in consideration for an award.

- j. The DBE Goal requirements and related selection procedures.
- k. Major work elements involved.
- l. A detailed scope of services for the agreement.
- m. The ODOT prequalification(s) required to provide the services;
- n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.

In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 of ODOT's Consultant Contract Administration for detailed explanations of contract types and payment methods.
- p. Estimated date of authorization.
- q. Time period in which the work must be completed.
- r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
- s. Required content of the letter of interest (RFLoI) including;
 - (1) The firm's general qualifications.
 - (2) Proposed key staff including key subconsultant staff and project approach.
 - (3) A listing of subconsultants including project responsibility.
 - (4) Whether resumes of key staff members must be submitted.
 - (5) Other information needed to make an informed selection decision.

2. Evaluation Process

- a. Initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
 - (1) Compliance with general LoI requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm's performance.
 - (2) Inclusion on the list of firms suspended or debarred by the Federal Government.
 - (3) For projects noted as having DBE Goals, ODOT will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE (Encouraging Diversity, Growth and Equity) participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.
- b. Compliance with prequalification requirements.
- c. Reduce the number of firms to 3-6 for each project through a process of elimination, based on

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Provide written documentation concerning the reasons for eliminating a firm from consideration.

In instances where two or fewer consultants respond to the RFLoI, or two or fewer consultants are considered qualified to be shortlisted, the LPA may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- d. For each project, rate each shortlisted firm using the selection rating form. Supplement the numerical ratings with written comments that explain the differential scoring. The highest rated firm shall be selected.

3. Selection Rating Procedures

- a. ODOT’s standard consultant selection rating form is shown below. The LPA may use a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 153.65 – 153.71.
- b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.
- c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm’s specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the LPA and other agencies should be considered. The selection committee may contact other ODOT Districts and outside agencies if necessary. Any subfactors identified in the RFLoI should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager’s role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors

4. ODOT’s Consultant Selection Rating Form and Selection Rating Notes

Category	Total Value	Scoring Criteria	Score
Management & Team			
Project Manager	10	See Note a. below	
Strength/Experience of Assigned Staff including Subconsultants	25	See Note b. below	
Firm's Current Workload/ Availability of Personnel	10	See Note c. below	
Consultant's Past Performance	30	See Note d. below	
Project Approach	25	See Note e. below	
Total	100		

The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

- a. Project Manager

The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

receiving commensurately lower scores. The rankings and scores should be based on each project manager's experience on similar projects and past performance for the LPA. The selection committee may contact ODOT and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager's role in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. Strength/Experience of Assigned Staff including Subconsultants

The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any subfactors identified in the project notification should be weighed heavily in the differential scoring.

As above, ODOT and other agencies may be contacted.

c. Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)

In instances when consultant's current workload may impact their ability to complete the work as proposed, the firm's current workload and availability of qualified personnel shall be considered.

d. Consultant's Past Performance

The consultants' past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider ODOT CES performance ratings if available, and consult other ODOT Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested. The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. Project Approach

Evaluation of the firm's project approach shall consider:

- (1) The firm's technical approach and understanding of the project.
- (2) The firm's qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
- (3) Any innovative ideas.

When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

- (4) The firm's project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal rules prohibit consideration of overhead rates, wage rates or any other cost data submitted voluntarily by the consultant.

D. Negotiation of Consultant Agreements

Agreements shall be negotiated in accordance with ODOT's Manual for Administration of Contracts for Professional Services, Volume 1 Consultant Contract Administration, Section 3.9.

E. Agreements

ODOT will prepare the LPA/Consultant Agreement between the Consultant and LPA. The agreement will be transmitted to the LPA by the ODOT District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the District Office.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

F. Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information, and provide copies of all documents to the District for their files.

1. A copy of the Request for Proposal and the date posted on ODOT's website;
2. A listing of firms that submitted Letters of Interest;
3. Letters of Interest from all firms that submitted;
4. Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
5. A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
6. Selected consultant's Price Proposal;
7. Negotiation records; and
8. A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. Refer to Sections 4.2 and 4.4 concerning Federal authorization.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 The LPA will coordinate with utilities, complete RE-75 forms, establish encumbrances towards each utility if needed, prepare an invoice to the LPA for the local share, and pay the State share as needed. In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. In the event that a utility is delaying the relocation of its facilities, the LPA shall take any action necessary to order and cause the removal and relocation of such utility. No reimbursable costs shall be incurred prior to the receipt of Federal Authorization for Right of Way from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 ODOT shall be responsible for any necessary railroad coordination and agreements in accordance with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

all activities relating to Railroad-Highway projects.

- 6.9 Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that, if any property acquired for this project is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this project that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

- 7.1 ODOT will prepare the State's estimate and manage the advertising, sale and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

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

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.

- 10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. For a PROJECT upon which a DBE goal is assigned, the LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Pursuant to 49 CFR 26.13(b), the LPA agrees not to discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The LPA agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The LPA

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ODOT deems appropriate.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest”) agrees as follows:

- (1) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter “U.S. DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.
In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as “ADA/504”).
- (2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (3) **Solicitations for Professional Services:** In all solicitations for professional services made by the LPA for work to be performed under a contract or subcontract, each potential consultant will be notified by the LPA of the LPA’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (4) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the LPA’s noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA’s consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA’s control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

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

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA: Rob Riley, PE PS 50 Channing St. Delaware, Oh, 43015 riley@co.delaware.oh.us	If to ODOT: Steve Fellenger, PE 400 E William St. Delaware, Oh, 43015 steven.fellenger@dot.oh.gov
--	--

15. GENERAL PROVISIONS

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

15.1 **Financial Reporting and Audit Requirements:** The LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200.

The LPA must submit performance reports at the interval required by the Federal awarding agency and pass-through entity. Annual reports must be due 90 calendar days after the reporting period; quarterly and semi-annual reports must be due 30 calendar days after the reporting period. Alternatively, ODOT may require annual reports before the anniversary dates of multiple year Federal awards.¹

LPAs that expend \$750,000 or more in the LPA's fiscal year in Federal awards must have a Single Audit, or program-specific audit, conducted for that year in accordance with 2 CFR §200.501.

Federal and State funds expended to or on behalf of a subrecipient must be recorded by the subrecipient (LPA). The LPA is responsible for tracking these payments throughout the life of the project in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as Schedule) is provided for 20.205 funding. The LPA must identify each ODOT PID and/or Project and the corresponding expenditures on its Schedule separately. LPAs are responsible for ensuring funds related to this PROJECT are reported when the activity related to the Federal award occurs.² The LPA is required to report its own expenditures, in addition to any expenditures made by ODOT for the project in the applicable Schedule when the expenditure was made. When a Schedule is not accurately reported for the project, the LPA will be required to make corrections to past, current, and possibly future Schedules and Audit Reports to ensure Federal funds are accurately reported in the correct fiscal year matching the project expenditure. The LPA is required to report all Federal funds received, or expended on its behalf, regardless to differences in the LPA expenditure date and ODOT reimbursement date.

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

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

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

15.3 **Ohio Ethics Laws:** LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.

15.4 **State Property Drug-Free Workplace Compliance:** In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.5 **Governing Law:** This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.6 **Assignment:** Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.7 **Merger and Modification:** This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.8 **Severability:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

15.9 **Signatures:** Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

15.9 *Facsimile Signatures*: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PE ENVIRONMENTAL	\$400,000.00	20	4BG7	\$1,600,000.00	80	4R47				\$2,000,000.00
PE DETAILED DESIGN	\$214,263.55	20	4BG7	\$857,054.21	80	4R47				\$1,071,317.76
CONSTRUCTION CONTRACT										
TOTALS	\$614,263.55			\$2,457,054.21						\$3,071,317.76

Attachment 2

DEL-71-3.55 PHS 1
COUNTY-ROUTE-SECTION

110964
PID NUMBER

37970
AGREEMENT NUMBER

DIRECT PAYMENT OF CONSULTANT

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA’s consultant shall be paid directly to the consultant in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the consultant. In addition, the invoice must state the consultant’s name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We (ININSERT NAME OF LPA) request that all payments for the Federal/State share of the consultant costs of this agreement performed by (CONSULTANT’S NAME) be paid directly to (CONSULTANT’S NAME) .

Consultant Name:
Oaks Vendor ID:
Mailing Address:

LPA signature

LPA Name:
Oaks Vendor ID:
Mailing Address:

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

Approved, ODOT signature

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

14

RESOLUTION NO. 22-816

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

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

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

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

Permit #	Applicant	Location	Type of Work
UT22-0148	Columbia Gas of Ohio	Wilson Road	Install natural gas
UT22-0150	Columbia Gas of Ohio	Olentangy View	Install natural gas
UT22-0151	AEP Ohio	Bale Kenyon	Replace & install poles
UT22-0152	Columbia Gas of Ohio	Price Ponds	Install natural gas
UT22-0153	AEP of Ohio	Rutherford Road	Remove overhead equipment
UT22-0154	AEP of Ohio	Norton Road	Replace overhead equipment

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

Other business:

RESOLUTION NO. 22-817

IN THE MATTER OF APPROVING AN ADVANCE OF FUNDS AND A SUPPLEMENTAL APPROPRIATION:

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

Advance of Funds

From:	To:	
10040421-8500	45411450-8400	1,100,000.00
Road & Bridge Projects/Advance Out	Ravines at Meadow Ridge TIF/Advance In	

Supplemental Appropriation

45411450-5402	Ravines at Meadow Ridge TIF/Permanent Right of Way & Easements	1,100,000.00
---------------	--	--------------

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

15

RESOLUTION NO. 22-818

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION AND A TRANSFER OF FUNDS FOR DOG AND KENNEL:

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

Supplemental Appropriation

10011102-5801	Commissioners General/Misc. Cash Transfers	65,000.00
---------------	--	-----------

Transfer of Funds

From	To	
10011102-5801	20411305-4601	65,000.00
Commissioners General/Misc. Cash Transfers	Dog and Kennel/Interfund Revenues	

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

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022

16

RESOLUTION NO. 22-819

IN THE MATTER OF APPROVING THE 2023 GROUP HEALTH, DENTAL, AND VISION INSURANCE RENEWAL WITH THE COUNTY EMPLOYEE BENEFITS CONSORTIUM OF OHIO:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has, pursuant to sections 9.833 and 305.171 of the Revised Code, provided certain group insurance coverage for county officers and employees; and

WHEREAS, the Board wishes to establish the group health, dental, and vision insurance coverage for eligible Delaware County employees for 2023; and

WHEREAS, competitive bidding under section 307.86 of the Revised Code would increase, rather than decrease, the cost of procuring the group insurance coverage; and

WHEREAS, in order to provide the most comprehensive and cost-effective group health insurance, prescription drug coverage, dental insurance and vision insurance within the available budget to the employees of Delaware County, the County Administrator and Deputy County Administrator recommend continuing the Medical PPO Plan 1D and the prescription drug Plan 1D renewal rates for 2023 from CEBCO and recommend the addition of group dental insurance Delta Dental PPO Plan 1 and group vision insurance VSP Plan 8 for 2023 through CEBCO;

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

Section 1. The Board hereby approves the following group insurance coverage from CEBCO for calendar year 2023:

- a. Delaware County will provide the Medical PPO Plan 1D and Anthem Rx Plan 1D designs for 2023 for eligible employees.
- b. Delaware County will provide the Delta Dental PPO Plan 1 design through CEBCO for 2023 for eligible employees.
- c. Delaware County will provide the VSP Vision Plan 8 design through CEBCO for 2023 for eligible employees.

Rates for the Employer/Employee Contributions for the group insurance coverage approved herein shall be determined in a separate resolution.

Section 2. The Board of Commissioners hereby authorizes the Deputy County Administrator to execute the documents necessary to fulfill the 2023 renewal requirements with CEBCO in accordance with the approvals stated herein.

(Documents available in the Administrative Services Department until no longer of administrative value.)

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

17

ADMINISTRATOR REPORTS

Tracie Davies, County Administrator
-No reports.

Dawn Huston, Deputy Administrator
-No reports.

18

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Benton
-Last week was a busy week with the Delaware County Fair (Jr. Fair auctions, Jug Day racing and the Veteran's dinner).
-Will be attending the OECC groundbreaking event this afternoon.
-Sports news.

Commissioner Merrell
-Attended the Veteran's Dinner along with the other events that Commissioner Benton mentioned.

Commissioner Lewis
-Thank you to Dawn Huston on all of her hard work with the health insurance.

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022

-This was the 10th anniversary of the Operation Forever Grateful dinner for the Veterans.

19

RESOLUTION NO. 22-820

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; PROMOTION; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:

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

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

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

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

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

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

Section 1. The Board hereby adjourns into executive session for consideration of employment; promotion; compensation of a public employee or public official and confidential information related to economic development.

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

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

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

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

RESOLUTION NO. 22-821

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

**COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD SEPTEMBER 26, 2022**

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners