

COMMISSIONERS JOURNAL NO. 77 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 29, 2022

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

Present:
Barb Lewis, President
Gary Merrell, Commissioner

Absent:
Jeff Benton, Vice President

1
RESOLUTION NO. 22-1155

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD DECEMBER 22, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on December 22, 2022; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

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

2
PUBLIC COMMENT

3
RESOLUTION NO. 22-1156

IN THE MATTER OF APPROVING THEN AND NOW CERTIFICATES AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1129, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1128:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then and Now Certificates, payment of warrants in batch numbers CMAPR1129, and memo transfers in batch numbers MTAPR1128:

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

4
RESOLUTION NO. 22-1157

IN THE MATTER OF APPROVING THE FOLLOWING LIST OF CARRY-OVER PURCHASE ORDERS FOR 2023:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following list of carry-over purchase orders:

FURTHER BE IT RESOLVED, that all current purchase order request shall be closed before the carry-over purchase orders are opened.

None.

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

5
RESOLUTION NO. 22-1158

IN THE MATTER OF RELEASING THE CONSTRUCTION BONDS FOR RIVER BLUFF PHASE 2A AND RIVER BLUFF PHASE 2B:

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

WHEREAS, the Engineer requests approval to return the construction bond being held as surety to the owners, Epcor River Bluff, LLC, for River Bluff Phase 2A and River Bluff Phase 2B;

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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 sureties in accordance with the Engineer’s recommendations stated herein.

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

6

RESOLUTION NO. 22-1159

IN THE MATTER OF ESTABLISHING MAINTENANCE BONDS AND RETURNING CONSTRUCTION SURETIES FOR BERLIN MANOR SECTION 2, PIATT PRESERVE SECTION 1A AND PIATT PRESERVE SECTION 1B:

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

WHEREAS, the roadway construction has been completed for the projects known as Berlin Manor Section 2, Piatt Preserve Section 1A, and Piatt Preserve Section 1B (the “Projects”); and

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

WHEREAS, the Engineer recommends that, in accordance with the Owner’s Agreement, the maintenance bond be set at \$58,000.00 for Berlin Manor Section 2, \$78,000.00 for Piatt Preserve Section 1A, and \$113,500.00 for Piatt Preserve Section 1B and that the Projects be placed on the required one year maintenance period; and

WHEREAS, Berlin Manor One, LLC and D.R. Horton-Indiana, LLC (the “Principals”) have provided maintenance bonds in the required amounts to cover the one year maintenance period; and

WHEREAS, the Engineer also recommends approval to return the construction performance bonds to the Principals;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves establishing maintenance bonds for each of the Projects listed herein and returning the construction bonds for each of the Projects listed herein to the respective Principals as outlined herein.

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

7

RESOLUTION NO. 22-1160

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

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

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

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

Permit #	Applicant	Location	Type of Work
UT22-0213	THAY POWER & COMMUNICATIONS	CHESHIRE AND AFRICA RD	AERIAL CABLE
UT22-0214	SPECTRUM	CHESHIRE RD	CABLE

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

8

RESOLUTION NO. 22-1161

IN THE MATTER OF APPROVING AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH OHM ADVISORS FOR GENERAL ENGINEERING SERVICES:

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

WHEREAS, pursuant to Resolution 19-984, adopted on October 7, 2019, the Board entered into an agreement with OHM Advisors; and

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WHEREAS, the County Engineer recommends modifying the agreement with OHM Advisors;

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

AMENDMENT NO. 3
PROFESSIONAL SERVICES AGREEMENT
General Engineering Services

This Amendment No. 3 to the Prime Agreement dated October 7, 2019, is made and entered into this 29th day of December, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and OHM Advisors, 580 North Fourth Street, Suite 610, Columbus, Ohio 43215 (“Consultant”) (hereinafter collectively referred to as the “Parties”).

ARTICLE 1 — AMENDMENT

Pursuant to Section 3.1 of the Prime Agreement, the Parties mutually agree to amend the Prime Agreement as follows:

- A. Section 4.3 of the Prime Agreement shall be modified to increase the maximum total compensation to Six Hundred Ninety-Four Thousand Nine Hundred Eighty-Seven Dollars and Twenty Eight Cents (\$694,987.28).
 - a. Original Contract (\$300,000) plus Mod #1 (\$50,000) plus Mod #2 (\$307,988.28) plus Mod #3 (\$36,999).
- B. Section 7.1 of the Prime Agreement shall be modified to extend the date for the completion of Services to December 31, 2023.

ARTICLE 2 — REMAINING PROVISIONS

All other terms and conditions of the Prime Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3.

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

9
RESOLUTION NO. 22-1162

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HNTB OHIO, INC., FOR SOUTH OLD STATE AND HOLLENBACK INTERSECTION IMPROVEMENTS:

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

WHEREAS, section 305.15 of the Revised Code provides that a board of commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from consulting firms interested in providing services for the project known as South Old State and Hollenback Intersection Improvements, DEL-CR 10-05.60; and

WHEREAS, the County Engineer has selected the consulting firm of HNTB Ohio, Inc., through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services, and requests that the Board enter into Contract with said firm;

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

PROFESSIONAL SERVICES AGREEMENT
DEL-CR 10-05.60
South Old State and Hollenback Intersection Improvements

This Agreement is made and entered into this 29th day of December, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and HNTB Ohio, Inc., 88 E Broad Street, Suite 1600, Columbus Ohio 43215 (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

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The Consultant shall provide professional design services for the preparation of construction and right of way plans in connection with the project known as DEL-CR 05.60 (PID 1901), South Old State Road and Hollenback Road Intersection Improvements, including preparation of final construction and right of way plans for a single-lane modern roundabout or a traffic signal with turn lanes at the intersection of South Old State Road and Hollenback Road, including widening South Old State Road to a 3-lane section beginning at Avonlea Drive, and widening Hollenback Road beginning about ¼ mile west of South Old State Road (the professional design services being referred to herein as the “Services”).

- 1.1 Preliminary engineering through Phase PE stage 1 plans will be included in contract part 1. Environmental and Final engineering through Phase FE Final Tracings will be included in contract part 2.
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 The Services are further defined in and shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Scope of Services and Price Proposal November 18, 2022.

2 SUPERVISION OF SERVICES

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

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Scope of Services and Price Proposal noted in Section 1.3.
- 4.2 For all Services described in the Scope of Services and Price Proposal, the total fee shall be \$246,037.00, which amount shall not be exceeded without subsequent modification.
- 4.3 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

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

Project Manager:

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

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2400

Email: Rmraz@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Naiel Hussein, P.E.

Address of Firm: 88 E Broad Street, Suite 1600

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City, State, Zip: Columbus, OH 43215
 Telephone: (614) 493-5527
 Email: nhusseini@hntb.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer and on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal. If the County Engineer objects to any invoice submitted by Consultant, the County Engineer shall so advise Consultant in writing giving reasons therefor within seven (7) days of receipt of such invoice. If any invoice submitted by Consultant is disputed by the County Engineer, only that portion so disputed may be withheld from payment.
- 6.2 Invoices shall be submitted to the County Engineer by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

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

- 7.1 The Consultant shall commence Services upon a written authorization to proceed from the County Engineer and shall complete the Services in a timely manner.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the County Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County. Should the County suspend this Agreement in excess of one-hundred and twenty (120) calendar days, Consultant may terminate the Agreement. Any such suspension does not preclude Consultant's ability to request an equitable adjustment in time for completion of Consultant's Services and the rates and amounts of Consultant's compensation.
- 8.2 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

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

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

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- 10.4 If Consultant for any reason, does not complete the Services contemplated in this Agreement, then Consultant shall not be responsible for the accuracy, completeness, or workability of the deliverables prepared by Consultant if used, changed or completed by the County or by another party.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

- 12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.
- 12.2 To the fullest extent permitted by law, neither party shall be liable to the other party for any special, punitive, consequential or indirect damages resulting in any way from the performance of the Services or otherwise arising from this Agreement.

13 INSURANCE

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

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

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- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the Services to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color,

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religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

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

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

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

10

RESOLUTION NO. 22-1163

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH PENNONI ASSOCIATES, INC., FOR DEL-TR180-1.25 FULTON CREEK ROAD OVER FULTON CREEK:

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

WHEREAS, section 305.15 of the Revised Code provides that a board of commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from consulting firms interested in providing services for the project known as DEL-TR180-1.25 Fulton Creek Road over Fulton Creek; and

WHEREAS, the County Engineer has selected the consulting firm of Pennoni Associates, Inc., through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services, and requests that the Board enter into Contract with said firm;

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

**PROFESSIONAL SERVICES AGREEMENT
DEL-TR180-1.25 Fulton Creek Road over Fulton Creek**

This Agreement is made and entered into this 29th day of December, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Pennoni Associates, Inc., 400 W. Wilson Bridge Road, Suite 105, Worthington, Ohio 43085, (“Consultant”), each individually referred to herein as a “Party” and collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONSULTANT

1.1 The Consultant shall provide professional design services to the County for the Project known as DEL- TR180-1.25 Fulton Creek Road over Fulton Creek (the “Services”), more specifically described in and rendered by the Consultant in accordance with, the following documents to be retained and on file with each Party, and by this reference fully incorporated into this Agreement:

- 1.1 .1 County’s Scope of Services dated: October 07, 2022
- 1.1.2 Consultant’s Price Proposal dated: November 22, 2022

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

2 SUPERVISION OF SERVICES

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

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

3 AGREEMENT AND MODIFICATIONS

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

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4 FEES AND REIMBURSABLE EXPENSES

4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal and other documents enumerated in Section 1 and as follows:

- a. For all Services described in the Scope of Services and Fee Proposal as “Authorized Services,” the lump sum fee shall not exceed \$223,556.
- b. For all Services described in the Scope of Services and Fee Proposal as “If Authorized Services,” payment shall be made based on a lump sum amount authorized by the Project Manager for each authorized task as specified in the Fee Proposal, the total of which shall not exceed \$29,267.

4.2 The Project Manager may authorize partial lump sum payments for itemized tasks in “If Authorized Services” with written consent of the Consultant when the Project Manager determines the necessity therefor. Total compensation under this Agreement shall not exceed \$252,823 without a subsequent written modification signed by both Parties.

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

5 NOTICES

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

County Engineer:

Name: Delaware County Engineer
Andrew T Fortman, P.E. — Design Engineer

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: afortiran@Eco.delaware.oh.us

Consultant

Name of Principal in Charge: Pennoni Associates, Inc.
Joan Zbin, P.E. — Associate Vice President — Contract Manager

Address of Firm: 400 W. Wilson Bridge Road, Suite 105

City, State, Zip: Worthington, Ohio 43085

Telephone: 614-486-0401

Email: JZbin@Pennoni.com

6 PAYMENT

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

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

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

7 NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

7.1 The Consultant shall not commence Services until a written Notice to Proceed

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(“Authorization”) from the Project Manager is received.

7.2 The Consultant shall not proceed with any “If Authorized” tasks without written Authorization.

7.3 The Consultant shall complete all work and file all required contract deliverables with the County no later than the date specified in the Scope of Services. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

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

9 CHANGE IN SCOPE OF SERVICES

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

10 OWNERSHIP OF DESIGN DELIVERABLES

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

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

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

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

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

12 INDEMNIFICATION

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

13 INSURANCE

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

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

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

13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its

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

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

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

14 MISCELLANEOUS TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other Business
RESOLUTION NO. 22-1164**

IN THE MATTER OF A TRANSFER OF APPROPRIATIONS, THE REPAYMENT OF ADVANCE OF FUNDS AND THE CONTINUATION OF ADVANCES FROM GENERAL FUND DOLLARS TO VARIOUS FUNDS:

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

WHEREAS, in previous years, advances from the general fund were made to various funds; and

WHEREAS, because these funds are not able to repay the general fund at this time, it is necessary to carry over the advances into the year 2023; and

WHEREAS, these dollars are expected to be repaid to the general fund in the year 2023;

NOW, THEREFORE, BE IT RESOLVED that the following advances be carried over to the year 2023:

29440456	2022 HSIP 36 & Carters Corner	1,744,331.75
44911445	Evans Farm TIF	17,573,611.18

Transfer of Appropriation

From:	To:	
24113102-5301	24113102-5450	\$14,913.08
County Recorder Equip/Professional Services County Recorder Equip/Capital Equipment		

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

- Rob Riley, Chief Deputy Engineer**
-A Thank-You To The Board For Their Support Of The Engineer’s Office This Past Year
-Winter Weather Event; Employees Worked Hard Under Difficult Conditions:
 -No Chance To Pre-Treat Roads When Event Went From Rain To Ice
 -Salt Does Not Work After Temperature Goes Below Negative 4 Degrees Fahrenheit

ADMINISTRATOR REPORTS

- Tracie Davies**
-Happy And Health New Year
-Thank-You To All The Employees Who Still Have To Come Into Work When The Weather Is Bad

Commissioners’ Committees Reports

- Commissioner Merrell**
- Engineer’s Office And Commissioners’ Office Have A Good Relationship For The Benefit Of County
-Happy New Year
-Thank-You To Employees
-Looking Forward To New Year
-Working With A Budget That Reflects A Responsibility To Taxapayers

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Commissioner Lewis

-Happy New Year

-Winter Weather Event Terrible Timing; Hard On Essential Employees And Their Families

-It Was An Honor To Serve As President Of The Board This Past Year

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners