

**COMMISSIONERS JOURNAL NO. 78 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 13, 2023**

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

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

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RESOLUTION NO. 23-108

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 9, 2023:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on February 9, 2023; 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

Commissioner Reports

Commissioner Benton introduced Glenn Marzluf (Del-Co CEO) and Larry Lester (City of Hilliard). Mr. Marzluf and Mr. Lester presented Engineer Chris Bauserman with the Clyde "Butch" Seidle Public Works Servant Leader Award from the Ohio chapter of the American Public Works Association.

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PUBLIC COMMENT

-None.

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RESOLUTION NO. 23-109

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0210 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0210:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0210, memo transfers in batch numbers MTAPR0210 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Youth Intensive Services (P2301152)	Medical & Health Care Related Services	70161605-5342	\$33,750.00
Buckeye Ranch (P2301041)	Medical & Health Care Related Services	70161605-5342	\$12,500.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2301620	G&G FITNESS EQUIPMENT INC	SPIN BIKES	10011303 - 5260	\$14,990.00
R2301620	G&G FITNESS EQUIPMENT INC	FITNESS EQUIP	10011303 - 5201	\$6,025.95
R2301969	CSA SERVICE SOLUTIONS LLC	LABOR CONTRACT BILLING	10011303 - 5225	\$20,425.00
R2302141	LAKESIDE EQUIPMENT CORP	FINE SCREEN BAGS	66211900 - 5201	\$7,000.00
R2302155	MOBILE HEALTH RESOURCES	PATIENT EXPER SURVEYS	10011303 - 5301	\$13,144.00
R2302155	MOBILE HEALTH RESOURCES	ANNUAL MONITORING 2023	10011303 - 5301	\$780.00
R2302156	OFFICE CITY EXPRESS INC	FURNITURE - PROSECUTOR'S OFFICE	40111402 - 5260	\$29,770.50

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

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RESOLUTION NO. 23-110

IN THE MATTER OF A NEW LIQUOR LICENSE REQUEST FROM BENTOS LUNCH, LLC, AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

WHEREAS, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a request for a new D3 liquor license from Bentos Lunch LLC, located at 1282 E Powell Road, Lewis Center, Ohio 43035; and

WHEREAS, the Delaware County Board of Commissioners has found no reason to file an objection;

NOW, THEREFORE, BE IT RESOLVED that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

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RESOLUTION NO. 23-111

IN THE MATTER OF A TRANSFER OF A LIQUOR LICENSE FROM TULSAS MARKET & GAS, LLC TO SUNRISE MART, LLC AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

WHEREAS, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a request for a transfer of a C1, C2, D6 liquor license from Tulasas Market & Gas, LLC to Sunrise Mart, LLC both located at 1491 US Highway 23 N, Delaware, OH 43015; and

WHEREAS, the Delaware County Board of Commissioners has found no reason to file an objection;

NOW, THEREFORE, BE IT RESOLVED that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

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RESOLUTION NO. 23-112

IN THE MATTER OF ACKNOWLEDGING RECEIPT OF ANNEXATION PETITION FROM AGENT FOR THE PETITIONER, MICHAEL R. SHADE, ATTORNEY-AT-LAW, REQUESTING ANNEXATION OF 13.953 ACRES OF LAND IN DELAWARE TOWNSHIP TO THE CITY OF DELAWARE:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to acknowledge that on February 7, 2023, the Clerk to the Board of Commissioners received a petition requesting annexation of 13.953 acres of land from Delaware Township to the City of Delaware.

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

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RESOLUTION NO. 23-113

IN THE MATTER OF APPROVING THE ALPHA GROUP OF DELAWARE’S PAYMENT OF CAPITAL REPAIRS TO 1000 ALPHA DRIVE FROM THE CAPITAL ACCOUNT ESTABLISHED IN THE LEASE AGREEMENT FOR SAID PROPERTY:

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

WHEREAS, on July 1, 2010, the Delaware County Board of Commissioners (the “Board”) adopted Resolution No. 10-861, approving a lease agreement between the Board and the Alpha Group of Delaware, Inc. (“Alpha”) for the property known as 1000 Alpha Drive, Delaware, Ohio (the “Leased Premises”); and

WHEREAS, the lease agreement provides for the establishment of a capital account for the payment of capital improvements or repairs to the Leased Premises that cost \$5,000.00 or more, subject to approval by the Board; and

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WHEREAS, Alpha obtained quotes for capital improvements or repairs to the Leased Premises in an amount more than \$5,000.00, for the following:

- Replacement of monitored fire panel in the amount of \$13,000;
- Reseal/stripe parking lot in the amount of \$10,505; and

WHEREAS, Alpha is seeking the Board’s approval to proceed with the capital improvements or repairs by utilizing the capital account;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves Alpha’s payment of capital improvements or repairs to the Leased Premises from the capital account established in the lease agreement as follows:

2023 Capital Improvements or Repairs	
Replacement of monitored fire panel	\$13,000.00
Reseal/stripe parking lot	\$10,505.00
TOTAL	\$23,505.00

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

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RESOLUTION NO. 23-114

IN THE MATTER OF RESCINDING RESOLUTION NO. 22-728 AND DECLARING NECESSITY FOR THE PURCHASE OR LEASE OF A MOTOR VEHICLE FOR THE USE OF THE COUNTY SHERIFF OR HIS EMPLOYEES:

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

WHEREAS, pursuant to section 307.41 of the Revised Code, the Board of Commissioners of Delaware County, Ohio (the “Board”) may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of motor vehicles to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, on August 29, 2022, the Board adopted Resolution No. 22-728, declaring the necessity to purchase a 2023 Ford Transit 350 Cargo Van for the use of the County Sheriff or his employees; and

WHEREAS, the vehicle approved for purchase in Resolution No. 22-728 is no longer available, but the Sheriff renews his request to expend county monies for the purchase of a new transport van, which is available for purchase from Statewide Ford-Lincoln-Mercury, Inc.;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. The Board hereby rescinds Resolution No. 22-728.

Section 2. The Board hereby declares that it is necessary to expend county monies for the purchase of a new motor vehicle to be used by the County Sheriff or his employees for the following reasons: (1) an existing vehicle has reached the end of its useful service life; (2) a new vehicle is necessary to provide safe and reliable transportation for the County Sheriff and his employees; and (3) a new vehicle will ensure optimal service, safety, and security for the citizens of Delaware County.

Section 3. The Board hereby authorizes the purchase of one (1) 2023 Ford Transit 350 Cargo Van at a cost of \$49,875.00, from Statewide Ford-Lincoln-Mercury, Inc.

Section 4. The Board hereby authorizes the Sheriff’s Office to initiate the necessary purchase order to Statewide Ford-Lincoln-Mercury, Inc., and hereby approves the purchase order from fund 42311453-5450.

Section 5. The Clerk of the Board is hereby directed to certify a copy of this Resolution to the County Sheriff and the County Auditor.

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

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RESOLUTION NO. 23-115

RESOLUTION OF NECESSITY FOR PURCHASE OR LEASE OF MOTOR VEHICLES FOR THE USE OF THE DELAWARE COUNTY SHERIFF’S OFFICE:

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

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WHEREAS, pursuant to section 307.41 of the Revised Code, the Board of Commissioners of Delaware County, Ohio (the “Board”) may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of motor vehicles to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, the Board has before it a request from the Director of Facilities to expend county monies for the lease of new motor vehicles; and

WHEREAS, the motor vehicles are available for lease through the Enterprise Government Vehicle Leasing Program (the “Program”);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. The Board hereby declares that it is necessary to expend county monies for the lease of motor vehicles to be used by the Delaware County Sheriff’s Office for the following reasons: (1) existing motor vehicles have reached the end of their useful service lives; and (2) new motor vehicles are necessary to provide safe and reliable transportation for County employees.

Section 2. The Board hereby approves the lease of the following motor vehicles from the Program and declares that the lease of said motor vehicles shall be in accordance with the Program’s Lease Agreement, pursuant to the contract and terms and conditions set forth in Resolution No. 18-824 approving the Fleet Management Master Equity Lease Agreement, Amendment To Master Equity Lease Agreement, and Credit Application With Enterprise FM Trust:

All General Fund and Other Fund Vehicles to be Leased:

Vehicle Type	2023 Vehicle Make and Model	Estimated Annual Lease Payment	Number to be Leased	Estimated Total Annual Lease Payment Per Type
Cargo Van	Ram ProMaster 2500	\$11,029.00	1	\$11,029.00
		TOTAL	1	\$11,029.00

Section 3. The Clerk of the Board is hereby directed to certify a copy of this Resolution to the Director of Facilities and the County Auditor.

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

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RESOLUTION NO. 23-116

IN THE MATTER OF ACCEPTING A GRANT AWARD FROM THE OHIO ATTORNEY GENERAL – VICTIMS OF CRIME ACT FOR THE VICTIM SERVICES PROGRAM AND THE COURT APPOINTED SPECIAL ADVOCATE PROGRAM FOR DELAWARE COUNTY JUVENILE AND PROBATE COURT:

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

Grant # VOCA – Victim Services
 Source: Ohio Attorney General – Victims of Crime Act
 Grant Period: 10/01/2022 – 09/30/2023

Grant (VOCA) Amount: \$33,093.37
 Grant (SVAA) Amount: \$21,838.98
 Local Cash Match: \$8295.92
 Local In-Kind Match: \$0.00
 Total Grant Amount: \$63,228.27

The Victim Services program was established for the Delaware County Juvenile Court in 1987 to provide information and support for victims of juvenile crime and to ensure that case related decisions include greater consideration for the victim. The program is committed to providing services and support to victims by informing them of their rights, providing information regarding the Court’s legal process, attending court hearings with or on behalf of the victim, arranging support for personal and emotional needs, and attempting to help recover any financial losses. Delaware County continues to experience one of the fastest growth rates in the nation, with a 78.6% population increase from 109,992 in 2000 to 196,463 in 2016. Over 27% of that population is under age 18. From October 1, 2015 to September 30, 2016, there were nearly 200 reported victims of juvenile crime in Delaware County referred to the Victim Services Program. The Delaware County Juvenile Court Victim Services Program is the only agency that serves victims of juvenile crime in Delaware County. Since 2015, the court has been successful in closing more than 100 open restitution cases

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and returning nearly \$10,000 annually to victims of juvenile crime.

Grant # VOCA – Court Appointed Special Advocate
 Source: Ohio Attorney General – Victims of Crime Act
 Grant Period: 10/01/2022 – 09/30/2023

Grant (VOCA) Amount: \$110,638.66
 Grant (SVAA) Amount: \$1,918.00
 Local Cash Match: \$0.00
 Local In-Kind Match: \$27,661.60
 Total Grant Amount: \$140,218.26

CASA provides a voice for the child victim. Victims, especially children, are often ignored, and can fall through the cracks during their involvement in the child welfare and judicial system. CASA advocates are the eyes and ears of the court, and fight for the best interests of the child victims. Research shows that the children served by a CASA are placed in safe and permanent home sooner, are less likely to spend time in long-term foster care, receive a higher number of court-ordered services, and are more likely to be adopted.

The one common factor most likely to predict the success of at-risk children in the presence of at least one consistent, concerned adult in their life. In Delaware and Union counties, this consistent, concerned adult can be a trained and knowledgeable CASA volunteer advocate. Almost all CASA cases have one consistent advocate throughout the life of the case. Volunteers are asked to advocate for the child through the entire time the child is in the child welfare system, from a preliminary shelter care hearing to permanency, whether that is reunification, legal custody to a relative, or adoption. The average length of a child welfare case is 18 months, and Delaware County volunteers average a service time of 36 months. This consistency is only possible through continued training and support by CASA staff. In this grant cycle the expected outcome measurements include: 20 new volunteers serving Delaware and Union Counties, 100% of CASA volunteers participate in monthly in-service trainings, 5 CASA Volunteers will be serving the aging out population as a Fostering Futures CASA/Mentor, 90% of children will be safe while under court jurisdiction, 80% of children will live in a permanent, safe family home when their case is closed.

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

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RESOLUTION NO. 23-117

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION FOR JUVENILE/PROBATE COURT:

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

Supplemental Appropriations

27526315-5319	State Victim Asst Grant/Reimbursements-Refunds	2,124.27
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Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

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RESOLUTION NO. 23-118

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, DELAWARE COUNTY EMERGENCY MEDICAL SERVICES, AND SAFETECH SOLUTIONS, LLP FOR EMS LEADERSHIP DEVELOPMENT TRAINING SERVICES:

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

WHEREAS, the Delaware County Director of Emergency Medical Services and staff recommend approval of a services agreement by and between the Delaware County Board of Commissioners, Delaware County Emergency Medical Services, and Safetech Solutions, LLP for EMS Leadership Development Training Services;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the services agreement by and between the Delaware County Board of Commissioners, Delaware County Emergency Medical Services, and Safetech Solutions, LLP for EMS Leadership Development Training Services:

**SERVICES AGREEMENT
EMS Leadership Development**

This Agreement is made and entered into on February 13, 2023, by and between the Delaware County Board of Commissioners, for and on behalf of Delaware County EMS, 10 Court Street, Delaware, Ohio 43015

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(“County”), and SafeTech Solutions, LLP, 29251 Potassium Street NW, Isanti, Minnesota 55040 (“Consultant”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant shall provide to the County’s Emergency Medical Services Department leadership development training services (the “Services”).
- 1.2 The Services are more fully defined in, and the Consultant shall perform the Services in accordance with, the Consultant’s proposal dated January 13, 2023 (the “Proposal”) attached hereto and, by this reference, incorporated herein.
- 1.3 The Consultant shall use sound and professional principles and practices in accordance with normally accepted industry standards in rendering Services hereunder, and the Consultant further agrees that performance shall reflect the best professional knowledge, skill and judgment. The Consultant shall furnish competent personnel for fulfillment of its obligations. If the County deems Consultant’s personnel unsatisfactory to perform the Services due to a failure by such personnel to comply with the terms and conditions imposed on Consultant as set forth herein, then the Consultant shall immediately remove such personnel.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of EMS 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 any 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 COMPENSATION

- 4.1 Compensation for the Services shall be as set forth in the Proposal. For all Services, the total compensation under this Agreement shall not exceed \$32,000.00 without subsequent written modification of this Agreement.
- 4.2 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

5 NOTICES

- 5.1 Official notices, as contemplated in and issued under this Agreement, shall be served on the Parties at the addresses listed in the Preamble to this Agreement via certified mail, with service being effective the date of receipt. Routine correspondence may be conducted in writing, including email, between the Consultant and the Project Manager.

6 PAYMENT

- 6.1 Compensation shall be in accordance with the Proposal and shall be initiated by an invoice submitted by the Consultant and approved by the Project Manager.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on 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 COMMENCEMENT; TERM

- 7.1 The Consultant shall commence Services as the Project Manager directs and shall complete the Services in accordance with a schedule approved by the Project Manager and the Consultant.
- 7.2 This Agreement shall terminate upon completion of the Services, unless earlier terminated in accordance with this Agreement.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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- 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 PROPRIETARY MATERIAL

- 9.1 Any and all reports, documentation, files, media and other materials created or produced by Consultant in connection with the Services rendered hereunder shall be deemed "Work Product."
- 9.2 The County shall not, under this Agreement, acquire any ownership rights in and/or to any software, documentation, tools, techniques, methodologies or other material which has not or is not created as part of the Services to be rendered hereunder which is proprietary to Consultant ("Consultant Proprietary Material"). However, if Consultant incorporates any Consultant Proprietary Material into any Work Product, or any of the Work Product requires Consultant Proprietary Material in order to operate or otherwise be useable by the County, then the Consultant hereby grants the County a nonexclusive, royalty free, fully paid, perpetual, irrevocable license to use the Consultant Proprietary Material as part of the Work Product.
- 9.3 The County shall not, under this Agreement, acquire any ownership rights in and/or to any software, documentation, tools, techniques, methodologies or other material which is proprietary to any third party ("Third Party Proprietary Material"). The County shall be responsible for obtaining any necessary licenses for Third Party Proprietary Material. The Consultant may not incorporate any Third Party Proprietary Material into the Work Product without the County's prior written consent.

10 INDEMNIFICATION

- 10.1 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.

11 INSURANCE

- 11.1 Liability Coverage: Consultant shall maintain liability insurance in amounts sufficient to protect the Consultant and the County, as determined by the County Administrator, and the County shall be additional insured on all liability policies.
- 11.2 Proof of Insurance: Consultant shall, upon request from the Project Manager, furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

12 MISCELLANEOUS TERMS AND CONDITIONS

- 12.1 Assignment: Neither party may assign or transfer this Agreement without the prior written consent of the non-assigning party.
- 12.2 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. **The 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.**
- 12.3 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.
- 12.4 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.

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- 12.5 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.

- 12.6 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.

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

- 12.8 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.

- 12.9 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.

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

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RESOLUTION NO. 23-119

IN THE MATTER OF AUTHORIZING THE PURCHASE OF A PEDIATRIC HIGH FIDELITY SIMULATION PACKAGE FOR THE USE OF THE DELAWARE COUNTY EMERGENCY MEDICAL SERVICES DEPARTMENT:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") has before it a request from the Delaware County Emergency Medical Services Department to expend county monies for the purchase of one new Pediatric High Fidelity Simulation package; and

WHEREAS, this package comes equipped with a high fidelity, highly interactive pediatric mannequin, a wireless streaming package, a bedside virtual monitor accessory, and a two (2) year service plan; and

WHEREAS, the Board and Delaware County EMS have found that investments into the training and equipment of Delaware County EMS provide significant benefit to the citizens and visitors of Delaware County and the partners of Delaware County EMS;

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

Section 1. The Board hereby authorizes the purchase of one new Gaumard Scientific Pediatric HAL S3005 Medium Skin tone five year old simulator package for the use of the Delaware County Emergency Medical Services Department at the total cost of \$32,513.00.

Section 2. The Board hereby approves Gaumard Quotation Number 93098, dated January 12, 2023, and the Gaumard Sales Terms and Conditions attached hereto.

Section 3. The Board hereby approves the purchase order to Gaumard Scientific for the purchase authorized herein from 42311453/5450 /R2302000.

Section 4. This Resolution shall take immediate effect upon passage.

GAUMARD SALES TERMS AND CONDITIONS

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These Gaumard Scientific Company, Inc. ("Gaumard") Sales Terms and Conditions ("Terms") apply to the sale or use of Gaumard equipment ("Equipment"), Software ("Software" as defined in paragraph 13), and supplies ("Supplies"), collectively referred to as "Product" or "Products" between Gaumard and the entity named on the applicable Gaumard Purchase Order ("Customer") (collectively, "Party" or "Parties"). The Parties, intending to be legally bound, agree as follows.

- 1. Agreement.** Customer agrees to purchase from Gaumard the Products set forth in quotes and purchase orders accepted by both Customer and Gaumard from time-to-time. These Terms, along with any Exhibits, any applicable Gaumard Purchase Order documents, Gaumard Warranty documents, Gaumard Cares Service Plan documents, and any other purchasing or service documents executed by the Parties constitute the complete and entire agreement between Gaumard and Customer (collectively referred to herein as the "Agreement"). This Agreement will supersede all other quotations, agreements, understandings, warranties, and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. No provision of this Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced. This agreement can be terminated by Gaumard without cause by giving thirty (30) days prior written notice to Customer.
- 2. Prices.** Prices, fees, and charges for Products and services (including maintenance, installation, and training as described in the applicable Gaumard Purchase Order documents, Gaumard Warranty documents, Gaumard Cares Service Plan documents) ("Service" or "Services") are payable in United States (U.S.) Dollars only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate before shipment of Products. Unless such certificate is furnished, Customer agrees to pay at its sole expense all applicable taxes, assessments, fees, penalties, import duties, and merchandise processing fees that may be levied or assessed upon Customer or Gaumard with respect to this Agreement, the Products, or any interest thereon.
- 3. Payment.** Customer shall pay all invoiced amounts within twenty (20) days from the invoice date, unless otherwise agreed upon by Gaumard in writing. Gaumard may require some or all of the purchase price to be paid in advance by Customer, unless Gaumard grants credit approval as determined in Gaumard's sole discretion on a case by case basis (taking into account factors such as credit rating, payment history, and size of order). A late charge will be due on any unpaid balance at a rate of 1.0% per month or the maximum rate otherwise permitted by law, whichever is lower. Gaumard may charge interest at the maximum rate permitted by law on all amounts not paid by the invoice due date. Gaumard retains a purchase money security interest in all Products sold to Customer to secure payment of the total purchase price thereof. Customer hereby grants Gaumard the right to file a copy of this Agreement with any appropriate authorities to evidence this security interest. Customer agrees to execute and deliver such other documents as Gaumard may request in connection therewith. Gaumard shall not be obligated to deliver any Product or perform any Service during any period when Customer payment is past due. Customer will be responsible for all costs (including reasonable attorneys' fees) incurred by Gaumard to collect overdue payments and/or to take possession or otherwise dispose of Products for which payment is overdue.
- 4. Product Shipment and Risk of Loss.** Unless otherwise agreed to in writing by Gaumard, all Products will be shipped F.O.B. Destination. F.O.B. Destination means title to the Products passes to the Customer at the point of delivery. Gaumard is responsible for shipping charges and for the cost of insurance paid to cover any losses from Gaumard's shipment point to Customer's receipt. Gaumard shall use reasonable efforts to meet the specified delivery dates. If Gaumard fails to make delivery within a reasonable time for reasons other than Customer's fault or circumstances beyond Gaumard's reasonable control, then Customer's only remedy is the right to terminate the applicable Purchase Order, whereupon Gaumard will refund any prepayments received from Customer relating to such Purchase Order.
- 5. Installation and Acceptance.** Product orders are subject to 1) written acceptance by Gaumard, 2) receipt of specified deposits, as applicable and 3) continuing credit approval. If applicable, Gaumard will install Equipment at an agreed upon location ("Installation"). Installation shall be complete upon Gaumard's demonstration that the Equipment meets Gaumard's then-current operating specifications ("Installation"). Installation is subject to Customer cooperating in preparing and maintaining the site in compliance with Gaumard specifications, including but not limited to, applicable electrical and other connection regulations and all environmental conditions. If Customer fails to accept shipment of Products other than for breach of warranty, Customer shall immediately pay the full purchase price as if shipment and Installation had occurred. If Customer fails to accept Products and if Gaumard decides to store ordered Products, Customer shall be responsible for Gaumard's reasonable insurance, handling, and storage charges. If Gaumard elects not to store ordered Products, Gaumard may arrange shipment and storage in a bonded warehouse at Customer's sole risk and expense.
- 6. Delay of Performance.** The Parties' obligations under this Agreement are subject to force majeure, including but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages,

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delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, acts of God or other contingencies or acts not within the sole control of the Parties. Gaumard reserves the right during any shortage period to (a) make Supplies available to Customer (as it sees fit) without any liability to Customer, and (b) to make substitutions and modifications in the specification of any Products, provided such substitutions or modifications do not materially affect the performance of Products.

7. WARRANTIES. Gaumard warrants that if a Product proves to be defective in material or workmanship within one year from the date on which title to the Product passes to the Customer ("Warranty Period"), Gaumard will, at Gaumard's option, repair or replace the Gaumard product. This limited warranty covers all defects in material and workmanship in the Gaumard product, except: (a) Damage resulting from accident, misuse, abuse, neglect, or unintended use of the Gaumard product; (b) Damage resulting from failure to properly maintain the Gaumard product in accordance with Gaumard product instructions, including failure to properly clean the Gaumard product; and (c) Damage resulting from a repair or attempted repair of the Gaumard product by anyone other than Gaumard or a Gaumard representative. Replacement parts are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer. Services are warranted to be supplied in a workman-like manner. Gaumard does not warrant that use of the Products will be uninterrupted or error-free, or that the Products will operate with non-Gaumard authorized third-party products. **THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, SUBSEQUENT PURCHASERS OR USERS OF THE PRODUCTS OR CUSTOMERS OF THE CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY OTHER ENTITY. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.**

These warranties do not apply to any Products that are supplied on a pre-release or "as-is" basis.

8. Warranty Claims and Remedies. In the event of any warranty claim, Gaumard will replace with new or repaired items any Product part or component that is in breach of the above limited warranties. Alternatively, Gaumard may elect to repay or credit to Customer an amount equal to the purchase price of the defective Product. Items replaced shall become Gaumard property. All claims shall be initiated by contacting Gaumard within the applicable Warranty Period and within thirty (30) days after discovery of the non-conformity. If Customer has failed to notify Gaumard within the Warranty Period, then Customer shall be barred from instituting any action thereafter. Customer shall not return the Product to Gaumard without prior authorization from Gaumard. If the necessary repairs to the Product are covered by this limited warranty, then Customer will pay only the incidental expenses associated with the repair, including any shipping, handling, and related costs for sending the product to Gaumard and for sending the product back to the first purchaser. However, if the repairs are not covered by this limited warranty, then Customer will be liable for all repair costs in addition to costs of shipping and handling. Upon request, Gaumard must be given access to and an opportunity to inspect the Product and any working areas and storage areas. These remedies shall comprise Gaumard's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity.

9. LIMIT OF LIABILITY. GAUMARD SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE, OR USE OF PRODUCT OR SERVICES ORDERED OR FURNISHED, OR FROM ANY CAUSE RELATING THERETO. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM GAUMARD'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, IN NO EVENT SHALL GAUMARD BE LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE RELATED TO A PRODUCT OR SERVICE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE, OR CHARGE RECEIVED BY GAUMARD FOR SUCH PRODUCT OR SERVICE.

10. Governmental Authorizations. Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange pennit, or the like ("Licenses"), even if applied for by Gaumard on Customer's behalf. If any authorization is delayed, denied, revoked, restricted, or not renewed, Gaumard shall not be liable, and Customer is not relieved of its obligations. Customer represents and agrees that it will handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not trans-ship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Gaumard except as U.S. laws and regulations expressly permit.

11. Indemnity. Gaumard agrees to indemnify, defend and hold Customer, its officers, directors,

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employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorneys' fees and expenses) by reason of any claims or actions by third parties against Customer for (1) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to Gaumard's gross negligence or willful misconduct or (2) infringement or misappropriation by Gaumard of any intellectual property rights under this Agreement.

12. Software License. For purposes of these Terms, the term "Software" includes all Gaumard computer software, firmware, and associated documentation, whether in printed or machine-readable form, supplied by reason of this Agreement or for use in connection with Equipment or Services. To the extent the Product includes Software, Customer's use of the Software is governed by the Gaumard End User License Agreement attached as Exhibit A to these Terms.

13. Confidential Information. Customer shall maintain the confidentiality of any information provided or disclosed by Gaumard relating to the Software (as defined above), business or customers of Gaumard, as well as this Agreement and its terms (including the pricing and other financial terms under which the Customer will be obtaining the Services hereunder). Customer shall use reasonable care to protect the confidentiality of Gaumard's information disclosed, but no less than the degree of care it would use to protect its own confidential information, and shall only disclose Gaumard's confidential information to its employees and agents having a need to know this information and who are subject to confidentiality agreements having terms at least as restrictive as those contained herein. The obligations of confidentiality set forth herein shall not apply to any of the following: (1) information in the public domain at the time of disclosure; (2) information required to be disclosed pursuant to applicable law or a court order; provided, however, Customer shall provide Gaumard notice of any request or order to disclose confidential information and an opportunity for Gaumard to dispute the request or order.

14. Intended Uses. Products are only intended for the uses described in the applicable user's manual or instructions for use. Customer assumes all risks associated with non-listed uses of Products.

15. Compliance with Laws. Gaumard and Customer agree to comply with all federal and state laws that govern the enforceability and performance of this Agreement.

16. HIPAA Compliance. As of the Effective date, the Parties are not planning to transfer any personal patient information between them. However, the Parties understand and agree that this Agreement may become subject to the Health Insurance Portability and Accountability Act of 1996 as amended ("HIPAA"), the privacy and security regulations promulgated thereunder, including 45 C.F.R. 160, 162 and 164, as amended (the "HIPAA Regulations"), and Title XIII of Division A and Title IV of Division B (the "Health Information Technology for Economic and Clinical Health Act" ("HITECH")), part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA"). The Parties agree to strictly comply with HIPAA and to execute any documents that may be required by HIPAA, HITECH, and any other applicable federal or state privacy laws and regulations. The Parties agree that if they directly or indirectly gain access to Protected Health Information ("PHI") held by the other Party during any interaction, the receiving Party will keep the PHI confidential under the terms of this Agreement.

17. State Reporting and Disclosure Laws. Unless otherwise noted in this Agreement, the cost of any Product training provided by Gaumard shall be included in the purchase price of the Product where applicable. Customer acknowledges and agrees that state reporting laws may require Gaumard to disclose certain aspects of this arrangement.

18. Fraud and Abuse. Gaumard hereby certifies that it is not currently a listed vendor in the: (a) Federal General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Presidential Executive Orders 12549 and 12689 "Debarment and Suspension;" and (b) in the Office of the Inspector General of the Department of Health and Human Services' "List of Excluded Individuals/Entities." Any discounted pricing terms offered under this Agreement may be a "discount or other reduction in price" under the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). Customer shall take all actions necessary to comply with the Anti-Kickback Statute discount safe harbor regulations, 42 C.F.R. § 1001.952(h), including but not limited to, (1) maintaining accurate records reflecting the pricing terms of items and Services purchased under this Agreement, (2) fully and accurately report any discount received under this Agreement if applicable, and (3) make available information provided to Customer by Gaumard concerning cost reports and other filings with the government, including but not limited to, the Secretary of the U.S. Department of Health and Human Services or other state agencies.

19. Bankruptcy. Except as may be prohibited by applicable bankruptcy laws, a Party to this Agreement may elect to terminate this Agreement (including any Purchase Orders) if any of the following situations arise: (1) the other Party becomes insolvent or is unable to pay debts as they become due; (2) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (3) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.

20. Waiver and Severability. If either Party fails to perform obligations under this Agreement, such nonperformance shall not affect the other Party's right to enforce performance at any time. Waiver of any remedy or material breach of any subject matter contained in this Agreement shall not be viewed as a waiver unless agreed to by the Parties in writing. Each provision of this Agreement is separate and independent of one another, and the unenforceability of any provision will not affect the enforceability of any other provision. If

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any provision is held to be excessively broad or unenforceable, such provision shall be modified so that it is enforceable to the fullest extent possible by law.

21. Assignment. Customer shall not assign this Agreement without the prior written consent of Gaumard, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the rights and obligations herein will be binding upon the successors and assigns of Customer.

22. Notices. Any required notices will be given in writing to Gaumard as set forth in the applicable Gaumard Purchase Order or other purchasing document.

23. Governing Law. Upon execution, this Agreement shall be governed and viewed under the laws of the State of Ohio without reference to its conflict of laws provisions. Customer and Gaumard specifically agree that any action relating to the relationship between the Parties, the Agreement, or Products provided, purchased or licensed hereunder, shall be brought and tried in the Courts of Delaware County, Ohio. Gaumard and Customer waive all objections to, and consent to the jurisdiction of such Courts.

24. Miscellaneous. See applicable Gaumard Purchase Order documents, Gaumard Warranty documents, and Gaumard Cares Service Plan documents for other terms and conditions, which may include, but are not limited to: Term, Termination, Customer Training and Support, and Product Repairs and Tune Ups.

**Exhibit A
GAUMARD END USER LICENSE AGREEMENT**

This End User License Agreement ("*EULA*") sets forth the respective rights and responsibilities between the entity named in the Purchase Order associated with this EULA ("*End User*") and Gaumard Scientific Company, Inc., a Florida corporation ("*Gaumard*"), relative to the Gaumard Software (as defined below). This EULA is effective as of the date Gaumard accepts and confirms the Purchase Order (the "*Effective Date*"). BY USING THE GAUMARD SOFTWARE, END USER IS AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF END USER DOES NOT AGREE, END USER MAY NOT USE THE GAUMARD SOFTWARE.

1. Definitions.

1.1 "*Gaumard Documentation*" means the Gaumard user and operations manuals, guides, and related materials provided by Gaumard to End User to facilitate use of the Gaumard Products.

1.2 "*Gaumard Equipment*" means Gaumard hardware components for medical simulation and training, including manikins and associated instrumentation, and other hardware and tangible products sold by Gaumard to End User.

1.3 "*Gaumard Products*" means Gaumard Software licensed and Gaumard Equipment sold or otherwise made available by Gaumard to End User currently or in the future.

1.4 "*Gaumard Software*" means the object code form of computer programs and Gaumard Documentation owned by Gaumard or its licensors and licensed to End User in accordance with this EULA. Gaumard Software includes (a) computer programs embedded in firmware in the Gaumard Equipment; (b) computer programs embedded in a separate medium (such as CD or flash drive) for use in conjunction with the Gaumard Equipment; (c) computer programs downloaded or received via mail from Gaumard;

(d) computer programs used on servers storing or processing data related to the Gaumard Products; and

(e) computer programs used to create and manage a network for the Gaumard Equipment, interface with the components of the Gaumard Equipment, manage and compute location information related to the Gaumard Equipment, and monitor health of the Gaumard Equipment.

2. Software License and Restrictions.

2.1 License. Subject to End User's compliance with the terms and conditions of this EULA, the Gaumard Sales Terms and Conditions, the Purchase Order, and the Gaumard Cares Service Plan Agreement, Gaumard grants End User a non-exclusive, non-transferable (except as otherwise set forth herein), personal license to execute and use the Gaumard Software for End User's internal purposes, but only so long as the Gaumard Software is installed on the Gaumard Product on which it was originally installed. End User may not, directly or indirectly, sell, sublicense, display, timeshare, loan, lease, distribute, or create derivative works of the Gaumard Software.

2.2 Ownership. All rights, title, and interest in and to the Gaumard Software, and any derivative works thereof, whether created by Gaumard, End User, or a third party, will remain at all times solely and exclusively owned by Gaumard. Nothing in this EULA or the Purchase Order will be construed to grant End User any rights of any kind with respect to the Gaumard Software, except as expressly set forth in this EULA.

2.3 Reverse Engineering and Other Restrictions. End User will not, and will not allow any third party to, tamper with, modify, decompile, disassemble, derive the source code of, reverse engineer, or attempt to obtain the internal design of the Gaumard Software or Gaumard Products for any purpose whatsoever (collectively, "*Restricted Acts*"). If applicable law permits End User to take any of the Restricted Acts

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notwithstanding the previous prohibition, and End User wishes to take any Restricted Act notwithstanding the previous prohibition, End User will first provide Gaumard with thirty (30) days prior written notice. Gaumard may terminate this EULA at any time during such notice period without liability arising from such termination. The parties agree that all information needed for interoperability is available from Gaumard in accordance with applicable government directives.

2.4 Updates. From time to time Gaumard may develop new versions or updates for the Gaumard Software that may be made available to the End User as agreed under the terms of the Gaumard Sales Terms and Conditions, Gaumard Purchase Order documents, Gaumard Warranty documents, or Gaumard Cares Service Plan documents. Unless otherwise agreed to by Gaumard, End User shall be responsible for installing the provided new versions or updates for the Gaumard Software.

2.5 Proprietary Notices. End User agrees to maintain and reproduce on all copies of the Gaumard Software, any names, logos, copyright notices, trademarks, other proprietary markings, and legends that appear on the Gaumard Software.

2.6 Control of Duplication. End User will not, nor will it allow any third party to, circumvent the protection controlling the duplication or use of the Gaumard Software, for example and without limitation, any software lock controlling the number of copies End User may make of the Gaumard Software.

2.7 No Source Code. End User acknowledges and agrees that its rights under this EULA do not include rights to source code. In its exercise of the rights granted under this EULA, End User agrees not to take any action that would result in any requirement to disclose or make available to other parties the Gaumard Software in source code format.

2.8 Certification. Upon thirty (30) days written notice to End User from Gaumard, End User shall certify End User's compliance with the restrictions and obligations in this EULA. Such requests will not occur more frequently than once per calendar year. If End User has used the Gaumard Software in violation of this EULA, End User shall, in addition to any other remedies Gaumard may have, pay Gaumard additional fees for the excess use according to Gaumard's then-current price list and policies, plus a late payment charge of one percent (1.0%) per month (or the highest amount allowed by applicable law, if lower) for each month of excess use from the date of initial excess use.

2.9 Privacy and Recordings. End User will comply with all applicable laws, rules and regulations related to privacy, publicity and data protection related to use of the Gaumard Products. End User shall not use the Gaumard Software to record or collect personal data from any person in violation of End User's policies or privacy statements. End User shall receive express consent from all persons recorded by the Gaumard Software sufficient for End User's use, storage, and distribution of such recordings.

3. Term and Termination

3.1 Term. This EULA commences on the Effective Date and continues perpetually, unless terminated earlier in accordance with the terms hereof.

3.2 Termination for Cause. This EULA is automatically terminated by Gaumard if the other party materially breaches this EULA, the Gaumard Sales Terms and Conditions, the Purchase Order, or the Gaumard Cares Service Plan Agreement. In addition, Gaumard may terminate this EULA if (a) End User becomes insolvent or makes an assignment for the benefit of End User's creditors; or (b) a receiver is appointed or a petition in bankruptcy is filed with respect to End User and such petition is not dismissed within thirty (30) days.

3.3 Effect of Termination. Upon the termination of this EULA for any reason, all licenses granted in Section 2 above will immediately cease and terminate. Upon termination, End User will immediately cease using the Gaumard Software.

3.4 Survival. Sections 3 through 6 will survive the termination of this EULA.

4. Confidential Information; Trademarks.

4.1 Confidential Information. End User acknowledges and agrees that the Gaumard Software is confidential information and contains trade secrets of Gaumard. End User agrees to (i) hold the Gaumard Software in the strictest confidence, (ii) not disclose the Gaumard Software to any third party for any purpose, and (iii) use at least the same security measures as End User to protect its own confidential and trade secret information but no less than reasonable measures to protect the confidentiality of the Gaumard Software. End User agrees and acknowledges that any breach of the provisions regarding ownership or confidentiality contained in this Agreement shall cause Gaumard irreparable harm and Gaumard may obtain injunctive relief without the requirement to post a bond as well as seek all other remedies available to Gaumard in law and in equity in the event of breach or threatened breach of such provisions.

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4.2 Trademarks. End User may not use Gaumard's trademarks, logos, service marks, or names in press releases, web sites, marketing, or other forms of public materials without the prior written consent of Gaumard. All use of the Gaumard trademarks and all goodwill associated with them will inure solely to the benefit of Gaumard.

5. Disclaimer; Limitation of Liability; Infringement Indemnification

5.1 Warranty and Disclaimer. For a period of twelve (12) months from the Effective Date, Gaumard will

(a) provide all updates to the Software that are made available generally, and (2) use reasonable efforts to fix or provide a workaround for any Gaumard Software defect or bug which prevents operation in substantial conformity with the Gaumard Documentation. Other than the above, the Gaumard Software is provided "as-is," with no express or implied warranties of any kind, including the warranties of merchantability, fitness for a particular purpose, or non-infringement.

5.2 Limitation of Liability. THE TOTAL LIABILITY, IF ANY, OF GAUMARD TO END USER OR ANY THIRD PARTY FOR ALL DAMAGES BASED ON ALL CLAIMS, WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, TORT, OR OTHERWISE, ARISING FROM THE GAUMARD PRODUCTS IS LIMITED TO ONE HUNDRED DOLLARS. IN NO EVENT WILL GAUMARD BE LIABLE TO END USER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3 Infringement Indemnification. Gaumard will, as further described below, indemnify, defend, and hold End User harmless, at its expense, against any claim or suit brought by a third party against End User alleging that any Gaumard Software furnished under this EULA infringes the United States patent, trademark, copyright or other intellectual property right of a third party. Gaumard will pay all settlements entered into or damages finally awarded, including attorneys' fees and costs, based on any such claim or suit; provided that End User gives Gaumard prompt written notice of such claim and gives Gaumard information, reasonable assistance, and sole authority to defend or settle the claim. In defense or settlement of the claim, Gaumard may obtain for End User the right to continue using the Gaumard Software, replace or modify the Gaumard Software so that it becomes non-infringing, or, if such remedies are not reasonably available, grant End User a refund for the associated Gaumard Products (depreciated over three years) and accept their return. Gaumard will not have any liability if the alleged infringement is based upon (a) the use or sale of the Gaumard Software in combination with other products or devices not furnished by or approved by Gaumard; (b) the use of the Gaumard Software in a manner for which they were not designed as described by the Gaumard Documentation; (c) any modification of the Gaumard Software not performed by or authorized by Gaumard; (d) any use of Gaumard Software by End User after End User learns of such allegation of infringement; or (e) any failure by End User to utilize a non-infringing version of the Gaumard Software made available by Gaumard along with notice that such update is non-infringing. The obligations set forth in this Section 5.3 are Gaumard's sole obligations, and End User's sole and exclusive remedy, for the Gaumard Software infringing third party intellectual property rights.

6. Miscellaneous.

6.1 Binding Effect: Assignment. This EULA will be binding upon, and inure to the benefit of, End User's and Gaumard's respective permitted successors and permitted assigns. Neither party may assign or transfer this EULA or any of the rights, privileges, duties or obligations under this EULA without the prior written consent of the other party, except that either party may assign this Agreement to any entity controlled by, controlling, or under common control with such party at such time, as well as in connection with the sale, transfer, merger, or acquisition, whether by operation of law or otherwise, of substantially all of the assets of such party. In addition, if End User transfers the Gaumard Product on which the Gaumard Software is installed to a third party, End User may assign this EULA to such third party, provided that the third party agrees in writing with Gaumard to be bound by this EULA.

6.2 Notices. Any written notice required by this EULA will be deemed made (a) when delivered by personal service, (b) one (1) business day after being sent by recognized international overnight courier service (such as FedEx), or (c) when received, if sent by certified or registered mail, postage prepaid, return receipt requested. Any such notice given to a party shall be sent to the addresses on the attached Purchase Order. By giving to the other party written notice thereof, the parties hereto and their respective permitted successors and assigns will have the right from time to time to change by written notice their respective addressee or address for notices.

6.3 Applicable Law. The validity of this EULA and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the substantive laws of the State of Ohio. All disputes arising under or related to this EULA shall be resolved exclusively in the State Courts located in Delaware County, Ohio. The parties consent to the jurisdiction and venue of such courts and waive any claims as to inconvenient forum. The judgments of such courts may be enforced in any court of competent jurisdiction.

6.4 Export Control. End User will not export or re-export the Gaumard Software, including any

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technical data, except as authorized and permitted by, and in compliance with, the laws and regulations, including but not limited to all export and re-export laws and regulations, of the United States.

6.5 Severability. If any provision of this EULA is invalid or unenforceable in any circumstances, it will be interpreted as much as possible to reflect the intent of the parties, and its application in any other circumstances and the remaining provisions of this EULA will not be affected thereby.

6.6 Entire Agreement. This EULA constitutes the entire agreement and understanding of the parties relating to the subject matter thereof. This EULA supersedes all prior written and oral agreements and all other communications between End User and Gaumard (or a Gaumard distributor) regarding the subject matter hereof. No contradictory terms and conditions of any purchase order, invoice, or other document issued by End User relating to the subject matter of this EULA shall be binding, unless agreed by the parties.

6.7 Waiver of Breach. No waiver by a party of any breach of this EULA will constitute a waiver of any other breach of the same or other provisions of this EULA. No waiver by a party will be effective unless made in a record signed or otherwise authenticated by an authorized representative of such party.

6.8 Relationship of the Parties. The parties are independent contractors. Nothing in this EULA or in the activities contemplated by the parties will be deemed to create an agency, partnership, employment or joint venture relationship between the parties. Neither party will have any responsibility nor liability for the actions of the other party except as expressly provided in this EULA. Neither party will have any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party. This EULA is made and entered into for the sole protection and benefit of Gaumard, its licensors and suppliers, and End User, and no other person or entity shall be a direct or indirect beneficiary of or shall have any direct or indirect cause of action or claim arising from this EULA.

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

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RESOLUTION NO. 23-120

IN THE MATTER OF APPROVING A LICENSE AGREEMENT, AND THE ADDENDUM TO THE LICENSE AGREEMENT, BETWEEN THE BOARD OF DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY ECONOMIC DEVELOPMENT DEPARTMENT, AND COSTAR REALTY INFORMATION, INC. FOR REAL ESTATE INFORMATION SERVICES FOR DELAWARE COUNTY ECONOMIC DEVELOPMENT:

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

WHEREAS, the Director of Economic Development recommends approval of a License Agreement, and the Addendum to the License Agreement, between the Board of Delaware County Commissioners, the Delaware County Economic Development Department, and CoStar Realty Information, Inc. for real estate information services for Delaware County Economic Development;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELAWARE, STATE OF OHIO:

Section 1. That the Board hereby approves the License Agreement, and the Addendum to the License Agreement, between the Board of Delaware County Commissioners; the Delaware County Economic Development Department, and CoStar Realty Information, Inc. for real estate information services for Delaware County Economic Development.

Section 2. That the Board hereby authorizes the County Administrator to execute the License Agreement, and the Addendum to License Agreement, on behalf of the Board.

Addendum to License Agreement

This Addendum to the License Agreement (the "Addendum") is made as of the date hereof by and between Costar Realty Information, Inc. ("Licensor") and Delaware County Economic Development ("Licensee") and is executed pursuant to and made a part of the License Agreement signed by Licensee on [February 13, 2023] for the provision of Licensor's commercial real estate information service(s) (the "Agreement"). Any capitalized term used in this Addendum and not otherwise defined shall have the meaning set forth in the Agreement.

NOW THEREFORE, Licensor and Licensee agree that the Agreement shall be amended as follows:

1. Notwithstanding anything to the contrary on the Subscription Form, Licensee's Start Date for all service offerings shall be January 1, 2023.

2. Section 14 is hereby deleted in its entirety and replaced with the following:

"Intentionally Deleted."

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3. Section 18 is hereby deleted in its entirety and replaced with the following:

"This Agreement shall be construed under the laws of the State of Ohio without regard to choice of law principles. Costar irrevocably consents to the exclusive jurisdiction of the federal and state courts located in Delaware County, Ohio for the purpose of any action brought against CoStar in connection with this Agreement or use of the Licensed Product. Licensee irrevocably consents to the jurisdiction and venue of the federal and state courts located in Delaware County, Ohio for purposes of any action brought against Licensee in connection with this Agreement or use of the Licensed Product."

4. Licensor and Licensee agree that, except as expressly provided above, all of the terms of the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the day and year set forth below and do each hereby warrant and represent that their respective signatories, whose signatories appear below, have been and are on the date hereof duly authorized by all necessary and appropriate action to execute this Addendum.

Costar Information Subscription Form

CoStar
Information
Subscription Form

FOR INTERNAL ONLY: (Ref ID) 2000120	
AE:	Eli Weikart
Location ID:	3407703
Business Code:	Government



BILL TO:	
Licensee: Delaware County Economic Development	Location ID: 3407703
Address: 91 N Sandusky St 2nd Floor	City/State/Zip: Delaware, OH 430151710
Telephone: (740) 833-2100	
Bill-To Contact: Monica Conners	Email for Bill-To Contact: mconners@co.delaware.oh.us
USE:	BILLING CYCLE:
Total No. Listings: 0	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually
Total No. Sites: 1	<input type="checkbox"/> Quarterly <input type="checkbox"/> Yearly
Total No. Authorized Users (All Sites): 1	
TERM:	
One Year Initial Term	
INVOICE TYPE/BILLING PREFERRED:	START DATE:
Single Invoice	Delayed start date for all service offerings: February 1, 2023.

SERVICES			
Site	Market	Product Description	Monthly License Fees (Before Tax)
3407703	All Data	CoStar Suite	\$430.00
Total Monthly Fees From Additional Schedule of Services:			
Discount:			
Total Monthly License Fees:			\$430.00
Discounted Monthly License Fees:			

Notes:

This agreement includes the applicable Terms and Conditions for the services identified above, available at <https://www.apartments.com/advertise/disclaimers/internet-advertising-terms-and-conditions>, <https://www.apartments.com/advertise/ocps-terms-conditions> and/or <https://www.costar.com/CoStarTerms-and-Conditions>, and any addenda attached hereto between CoStar Realty Information, Inc. ("CoStar") and the above-named Customer/Licensee (collectively, the "Agreement"), and establishes the terms and conditions under which CoStar will license the products set forth in this Agreement. The Terms and Conditions are an integral part of the Agreement being formed hereby. In addition, this Agreement incorporates by reference the website Terms of Service/Use (the "Website Terms of Use") available online for each applicable service provided under this Agreement (e.g., www.costar.com, www.apartments.com, www.apartmentfinder.com, etc.). Customer/Licensee agrees to comply with the Website Terms of Use and to regularly review such terms for updates and changes. To the extent a conflict exists, the Subscription Form and the Terms and Conditions shall govern over the Website Terms of Service. Terms used on this Subscription Form and not otherwise defined shall have the meanings set forth in the applicable Terms and Conditions.

In the event Licensee does not execute this Agreement by the following date 10/31/2022, the terms of this Agreement shall become null and void; however, if both parties execute and commence performance of their duties and obligations under this Agreement after such date, this Agreement shall continue in full force and effect and be binding on the parties. Licensee may not make any changes to this Agreement unless agreed to by CoStar in writing. The person executing this Agreement on behalf of Licensee represents and warrants that he or she has been authorized to do so and that all necessary actions required for the execution have been taken. CoStar hereby provides notice that only an authorized officer of CoStar or its parent company can execute this Agreement on behalf of CoStar. Delivery of an executed signature page to this Agreement by electronic means shall be effective and constitute a legal and binding agreement on the parties.

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

**15
RESOLUTION NO. 23-121**

IN THE MATTER OF AUTHORIZING THE TRADE-IN OF EQUIPMENT THAT IS NOT NEEDED OR UNFIT FOR PUBLIC USE AS A CREDIT TOWARD THE COST OF EQUIPMENT AUTHORIZED FOR PURCHASE IN RESOLUTION NO. 23-36:

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

WHEREAS, pursuant to section 5549.01 of the Revised Code, the Board of Commissioners (the "Board") may purchase machinery and equipment for the construction, improvement, maintenance or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary, including the purchase of

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automobiles, motorcycles, or other conveyances and maintenance thereof for the use of the County Engineer and the Engineer’s Assistants when on official business; and

WHEREAS, on January 23, 2023, the Board adopted Resolution No. 23-36, authorizing the purchase of equipment for the Engineer’s Office, including a Gen 3 MowerMax boom mower from Atmax Equipment Company; and

WHEREAS, pursuant to section 307.12(G) of the Revised Code, if the Board finds, by resolution, that the county has personal property that is not needed, or is unfit for public use, the Board may offer to sell the property to a firm from which the Board proposes to purchase new property and have the selling price credited against the purchase price of the new property; and

WHEREAS, the County has personal property currently used by the Engineer’s Office that is not needed or is unfit for public use and that was included as trade-in credits in the price for the Gen 3 MowerMax boom mower authorized for purchase in Resolution No. 23-36; and

WHEREAS, the Engineer recommends authorizing the trade-in of the equipment that is not needed or is unfit for public use, which was inadvertently omitted from Resolution No. 23-36;

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

Section 1. The Board hereby determines that the following equipment is not needed or is unfit for public use and authorizes the trade-in of the equipment as credits toward the purchase of the Gen 3 MowerMax boom mower from Atmax Equipment Company, as already approved in Resolution No. 23-36: (1) \$33,250 for a 2014 New Holland Tractor Model #T6140AC Serial #ZDBU21440; and (2) \$61,750.00 for a 2017 John Deere Tractor Serial# 1L06145MJGG847502.

Section 2. The Clerk shall provide a copy of this Resolution to the County Engineer.

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

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RESOLUTION NO. 23-122

IN THE MATTER OF APPROVING A DRAINAGE MAINTENANCE PETITION FOR BERKSHIRE CROSSING:

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

WHEREAS, on February 13, 2023, a Drainage Maintenance Petition for Berkshire Crossing (the “Petition”) was filed with the Board of Commissioners of Delaware County (the “Board”); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within Berkshire Crossing in Berkshire Township; and

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

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

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

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

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

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

The cost of the drainage improvements is \$510,697.08 for the benefit of the lots being created in this subdivision. The drainage improvements are being constructed for the benefit of the lot(s) being created in this subdivision. 101 lots are created in these plats and each lot received an equal share of the benefit (cost) of the project. . The developed area of 36.14 acres will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$5,056.41. An annual maintenance fee equal to

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2% of this basis (\$101.13) will be collected for each lot. We (I) understood that the basis for calculating the maintenance assessment will be reviewed and possible revised every 6 years. The first year’s assessment for all of the lots in the amount of \$4,955.37 has be paid to Delaware County. Future assessments to be paid at the time of platting each section: Section 2 (52 lots) - \$5,258.76.

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

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RESOLUTION NO. 23-123

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR BERKSHIRE CROSSING SECTION 1:

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

WHEREAS, AMH Development, LLC, has submitted the plat of subdivision for Berkshire Crossing Section 1, including related development plans, and requests approval thereof by the Board of Commissioners of Delaware County; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the plat of Berkshire Crossing Section 1:

Situated in the State of Ohio, County of Delaware, Township of Berkshire, Quarter Township 2, Township 4, Range 17, Farm Lots 2 and 3 (Middle Tier), United States Military Lands, being 20.237 acres of land (a portion of Lot 1817), of record in Berkshire Crossing (Northstar Section 1, Phase A, Lot 645, Division 1)1 plat cabinet 5, slide 734, as conveyed to AHM Development, LLC of record in Official Record 1967, PG. 2749,being of record in the Recorder’s Office, Delaware County, Ohio. Cost: \$156.00 (*\$3.00 per buildable lot*)

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

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RESOLUTION NO. 23-124

IN THE MATTER OF APPROVING PRELIMINARY LEGISLATION AND AN LPA PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE INTERSECTION OF SAWMILL ROAD AND PRESIDENTIAL PARKWAY:

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

PRELIMINARY LEGISLATION
RC 5521.01

PID Number 111806
DEL-TR119-0.56
ODOT Agreement Number 34567

The following is a Resolution enacted by the Board of Commissioners of Delaware County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the described project.

Project Description

WHEREAS, the LPA has identified the need for improvements to the intersection of TR119 (Sawmill Road) and Presidential Parkway by constructing a roundabout (the “Project”);

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

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

Section 2. The LPA hereby approves the LPA Federal Local-Let Project Agreement with the Director of Transportation and authorizes the Delaware County Engineer to execute and administer the same on behalf of the LPA.

DEL-TR119-0.56 PID NUMBER 111806
AGREEMENT NUMBER 34567

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation,

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hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the Delaware County Engineer hereinafter referred to as the LPA [acting by and through the **Delaware County Board of Commissioners**, hereinafter referred to as the LPA, **50 Channing Street, Delaware, OH 43015**.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **DEL-TR119-0.56, PID Number 111806** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:
- a. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
 - b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
 - c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
 - d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
 - e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.
- 2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization, for Construction, until the Form has been completed and approved. Failure to submit a completed Form will result in the Project reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program, until the Form is completed and approved by the Department.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be **\$555,555.56** as set forth in Attachment 1. ODOT shall provide to the LPA **90% percent** of the eligible costs, up to a maximum of **\$500,000 (\$500,000 in Construction Funds for FY 2023)** 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 the actual construction of the transportation project improvements and construction engineering/inspection activities.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written

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design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [ODOT's Office of Local Programs](#)

- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the Project Design Engineer and serve as the LPA's principal representative for attending to project responsibilities or engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC Sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [ODOT's Office of Contracts](#). If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criterion with Ohio EPA approval.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through

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

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

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and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA’s construction contractor (“Contractor”), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor’s invoice from the LPA.

8.6 The LPA shall notify ODOT of the filing of any mechanic’s liens against the LPA’s Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic’s lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic’s lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

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

8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT’s written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA’s rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA’s rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

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

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- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the project, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

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

10. NONDISCRIMINATION

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

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

- 10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

GOOD FAITH EFFORTS

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

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The Contractor shall demonstrate its Good Faith Effort(s) (GFEs) by submitting information including but not limited to the following to the LPA:

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

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

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

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

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

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

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

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

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

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

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

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;
- (c) any steps taken to rectify the situation;
- (d) the Contractor's record of performance on other projects including, but not limited to:
 - (1) annual DBE participation over DBE goals;
 - (2) annual DBE participation on projects without goals;
 - (3) number of complaints ODOT has received from DBEs regarding the Contractor; and,
 - (4) the number of times the Contractor has been previously sanctioned by ODOT; and,
- (e) Whether the Contractor falsified, misrepresented, or withheld information.

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

- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

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In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as “ADA/504”).

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

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

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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.

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

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

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

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

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14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

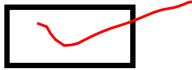
If to ODOT:

Ryan Mraz, Deputy Design Engineer	Angie Jacobs
Delaware County Engineers Office	Ohio Department of Transportation, District 6
50 Channing Street	400 E William St
Delaware, Ohio 43015	Delaware, Ohio 43015
RMraz@co.delaware.oh.us	Angela.jacobs@dot.ohio.gov

15. GENERAL PROVISIONS

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

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



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

- (A) The LPA *does not* currently maintain an ODOT approved federally compliant time-tracking system¹, *and*
- (B) The LPA *does not* intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, *and/or*
- (C) The LPA *does not* intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



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

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

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

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

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.



3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved

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Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate. ³

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



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

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

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

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

All non-federal entities, including ODOT’s LPA sub recipients, that have aggregate federal awards expenditures from all sources of \$750,000 or more in the non-federal entity’s fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

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

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

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

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

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

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

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

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

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

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principal's behalf.

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

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: Delaware County Engineer's Office	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Chris Bauserman, P.E., P.S. Delaware County Engineer	Jack Marchbanks Director
Date:	Date:

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY ENGINEERING										
RIGHT OF WAY										
CONSTRUCTION	\$55,555.56	10	LNT P	\$500,000	9 0	4HJ 7				\$555,555.56
TOTALS	\$55,555.56			\$500,000						\$555,555.56

EL-TR119-0.56 PID NUMBER 111806

AGREEMENT NUMBER 34567

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

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 contractor shall be paid directly to the contractor 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 contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). 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.

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

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IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN DEL-CO., AN OHIO CORPORATION, 6658 OLENTANGY RIVER ROAD, DELAWARE, OHIO 43015 AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE PROJECT KNOWN AS DEL-CR124-9.02, HOME ROAD-PIATT ROAD-LEWIS CENTER ROAD:

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

WHEREAS, the County Engineer recommends approval of the contract for sale and purchase with DEL-CO., an Ohio Corporation, for the project known as DEL-CR124-9.02, Home Road-Piatt Road- Lewis Center Road;

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 DEL-CO., an Ohio Corporation, for the project known as DEL-CR124-9.02, Home Road-Piatt Road-Lewis Center Road as follows:

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 13th day of February, 2023, **DEL-CO., an Ohio Corporation, whose address is 6658 Olentangy River Road, Delaware, Ohio 43015**, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
24-WD, T
DEL-CR124-9.02, Home Road-Piatt Road-Lewis Center Road

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of **Thirty Thousand, Four Hundred, Sixty-One and no/100 Dollars (\$30,461.00)**, which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
 - (A) All title, rights, and interest in and to the PROPERTY; and,
 - (B) For damages to any residual lands of the SELLER; and,
 - (C) For SELLER's covenants herein; and,
 - (D) For expenses related to the relocation of the SELLER, their family, and business; and,
 - (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.
2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters' rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the

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PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

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13. This CONTRACT shall be binding upon the SELLER and the SELLER’s heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

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RESOLUTION NO. 23-126

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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
UT2023-0022	DEL-CO	MINK STREET ROAD	WATERLINE
UT2023-0023	PIKE ENGINEERING	ORANGE ROAD	ELECTRIC
UT2023-0024	AEP	WOODTOWN ROAD	ELECTRIC
UT2023-0025	AEP	PIATT ROAD	ELECTRIC
UT2023-0026	AEP	PIATT ROAD	ELECTRIC
UT2023-0027	SPECTRUM	LAUREL WIND BLVD	CABLE

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

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RESOLUTION NO. 23-127

IN THE MATTER OF APPROVING DEVELOPER’S AGREEMENT FOR GENOA CHRISTIAN ACADEMY EXPANSION PHASE 4:

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

WHEREAS, the Engineer recommends approving the Developer’s Agreement for Genoa Christian Academy Expansion Phase 4;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Developer’s Agreement for Genoa Christian Academy Expansion Phase 4, as follows:

DEVELOPER’S AGREEMENT
PROJECT NUMBER: 22004

THIS AGREEMENT made and entered into this 13th day of February, 2023, by and between the **COUNTY OF DELAWARE** (acting through its **BOARD OF COUNTY COMMISSIONERS**), hereinafter called the **COUNTY**, and Genoa Baptist Church, hereinafter called the **OWNER**, is governed by the following considerations, to wit:

- 1) The **OWNER** is constructing a development known as Genoa Christian Academy

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Expansion Ph 4 (the “Development”) which will include a new roadway access to Worthington Road and contribute to the need for improvements to Worthington Road as shown in DEL-CR13-5.02, which shall be constructed by the **COUNTY** (the “Improvements”)

- 2) On or before February 1, 2023, the **OWNER** shall pay to the **COUNTY** Two Hundred Ninety One Thousand Dollars and No Cents (\$291,000.00), mutually agreed to be the **OWNER’S** proportional share of, and contribution toward, the cost and expense of the Improvements. **OWNER** further agrees that such contribution will be used as determined by the **COUNTY** for improvements to Worthington Road as shown in project DEL-CR13-5.02.
- 3) The **OWNER** is to provide a bond, irrevocable letter of credit, or other approved financial warranty in the amount of Two Hundred Ninety One Thousand Dollars and No Cents (\$291,000.00), payable to the **BOARD OF COUNTY COMMISSIONERS**, to insure the faithful performance of this **AGREEMENT**. Said financial warranty will be released and returned to the **OWNER** within thirty (30) days of the receipt of payment as required in Section 2 hereof.
- 4) To the extent the **OWNER**, either directly or through its agents or contractors, performs any work within the **COUNTY’S** right-of-way, the **OWNER** shall indemnify and hold the **COUNTY** free and harmless from any and all claims for damages of every nature arising or growing out of the work.
- 5) The **OWNER** further agrees that any violation of or noncompliance with any of the provisions as stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **Delaware County Engineer** shall have the right to suspend or terminate any permit for access to or work within the **COUNTY** right-of-way.
- 6) If the **OWNER** should become unable to carry out the provisions of this **AGREEMENT**, the **OWNER’S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.
- 7) In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants to the **OWNER** or his agent the right and privilege to access the Improvements stipulated herein, subject to the issuance of a right-of-way work permit.

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

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RESOLUTION NO. 23-128

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RETURNING THE CONSTRUCTION BOND FOR EVANS FARM SECTION 3:

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

WHEREAS, the roadway construction has been completed for the project known as Evans Farm Section 3 (the “Project”); and

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

WHEREAS, the Engineer recommends that, in accordance with the Owner’s Agreement, the maintenance bond be set at \$78,100.00 (10% of the original construction estimate) and that the Project be placed on the required one year maintenance period; and

WHEREAS, 3 Pillar Homes Villas at Old Harbor West, LLC (the “Principal”) has provided a maintenance bond in the amount of \$78,100.00 as surety to cover the one year maintenance period; and

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

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

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

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ADMINISTRATOR REPORTS

Tracie Davies, County Administrator
-No reports.

Dawn Huston, Deputy Administrator
-No reports.

Aric Hochstettler, Deputy Administrator
-No reports.

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COMMISSIONERS’ COMMITTEES REPORTS

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Commissioner Merrell
-Attended a CORSA Board meeting on Friday.

Commissioner Lewis
-Went to Washington D.C. for a NaCO Justice and Public Safety Steering Committee meeting over the weekend.

Commissioner Benton
-Participated in the Government Day put on by Leadership Delaware.

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RESOLUTION NO. 23-129

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

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

WHEREAS, pursuant to section 121.23(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 121.23(G)(1)–(7) of the Revised Code; and

WHEREAS, pursuant to section 121.23(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 appointment; employment; compensation of a public employee or public official; for pending or imminent litigation 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 Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

RESOLUTION NO. 23-130

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

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Other Business:

RESOLUTION NO. 23-131

IN THE MATTER OF APPOINTING A MEMBER TO THE DELAWARE COUNTY DISTRICT LIBRARY BOARD OF TRUSTEES:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board of Commissioners") created the Delaware County District Library pursuant to section 3375.19 of the Revised Code; and

WHEREAS, the Board of Commissioners is responsible for making several appointments to the Delaware County District Library Board of Trustees (the "Library Board"), pursuant to section 3375.22 of the Revised Code; and

WHEREAS, a vacancy exists for a term that will expire December 31, 2028; and

WHEREAS, Reginald Ike has applied for appointment to the Library Board and meets the requirements stipulated by section 3375.22 of the Revised Code;

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

Section 1. The Board of Commissioners hereby approves the appointment of Reginald Ike to the Delaware County District Library Board of Trustees for the unexpired term ending December 31, 2028.

Section 2. The appointment approved herein shall be effective immediately upon adoption of this Resolution.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners