

**COMMISSIONERS JOURNAL NO. 78 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 27, 2023**

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

Present:
Gary Merrell, Vice President
Barb Lewis, Commissioner

Absent:
Jeff Benton, President

1
RESOLUTION NO. 23-140

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD FEBRUARY 16, 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 16, 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 Absent

2
PUBLIC COMMENT
 -None.

3
RESOLUTION NO. 23-141

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0224 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0224:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0224, memo transfers in batch numbers MTAPR0224 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Peterson Construction (P2301877)	Building & Improvements	66611900-5410	\$4,091,523.36
Treasurer, DEL CTY (P2301878)	Building & Improvements	66611900-5410	\$355,784.64

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2302256	EVERBRIDGE INC	MASS NOTIFICATION SOFTWARE	10011102 - 5320	\$4,750.00
R2302256	EVERBRIDGE INC	MASS NOTIFICATION SOFTWARE	21411306 - 5320	\$17,000.00
R2302338	B & K LEHNER EXCAVATING LLC	MAIN	66211900 - 5328	\$41,920.00
R2302372	SI TECHNOLOGIES LLC	BYXBE CAMPUS AV EQUIPMENT	42011440 - 5410	\$62,538.86
R2302379	WORLY PLUMBING SUPPLY INC	BOTTLE FILLING STATIONS - HAYES & COURTHOUSE	40111402 - 5260	\$5,777.47
R2302384	COMMERCE CONTROLS INC	FINE SCREEN 1 PLC REPAIR	66211900 - 5328	\$10,000.00

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

4
RESOLUTION NO. 23-142

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Facilities Department is requesting that Shane Friley attend a PLC Programming & Applications Training in Columbus, Ohio from May 15-16, 2023 at the cost of \$1,195.000 (fund number 10011105).

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

**5
RESOLUTION NO. 23-143**

IN THE MATTER OF A TRANSFER OF A LIQUOR LICENSE FROM NEW ERA GOLF OHIO RAL INC (DBA ROYAL AMERICAN LINK GOLF CLUB; GOLF COURSE PATIO & BALCONY) TO ROYAL AMERICAN GOLF COURSE 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 D1, D2, , D3 and D6 liquor license from New Era Golf Ohio Ral Inc (DBA Royal American Link Golf Club; Golf Course Patio & Balcony) to Royal American Golf Course LLC; 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 Absent Mr. Merrell Aye

**6
RESOLUTION NO. 23-144**

IN THE MATTER OF DECLARING MARCH 2023 NATIONAL DEVELOPMENTAL DISABILITIES AWARENESS MONTH:

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

WHEREAS, March 2023 marks the 36th anniversary of National Developmental Disabilities Awareness Month; and

WHEREAS, people with developmental disabilities share a vision for a good life with Delaware County’s 200,000+ residents; and

WHEREAS, the Delaware County Board of Developmental Disabilities, families of people with developmental disabilities, and providers of service partner to support more than 2,400 people with developmental disabilities throughout the county; and

WHEREAS, every person has abilities, skills and talents to enrich the community and people around them; and

WHEREAS, the Delaware County Commissioners acknowledge the importance of equitable access to opportunities to live, learn, work and play in Delaware County; and

WHEREAS, the most effective way to increase community inclusion is by raising awareness of and actively advocating for enhancements that support the disability community; and

WHEREAS, activities during the month of March will reinforce the value and talent people with developmental disabilities add to our communities and reaffirm the commitment of the Delaware County Commissioners to achieving an inclusive community that increases access and opportunities to all; and

THEREFORE, BE IT RESOLVED that the Delaware County Commissioners recognize and commemorate the 36th anniversary of National Developmental Disabilities Awareness Month.

BE IT FURTHER RESOLVED that the Delaware County Commissioners designate the month of March 2023 as Developmental Disabilities Awareness Month.

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

**7
RESOLUTION NO. 23-145**

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATIONS AND TRANSFER OF FUNDS:

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

Supplemental Appropriation

24820101-5801	Title Administration/Cash Transfer	7,277.00
10020201-5260	Clerk of Court/Inv Tool, Equipment, Furniture	7,277.00

Transfer of Funds

From:	To:	
24820101-5801	10011102-4601	7,277.00
Title Administration/Cash Transfer	General Fund/Interfund Revenues	

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

**8
RESOLUTION NO. 23-146**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY AUDITOR, AND AHEAD, INC. FOR VARIOUS CONSULTING, IMPLEMENTATION AND/OR INFORMATION TECHNOLOGY RELATED PROFESSIONAL SERVICES:

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

Professional Services Agreement

This PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”), is entered into as of this 27th day of February, 2023, by and between Ahead, Inc., an Illinois corporation and its affiliates (“**Ahead**”) and Delaware County, Ohio, a governmental agency (“**Client**”).

R E C I T A L S

WHEREAS, Client desires to engage Ahead for various consulting, implementation and/or information technology related professional services as outlined herein; and

WHEREAS, Ahead is willing to perform such services and desires to provide such services for Client.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is acknowledged by Ahead and Client, the parties agree as follows:

A G R E E M E N T

1. **Incorporation of Recitals.** The above recitals and all exhibits attached hereto are incorporated herein by reference.

2. **Services.**

2.1 **Scope of Services.** Ahead shall perform the Services (as defined below) and all tasks incidental thereto as specified in any and all Statements of Work (each, a “**SOW**”, and collectively, “**SOWs**”) entered into by the parties or as otherwise necessary and appropriate to carry out the services described in each SOW (all such tasks and services, including those performed under SOWs entered into subsequent to the date hereof, shall be collectively referred to herein as the “**Services**”), for the fees and costs set forth in the price quote presented in connection herewith (the “**Price Quote**”) or the applicable SOW. The final form and content of each SOW shall be mutually agreed upon by the parties. All SOWs executed by the parties hereto and any Price Quotes presented by Ahead to Client are hereby incorporated herein by reference. In the event of any conflict or inconsistency between this Agreement and any SOW, the particular SOW shall take precedence, govern and control.

2.2 **Change Orders.** Periodically, additional tasks may be required or desired that change the scope of the Services. Any such changes shall be agreed upon by the parties by mutual written agreement.

3. **Personnel.** Ahead shall provide all personnel required to perform the Services. Further, all Services that require the exercise of professional skill or judgment will be performed by professionals qualified and competent in each applicable discipline. Notwithstanding anything contained in this Agreement to the contrary, Ahead may perform the Services with personnel of Ahead, as well as independent contractors and/or subcontractors.

4. **Fees and Related Matters.**

4.1 **Fee.** As payment for the performance of the Services, Client shall pay to Ahead fees in such amounts and in such manner and means as is mutually agreed upon by the parties and set forth in a particular SOW (the “**Fee**”).

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4.2 Expenses; Reimbursement. Ahead shall be entitled to reimbursement for its ordinary and reasonable business expenses, if any, incurred in connection with performing the Services under this Agreement and any SOW.

4.3 Invoices.

4.3.1 Except as specifically detailed in a SOW, Ahead shall submit weekly invoices to Client for its review and approval indicating the portion of the Services provided and expenses incurred during the invoice period. Ahead shall comply with any reasonable form and time limitations in which invoices must be submitted and shall submit such evidence to Client in such manner as may be reasonably required to show the validity of the Fee and any claimed expenses. Payment on approved invoices shall be due within thirty (30) days from the invoice. Late payments shall bear interest at the rate of one and one-half percent (1 ½%) per month from the date due until paid in full. If any undisputed invoice is not paid when due, payment shall be considered late, and Ahead may, following five (5) days written notice to Client and Client's continued failure to make such payment, suspend performance of the Services without liability or penalty and take all other legal action permitted under the law.

4.3.2 If Client objects to all or any portion of an invoice, it shall promptly notify Ahead of its objection and both parties shall immediately make every effort to promptly settle the disputed portion of the invoice in a commercially reasonable manner. If the dispute is not settled by the date that the payment is due, then Client shall pay the undisputed portion of the invoice. In the event that the parties are unable to resolve such disputed portion of an invoice, Ahead shall have the right to suspend performance and provision of Services to Client until such dispute is resolved.

4.4 Taxes. All amounts set forth in each SOW are exclusive of taxes and Client shall be responsible for payment of all taxes (except taxes on Ahead's net income), duties or charges of any kind imposed by any governmental entity for Services provided under this Agreement. The parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Ahead shall be solely responsible for paying income, social security and other employment taxes due to the proper taxing authorities, and understands that Client shall not deduct such taxes from any payments to Ahead hereunder. Ahead shall also obtain, at Client's sole cost and expense, any permits, licenses and fees specifically required to perform the Services and comply with the terms of this Agreement and any SOW.

5. **Term and Termination.**

5.1 This Agreement shall be effective upon the date hereof and shall continue in full force and effect until terminated in accordance with the terms hereof (the "**Term**").

5.2 This Agreement may be terminated:

5.2.1 Upon written agreement between Ahead and Client;

5.2.2 By either party, in the event of a material breach of this Agreement by the other party, following thirty (30) days written notice to the breaching party, which notice shall specify the precise nature of the breach and such material breach is not cured or discharged;

5.2.3 By either party, in the event the other party files for bankruptcy or reorganization, becomes insolvent, or makes a general assignment for the benefit of its creditors; or

5.2.4 By either party upon written notice to the other party at any time if there is no outstanding SOW then in effect.

5.3 In the event of a termination of this Agreement or any underlying SOW for any reason, Client shall reimburse Ahead for all actual fees, costs and expenses incurred by Ahead on or before the date of termination. For the avoidance of doubt, managed services may not be terminated under any circumstances.

6. **Intellectual Property; Ownership; Confidentiality.**

6.1 Use/License of Documents. Except for Ahead IP (as defined in Section 6.2), all materials and information, including but not limited to presentations, documents, runbooks, data, studies and reports prepared, furnished or generated in connection with this Agreement or any SOW ("**Work Product**"), if any, shall be and remain the property of Client, provided that Client is not in default under this Agreement or any SOW, including its payment obligations to Ahead. Upon the expiration or termination of this Agreement or any relevant SOW, provided that Client has fulfilled any and all of its payment obligations under this Agreement or any relevant SOW, Ahead shall deliver to Client all finished and/or unfinished Work Product related thereto.

6.2 Ahead IP. Ahead will, at all times, retain exclusive ownership of and to all (a) know-how, concepts, techniques, methodologies, ideas, templates, routines, sequences, software, firmware, designs, scripts, interfaces, command lines, programming code, applets, executables, objects, files, utilities and tools that existed prior to the performance of Services under the applicable SOW or which are created independent of the

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applicable SOW along with all updates, modifications, improvements, enhancements and derivative works thereto, and (b) all ideas, concepts, processes, methods, techniques and know-how discovered, created or developed by Ahead during the performance of Services that are of general application and are not based on or derived from Client's Confidential Information ((a) and (b) are collectively referred to as, "**Ahead IP**"). To the extent the Work Product incorporates Ahead IP, Ahead grants Client a non-exclusive, non-transferable, royalty-free, worldwide right to use such Ahead IP solely to the extent it is incorporated into the Work Product.

6.3 **Confidentiality.** The Parties understand and agree that in the performance of this Agreement each Party may have access to confidential or proprietary information of the other Party whether or not such information may be marked as "confidential" and/or contain a separate written notice designating the information as confidential and/or proprietary prior to any disclosure or release. Each of the Parties shall hold such information in confidence and not, without the consent of the other, disclose it to a third party or use it for any purpose other than in performance of this Agreement. This obligation of confidentiality shall not apply to any of the following information: 1) Information that is generally available to the public through no act or omission of the receiving Party; 2) Information that becomes known to the receiving Party through a third party with no obligation of confidentiality; or, 3) Information that is required to be disclosed by law (i.e. public records), rule, or regulation, court order, or by any government or regulatory authority. If any confidential or proprietary information is required to be disclosed, before any such disclosure if the law permits, the receiving Party shall provide notice to the disclosing Party reasonably sufficient to allow the disclosing Party the opportunity to apply for a protective order or other restriction regarding such disclosure. All confidential and/or proprietary information shall remain the exclusive property of the owner. Notwithstanding the foregoing, the Receiving Party shall be entitled to retain Confidential Information in back-up systems and pursuant to the Receiving Party's document or e-mail retention practices or as required law, so long as it is maintained subject to the terms of this agreement. Lastly, Ahead and its employees, agents, and subcontractors shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any confidential or proprietary information of Client.

7. Representations, Warranties and Covenants.

7.1 **By Ahead.** In connection with this Agreement and any SOW, Ahead represents, warrants and covenants that:

7.1.1 It is ready, willing and able to perform, and will perform, the Services in accordance with this Agreement and any SOW;

7.1.2 Ahead is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois. Ahead has all requisite power and authority to execute and deliver this Agreement and any SOW and to perform its obligations hereunder and under any SOW;

7.1.3 The execution and delivery of this Agreement and any SOW and the consummation of the transactions contemplated hereby and in any SOW have been duly authorized by all requisite action on the part of Ahead. This Agreement and any SOW executed in connection herewith constitutes the legal, valid and binding agreement of Ahead, enforceable against Ahead in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies); and

7.1.4 EXCEPT AS SET FORTH IN THIS SECTION 7, AHEAD MAKES NO OTHER WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE), WRITTEN OR ORAL, AND ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY SPECIFICALLY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE. AHEAD ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO AHEAD BY OR ON BEHALF OF CLIENT.

7.2 **By Client.** In connection with this Agreement, Client represents, warrants and covenants that:

7.2.1 Client has all requisite corporate power and authority to execute and deliver this Agreement and any SOW and to perform its obligations hereunder and under any SOW;

7.2.2 The execution and delivery of this Agreement and any SOW and the consummation of the transactions contemplated herein and in any SOW, have been duly authorized by all requisite action on the part of Client. This Agreement and any SOW executed in connection herewith constitutes the legal, valid and binding agreement of Client, enforceable against Client in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies);

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7.2.3 Client has the sole and absolute ownership of or right to use all materials, concepts, ideas, designs, trademarks, logos or other information and materials provided by it to Ahead for use in connection with the Services provided by Ahead hereunder (and any addendum hereto) and the same do not infringe on any third parties' intellectual property rights including, without limitation, trademark, copyright, design rights or other proprietary rights.

7.2.4 Client is sufficiently capitalized and has the ability to pay all of its debts as they become due, and has and will have sufficient funds to pay the Fee and related expenses hereunder or under any SOW; and

7.2.5 Client will support and cooperate with Ahead in any manner reasonably necessary, appropriate or desirable in order to assist Ahead and facilitate Ahead's performance of the Services under any SOW. Client will provide Ahead access to Client's resources (including without limitation, data, infrastructure, personnel and the like) reasonably necessary, appropriate or desirable in order to assist Ahead with the performance of the Services under any SOW.

8. **Non-Solicitation.** Neither party will, during the term of this Agreement and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other party's personnel or subcontractors who have had direct involvement with the Services, without such other party's express written consent. An Ahead or Client employee who responds to an employment solicitation directed to the public generally, including without limitation internet, newspaper, radio, or television advertisements is not considered a solicitation and this section shall not apply.

9. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, STATUTE OR ANY OTHER LEGAL THEORY, INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR ITS USE, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EXCEPT WITH REGARD TO PAYMENT OBLIGATIONS, NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OF ACTION, THE TOTAL LIABILITY OF EACH PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF (i) FIFTY THOUSAND DOLLARS (\$50,000) OR (ii) THE TOTAL AMOUNT PAID OR PAYABLE TO AHEAD FOR THE SERVICES RENDERED IN CONNECTION WITH THE APPLICABLE SOW GIVING RISE TO SUCH LIABILITY.

10. **Additional Provisions.** The parties further agree to the following provisions:

10.1 **Notices.** All notices hereunder shall be in writing and either (i) delivered personally; or (ii) sent by nationally recognized express courier; or (iii) sent by certified mail (return receipt requested). Any such notice will be deemed given when actually received and addressed as follows:

If to Client:

Delaware County Commissioners
91 N. Sandusky Street
Delaware, Ohio 43015

If to Ahead:

Ahead, Inc.
401 N. Michigan Avenue
Suite 3400
Chicago, Illinois 60611
Attn: Legal Department

With copy by electronic mail to legal@ahead.com

10.2 **Severability.** The terms of this Agreement are severable and if a court of competent jurisdiction herein declares any term or provision illegal, void or unenforceable, the remainder of the provisions hereunder shall remain valid and enforceable.

10.3 **Entire Agreement.** This Agreement, and any SOWs incorporated herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof. Any prior or contemporaneous written or oral agreements or representations related to this Agreement and the SOWs or the Services are of no force or effect.

10.4 **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 an appropriate Ohio court or federal court having jurisdiction over Delaware County, Ohio and such courts shall be deemed to have jurisdiction and venue. Ahead hereby irrevocably consents to such applicable law, venue, and jurisdiction.

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10.5 Affiliates. “Affiliate” means an entity that directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is directly or indirectly under common ownership or control with another entity.

10.6 Amendments/Changes. No modification or amendments to this Agreement or any SOW shall be effective unless such amendment is in writing and signed by both parties hereto.

10.7 Independent Contractor. Ahead is an independent contractor and not the agent, partner or employee of Client. Neither party shall have the authority to enter into any contract or agreement to bind the other party, and neither party shall represent to anyone that it has such authority.

10.8 Survival. Upon the expiration or termination of this Agreement, those provisions that would by their nature survive this Agreement will so survive, including but not limited to, Client’s payment obligations hereunder.

10.9 Third Party Beneficiaries. Nothing contained in this Agreement is intended to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, and no person will be deemed a third party beneficiary under or by reason of this Agreement.

10.10 Force Majeure. Neither party shall be liable for any delay or failure in performance where such delay or failure to perform is incurred due to weather, acts of God, acts of governments, civil disturbances, war, acts of terrorism, riots, insurrections, quarantine, customs regulations, pandemics, epidemics, criminal activity, natural disasters, boycotts, strikes, lockouts or other labor unrest, or for any other cause beyond each party’s reasonable control (individually and collectively, “**Force Majeure Event**”), except payment obligations shall remain. The time for performance under any SOW shall be extended for the duration of any Force Majeure Event.

10.11 Assignment. Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations under this Agreement without the prior written approval of the other party; except that Ahead may assign or otherwise transfer this Agreement without the consent of Client (a) in connection with a merger, acquisition or sale of all or substantially all of its assets, or (b) to any affiliate or as part of a corporate reorganization. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

10.12 Counterparts. This Agreement and any SOW may be executed in two (2) or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one binding agreement. This Agreement and any documents relating to it may be executed and transmitted to any other party by facsimile or other electronic transmission, which facsimile or other electronic transmission shall be deemed to be, and utilized in all respects in all respects as an originally signed document.

10.13 Acknowledgment. THIS AGREEMENT SHALL BE CONSTRUED WITHOUT REGARD TO THE PARTY OR PARTIES RESPONSIBLE FOR THE PREPARATION OF THE SAME AND SHALL BE DEEMED AS PREPARED JOINTLY BY THE PARTIES HERETO. ANY AMBIGUITY OR UNCERTAINTY EXISTING HEREIN SHALL NOT BE INTERPRETED OR CONSTRUED AGAINST ANY PARTY HERETO. EACH OF THE PARTIES STATES THAT IT HAS READ EACH OF THE SECTIONS OF THIS AGREEMENT, HAS HAD THE OPPORTUNITY TO AVAIL ITSELF OF LEGAL COUNSEL OF ITS CHOICE DURING NEGOTIATIONS OF THIS AGREEMENT, AND IS FREELY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT UNDER NO DURESS AND THAT IT UNDERSTANDS THE SAME AND UNDERSTANDS THE LEGAL OBLIGATIONS THEREBY CREATED.

10.14 Records Retention. For a minimum of three (3) years after receiving compensation for Services rendered under this Agreement or as otherwise required by any applicable law, regulation, rule, or records retention schedule, whichever requires the longest retention period, Ahead shall retain and maintain all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Agreement (collectively “Records”). If an audit, litigation, prosecution, or other action (collectively “Action”) is initiated during the term of this Agreement or any Renewal Term, Ahead shall retain and maintain the Records until the Action is concluded and all issues are resolved or the applicable retention period has expired, whichever is later.

10.15 Access to Records. At any time during Business Hours and with reasonable notice, Ahead shall make available to the Client or its authorized representatives, at no cost and within a reasonable period of time, any and/or all Records. The Client or its authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records. For the avoidance of doubt, in no event shall Ahead be required to disclose its internal costs, margins, employee data, internal audit and review reports, any other proprietary or confidential information not reasonably required to be disclosed in relation to this Agreement or any SOW.

10.16 Non-Discrimination. The Provider warrants and agrees as follows:

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- 10.16.1 That in the hiring of employees for the performance of work under this Agreement or any subcontract, the Ahead shall not, by reason of race, color, religion, sex, sexual orientation, Vietnam-era veteran status, age, handicap, national origin, or ancestry, discriminate against any citizen of this state qualified to perform the work to which this Agreement relates; and,
- 10.16.2 That neither Ahead, nor any employee and/or agent, acting on their behalf shall, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race color, religion, sex, sexual orientation, Vietnam-era veteran status, age, handicap, national origin, or ancestry; and,
- 10.16.3 That neither Ahead nor any employee and/or agent, acting on their behalf shall, in any manner, discriminate against, intimidate, or retaliate against any person receiving Services under this Agreement on account of race color, religion, sex, sexual orientation, Vietnam-era veteran status, age, handicap, national origin, or ancestry; and,
- 10.16.4 The Ahead shall comply with all federal, state, and/or local discrimination laws and shall not discriminate.

10.17 Insurance. Prior to commencement of this Agreement, Ahead shall present to the Client current certificates of insurance for the below required policies of insurance. The insurance company needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance company to bind coverage on its behalf. The Client shall be named as an additional insured on all of the below required policy(ies) of insurance and such designation shall appear on the certificates of insurance. Ahead shall be responsible for any and all premiums for all required policy(ies) of insurance. All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance. If there is any change in insurance carrier or liability amounts and/or upon renewal, a new certificate of insurance must be provided to the Client within seven (7) calendar days of change. During the term of the Agreement, the Client may require Ahead to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default. In addition to the rights and protections provided by the insurance policies as required above, the County shall retain any and all such other and further rights and remedies as are available to them at law or in equity. Ahead shall carry and maintain current throughout the term of the Agreement, without lapse, the following policies of insurance with the following minimum coverages:

11. Commercial General Liability Insurance adequate to protect the Ahead and the Client against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Agreement. Said insurance shall, at a minimum, provide coverage in an amount which is customary in the industry or is required by law, whichever is the greater standard, and is adequate to protect the Ahead and the Client against any and all liability or damages arising from the performance of or operations under this Agreement.

11.1.1 Professional Liability Insurance, if and as applicable, for the Ahead and the Ahead’s employees providing Services under this Agreement. Such insurance shall provide coverage in an amount that is both standard in the industry and adequate to protect the Ahead and Client against any and all liability or damages arising from the professional Services provided under this Agreement.

11.1.2 Automobile Insurance, if vehicles are to be used by the Consultant in connection with this Agreement, covering all owned, leased, non-owned, and/or hired vehicles so used with minimum coverage limits of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

11.1.3 Worker’s Compensation Insurance as required by Ohio law and any other state in which work will be performed.

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

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

**COMMISSIONERS JOURNAL NO. 78 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 27, 2023**

IN THE MATTER OF APPROVING THE FIRST AMENDMENT TO THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, AND MARION GOODWILL INDUSTRIES, INC. FOR THE PURCHASE OF COMPREHENSIVE CASE MANAGEMENT EMPLOYMENT PROGRAM AND WORKFORCE INNOVATION AND OPPORTUNITY ACT YOUTH PROGRAM SERVICES:

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

WHEREAS, the Director of Jobs & Family Services recommends approval of the first amendment to the contract with Marion Goodwill Industries, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following first amendment to the contract with Marion Goodwill Industries, Inc., for the purchase of comprehensive case management employment program and workforce innovation and opportunity act youth program services:

**First Amendment
To
Contract for the Purchase of
CCMEP/WIOA Youth Program Services
Between
Delaware County Department of Job and Family Services
and
Marion Goodwill Industries, Inc.**

This First Amendment of the Contract For The Provision of Youth Program Services is entered into this 27th day of February, 2023 by and between Delaware County Board of County Commissioners (hereinafter "Board"), whose address is 91 North Sandusky Street, Delaware, Ohio 43015, the Delaware County Department of Job and Family Services, a Title IV-E Agency, (hereinafter "Agency") whose address is 145 North Union Street, 2nd Floor, Delaware, Ohio 43015, and Marion Goodwill Industries, Inc. (hereinafter "Provider") whose address is 340 W. Fairground St., Marion Ohio 43302 (hereinafter collectively the "Parties.).

WHEREAS, the Parties entered into the Contract for Youth Program Services ("Contract") on June 23, 2022,

WHEREAS, the parties agree to the addition of certain provisions to the Contract (collectively, "Provisions").

NOW THEREFORE, the Parties agree as follows:

1. The Parties agree to amend the Contract to add the following Provisions:
 - A. Five Thousand dollars (\$5,000) shall be added to the budget for supportive services for a new contract maximum of one hundred and five thousand dollars (\$105,000) for the service period of July 1, 2022 – June 30, 2023. The adjusted budget is depicted in Appendix I.
 - B. Expenditures for supportive services by the Provider shall be approved by the agency prior to purchases for services and goods are made on behalf of the program participant.
 - C. The Agency, Provider, and Work Experience Worksite shall collaborate on work experience participate wages that shall be a minimum of ten dollars (\$10.00) per hour and may be up to fifteen dollars (\$15.00) per hour.
 - D. The Agency, Provider, and Work Experience Worksite shall use the WEP Wage Authorization form dated 12/2/2022 as depicted in Appendix II.

2. Signatures

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



3. Conflicts

In the event of a conflict between the terms of the Contract and the First Amendment, the terms of this First Amendment shall prevail.

4. Terms of Agreement Unchanged

All terms and conditions of the Contract, not changed by this First Amendment remain the same, unchanged, and in full force and effect.

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		Delaware County A proud partner of the American Job Center network		DKMM CCMEP WIOA YOUTH PROGRAM APPENDIX 1 BUDGET FORM			
Provider Name: Marion Goodwill Industries				Date			
Signature of Authorized Representative							
Budget Line Item							
						Amount \$\$	
Education Expenses (Study Guides, HS Grad Programs, Dropout Prevention, Registration, School Fees)		\$	5,000.00				\$5,000.00
Youth Work Experience Costs							
Wages Youth		\$	21,312.21				\$21,312.21
Incentive wages (taxable)		\$	-				\$0.00
Incentive payments (non axable, non payroll issued)		\$	-				\$0.00
FICA tax @ 7.65%		\$	1,630.38				\$1,630.38
BWC tax at specific site rate		\$	809.86				\$809.86
Total Youth Work Experience Costs:				\$	23,752.45		
Direct Service Costs:							
Employment Specialist Wages		\$	38,200.00				\$38,200.00
Tutor / Guidance Wages		\$	750.00				\$750.00
Program Coordinator		\$	1,000.00				\$1,000.00
FICA tax @ 7.65%		\$	3,056.18				\$3,056.18
BWC tax @ 2.6575%		\$	1,061.67				\$1,061.67
Unemployment tax @ 0.48%		\$	191.76				\$191.76
Major Medical Insurance		\$	10,302.84				\$10,302.84
401(k) match - Employment Specialist		\$	1,073.28				\$1,073.28
401(k) match - Program Coordinator		\$	30.00				\$30.00
Mileage		\$	936.79				\$936.79
Cell Phones		\$	600.00				\$600.00
Supportive Services		\$	5,000.00				\$5,000.00
Total Direct Service Costs:				\$	62,202.52		
Billing & Program Management							
Grant Accounting		\$	1,781.00				\$1,781.00
Program Manager Wages		\$	2,000.00				\$2,000.00
FICA tax @ 7.65%		\$	289.25				\$289.25
BWC tax @ 2.6575%		\$	100.48				\$100.48
Unemployment tax @ 0.48%		\$	18.15				\$18.15
Major Medical Insurance		\$	1,106.36				\$1,106.36
401(k) match - Grant Accounting		\$	53.43				\$53.43
401(k) match - Program Manager		\$	60.00				\$60.00
Total Billing & Program Management Costs:				\$	5,408.67		
Total Direct Costs:				\$	91,363.64		
Applied Indirect Expenses:							
De Minimis @ 10% Total Direct Costs		\$	9,136.36				\$9,136.36
Please add rows to the spreadsheet if needed							
Work Experience (20% of Available Funds Mandated)							\$21,312.21
Total Proposed Budget							\$105,000.00
Maximum Annual Funds Available For Contract							\$105,000.00
In-Kind Contributions by Provider							
Cell Phone							
Please add rows to the spreadsheet if needed							
In-Kind Total		\$	-				\$0.00

Not less than 20% of the youth program funds shall be used to provide in-school and out-of-school youth with work experience activities as required by CCMEP WIOA.

Not less than 75% of the youth program funds shall be used to provide out-of-school youth services as required by WIOA. Line item budget flexibility does not require prior approval from funder, however total reimbursable expenditures cannot exceed total award amount.

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Appendix II



Delaware County
A proud partner of the
American Job Center network

CCMEP TANF & WIOA Youth

WEP Wage Authorization



PARTICIPANT / EMPLOYEE INFORMATION	
Name:	
WORKSITE EMPLOYER INFORMATION	
Business Name:	
Street Address:	
City, State, Zip:	
Phone:	
Representative's Name:	
Representative's Title:	
WORKSITE EMPLOYMENT INFORMATION	
Start Date of Employment:	
Position Title:	
Hours Per Week & Hourly Wage:	
Approved Wage Amount (DCDJFS Staff Only)	
Hourly Wage:	

Goodwill or DCDJFS Case Manager Signature

Date

Supervisor Signature

Date

REVISION DATE | 12.2.2022

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

10
RESOLUTION NO. 23-148

IN THE MATTER OF APPROVING A TRANSFER OF FUNDS FOR JOB AND FAMILY SERVICES:

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

Transfer of Funds		Amount
From:	To:	
22511607-5801	22411604-4601	\$478,585.77
Children Services Fund/Transfer	JFS Child Protection/Interfund Revenues	
22311611-5801	22411601-4601	\$40,339.11
Workforce Investment Act/Transfers	JFS Income Maintenance/Interfund Revenue	
22411602-5801	22511607-4601	\$10,680.83
JFS PRC/Transfers	Children Services/Fund/Interfund Revenues	

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

11

RESOLUTION NO. 23-149

IN THE MATTER OF APPROVING A PROFESSIONAL DESIGN SERVICES AGREEMENT WITH AMERICAN STRUCTUREPOINT, INC. FOR THE COUNTY'S HAYES BUILDING ROOF REPLACEMENT PROJECT:

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

WHEREAS, the Director of Facilities recommends approval of a Professional Design Services Agreement with American Structurepoint, Inc. for the County's Hayes Building Roof Replacement Project;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Professional Design Services Agreement with American Structurepoint, Inc. for the County's Hayes Building Roof Replacement Project:

**PROFESSIONAL DESIGN SERVICES AGREEMENT
Hayes Building Roof Replacement**

This Agreement is made and entered into on February 27, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 ("County"), and American Structurepoint, Inc., 600 Superior Avenue, Suite 2401, Cleveland, Ohio 44114 ("Consultant"), hereinafter collectively referred to as the "Parties," and shall be known as the "Agreement."

1 SERVICES PROVIDED BY CONSULTANT

1.1 The Consultant shall provide professional design and construction administration services for the County's Hayes Building Roof Replacement project (the "Services").

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

1.3 The Services are more fully defined in, and shall be rendered by the Consultant in accordance with, the Consultant's Scope of Services attached hereto as Exhibit A and, by this reference, incorporated herein.

2 SUPERVISION OF SERVICES

2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities (the "Director") as the agent of the County for this Agreement.

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

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

4.1 Compensation for Services provided under this Agreement shall be in accordance with Exhibit A.

4.2 For all Services, the total fee shall be \$49,900.00, which amount shall not be exceeded without subsequent modification.

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

5 NOTICES

5.1 "Notices" issued under this Agreement shall be served by U.S. Certified Mail on the Parties at the addresses written in the preamble of this Agreement. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

6 PAYMENT

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6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the Director. If the Director objects to any invoice submitted by Consultant, the Director shall give Notice thereof to Consultant in writing giving reasons therefor within seven (7) days of receipt of such invoice. If any invoice submitted by Consultant is disputed by the Director, only that portion so disputed may be withheld from payment.

6.2 The Consultant shall submit invoices to the Director on Consultant's company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The Director may require additional documentation to substantiate said invoices, and the Consultant shall promptly submit documentation as requested to substantiate said invoices.

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

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

7.1 The Consultant shall commence Services upon a written order to proceed from the Director and shall complete the Services in a timely manner.

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

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

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

9 CHANGE IN SCOPE OF SERVICES

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

10 OWNERSHIP

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

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

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

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

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

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

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

12 INDEMNIFICATION

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

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subcontractors and their employees or any other person for whose acts any of them may be liable.

12.2 To the fullest extent permitted by law, neither party shall be liable to the other party for any special, punitive, consequential or indirect damages resulting in any way from the performance of the Services or otherwise arising from this Agreement.

13 INSURANCE

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

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

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

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

13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and

13.2. Consultant shall require all of its subcontractors to provide like endorsements.

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

14 MISCELLANEOUS TERMS AND CONDITIONS

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

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

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

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

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

14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof

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

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

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

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

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

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

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

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

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

EXHIBIT A

Consultant's Scope of Services

For purposes of this Scope of Services "we" and "us" shall refer to the Consultant, and "you" shall refer to the County. The County wishes to proceed with replacing the low-slope membrane roofing at the Rutherford B. Hayes Delaware County Services Building. Original construction drawings dated 4/5/2001 were provided to us. Steep-slope roof areas with metal roof panels and HVAC replacement are not included in this project. We were able to include CA within this proposal.

Per the County's request, American Structurepoint, Inc. proposes the following Scope of Services for this project:

- **Schematic Design and Design Development**
 - We will visit the property and meet with you or your representatives to become generally familiar with the site and discuss the anticipated scope (completed).
 - Review any available construction drawings of the building specific to the roof areas.
 - Complete a site visit to collect necessary field measurements and obtain roofing cores with the assistance of a roofing contractor (if necessary).
 - We will prepare bidding documents to address the low-slope roof area. The roof replacement is anticipated to include removal of the existing EPDM membrane roofing. Metal flashings may be reused or be replaced. Existing roof insulation and cover boards are anticipated to remain in place, and new insulation will be added as determined necessary to meet current energy code requirements and as desired by the Owner. New 60-mil black EPDM membrane is anticipated to be specified, achieving a 20-year manufacturer's warranty.

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- With the anticipated addition of insulation thickness, modifications may be required to wall/siding components.
- Submit a review set of drawings to the County.
- Provide an Opinion of Probable Construction Cost to the County.*

- **Construction Documents**

- Following the County’s review of the SD/DD review drawings, we will produce bidding documents, including any necessary front-end documents, technical specifications, and construction drawings. The front- end documents will include applicable sections from Division 00 (Procurement and Contracting Requirements) and Division 01 (General Requirements). Bidding documents will be submitted electronically to the County for final approval before final issuance to contractors.

- **Bidding/Negotiation Phase Services**

- Attend a pre-bid meeting.
- Respond to contractor questions.
- Issue addendums to construction documents as necessary.
- Review bid results and provide a bid award letter of recommendation.

- **Construction Administration Services**

- Attend one pre-construction / project kickoff meeting.
- Based on an estimated 2-month construction schedule:
 - Conduct bi-weekly (once every two weeks) on-site progress meetings and construction observation (CO) site visits, to occur concurrently, over the 2-month construction period. Up to 4 meetings/CO visits total are anticipated.
 - Prepare and submit progress meeting minutes and construction observation reports for each site visit.
 - Review and respond to contractor requests for information, construction submittals, and shop drawings throughout the project.
 - Write and execute change orders related to the scope of the project.
 - Review and certify contractor payment applications.
- Perform one substantial completion / punch list inspection near the end of work.

- **Project Close-out Services**

- Perform one final / close-out inspection at the completion of work to verify punch list items have been completed.
- Compile necessary close-out documents, including as-built and record document submittals.

We propose to perform the work outlined above for a lump sum price of **\$49,900**, which includes all anticipated project-related expenses.

We anticipate completion of the construction documents within 60 calendar days of receiving the signed contract. If, during construction, deficiencies are identified in the existing construction requiring redesign or significant additional effort, or if the construction work extends beyond the estimated construction schedule, revisions to the scope and fees may be required.

*The Opinion of Probable Construction Cost (estimate) will be based on approximate quantities and values and will be generated with the assistance of contractors involved in such trades. The estimate should not be interpreted as a bid or offer to perform the repairs or replacements. The estimate does not address the cost impact of environmentally regulated materials on demolition activities. The estimate should be construed as preliminary, order of magnitude budgets. Actual costs will likely vary depending on such matters as manufacturer and type of systems selected, field conditions, existing materials to be removed, quality of contractor, quality of project management exercised, market conditions, and whether competitive pricing is solicited, etc.

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

12
RESOLUTION NO. 23-150

IN THE MATTER OF APPROVING AN AMENDMENT TO THE USE OF PROCUREMENT CARDS FOR THE EMERGENCY MEDICAL SERVICES DEPARTMENT:

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

WHEREAS, pursuant to section 301.29 of the Revised Code, the Board of Commissioners of Delaware County, by Resolution No. 04-1193, dated September 30, 2004, adopted a policy for the use of County Procurement Cards; and

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WHEREAS, the Board of Commissioners of Delaware County, by Resolution No. 11-1040, dated October 3, 2011, adopted amendments to the Policies and Procedures for the county procurement card program; and

WHEREAS, the Board of Commissioners has adopted the procurement card policy for the use of the card to pay for specific classes of work related expenses, without submitting a monthly estimate of the expenses, pursuant to section 301.29(F)(2) of the Revised Code;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, authorizes the use of the following procurement cards to the limits indicated and for specific work related expenses designated in the Procurement Card Policy without submitting a monthly estimate of expenses:

Amended Card for Rachael Cox:

Appointing Authority:	Commissioners
Office/Department:	Emergency Medical Services
Daily spending per card:	\$5,000
Monthly spending per card:	\$10,000
Single transaction limit:	\$5,000
Daily number of transactions per card:	10
Monthly number of transactions per card:	50
Department Coordinator:	Sarah Dinovo

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

13

RESOLUTION NO. 23-151

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DLZ OHIO, INC. FOR CONSTRUCTION MATERIALS TESTING AND FIELD INSPECTION RELATED TO THE OECC HEADWORKS AND AERATION UPGRADES PROJECT:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with DLZ Ohio, Inc. for construction materials testing and field inspection related to the OECC Headworks and Aeration project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with DLZ Ohio, Inc.:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on February 27, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and DLZ Ohio, Inc., 6121 Huntley Road, Columbus, Ohio 43229 (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide construction materials testing for the County’s Olentangy Environmental Control Center Headworks and Aeration Upgrades Project (the “Services”).
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 The Services are more fully defined in, and shall be rendered by the Consultant in accordance with, the Consultant’s Construction Services Agreement and Fee Proposal dated January 20, 2023 (the “Proposal”), attached hereto and, by this reference, incorporated herein.

2 SUPERVISION OF SERVICES

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

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior

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understandings and agreements relating to the Services, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Proposal.
- 4.2 Total compensation under this Agreement shall not exceed Forty-Nine Thousand, Nine Hundred and Fifty-One Dollars and Fifty-Cents (\$49,951.50) without subsequent modification.
- 4.3 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

5 NOTICES

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

Sanitary Engineer:

Name: Delaware County Sanitary Engineer's Office
Attn: Brad Stanton

Address: 10333 Olentangy River Road, Powell, Ohio 43065

Telephone: 740-833-2240

Email: bstanton@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Jody Sucharski, P.E.

Address of Firm: 6121 Huntley Road

City, State, Zip: Columbus, Ohio 43229

Telephone: 614-888-0040

Email: jsucharski@dlz.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the Sanitary Engineer for Services performed to date in accordance with the Consultant's Proposal.
- 6.2 Invoices shall be submitted to the Sanitary Engineer by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

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

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

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 CHANGE/ADDITIONS IN SCOPE OF SERVICES

9.1 In the event that significant changes to the scope of the Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only take effect if approved in a writing signed by both Parties in accordance with Section 3.1.

For any additional services in addition to those included in Section 1 as authorized or "if authorized", a scope and fee shall be negotiated and agreed to by both Parties prior to performance of the additional services. This Agreement shall be modified or amended in writing with the mutual consent and agreement of the Parties prior to performance of the additional services.

10 OWNERSHIP

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

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

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

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

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

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

12 INDEMNIFICATION

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

13 INSURANCE

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

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

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

13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.

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- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established

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

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

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

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

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

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

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

14

RESOLUTION NO. 23-152

IN THE MATTER OF APPROVING A SERVICES AGREEMENT WITH CENTRIFUGE-SYSTEMS, LLC FOR CENTRIFUGE INSPECTION AND REPAIR SERVICES:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Centrifuge-Systems, LLC for centrifuge inspection and repair services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Centrifuge-Systems, LLC:

SERVICES AGREEMENT

This Agreement is made and entered into on February 27th, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Centrifuge-Systems, LLC, 9586 58th Place, Kenosha, WI 53144 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide inspection and repair of the CS14-4 centrifuge and 1071 rotodiff from the County’s Lower Scioto Water Reclamation Facility, 6579 Moore Road, Delaware, Ohio, including shipping the equipment to the Contractor’s facility for repair and on-site reinstallation after repair, including travel and related expenses (the “Services”).
- 1.2 The Contractor shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 The Services are described in and shall be rendered by the Contractor in accordance with the Contractor’s Repair Inspection Report and Quote, dated February 2, 2023, which is attached hereto as **Exhibit A** and, by this reference, fully incorporated herein.

2 SUPERVISION OF SERVICES

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

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3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with *Exhibit A*, at the total fee of \$38,633.00. Compensation under this Agreement shall not exceed \$38,633.00 without subsequent modification in accordance with Section 3.1.
- 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 "Notices" issued under this Agreement shall be served in writing by Certified U.S. Mail on the Parties to the attention of the individuals listed below. The Parties may use electronic communication for the purposes of general communication, but e-mail shall not be used to transmit Notices.

County:

Name: Jeff Hall
 Address: 6579 Moore Rd., Delaware, OH 43015
 Telephone: (740) 833-2226 x5102
 Email: jhall@co.delaware.oh.us

Contractor:

Name: James Jones
 Address: 9586 58th Place, Kenosha, WI 53144
 Telephone: (412) 720-7476
 Email: jjones@centrisys.us

6 PAYMENT

- 6.1 Compensation shall be paid upon the Contractor's invoice(s), but no more than once per month.
- 6.2 The Contractor shall submit invoices to the Sanitary Engineer on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The Sanitary Engineer may require additional documentation to substantiate an invoice, and the Contractor shall promptly submit documentation as requested to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

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

- 7.1 The Contractor shall commence Services upon written order from the Sanitary Engineer and shall complete the Services promptly and in accordance with *Exhibit A*.
- 7.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

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9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only be effective if approved in a written modification signed by both Parties in accordance with Section 3.1.

10 OWNERSHIP

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

11 CHANGE OF KEY CONTRACTOR STAFF; ASSIGNMENT

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

12 INDEMNIFICATION

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

13 INSURANCE

- 13.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 13.5 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

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

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

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

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

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Revised Code.

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

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

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

15

RESOLUTION NO. 23-153

IN THE MATTER OF APPROVING A SERVICES AGREEMENT WITH VISU-SEWER OF OHIO, LLC FOR CCTV INSPECTION SERVICES:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Visu-Sewer of Ohio, LLC for CCTV inspection services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Visu-Sewer of Ohio, LLC:

DIVISION OF ENVIRONMENTAL SERVICES
REGIONAL SEWER DISTRICT
SERVICES AGREEMENT

This Agreement is made and entered into this 27th day of February, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and *Visu-Sewer of Ohio, LLC, 6508 Taylor Road SW, Reynoldsburg, Ohio 43068* (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide the Delaware County Regional Sewer District with closed-circuit televised (CCTV) inspection of approximately 15,852 feet of sanitary sewers (the “Services”).
- 1.2 The Contractor shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 The Services shall be rendered by the Contractor in accordance with *Exhibit A*, attached hereto and, by this reference, fully incorporated herein.

2 SUPERVISION OF SERVICES

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

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be based upon the unit prices per linear foot of sewer inspected and days of traffic control, in accordance with *Exhibit A*.
- 4.2 Services shall only be performed upon written Notice from the Sanitary Engineer.
- 4.3 Total compensation under this Agreement shall not exceed \$50,000.00 without subsequent modification.
- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the Services.

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5 NOTICES

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

County: Delaware County Regional Sewer District

Name: Julie McGill

Address: 7767 Walker Wood Blvd., Lewis Center, OH 43035

Telephone: 740-833-2240

Email: jmcgill@co.delaware.oh.us

Contractor: Visu-Sewer of Ohio, LLC

Name of Principal: John Murphy

Address of Firm: 6508 Taylor Road SW

City, State, Zip: Reynoldsburg, OH 43068

Telephone: (614) 575-0065

Email: RonA@visu-sewer.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Sanitary Engineer and shall be in accordance with Article 4 of this Agreement and *Exhibit A*.
- 6.2 Invoices shall be submitted to the Sanitary Engineer by the Contractor on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices, and the Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

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

- 7.1 The Contractor shall commence Services upon written Notice to Proceed (“Authorization”) from the Sanitary Engineer and shall complete the Services within four (4) months.
- 7.2 Contractor shall not proceed with any “If Authorized” tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of termination, the Contractor shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the scope of the Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall only be effective upon approval in a writing signed by both Parties.

10 OWNERSHIP

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

11 CHANGE OF KEY CONTRACTOR STAFF; ASSIGNMENT

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

12 INDEMNIFICATION

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

13 INSURANCE

- 13.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 13.5 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

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

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

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

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

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

- 14.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing 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 Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

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

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

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

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

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

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

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

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RESOLUTION NO. 23-154

IN THE MATTER OF AUTHORIZING THE USE OF A PROCUREMENT CARD FOR THE REGIONAL SEWER DISTRICT:

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

WHEREAS, pursuant to section 301.29 of the Revised Code, the Board of Commissioners of Delaware County, by Resolution No. 04-1193, dated September 30, 2004, adopted a policy for the use of County Procurement Cards; and

WHEREAS, the Board of Commissioners of Delaware County, by Resolution No. 11-1040, dated October 3, 2011, adopted amendments to the Policies and Procedures for the county procurement card program; and

WHEREAS, the Board of Commissioners has adopted the procurement card policy for the use of the card to pay for specific classes of work related expenses, without submitting a monthly estimate of the expenses, pursuant to section 301.29(F)(2) of the Revised Code;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, authorizes the use of the following procurement card to the limits indicated and for specific work related expenses designated in the Procurement Card Policy without submitting a monthly estimate of expenses:

Card 1:

Appointing Authority: County Commissioners
Office/Department: Regional Sewer District

Daily spending per card: \$10,000
Monthly spending per card: \$25,000
Single transaction limit: \$10,000
Daily number of transactions per card: 10
Monthly number of transactions per card: 50

Name on Card: Kristopher Fluty
Department Coordinator: Brittany Tuggle

Card 2:

Appointing Authority: County Commissioners
Office/Department: Regional Sewer District

Daily spending per card: \$5,000
Monthly spending per card: \$10,000
Single transaction limit: \$5,000
Daily number of transactions per card: 10
Monthly number of transactions per card: 50

Name on Card: Lauren Wheeler
Department Coordinator: Gina DeWitt

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

17

RESOLUTION NO. 23-155

IN THE MATTER OF WAIVING THE DELAWARE COUNTY PORTION OF TIPPING FEES AT THE SOLID WASTE TRANSFER STATION TO SUPPORT 2023 LITTER CONTROL CAMPAIGNS:

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

WHEREAS, the Delaware General Health District has requested that the Board of County Commissioners waive its portion of the Solid Waste Transfer Station tipping fees in support of litter control campaigns; and

WHEREAS, these litter control campaigns include support of Keep Delaware County Beautiful, an affiliate of Keep America Beautiful to promote the Olentangy Watershed Clean Up and the Scioto River Sweep; and

WHEREAS, the Board of County Commissioners of Delaware County has waived its portion of Solid Waste Transfer Station tipping fees in support of these initiatives in past years;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Delaware County does hereby waive the Delaware County portion of the Solid Waste Transfer Station tipping fees in support of the

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aforementioned programs effective April 11, 2023 to July 1, 2023 for the Great American Clean Up, the Olentangy Watershed Clean Up in August 2023 and the Scioto River Sweep in the fall of 2023.

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

18

RESOLUTION NO. 23-156

IN THE MATTER OF APPROVING THE SIXTH AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CONCORD/SCIOTO COMMUNITY AUTHORITY:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sixth Amendment to the Amended and Restated Intergovernmental Cooperation Agreement with the Concord/Scioto Community Authority;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Sixth Amendment to the Amended and Restated Intergovernmental Cooperation Agreement with the Concord/Scioto Community Authority:

SIXTH AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL COOPERATION AGREEMENT

This Sixth Amendment to the Amended and Restated Intergovernmental Cooperation Agreement (the "Sixth Amendment") dated as of February 27th, 2023, is by and between the CONCORD/SCIOTO COMMUNITY AUTHORITY, 470 Olde Worthington Road, Suite 100, Westerville, Ohio 43082, a new community authority organized and existing under Chapter 349 of the Ohio Revised Code (the "Authority"), and the COUNTY OF DELAWARE, OHIO, 91 North Sandusky Street, Delaware, Ohio 43015, a political subdivision duly organized and validly existing under and by virtue of the laws of the State of Ohio (the "County"), and amends the Amended and Restated Intergovernmental Cooperation Agreement (the "Agreement") between the Authority and the County dated October 1, 2013.

RECITALS:

WHEREAS, the Authority and the County have previously entered into the Agreement dated as of October 1, 2013, whereby the Authority has agreed, among other things, to design and construct, or cause to be designed and constructed, the O'Shaughnessy Pump Station; and

WHEREAS, the Authority and the County amended the Agreement by the First Amendment, dated December 2, 2013, to extend the timelines associated with the design and construction of the O'Shaughnessy Pump Station for the benefit of both the Authority and the County; and

WHEREAS, the Authority and the County amended the Agreement by the Second Amendment, dated May 28, 2015, to:

- (i) plan, design, and construct additional sanitary sewer improvements referred to in the Second Amendment as "Project #1" and "Project #2"; and
- (ii) adjust the timelines associated with the construction of the O'Shaughnessy Pump Station,

all as set forth in a certain Term Sheet agreed to by the County, the Authority, the Developer, and Donald R. Kenney; and

WHEREAS, the Authority and the County amended the Agreement by the Third Amendment, dated June 23, 2016, in order to redefine certain infrastructure improvements known as Project #1 and Project #2 and define Project #3, which are referred collectively as the "Third Amendment Improvements;" and

WHEREAS, the Authority and the County amended the Agreement by the Fourth Amendment, dated November 16, 2017, in order to define "Project #4" and to provide for the County's contribution toward the costs of Project #4; and

WHEREAS, the Authority and the County amended the Agreement by the Fifth Amendment, dated January 23, 2018, in order to revise the "Service Area" of the Agreement, and add to the scope of the Agreement certain territory serviced by the Tartan Fields wastewater treatment facility; and

WHEREAS, the Authority and the County desire in this Sixth Amendment to amend the Agreement in order to further revise the "Service Area" of the Agreement to cover any areas within the area depicted as "Lower Scioto Service Area" and "Owner's Choice," and add to the scope of the Agreement certain territory outside the area serviced by the Treatment Facility.

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NOW, THEREFORE, in consideration of the foregoing and the promises of the parties hereto to be bound by the terms hereof and for other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Authority and the County agree to the foregoing and as follows:

Section I

Amendments to Section I.

Section I of the Agreement is hereby amended by adding the following definitions:

“Commercial Declaration” means any declaration of covenants and restrictions as defined in Ohio Revised Code Section 349.07 and is filed of record for the benefit of the Authority that levies no more than 5.0 mills on real property that is classified by the County Auditor as commercial use real property only and in such instrument is declared to be a “Commercial Declaration” under this Agreement.

“Eastern Service Area” means the area described in Sixth Amendment – Exhibit C, which is outside the Service Area, as such area may be expanded pursuant to Section V of this Agreement.

“Service Area Map” means the map describing the Service Area, which map is attached hereto as Sixth Amendment – Exhibit A, as such map may be amended pursuant to Section V of this Agreement.

“Sixth Amendment Surcharge Area” means the area depicted in Sixth Amendment – Exhibit D, which is subject to a division of the revenue from the Surcharge charged and collected pursuant to Section XIII of this Agreement.

Section I of the Agreement is hereby amended by deleting the existing definition of “Community Development Charge” in its entirety and substituting the following in its place:

“Community Development Charge” means the annual community development charge (10.25 mills for residential property parcels and 5.0 mills for commercial property parcels) to be paid by owners of property within the District in accordance with the Declaration or Commercial Declaration, whichever applies.

Section II

Amendments to Section V.

Section V of the Agreement is hereby amended by deleting the existing language of Section V, as amended by the Fifth Amendment, in its entirety and substituting the following language in its place:

The County and the Authority agree to revise the Service Area Map effective as of this Sixth Amendment. The revised Service Area Map is attached hereto as Sixth Amendment – Exhibit A.

The County intends that the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, will be the sole and exclusive wastewater treatment facility for the Service Area, and the County covenants that it shall not acquire, construct or install any other wastewater treatment facility serving the Service Area; provided, that the County may maintain any treatment plants or pump stations that existed at the time at which the Original Agreement was executed, but the County shall not expand the service area of any treatment plants or pump stations that existed at the time at which the Original Agreement was executed if such expansion would include service to territory within the Service Area. The preceding sentence shall remain in full force and effect until such time as the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, has reached its full capacity, whereupon the County may acquire, construct or install other wastewater treatment facilities to serve the Service Area. Notwithstanding any other provision of this Agreement (except those provisions of this Agreement imposing requirements on property owners within the Service Area, the Tartan Fields Service Area, the Eastern Service Area, or regarding the ability of parcels to join or remain within the District), after obtaining the prior written consent of the Authority and without reducing the Service Area the County may (i) direct or redirect wastewater flow from pump stations, sanitary sewers, or force mains within the Service Area to be treated at County facilities other than the Treatment Facility and the Treatment Facility Expansion, if such direction or redirection is reasonably necessary to reserve capacity in the Treatment Facility (as expanded by the Treatment Facility Expansion), and (ii) expand the Service Area to include additional properties and direct or redirect wastewater flow from pump stations, sanitary sewers, or force mains outside of the Service Area serving such additional properties to be treated at the Treatment Facility and the Treatment Facility Expansion. The County may expand the Service Area, the Tartan Fields Service Area, and the Eastern Service Area. The County and the Authority agree that the County shall expand the Service Area to cover any areas within the area depicted as “Owner’s Choice” on the Service Area Map at the election of any property owner owning property outside of the Service Area but within the “Owner’s Choice” area that desires to develop such property within such area and to receive sewer services from the Treatment Facility or any Supportive Improvements; provided, that any property owner so electing to receive sewer services from the Lower Scioto Water Reclamation Facility shall be subject to and shall pay both (i) the Surcharge for the Service Area in accordance with Section XIII hereof, and (ii) an additional surcharge in the amount of \$1,350 or such other amount as may be determined by the County from time to time. If the County expands the Service Area the County shall certify to the Authority

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an expanded Service Area Map to replace the map attached hereto as Sixth Amendment – Exhibit A. If the County expands the Tartan Fields Service Area the County shall certify to the Authority an expanded Tartan Fields Service Area map to replace the map attached hereto as Sixth Amendment – Exhibit B. If the County expands the Eastern Service Area the County shall certify to the Authority an expanded Eastern Service Area map to replace the map attached hereto as Sixth Amendment – Exhibit C.

Except as otherwise expressly set forth in this Agreement, the County agrees to oppose any attempt by any entity to provide sanitary sewer service within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area, each as defined in this Agreement in such a manner as the County shall determine. Moreover, except as otherwise expressly set forth in this Agreement, the County shall not concede any rights it now has to provide sanitary sewer service to the Service Area, the Tartan Fields Service Area, or the Eastern Service Area to any other sewer service provider without the express written consent of the Authority and the Developer. Other than the O’Shaughnessy Pump Station and other pump stations intended solely to convey wastewater to the Treatment Facility and approved by the Authority, the County shall not permit the construction of treatment plants or pump stations within the Service Area to provide wastewater treatment services by or on behalf of the County in addition to those treatment plants or pump stations that existed at the time at which the Original Agreement was executed, until such time as the Treatment Facility, as it may be expanded by the Treatment Facility Expansion, has reached its full capacity, and the County shall not expand the service area of any treatment plant or pump station if such expansion includes a portion of the Service Area. Notwithstanding the preceding sentence, after obtaining the prior written consent of the Authority and without reducing the Service Area, the County may (i) direct or redirect wastewater flow from pump stations, sanitary sewers, or force mains within the Service Area to be treated at County facilities other than the Treatment Facility and the Treatment Facility Expansion, if such direction or redirection is reasonably necessary to reserve capacity in the Treatment Facility (as expanded by the Treatment Facility Expansion), and (ii) expand the Service Area to include additional properties and direct or redirect wastewater flow from pump stations, sanitary sewers, or force mains outside of the Service Area serving such additional properties to be treated at the Treatment Facility and the Treatment Facility Expansion. In addition, the County shall not reduce the Service Area, the Tartan Fields Service Area, or the Eastern Service Area or consent to the provision of wastewater treatment services in the Service Area by entities other than the County without the express written consent of the Authority and the Developer. This paragraph shall not bind the County with respect to territory within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area annexed pursuant to any procedure set forth in Chapter 709 of the Ohio Revised Code in which the County is not vested with the discretion to deny the petition for annexation.

There shall be two methods for properties within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area to receive and be assessed for the cost of sewer services, with the method to be chosen by the property owner.

The first method shall be for a property to join the District, which is governed by the Authority, and pay the Community Development Charge (as defined in Section XII herein), which Community Development Charge shall be in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement. Amounts received by the Authority under this first method shall be distributed in accordance with Section XII hereof. The Authority and the County agree that the Developer shall have the same rights to approve of the addition of territory to the District as are granted to the Developer under the Declaration and Ohio Revised Code Chapter 349. The Authority and the County agree that no amendments shall be made to the Authority’s new community development program without the consent of the Developer. The County shall not authorize the creation of any new community authority within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area other than the Authority, and if any property owner within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area petitions to form a new community authority other than the Authority, the County shall require the petition to satisfy the conditions for a petition to amend the territory of the Authority before accepting the petition.

The second method shall be for a property owner to pay to the County, for each single family residential equivalent unit (as determined by the County pursuant to the applicable sewer rate and/or charge resolution then in effect) to be developed and at the time that a Subdivider’s Agreement is approved for the site within which such single family residential equivalent unit is to be developed, in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement, the present value of a 2.0 millage charge assuming that such charge were imposed over a thirty-year period against the projected assessed value of such unit (the “Improvement Fee”), which Improvement Fee shall be in addition to, and not in lieu of, the normal sewer tap fees and any Surcharge required to be collected pursuant to this Agreement. For purposes of applying the second method, the present value of the Improvement Fee per single family residential equivalent unit shall be determined in each year according to the following table:

<u>Year</u>	<u>Improvement Fee</u>
2022	\$8,347.59
2023	\$8,598.02
2024	\$8,855.96
2025	\$9,121.64
2026	\$9,395.29

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<u>Year</u>	<u>Improvement Fee</u>
2027	\$9,677.15
2028	\$9,967.46
2029	\$10,266.47
2030	\$10,574.48
2031	\$10,891.72
2032	\$11,218.47

For the year 2033 and each year thereafter, the present value of the Improvement Fee is equal to the present value of the charge for the preceding year multiplied by 1.03. The amount received by the County under this second method shall be used to reimburse the County for costs it incurs in funding the costs of the Improvements and will no longer be collected once all such costs (including interest on all unreimbursed costs at an annual rate of 5.0%, compounding annually) are reimbursed by amounts received by the County under this second method, pursuant to the surcharge described in Section XIII or paid to the County pursuant to Section XII.

Any buildings within the Service Area, the Tartan Fields Service Area, or the Eastern Service Area already connected to County sanitary sewer, any single-family homes in the Service Area, the Tartan Fields Service Area, or the Eastern Service Area existing as of the date of the Original Agreement, and any platted lots served by pump stations or treatment plants that existed at the time at which the Original Agreement was executed shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee. Any single-family homes in the Service Area, the Tartan Fields Service Area, or the Eastern Service Area existing as of the date of the Original Agreement and not connected to sewer shall pay a sewer tap fee and surcharge, if applicable, pursuant to the County’s sewer tap collection fee policy then in effect as of the date of the tap; provided, that:

(i) any single-family homes in the Scioto Reserve development that have been added to the Service Area as a result of the Second Amendment shall pay a sewer tap fee and surcharge, if applicable, pursuant to the Amended and Restated Subdivider’s Agreement between the Scioto Reserve subdivider and the County;

(ii) any single-family homes in the area identified in Authority Resolution No. 2013-05, adopted by the Board of Trustees of the Authority on August 30, 2013 and attached hereto as Exhibit E, shall not be obligated to join the District and pay the Community Development Charge or to pay the Improvement Fee but shall pay (A) a sewer tap fee to the subdivider of the Scioto Reserve development identified in the Amended and Restated Subdivider’s Agreement between the Scioto Reserve subdivider and the County, and (B) a surcharge to the County in the amount of \$1,500; and

(iii) up to 34 single-family homes in the Tartan Fields Service Area and identified in the Amended and Restated Subdivider’s Agreement by and between NHG Development Group, Ltd., and the County, dated December 28, 2017, shall not be obligated to join the District and pay the Community Development Charge, pay the Improvement Fee, or pay a sewer tap fee to the County.

Notwithstanding anything in this Agreement to the contrary, the County shall fix at \$5,900 those sanitary sewer tap fees applicable within the properties owned or controlled by the Developer or its affiliates in the area identified on Sixth Amendment – Exhibit D as “Capacity Fees Per Third Amendment to IGA.” Similarly, notwithstanding anything in this Agreement to the contrary, the County shall fix at \$8,100 those sanitary sewer tap fees applicable within the properties owned or controlled by the Developer or its affiliates in the area identified on Sixth Amendment – Exhibit D as “Capacity Fees Per Sixth Amendment to IGA.” All sanitary sewer tap fees fixed pursuant to this paragraph shall remain fixed until June 23, 2028, whereupon the County may set sanitary sewer tap fees pursuant to the County’s sewer tap collection fee policy then in effect as of the date of the tap.

Section III

Amendments to Section XII.

Section XII of the Agreement is hereby amended by deleting the existing language of Section XII, in its entirety and substituting the following language in its place:

All parcels of residential real property located within the District shall be subject to an annual Community Development Charge of 10.25 mills according to the Declaration. Parcels in the District become subject to the Community Development Charge as (i) a parcel of real property ties into the public sanitary sewer treatment system or the Delco water system (or any successor thereto) and (ii) the applicable zoning jurisdiction for such property approves a final development plan for the property. Parcels may be added to the District as provided in Chapter 349, the Declaration, or Section V of this Agreement. The Authority agrees to levy and collect the Community Development Charge annually for each residential parcel in the District once that parcel meets the conditions for levying the Community Development Charge specified in this Section XII and in the Declaration. Two (2.0) mills of the Community Development Charge collected by the Authority shall be paid to the County to reimburse it for any of the costs that it incurs in funding the Costs of the Improvements. Such payment shall be made by the Authority to the County within 45 days of the semi-annual settlement, in

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connection with the Community Development Charge, made by the County Auditor to the Authority; provided, that the Authority and the County may enter into an agreement directing the County Auditor to settle accounts with the County directly with respect to the two (2.0) mill portion of the Community Development Charge to be paid by the Authority to the County.

All parcels of commercial real property located within the District shall be subject to an annual Community Development Charge of 5.0 mills according to the Commercial Declaration. Parcels in the District become subject to the Community Development Charge as (i) a parcel of real property ties into the public sanitary sewer treatment system or the Delco water system (or any successor thereto) and (ii) the applicable zoning jurisdiction for such property approves a final development plan for the property. Parcels may be added to the District as provided in Chapter 349, the Commercial Declaration, or Section V of this Agreement. The Authority agrees to levy and collect the Community Development Charge annually for each commercial parcel in the District once that parcel meets the conditions for levying the Community Development Charge specified in this Section XII and in the Community Declaration. Two (2.0) mills of the Community Development Charge collected by the Authority shall be paid to the County to reimburse it for any of the costs that it incurs in funding the Costs of the Improvements. Such payment shall be made by the Authority to the County within 45 days of the semi-annual settlement, in connection with the Community Development Charge, made by the County Auditor to the Authority; provided, that the Authority and the County may enter into an agreement directing the County Auditor to settle accounts with the County directly with respect to the two (2.0) mill portion of the Community Development Charge to be paid by the Authority to the County.

Section IV

Replacement of Third Amendment – Exhibit E

The Authority and the County agree that the Third Amendment – Exhibit E is hereafter replaced in its entirety by the Sixth Amendment – Exhibit D, attached hereto.

Section V

Tartan Fields Service Area and the Eastern Service Area

Notwithstanding anything to the contrary, the Authority and the County agree that the Authority and the Developer shall have no responsibility to operate or maintain any sewer infrastructure or improvements in the Tartan Fields Service Area and the Eastern Service Area, including but not limited to the Tartan Fields wastewater treatment plant, the Perry-Taggart wastewater treatment plant, or any associated existing service lines, and the Authority and the Developer shall have no liability related to any such infrastructure or improvements. The County shall operate and maintain such improvements and infrastructure in a proper manner.

Section VI

Full Force and Effect of the Agreement

The Authority and the County agree that the Agreement remains in full force and effect, except as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, and this Sixth Amendment.

Section VII

Binding Effect; Assignment

The Authority and the County, for themselves, their successors, executors, administrators, and assigns, agree to the full performance of the covenants contained in this Sixth Amendment. The Authority may not assign this Sixth Amendment absent prior written consent of the County.

Section VIII

Amendment; Consent

This Sixth Amendment may be amended by written instrument signed by both parties; provided, however, that no amendment shall be effective without the written consent of the Developer so long as the Developer is not in default under any Infrastructure Construction Agreement then in effect.

Section IX

Remaining Provisions

This Sixth Amendment shall be subject to all other provisions of the Agreement, which shall remain in full force and effect, unless specifically amended herein.

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The County and the Authority have caused this Sixth Amendment to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

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

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RESOLUTION NO. 23-157

IN THE MATTER OF APPROVING THE AMENDED AND RESTATED SANITARY SEWER IMPROVEMENTS PLAN APPROVAL AND SUBDIVIDER’S AGREEMENT FOR BERLIN FARM SECTION 1:

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

WHEREAS, the Sanitary Engineer recommends approval of the Amended and Restated Sanitary Sewer Improvements Plan Approval and Subdivider’s Agreement for Berlin Farm Section 1;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Amended and Restated Sanitary Sewer Improvements Plan Approval and Subdivider’s Agreement for Berlin Farm Section 1:

**AMENDED AND RESTATED SANITARY SEWER IMPROVEMENTS
PLAN APPROVAL AND SUBDIVIDER’S AGREEMENT
BERLIN FARM SECTION 1**

SECTION I: INTRODUCTION

This Amended and Restated Subdivider’s Agreement (the “Agreement”) is entered into on this 27th day of February 2023, by and between **M/I Homes of Central Ohio, LLC**, hereinafter called “Subdivider”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”) as evidenced by the **Berlin Farm Section 1** Subdivision Plat or condominium amendments on said development parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and fully amends and restates the Subdivider’s Agreement entered into by and between the Subdivider and the County on February 28, 2022 (the “Original Agreement”).

RECITALS

WHEREAS, the Original Agreement approved capacity for 49 single family residential equivalent connections to be constructed as part of “Sanitary Sewer Improvement Plan for Berlin Farm Section 1”; and

WHEREAS, the parties mutually desire to amend and restate the Original Agreement to include a Phase A (everything downstream of manhole 9 and downstream of manhole 22) and a Phase B (all remaining proposed sanitary in Section 1) of the Berlin Farm Development; and

WHEREAS, the Subdivider has requested allowing for substantial completion of a portion of the Improvements including service connections for 21 single family residential equivalent connections; and

WHEREAS, the Subdivider and County mutually acknowledge and agree that such connections shall be at the Subdivider’s sole risk and expense;

NOW, THEREFORE, in consideration of the Recitals set forth herein, which are deemed to be an integral part of this Agreement, the SUBDIVIDER and the COUNTY mutually agree as follows:

The Subdivider is to construct, install or otherwise make all public improvements (the “Improvements”) shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **Sanitary Sewer Improvement Plan for Berlin Farm Section 1**, dated **January 19, 2022**, and approved by the County on **January 19, 2022**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **21** single family residential equivalent connections approved for Berlin Farm Section 1 Phase A, and **31** single family residential equivalent connections approved for Berlin Farm Section 1 Phase B with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

For on-site improvements the following options for financial warranty apply:
OPTIONS:

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- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$311,919.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 1 for this project.

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance of each phase, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost for that phase.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **Sanitary Sewer Improvement Plan for Berlin Farm Section 1**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Sanitary Sewer Improvement Plan for Berlin Farm Section 1 (\$10,917.17)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight and one-half percent (8½ %) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of **Sanitary Sewer Improvement Plan for Berlin Farm Section 1 (\$26,513.12)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight and one-half percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Sanitary Sewer Improvement Plan for Berlin Farm Section 1** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of

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the Improvements.

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

SECTION VI: EASEMENTS

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format. If each phase is accepted separately, Subdivider agrees to provide as built drawings for each phase as requested and one complete set of as built drawings for the **Berlin Farm Section 1** Sanitary Sewer Improvement Plan with the last final acceptance.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

The Subdivider, for a period of five (5) years after acceptance of each phase of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements. A list of corrective items shall be provided to the Subdivider prior to expiration of the five (5) year period.

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer. User fee charges will commence the day the sanitary tap is made, regardless of completeness of construction.

SECTION VIII: SUBSTANTIAL COMPLETION

The County shall permit the Subdivider to utilize a portion of the Improvements within Sanitary Sewer Improvement Plan for Berlin Farm Section 1 Phase A. Regardless of any inspection by the County, the Subdivider shall be solely liable for any and all costs, expenses, and other liabilities arising from connection to sanitary sewers, and any damage resulting therefrom, until the Improvements have been accepted by the County and the maintenance period has expired. The allowed connections shall consist of lot numbers 3302 to 3321 and 3284 and extend from the existing manhole to manhole 9, as well as manhole 2 to manhole 22 on the approved engineering drawings for Berlin

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Farm Section 1, subject to the following conditions:

1. The Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Sanitary Engineer.
2. The Subdivider shall install mechanical sewer plugs in the main line at manholes as directed by the Sanitary Engineer and must be inspected by the Subdivider with the County present weekly and immediately after rain events.
3. The installation of the plugs is subject to inspection by the County. The Subdivider shall be liable for any failures thereof and resulting damage until the Improvements have been accepted by the County and the maintenance period has expired.
4. Prior to connection to the sanitary sewer, capacity charges and any surcharges shall be paid to the Delaware County Regional Sewer District.
5. The Subdivider shall cause the identified building’s sewage lines to be plugged to ensure that wastewater is securely contained and does not unlawfully discharge.
6. The plugs to be used shall be Rectorseal HubSett Test Coupling. Any alternate plugs may not be used without the express, written approval of the Delaware County Sanitary Engineer.
7. The plugs shall only be permitted in the buildings identified herein and may not be used in other buildings within Berlin Farm.
8. Prior to final acceptance the Subdivider shall cause the substantially completed sewer to be cleaned and closed-circuit televised. The videos must be provided to the County for review and approval as part of the final inspection of the Improvements.
9. Only upon final acceptance of the improvements shall the County permit the plugs installed as specified herein to be removed.
10. Removal of the HubSett test ball is subject to inspection by the County.

SECTION IX: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

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MONTHLY SANITARY APPROVAL UPDATE TO BOARD OF COMMISSIONERS

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RESOLUTION NO. 23-158

IN THE MATTER OF APPROVING PRELIMINARY LEGISLATION AND AN LPA PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR RESURFACING IMPROVEMENTS TO CR31 (RED BANK ROAD) FROM CR3 (SMOTHERS ROAD) TO CR27 (GORSUCH ROAD):

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

PRELIMINARY LEGISLATION
RC 5521.01

PID Number 105739
DEL-CR131-0.00
ODOT Agreement Number 30430

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 to resurface CR31 (Red Bank Road) from CR3 (Smothers Road) to CR27 (Gorsuch Road), to include converting existing turf shoulders to four foot minimum paved shoulders, replacement of deficient guardrail, and signage (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-CR31-0.00 (RED BANK RD)
PID NUMBER 105739
AGREEMENT NO. 30430
CFDA 20.205

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LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the Delaware County Engineer hereinafter referred to as the LPA acting by and through the Delaware County Commissioners, 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-CR131-0.00, PID 105739 (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.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$1,413,360 as set forth in Attachment 1. ODOT shall provide to the LPA 60% percent of the eligible costs, up to a maximum of \$848,016 (**\$848,016 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.

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- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written 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: www.dot.state.oh.us/drrc/Pages/default.aspx
- 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 www.dot.state.oh.us/CONTRACT. 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 criteria 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.

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- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 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.

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- 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.
- 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.

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- 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 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,

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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.

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

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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 (GFEs)

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.

The Contractor shall demonstrate its 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.

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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.

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

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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 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

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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.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Andrew Fortman, P.E.	Brian Davidson
Delaware County Engineer	Ohio Department of Transportation
50 Channing Street	400 E. William St.,
Delaware, Ohio 43015	Delaware, OH 43015
afortman@co.delaware.oh.us	brian.davidson@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**

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(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. Direct labor, plus fringe benefits costs calculated using the LPA’s ODOT approved 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.

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- 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

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- 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. 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:

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

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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 Delaware 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 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

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

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
CONSTRUCTION	\$565,344.00	40	LNTP	\$848,016.00	60	4TA7				\$1,413,360.00
TOTALS	\$565,344.00			\$848,016.00						\$1,413,360.00

Attachment 2

DEL-CR21-0.00 (RED BANK RD)
AGREEMENT NO. 30430

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

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RESOLUTION NO. 23-159

IN THE MATTER OF APPROVING PRELIMINARY LEGISLATION AND AN LPA PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR REHABILITATION OF THE STRUCTURE ON WHIPPLE ROAD OVER HORSESHOE RUN:

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

PRELIMINARY LEGISLATION
RC 5521.01

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DEL-TR222-0.60

ODOT Agreement Number 37993

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 to rehabilitate the structure on Whipple Road (Township Road 222) over Horseshoe Run (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-TR222-0.60
COUNTY-ROUTE-SECTION
PID NUMBER 117449
AGREEMENT NO. 37993
CFDA 20.205**

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **DELAWARE COUNTY ENGINEER** hereinafter referred to as the LPA [acting by and through **DELAWARE COUNTY COMMISSIONERS**, hereinafter referred to as the LPA, **50 W. 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-TR222-0.60, PID 117449) (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

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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 **\$375,000** as set forth in Attachment 1. ODOT shall provide to the LPA 100 percent of the eligible costs, up to a maximum of **\$375,000 (\$375,000 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 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

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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 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

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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.

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.

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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 and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA 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

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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.
- 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

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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.

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.

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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.

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

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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 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.

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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.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Andrew Fortman, PE	Eric Petee
Delaware County Engineer	ODOT, District 6
50 Channing Street	400 East William Street
Delaware, Ohio 43015	Delaware, OH 43015
afortman@co.delaware.oh.us	Eric.petee@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.

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- 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



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

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

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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.

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:

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

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CONSTRUCTION CONTRACT				\$375,000	1 0 0	4H B7				\$375,000
TOTALS				\$375,000						\$375,000

Attachment 2

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. Merrell Aye Mrs. Lewis Aye Mr. Benton Absent

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RESOLUTION NO. 23-160

IN THE MATTER OF APPROVING AN AMENDED AND RESTATED COOPERATIVE PROJECT AGREEMENT BETWEEN DELAWARE COUNTY, LIBERTY TOWNSHIP AND THE CITY OF POWELL FOR IMPROVEMENTS TO THE INTERSECTION OF “OLD” SAWMILL ROAD AND PRESIDENTIAL PARKWAY:

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

**AMENDED AND RESTATED COOPERATIVE PROJECT AGREEMENT
BETWEEN
DELAWARE COUNTY,
LIBERTY TOWNSHIP AND
THE CITY OF POWELL
FOR IMPROVEMENTS TO THE INTERSECTION OF
“OLD” SAWMILL ROAD AND PRESIDENTIAL PARKWAY**

This Amended and Restated Cooperative Project Agreement (the “Agreement”) is made by and among the Board of Commissioners of Delaware County (“County”), Liberty Township (“Township”), the City of Powell (“City”) and the County Engineer, hereinafter individually referred to as a “Party” and collectively referred to as the “Parties” to the Agreement. This Agreement amends and restates the original cooperative agreement among the Parties dated November 3, 2022.

WHEREAS, the Parties have determined the need to make safety improvements to the intersection of “Old” Sawmill Road and Presidential Parkway including construction of a single lane modern roundabout, resurfacing and revision of pavement markings on Presidential Parkway (the “Project,” as hereinafter defined in Section 1.1.7); and

WHEREAS, the Ohio Department of Transportation (“ODOT”) has committed to providing federal highway funding through the Highway Safety Improvement Program (HSIP) toward the Project; and

WHEREAS, pursuant to Section 9.482 of the Ohio Revised Code, when legally authorized to do, a political subdivision may enter into an agreement with another political subdivision or a state agency whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform or render; and

WHEREAS, the Parties desire to cooperate for the purpose of completing the Project;

WITNESSETH:

In consideration of the mutual benefits accrued the Parties hereby agrees as follows:

1 DEFINITIONS

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- 1.1 The following definitions shall apply for the purposes of this Agreement:
- 1.1.1 **Construction.** The physical construction of the Project, and contract expenses thereof, undertaken pursuant to a competitively bid construction contract.
- 1.1.2 **Construction Engineering.** Advertisement, bidding, construction contract management, inspection and testing of materials performed by the County Engineer or a consulting engineer retained by the County to assist the County Engineer.
- 1.1.3 **Design Engineering.** Design engineering shall include preparation of surveys, plans, profiles, cross sections, reports, specifications and estimates for the Project.
- 1.1.4 **Eligible Costs.** Costs eligible for payment by ODOT under a separate project agreement relating to the Construction of the Project.
- 1.1.5 **Land Acquisition Services.** Title research, appraisals, negotiation, closing and recording services provided by the County Engineer or a competent consultant retained by the County to perform such services.
- 1.1.6 **Land Cost.** The cost of any property, right of way or easements necessary for the Project, including the amount paid for the land but not including the cost of Land Acquisition Services necessary to acquire such land.
- 1.1.7 **Project.** The Project will consist of constructing a single-lane modern roundabout at the intersection of "Old" Sawmill Road (Township Road 119) and Presidential Parkway (Township Road 717), resurfacing and revision of pavement markings on Presidential Parkway between Sawmill Parkway and "Old" Sawmill Road, and ancillary roadway and drainage improvements necessary to complete the Project.
- 1.1.8 **Project Costs.** The costs of the Project, including both Eligible Costs and any other costs of the Project determined by the County, Township and City as being beneficial to the Project.

2 INITIATION OF PROJECT

- 2.1 The Parties will each enact necessary legislation to declare the Project necessary as required by law, either as part of the resolution approving this Agreement or by separate action.

3 AUTHORITY OF ENGINEER

- 3.1 The Township and County authorize the County Engineer, and the City authorizes the City Engineer, to administer and carry out the provisions of this contract on its behalf and to take any necessary actions to complete the Project as contemplated by this Agreement. Such authority will not include approval of agreements or obligations upon any Party that would otherwise require County, Township or City approval except where specifically enumerated within this Agreement.

4 PROJECT CONSTRUCTION COSTS

- 4.1 **ODOT Costs:** Through a separate grant agreement, ODOT intends to provide 80% of the Eligible Costs of Construction of the Project, up to a maximum of \$500,000 through its allocation of federal highway funds under the Highway Safety Improvement Program (HSIP).
- 4.2 **County:**
- 4.2.1 Up to a maximum County contribution of One Hundred Fifty Thousand Dollars (\$150,000), the County, through its Roadway Grant Assistance Program (RGAP), the procedures and requirements of which are hereby incorporated by reference, shall contribute three (3) Dollars for each one (1) Dollar paid by Liberty Township for Liberty Township's pro rata share of the Project Costs.
- 4.2.2 Up to a maximum County contribution of One Hundred Fifty Thousand Dollars (\$150,000), the County, through its Roadway Grant Assistance Program (RGAP), the procedures and requirements of which are hereby incorporated by reference, shall contribute three (3) Dollars for each one (1) Dollar paid by the City of Powell for the City of Powell's pro rata share of the Project Costs.
- 4.2.3 The County Engineer shall pay for all Design Engineering and Construction Engineering costs and Land Acquisition Services costs using any funds appropriated to the County Engineer by the County available for such purpose.
- 4.3 **Township:** The Township will pay one-hundred percent (100%) of the Land Cost, not including Land Acquisition Services, for any parcel(s) located in the unincorporated areas of the Project, and will pay for seventy-five percent (75%) of any other Project costs not otherwise paid for.

The Township's share of the Land Cost, not including Land Acquisition Services, for any parcel(s)

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located in the unincorporated areas of the Project, and any other Project Costs not otherwise paid for, shall not exceed the estimate set forth in Exhibit "A," a copy of which is attached hereto, unless expressly authorized by the Township. The estimated Land Cost, not including Land Acquisition Services, for any parcel(s) located in the unincorporated areas of the Project, and any other Project Costs not otherwise paid for, is One Hundred Seventy Thousand Four Hundred Dollars (\$170,400). Any cost above One Hundred Seventy Thousand Four Hundred Dollars (\$170,400) shall be authorized and approved by the Township prior to the work being completed.

- 4.4 **City:** The City will pay one-hundred percent (100%) of the Land Cost, not including Land Acquisition Services, for any parcel(s) located in the City of Powell incorporated areas of the Project, and will pay for twenty-five percent (25%) of any other Project Costs not otherwise paid for.
- 4.5 **Other Costs:** For the purposes of this Agreement, costs of any salaries, benefits and direct or indirect costs related to the performance of work by regular employees of the Parties on the Project will be borne by the respective Party.

5 ENGINEERING

- 5.1 The County Engineer will perform or procure all Design Engineering and Construction Engineering for the Project and will provide copies of design and construction documents to the other Parties if requested for review and comment.
- 5.2 The County Engineer will coordinate the design with the Parties as reasonably necessary to complete the Project and will act as the engineer-in-charge as may be required by ODOT under any state or federal regulations requiring the appointment of an engineer in responsible charge of the project.
- 5.3 The County Engineer will complete the Design Engineering for the Project at the earliest possible date following approval of this Agreement and notify the Parties at the time when such work is complete.

6 RIGHT OF WAY ACQUISITION

- 6.1 The County Engineer will perform or obtain services for Land Acquisition Services pursuant to the requirements of Chapter 163 of the Ohio Revised Code and any other applicable federal requirements.
- 6.2 Prior to making any good faith offer to acquire property for the Project, the County Engineer will provide copies of appraisals and the amount of the Fair Market Value Estimate (FMVE) to the Township and the City for review. If there are no comments or requests to amend the FMVE made in writing by the Township or City to the County Engineer within 14 days after the FMVE is provided to the Township and City respectively, the County Engineer will proceed to deliver the offers to affected property owners.
- 6.3 If the County Engineer is unable to acquire the necessary rights of way through good faith negotiation, the County Engineer will notify the respective Party with jurisdiction over the property and that Party will initiate appropriation proceedings pursuant to Chapter 163 of the Revised Code.
- 6.4 The Parties agree to attend meetings and assist each other in the acquisition of right of way in any other manner as is reasonably necessary to complete the Project.
- 6.5 If necessary, upon completion of acquisition, the County Engineer will certify to ODOT and/or any other agency as necessary, that the acquisition of all necessary rights of way is completed.
- 6.6 With respect to interest being obtained in the right of way for the Project, the County will make proper notation on the right of way plans and will prepare instruments of conveyance to acquire all necessary rights of way for the Project as follows:
- 6.6.1 All permanent right of way, including easement or fee simple interest will be acquired in the name and for the use of the **"Board of Trustees, Liberty Township, Delaware County, Ohio, and its successors in office forever"**; and,
- 6.6.2 All temporary easements or work agreements, regardless of location, will be acquired in the name and for the use of the **"Board of Trustees, Liberty Township, Delaware County, Ohio"**.

7 UTILITIES

- 7.1 The County Engineer will coordinate and order relocation of utility facilities by authority granted in Ohio Revised Code Section 5547.03. The Parties agree to support such orders made by the County Engineer, if necessary, through applicable authority granted to each Party under Ohio Law.
- 7.2 For any reimbursable utility relocations, the County Engineer will provide a proper accounting of costs to be included in the total Project Costs.
- 7.3 If required, the County Engineer will certify to ODOT or other public agency as necessary that right

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of way acquisition is complete and that utility relocation is completed or will be completed to proceed to receive necessary ODOT or federal authorization(s) to bid the construction contract for the Project.

8 CONSTRUCTION

- 8.1 The County will act as the lead Local Public Agency and administer the construction phase of the Project including approving necessary agreements with ODOT, bidding and awarding the construction contract and managing the construction contract, including providing for the necessary inspection and testing of work.
- 8.2 The County will not proceed with any contract modifications or order work in excess of ten (10) percent of the contract amount without written consent of the Township, the City, ODOT or any applicable agency that provides funding for the project.

9 COST ACCOUNTING AND PAYMENT

- 9.1 The Parties agree to each keep a detailed record of all eligible expenses relating to this Project and to transmit copies of the same to the other Parties for review when an invoice is submitted or otherwise whenever requested.
- 9.2 ODOT will pay for its share of Construction costs directly to the Construction contractor.
- 9.3 The County will pay for all other Construction costs initially and invoice **the Township and the City** for their respective shares of the Project up to four (4) times per year.
- 9.4 The Township and the City will pay approved invoices within 30 days of approval.

10 OPERATION AND MAINTENANCE OF THE PROJECT

- 10.1 During the construction of the Project and until final acceptance by the Parties, the Township will operate and maintain the Project area.
- 10.2 The Township will maintain the completed street lights and pay all costs associated with supply of electrical energy.
- 10.3 The City will maintain all of the landscaping of the Project, including mowing, planting and pruning of vegetation and maintaining, repairing or replacing decorative rocks, mulch, edging, and related features.
- 10.4 The Township and City will cooperate in any other maintenance necessary for the Project pursuant to law or other agreement(s).

11 GENERAL PROVISIONS

- 11.1 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, will constitute the entire understanding and agreement, will 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.
- 11.2 **Financial Audits:** The agency managing the respective phase of work of the Project will be responsible for conducting and coordinating any federal or state audits of funds provided in those phases.
- 11.3 **Governing Law:** This Agreement will be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement will be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any of its provisions. This Agreement will be deemed to have been drafted by all Parties and no interpretation will be made to the contrary.
- 11.5 **Waivers:** No waiver of breach of any provision of this Agreement will 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 will 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 will not constitute and will 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.
- 11.6 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance will 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,

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or circumstances other than those as to whom it will be held invalid or unenforceable will not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof will, in all other respects, continue to be effective and to be complied with.

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

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RESOLUTION NO. 23-161

IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT FOR DEL-CR124-5.12, PART 2 HOME ROAD IMPROVEMENTS (SR 315 TO CR 9):

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

WHEREAS, on July 6, 2020, the Delaware County Board of Commissioners (the “Board”) adopted Resolution No. 20-578, approving an agreement with Jacobs Engineering Group, Inc., for required engineering services associated with improvements to Home Road, including widening and improvements of alignment of Home Road from east of Liberty Road to west of SR 315; and

WHEREAS, Jacobs Engineering Group, Inc., has completed preliminary engineering for the proposed improvements under the direction of the County Engineer; and

WHEREAS, the County Engineer has negotiated a scope of work and fee to perform detailed design of the proposed improvements and recommends modifying the agreement with Jacobs Engineering Group, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Amendment No. 1 to the Professional Services Agreement with Jacobs Engineering Group, Inc.:

**AMENDMENT NO. 1
PROFESSIONAL SERVICES AGREEMENT
DEL-CR124-5.12, Part 2
Home Road Improvements (SR 315 to CR 9)**

This Amendment No. 1 to the Agreement dated July 6, 2020, is made and entered into this 27th day of February, 2023, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Jacobs Engineering Group, Inc., 2 Easton Oval, Suite 500, Columbus, Ohio 43219 (“Consultant”) (hereinafter collectively referred to as the “Parties”).

ARTICLE 1 – AMENDMENT

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

- A. Section 4.2 of the Agreement shall be modified to increase the maximum total compensation to Seven Hundred Two Thousand Six Hundred Ninety Five Dollars and Eight Cents (\$702,695.08).
 - a. Original Contract Part 2 (\$520,813.59) plus Mod #1 (\$181,881.49)
- B. Section 7.1 of the Agreement shall be modified to extend the date for the completion of Services to December 31, 2024.

ARTICLE 2 – REMAINING PROVISIONS

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

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1.

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

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RESOLUTION NO. 23-162

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN WILLIAM L. MICHEL, JR., AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE PROJECT KNOWN AS DEL-CR 124-9.02, 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 William L. Michel, Jr., for the project known as DEL-CR 124-9.02, Home Road-Piatt Road-Lewis Center Road;

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

Section 1. The Delaware County Board of Commissioners approves the contract for sale and purchase with William L. Michel, Jr., for the project known as DEL-CR 124-9.02, Home Road-Piatt Road-Lewis Center Road, as follows:

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

WITNESSETH: On this 27th day of February, 2023, William L. Michel, Jr., whose address is 1696 Lewis Center Road, Ohio 43035, 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 91 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
15-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 and no/100 Dollars (**\$30,000.00**), 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

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, whatever 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 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.

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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.

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

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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.

(Copy of exhibits are available for review at the Commissioners’ Office until no longer of administrative value.)

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

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RESOLUTION NO. 23-163

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

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

WHEREAS, on February 27, 2023, a Drainage Maintenance Petition for Hidden Ravines 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 Hidden Ravines Crossing in Orange 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 \$202,154.81 and a detailed cost estimate is attached. The drainage improvements are being constructed for the benefit of the lot(s) being created in the subject site. The developed area of 28.051 acres will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore, \$7,206.69 per acre. An annual maintenance fee equal to 2% of this basis (\$144.13) will be collected for each developed acre. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year’s assessment for all of the lots in the amount of \$4,042.99 has been paid to Delaware County.

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

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RESOLUTION NO. 23-164

IN THE MATTER OF AWARDED A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND G&G ENTERPRISES COMPLETE EXCAVATING SERVICE, LLC, FOR THE ENGLISH #346 DRAINAGE IMPROVEMENT PROJECT:

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

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English #346 Drainage Improvement Project Bid Opening of January 19, 2023

WHEREAS, as the result of the above referenced bid opening, the County Engineer recommends that a bid award be made to G&G Enterprises Complete Excavating Service, LLC, the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the contract between the Delaware County Commissioners and G&G Enterprises Complete Excavating Service, LLC, for the project;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners awards the bid to and approves the following contract with G&G Enterprises Complete Excavating Service, LLC, for the English #346 Drainage Improvement Project:

CONTRACT

THIS AGREEMENT is made this 27th day of February, 2023, by and between G&G Enterprises Complete Excavating Service, LLC, 5907 Renie Rd, Bellville Ohio 44813-9028, hereinafter called the "Contractor," and the Delaware County Board of Commissioners, hereinafter called the "Owner."

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

ARTICLE I. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named "English #346 Drainage Improvement Project" and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities or work performed at the unit prices stipulated in the Bid for the respective items or work completed for the sum not to exceed Ninety Seven Thousand Nine Hundred Eighty Eight Dollars and Zero Cents (\$97,988.00), subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

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

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

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

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RESOLUTION NO. 23-165

IN THE MATTER OF APPROVING DEVELOPER'S AGREEMENT FOR GREENERY RESIDENTIAL:

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

WHEREAS, the Engineer recommends approving the Developer's Agreement for Greenery Residential;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Developer's Agreement for Greenery Residential, as follows:

**DEVELOPER'S AGREEMENT
PROJECT NUMBER: 22107**

THIS AGREEMENT made and entered into this 27th day of February, 2023 by and between the

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COUNTY OF DELAWARE (acting through its BOARD OF COUNTY COMMISSIONERS), hereinafter called the COUNTY, and OP Greenery, LLC, hereinafter called the OWNER, is governed by the following considerations, to wit:

- 1) The OWNER is constructing a development known as Greenery Residential (the "Development") which will include a new roadway access to Shanahan Road and contribute to the need for improvements to Shanahan Road or other roadways in the vicinity of the Development which shall be constructed by the COUNTY (the "Improvements").
- 2) On or before June 1, 2025, 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 may be used as determined by the COUNTY for improvements to Shanahan Road, or any other public roadway in the vicinity thereof, benefitting the Development.
- 3) The OWNER may 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 Mrs. Lewis Aye Mr. Benton Absent Mr. Merrell Aye

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RESOLUTION NO. 23-166**

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:

<i>Permit #</i>	<i>Applicant</i>	<i>Location</i>	<i>Type of Work</i>
UT2023-0029	AEP	CENTER VILLAGE & WOODTOWN	ELECTRIC
UT2023-0030	SPECTRUM	GORSUCH ROAD	CABLE
UT2023-0031	SPECTRUM	LAUREL WIND BLVD	CABLE
UT2023-0032	CITY OF DELAWARE	TROY ROAD	WATERLINE
UT2023-0034	FRONTIER	LEWIS CENTER ROAD	FIBER OPTIC
UT2023-0035	FRONTIER	HOME ROAD	FIBER OPTIC
UT2023-0036	SPECTRUM	HIGHFIELD DRIVE	CABLE

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

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RESOLUTION NO. 23-167**

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATION:

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

Supplemental Appropriation

21111173-5601	Emergency Rental Assist Prog 2/Grants In Aid	\$1,421,639.06
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Vote on Motion	Mr. Merrell	Aye	Mr. Benton	Absent	Mrs. Lewis	Aye
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ADMINISTRATOR REPORTS

Dawn Huston, Deputy Administrator

-No reports.

Aric Hochstettler, Deputy Administrator

-No reports.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis

-While reading the Wall Street Journal, saw an article that about Intel and the announcement about the bill for the Chips Act that will provide 53 billion in funding for microchip production.

-Attended Regional Planning last Thursday evening.

Commissioner Merrell

-Attended the Central Ohio Youth Center's meeting Thursday evening.

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RESOLUTION NO. 23-168

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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 of a public employee or public official.

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.

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

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

RESOLUTION NO. 23-169

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. Merrell Aye Mrs. Lewis Aye Mr. Benton Absent

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners