

**COMMISSIONERS JOURNAL NO. 81 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 28, 2024**

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

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

**1
RESOLUTION NO. 24-860**

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 24, 2024:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on October 24, 2024; 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 Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

**2
PUBLIC COMMENT**

Karl Van Veltier – Asking for Resolution to ensure valid Election.
Steven Schaeffer – Election Integrity
Jessica Goeller – Election Integrity
Deborah Guebert – County Facebook Policy

**3
RESOLUTION NO. 24-861**

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR 1025 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR 1025:

It was moved by Mr. Benton, seconded by Mrs. Lewis, to approve Then and Now Certificates, payment of warrants in batch numbers CMAPR 1025, memo transfers in batch numbers MTAPR 1025 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>

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

**4
RESOLUTION NO. 24-862**

IN THE MATTER OF CANCELING THE DELAWARE COUNTY COMMISSIONERS’ SESSION SCHEDULED FOR THURSDAY DECEMBER 5, 2024:

It was moved by Mrs. Lewis, seconded by Mr. Benton, to cancel the Delaware County Commissioners’ session scheduled for Thursday December 5, 2024.

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

**5
RESOLUTION NO. 24-863**

IN THE MATTER OF SETTING DATE AND TIME FOR VIEWING AND PUBLIC HEARING FOR

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CONSIDERATION OF THE DRAINAGE IMPROVEMENT PETITION FOR THE NELSON #131 WATERSHED, FILED BY HARDCRABBLE FARMS INC. AND OTHERS:

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

WHEREAS, on October 1, 2024, the Clerk of this Board gave notice to the Board of County Commissioners and the County Engineer of Delaware County, Ohio, on the filing with her of a petition signed by Hardscrabble Farms Inc. and Others, to:

1. Generally improve the drainage, both surface and subsurface, to a good and sufficient outlet by replacing or repairing, or altering the existing improvement as required and/or creating new surface and subsurface drainage mains or laterals, as requested by this petition.
2. In Delaware County, Brown Township, within the Nelson #131, watersheds and generally following, but not limited to, the course and termini of existing improvements.

WHEREAS, the proper bond has been filed with the clerk, conditioned to pay all costs associated in preparing for the view and first hearing if the petition is not granted or if the petition is for any cause dismissed;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners that **Monday January 13, 2025, at 1:30P.M.**, with the use of video technology at the Office of the Board of County Commissioners, 91 North Sandusky Street Delaware, Ohio 43015, be and the same is hereby fixed as the time and place for the view thereon; and

BE IT FURTHER RESOLVED that **Monday April 7, 2025, at 10:00A.M.**, at the Office of the Board of County Commissioners, 91 North Sandusky Street Delaware, Ohio, be and the same is hereby fixed as the time and place for the first hearing on the petition; and

BE IT FURTHER RESOLVED that notice of said view and hearing be given, as required by law.

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

6

RESOLUTION NO. 24-864

IN THE MATTER OF APPROVING A PROCLAMATION TO HONOR OUR VETERANS BY TAKING PART IN THE "GREEN LIGHT A VET" INITIATIVE DURING THE MONTH OF NOVEMBER:

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

WHEREAS, Delaware County has a responsibility to recognize Veterans and current service members as valued members of our community; and

WHEREAS, Veterans are some of our nation's bravest and hardest-working men and women, with nearly 200,000 service members transitioning to civilian life each year; and

WHEREAS, studies indicate that between 44 percent and 72 percent of these Veterans transitioning to civilian life experience high levels of stress during this time and are at high risk for suicide; and

WHEREAS, Operation Green Light for Veterans provides an opportunity to literally shine a light on the service and sacrifices of our Veterans; AND

WHEREAS, green is the color of hope, renewal and well-being, and the simple act of changing an outdoor light to green provides a tangible way to show gratitude not only to our Veterans, but to current U.S. service members and their families; AND

WHEREAS, the National Association of Counties encourages all counties to recognize and support Operation Green Light for Veterans.

THEREFORE, BE IT RESOLVED that Delaware County Board of Commissioners declares itself to be a Green Light for Veterans County and will display green lights outside The Historic Courthouse from November 4 through November 11, 2024. And the Board further encourages its citizens to honor those who have served and sacrificed by also displaying green lights at their residences or places of business.

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

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7

RESOLUTION NO. 24-865

IN THE MATTER OF APPROVING A PERMIT FOR USE OF DELAWARE COUNTY FACILITIES:

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

WHEREAS, the Delaware County Commissioners passed Resolution No. 21-449 on May 24, 2021, adopting a Delaware County Facilities Permit Policy (the "Policy"); and

WHEREAS, it is the intent of the Policy to allow persons and organizations access to appropriate Delaware County facilities, grounds and meeting places; and

WHEREAS, each request will only be considered after the receipt of a completed Delaware County Facilities Permit Form; and

WHEREAS, the Policy mandates approval from the Commissioners for use of county facilities by groups of 30 participants or more that have agreed in writing to full compliance with the Policy;

NOW, THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED that the Delaware County Board of Commissioners hereby authorizes the use of the Byxbe Complex Auditorium for Training Seminar for Firefighters / Medics hosted by Tri-Township Fire on November 3, 2024; at no cost.

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

8

RESOLUTION NO. 24-866

IN THE MATTER OF APPOINTING A MEMBER TO THE DELAWARE COUNTY TRANSIT BOARD:

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

WHEREAS, on October 25, 1999, the Delaware County Board of Commissioners (the "Board of Commissioners") created the Delaware County Transit Board (the "Transit Board") and made the necessary appointments to the Transit Board, pursuant to section 306.01 and 306.02 of the Revised Code; and

WHEREAS, as necessary, the Board of Commissioners has made appointments to the Transit Board to fill vacancies in both unexpired and expired terms; and

WHEREAS, a vacancy exists for the DCT-1 seat, the term for which will expire October 24, 2027, and Todd Miller has applied for appointment to this seat;

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

Section 1. The Board of Commissioners hereby appoints Todd Miller as a member of the Transit Board to the DCT-1 seat, the term for which expires October 24, 2027.

Section 2. The appointment approved herein shall take effect immediately upon the adoption of this Resolution.

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

9

RESOLUTION NO 24-867

IN THE MATTER OF ACCEPTING THE AWARD FOR THE VICTIMS OF CRIME AND STATE VICTIMS ASSISTANCE GRANT (VOCA/SVAA FOR VICTIM SERVICES):

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

Grant # 2025 VOCA
Source: VOCA- Ohio Attorney General
Grant Period: October 1, 2024 – September 30, 2025

Federal Grant Requested Amount: \$ 63,781.19
Local Match: \$ 15,945.31
Total VOCA Grant Amount: \$ 79,726.50

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telephone or otherwise contact the Sheriff of Delaware County, Ohio, before delivery of Union County's inmates to ascertain that the same will be accepted for incarceration within the Delaware County Jail. Union County will also notify Delaware County of an estimated time of arrival.

Union County agrees to abide by any and all rules, regulations, laws and standards of conduct that now are or any time in the future may be in force at the Delaware County Jail as prescribed by the Delaware County Sheriff, Delaware County Judges, the State of Ohio, or any other political subdivision having authority or empowered to make such rules, regulations, laws or standards, which shall all be open for inspection at the Delaware County Jail.

Union County agrees to take reasonable steps to properly identify the inmate and provide complete information to Delaware County, including the inmate's nationality, age, and date of birth. Union County agrees to contact and coordinate with other entities that have issued warrants, summons, detainers, subpoenas, and similar legal process for the inmate. Union County agrees to assume sole responsibility for adhering to all relevant law and procedure regarding a foreign national's rights, if any, under a treaty or federal law.

Section 5 - Transportation Expenses

Persons imprisoned by Union County or arrested and brought to the Delaware County Jail for incarceration shall be escorted and transported by Union County, at Union County's sole expense, to the Delaware County Jail. In no event shall Delaware County transport Union County's inmates outside Delaware County's jurisdiction. When the destination of Union County's inmate transportation is outside Delaware County, Union County shall arrange, at Union County's sole expense, transportation of said inmate to and from the Delaware County Jail.

Section 6 - Confinement Expenses

Union County shall be invoiced monthly by the Delaware County Sheriff, for each person confined in the Delaware County Jail pursuant to this Agreement, as follows: for inmates housed in Delaware County the sum of \$83.00 per inmate day during the inmate's confinement. "Inmate day" is any one calendar day, or any part thereof, separately computed for each of Union County's inmates, during which said inmate is actually subject to the care, control, custody, and supervision of the Sheriff of Delaware County, Ohio, or any of his agents or employees.

The Parties agree that Delaware County shall be able to recover the costs, expenses, settlement monies, and monetary judgments paid by Delaware County to an inmate or inmate's estate arising out of the inmate's confinement as expenses under R.C. 341.19 or damages under R.C. 341.18.

Delaware County Sheriff shall prepare and submit to Union County, monthly, a statement specifying all obligations for payment required of Union County. Union County shall pay unto Delaware County any amount due and unpaid as specified in such statements within thirty (30) days of the statement. Delaware County shall refund to Union County any amount overpaid as specified in such statements within thirty (30) days of the statement.

Notwithstanding any term of this Agreement, Delaware County may require inmate reimbursements in accordance with section 341.14(B)--(C) of the Revised Code, without any right of setoff to Union County.

Section 7 - Care Expenses

Union County shall pay all sums expended for or incurred in the name of Delaware County for any and all medical, dental, or hospital treatments (inpatient or outpatient) necessary for the care of Union County's inmates while such inmates are in the custody and control of Delaware County, including, but not limited to, examinations, treatments, prescription medication, x-rays, laboratory work, physical therapy, testing, and referrals to outside physicians, Mental Health Professionals or specialists.

In the event hospitalization is deemed necessary, Delaware County shall notify Union County when the fact is known or as soon thereafter as possible. If the inmate requires hospitalization under guard, they will be booked out of jail into the custody of Union County, and Union County shall provide their own security.

In case of the death of an inmate, Delaware County shall not be liable for any costs or expenses related to the inmate's death. Union County shall pay for all expenses and costs relating, but not limited to, transportation of the corpse, autopsy, and burial expenses.

Section 8 - Habeas Corpus Expenses

Notwithstanding R.C. 341.17, the Parties agree that the Prosecuting Attorney of Union County, or such other counsel Union County may retain, shall provide legal counsel in habeas case filed in state court. Union County shall give notice to Delaware County within 14 days of service of the complaint of its intention to defend a habeas action. Failure of Union County to give such notice, to file an answer, or otherwise defend the matter shall entitle Delaware County to act instead of Union County. All reasonable and necessary expenses incurred by Delaware County in any habeas corpus proceedings for any of Union County's inmates shall be paid by Union County unless otherwise paid by said inmate, or by someone on the inmate's behalf. The Parties agree that the Delaware County Prosecuting Attorney's hourly rate for performing this work on behalf of the other Party's County is \$100.00.

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Section 9 - Liability

Delaware County shall be liable for escapes or other neglect of duty in relation to the inmate, as in other cases, and neither the Union County's sheriff nor any of the Union County's county commissioners is liable in damages in a civil action for any injury, death, or loss to person or property suffered or caused by the inmate while the inmate is in the custody of Delaware County. The Parties agree that under R.C. 341.18 Delaware County shall have a right of action against Union County for damages to the Delaware County Jail or other Delaware County property done by any inmate confined pursuant to this Agreement. Union County shall not be required to reimburse Delaware County for ordinary wear and tear of Delaware County property occurring during confinement of Union County's inmates pursuant to this Agreement.

Section 10 - Right to Refuse Inmates

Delaware County reserves the right to reject any and all persons who, because of medical or mental health problems, shows it is unsafe to incarcerate such persons. The Delaware County Sheriff shall not commit inmates suffering from any communicable, contagious, infectious or venereal disease. Should any inmate committed by Union County develop or contract any such disease while detained at Delaware County Jail, or having received any inmate so affected, without knowledge thereof upon discovery of such condition in any inmate thereafter, Delaware County may refuse to keep such inmates. Upon such refusal to keep said inmate, Delaware County shall immediately notify Union County or Union County's Sheriff's Office and advise of same. Upon notification provided herein, Union County shall, at its own expense, promptly remove or cause to be removed such inmate from the Delaware County Jail.

Delaware County shall not receive or allow to remain any pregnant inmates in the Delaware County Jail. Delaware County further reserves the right to reject or return any and all inmates committed to the Receiving Jail, when, in the sole discretion of Delaware County, the Delaware County Sheriff, or his employees, agents, or assigns determine that the conditions of said Delaware County Jail and its inmates are subject to hazards and, therefore, injurious to the well-being of any and / or all inmates confined. The Parties agree that juvenile inmates are outside the scope of this agreement.

Section 11-Term of Agreement

This Agreement shall commence on the date recited first herein and continue in force until July 31, 2027, whereupon this Agreement shall terminate unless the Parties mutually agree upon an extension of this Agreement or a new agreement. Either Party may suspend or terminate this Agreement at any time for convenience by providing ninety (90) days' written notice to the other Party. In the case of termination, Delaware County shall submit a final invoice statement within sixty (60) days of the effective date of termination. Termination of this Agreement shall not affect the Agreement of the Parties as to inmates incarcerated at the time notice of termination is given to the other Party.

Section 12 - Miscellaneous Terms & Conditions

- 12.1 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between Delaware County and Union County, 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.
- 12.2 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 12.3 **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.
- 12.4 **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 aimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 12.5 **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

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11

RESOLUTION NO. 24-869

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE KNOX COUNTY BOARD OF COMMISSIONERS AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS, REGARDING RECIPROCAL INMATE HOUSING:

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

WHEREAS, the Sheriff and Sheriff's Office Staff recommend approval of the following Contract between the Knox County Board of Commissioners and the Delaware County Board of Commissioners, regarding reciprocal inmate housing;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following Contract between the Knox County Board of Commissioners and the Delaware County Board of Commissioners, regarding reciprocal inmate housing:

CONTRACT FOR INMATE HOUSING

Section 1 - Parties to the Agreement

This Agreement is made and entered into this day 28th day of October, 2024, by and between the Delaware County Board of Commissioners, and Knox County Board of Commissioners. (hereinafter collectively referred to as the "Parties"), pursuant to sections 9.482, 307.15, *et seq.*, and 341.12, *et seq.* of the Revised Code.

Section 2-Purpose

The Parties to this agreement wish to contract for the housing of inmates, from time to time, in the Delaware County jail facilities.

Section 3 - Contract Administrator

Delaware County hereby designates the Delaware County Administrator of Corrections and Court Services or Jail Administrator, subject to the direction of the Delaware County Sheriff, as Administrator and agent of Delaware County for purposes of this Agreement, including commencement and suspension thereof.

Section 4 - Scope

Knox County is duly authorized to exercise, perform, render, or contract for jail services and is, or from time to time may be, without adequate and sufficient facilities for incarceration and care of its adult inmates or due to certain circumstances is unable to house a particular inmate. Delaware County and Knox County desire that Delaware County provide jail services to Knox County and have Knox County's inmates incarcerated and cared for in the Delaware County Jail for such periods as may be directed by the Courts and/ or Knox County.

Delaware County will receive and care for, at the Delaware County Jail, all inmates referred by Knox County for such length of time as said inmates respectively may be committed by the court of competent jurisdiction, subject to the provisions of this Agreement. Delaware County's acceptance of inmates is also subject to available space within the Delaware County Jail. The Parties agree that there is no minimum number of inmates required to be housed under this agreement.

The care, control, custody and supervision of inmates accepted by Delaware County shall be exercised in conformity with the minimum standards for full service jails in Ohio as adopted by the rules and regulations of the Ohio Department of Rehabilitation and Corrections and the rules and regulations and policies of operation of the Delaware County Jail as adopted by the Sheriff of Delaware County, Ohio.

Upon delivery to the Delaware County Jail by Knox County of its inmates, along with proper commitment papers, Delaware County shall accept and receive said inmates for incarceration therein, provided however, that this Agreement imposes no obligation upon Delaware County to accept any or all such inmates tendered by Knox County for incarceration in the Delaware County Jail when, at the discretion of the Sheriff of Delaware County, an inmate is refused in accordance with this Agreement. It shall be the obligation of Knox County to telephone or otherwise contact the Sheriff of Delaware County, Ohio, before delivery of Knox County's inmates to ascertain that the same will be accepted for incarceration within the Delaware County Jail. Knox County will also notify Delaware County of an estimated time of arrival.

Knox County agrees to abide by any and all rules, regulations, laws and standards of conduct that now are or any time in the future may be in force at the Delaware County Jail as prescribed by the Delaware County Sheriff, Delaware County Judges, the State of Ohio, or any other political subdivision having authority or empowered to make such rules, regulations, laws or standards, which shall all be open for inspection at the Delaware County Jail.

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Knox County agrees to take reasonable steps to properly identify the inmate and provide complete information to Delaware County, including the inmate's nationality, age, and date of birth. Knox County agrees to contact and coordinate with other entities that have issued warrants, summons, detainers, subpoenas, and similar legal process for the inmate. Knox County agrees to assume sole responsibility for adhering to all relevant law and procedure regarding a foreign national's rights, if any, under a treaty or federal law.

Section 5 – Transportation Expenses

Persons imprisoned by Knox County or arrested and brought to the Delaware County Jail for incarceration shall be escorted and transported by Knox County, at Knox County's sole expense, to the Delaware County Jail. In no event shall Delaware County transport Knox County's inmates outside Delaware County's jurisdiction. When the destination of Knox County's inmate transportation is outside Delaware County, Knox County shall arrange, at Knox County's sole expense, transportation of said inmate to and from the Delaware County Jail.

Section 6 - Confinement Expenses

Knox County shall be invoiced monthly by the Delaware County Sheriff, for each person confined in the Delaware County Jail pursuant to this Agreement, as follows: for inmates housed in Delaware County the sum of \$83.00 per inmate day during the inmate's confinement. "Inmate day" is any one calendar day, or any part thereof, separately computed for each of Knox County's inmates, during which said inmate is actually subject to the care, control, custody, and supervision of the Sheriff of Delaware County, Ohio, or any of his agents or employees.

The Parties agree that Delaware County shall be able to recover the costs, expenses, settlement monies, and monetary judgments paid by Delaware County to an inmate or inmate's estate arising out of the inmate's confinement as expenses under R.C. 341.19 or damages under R.C. 341.18.

Delaware County Sheriff shall prepare and submit to Knox County, monthly, a statement specifying all obligations for payment required of Knox County. Knox County shall pay to Delaware County any amount due and unpaid as specified in such statements within thirty (30) days of the statement. Delaware County shall refund to Knox County any amount overpaid as specified in such statements within thirty (30) days of the statement.

Notwithstanding any term of this Agreement, Delaware County may require inmate reimbursements in accordance with section 341.14(B)-(C) of the Revised Code, without any right of setoff to Knox County.

Section 7 - Care Expenses

Knox County shall pay all sums expended for or incurred in the name of Delaware County for any and all medical, dental, or hospital treatments (inpatient or outpatient) necessary for the care of Knox County's inmates while such inmates are in the custody and control of Delaware County, including, but not limited to, examinations, treatments, prescription medication, x-rays, laboratory work, physical therapy, testing, and referrals to outside physicians, Mental Health Professionals or specialists.

In the event hospitalization is deemed necessary, Delaware County shall notify Knox County when the fact is known or as soon thereafter as possible. If the inmate requires hospitalization under guard, they will be booked out of jail into the custody of Knox County, and Knox County shall provide their own security.

In case of the death of an inmate, Delaware County shall not be liable for any costs or expenses related to the inmate's death. Knox County shall pay for all expenses and costs relating, but not limited to, transportation of the corpse, autopsy, and burial expenses.

Section 8 - Habeas Corpus Expenses

Notwithstanding R.C. 341.17, the Parties agree that the Prosecuting Attorney of Knox County, or such other counsel Knox County may retain, shall provide legal counsel in habeas case filed in state court. Knox County shall give notice to Delaware County within 14 days of service of the complaint of its intention to defend a habeas action. Failure of Knox County to give such notice to file an answer, or otherwise defend the matter shall entitle Delaware County to act instead of Knox County. All reasonable and necessary expenses incurred by Delaware County in any habeas corpus proceedings for any of Knox County's inmates shall be paid by Knox County unless otherwise paid by said inmate, or by someone on the inmate's behalf. The Parties agree that the Delaware County Prosecuting Attorney's hourly rate for performing this work on behalf of the other Party's County is \$100.00.

Section 9 - Liability

Delaware County shall be liable for escapes or other neglect of duty in relation to the inmate, as in other cases, and neither the Knox County's sheriff nor any of the Knox County's county commissioners is liable in damages in a civil action for any injury, death, or loss to person or property suffered or caused by the inmate while the inmate is in the custody of Delaware County. The Parties agree that under R.C. 341.18 Delaware County shall have a right of action against Knox County for damages to the Delaware County Jail or other Delaware County property done by any inmate confined pursuant to this Agreement. Knox County shall not be required to reimburse Delaware County for ordinary wear and tear of Delaware County property occurring during confinement of Knox County's inmates pursuant to this Agreement.

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Section 10 - Right to Refuse Inmates

Delaware County reserves the right to reject any and all persons who, because of medical or mental health problems, shows it is unsafe to incarcerate such persons. The Delaware County Sheriff shall not commit inmates suffering from any communicable, contagious, infectious or venereal disease. Should any inmate committed by Knox County develop or contract any such disease while detained at Delaware County Jail, or having received any inmate so affected, without knowledge thereof upon discovery of such condition in any inmate thereafter, Delaware County may refuse to keep such inmates. Upon such refusal to keep said inmate, Delaware County shall immediately notify Knox County or Knox County's Sheriff's Office and advise of same. Upon notification provided herein, Knox County shall, at its own expense, promptly remove or cause to be removed such inmate from the Delaware County Jail.

Delaware County shall not receive or allow to remain any pregnant inmates in the Delaware County Jail. Delaware County further reserves the right to reject or return any and all inmates committed to the Receiving Jail, when, in the sole discretion of Delaware County, the Delaware County Sheriff, or his employees, agents, or assigns determine that the conditions of said Delaware County Jail and its inmates are subject to hazards and, therefore, injurious to the well-being of any and/or all inmates confined. The Parties agree that juvenile inmates are outside the scope of this agreement.

Section 11 - Term of Agreement

This Agreement shall commence on the date recited first herein and continue in force until July 31, 2027, whereupon this Agreement shall terminate unless the Parties mutually agree upon an extension of this Agreement or a new agreement. Either Party may suspend or terminate this Agreement at any time for convenience by providing ninety (90) days written notice to the other Party. In the case of termination, Delaware County shall submit a final invoice statement within sixty (60) days of the effective date of termination. Termination of this Agreement shall not affect the Agreement of the Parties as to inmates incarcerated at the time notice of termination is given to the other Party.

Section 12 - Miscellaneous Terms & Conditions

- 12.1 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between Delaware County and Knox County, 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.
- 12.2 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 12.3 **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.
- 12.4 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 12.5 **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.

Vote on Motion

Mr. Merrell Aye

Mr. Benton Aye

Mrs. Lewis Aye

12

RESOLUTION NO. 24-870

**IN THE MATTER OF RANKING THE PROPOSALS SUBMITTED FOR DELAWARE COUNTY
PRINTERS AND PRINTER MAINTENANCE:**

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

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WHEREAS, the Delaware County Board of Commissioners (the “Board”) requested competitive sealed proposals from qualified offerors for Printers and Printers Maintenance for various Delaware County offices, pursuant to section 307.862 of the Revised Code; and

WHEREAS, the Board received proposals from six offerors, which were submitted to an evaluation team to evaluate and rank the proposals in accordance with the request for proposals; and

WHEREAS, the evaluation team has determined that all proposals received were responsive to the request for proposals and has completed its ranking of the responsive proposals;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the ranking of the proposals submitted for Delaware County Printers and Printer Maintenance as follows: (1) Perry ProTech (most advantageous); (2) Data House (second most advantageous); (3) Gordon Flesch (third most advantageous); (4) Modern Office Methods (fourth most advantageous); (5) Donnellon McCarthy Enterprises (fifth most advantageous); (6) Dynamic Advantage (sixth most advantageous);

BE IT FURTHER RESOLVED that the Board hereby directs the County Administrator and the evaluation team to conduct contract negotiations with Perry ProTech.

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

**13
RESOLUTION NO. 24-871**

IN THE MATTER OF ACCEPTING THE ROADS, APPROVING RECOMMENDED SPEED LIMITS, ESTABLISHING STOP CONDITIONS, AND RELEASING THE MAINTENANCE BOND FOR MAEVE MEADOWS:

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

WHEREAS, the Engineer has reviewed the roadway construction of the roads in Maeve Meadows (the “Subdivision”), finds it to be constructed in accordance with the approved plans, and recommends that the following roadways within the Subdivision be accepted into the public system:

- An addition of 0.296 miles to Township Road Number 1885, McKenna Drive
- An addition of 0.099 miles to Township Road Number 1896, Stogen Court; and

WHEREAS, the Engineer recommends that the following stop conditions be established within the Subdivision:

- On Township Road Number 1885, McKenna Drive, at its intersection with Township Road Number 99, Piatt Road; and
- On Township Road Number 1896, Stogen Court, at its intersection with Township Road Number 1885, McKenna Drive; and

WHEREAS, the Engineer recommends that 25-mile-per-hour speed limits be established throughout the Subdivision; and

WHEREAS, the Engineer also requests approval to return the maintenance bond to the owner, Pulte Homes of Ohio, LLC.;

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

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

**14
RESOLUTION NO. 24-872**

IN THE MATTER OF APPROVING PRELIMINARY LEGISLATION AND AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE INSTALLATION OF GUARDRAIL ON LACKEY OLD STATE ROAD (CR10):

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

PRELIMINARY LEGISLATION
RC 5555.022
PID Number 113511

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**DEL-VAR CR GR (FY'25)
ODOT Agreement Number 41424**

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 upgrade the guardrail on Lackey Old State Road (County Road 10) between Cheshire Road and US Route 36 (the "Project"); and

WHEREAS, the Project is necessary to meet current roadside safety design standards and is necessary for the public safety and welfare; and

WHEREAS, the Ohio Department of Transportation (ODOT), through the County Engineer's Association of Ohio, has committed up to \$200,000 in Federal Highway Safety Improvement Program (HSIP) funds toward the Project; and

WHEREAS, ODOT has requested approval of a Federal Local-Let Project Agreement enumerating the responsibilities of ODOT and LPA;

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-VAR CR GR-FY25
INSTALLATION OF GUARDRAIL ON LACKEY OLD STATE ROAD (CR 10)
PID NUMBER 113511
AGREEMENT NUMBER 41424
SAM UNIQUE ENTITY ID S23XDUCXT3L9
CFDA 20.205
LPA FEDERAL LOCAL-LET PROJECT AGREEMENT**

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the Delaware County Engineer's Office, 1610 SR 521, PO Box 8006, Delaware, OH 43015, acting by and through the Delaware County Board of Commissioners, hereinafter referred to as the LPA, 91 North Sandusky 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 (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 (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 CEAO safety funded (HSIP) project to upgrade existing guardrail on Various Delaware County Roads. (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. FEDERAL
 - 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
 - 23 CFR 1.33 – Conflicts of Interest
 - 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
 - 23 CFR 630.106 – Authorization to Proceed

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- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
 - 23 CFR Part 645 –Utilities
 - 48 CFR Part 31 – Contract Cost Principles and Procedures
 - 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs
 - 23 USC § 112 – Letting of Contracts
 - 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
 - Federal Funding Accountability and Transparency Act (FFATA)
- B. STATE
- ORC 102.03
 - ORC 153.65 -153.71
 - ORC 5501.03(D)
 - ORC 2921.42 and 2921.43
 - Ohio Administrative Code 4733-35-05
- C. ODOT
- ODOT’s Manual for Administration of Contracts for Professional Services
 - ODOT’s Specifications for Consulting Services – 2016 Edition
 - ODOT’s Consultant Prequalification Requirements and Procedures
 - ODOT’s Construction and Material Specifications Manual
 - ODOT’s Construction Administration Manual of Procedures
 - ODOT’s Local-let Manual of Procedures
- 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 (FORM) before the first required submission of the Project’s Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.
3. **FUNDING**
- 3.1 The total cost for the PROJECT is estimated to be \$498,850 as set forth in Attachment 1. ODOT shall provide to the LPA 100 percent of the eligible costs, up to a maximum of \$200,000 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 improvements of the PROJECT.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100%Locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.
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 recognized set of written design standards may be either the LPA’s formally written local design standards that have been reviewed and accepted by ODOT or ODOT’s Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT’s L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA’s principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must 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 153.65 through 153.71. The pre-qualified list is available on the ODOT website at:

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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 (NEPA) and related regulations, including but not limited to the requirements of the National Historic Preservation Act, and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [ODOT's Office of Contracts](#). If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant’s activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT’s environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice (BMP) criterion with Ohio EPA approval.
6. **RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION**
- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W 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 R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures 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 LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA’s control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately

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relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, 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 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.
- 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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 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.

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 Manager 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 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC 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% 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% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not

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subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 Per ORC 9.75(B), 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 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 LAMP 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 requesting 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 daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's lien that may be due and

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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 mechanic's lien is resolved.

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

Chris Bauserman, P.E., P.S.
Delaware County Engineer
1610 SR 521, PO Box 8006
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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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 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

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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 not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.
- 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 U.S. DOT, 49 CFR 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

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FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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.

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

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

- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all 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 by either party 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 ORC 126.30.

- 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:

15. **GENERAL PROVISIONS**

Andrew Fortman, P.E.	Paul Maricocchi, LPA Project Manager
Delaware County Engineers Office	Ohio Department of Transportation
1610 SR 521, PO Box 8006	400 East William Street
Delaware, Ohio 43015	Delaware, Ohio 43015
AFortman@co.delaware.oh.us	Paul.Maricocchi@dot.ohio.gov

- 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.*]

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- 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.

- 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.

-
- 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 %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% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.
 - 3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.
 - 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

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

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

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

Federal and State funds expended to or on behalf of a subrecipient 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 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 (3) 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 Agreement.

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 and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.
- 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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

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

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

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

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

- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original. The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: DELAWARE COUNTY	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Chris Bauserman PE, PS Delaware County Engineer	Jack Marchbanks Director
Date:	Date:

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

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SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS	\$253,500	100	LNTF	\$200,000	100	4HB7				
INSPECTION	\$45,350	100	LNTF							
TOTALS	\$298,850			\$200,000						\$498,850

**Attachment 2
DIRECT PAYMENT OF CONTRACTOR**

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

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

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

**15
RESOLUTION NO. 24-873**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BG ENGINEERING GROUP, LLC, FOR GENERAL ENGINEERING SERVICES 2024-1:

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

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

WHEREAS, the County Engineer has received proposals from consulting firms interested in providing general engineering services; and

WHEREAS, the County Engineer has selected BG Engineering Group, LLC, through a qualifications-based selection process, has negotiated a fee and agreement to provide the required services for general engineering, and requests entering into Contract with said firm;

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

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**PROFESSIONAL SERVICES AGREEMENT
General Engineering Services 2024-1**

This Agreement is made and entered into this 28th day of October, 2024, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and BG Engineering Group, LLC, 5960 Wilcox Place, Suite C, Dublin, Ohio 43016 (“Consultant”), each individually referred to herein as a “Party” and collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant shall provide general engineering services (the “Services”) to the County.
- 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 shall be further described in and rendered by the Consultant in accordance with the following documents, to be retained and on file with each Party, and by this reference incorporated into this Agreement: Delaware County General Engineering Services 2024-1 Scope of Services dated 7-26-2024 (the “Scope of Services”).

2 SUPERVISION OF SERVICES

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

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Consultant’s Fee Proposal, which is to be retained and on file with each Party and, by this reference, incorporated into this Agreement, and other documents enumerated in Section 1.3.
- 4.2 The County Engineer may authorize partial lump sum payments for itemized tasks in “If Authorized Services” with written consent of the Consultant when the County Engineer determines the necessity therefor.
- 4.3 Total compensation under this Agreement shall not exceed Three Hundred Thousand Dollars and no cents (\$300,000.00) 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.

5 NOTICES

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

County Engineer:

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

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: Rmraz@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Greg Boyer, P.E.

Address of Firm: 5960 Wilcox Place, Suite C

City, State, Zip: Dublin, Ohio 43016

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Telephone: 614-615-6499
Email: gboyer@bgenggroup.com

6 PAYMENT

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

7 NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written notice to proceed from the County Engineer and shall complete the services within 24 months from said date. No extensions will be provided without prior written approval.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the County Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

9 CHANGE IN SCOPE OF SERVICES

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

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

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

12 INDEMNIFICATION

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

13 INSURANCE

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- 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 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.

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- 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 <https://humanresources.co.delaware.oh.us/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 work to which the Agreement relates. Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry. Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

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

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RESOLUTION NO. 24-874

IN THE MATTER OF APPROVING A DRAINAGE MAINTENANCE PETITION AND DITCH MAINTENANCE ASSESSMENT FOR CLARK SHAW RESERVE:

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

WHEREAS, on October 28, 2024, a Ditch Maintenance Petition for Clark Shaw Reserve (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 Clark Shaw Reserve, 41.71 acres in Liberty 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:

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The cost of the drainage improvements is **\$480,459.61** and a detailed cost estimate is attached in Exhibit “D”. The drainage improvements are being constructed for the benefit of the lots being created in this subdivision. 61 lots are created in these plats and each lot received an equal share of the benefit (cost) of the project. The basis for calculating the assessment for each lot is therefore, **\$7,876.39** per lot. An annual maintenance fee equal to 2% of this basis (**\$157.53**) will be collected for each lot. 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 **\$9,609.33** has been paid to Delaware County.

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

**17
RESOLUTION NO. 24-875**

IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND G&G ENTERPRISES COMPLETE EXCAVATING SERVICE, LLC FOR THE GRIFFITH #391 DRAINAGE IMPROVEMENT PROJECT:

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

Griffith #391 Drainage Improvement Project Bid Opening of October 1, 2024

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;

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 Griffith #391 Drainage Improvement Project:

CONTRACT

THIS AGREEMENT is made this 28th day of October, 2024, by and between G&G Enterprises Complete Excavating Service, LLC, 5907 Renie Road, Bellville, Ohio 44818, 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 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named “Griffith #391 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 ONE-HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED SIXTY FIVE DOLLARS AND FORTY CENTS (\$179,465.40), 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. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

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RESOLUTION NO. 24-876

IN THE MATTER OF APPROVING OWNER'S AGREEMENTS FOR PUBLIC STREET IMPROVEMENTS FOR MONROE DRIVE AND THE DISTRICT AT BERKSHIRE ROAD EXTENSION SECTION 2:

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

WHEREAS, the Engineer recommends approving the Owner's Agreements for Public Street Improvement Plans for Monroe Drive and The District at Berkshire Road extension Section 2;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner's Agreements for Public Street Improvement Plans for Monroe Drive and The District at Berkshire Road Extension Section 2 as follows:

Public Street Improvement Plans for Monroe Drive:

**OWNER'S AGREEMENT
PROJECT NUMBER 22037**

THIS AGREEMENT made and entered into this 28th day of October, 2024, by and between the COUNTY OF DELAWARE (acting through its BOARD OF COUNTY COMMISSIONERS), hereinafter called the COUNTY, and ILOS II LLC hereinafter called the OWNER, as evidenced by the Engineering and Construction Plan entitled Public Street Improvement Plans for Monroe Drive, which was approved by the County Engineer, hereinafter called the Plan, is governed by the following considerations to wit:

- 1) The OWNER is to construct, install or otherwise make all of the improvements as shown and set forth to be performed and completed on the PLAN, which is part of this AGREEMENT.
- 2) The OWNER shall pay the entire cost and expense of said improvements.
- 3) The OWNER is to provide an irrevocable letter of credit or other approved financial warranties in the amount of \$55,600.00 payable to the BOARD OF COUNTY COMMISSIONERS to insure the faithful performance of this AGREEMENT and the completion of all of the said improvements in accordance with the current "Delaware County Engineering and Surveying Standards for Subdivision Development" and current "Subdivision Regulations of Delaware County, Ohio".
- 4) Before beginning construction, the OWNER shall deposit inspection fees in the amount of \$4,500.00 estimated to be necessary to pay the cost of inspection by the Delaware County Engineer. When the fund has been depleted to ten percent (10%) of the original amount deposited, the OWNER shall replenish the account upon notice by the Engineer. Upon completion of the project and acceptance of the improvements by the DELAWARE COUNTY COMMISSIONERS, the remaining amount in the fund shall be returned to the OWNER.
- 5) The OWNER is to complete all construction to the satisfaction of the COUNTY no later than October 1, 2025.

Upon completion of construction, the OWNER shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of one year. Said OWNER'S bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in Exhibit "A" for said maintenance. The reduction may be approved only after the County Engineer has been provided evidence that all work has been accomplished according to the approved plan and/or to the County Engineer's satisfaction. All work is to be done in accordance with the Delaware County Design, Construction and Surveying Standards, and any supplements thereto.

Acceptance of the project into the public system shall be completed only after written notice to the from the of his approval. The OWNER'S maintenance responsibility as described above shall be completed upon formal acceptance by the COUNTY COMMISSIONERS.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the OWNER. All of the funds set forth in the AGREEMENT shall be made available to the to ensure proper safety compliance.

The OWNER shall, within thirty (30) days of completion of construction and prior to final acceptance, to the COUNTY COMMISSIONERS, as required, "as-built" drawings of the improvements, which plans shall become the property of the COUNTY and remain in the office of the Delaware County Engineer.

The OWNER shall, within thirty (30) days of completion of construction, furnish to the COUNTY COMMISSIONERS an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The OWNER shall indemnify and hold harmless

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Delaware County and all Townships and/or Villages within and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

- 6) 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 construction of said improvements.
- 7) The OWNER will at all times during the construction of said improvements maintain thru traffic on the public roadway and keep the same free of unreasonable hazards to the public. Said roadway shall not be closed to traffic except as approved by the Delaware County Engineer. Construction signs, barricades and lights shall be placed as needed on the job site as in accordance with the Ohio Department of Transportation "Uniform Traffic Control Devices" and "Traffic Control for Construction and Maintenance".
- 8) 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 stop work forthwith and use the surety for the completion of the improvements.
- 9) 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.
- 10) Upon approval and acceptance of the improvements, the original copy of the PLAN shall become the property of the COUNTY and shall be filed in the office of the Engineer.
- 11) 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 make the said improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$55,600.00	
CONSTRUCTION BOND AMOUNT	N/A	
MAINTENANCE BOND AMOUNT	\$5,600.00	
INSPECTION FEE DEPOSIT	\$4,500.00	

The District at Berkshire Road Extension Section 2:

OWNER'S AGREEMENT
PROJECT NUMBER: 23051

THIS AGREEMENT, executed on this 28th day of October, 2024, between Berkshire Holding I, LLC, hereinafter called "OWNER" and the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS), for the project described as The District at Berkshire Road Extension Sec 2 further identified as Project Number 23051 is governed by the following considerations to wit:

Said OWNER is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this AGREEMENT.

OPTIONS:

1. Should OWNER elect to record the plat prior to beginning construction, OWNER shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in Exhibit "A" attached hereto.
2. Should OWNER elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as OWNER elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 2 for this project.

The financial warranties are to insure faithful performance of this AGREEMENT and the completion of all improvements in accordance with the Delaware County Design, Construction and Surveying Standards and any supplements thereto. The OWNER shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The OWNER shall indemnify and save harmless Delaware County and all Townships and/or Villages within Delaware County and all of their officials, employees or 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 actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

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All public improvement construction shall be performed within one (1) year from the date on which this AGREEMENT is executed by the COUNTY COMMISSIONERS.

The OWNER 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 public improvements within this subdivision.

It is further agreed that upon execution of the AGREEMENT, the OWNER shall deposit No Dollars and No Cents (\$0.00) estimated to be necessary to pay the cost of inspection by the Delaware County Engineer. When the fund has been depleted to ten percent (10%) of the original amount deposited, the OWNER shall replenish the account upon notice by the Engineer. Upon completion of the maintenance period and acceptance of the improvements by the Delaware County Commissioners, the remaining amount in the fund shall be returned to the OWNER.

Upon completion of construction, the OWNER shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of one year. Said OWNER'S bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in Exhibit "A" for said maintenance. The reduction may be approved only after the County Engineer has been provided evidence that all work has been accomplished according to the approved plan and/or to the County Engineer's satisfaction. All work is to be done in accordance with the Delaware County Design, Construction and Surveying Standards, and any supplements thereto.

Acceptance of the project into the public system shall be completed only after written notice to the COUNTY COMMISSIONERS from the County Engineer of his approval. The OWNER'S maintenance responsibility as described above shall be completed upon formal acceptance by the COUNTY COMMISSIONERS.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the OWNER. All of the funds set forth in the AGREEMENT shall be made available to the County Engineer to ensure proper safety compliance.

The OWNER shall, within thirty (30) days of completion of construction and prior to final acceptance, to the COUNTY COMMISSIONERS, as required, "as-built" drawings of the improvements, which plans shall become the property of the COUNTY and remain in the office of the Delaware County Engineer.

The OWNER shall, within thirty (30) days of completion of construction, furnish to the COUNTY COMMISSIONERS an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The OWNER shall indemnify and hold harmless Delaware County and all Townships and/or Villages within and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

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

Should the OWNER 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.

In consideration whereof, the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO hereby grants the OWNER or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$564,400.00
CONSTRUCTION BOND AMOUNT	N/A
MAINTENANCE BOND AMOUNT	\$56,500.00
INSPECTION FEE DEPOSIT	\$0.00

Vote on Motion

Mr. Benton Aye

Mrs. Lewis Aye

Mr. Merrell Aye

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RESOLUTION NO. 24-877

IN THE MATTER OF ACCEPTING A MAINTENANCE BOND AND PLACING LIBERTY TRAILS ON THE REQUIRED ONE-YEAR MAINTENANCE PERIOD:

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

WHEREAS, the roadway construction has been completed for the project known as Liberty Trails (the “Project”); and

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

WHEREAS, the Engineer recommends that, in accordance with the Owner’s Agreement, the maintenance bond be set at \$59,400.00 (10% of the original construction estimate) and the Project be placed on the required one-year maintenance period; and

WHEREAS, Liberty Trails, LLC, (the “Principal”) has provided a maintenance bond in the amount of \$59,400.00 to secure the one-year maintenance period;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves accepting the maintenance bond for the Project and places the Project on the required one-year maintenance period.

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

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RESOLUTION NO. 24-878

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

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

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

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

<u>PERMIT #</u>	<u>APPLICANT</u>	<u>LOCATION</u>	<u>TYPE OF WORK</u>
UT2024-0198	SPD	RED BANK RD	ROAD BORE
UT2024-0210	SPD	WORTHINGTON RD	REPLACE COAX
UT2024-0211	SPD	HOME RD & SAWMILL PKWY	ROAD BORE
UT2024-0212	SIGMA	COUNTY HOME RD	REPLACE POLES
UT2024-0213	AEP	SHERMAN RD	REPLACE POLES
UT2024-0214	AEP	CLARKSHAW RD	INSTALL POLES

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

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ADMINISTRATOR REPORTS

CA Davies – Nothing to report.

Attorney Hochstettler – Nothing to report.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis – Wanted to recognize that Flags are at half staff today to honor former Speaker of the House Jo Ann Davidson. Mrs. Lewis attended a Zoom meeting with Assistant Jail Directors to discuss the “Stepping Up” program.

Commissioner Benton – Attended a Regional Planning meeting on 10/24/24. He also wanted to honor Jo Ann Davidson. He also attended a ribbon cutting ceremony for the new Preservation Park.

Commissioner Merrell – Attended a CCAO Board meeting on 10/25/24. Wanted to wish everyone a safe and happy Halloween.

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RESOLUTION NO. 24-879

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

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

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

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

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

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

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

Section 1. The Board hereby adjourns into executive session for consideration of Employment and Compensation of a Public Employee or a Public Official.

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

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RESOLUTION NO. 24-880

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Jeff Benton

Barb Lewis

Gary Merrell

Jennifer Walraven, Clerk to the Commissioners