

COMMISSIONERS JOURNAL NO. 41 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 5, 2001

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

Present: James Ward, Deborah Martin, Donald Wuertz

6:45 PM – Executive Session for Personnel Matters

7:30 PM – Public Hearing for Annexation of .92 Acres from Delaware Township to City of Delaware

7:40 PM – Public Hearing Regarding the Funding of Emergency 9-1-1 and Non-Emergency Public Safety Communications

RESOLUTION NO. 01-135

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PERSONNEL MATTERS AT 6:45 PM:

It was moved by Mr. Wuertz, seconded by Mrs. Martin to adjourn into Executive Session.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

RESOLUTION NO. 01-136

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION AT 7:02 PM:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to adjourn out of Executive Session:

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

PUBLIC COMMENT – Discussed possible sites for EMS Station in Scioto Township Area

RESOLUTION NO. 01-137

IN THE MATTER OF APPROVING PAYMENT OF WARRANTS NUMBERED 295165 THROUGH 295389:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve for payment warrants 295165 through 295389 on file in the office of the Delaware County Commissioners.

Vote on Motion Mr. Wuertz Aye Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-138

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Wuertz, seconded by Mrs. Martin to approve the following:

Emergency Services is requesting that David Hall, Doug Sams, Tom Macklin and Gil Borchers attend the Threat & Risk Assessment Course “Texas A&M University” at Cambridge, Ohio on February 20 through February 21, 2001, in the amount of \$785.92.

Commissioners are requesting that Dave Cannon attend the 2001 Technology Seminar – GFOA at Cincinnati on February 21, 2001, in the amount of \$75.00.

Juvenile Court is requesting that Vickie Cortez and Eddie Parker attend Learning to Lead Workshop at Columbus on April 2, 2001, in the amount of \$184.00.

Juvenile Court is requesting that Deb McCurdy attend the Supervision Workshop at Columbus on April 2, 2001, in the amount of \$89.00.

Administrative Services is requesting that Terry Conant, John King and Jay Shannon attend the Ohio Humane Agent Association Seminar at Columbus on February 25, 2001, in the amount of \$24.00.

Administrative Services is requesting that Terry Conant attend the OVMA Conference at Columbus on February 22, 2001, in the amount of \$112.00.

Administrative Services is requesting that Kevin Williams attend the monthly Human Resource of Central Ohio Assoc. Meetings at various locations on monthly dates in the amount of \$435.00.

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Child Support Enforcement Agency is requesting that Robyn Moehring attend the Management Skills for the New Supervisor at Akron, Ohio on February 8, 2001, in the amount of \$169.00.

Records Center is requesting that Christine Shaw attend the Round Table Discussion of County Record Center Managers at Clinton County Records Center on February 15, 2001, in the amount of \$72.00.

County Engineer is requesting that Bob Walker and Junior Yates attend the Windows I and II at Delaware JVS on February 20, 22, 27, 2001, in the amount of \$110.00.

Juvenile Court is requesting that Debbie Gibson and Marilyn Kinniard attend Customer Service Conference at Columbus on March 21, 2001, in the amount of \$398.00.

Job and Family Services is Requesting Authorization for:
Required Training

Cost of training to be paid from local/state/federal appropriated funds

Following are itemized the anticipated expenses necessary to be incurred during such period.

NOTE: The total will be the maximum that would be reimbursed. Staff will use a county vehicle if available.

Lisa, Cabot, Marie Ellinger, Rosemary Halterman, Keith Matlack, Lori Powers, Sarah Hoffer, Carrie Block, Donna Bukovec, Marcy Downing, Craig Hill, John Reeves, Judy McCormick, Lee Hayes, and Jim Little, Sam Keckler and Crystal Ufferman to attend, at the expense of Delaware County, training at various locations, primarily 1919 Frank Rd., Columbus for the period of 2/05/01 through 12/31/01.

(6 trainings x 16 staff x 80 miles x \$0.30)	
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>	\$ 2,304
Parking for <u>actual</u> cost (1 ½ trainings x 15 staff x \$10.00)	\$ 160
Registration for <u>actual</u> cost (1 training x 15 staff x \$75.00)	\$ 2,400
Approximate of total request	\$ 4,864

Kathy Mason, Diana Bratton, Crystal Ufferman to attend, at the expense of Delaware County, quarterly FACSIS meetings at various locations for the period of 2/05/01 through 12/31/01.

(4 meetings x 100 miles x \$0.30)	
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>	\$ 120
Parking for <u>actual</u> cost (2 meetings x \$10.00)	\$ 40
Registration for <u>actual</u> cost	-0-
Approximate of total request	\$ 160

Judy McCormick, Carrie Block, Lee Hayes to attend, at the expense of Delaware County, quarterly foster/adoption coordinator meetings, regional adoption meetings, RAPS (risk assessment problem solving) meetings at Columbus, OH for the period of 2/05/01 through 12/31/01.

(10 meetings x 60 miles x \$0.30)	
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>	\$ 180
Parking for <u>actual</u> cost (2 meetings x \$10.00)	\$ 100
Registration for <u>actual</u> cost	-0-
Approximate of total request	\$ 280

Julie Kunkle, Susan Chronaberry, Candy Kelley, Joyce Marquart, Mary Sedlacek, Margaret Shields, Larry Hager, Cathy Humphreys, Patti Rayburn, Rhonda Leasure, Donna Eckman, Ceilia Vail, Perry Harper, Pam Pruettt, Anne Tallent, Tammy Mannasmith, Wendi Stephens, Sharon Aspery, Tami DeJonge, Candace Hendrickson, Sharon Lloyd, Tracey Merrin, Tammy Jones, Jennifer Laird, Heather Roberts to attend, at the expense of Delaware County, CRISE and TOPS training at Columbus State Community College and various locations in Columbus for the period of 2/05/01 through 12/31/01

(2 staff x 18 days x 60 miles x \$0.30)	
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>	\$ 648
Parking for <u>actual</u> cost	60
Registration for <u>actual</u> cost	-0-
Approximate of total request	\$ 708

Julie Kunkle, Rhonda Leasure, Sharon Lloyd, Tami DeJonge to attend, at the expense of Delaware County, Monthly Workforce Development meetings, One Stop Consortium meetings (DMARK), IM Supervisor meetings at various locations for the period of 2/05/01 through 12/31/01.

(100 miles x 6 x \$0.30) + (60 miles x 2 x \$0.30)	\$ 216
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>	
Parking for <u>actual</u> cost(6 meetings x \$10.00)	60
Meals (\$10 x2 meetings x20)	40

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Registration for <u>actual</u> cost		120
Approximate of total request	\$	436

Rhonda Leasure, Sharon Aspery, Wendi Stephens, Tammy Mannasmith to attend, at the expense of Delaware County, Quarterly Child Care meetings at Columbus for the period of 2/05/01 through 12/31/01.

(4 meetings x 60 miles x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 72
Parking for <u>actual</u> cost		40
Registration for <u>actual</u> cost		N/A
Approximate of total request	\$	112

Anne Tallent, Pam Pruett to attend, at the expense of Delaware County, Quarterly Fraud/Overpayment meetings at various locations for the period of 2/05/01 through 12/31/01.

(100 miles x 4 x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 120
Parking for <u>actual</u> cost		-0-
Registration for <u>actual</u> cost		-0-
Approximate of total request	\$	120

Mona Reilly, Angela Thomas to attend, at the expense of Delaware County, Quarterly PCSAO (Public Children Services Assoc. of Ohio), OJFSDA (Ohio Job and Family Services Directors Assoc.), ODJFS Children Services Directors, Region 1 Directors meetings at various locations for the period of 2/05/01 through 12/31/01.

(24 meetings x 100 miles x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 720
Parking for <u>actual</u> cost (12 meetings x \$10)		\$ 120
Registration for <u>actual</u> cost		<u>-0-</u>
Approximate of total request	\$	840

Jackie Williams, Angela Thomas to attend, at the expense of Delaware County, Quarterly Fiscal meetings at Columbus for the period of 2/05/01 through 12/31/01.

Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 72
Parking for <u>actual</u> cost		-0-
Registration for <u>actual</u> cost		-0-
Approximate of total request	\$	72

Jackie Williams, Diane Bowersmith, Vickie Kerns, Barbara Thomas, Becky Ward, Deanna Slone to attend, at the expense of Delaware County, Semi-annual EBT (Electronic Benefit Transfer)/ food stamp card meetings at Columbus for the period of 2/05/01 through 12/31/01

(4 meetings x 60 miles x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 72
Parking for <u>actual</u> cost (4 meetings x \$10)		\$ 40
Registration for <u>actual</u> cost		\$ N/A
Approximate of total request	\$	112

Jackie Williams, Barbara Minnick, Marty Starkey, Deanna Slone, Angela Thomas to attend, at the expense of Delaware County, Annual PET & QUIC user meetings (fiscal software at various locations for the period of 2/05/01 through 12/31/01).

(4 days x 100 miles x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 120
Parking for <u>actual</u> cost		-0-
Registration for <u>actual</u> cost		600
Approximate of total request	\$	720

Craig Hill, Lee Hayes to attend , at the expense of Delaware County, monthly PCSAO Rule Review Committee Meeting at 400 E. town Street, Columbus, Ohio for period of 2/05/01 through 12/31/01

(11 meetings x 60 miles x \$0.30)		
Mileage for personal automobile <u>actual</u> miles at \$. <u>30</u>		\$ 198
Parking for <u>actual</u> cost		110
Registration for <u>actual</u> cost		0
Approximate of total request	\$	308

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It was moved by Mr. Wuertz, seconded by Mrs. Martin to setting time and date:

Whereas, the Clerk of the Board of County Commissioners has given notice of the filing of a petition for annexation of certain real estate in Delaware Township to City of Delaware, and

Whereas, Daniel H. Schoedinger, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio, has been designated as agent for the petitioners.

Now Therefore Be It Resolved, that **Monday, April 2, 2001, at 8:00 PM** in the hearing room of the Board of County Commissioners of Delaware County, 101 Sandusky Street, Delaware, Ohio be set as date, time and place for hearing on same pursuant to Section 709.031 of the Ohio Revised Code; Further Be It Resolved, that the Clerk of the Board of Commissioners shall give notice to the Agent for the Petitioners of this action.

Vote on Motion Mr. Wuertz Aye Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-141

IN THE MATTER OF APPROVING THE DITCH MAINTENANCE PETITION FOR SHERBROOK, PHASE 7:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the ditch petition

Sherbrook, Phase 7

We the undersigned owners of 36.038 acres in Genoa Township, Delaware County, Ohio propose to create a subdivision known as Sherbrook , Phase 7 as evidenced by the subdivision plant (Exhibit "A" which is available at the County Engineer's Office). This plat has been approved and signed by the Delaware County Regional Planning Commission and the Delaware County Engineer. Drainage improvements related to this subdivision have been constructed (or are bonded and will be constructed within a period of one year as evidenced by the Subdivider's agreement Exhibit "B" available at the County Engineer's Office). In accordance with Section 6137 of the Ohio Revised Code, we (I) hereby request that the improvements delineated on Exhibit "C" (available at the County Engineer's Office), be accepted as part of the County Ditch Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for each lot in the subject subdivision to cover the cost of current and future maintenance of the improvements.

We (I) represent 100% of the property owners to be assessed for maintenance related to this drainage improvement.

We (I) hereby waive our rights to a public viewing and hearing and ask that your board approve this action in conjunction with the approval of the Sherbrook, Phase 7 Subdivision.

The cost of the drainage improvements is \$155,369.97 and a detailed cost estimate is available at the County Engineer's office in Exhibit "D". The drainage improvements are being constructed for the benefit of the lots being created in this subdivision. Eighty-One (81) lots are created in this plat and each lot receives an equal share of the benefit (cost) of the project. The basis for calculating the assessment for each lot is therefore, \$1,904.04 per lot. An annual maintenance fee equal to 2% of this basis \$38.08 will be collected for each lot. 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 \$3,107.50 has been paid to Delaware County.

Easements to provide for the maintenance of the improvements have been provided on the plat.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

RESOLUTION NO. 01-142

IN THE MATTER OF ACCEPTING MAINTENANCE BOND FOR MEDALLION, SECTION 10, PHASE 1:

It was moved by Mr. Wuertz, seconded by Mrs. Martin to approve the following.

Medallion, Section 10, Phase 1

The roadway construction has been completed for the referenced subdivision ands, as the results of our recent field review, we have determined that minor remedial work will be required during the 2001-construction season.

In accordance with the Subdivider's Agreement, we recommend that the maintenance bond be set at **\$95,000** for the duration of the one-year maintenance period. A letter of credit in the amount is in place.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

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RESOLUTION NO. 01-143**IN THE MATTER OF APPROVING THE SUBDIVIDER'S AGREEMENT FOR SCIOTO RESERVE SECTION 4, PHASE 4:**

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the following:

THIS AGREEMENT executed on this 5th day of February 2001, between **HOMEWOOD CORPORATION** as evidenced by the **SCIOTO RESERVE SECTION 4, PHASE 4** Subdivision Plat to be filed with the Delaware County Recorder, Delaware County, Ohio and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** is governed by the following considerations, to wit:

Said **SUBDIVIDER** 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**, said **SUBDIVIDER** shall, at the time of plat approval, execute bond, certified check, irrevocable letter of credit or other approved financial warranties equal to the cost of any remaining construction as shown in the Engineer's Estimate approved 1/10/01 which is acceptable to the **COUNTY COMMISSIONERS** to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Subdivision Regulations** of Delaware County, Ohio. The **SUBDIVIDER** shall pay the entire cost and expense of all improvements.

The **SUBDIVIDER** shall indemnify and save harmless the **County, Townships and/or Villages** 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.

All public improvement construction shall be performed within one year from the date of the approval of said subdivision by the **COUNTY COMMISSIONERS**. But an extension of time may be granted if approved by the **COUNTY COMMISSIONERS**.

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

The **SUBDIVIDER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

ROADWAY AND STORM DRAINAGE

It is further agreed that upon execution of the **AGREEMENT**, the **SUBDIVIDER** shall deposit **THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS estimated** to be necessary to pay the cost of inspection by the **Delaware County Engineer** and, if deemed necessary by the **Delaware County Engineer**, testing by an independent laboratory, and the cost of street and traffic control signs. When the fund has been depleted to **thirty percent (30%)** of the original amount deposited, the **SUBDIVIDER** shall replenish the account, upon notice by the **Delaware County Engineer**. Upon completion and acceptance of the construction, the remaining amount in the fund shall be returned to the **SUBDIVIDER**, with the exception of a nominal amount for the final inspection at the end of the maintenance period.

Upon completion of construction, the **SUBDIVIDER** shall be responsible for the maintenance, repair or reconstruction of any and all defective materials or workmanship for a period of one year. Said **SUBDIVIDER'S** bond or certified check or irrevocable letter of credit may be reduced to an amount estimated by the **County Engineer** 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 to the **Ohio Department of Transportation Specifications**.

Acceptance of the roads and drainage structures in said subdivision into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **SUBDIVIDER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

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

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compliance.

CONSTRUCTION

The **SUBDIVIDER** shall, within thirty (30) days following the completion of construction and prior to final acceptance, furnish to **Delaware County**, 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 **SUBDIVIDER** shall, within thirty (30) days of completion of construction, furnish to the **County** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **SUBDIVIDER** shall indemnify and hold harmless the **County** from expenses or claims for labor or material incident to said construction of improvements.

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

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

Should the **SUBDIVIDER** become unable to carry out the provisions of this **AGREEMENT**, the **SUBDIVIDER’S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.

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

Vote on Motion Mr. Wuertz Aye Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-144

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

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

Permit #	Applicant	Location	Type of Work
U-010004	AEP	Africa Road-3B's & K	Place Poles
U-010005	Sprint	Carters Corner	Bury Cable
U-010006	Sprint	Rosecrans	Buried/Aerial Cable
U-010007	Sprint	Olive Green	Bury Cable
U-010008	Columbia Gas	Africa	Gas Main
U-010009	Columbia Gas	Harbor Point Sub	Gas Main
U-010010	Columbia Gas	Africa Road	Gas Main
U-010011	Columbia Gas	Africa Road	Gas Main
U-010012	GTE-Verizon	Africa Road	Bury Cable
U-010013	Verizon	Orange Point Dr	Bury Cable
U-010014	GTE-Verizon	McCurdy	Bury Cable
U-010015	Sprint	Wilson Road	Bury Cable

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

RESOLUTION NO. 01-145

IN THE MATTER OF APPROVING THE CONTRACT MODIFICATION #1 WITH ARMSTRONG STEEL ERECTORS FOR THE RED BANK ROAD BRIDGE REPLACEMENT:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the contract modification #1:

CONTRACT (Modification # 1)

MODIFICATION AGREEMENT made and entered into this 5th day of February, 2001, by and between the **DELAWARE COUNTY COMMISSIONERS**, Delaware County, Ohio, and hereinafter designated as **FIRST PARTY**, and **ARMSTRONG STEEL ERECTORS**, hereinafter designated as **SECOND PARTY**.

THIS MODIFICATION AGREEMENT herein after modifies the original agreement dated September 18, 2000, by and between the **DELAWARE COUNTY COMMISSIONERS AND ARMSTRONG STEEL**

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ERECTORS.

That said **FIRST AND SECOND PARTY**, hereby agrees to increase the original Contract amount of **\$444,709.75 by \$46,782.00** for necessary change orders and extra work a deemed necessary and agreed to by the Delaware County Engineer. That change orders # 1 and # 2 are hereby incorporated by reference into the original plans, specifications and agreement. The revised contract amount is, therefore, increased to a **TOTAL of FOUR HUNDRED NINETY ONE THOUSAND, FOUR HUNDRED SEVENTY FIVE AND SEVENTY-FIVE CENTS, (\$491,491.75**, to be paid as specified in the terms of the original agreement.

The **FIRST PARTY** agrees to furnish all the necessary material, labor and equipment required to complete the project known as **Red Bank road Bridge Replacement, Delaware County, Ohio**, in accordance with **Plans, Drawings, General specifications, Invitation to Bid for same**; which **Plans, Drawings, General Specifications, State of Ohio Department of Transportation specifications, Invitation to Bid and this modification** are hereby declared to be a part of said **Contract**.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

RESOLUTION NO. 01-146

IN THE MATTER OF APPROVING THE TEMPORARY WEIGHT LIMIT REDUCTIONS ON BRAUMILLER ROAD (DELAWARE TOWNSHIP PORTION):

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the following:

The Liberty Township Board of Trustees submitted Braumiller Road for weight reduction. The Delaware Township Board of Trustees has passed a resolution in agreement with this reduction. The section requested is from Berlin-Station Road, County Road 91, to Cheshire Road, County Road 72. This reduction will be effective February 6, 2001, pending the Commissioners approval.

Vote on Motion Mr. Wuertz Aye Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-147

IN THE MATTER OF APPROVING THE CONTRACTS BETWEEN JOB AND FAMILY SERVICES AND KATHY HARPER, DENNIS BUDINSKI AND LISA BARNHART:

It was moved by Mr. Wuertz, seconded by Mrs. Martin to approve the contracts for child care:

	Contract Period	Basic Rates Full Time (25 Hrs. or More)	Part Time Rates	Adjustments to Basic Rates
Kathy Harper				
4181 Portobello Dr.	July 1, 2000 – June 30, 2001			
Gahanna, Ohio 43230				
Infants		\$16.05	\$10.80	None
Toddlers		\$15.45	\$10.35	
Preschool		\$13.65	\$ 9.15	
Schoolage		\$12.90	\$ 8.70	
Dennis Budinski				
8400 Greyhawk Circle	January 2, 2001-June 30, 2001	\$1.25 per hour		None
Lisa Barnhart				
211 Knight Dream St.	January 2, 2001 – June 30, 2001	\$1.65		None
Delaware, Ohio 43015				

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

RESOLUTION NO. 01-148

IN THE MATTER OF APPROVING THE ACCEPTANCE OF THE EXTENSION OF THE EXISTING JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT AWARD:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the extension of the existing Juvenile Accountability Incentive Block Grant:

Subgrant No: 1999-JB-013-A017S

Project Period: 1/1/2001 to 6/30/2001

<u>SOURCE OF FUNDS</u>	<u>AMOUNT</u>	<u>PERCENTAGE</u>
OCJS Fund-Award Amount	\$11,280.00	89.9952%

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Cash Match		\$ 1,254.00			10.0048%
Project Total		\$12,534.00			100.0000%
Vote on Motion	Mrs. Martin	Aye	Mr. Wuertz	Aye	Mr. Ward Aye

RESOLUTION NO. 01-149

IN THE MATTER OF APPROVING QUARTERLY FINANCIAL REPORT FOR LITTER GRANT:

It was moved by Mr. Wuertz, seconded by Mrs. Martin to approve the quarterly financial report for the Recycle Ohio Grant.

Vote on Motion	Mr. Wuertz	Aye	Mr. Ward	Aye	Mrs. Martin	Aye
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RESOLUTION NO. 01-150

IN THE MATTER OF APPROVING SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR DOCUMENT MANAGEMENT SERVICES:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve specifications and set bid opening date and time for **Monday, March 12, 2001 at 10:00 AM** for document management services for Delaware County.

Vote on Motion	Mr. Ward	Aye	Mrs. Martin	Aye	Mr. Wuertz	Aye
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RESOLUTION NO. 01-151

IN THE MATTER OF PROVIDING FOR THE CONSTRUCTION AND PARTIAL FINANCING OF CERTAIN PUBLIC ROADWAY IMPROVEMENTS IN COOPERATION WITH THE CITY OF COLUMBUS, OHIO AND APPROVING AND AUTHORIZING RELATED AGREEMENTS:

The Board of County Commissioners of Delaware County, Ohio, met in regular session in its offices at 101 North Sandusky Street, Delaware, Ohio at 7:00 p.m. on February 5, 2001, with the following members present:

Mrs. Martin moved the adoption of the following Resolution and Mr. Wuertz, seconded the motion.

A RESOLUTION PROVIDING FOR THE CONSTRUCTION AND PARTIAL FINANCING OF CERTAIN PUBLIC ROADWAY IMPROVEMENTS IN COOPERATION WITH THE CITY OF COLUMBUS, OHIO AND APPROVING AND AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT AND PUBLIC ROADWAY IMPROVEMENTS AGREEMENT:

WHEREAS, this Board recognizes that the Polaris Centers of Commerce, a commercial and retail development project located within the County (referred to herein as the “Polaris Centers of Commerce”) has caused and is expected in the future to cause significant growth and development in the southern portion of the County; and

WHEREAS, the City of Columbus (the “City”) has also acknowledged, in Ordinance No. 2656-00 passed on December 4, 2000 (the “City Ordinance”), that the Polaris Centers of Commerce has caused and is expected in the future to cause significant growth and development in the southern portion of the County, which area is also located within the City; and

WHEREAS, a proposal has been made for the development of a shopping mall in the Polaris Centers of Commerce (the “Mall”); and

WHEREAS, this Board finds, and the City has heretofore determined in the City Ordinance, that the growth and development caused by the current development of the Polaris Centers of Commerce and the growth expected as a result of the construction of the Mall will place significant demands on existing roadway improvements in and around the Polaris Centers of Commerce; and

WHEREAS, this Board finds, and the City has heretofore determined in the City Ordinance, that the facilitation of traffic flow in and around the Polaris Centers of Commerce is of great importance to the continued prosperity to those areas of the County and the City, respectively, and that the provision of safe and efficient traffic flow in that area is vital to the health and welfare of the residents of the County and the City, respectively; and

WHEREAS, this Board and the City, as authorized by the City Ordinance, have determined to enter into an agreement (the “Cooperative Agreement”) to cooperate and jointly provide for the construction of a certain roadway improvements (referred to herein as the “Public Improvements”), including but not limited to authorizing the County to exercise the power of the City to execute a guaranteed maximum sum contract to provide for the construction of such Public Improvements, which will facilitate traffic flow in and around the Polaris Centers of Commerce; and

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WHEREAS, Polaris Mall LLC (the "*General Contractor*") has been and continues to be integrally involved in the development of real property located in the Polaris Centers of Commerce; and

WHEREAS, General Contractor desires to cause the construction of the Public Improvements and has requested financial assistance from the County with respect to the costs of the Public Improvements; and

WHEREAS, this Board finds and determines that it would be in the best interests of the County, and in furtherance of performing the County's obligations under the Cooperative Agreement, to provide for the construction of those Public Improvements and to further provide financial assistance for a portion of the costs of those Public Improvements by authorizing the execution of an agreement (the "*Public Roadway Improvements Agreement*") with the General Contractor;

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

Section 1. Authorization of Cooperative Agreement. The Cooperative Agreement by and between the County and the City in the form presently on file with the Clerk of this Board, providing for the cooperative efforts of the County and the City in causing the construction of the Public Improvements, including but not limited to, authorizing the County to exercise the power of the City to execute and deliver a guaranteed maximum sum contract providing for the construction of those Public Improvements, is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this County and which shall be approved by the County Commissioners. The County Commissioners, for and in the name of this County, are hereby authorized to execute that Cooperative Agreement, provided further that the approval of changes thereto by the County Commissioners, and the character of the changes as not being substantially adverse to the County, shall be evidenced conclusively by the County Commissioners' execution thereof.

Section 2. Authorization of Public Roadway Improvements Agreement. The Public Roadway Improvements Agreement by and between the County and the General Contractor in the form presently on file with the Clerk of this Board, providing for the construction of the Public Improvements by the General Contractor and the partial financing thereof by the County, is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this County and which shall be approved by the County Commissioners. The County Commissioners, for and in the name of this County, are hereby authorized to execute that Public Roadway Improvements Agreement, provided further that the approval of changes thereto by the County Commissioners, and the character of the changes as not being substantially adverse to the County, shall be evidenced conclusively by the County Commissioners' execution thereof. This Board initially appoints [**the County Administrator**] to act as the Authorized County Representative under the Public Roadway Improvements Agreement. This Board further authorizes and directs the County Auditor to make such arrangements as are necessary and proper to provide for payments to be made to the General Contractor pursuant to the Public Roadway Improvements Agreement.

Section 3. Compliance with Open Meeting Requirements. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. Effective Date. This Resolution shall be in full force and effect immediately upon its adoption.

PUBLIC ROADWAY IMPROVEMENTS AGREEMENT

THIS PUBLIC ROADWAY IMPROVEMENTS AGREEMENT (the "*Agreement*") is made and entered into this **5th** day of **February, 2001**, by and between the COUNTY OF DELAWARE, OHIO (the "*County*"), a county and political subdivision duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*"), and Polaris Mall LLC, a Delaware limited liability company having its principal office in Columbus, Ohio (the "*General Contractor*"), and collectively with the County, the "*Parties*"), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof).

RECITALS:

WHEREAS, the Parties recognize that the Polaris Centers of Commerce, a commercial and retail development project located within the City of Columbus, Ohio (the "*City*") and the County (as depicted on Exhibit A and referred to herein as the "*Polaris Centers of Commerce*"), has caused and is expected in the future to cause significant growth and development in the southern portion of the County; and

WHEREAS, General Contractor has been and continues to be integrally involved in the development of real property located in the Polaris Centers of Commerce; and

WHEREAS, a proposal has been made for the development of a shopping mall in the Polaris Centers of Commerce (the "*Mall*"); and

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WHEREAS, the Parties find that the growth and development caused by the current development of the Polaris Centers of Commerce and the growth expected as a result of the construction of the Mall will place significant demands on existing roadway improvements in an around the Polaris Centers of Commerce; and

WHEREAS, General Contractor desires to cause the construction of certain roadway improvements in and around the Polaris Centers of Commerce (as depicted on Exhibit B and referred to herein as the “*Public Improvements*”) and has requested financial assistance from the County with respect to the costs of the Public Improvements; and

WHEREAS, the City and the County have each determined that the facilitation of traffic flow in and around the Polaris Centers of Commerce is of great importance to the continued prosperity of that area of the County; and

WHEREAS, the County has determined that the provision of safe, modern and efficient traffic flow in and around the Polaris Centers of Commerce is vital to the health, safety and welfare of the residents of the County; and

WHEREAS, the County, by its Resolution No. 01-151 adopted on **February 5, 2001**, has determined to cooperate with the City to cause the construction of and partially finance the costs of constructing the Public Improvements to facilitate traffic flow in and around the Polaris Centers of Commerce; and

WHEREAS, the City, by its Ordinance No. 2656-00 passed on December 4, 2000, has determined to cooperate with the County to provide for the construction of the Public Improvements; and

WHEREAS, the City and the County have entered into a Cooperative Agreement, dated **February 5, 2001** (the “*Cooperative Agreement*”), providing for the construction of the Public Improvements and the County, acting in accordance with the Cooperative Agreement, has determined to enter into this Agreement to further provide for the construction of the Public Improvements; and

WHEREAS, the Parties have determined to enter into this Agreement to provide for the financing and construction of the Public Improvements;

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. Unless otherwise defined herein, words and terms used in this Agreement with initial capital letters shall have the meanings set forth in this Section 1.1.

“*Agreement*” means this Public Roadway Improvements Agreement dated **February 5, 2001**, by and between the County and General Contractor, as duly amended or supplemented from time to time in accordance with its terms.

“*Agreement Term*” means the period commencing with the delivery of this Agreement and ending on the Termination Date.

“*Authorized City Representative*” means initially the City Engineer of the City. The City may from time to time provide a written certificate to the County and the General Contractor signed on behalf of the City by the **Director of the Department of Trade and Development of the City** designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized City Representative.

“*Authorized County Representative*” means initially the **County Administrator** of the County. The County may from time to time provide a written certificate to the City and the General Contractor signed on behalf of the County by the County Administrator designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized County Representative.

“*Authorized General Contractor Representative*” means initially **the Senior Vice President, Construction Services of General Contractor**. General Contractor may from time to time provide a written certificate to the City and the County signed on behalf of General Contractor by the **Senior Vice President, Construction Services** of General Contractor designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized General Contractor Representative.

“*City*” means the City of Columbus, Ohio.

“*County*” means the County of Delaware, Ohio.

“*County Documents*” means this Agreement and the Legislation; provided that when reference is made to the execution and delivery of the County Documents, the reference with respect to the Legislation means instead its adoption.

“*Completion Date*” means the date specified in a certificate given pursuant to Section 2.4 of this Agreement.

“*Construction Documents*” means the detailed construction documents for the Public Improvements including, without limitation, working drawings, plans and specifications for the Public Improvements, as shall be approved by the

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Authorized City Representative, as the same may be revised or supplemented from time to time with the approval of the Authorized City Representative.

“*Construction Period*” means the period beginning with the commencement of the construction of the Public Improvements and ending on the Completion Date therefor.

“*Construction Phase Contribution*” means \$3,000,000.

“*Cost of Work*” means the total consideration paid or to be paid by or on behalf of the General Contractor for the construction and design of the Public Improvements pursuant to Article II.

“*Event of Default*” means an Event of Default under Section 6.1 of this Agreement.

“*Force Majeure*” means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any cause or event not reasonably within the control of General Contractor or the County, as the case may be; provided, however, any such occurrence shall not be considered Force Majeure if such event was a foreseeable consequence of the either the General Contractor or the County, as the case may be, failing to exercise reasonable care in the performance of its obligations hereunder.

“*General Contractor*” means Polaris Mall LLC, a Delaware limited liability company having its principal office in Columbus, Ohio.

“*Guaranteed Maximum Sum*” means collectively, the Construction Phase Contribution and the Post Construction Contribution. The Guaranteed Maximum Sum shall, in no event, exceed \$4,000,000 and, in any event, is subject to satisfaction of the conditions stated in Sections 4.2 and 4.4.

“*Legislation*” means the County’s resolution authorizing the execution of this Agreement, as amended or supplemented from time to time.

“*Mall*” means the shopping mall to be constructed within the area indicated on Exhibit A.

“*Notice Address*” means:

(a) As to the City:

City of Columbus, Ohio
90 West Broad Street
Columbus, Ohio 43215
Attention: Director of Public Service

(b) As to the County:

Delaware County, Ohio
101 North Sandusky Street
Delaware, Ohio 43015
Attention: County Administrator

(c) As to General Contractor:

Polaris Mall LLC
20 South Third Street
Columbus, Ohio 43215
Attention: Senior Vice President of Construction Services

or a different address as to which notice is given pursuant to Section 7.1 of this Agreement.

“*Parties*” means collectively, the County and the General Contractor.

“*Person*” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

“*Post Construction Contribution*” means \$1,000,000.

“*Public Improvements*” means the public roadway improvements identified generally in Exhibit B attached to this Agreement and specifically described in the Construction Documents.

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“*Public Improvements Site*” means the real estate described in Exhibit A of this Agreement.

“*State*” means the State of Ohio.

“*Termination Date*” means the date which is one (1) year after the Completion Date.

“*Work*” means the construction of the Public Improvements in accordance with Articles 2 and 3 of this Agreement.

Section 1.2. Certain Words Used Herein; References. Any reference herein to the County or the General Contractor, any members or officers thereof, or other public boards, commissions, departments, institutions, agencies, bodies or other entities, or members or officers thereof, includes without limitation, entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or performing their functions lawfully.

Any reference to a section or provision of the Constitution of the State, a section, provision or chapter of the Ohio Revised Code, federal or State laws includes without limitation, that section, provision or chapter, or those laws or regulations, as amended, modified, revised, supplemented or superseded from time to time.

Words of any gender include the correlative words of any other gender. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof”, “herein”, “hereby”, “hereto” and “hereunder”, and similar terms, refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before the date as of which this Agreement is executed by the Parties.

**ARTICLE II
CONSTRUCTION OF THE PUBLIC IMPROVEMENTS**

Section 2.1. General Considerations. In consideration of General Contractor’s promise to cause to be constructed the Public Improvements, the County agrees to finance the Cost of Work, up to but not exceeding the Guaranteed Maximum Sum, all in accordance with this Agreement.

Section 2.2. Construction of the Public Improvements. General Contractor covenants and agrees that it will contract for the construction of the Public Improvements in General Contractor’s name with contractors or subcontractors, and the County covenants and agrees to finance the Cost of Work, up to but not exceeding the Guaranteed Maximum Sum, which Guaranteed Maximum Sum shall consist of (a) the Construction Phase Contribution in accordance with the terms and provisions of this Agreement and the Legislation, and the (b) Post Construction Contribution payable solely from a source to be determined by the County, but subject to satisfaction of the conditions set forth in Sections 4.2 and 4.4.

Section 2.3. General Contractor Covenants Regarding Construction of the Public Improvements. General Contractor further covenants and agrees:

(a) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions hereafter delivered, and do all other things which may be necessary or advisable for the construction of the Public Improvements, all in conformity with all then applicable governmental laws, rules and regulations;

(b) pursuant to the provisions of this Agreement, to provide for the payment of all fees, costs and expenses incurred in the construction of the Public Improvements from funds made available therefor in accordance with this Agreement, by the County or otherwise; and

(c) to the extent commercially reasonable, to ask for, demand, sue for, levy upon, recover and receive all sums of money, indebtedness and other demands whatsoever which may be due, owing or payable to General Contractor under the terms of each contract, agreement, obligation, bond, performance security, order and receipt in connection with the construction of the Public Improvements and to enforce the provisions of each contract, agreement, obligation, bond, performance security, order and receipt in connection therewith.

Section 2.4. Completion Date. The Completion Date of the Work shall be specified to the City and the County in a certificate signed by the Authorized General Contractor Representative, which certificate (a) shall describe all property installed as part of that completed Work, (b) shall state the Cost of Work, and (c) shall state that:

(i) the construction of the Work has been completed substantially in accordance with the related Construction Documents, all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with the Work and payable by the County or otherwise payable by the General Contractor have been paid or discharged except for any amounts retained by the County as provided below;

(ii) all other facilities necessary in connection with the Work have been constructed, improved and equipped; and

(iii) the construction of the Work has been accomplished in a manner which conforms to the City of Columbus standards and specifications and all then applicable governmental laws, rules and regulations.

The certificate also shall specify (d) the date by which the foregoing events shall have occurred, (e) which costs and expenses,

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if any, are not yet due, or are being contested by General Contractor, and (f) what amounts should be retained for any other reasons. In reliance thereon, the County may retain an amount equal to the aggregate of those costs and expenses. Notwithstanding the foregoing, the certificate shall state that it is given without prejudice to any rights against third parties which then exist or which may come into being subsequently.

Section 2.5. Acceptance of Public Improvements. Acceptance by the City of the Public Improvements shall not relieve General Contractor of its responsibility for defects in material or workmanship as set forth in Section 5.5.

**ARTICLE III
FURTHER PROVISIONS RELATING TO
THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS**

Section 3.1. Construction Documents. **General Contractor agrees that it will, without any expense to the County, prepare, or cause the preparation of, the Construction Documents.** General Contractor covenants and agrees that the construction of the Public Improvements will be accomplished in accordance with the Construction Documents (which Construction Documents shall be prepared in accordance with Exhibit B) and as shall be approved by the Authorized City Representative, as those Construction Documents may be revised or supplemented from time to time, provided such revisions or supplements are approved by the City and the General Contractor.

Section 3.2. Prevailing Wage. The County and General Contractor acknowledge and agree that the Public Improvements are subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed on the Public Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The General Contractor shall comply, and General Contractor shall require compliance by all contractors and subcontractors working on the Public Improvements, with all applicable requirements of that Chapter 4115.

Section 3.3. Awarding of Contracts. The Parties acknowledge that the General Contractor has prepared the Plans and Specifications and the bid documents and submitted them to the City for review. The County consents to the General Contractor's awarding of the contracts for the construction of the Public Improvements.

Section 3.4. Traffic Control Requirements. General Contractor shall be responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the "Ohio Manual of Traffic Control Devices for Construction and Maintenance Operation."

Section 3.5. Security for Performance. General Contractor shall require all contractors and subcontractors performing Work to furnish prior to commencement of construction of the Public Improvements, one of the following types of project guarantees:

(a) Contract Bonds. A labor, payment and performance bond containing customary conditions for payment which shall name General Contractor, the County and the City as obligee in the form provided by Section 153.57 of the Ohio Revised Code. The performance and materialman's bond shall cover all Costs of Work, including a guarantee period of one (1) year set forth in Section 5.5 hereof.

(b) Irevocable Letter of Credit. A letter of credit naming General Contractor, the County and the City as obligee in the form provided by 153.57 of the Ohio Revised Code. The letter of credit shall be subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500. The letter of credit shall cover all Costs of Work, including a guarantee period of one (1) year set forth in Section 5.5 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State and are named in the current list of "companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Insurance amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety of any bond so furnished by a contractor or a subcontractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, General Contractor shall within five (5) days thereafter cause the contractor or subcontractor to substitute another bond and surety, both of which shall be acceptable to the County and General Contractor. General Contractor shall provide to the County prior to commencement of any Work by each contractor or subcontractor a copy of the Contract Documents relating to the Work to be performed by that contractor or subcontractor and the security for performance provided by the contractor or subcontractor pursuant to this Section.

Section 3.6. Inspection and Approval; Fees.

(A) The Parties agree, and the City has agreed pursuant to the Cooperative Agreement, that the City shall have exclusive responsibility for the inspection and approval of all phases of the design and construction of the Public Improvements. The City has further acknowledged in the Cooperative Agreement that the Public Improvements will be constructed pursuant to an expedited time schedule and has agreed in that Cooperative Agreement to dedicate sufficient staff and resources to the inspection and approval of such Public Improvements to facilitate the completion of the Public Improvements within the prescribed timetable.

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(B) The General Contractor acknowledges and agrees that the City's obligation to inspect and approve as described above is expressly conditioned on the receipt by the City Treasurer from the General Contractor of sufficient monies to pay the City's Construction Inspection Division for such inspection and approval services. The City has agreed in the Cooperative Agreement that the fees for such services shall not exceed nine percent (9%) of the hard costs of the Public Improvements. Accordingly, the County shall notify the General Contractor as necessary from time to time as to the amount of monies which are required to be deposited with the City Treasurer to provide for the payment of such inspection and approval services and the General Contractor agrees to promptly pay such amounts as required.

Section 3.7. Cost of Work in During Construction Period; Guaranteed Maximum Sum. General Contractor agrees to assume and pay the Cost of Work during the Construction Period in excess of the Construction Phase Contribution. The County will pay the Post Construction Contribution to the General Contractor representing an additional payment towards the Cost of Work only if the conditions set forth in Sections 4.2 and 4.4 are satisfied. In no event shall the County be obligated under this Agreement or otherwise to pay any Cost of Work in excess of the Guaranteed Maximum Sum.

Section 3.8. Dedication of Public Roadway Improvements. As soon as practicable after the Public Improvements are certified as complete pursuant to Section 2.4, the General Contractor agrees that it shall file or cause to be filed with the City a plat dedicating for public use the right of way for the Public Improvements free and clear of any lien or encumbrance. The General Contractor further agrees that the right of way, upon dedication, shall be consistent with and include such area as described on Exhibit B. Finally, the Parties acknowledge that the City has agreed in the Cooperative Agreement that once the Public Improvements are dedicated to the City in accordance with this Section 3.8, the City will maintain the Public Improvements as municipal streets and to keep such Public Improvements open, in repair and free from nuisance, provided that the County shall have no responsibility with respect to the Public Improvements subsequent to the dedication.

Section 3.9. Equal Opportunity Clause. General Contractor will, in all solicitations or advertisements for employees placed by or on behalf of General Contractor and its contractors and subcontractors, state that General Contractor is an equal opportunity employer. General Contractor shall require all contractors and subcontractors to include in each contract a summary of this equal opportunity clause.

Section 3.10. Insurance Requirements. General Contractor shall require all contractors and subcontractors to take out or cause to be taken out and maintained until such time as that contractor or subcontractor has completed its portion of the Work, such insurance as is required by the Construction Documents, including but not limited to workers' compensation insurance, which insurance shall protect General Contractor, the County and the City and any contractor or subcontractor performing Work covered by this Agreement from the types of claims for damages as set forth in the Construction Documents. Such insurance policy or policies shall include General Contractor, the County and the City as additional named insureds. Such insurance policies shall further provide that any attorney fees accruing or payable with respect to a claim under such policy shall be paid by the insurer and shall not count against the coverage limits of such policy. Prior to commencement of any portion of the Work by any contractor or subcontractor, such contractor or subcontractor, as the case may be, shall provide to the General Contractor, the City and the County an original certificate of insurance as proof of such insurance coverage.

Such insurance shall remain in full force and effect during the Agreement Term. Insurance may not be changed or canceled unless all insureds, including the General Contractor, the City and the County, are notified in writing not less than thirty days prior to such change or cancellation.

Section 3.11. Compliance with Occupational Health and Safety Act of 1970. General Contractor and all contractors and subcontractors shall be solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

Section 3.12. Provision of Security for Mechanic's Liens. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Public Improvements, General Contractor shall, or shall require the appropriate contractor to, provide any security required by Ohio Revised Code Section 1311.11 to cause that mechanic's lien to be released of record with respect to the Public Improvements.

ARTICLE IV
GUARANTEED MAXIMUM SUM; PAYMENT OF COSTS

Section 4.1. County Payment of a Portion of Cost of Work. The County covenants and agrees to make payments towards the Cost of Work in an amount not exceeding the Guaranteed Maximum Sum which aggregate amount shall consist of (a) the payments comprising the Construction Phase Contribution which shall be payable to those contractors or subcontractors as designated by the General Contractor during the Construction Period and (b) the Post Construction Contribution which shall be payable to the General Contractor, all as provided for in this Article IV.

Section 4.2. Payment of the Construction Phase Contribution. The County agrees to make payments towards the Cost of Work during the Construction Period in the amounts and at the times as set forth in this Section 4.2.

(a) Periodic Disbursements.

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(1) General. During the Construction Period, the County agrees to make payments towards the Cost of Work up to the maximum amount of the Construction Phase Contribution. All payments will be made in accordance with the Construction Documents and this Agreement, including any retainage as provided for therein and herein.

(2) Requests for Disbursements. The County shall make payments from time to time to payees (which may include General Contractor) designated by the General Contractor in respect of portions of the Cost of Work, upon receipt by the County of an executed, written requisition substantially in the form attached hereto as Exhibit C. Any Written Requisition under this Section 4.2 shall be in original form and executed by an Authorized General Contractor Representative and approved by the Authorized City Representative. General Contractor shall furnish original invoices and any other relevant documentation in connection with each such Written Requisition. The Authorized County Representative, with the concurrence of the County Prosecuting Attorney, may agree to vary the lien waiver requirements in paragraph (vii) of attached Exhibit C. All disbursements requested pursuant to this Section shall be subject to the prior approval of the County Auditor.

(3) Payment Limitation. Except as provided below, no payment shall be made by the County pursuant to this Section 4.2 which shall exceed forty percent (40%) of the stated amount on the original invoice or documentation submitted in connection with that written requisition.

(b) Adjustment of Payment Limitation. If the Parties mutually determine and agree that the County's commitment to pay the Construction Phase Contribution will not be satisfied because of the limits imposed by Section 4.2(a)(3), the Parties agree that the limitation imposed by Section 4.2(a)(3) will be modified by mutual agreement of the Parties in order that the Construction Phase Contribution will be paid by the County prior to the completion of the Work.

(c) Certifications. In paying any Written Requisition under this Section 4.2, the County shall be entitled to rely as to the completeness and accuracy of all statements in such Written Requisition upon the approval of such Written Requisition by an Authorized General Contractor Representative, execution thereof, and delivery thereof to be conclusive evidence of such approval, and General Contractor shall indemnify and save harmless the County from any liability incurred in connection with any Written Requisition so executed or communicated by an Authorized General Contractor Representative.

(d) Event of Default. General Contractor shall not submit or cause to be submitted to the County any Written Requisition pursuant to this Section 4.2 and shall have no claim upon any moneys of the County so long as there shall have occurred and be continuing any Event of Default.

(e) Remittance of Payment. The County shall remit payment in accordance with a Written Requisition submitted in compliance with this Agreement within fifteen (15) days following receipt by the County of such Written Requisition.

Section 4.3. General Contractor Required to Pay Certain Costs. In the event that the Construction Phase Contribution is not sufficient as needed to pay in full the Cost of Work, General Contractor covenants and agrees, for the benefit of the County, to pay that portion of the Cost of Work necessary to complete the construction to be accomplished pursuant to this Agreement which may be in excess of the Construction Phase Contribution.

The County does not make any representation or warranty, either express or implied, that the Construction Phase Contribution, and which under the provisions of this Agreement will be available for payment of the costs of the construction to be accomplished pursuant hereto, will be sufficient to pay all of the Cost of Work thereof or costs and expenses which will be incurred in connection therewith.

General Contractor covenants and agrees that if, after exhaustion of the Construction Phase Contribution, General Contractor pays pursuant to this Section any portion of the costs and expenses necessary for the completion of the Public Improvements as required under this Agreement, General Contractor will not be entitled to any reimbursement therefor from the County, except as provided in Section 4.4.

Section 4.4. Payment of the Post Construction Contribution. One (1) year after the issuance by the City of a certificate of occupancy for at least 65% of the leasable square footage in the Mall pursuant to Section 4117.01 of the Columbus City Code, the County agrees to make a payment to the General Contractor in an amount equal to the Post Construction Contribution. The Parties agree that such payment shall represent an additional payment by the County towards the Cost of Work.

ARTICLE V
CERTAIN REPRESENTATIONS, WARRANTIES,
COVENANTS AND AGREEMENTS

Section 5.1. Certain Representations, Warranties, Covenants and Agreements of County. The County represents and warrants as of the date of delivery of this Agreement that:

(a) It is a county and political subdivision duly organized and validly existing under the Constitution and the laws of the State.

(b) It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and

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delivery of each of the County Documents.

(c) To the best of its knowledge, it is not in violation of or in conflict with any provision of the laws of the State which would impair its ability to observe and perform its covenants, agreements and obligations under the County Documents.

(d) It has or will have duly authorized the execution, delivery, observance and performance of the County Documents.

Section 5.2. Certain Representations, Warranties, Covenants and Agreements of General Contractor. General Contractor represents and warrants as of the date of delivery of this Agreement that:

(a) General Contractor (i) is a Delaware limited liability company duly created and validly existing, and in good standing under the laws of the State and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of General Contractor threatened, against or affecting General Contractor in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or the ability of General Contractor to perform its obligations under this Agreement.

(c) The execution and delivery by General Contractor of this Agreement and the compliance by General Contractor with all of the provisions hereof (i) are within the authority and powers of General Contractor, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement or other instrument to which General Contractor is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over General Contractor or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of General Contractor.

(d) No event has occurred and no condition exists with respect to General Contractor that would constitute a default under this Agreement or which, with the lapse of time or with the giving of notice or both, would become an Event of Default under this Agreement.

Section 5.3. General Contractor to Maintain Legal Existence. General Contractor covenants and agrees that it will maintain its legal existence so long as General Contractor remains liable under this Agreement.

Section 5.4. Indemnification. General Contractor shall indemnify, defend and hold harmless the County and the City, their agents, and employees from and against any and all suits or claims for damages or losses arising or allegedly arising out of, or resulting from performance of the Work by General Contractor, its contractors, subcontractors, agents, employees or representatives. General Contractor shall require that all contractor agreements and subcontractors agreements, include indemnification language as found above. General Contractor shall promptly reimburse the County and the City and its successors and assigns, for any cost, expense or attorney's fees incurred on account of any such suit or claim incurred in enforcing the terms of this Agreement. This indemnification provision is agreed by General Contractor to expressly waive General Contractor's immunity, if any, as a complying employer under Section 35, Article II of the Ohio Constitution and Worker's Compensation laws of the Ohio Revised Code from indemnifying and holding the County and the City harmless from claims by employees, agents or contractors of General Contractor. This indemnity does not cover (a) any injuries or damages occurring after the Public Improvements have been dedicated by the General Contractor to the City, or (b) any injuries or damages arising out of the actions or inactions of the County or the City or their agents or employees.

Section 5.5. Further General Contractor Guaranties Relating to the Public Improvements. General Contractor warrants that it will exercise or cause to be exercised in the performance of the Work the standard of care normally exercised by nationally recognized engineering and construction organizations engaged in performing comparable services. General Contractor further warrants that to the best of its knowledge each phase of the Work shall be free from defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work. General Contractor shall at its own expense:

(a) Correct or re-execute, or cause to be corrected or re-executed, any of the Work that fails to conform with the requirements of the Construction Documents and appears during the prosecution of the Work;

(b) Correct, or cause to be corrected, any defects in materials and workmanship of the Work (without regard to the standard of care exercised in its performance) which appear within a period of one (1) year after final written acceptance of that Work or within such longer period of time as may be set forth in the Construction Documents; and

(c) Replace, repair, or restore, or cause replacement, repair or restoration of, any parts of the Work or any of the fixtures, equipment, or other items placed therein that are injured or damaged as a consequence of any such failure or defect, or as a consequence of corrective action taken pursuant hereto. Should General Contractor fail to make, or cause to be made, corrections required by this Section, then the City may do so at the expense and for General Contractor.

Section 5.6. General Contractor Representations as to Personal Property Taxes. General Contractor represents that at the time of the execution of this Agreement, General Contractor was not charged with any delinquent

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personal property taxes on the general tax list of personal property of either of Delaware or Franklin Counties. Further, General Contractor shall require all contractors and subcontractors to execute an affidavit in the form attached as Exhibit D, a copy of which certificate shall be delivered to the Authorized County Representative prior to the commencement of any work by that contractor or subcontractor.

**ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES**

Section 6.1. Events of Default and Remedies. (a) Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the party asserting default or breach may institute such proceedings at law or in equity, or in the case of a claim against the County, an action in mandamus, as may be necessary or desirable in its opinion to remedy such default or breach.

(b) Notwithstanding the preceding paragraph, if by reason of Force Majeure any party fails in the observance or performance of any of its agreements, duties or obligations to be observed or performed under this Agreement, the party shall not be deemed to be in default under this agreement. The party will give notice promptly to the other of any event of Force Majeure and will use its best efforts to remedy that event with all reasonable dispatch; provided that a party will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing Person, when in that party's judgment, that course would be unfavorable to it; and no suspension will constitute an Event of Default if that suspension is a result of the application of federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates, charges or revenues of General Contractor, which prevents General Contractor from observing and performing the applicable covenant, agreement or obligation.

(c) The declaration of an Event of Default hereunder and the exercise of rights, remedies and powers upon the declaration are subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 6.2. No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy or power conferred upon or reserved to either party under this Agreement is intended to be exclusive of any other available right, remedy or power, but each right, remedy and power shall be cumulative and concurrent and shall be in addition to every other right, remedy and power available under this Agreement or existing at law, in equity or by statute or otherwise now or hereafter.

No exercise, beginning of the exercise, or partial exercise by either party of any one or more rights, remedies or powers shall preclude the simultaneous or later exercise by that party of any or all other rights, remedies or powers. No delay or omission in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair that or any other right, remedy or power or shall be construed to constitute a waiver of any Event of Default hereunder, but any right, remedy or power may be exercised from time to time and as often as may be deemed to be expedient.

Section 6.3. No Additional Waiver Implied by One Waiver. In the event that any covenant, agreement or obligation under this Agreement shall be breached by either General Contractor or the County and the breach shall have been waived thereafter by General Contractor or the County, as the case may be, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or any subsequent breach thereunder.

No failure by either party to insist upon the strict observance or performance by the other party of any covenant, agreement or obligation under this Agreement and no failure to exercise any right, remedy or power consequent upon a breach thereof, shall constitute a waiver of any right to strict observance or performance or a waiver of any breach. No express waiver shall be deemed to apply to any other breach or to any existing or subsequent right to remedy the breach.

Section 6.4. Waiver of Appraisement, Valuation and Other Laws. In the event that there is an Event of Default under this Agreement and the defaulting party does not contest the existence of the Event of Default, the defaulting party covenants and agrees to waive, and waives hereby, the benefit of all appraisement, valuation, stay, extension or redemption laws in force from time to time, all right of appraisement and redemption to which it may be entitled, and all rights of marshaling, all to the extent that the defaulting party may effect that waiver lawfully. Neither the defaulting party, nor anyone claiming through it, shall set up, claim or seek to take advantage of any of those laws or rights.

Section 6.5. Right to Observe and Perform Covenants, Agreements and Obligations. If General Contractor shall fail to observe or perform any covenant, agreement or obligation, under this Agreement, without demand upon General Contractor and without waiving or releasing any covenant, agreement, obligation or Event of Default, upon thirty (30) days' written notice to General Contractor, the County may observe or perform that covenant, agreement or obligation for the account and at the expense of General Contractor, provided that the County shall have no obligation to take any of those actions.

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ARTICLE VII
MISCELLANEOUS

Section 7.1. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. A duplicate copy of each notice, certificate, request or other communication given hereunder to the City, the County or the General Contractor shall be given also to the others. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 7.2. Extent of Provisions; No Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the County under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of the County or General Contractor in other than his or her official capacity. No official executing or approving the County's or General Contractor's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.3. Third Party Beneficiary. The Parties agree that the City is a third party beneficiary of this Agreement. The Parties further agree that the City and the County shall each be a third party beneficiary of each subcontract between the General Contractor and each subcontractor and shall be entitled to the benefits and enforcement under each as if the City and the County were each the General Contractor. The General Contractor shall include in each such subcontract a provision which acknowledges the City's and the County's third party beneficiary status thereunder.

Section 7.4. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County, General Contractor and their respective permitted successors and assigns, subject, however, to the specific provisions hereof; provided that any covenant, agreement or obligation of the County which requires the expenditure of funds shall not be a general debt of the County.

The County and General Contractor will each observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement.

Each covenant, agreement and obligation of the County or the General Contractor under this Agreement is binding upon each officer of the County or the General Contractor who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement or obligation.

Section 7.5. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 7.6. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 7.7. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 7.8. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes and other matters in question between the County, its agents and employees, and General Contractor, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County.

Section 7.9. Survival of Representations and Warranties. All representations and warranties of General Contractor and the County in this Agreement shall survive the execution and delivery of this Agreement.

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Polaris Agreement
Exhibit B December 21, 2000 (**Revised January 8, 2001**)

GEMINI PARKWAY (Bid Package 2)

Gemini Parkway is considered to run north-south at its intersection with Polaris Parkway. Along the north frontage of Polaris Fashion Place, Gemini Parkway is considered as an east-west roadway. Polaris Parkway is designated as an east-west roadway.

1. Approximately 0.96 miles, from the curb returns at the Polaris Parkway intersection to the western limited access line of the future Gemini Parkway interchange with I-71.
2. 90-foot right-of-way north and east of Polaris Parkway for a distance of approximately 635 feet; then a 100-foot right-of-way to Lyra Drive with said right-of-way being 113 ft. in width west of Lyra Drive to accommodate an eastbound right turn lane at Lyra Drive and the right-of-way east of Lyra Drive shall be 112 feet in width to accommodate a future westbound right turn lane at extended Lyra Drive (Phase III).
3. Cross-section:
 - a. Centerline 55 feet from north r-o-w line and 45 feet to the south r-o-w line within the standard 100' r-o-w.
 - b. Five lanes, 56-foot wide pavement, with curb and gutter west of Lyra Drive; section east of Lyra Drive to match the interchange section.
 - c. No separate bicycle lane(s).
 - d. No sidewalk(s).
 - e. Lighting per City specifications
 - f. Fire hydrant water line.
 - g. No street trees nor special landscaping.
4. Enclosed drainage system (where needed); channel protection (where needed).
5. Posted speed: 35 mph; design speed: 40 mph.
6. Separate eastbound right turn lane on Gemini at Lyra.
7. Two driveways on the south for Polaris Fashion Place with full access.
8. One additional future full access drive on the south side of Gemini midway between Polaris Parkway and the western driveway serving Polaris Fashion Place.
9. Four future full access drives on the north opposite the three driveways described in items 7 and 8 and Lyra Drive.
10. Retention of driveway on north serving CIGNA.

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11. The CIGNA driveway, the two Polaris Fashion Place driveways, and Lyra Drive under stop sign control. (Traffic signal warrants will not be met until at least after the Gemini Parkway interchange with I-71 is constructed.) The warranted traffic signal and all related work at these locations along Gemini Parkway will be included with the interchange improvements (Bid Package 3).
12. If acceptable to the City and County, Gemini Parkway may be striped for three lanes with shoulders (on the base asphalt layer) as an initial stage to facilitate construction vehicles associated with the I-71 interchange project; the final asphalt layer and five lane striping would then occur once the interchange is ready for vehicular use.

POLARIS PARKWAY (Bid Package 4A)

Polaris Parkway is designated as an east-west roadway. Gemini Parkway is considered to run north-south at its intersection with Polaris Parkway.

1. 1.21 miles, from east of Antares Avenue to the western limited access line of the Polaris Parkway interchange with I-71.
2. Widening and improvements within existing right-of-way (164 feet wide east of Gemini Parkway).
3. Add two through lanes each direction between Sancus Boulevard and the I-71 limited access line (with eastbound lanes striped for tapers to correspond with existing lane usages at the existing I-71 interchange).
4. Add one through lane each direction between Sancus Boulevard and Gemini Parkway.
5. Four-foot shoulder with curb and gutter (approved design exception from ODOT).
6. Posted speed: 45 mph; design speed: 55 mph; SR 750.
7. Correct existing superelevation on Polaris Parkway (by milling and filling) between Gemini and west of Lyra to correct construction and to comply with original design plans.
8. Modify Sancus Boulevard for 300 feet south of Polaris Parkway to agree with City's plans for widening Sancus Boulevard.
9. Dual westbound left turn lanes on Polaris Parkway at the following locations:
 - a. Lyra Drive.
 - b. East Towne Center Drive (at Target).
 - c. Sancus Boulevard.
10. Dual eastbound left turn lanes on Polaris Parkway at Gemini Parkway (this is a reconstruction of the existing median section on Polaris Parkway west of existing Gemini Parkway).
11. Eastbound right turn lane on Polaris Parkway at Sancus Boulevard.
12. Access to Polaris Fashion Place via three driveways opposite the two Towne Center drives and Sancus Boulevard.
13. Lighting per City specifications.
14. No sidewalk(s), street trees, special landscaping, bus stop pads.
15. Enclosed drainage.
16. Restriping of Gemini Parkway south of Polaris Parkway to provide three northbound lanes.
17. Placement of light and signal poles (and similar appurtenances) to permit potential future widenings of Gemini Parkway and Polaris Parkway in the area of their intersection.
18. Modification of six traffic signals at:
 - a. Lyra Drive.
 - b. East Towne Center driveway.
 - c. West Towne Center driveway.
 - d. Sancus Boulevard.
 - e. Bank One driveway/Capella Drive.
 - f. Gemini Parkway.
 (See subsequent description of planned signal system modification.)

POLARIS PARKWAY (Bid Package 4B)

1. Add an eastbound lane on Polaris Parkway from Antares Avenue to Gemini Parkway (to serve as a through-right lane).
2. Re-stripe westbound Polaris Parkway at Gemini Parkway to activate dual westbound left-turn lanes to southbound Gemini Parkway (i.e., to Bank One).
3. Widen Gemini Parkway on its western side south of Polaris Parkway to provide two receiving lanes for the dual left turns of item 2 above. (The five-lane cross-section on Gemini Parkway will be tapered to the existing four-lane cross-section at Antares Avenue to correspond with the Bank One access driveway.)
4. Modify the traffic signal at the intersection of Polaris and Gemini Parkways to accommodate the foregoing.
5. Remove and replace six light poles.
6. Remove and replace two fire hydrants.
7. Remove and replace three driveway aprons serving developments on the west side of Gemini Parkway.
8. Re-stripe south approach of Gemini Parkway to provide for a left-turn lane, a through lane, and a through/right-turn lane.
9. Assume that these improvements/modifications can be made within the existing right-of-ways.
10. Anticipate no new drainage impacts to existing ditch.

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POLARIS PARKWAY TRAFFIC SIGNAL SYSTEM PLANNED MODIFICATIONS

Intersections

The following traffic signal modifications along Polaris Parkway are required for the widening of Polaris Parkway from Gemini Parkway to the western boundary of the limited access right-of-way for Interstate Route 71. In addition, there will be some modification to the median on Polaris Parkway west of Gemini to accommodate a future dual left turn into Gemini Parkway.

The existing traffic signals at the intersection of Polaris at Gemini, Polaris at Bank One, and Polaris at Sancus Boulevard will be modified to accommodate the planned widening of Polaris Parkway (per Bid Package 4A) as well as any modifications made to the side street approaches. This includes poles, span wire, signal heads, controller/cabinet assembly, and detectors where necessary. If cabinets must be relocated, new cabinets will be installed. Existing controllers **and the on-street master** will be reused. New poles, span wire, signal heads, overhead signs on signal span wires, and detectors will be added/replaced, as needed. **All controller/cabinet modifications required at the Gemini Parkway intersection shall be solely the responsibility of the City—with the exception of connection of cabling being installed by the contractor. (Applies to Bid Package 4A only and only while the cabinet is at its present location.)**

The intersections of Polaris at Towne Center west drive, Polaris at Towne Center east drive, and Polaris at Lyra Drive are new traffic signals installed within the past year. These traffic signal installations were designed to facilitate the future widening of Polaris Parkway wherever feasible. The primary modifications include relocating the strain poles on the north side of Polaris Parkway, replacing all affected detector loops, installation of new and relocation of existing signal heads as applicable, cable installation, and the rewiring of cabinets.

Interconnect

There exists today a traffic signal interconnect system along the south side of Polaris Parkway from Old State Road to Orion Place. There is also interconnect along Sancus Boulevard from Polaris Parkway southward to Lazelle Road. The entire system is currently a "twisted-pair" type of cabling. However, it is understood that the City of Columbus desires to switch to fiber optic cable. With the widening of Polaris Parkway, the entire conduit runs and pull boxes, containing the interconnect cable, need to be replaced.

The base set of plans for Bid Package 4A will reflect continued use of twisted-pair interconnect. The interconnect will be installed in a single three-inch conduit encased in concrete as an in-kind replacement for what exists today. This conduit is also compatible with the conduit called for in the plans associated with the City's Sancus Boulevard widening project.

The limits of the traffic signal interconnect for the Polaris Parkway project shall be the control cabinets at Gemini and the I-71 southbound ramps.

Bid Package 4A will provide an interconnect pull box approximately 300' south of Polaris Parkway on the west side of Sancus as access to the interconnect system on Sancus. If sufficient cable length is not provided under the Sancus project, new cable will be required from the intersection of Sancus at Bank One to Polaris at Sancus.

At the eastern limits of the Polaris widening, this project proposes to tie into **the existing interconnect conduit run via a 90° ell, west of the limited access right-of-way of I-71. This will** provide a continuous access from the controller cabinet at the intersection of Lyra Drive to the controller cabinet at the I-71 southbound ramps. New cable, without splices, will be provided to interconnect the controllers at these intersections. In addition to the foregoing, new traffic signal interconnect cable will be provided from Gemini Parkway to Lyra Drive via the proposed conduit runs and pull boxes along Polaris Parkway.

Fiber Optic Alternate

Since it is possible for the City to convert from a twisted pair interconnect system to a fiber optic system east of Lyra Drive, west of Gemini Parkway, and south along Sancus Boulevard during the subject Polaris Parkway widening project, an alternate set of **bid items associated with the installation of a fiber optic closed loop interconnect system will be incorporated into the plans.**

The plan set will reflect additional modifications required due to the installation of a fiber optic interconnect system. The specifications for the differences between a twisted-pair and fiber optic system will be described in the Traffic Signal General Notes as well as in the Traffic Signal Interconnect Details for the project. Pay items will be provided in the General Summary as an alternate bid. The City at its expense shall supply the labor required to modify the cabinets at Lyra Drive, Polaris Towne Center East Drive, and Polaris Towne Center West Drive to install the "supply only" materials as specified in the plan set. The "supply only" items shall be provided by this project. New cabinets shall be fiber optic ready and shall include equipment included in the item descriptions of the "supply only" items as applicable. The interconnect conduit duct bank for the fiber optic alternate bid shall consist of four two-inch conduits encased in concrete.

It is acknowledged that the above roadway improvement descriptions are not intended to be all-inclusive, but merely describe the basic design parameters. The description may lack the reference to miscellaneous details that are normal and customary requirements of the City of Columbus as they relate to similar roadway improvement

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projects.

EXHIBIT C
WRITTEN REQUISITION

Delaware County, Ohio 101 North Sandusky Street Delaware, Ohio 43015

Attention: _____, Authorized County Representative

Re: Certificate and Request for Disbursement from the County of Delaware

You are hereby requested to disburse, in accordance with the provisions of Section 4.2 of the Public Roadway Improvements Agreement, dated **February 5, 2001** (the "Agreement") between the County and Polaris Mall LLC (the "General Contractor"), the amount of \$_____ as more fully set forth on Schedule A attached hereto to be paid pursuant to this Written Requisition No. _____ to the Payee(s) listed on such Schedule A for the purposes therein set forth.

The undersigned Authorized General Contractor Representative does hereby certify in compliance with Section 4.2 of that certain Agreement that:

1. I have read the Agreement including the definitions therein and have reviewed appropriate records and documents of General Contractor relating to the matters covered by this Written Requisition.
2. The amount and nature and the name and address of the Payee of each item of the Cost of Work hereby requested to be paid are shown on Schedule A attached hereto;
3. The disbursement herein requested is for an obligation properly incurred, is a proper charge payable against the Construction Phase Contribution as a Cost of Work (as defined in the Agreement), and has not been the basis of any previous withdrawal from any other County account, and, if for construction of the Public Improvements, was made in accordance with the Construction Documents;
4. The Public Improvements have not been materially injured or damaged by fire or other casualty in a manner which, if not repaired or replaced, would materially impair the ability of General Contractor to meet its obligations under the Agreement;
5. General Contractor is in compliance with all provisions and requirements of the Agreement;
6. No Event of Default set forth in Article VI of the Agreement, and no event which but for the lapse of time or the giving of notice or both would be such an Event of Default, has occurred and is continuing;
7. Attached hereto as Schedule B are lien waivers from any materialmen, contractors and subcontractors who have provided services or materials to the Public Improvements in excess of Five Hundred Dollars (\$500) and who were paid pursuant to the previous Written Requisition and General Contractor acknowledges its obligation to require, or require provision of, certain security pursuant to Section 3.12 of the Public Improvements Agreement in the event any mechanic's liens are filed in connection with the Public Improvements;
8. The Public Improvements are being and has been installed in accordance with the Construction Documents for the Public Improvements, and all materials for which payment is requested have been delivered to and remain on the Public Improvements Site;
9. The payment requested hereby does not include any amount which is entitled to be retained under any holdbacks or retainages provided for in any agreement;
10. General Contractor has asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to such improvement or any part thereof which warranties have vested in General Contractor and shall be wholly transferable to the City and the County; and
11. All proceeds of the County heretofore disbursed have been spent in accordance with the Written Requisition applicable thereto.
12. The amount requested herein does not exceed forty percent (40%) of the amount set forth in the **original** invoice(s) (attached hereto) which was/were submitted **in connection with the Work performed**.

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This COOPERATIVE AGREEMENT (the "*Agreement*") is made and entered into this **5th** day **February, 2001** by and between the COUNTY OF DELAWARE, OHIO (the "*County*"), a county and political subdivision duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*") and the CITY OF COLUMBUS, OHIO (the "*City*"), and collectively with the County, the "*Parties*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State, under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Section 1 hereof).

RECITALS:

WHEREAS, the Parties recognize that the Polaris Centers of Commerce, a commercial and retail development project located within the City and the County (as depicted on Exhibit A and referred to herein as the "*Polaris Centers of Commerce*"), has caused and is expected in the future to cause significant growth and development in the southern portion of the County; and

WHEREAS, a proposal has been made for the development of a shopping mall in the Polaris Centers of Commerce (the "*Mall*"); and

WHEREAS, the Parties find that the growth and development caused by the current development of the Polaris Centers of Commerce and the growth expected as a result of the construction of the Mall will place significant demands on existing roadway improvements in and around the Polaris Centers of Commerce; and

WHEREAS, the City and the County have each determined that the facilitation of traffic flow in and around the Polaris Centers of Commerce is of great importance to the continued prosperity to those areas of the City and the County, respectively, and that the provision of safe and efficient traffic flow in that area is vital to the health and welfare of the residents of the City and County, respectively; and

WHEREAS, the City, by its Ordinance No. 2656-00 passed on December 4, 2000, and the County, by its Resolution No. 01-151 adopted on **February 5, 2001**, have determined to cooperate and jointly provide for the construction of a certain roadway **improvements** (as depicted on Exhibit B and referred to herein as the "*Public Improvements*") which will facilitate traffic flow in and around the Polaris Centers of Commerce; and

WHEREAS, the Parties acting under applicable provisions of the Ohio Revised Code and the City Charter have determined to enter into this Agreement to enable the County to cause the construction of and partially finance the Public Improvements and to provide for acceptance by the City of those Public Improvements upon completion;

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements in this Agreement, the Parties agree as follows:

Section 1. Defined Terms. As used herein:

"*City*" means the City of Columbus, Ohio.

"*City Charter*" means the Charter of the City as adopted and in effect as of the date of this Agreement, as may be amended from time to time.

"*County*" means the County of Delaware, Ohio.

"*County Administrator*" means the County Administrator of the County.

"*Parties*" means collectively, the City and the County.

"*Polaris Centers of Commerce*" means that area in the City and the County as depicted on Exhibit A.

"*Public Improvements*" means the public roadway improvements described and depicted on Exhibit B.

"*Notice Address*" means:

as to the County: County of Delaware
101 North Sandusky Street
Delaware, OH 43015
Attention: County Administrator

as to the City: City of Columbus
90 West Broad Street
Columbus, Ohio 43215
Attention: Director of Public Service

"*State*" means the State of Ohio.

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Any reference in this Agreement to the City or the County or to any officers of the City or the County includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the City or the County under this Agreement.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 2. Cooperation in Providing for the Construction of the Public Improvements. The City and the County have each determined that the provision of safe, modern and efficient roadways in an around the Polaris Centers of Commerce is vital to the continued health, safety and welfare of the residents of the City and the County, respectively. In order to facilitate that traffic flow in and around the Polaris Centers of Commerce, the Parties have agreed to cooperatively provide for the construction of the Public Improvements.

(a) City's Consent for Construction. The Parties acknowledge and agree that the proposed Public Improvements will be constructed within the municipal boundaries of the City. The City hereby consents to the County's proposed construction of the Public Improvements.

(b) Guaranteed Maximum Sum Contract. The City represents that Section 186 of the Charter provides that the City may provide for the construction of certain public improvement projects by a contract containing a guaranteed maximum sum and stipulating, among other terms, that the City shall pay within such maximum the cost of labor and materials (a "*Guaranteed Maximum Sum Contract*"). Since the Parties have agreed to cooperatively provide for the construction of the Public Improvements, the Parties agree that, pursuant to Section 307.15, Ohio Revised Code, the County shall undertake the power of the City and use its best efforts to execute a Guaranteed Maximum Sum Contract with a party (the "*General Contractor*") containing such terms as are reasonably acceptable to the County to provide for the construction of the Public Improvements.

(c) Plans and Specifications for the Public Improvements. The County shall use its best efforts to prepare or cause to be prepared the plans and specifications for the Public Improvements. The Parties agree that construction of the Public Improvements shall not commence until the City shall have approved in writing such plans and specifications.

(d) Construction of Public Improvements.

(i) Construction Agreement. The County agrees to use its best efforts to execute a Guaranteed Maximum Sum Contract with such party and containing such terms as are reasonably acceptable to the County to provide for construction of the Public Improvements.

(ii) Security for Performance. The County agrees that, pursuant to any Guaranteed Maximum Sum Contract, the General Contractor will be obligated to require any contractor or subcontractor undertaking work on the Public Improvements to furnish a contract bond or irrevocable letter of credit (each in the form prescribed by Section 153.57 of the Ohio Revised Code) which shall be equal in amount to the cost of the Public Improvements constructed by that contractor or subcontractor, including a guarantee period of one (1) from the date of completion of those Public Improvements. The City agrees that if the County requires the submission of such security, the City will not require any further security for performance from the General Contractor, or its contractors and subcontractors, in connection with the construction of the Public Improvements.

(iii) Inspection and Approval: Fees.

(A) The Parties agree that the City shall have exclusive responsibility for the inspection and approval of all phases of the design and construction of the Public Improvements. The City further acknowledges that the Public Improvements will be constructed pursuant to an expedited time schedule and agrees to dedicate sufficient staff and resources to the inspection and approval of such Public Improvements to facilitate the completion of the Public Improvements within the prescribed timetable. The City agrees that its appointed representative described in this subsection and its agreement to inspect and approve the design and construction of the Public Improvements shall be included in any agreement executed by the County in accordance with Section 2(d)(i).

(B) The City's obligation to inspect and approve as described above is expressly conditioned on the receipt by the City Treasurer from the General Contractor of sufficient monies to pay the City's Construction Inspection Division for such inspection and approval services. The

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City agrees that the fees for such services shall not exceed nine percent (9%) of the hard costs of the Public Improvements. The City shall, from time to time as necessary, notify the County Administrator in writing of the individual appointed by the City as having responsibility for the inspection and approval of that design and construction and the amount of funds necessary to be placed on deposit with the City Treasurer.

Section 3. County Financing of Public Improvements. The County represents that it has determined, as part of its commitment herein to cooperatively provide for the construction of the Public Improvements, that it will pay for a portion of the costs of the Public Improvements and the City shall have no obligation to pay for any portion of these costs. The County further represents that it may elect to finance that portion of the costs of the Public Improvements with County securities (as "securities" is defined in Chapter 133, Ohio Revised Code, herein the *County Bonds*"), the interest on which would be exempt from federal, state and local income taxes. If the County issues County Bonds, the City agrees that, after acceptance of the Public Improvements pursuant to Section 4 herein, such Public Improvements shall be available for general public use for so long as the County Bonds remain outstanding and the City covenants that it will take no action which may adversely affect the tax-exempt status of the County Bonds.

Section 4. Dedication and Use of Public Improvements. Upon completion of the construction of the Public Improvements in a manner which is reasonably satisfactory to the City, the County agrees to take those steps necessary to cause the Public Improvements to be dedicated to the City at no cost to the City and the City agrees to take those steps necessary to accept such Public Improvements by dedication. The Parties acknowledge and agree that such dedication shall be evidenced by the approval and acceptance by the City of a plat dedicating the right of way for the Public Improvements free and clear of any lien or encumbrance. Further, that right of way, upon dedication, shall be consistent with and include such area as described on Exhibit B. The City agrees that once the Public Improvements are dedicated to the City in accordance with this Section 4, the City will maintain the Public Improvements as municipal streets and to keep such Public Improvements open, in repair and free from nuisance, provided that the County shall have no responsibility with respect to the Public Improvements subsequent to the dedication.

Section 5. Representations by the Parties.

(a) By the City. The City represents that:

(i) It is a municipal corporation duly organized and validly existing under the laws of the State.

(ii) It has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated hereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to the City, including but not limited to the Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound. This Agreement has, by proper action, been duly authorized, executed and delivered by the City and all steps have been taken to constitute this Agreement a valid and binding obligation of the City.

(b) By the County. The County represents that:

(i) It is a county and political subdivision duly organized and validly existing under the laws of the State.

(ii) It has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated hereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to the County and do not, and will not, conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound. This Agreement has, by proper action, been duly authorized, executed and delivered by the County and all steps have been taken to constitute this Agreement a valid and binding obligation of the County.

Section 6. Miscellaneous Provisions.

(a) Notices. Any notices or other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

(b) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Parties in other than his official capacity, and neither the members of the legislative bodies of the Parties nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

(c) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant,

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obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(d) Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

(e) Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(f) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(g) Survival of Representations and Warranties. All representations and warranties of the City and the County in this Agreement shall survive the execution and delivery of this Agreement.

(h) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

RESOLUTION NO. 01-152

7:30 PM – PUBLIC HEARING OF THE ANNEXATION OF .92 ACRES FROM DELAWARE TOWNSHIP TO CITY OF DELAWARE:

Hearing Opened at 7:30 PM.

It was moved by Mrs. Martin, seconded by Mr. Wuertz to continue the Hearing until March 5, 2001, at 7:20 PM.

Vote on Motion Mr. Wuertz Aye Mr. Ward Aye Mrs. Martin Aye

RESOLUTION 01-153

IN THE MATTER OF AMENDING RESOLUTION 01-123, APPROVING DATES FOR PUBLIC HEARINGS TO DISCUSS FUNDING MECHANISMS FOR THE CONTINUED OPERATION OF A COUNTYWIDE 9-1-1 EMERGENCY TELEPHONE SYSTEM AND COUNTYWIDE NON-EMERGENCY PUBLIC SAFETY COMMUNICATIONS.

It was moved by Mr. Wuertz, seconded by Mrs. Martin to adopt the following Resolution:

WHEREAS, Delaware County Board of Commissioners approved a resolution to hold two public hearings to discuss funding options for the continued operation of a countywide 9-1-1 Emergency Telephone System and countywide non-emergency Public Safety Communications, and

WHEREAS, to ensure that these meetings have been announced with sufficient time for the public to attend and provide any comments to the Board;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners amend the initial resolution, #01-123 establishing two meeting dates to include a third meeting date on 20 February at 9:30 a.m. to be held in the Commissioner’s Hearing Room at 101 North Sandusky Street, Delaware.

BE IT FURTHER RESOLVED: That the Clerk of the Board of Commissioners shall cause this Resolution to be spread upon the Board's Official Journal.

Vote on motion: Mr. Ward Aye Mr. Wuertz Aye Ms. Martin Aye

RESOLUTION NO. 01-154

7:40 PM – PUBLIC HEARING REGARDING THE FUNDING OF EMERGENCY 9-1-1 AND NON-EMERGENCY PUBLIC SAFETY COMMUNICATIONS:

Hearing Opened at 7:45 PM.

It was moved by Mr. Wuertz, seconded by Mrs. Martin to continue the Hearing to February 12, 2001, at 10:00

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AM.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

RESOLUTION NO. 01-155

IN THE MATTER OF APPROVING TRAVEL REQUEST:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to approve the additional travel request :

Juvenile Court request that Susan Bail-Hummel attend the File Pro Training Session at Bowling Green, Ohio on February 8, 2001, in the amount of \$330.00.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Aye

There being no further business, the meeting adjourned.

Deborah Martin

James D. Ward

Donald Wuertz

Letha George, Clerk to the Commissioners