

COMMISSIONERS JOURNAL NO. 56 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 28, 2011

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

Present:
Dennis Stapleton, President
Ken O'Brien, Vice President
Tommy Thompson, Commissioner

RESOLUTION NO. 11-1354

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 21, 2011:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on November 21, 2011; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 11-1355

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1123, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1123:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1123, memo transfers in batch numbers MTAPR1123 and Purchase Orders as listed below:

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 11 -1356

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Environmental Services is requesting that Matt Lambert and Tiffany Jenkins attend the County Sanitary Engineers Association of Ohio Winter Conference in Columbus, Ohio on December 12 and 13, 2011 for a total cost of \$130.00 from Org key 66211902.

The Engineer's Office is requesting that Ryan Mraz attend the County Engineers Association of Ohio Annual Winter Conference in Columbus, Ohio on December 12 and 13, 2011 for a total cost of \$388.00 (Fund 29214001).

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1357

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

The Director Emergency Medical Services recommends the promotion of Joseph Farmer to a Captain with The Delaware County EMS; effective November 28, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve promoting Joseph Farmer to a Captain with

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The Delaware County EMS; effective November 28, 2011.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1358

IN THE MATTER OF ACKNOWLEDGING RECEIPT OF ANNEXATION PETITION FROM AGENT FOR THE PETITIONER, DARREN SHULMAN, DELAWARE CITY ATTORNEY, REQUESTING ANNEXATION OF 1.58 ACRES OF LAND IN DELAWARE TOWNSHIP TO THE CITY OF DELAWARE:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to acknowledge that on November 21, 2011, the Clerk to the Board of Commissioners received an annexation petition request to annex 1.58 acres from Delaware Township to the City of Delaware.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1359

IN THE MATTER OF TERMINATING THE AGREEMENT FOR INMATE HEALTH CARE SERVICES WITH CORRECTIONAL HEALTHCARE COMPANIES, INC.:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

WHEREAS, the Delaware County Board of Commissioners (the "Board"), the Delaware County Sheriff, and Health Professionals, Ltd. entered into an Agreement for inmate health care services at the Delaware County Jail, effective March 1, 2009 (the "Agreement"); and

WHEREAS, the Agreement was extended in 2010 and 2011 and currently terminates on February 29, 2012; and

WHEREAS, in the most recent amendment, approved on November 21, 2011, Health Professionals, Ltd. was replaced with Correctional Healthcare Companies, Inc.; and

WHEREAS, because the services have not been competitively bid since 2009, the Board wishes to advertise for bids for inmate health care services to commence in March 2012; and

WHEREAS, Section 9.4 of the Agreement allows any party to terminate the Agreement without cause by providing ninety (90) days advance written notice to the other party;

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

Section 1. The Board hereby terminates the Agreement with Correctional Healthcare Companies, Inc., in accordance with Section 9.4 of the Agreement, effective at 11:59PM EST on February 29, 2012.

Section 2. The Board hereby directs the Clerk of the Board to cause delivery of a certified copy of this Resolution upon the Delaware County Sheriff and Correctional Healthcare Companies, Inc., at the notice addresses provided in the Agreement.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1360

IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO PLUMB ROAD INCLUDING REPLACEMENT OF THE BRIDGE AND ASSOCIATED ROADWAY IMPROVEMENTS TO ACCOMMODATE THE NEW BRIDGE, APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATES FOR THE PROJECT KNOWN AS DEL-TR105-0.97:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

Whereas, Section 5555.022 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the Improvement and may authorize such Improvement, and;

Whereas the County Engineer has determined that existing bridge on Plum Road just west of the I-71 overpass is structurally deficient and requires replacement and that the roadway will also need improved to accommodate the new bridge and recommends that the Board proceed with Improvements thereof, and;

Whereas the County Engineer has prepared plans, specifications and estimates for the Improvement, and;

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Whereas the County Engineer has estimated the construction cost of the Improvement to be \$310,000;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The public convenience and welfare require the replacement of the bridge on Township Road Number 105 (Plumb Road) over Branch of Alum Creek and roadway improvements around the bridge just west of the I-71 overpass, and that the Improvement known as DEL-TR105-0.97 be initiated for such purpose, and;

Section 2: The costs for said Improvement will be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay for the Improvement, and;

Section 3: The plans, specifications and estimates for the project known as DEL-TR105-0.97 are hereby approved, and;

Section 4: The County Engineer is authorized to advertise for and received bids on behalf of the Board in accordance with the following Invitation to Bid:

Public Notice
Advertisement for Bids

Sealed bids will be received at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until 10:00 am on Tuesday, January 10, 2012, at which time they will be publicly opened and read aloud, for the project known as:

DEL-TR105-0.97
PLUMB ROAD OVER BRANCH OF ALUM CREEK

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked "SEALED BID FOR DEL-TR105-0.97". Bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from the Delaware County Engineer, 50 Channing Street, Delaware, OH 43015. Cost for printed copies of each set of plans and specifications is \$20, and the cost is non-refundable. Plans and specifications may also be downloaded, free of charge, from the Delaware County Engineer's website at www.co.delaware.oh.us/ebids. All bidders must register as a plan holder with the Delaware County Engineer through the County Engineer's ebids website or in person at the time of purchasing plans and specifications.

The Owner requires that all work associated with the project be completed before August 1, 2012. The estimated commencement of work date is January 25, 2012.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the Township. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
December 16, 2012
December 23, 2012

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 11-1361

IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO HOME & CONCORD ROADS INCLUDING REPLACEMENT OF EXISTING STRUCTURES ON HOME ROAD AND CONCORD ROAD OVER A TRIBUTARY OF EVERSOLE RUN AS WELL AS IMPROVING THE INTERSECTION BY CONSTRUCTION OF A ROUNDABOUT, WIDENING, GRADING AND DRAINAGE, AND LIGHTING, APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATES FOR THE PROJECT KNOWN AS DEL-CR124-02.6 HOME & CONCORD INTERSECTION IMPROVEMENTS.

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

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Whereas, Section 5555.022 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the Improvement and may authorize such Improvement, and;

Whereas the County Engineer has determined that the intersection of Home & Concord Roads needs improvements for safety and traffic fluidity by replacing the existing structures on Home and Concord Roads and constructing a roundabout along with additional improvements to the intersection and recommends that the Board proceed with Improvements thereof, and;

Whereas the County Engineer has prepared plans, specifications and estimates for the Improvement, and;

Whereas the County Engineer has estimated the construction cost of the Improvement to be \$1,780,000.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The public convenience and welfare require the improvement of the intersection of Home & Concord Roads by replacing the existing structures, constructing a roundabout, and widening, grading, improving drainage and adding lighting, and that the Improvement known as DEL-CR124-0.26 be initiated for such purpose, and;

Section 2: The costs for said Improvement will be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay for the Improvement, and;

Section 3: The plans, specifications and estimates for the project known as DEL-CR124-0.26 are hereby approved, and;

Section 4: The County Engineer is authorized to advertise for and received bids on behalf of the Board in accordance with the following Invitation to Bid:

Public Notice
Advertisement for Bids

Sealed bids will be received at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until 10:00 am on Tuesday, January 10, 2012, at which time they will be publicly opened and read aloud, for the project known as:

DEL-CR124-0.26
Home & Concord Intersection Improvements

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked "SEALED BID FOR DEL-CR124-0.26". Bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from the Delaware County Engineer, 50 Channing Street, Delaware, OH 43015. Cost for printed copies of each set of plans and specifications is \$20, and the cost is non-refundable. Plans and specifications may also be downloaded, free of charge, from the Delaware County Engineer's website at www.co.delaware.oh.us/ebids. All bidders must register as a plan holder with the Delaware County Engineer through the County Engineer's ebids website or in person at the time of purchasing plans and specifications.

The Owner requires that all work associated with the project be completed before August 1, 2012. The estimated commencement of work date is January 25, 2012.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the Township. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
December 16, 2012
December 23, 2012

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 11-1362

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IN THE MATTER OF APPROVING AGREEMENT BY AND BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION; THE DELAWARE COUNTY ENGINEER AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS NAMING DELAWARE COUNTY AS THE LPA FOR THE BROWN ROAD OVER BOKES CREEK PROJECT:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

**DEL-TR176-0.02
(Brown Road over Bokes Creek)
PID Number 83528
Agreement Number 24586
CFDA 20.205**

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **Delaware County Engineer** acting by and through the **Delaware County Board of Commissioners**, hereinafter referred to as the LPA, **50 Channing Street, Delaware, OH 43015**.

PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (C) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 **DEL-TR176-0.02, PID Number 83528** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(C) of the Ohio Revised Code;
 - b. ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
 - c. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
 - d. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be **\$1,932,338** as set forth in Attachment 1. ODOT shall provide to the LPA **95% (ninety five percent)** of the eligible costs, up to a **maximum of \$1,414,930 in Federal funds**, which includes **15% (fifteen percent) Credit Bridge Program funds up to a maximum amount of \$223,410 in Credit Bridge Program funds**. Further, ODOT shall provide to the LPA **80% (eighty percent)** of the eligible costs above the Credit Bridge Program limit, up to a **maximum of \$354,350 in Federal funds**. **The total federal maximum amount is \$1,769,280**. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance

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with all LPA participation requirements.

- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/dtrc.)
- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>.)
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II-(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If

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the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work can not also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that if any property acquired for this project is subsequently sold for less than fair market value that all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this agreement the LPA shall assure that if the LPA grants a permit or license for the property acquired for this project that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes-Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all

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contracts, as well as appropriate subcontracts and purchase orders.

- 7.5 The LPA shall require the contractor to be enrolled in, and in good standing with, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract.** For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII. and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/WhatsNew/FFR/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to suspension or debarment under the Federal Excluded Parties System List (EPSL). Contractors on the EPSL are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and the FHWA codification of the Common Rule for Nonprocurement suspension and debarment. The EPSL can be viewed on the Federal EPSL website at <https://www.epls.gov/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this agreement.
- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with

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the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

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

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

**Chris Bauserman, P.E., P.S.
Delaware County Engineer
50 Channing Street
Delaware, OH 43015
740-833-2400**

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

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

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

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

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

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

10. NONDISCRIMINATION

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- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3 For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The Contractor must document the progress and efforts being made in securing the services of DBE subcontractors. In the event the Contractor is unable to meet the DBE Goal placed on this Local Let project, a request for a waiver of all or part of the goal may be made. The written request must indicate a good faith effort was made to meet the goal and be sent to the LPA contracting authority. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to Office of Contracts, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by LPA or the subject of an approved VECP, the Contractor may request a waiver for the portion of work excluded.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees as follows:

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

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

(2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the

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Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their

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- departments or political subdivisions, or any other cause not reasonably within the LPA’s control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with section 12.3 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
13. **THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS**
- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.
- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA’s obligations made or agreed to herein.
14. **NOTICE**
- 14.1 Notice under this Agreement shall be directed as follows:
- | | |
|------------------------------------|--|
| If to the LPA: | If to ODOT: |
| Chris Bauserman, P.E., P.S. | Ferzan Ahmed, P.E., Deputy Director |
| Delaware County Engineer | Attention: Tracy L. Allen |
| 50 Channing Street | ODOT, District Six |
| Delaware, OH 43015 | 400 East William Street |
| | Delaware, OH 43015 |
15. **GENERAL PROVISIONS**
- 15.1 Audit Requirements: The LPA shall comply with the audit requirements of 49 CFR Part 18.26 (Federal Single Audit Act) for any and all projects with a total cost of \$500,000 or more.
- 15.2 Record Retention: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA’s obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA’s final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

- 15.3 Ohio Ethics Laws: LPA agrees that it they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 15.4 State Property Drug-Free Workplace Compliance: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.5 Governing Law: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.6 Assignment: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.7 Merger and Modification: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.8 Severability: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.9.1 Signatures: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal’s behalf.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1363

IN THE MATTER OF APPROVING THE TRIENNIAL DELAWARE COUNTY ECONOMIC DEVELOPMENT REVOLVING LOAN FUND AGREEMENT WITH THE OHIO DEPARTMENT OF DEVELOPMENT (ODOD):

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, Delaware County established a Community Development Block Grant (CDBG) funded Revolving Loan Fund (RLF), capitalized with ODOD CDBG economic development grants and the payback from CDBG loans to local businesses; and

WHEREAS, Delaware County has adopted guidelines to govern the proper use of RLF funds, per Resolution 09-151 with amendments per Resolutions 09-970 and 09-971; and

WHEREAS, approval of this resolution replaces the December 31, 2011 expiring Revolving Loan Fund Administration Agreement section of Resolution 09-151 (starting on p. 146 of the Journal); and

WHEREAS, the Economic Development Director recommends approval of this agreement; and

NOW THEREFORE BE IT RESOLVED, that the Delaware County Board of Commissioners does hereby approve the following Revolving Loan Fund Administration Agreement:

REVOLVING LOAN FUND ADMINISTRATION AGREEMENT

This Revolving Loan Fund Administration Agreement (the “Agreement”) is made and entered into by and between the **State of Ohio, Department of Development**, located at 77 South High Street, P.O. Box 1001, Columbus, Ohio 43216-1001 (the “Grantor”), and the Delaware County Board of Commissioners, located at 101

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North Sandusky Street, Delaware, OH 43015 with F.T.I. Number: **FTI 31-640065** (the “Grantee”), and shall be effective beginning **January 1, 2012** (the “Effective Date”) and **terminate December 31, 2014** (the “Termination Date”).

BACKGROUND INFORMATION

A. Grantor, through its Office of Community Development (“OCD”), administers the federal Community Development Block Grant (“CDBG”) Program for the State of Ohio.

B. Grantee has been determined to be an eligible recipient of CDBG funds and Grantee has been awarded CDBG funds from the Grantor for use to finance eligible activities that may generate Program Income as defined herein.

C. Grantor has recognized the positive impact on community development initiatives when the use of Program Income is locally determined. Grantor has permitted the establishment of Revolving Loan Funds within local political subdivisions to meet the primary development goals of: 1) encouraging the expansion and stability of the economic base of the designated area of the Revolving Loan Fund; and 2) encouraging increased employment opportunities, particularly for low- and moderate-income persons in designated areas of the Revolving Loan Fund.

D. Grantor desires to have Grantee to administer a Revolving Loan Fund using the CDBG Program Income and Grantee desires to administer a Revolving Loan Fund using the CDBG Program Income for the purposes stated above.

E. Grantee has adopted Resolution 11-1363 on November 28, 2011 (date) authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

STATEMENT OF THE AGREEMENT

1. **Revolving Loan Fund Capitalization.** Grantee shall deposit any and all Program Income, as defined herein, derived from CDBG Economic Development Program funds awarded by the Grantor to the Grantee pursuant to the grant awards and/or activities as set forth in this Agreement into a Revolving Loan Fund Account held by the Grantee. For the purposes of this Agreement, Program Income is defined as gross income received by the recipient directly generated from the use of CDBG Economic Development Program funds. Furthermore, the Revolving Loan Fund (“RLF”) is defined as a separate fund established for the purpose of accounting for Program Income and of carrying out the specific activities designated in OCD’s RLF Policies and Procedures Manual, which, in turn, generate payments to the fund (“RLF Funds”) for the continued use in carrying out the same activities.

2. **RLF Plan and Use of Funds.** Grantee has adopted an RLF Plan that has been previously submitted and approved by the Grantor. Within sixty (60) days after execution of this Agreement Grantee shall update its current RLF Plan and submit the revisions to the Grantor for approval. The updated plan must include the policies and procedures established by Grantor in the OCD RLF Policies and Procedures Manual. The plan must include any designated administrative agent, an established board structure, loan review criteria, and procedures for workouts, delinquencies and defaults. Any changes to the local RLF Plan must be submitted to Grantor for approval. Grantee shall use the RLF Funds solely for the stated purposes set forth in this Agreement, OCD’s RLF Policies and Procedures Manual and the Local RLF Plan.

3. **Loan Approvals.** Grantee shall submit to Grantor a RLF Grant/Loan Review Report Form for each project being considered for RLF assistance. Grantee must receive Grantor’s written approval prior to the closing of the Grantee’s local RLF economic development loan or infrastructure project.

4. **Reporting Requirements.** Grantee shall submit semi-annual RLF Reports to Grantor within thirty (30) days after receipt of the June 30 and December 31 semi-annual RLF Report of each year from Grantor. Each RLF Report shall include information for both economic development and housing program income. Grantee shall also file an Annual Other Program Income Report due March 31 of each year in which this Agreement is in effect.

5. **Compliance with General CDBG Requirements.** Grantee shall comply with all applicable provisions of the statutes, rules, regulations and guidelines as passed by Congress or promulgated by the Secretary of the Department of Housing and Urban Development (HUD).

6. **Compliance with Environmental Requirements.** Grantee shall comply with the provisions of the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to activities undertaken with CDBG Program Income. Grantee agrees to assume responsibility for preparing Environmental Assessments and Environmental Reviews as required.

7. **Prevailing Wage Rates and Labor Standards.** Grantee shall comply with Section 570.603; Labor Standards of the Regulations published by HUD for Community Development Block Grants and the labor provisions and apply

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the federal Davis Bacon Labor Standards where required. In the event that any construction work to be undertaken does not lie within the purview of the Davis-Bacon Act, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in the construction work to be assisted by this Project(s), Grantee will comply with the provisions of Ohio Revised Code Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

8. Acquisition and Relocation. Grantee shall comply with the relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementation regulations set forth in 570.488 and 49 CFR Part 24 as they apply to the activities covered by this Agreement. Grantee shall comply with the process established under the Anti-Displacement and Relocation Plan.

9. National Objective Requirements. Grantee shall ensure that all projects funded as a result of this Agreement meet the national objective of creating or retaining jobs for low-and-moderate income persons. Any projects not meeting this requirement must submit a request for waiver to Grantor. Grantor will review the request to determine if the project meets a CDBG National Objective. Written approval from Grantor must be received prior to the local RLF issuing approval for the project.

10. Suspension and Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other. Grantor reserves the right to suspend the administration of the RLF at any time for failure of the Grantee or its designated administrative agent to administer the local RLF in compliance with the OCD RLF Policies and Procedures Manual which is not attached but incorporated herein by reference. Throughout this Agreement, Grantee and any designated administrative agent must continue to demonstrate administrative capacity in the administration of the RLF. Failure to accurately report on the RLF Funds could result in Grantor placing the RLF Funds on hold or recapturing the RLF Funds. Grantor also reserves the right to request the RLF Funds be returned to the State of Ohio upon failure to comply with the OCD RLF Policies and Procedures Manual.

11. Subrecipient Agreements. Grantee shall not subgrant the Program Income funds to any other local political jurisdiction or non-profit agency. Grantee may contract with a non-profit agency to administer the RLF Funds, but the funds are to remain with the Grantee in the Revolving Loan Fund Account. If there is a change in the designated administrative agent of the RLF Funds, it is the responsibility of the Grantee to notify OCD within fifteen (15) days of any change in status of the designated administrative agent.

12. Term of the Agreement. This Agreement shall begin on the Effective Date and shall terminate on the Termination Date, unless otherwise modified pursuant to Section 20f herein. At least sixty (60) days prior to the Termination Date, Grantor will determine if the Grantee continues to have the capacity to administer the RLF Funds based on the performance of the Grantee and its designated administrative agent. Grantor shall promptly notify Grantee in writing of a determination questioning administrative capacity. Grantor reserves the right to determine if the State of Ohio will renew the Revolving Loan Fund Administration Agreement to allow the Grantee to administer the RLF, have the Grantee close out the RLF by executing a CDBG Closeout Agreement or recapture the RLF Funds.

13. Records, Access and Maintenance. Grantee shall establish and maintain for at least four (4) years from the expiration of this Agreement, all direct information and such records as are reasonably related to the administration of a RLF as set forth in the OCD RLF Policies and Procedures Manual. Both parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement as provided in Section 10 of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RLF Funds, the Grantee shall, at its own cost and expense, segregate all such records related to the RLF Funds from its other records of operation.

14. Audits and Inspections. Grantee shall, at any time during normal business hours upon written notice and as often as Grantor may deem necessary, make available to Grantor, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Agreement including, but not limited to, records of all contracts, loans and disbursements and shall permit Grantor to audit, examine and make excerpts or transcripts from such records. Grantee shall ensure that the RLF Funds are audited according to the requirements of the ODOD Grant Administration Guidelines-Audits that is not attached hereto, but incorporated by reference.

15. Equal Employment Opportunity. Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. Grantee shall take affirmative action to ensure that applicants are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status or ancestry. Grantee shall, in all solicitations or advertisements or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. Grantee shall incorporate the requirements of this paragraph in all its respective contracts for any of the work prescribed herein (other than subcontractors for standard commercial supplies or raw materials), and the Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such

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work.

16. **Liability.** Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of the Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees and agents. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

17. **Adherence to State and Federal Laws and Regulations.**

a. **General.** Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement. Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the performance of the work authorized by this Agreement.

b. **Ethics.** In accordance with Executive Order 2011-03K, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

18. **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Grantor of any of its rights hereunder.

19. **Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.** If applicable, the Grantee must certify compliance with Ohio Revised Code Section 2909.33.

20. **Miscellaneous.**

a. **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio as to all matters, including, but not limited to matters of validity, construction, effect and performance.

b. **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.

c. **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.

d. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

1. In the case of the Grantor, to:

Ohio Department of Development
Office of Community Development
77 South High Street, P.O. Box 1001

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Columbus, Ohio 43216-1001

2. In the case of the Grantee, to:

Delaware County Board of Commissioners
101 North Sandusky Street
Delaware, OH 43015
Attention: Director of Economic Development

f. Amendments or Modifications. Either party may, at any time during the term of this Agreement, request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Agreement. Should the parties consent to modification of the Agreement, and then an amendment shall be drawn, approved, and executed in the same manner as the original Agreement.

g. Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h. Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

i. Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned, subcontracted or subgranted by the Grantee without the prior express written consent of the Grantor.

j. Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

k. Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Nay Mr. Stapleton Aye

RESOLUTION NO. 11-1364

IN THE MATTER OF APPROVING THE SUPPLEMENTAL APPROPRIATION IN THE
EMERGENCY MANAGEMENT PROGRAM GRANT (EMPG):

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adopt the following Resolution:

WHEREAS, the Delaware County Board of Commissioners approved the appropriation of the Org Key 21581301 EMA; and

WHEREAS, the Delaware County Office of Homeland Security and Emergency Management was recently awarded special project funds through the assistance with DELCOMM that will have no additional cost to the local government; and

WHEREAS, the Delaware County Office of Homeland Security and Emergency Management will work with DELCOMM and County EMS to use the funds in creating a training room that can also function as a Joint Information Center;

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners approves the supplemental appropriations:

Supplemental Appropriation		
21581301-5250	Emergency Management Services/Minor Tools	9,000.00

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

RESOLUTION NO. 11-1365

IN THE MATTER OF AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE
OHIO DEPARTMENT OF YOUTH SERVICES FOR THE 2012 JUVENILE ACCOUNTABILITY
BLOCK GRANT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Grant Number: 2012-JB
Source Ohio: Department of Youth Services

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Grant Period: 1-1-12 thru 12-31-12

Grant Amount: \$10,000.00
Local Match: \$ 1,000.00
Total: \$11,000.00

This grant supports a portion of the School Alternative Program supervisors salary and benefits.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1366

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS AND SUPPLEMENTAL APPROPRIATIONS FOR A JUVENILE COURT GRANT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Transfer of Appropriation			
From	To		
26226206-5101	26226206-5365		
Family Drug Court/Insurance	Family Drug Court/Grant Related Services	\$	138.08
Supplemental Appropriation			
27426314-5001	Crime Victims CASA/Compensation	\$	400.00
27426314-5120	Crime Victims CASA/PERS	\$	120.00
26726324-5001	Youth Service/Compensation	\$	10,132.00

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 11-1367

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS AND SUPPLEMENTAL APPROPRIATIONS FOR THE REGIONAL SEWER DISTRICT AND A TRANSFER OF APPROPRIATIONS FOR CODE COMPLIANCE:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Transfer of Appropriation			
From	To		
10011301-5001	10011301-5328		
Code Compliance/Compensation	Code Compliance/Maint & Repair	\$	9,000.00
66211904-5228	66211904-5319		
ACWRF SRF/Vehicle Maint	ACWRF SRF/Reimbursements	\$	1,000.00
66211904-5228	66211904-5328		
ACWRF SRF/Vehicle Maint	ACWRF SRF/Maint & Repair	\$	5,000.00
Supplemental Appropriation			
66211903-5328	OECC SRF/Maint & Repair	\$	10,000.00

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1368

IN THE MATTER OF ACCEPTING THE GIFT OF JAMES F. MASON, M.D. AND SHIRLEY S. MASON TO DELAWARE COUNTY EMERGENCY MEDICAL SERVICES:

It was moved by Mr. O'Brien, seconded by Mr. Thompson, to adopt the following Resolution:

WHEREAS, James F. Mason, M.D. and Shirley S. Mason donated \$200.00 to Delaware County Emergency Medical Services in thanks for the “very professional care of the three (3) medics to [the patient]”; and

WHEREAS, Delaware County EMS Lieutenant Kevin George, and Paramedics Heather Spiegelberg and Shelly Curry of DCEMS Medic 10 cared for Dr. and Mrs. Mason’s loved one that day;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Delaware County hereby

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accepts the donation to Delaware County Emergency Medical Services from James Mason, M.D. and Shirley Mason.

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 11-1369

**IN THE MATTER OF APPROVING THE JOB DESCRIPTION FOR THE CAPTAIN –
ADMINISTRATION/TRAINING FOR EMERGENCY MEDICAL SERVICES:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, The Director Emergency Medical Services recommends the Job Description for the Captain – Administration/Training For Emergency Medical Services;

Therefore Be it Resolved, the Board of Commissioners approve the Job Description for the Captain – Administration/Training For Emergency Medical Services.

**DELAWARE COUNTY
Emergency Medical Services**

TITLE: Captain – Administration / Training (40 hrs)

JOB DESCRIPTION:

Individual provides direction to Emergency Medical Services Unit, staff personnel, and consistently enforces the Standard Operating Guidelines, policies, and procedures of Delaware County; responsible for implementing and administering all aspects of training and continuing education for all DCEMS department personnel. The Training Coordinator reports to the Assistant Chief of EMS.

ESSENTIAL JOB FUNCTIONS:

- Recommends, administers and enforces, in a consistent manner, Standard Operating Guidelines, departmental policies and procedures, including, but not limited to adherence to medical protocol;
- Supports EMS and other programs by working with local agencies to include attending meetings, conferences, workshops, training sessions, and performing a variety of public relations duties, and by assisting Unit Captains solve specific training problems, either on a one-to-one basis or in groups;
- Participates in EMS operations as needed, up to or including commanding a DCEMS incident and other duties as assigned by the Chief or Assistant Chief;
- Supervises staff involved with EMS program to include, but not limited to, assigning work, planning and estimating project completions, monitoring performance, training employees, interviewing staff, conducting annual evaluations and resolving problems, grievances and personnel situations;
- Compiles and maintains accurate manual and electronic records of employee certifications;
- Develops, facilitates and evaluates EMS quality and performance on medical responses, and manages quality improvement and performance data for the DCEMS system;
- Regularly and accurately evaluates the patient care activities of DCEMS personnel;
- Assists in the development of policies and procedures relating to training consistent with existing rules, regulations and procedures;
- Develops, implements and administers all training class schedules and performs oversight of training needs for all EMS personnel and may deliver lectures and classroom training;
- Assists in developing, implementing and maintaining the Field Training Officer orientation program for all new EMS employees to ensure a smooth transition into DCEMS procedures, policies and protocols;
- Ensures that training programs meet or exceed local, state and federal requirements and minimum standards ;
- Meets periodically with personnel as procedures, rules, or equipment are changed or updated to ensure awareness, education and comprehension;
- Designing and developing training and development programs based on both the organization's and the individual's needs

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- Develops, facilitates and evaluates emergency-medical practice parameters, protocols, procedures and patient care standards on a regular basis for the DCEMS system by working through and with the Clinical Development Team and by conducting regular appraisals;
- Supports EMS and other programs by working with local agencies to include attending meetings, conferences, workshops, training sessions, and performing a variety of public relations duties including but not limited to, station tours, open houses, safety fairs and civic association meetings, considering the costs of planned programs and keeping within budgets as assessing the return on investment of any training or development program is becoming increasingly important;
- Develops and maintains the Medical / EMS skills educational equipment as necessary;
- Facilitates investigations and resolves internal and external complaints, as they relate to patient care;
- Works with health and safety advisory committees to promote and provide safety expertise in the development and presentation of safety training materials. Performs or assists with accident investigations as needed. Insures that processes take necessary corrective action to prevent future incidents;
- Other duties as assigned by the Chief or Assistant Chief.

NON-ESSENTIAL JOB FUNCTIONS:

- Performs related Essential/Non-Essential functions as required by daily operations.
- May serve as management representative or serve on committees.
- Assists in other department administrative activities as assigned.

I. JOB REQUIREMENTS

Equipment:

Ability to operate a variety of equipment such as computer and various related audio and visual equipment, copier, typewriter, telephone, calculator, FAX machine, document scanner, VCR/DVD/DVR, radios, pagers, Computerized Reporting System and special medical equipment such as monitors, IV pumps, etc. necessary to perform duties of DCEMS. Ability to safely operate a motor vehicle is required.

Critical Skills/Expertise:

- Thorough knowledge of EMT Basic, Intermediate and Paramedic functions;
- Thorough knowledge of research techniques, systems analysis, and operations research. Considerable knowledge of quality improvement and assurance techniques. Considerable knowledge of educational curriculum research, development and implementation;
- Thorough knowledge of the structure and management of local, state and federal governments, especially as to how they relate to laws governing the administration of an EMS program;
- Thorough knowledge of current developments, legislation, and other matters pertaining to EMS and their impact on training and procedures;
- Thorough knowledge of and the ability to apply rules, regulations and guidelines associated with EMS and training;
- Ability to define and solve problems; collects data, establish facts, draw valid conclusions using judgment and analytical skills;
- Ability to organize and maintain large volumes of information and paperwork;
- Extensive knowledge of and ability to apply EMS program policies and procedures to assist staff in the performance of their responsibilities;
- Ability to communicate effectively, both orally and written;
- Ability to motivate and counsel staff and customers;
- Ability to work effectively with clients who may be upset, distraught, irate, emotionally or mentally or otherwise unable to function within reasonable range of constructive behaviors.

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- Thorough knowledge of training methodologies and the ability to apply those methods to a diverse workforce;
- Ability to work independently, under pressure, and to set and achieve goals;
- Thorough knowledge of computer applications and systems utilized by EMS;
- Ability to effectively program plan independently and in collaboration with other staff units and outside agencies.

Job Standards:

- Thorough knowledge of the principals and practices of management and administration. Considerable knowledge of ordinances, laws, regulations, statutes, procedures and processes related to Emergency Medical Services in the State of Ohio;
- Bachelors Degree (or 8 to 10 years of equivalent experience) in EMS, Health Care Administration or other appropriate field;
- Ohio Certification as an EMT-Paramedic, with a minimum of six years field experience as a Paramedic. Four years of supervisory experience in a supervisory or training officer capacity is preferred. Must hold an Ohio Department of Public Safety EMT-Instructor certification, American Heart Association BLS and Advanced Cardiac Life Support, Pediatric Advanced Life Support Instructor certifications (or equivalents), International Trauma Life Support Instructor certification, Ohio Emergency Vehicle Operator Instructor Certification or have the ability to obtain these certifications within one year of hire;
- Must have valid Ohio Driver's License and have an acceptable driving record;
- Must meet and maintain all required licensures and certifications as a continued condition of employment.

II. DIFFICULTY OF WORK

Work consists of complex, varied, standardized and non-standardized tasks requiring application of numerous laws, rules, regulations, and procedures. Individuals are required to provide technical assistance to staff personnel on programs, policies and the interrelationship of programs under extremely complex, time sensitive and difficult situations. It requires the individual to be continually aware of changes occurring in EMS equipment and procedures that must be learned and passed on to staff. Procedures must be developed for implementing changes at the local level.

III. RESPONSIBILITY

Individual makes choices or decisions without supervisory input on most daily activities, such as scheduling appointments, establishing priorities, making referrals to other agencies, developing contracts with businesses and agencies and forming collaborative relationships with other service providers in the county and at the state level. Individual operates independent of supervision in handling staffing and daily operations, normally receiving supervisor's input when needed. Errors in work may cause inaccuracies in reports, records, or technical data resulting in inaccurate or incomplete information, and may cause loss of efficiency of response of emergency services and possible loss of life and property.

IV. PERSONAL WORK RELATIONSHIPS

Contact is with co-workers, employees from public and private sector organizations and the public at the local and state level. The purpose of these contacts is to guide and direct, check on progress of work assigned, coordinating services, job development / referrals and handle questions about department, programs and client concerns.

V. PHYSICAL EFFORT AND WORK ENVIRONMENT

Physical Requirements: The physical requirements of the position are identified as an individual is required to lift office and medical equipment and/or a patient up to two hundred (200) lbs.

Physical Activity: The physical activity of the position is climbing, balancing, stooping, kneeling, crouching, crawling, reaching, standing, walking, pushing, pulling, lifting, grasping, feeling, talking, listening, and repetitive motions.

Visual Activity: The visual activity includes duties close to eyes, at or within arm's reach and operating vehicles.

Job Location: Work is performed both inside and outside with exposure to weather temperatures ranging from below 32 degrees to above 100 degrees for periods of more than one hour. Individual is exposed to noise, vibrations, physical hazards, and oil. Individual is exposed to fumes, odors, dusts, mists, gases or poor ventilation.

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Vote on Motion Mr. O'Brien Abstain Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1370

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

The Director of Environmental Services recommends Leave Without Pay for Worker's Comp for Mark Howard; effective November 8, 2011 until further notice.

Therefore be it resolved, that the Board of Commissioners approve Leave Without Pay for Worker's Comp for Mark Howard; effective November 8, 2011 until further notice.

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

RESOLUTION NO. 11-1371

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS AND SUPPLEMENTAL APPROPRIATIONS FOR ADMINISTRATIVE SERVICES RECORDS CENTER AND HEALTH INSURANCE:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Transfer of Appropriation			
From	To		
10011108-5001	10011103-5301		
Human Resources/Compensation	Records Center/Professional Services	\$	3,000.00
Supplemental Appropriation			
60211902-5215	Health Insurance/Program Supplies	\$	10,000.00
60211902-5370	Health Insurance/Premiums-Claims	\$	700,000.00

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1372

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND MAXIMUS CONSULTING SERVICES, INC. FOR A COST ALLOCATION PLAN:

It was moved by Mr. Thompson, seconded by Mr. O'Brien to approve the following agreement:

AGREEMENT TO PROVIDE
PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into this 28th day of November, 2011, by and between MAXIMUS Consulting Services, Inc., a wholly owned subsidiary of MAXIMUS, Inc. (hereinafter "Consultant"), and the Delaware County Board of Commissioners, State of Ohio (hereinafter "Client"). The parties hereto, in consideration of mutual promises and covenants, agree as follows:

- (1) Scope of Services. Consultant shall perform in a professional manner the services as detailed in Exhibit A, incorporated herein by reference as if fully set forth as part of this Agreement.
- (2) Term. This Agreement shall be in full force and effect for the term as stated in Exhibit A.
- (3) Compensation. Client shall pay Consultant a fee for services rendered as set forth in Exhibit B, incorporated herein by reference as if fully set forth as part of this Agreement.
- (4) Termination. Upon Consultant's material breach, Client may terminate this Agreement upon thirty (30) days prior written notice to Consultant wherein Client shall specify the nature of the default and the effective termination date. Upon such notice, Consultant shall be entitled to the opportunity to cure any such default prior to the effective date of termination.

Client may terminate this Agreement for any reason upon sixty (60) days prior written notice to Consultant. Client shall reimburse Consultant for all reasonable costs incurred by Consultant due to such early termination.

Upon termination for whatever reason and regardless of the nature of the default (if any), Client agrees to pay Consultant in full for all goods and/or services provided to, and accepted by, Client under this Agreement, or any

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amendment thereto, as of the effective date of the Agreement. In no event shall the making of any payment to Consultant constitute or be construed as a waiver by Client or shall in no way impair or prejudice any right or remedy available to Client.

(5) Services and Materials to be Furnished by Client. Consultant shall provide guidance to Client in determining the data required. The Client acknowledges and agrees that Consultant shall be entitled to rely upon the accuracy and completeness of the data provided by the Client to perform the work under this contract.

(6) Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for six (6) years after the completion of the Services. During such period, Client shall have the right to examine and audit the records and to make transcripts therefrom. Client shall provide thirty (30) days written notice of its intent to inspect or audit any such records and shall conduct such inspection or audit only during Consultant's normal business hours. Any Client's employee, consultant, subcontractor or agent who may have access to such records shall execute a non-disclosure agreement prior to being granted such access.

(7) Copyright for Consultant's Proprietary Software. To the extent that the service and/or deliverables provided by Consultant are generated by Consultant's proprietary software, nothing contained herein is intended nor shall it be construed to require Consultant to provide such software to Client. Client agrees that all ownership, including copyright, patents or other intellectual property rights to the software, lie with Consultant. Nothing herein shall be construed to entitle Client to any pre-existing Contractor materials.

(8) Insurance. Consultant shall maintain appropriate general liability insurance, workers' compensation insurance, automobile insurance, and professional liability insurance.

(9) Indemnification. Consultant shall defend, indemnify and hold harmless Client from and against damages, liability and costs (including reasonable attorney fees) directly caused by the negligent actions or willful misconduct of Consultant, its employees or agents. Consultant shall not be responsible for any damages or liability resulting from the negligence or willful misconduct of Client, its employees, consultants, or agents or any third party.

(10) Limitation of Liability. Client agrees that Consultant's total liability to Client for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the annual value of the contract.

In no event shall Consultant be liable for indirect, special, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if Consultant has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Any claim by Client against Consultant relating to this Agreement must be made in writing and presented to Consultant within one (1) year after the date on which Consultant completes performance of the services specified in this Agreement.

(11) Consultant Liability if Audited. The Client represents that all financial and statistical information provided to Consultant by Client, its employees and/or agents is accurate and complete to the best of Client's knowledge. Consultant shall, upon notice of audit, make work papers and other records available to the auditors. The Consultant's sole responsibility under an audit shall be to provide reasonable assistance to the Client through the audit and to make those changes to the work product as required as a result of the audit. Under no circumstances shall the Consultant be liable for any audit disallowances or any missed or lost revenue associated with, or related to, the services provided pursuant to this Agreement.

(12) Notices. Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, to the address noted below:

Delaware County Board of Commissioners
101 North Sandusky Street
Delaware, Ohio 43015
(740) 833-2100

Robert J. Fink, State Director/Manager
MAXIMUS Consulting Services, Inc.
7523 Fredle Drive
Concord Twp., Ohio 44077
(800) 543-0288 – Toll Free
robertfink@maximus.com

Such notice shall be deemed delivered five (5) days after deposit in the U.S. mailbox.

(13) Changes. The terms of this Agreement may be changed via a mutually executed written instrument.

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(14) Miscellaneous.

- a. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.
- b. The parties intend that Consultant, in performing the services specified in this Agreement shall act as an independent contractor and shall have full control of the work and the manner in which it is performed. Consultant and Consultant's employees are not to be considered agents or employees of Client for any purpose
- c. Should any part, term, portion, section or provision of this Agreement be decided finally to be in conflict with law or otherwise be unenforceable or ineffectual, the remaining parts, terms, portions, sections or provisions shall be deemed severable and shall remain in full force and effect.
- d. The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
- e. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
- f. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, acts of God, war, governmental action, labor conditions, material shortages or any other cause which is beyond the reasonable control of such party.
- g. Each individual signing this Agreement certifies that (i) he or she is authorized to sign this Agreement on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Agreement, including but not limited to the approval of its governing board, and (iii) when executed, this Agreement is a valid and enforceable obligation of such organization.
- h. This Agreement shall be governed by the laws of the State of Ohio. Any and all disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio.

IN WITNESS WHEREOF, the Client and the Consultant have executed this Agreement as of the date first written below.

**EXHIBIT A
Term and Scope of Services
Delaware County, Ohio**

This Agreement shall become effective on November 28, 2011. The services to be performed hereunder by the Consultant shall be undertaken and completed in such sequence as to assure their expeditious completion and to best carry out the purposes of this Agreement.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of services under this Agreement. All of the services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein. Consultant shall commence, carry on, and complete the services with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the provisions herein and all applicable laws.

Consultant reserves the right to subcontract for services hereunder. Consultant agrees to notify Client in writing of any such subcontracts.

Scope of Services:

Development of a central services cost allocation plan which identifies the various costs incurred by the County to support and administer Federal programs. This plan will contain a determination of the allowable costs of providing each supporting service, such as purchasing, legal counsel, disbursement processing, etc. The plan will be based upon the County's year-end financial data for the year 2011 and will be the basis for the recoveries to be claimed for calendar year 2013.

Negotiation of the completed cost allocation plan with the representatives of DHHS and/or the State if required. The Consultant is responsible for the conduct of negotiations and securing approval of the plan as filed or as negotiated, where applicable, on the County's behalf.

Assistance in preparing the County's claims to the State for recovery of funds due the County, as it pertains to the information contained in the cost allocation plan.

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Option to Renew Contract – At its option, the County may renew this contract for an additional two years. The County may exercise its option by providing Consultant with written notice of its intent to exercise the option to renew. The County agrees to pay the Consultant the sum \$10,900 for all services required herein to prepare the 2012 plan. Further, the County agrees to pay the Consultant the sum of \$10,900 for all services required herein to prepare the year 2013 plan. The Consultant will invoice the amount due for each year upon plan delivery.

EXHIBIT B
Compensation
Delaware County, Ohio

For services provided as set forth in Exhibit A, Client agrees to pay Consultant a lump-sum amount of \$10,900 (Ten Thousand Nine Hundred Dollars), which shall include reimbursement for expenses incurred. Consultant agrees to complete the project and all services provided herein for said sum.

The Consultant will invoice the amount due upon delivery of the report.

Consultant will render to Client one or more invoices for the fees specified herein, with payment due by thirty (30) days after the invoice date.

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 11-1373

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE BASINGER
DITCH PROJECT FUND AND APPROVING THE BOND PAYMENT TO DELAWARE COUNTY
BANK:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Supplemental Appropriation			
51311130-5720	BR Ditch Improvement Basinger/Interest	\$	1.00

Further Be It Resolved, that the Board of Commissioners approve the following:
Increase to Purchase Order P1103343 in the amount of \$1.00

And			
Payment of Voucher to Delaware County Bank			
P1103343 line 1 Basinger Principal	51311130-5725	\$	18,800.00
P1103343 line 2 Basinger Interest	51311130-5720	\$	2,837.25

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Stapleton
-Attend With Commissioner Thompson The Special DKMM Meeting-Budget; Will Be Another Meeting
On December 6 -New Officers For 2012 Will Be Elected
-CCAO Annual Meeting During The Winter Conference

Commissioner Thompson
-Possible Day For The Office Christmas Lunch December 22, 2011

Commissioner O'Brien
-Nothing Additional

RESOLUTION NO. 11-1374

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF
APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR
IMMINENT LITIGATION AND FOR COLLECTIVE BARGAINING:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn into Executive Session at 10:33AM.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-1375

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 11:55AM.

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Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

There being no further business, the meeting adjourned.

1:00PM SPECIAL BUDGET SESSION

Ken O'Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners