

COMMISSIONERS JOURNAL NO. 64 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 7, 2016

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

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

1
RESOLUTION NO. 16-217

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 3, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 3, 2016; and

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

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

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

2
PUBLIC COMMENT

3
ELECTED OFFICIAL COMMENT

4
RESOLUTION NO. 16-218

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0304:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0304 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Trane Company	HVAC County Buildings	10011105-5325	\$6,470.00
Konescranes Inc.	Equipment Inspections Water Reclamations	66211903-5328	\$8,120.00

<u>Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>	<u>Line</u>
R1602576	TRANE COMPANY INC	JAIL - HVAC COMPRESSOR CHILLER	40111402 - 5410	\$37,618.00	0001
R1602579	NORTH CENTRAL JOBS FOR OHIO GRADUATES	JOG JOBS FOR OHIO GRADS.	22311611 - 5348	\$21,699.26	0001

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

5
RESOLUTION NO. 16-219

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Auditor's Office is requesting that Brad Higgins attend a SUGA (Sungard User Group Annual Conference) 2016 Training Event in Las Vegas, Nevada April 18-22, 2016; at the cost of \$1,990.00 (fund number 10010101).

The Auditor's Office is requesting that Mike Laws attend a SUGA (Sungard User Group Annual Conference) 2016 Training Event in Las Vegas, Nevada April 18-22, 2016; at the cost of \$1,996.00 (fund number 10010101).

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

6

RESOLUTION NO. 16-220

SETTING DATE, TIME AND PLACE FOR THE FINAL HEARING BY THE COMMISSIONERS FOR THE DRAINAGE IMPROVEMENT PROJECT TO VACATE PORTIONS OF THE EXISTING STORM WATER EASEMENTS IN THE ORANGE CENTRE DEVELOPMENT SECTION 1 PROJECT #0723 (UPON APPROVAL OF CONSTRUCTION OF NEW ALIGNMENT AND EASEMENT WITHIN THE COURTYARDS AT HIDDEN RAVINES SECTION 1):

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

Whereas, the Board of Commissioners of Delaware County on **August 6, 2015**, held a public hearing and determined the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for the reconstruction and improvement of the Drainage Improvement To Vacate Portions Of The Existing Storm Water Easements In The Orange Centre Development Section 1 Project #0723 (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1), and

Whereas, at that time the Delaware County Commissioners directed the Delaware County Engineer to proceed with the preparation of plans, reports, and schedules for the completion of the Drainage Improvement project, and

Whereas, the Delaware County Engineer has notified the Commissioners that the plans, reports, and schedules for the construction of the Drainage Improvement To Vacate Portions Of The Existing Storm Water Easements In The Orange Centre Development Section 1 Project #0723 (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1,) Project are finalized for their review and consideration.

Therefore Be It Resolved, the Board of County Commissioners of The County of Delaware have fixed the **April 28, 2016, at 9:45AM** at the Commissioners Hearing Room 101 North Sandusky Street Delaware, Ohio as the time and place of the final hearing by the Commissioners on the report of the County Engineer.

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

7

RESOLUTION NO. 16-221

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND MASTERMIND, LLC FOR A 2016 BALL BANK SAFETY STUDY:

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

Whereas, per Resolution No. 15-1473, an agreement was entered into between The Board of County Commissioners (“Board”) and The Ohio Department of Transportation (“ODOT”) for a Ball Bank Safety Study for Delaware County roads, and;

Whereas, said agreement gave authorization to the County Engineer to select a qualified consulting engineering firm to conduct said studies; and,

Whereas the County Engineer recommends approval of a Contract with MasterMind, LLC for performance of the 2016 Ball Bank Safety Study.

Now, Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract with MasterMind, LLC for the 2016 Ball Bank Safety Study as follows:

PROFESSIONAL SERVICES CONTRACT
2016 Ball Bank Safety Study

Section 1 – Parties to the Agreement

Agreement made and entered into this 7th day of March, 2016, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and the firm of MasterMind, LLC, 199 Seatrain Drive, Delaware, Ohio 43015 (“Consultant”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

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Consultant agrees to furnish, unto the County, professional services in accordance with the Scope of Services and Price Proposal as outlined in the LPA Safety Study Agreement approved under Resolution No. 15-1473, by this reference hereby made part of this Agreement. Consultant further agrees to perform the Work promptly and in a skillfully competent manner under the direction of the Administrator and in accordance with accepted professional standards.

Section 4 – Compensation

Compensation for Work performed under this Agreement shall be in accordance with the Scope of Services and Price Proposal. The Base Fee shall be a Lump Sum not to exceed **Thirty-Eight Thousand Four Hundred Dollars (\$38,400)** in accordance with allowable costs and fees listed in the aforementioned Price Proposal. Compensation shall constitute full payment for all labor, equipment and materials required to complete the required Work.

Section 5 – Payment

Compensation shall be paid periodically, but no more than once per month, and shall be based on the calculated percentage of work performed to date in accordance with the Price Proposal. Invoices shall be submitted to the Administrator by the Consultant on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Authorization to Proceed, Completion of Work, Delays and Extensions

The Consultant shall commence Work upon written authorization of the Administrator and shall complete the work no later than November 1, 2016. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

Section 7 – Insurance

- 7.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 Workers’ Compensation Coverage: Consultant shall maintain workers’ compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 7.6 Proof of Insurance: Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured required by Subsection 7.5. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Indemnification

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

Section 9 – Suspension or Termination of Agreement

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Consultant ordering termination of Work. The Consultant shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination.

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The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

Section 11 – Ownership of Engineering Documents

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

Section 12 – Change of Key Consultant Staff

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

Section 13 – Miscellaneous Terms & Conditions

- 13.1 **Prohibited Interests:** Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 13.2 **Independent Contractor:** The Parties acknowledge and agree that contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 13.3 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.4 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.5 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.6 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 13.7 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 13.8 **Findings for Recovery:** Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.9 **Non-Discrimination/Equal Opportunity:** Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and

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available to perform the work to which the Agreement relates.

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

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

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

- 13.10 Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” **Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract.** Such certification is attached to this Contract and by this reference made a part thereof.

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

**8
RESOLUTION NO. 16-222**

IN THE MATTER OF APPROVING MODIFICATION #1 TO A REAL ESTATE ACQUISITION SERVICES AGREEMENT WITH HERITAGE LAND SERVICES FOR THE PROJECT KNOWN AS S. OLD STATE ROAD, DEL-CR10-0.90:

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

WHEREAS, per Resolution No. 15-388, a Contract was entered into between The Board of County Commissioners (“Board”) and Heritage Land Services (“Consultant”) for Real Estate Acquisition Services for the project known as S. Old State Road, DEL-CR10-0.90 (“Project”); and

WHEREAS, since that time, the County Engineer has identified additional parcels required for the Project, requiring additional work to be performed by Consultant; and

Whereas, the County Engineer is requesting approval of Modification #1 of said Contract to cover said additional work;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that the following Modification #1 to the Real Estate Acquisition Services Agreement with Heritage Land Services is hereby approved:

**DELAWARE COUNTY OHIO
REAL ESTATE ACQUISITION SERVICES AGREEMENT
S. Old State Road, DEL-CR10-0.90
CONTRACT MODIFICATION #1**

Section 1-Parties to the Agreement

This Agreement is made and entered into this 7th day of March, 2016 by and between the Delaware County Board of Commissioners, Delaware County, Ohio ("County"), and the firm of Heritage Land Services, 635 Brookside Boulevard, Westerville, Ohio 43081 ("Consultant").

Section 2-Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for performance of the Work performed under this Agreement. The Administrator shall have the right to issue Notice to Proceed, Notice to Suspend or Notice to Resume Work under this Agreement within the dates to which this Agreement is effective and shall have general supervision of the Work.

Section 3-Basic Services of Consultant

The duties of the Consultant shall encompass the following tasks within Delaware County for the project known as S. Old State Road, DEL-CR10-0.90 as outlined in the Consultant's Scope of Services dated February 19, 2015.

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- A. Title Research
- B. Appraisal
- C. Acquisition
- D. Relocation Assistance
- E. Recording of Instruments
- F. Project Management

Section 4 – Payment for Professional Services

- 4.1** *The County agrees to pay the Consultant as compensation for professional services as listed in Section 3, an additional amount as per this contract Modification #1 of \$20,000 (\$12,150 from modified parcels and \$7,850 in “if authorized” acquisitions), such when added to the original contract amount of Four Hundred Sixty-Eight Thousand Seven Hundred Fifty Dollars (\$468,750), results in a **Total Contract Amount of Four Hundred Eighty Eight Thousand, Seven Hundred Fifty dollars and zero cents. (\$488,750)***
- 4.2 The actual cost plus reimbursable expenses as incurred by the Consultant in the performance of the portion of the work outlined in Section 3 of this Agreement, shall not exceed the amount stipulated in Section 4.1 without an amendment to the Agreement duly authorized by the County.
- 4.3 Payment for services performed shall be due and payable monthly, based on the actual time and expenses incurred by the Consultant in the performance of the services on the project.

Section 5 - Payment

- 5.1 Notwithstanding any provision in this contract to the contrary, the maximum obligation of the County under this contract is limited to the amount of \$468,750. Unless the County appropriates and authorizes the expenditure of additional funds pursuant to proper modification of this contract, the Consultant's duties and obligations to perform additional services under this contract shall be considered ended December 31, 2016. Payment of invoices submitted to the County by the Consultant shall be made by the County within thirty (30) days of the date the County receives the invoice. If the maximum obligation of the County provided herein is changed properly, then the new amount will control the continuation of the duties and obligations of the Consultant to perform additional services.
- 5.2 County shall provide all criteria and full information as to County's requirement for the Project; designate a person to act with authority on County's behalf in respect of all aspects of the Consultant's submissions; and give prompt written notice to Consultant whenever County observes or otherwise becomes aware of any defect in the work.

Section 6 - Time of Schedule and Completion

- 6.1 After notification from the County to proceed, the Consultant shall, to the extent possible, schedule activities to meet specific project dates as requested by the County.

Section 7 - Insurance

- 7.1 **General Liability Coverage:** Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 **Workers' Compensation Coverage:** Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 7.5 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements in accordance with Subsection 7.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 - Indemnification

The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a

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result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or part by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

As the County's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Consultant and not against any of the Consultant's employees, officers or directors.

The Consultant's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the work, and the Consultant shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the County, including but not limited to, claims for loss of use, loss of profits and loss of markets.

Section 9-Termination of Agreement

The County reserves the right to terminate this Agreement at any time for reasons identified in this Agreement or for any other reasons, for the convenience of the County. Upon termination of the Agreement, the County will provide written notice to the Consultant to terminate all work at which time the Consultant shall terminate all work associated with this Agreement and submit a final invoice for the portion of the work completed to date. The County shall not be responsible for payment for any work performed after the date of termination.

In the unforeseen event that substantial changes to the scope of work as defined in Section 3 are required during performance of work under this Agreement, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

Upon completion or termination of the Agreement, the Consultant shall provide copies, if requested, to the County of all documents as part of this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed written or electronic work produced exclusively as part of this Agreement. This section does not require unauthorized duplication of copyrighted materials.

Section 12-Change of Key Consultant Staff

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

Section 13-Miscellaneous Terms & Conditions

- 13.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.
- 13.2 Independent Contractor: The Parties acknowledge and agree that contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.
- 13.3 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.4 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.5 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.6 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of

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

- 13.7 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 13.8 Findings for Recovery: Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.9 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

- 13.10 Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 1(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(1)(1) and (J)(l) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

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

**9
RESOLUTION NO. 16-223**

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN RICHARD E. BALE AND PHYLLIS K. BALE AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR DEL-CR106-4.25:

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

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Richard E. Bale and Phyllis K. Bale, Co-Trustees of the Warren E. Bale and Phyllis K. Bale Family Trust Dated July 22, 2010 for the project known as DEL-CR-106-4.25.

Now Therefore Be It Resolved that:

Section 1. The Delaware County Board of Commissioners approve the contract of sale and purchase with Richard E. Bale and Phyllis K. Bale, Co-Trustees of the Warren E. Bale and Phyllis K. Bale Family Trust Dated July 22, 2010 for the project known as DEL-CR-106-4.25 as follows:

CONTRACT OF SALE AND PURCHASE

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VACANT LAND/IMPROVEMENTS

WITNESSETH: On this 7th day of March, 2016, Richard E. Bale and Phyllis K. Bale, Co-Trustees of the Warren E. Bale and Phyllis K. Bale Family Trust Dated July 22, 2010, whose address is 6210 Bale-Kenyon Road, Lewis Center, Ohio 43035, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
10-WD
DEL-CR106-4.25

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

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of **Thirty Thousand, Dollars (\$30,000.00)** which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
 - (A) All title, rights, and interest in and to the PROPERTY; and,
 - (B) For damages to any residual lands of the SELLER; and,
 - (C) For SELLER's covenants herein; and,
 - (D) For expenses related to the relocation of the SELLER, their family, and business; and,
 - (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a fiduciary deed, with fiduciary warranties and the release of dower rights, if any, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.

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8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

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

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.
13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.

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- 16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 18. Purchaser acknowledges that Seller desires to install a new driveway from Bale-Kenyon Road to access the remaining portion of Seller’s property. Purchaser agrees to waive permit fee for approval and installation of the driveway and further agrees to use its best efforts to assist Seller in preparing and filing an application and obtaining approval for the driveway and any curb-cut.

Section 2. The Board approves a Purchase Order and Voucher for the above contract.

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

**10
RESOLUTION NO. 16-224**

IN THE MATTER OF ESTABLISHING A MAINTENANCE BOND AND RETURNING CONSTRUCTION BOND FOR TRAILS END SECTION 2, PHASE B

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

WHEREAS, the roadway construction has been completed for the project known as Trails End Section 2, Phase B (“Project”); and

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

WHEREAS, The Engineer recommends that in accordance with the Owner’s Agreement the Maintenance Bond be set at **\$45,610** (10% of the original construction estimate) and the project be placed on the required one year maintenance period; and

WHEREAS Edwards Land Development Company (“Owner”) has provided a Maintenance Bond in the amount of \$45,610 as surety to cover the one year maintenance period; and

WHEREAS, The Engineer requests permission to return the Letter of Credit being held as construction surety for the Project to the Owner.

Now Therefore Be It Resolved that:

Section 1. The Delaware County Board of Commissioners (Board) accepts the Maintenance Bond in the amount of \$45,610 for the Project and place the Project on the required one year maintenance period.

Section 2. The Board approves the return of the Letter of Credit being held as construction surety for the Project to the Owner.

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

**11
RESOLUTION NO. 16-225**

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR HARVEST POINT:

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

Whereas, Crown Ridge Investments LLC has submitted the Plat of Subdivision (“Plat”) for Harvest Point, including related development plans (“Plans”) and requests approval thereof by the Board of Commissioners of Delaware County; and

Whereas, the Liberty Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on September 16, 2015; and

Whereas, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on September 24, 2015; and

Whereas, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the

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Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on January 27, 2016; and

Whereas, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on January 28, 2016; and

Whereas, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on February 29, 2016.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for Harvest Point.

Harvest Point:

Situated in the State of Ohio, County of Delaware, Township of Liberty and in Farm Lot 30, Quarter Township 2, Township 3, Range 19, United States Military Lands, containing 35.137 acres of land, more or less, said 33.137 acres being all of that tract of land conveyed to Crown Ridge Investments LLC by deed of record in Official Record 254, Page 1226, Recorder’s Office, Delaware County, Ohio. Cost \$114.

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

**12
RESOLUTION NO. 16-226**

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

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

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

Now Therefore Be It Resolved, that the following permits are hereby approved by The Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U16-033	Frontier	Sawmill Parkway @ Ford Road	Bury cable in ROW
U16-034	AT&T	Green Meadows Dr./E. Orange Road	Relocate existing manholes
U16-035	Time Warner Cable	W. Powell Road	Bury cable in ROW
U16-036	WOW	S. Old State Road	Directional Bore
U16-037	AEP	Bean Oller Rd @ Sawmill Parkway	Relocate Utilities
U16-038	AEP	Bunty Station @ Sawmill Parkway	Relocate Utilities

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

**13
RESOLUTION NO. 16-227**

IN THE MATTER OF APPROVING THE SANITARY MAIN IMPROVEMENT PLANS FOR MCDONALD’S:

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

Whereas, the Director of Environmental Services recommends sanitary sewer main improvement plans for McDonald’s for submittal to the Ohio EPA for their approval.

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer main improvements plans for McDonald’s for submittal to the Ohio EPA for their approval.

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

**14
ADMINISTRATOR REPORTS
Si Kille, Acting County Administrator/Director of Fiscal Services
-No reports**

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15**COMMISSIONERS' COMMITTEES REPORTS****Commissioner Benton**

- Congrats to the Ohio Wesleyan Men's basketball team for proceeding to the Sweet Sixteen in Illinois
- Will be attending the Finance Authority's meeting tomorrow night
- Will be going on a tour of the Delaware County Jail this week

Commissioner Merrell

- Karla Jacobs sent an email to remind everyone that Dispatcher's Week was coming up. Will be contacting Patrick to see what the commissioners can provide for a lunch one of those days.

Commissioner Lewis

- No reports

16**RESOLUTION NO. 16-228**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF
EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL;
PENDING OR IMMINENT LIGATION:**

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn into Executive Session at 9:47 AM.

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

RESOLUTION NO. 16-229**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn out of Executive Session at 10:07 AM.

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

17**OTHER BUSINESS****18****10:07 AM RECESS/ 2:04 PM RECONVENE****19****RESOLUTION NO. 16-230**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PENDING OR IMMINENT
LIGATION:**

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn into Executive Session at 2:04 PM.

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

*Mr. Benton was absent due to a previous engagement.

RESOLUTION NO. 16-231**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to adjourn out of Executive Session at 4:00 PM.

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

There being no further business, the meeting adjourned.

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Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners