



COMMISSIONERS JOURNAL NO. 66 - DELAWARE COUNTY  
 MINUTES FROM REGULAR MEETING HELD FEBRUARY 13, 2017

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**RESOLUTION NO. 17-138**

**IN THE MATTER OF ACCEPTING AND APPROVING THE DELAWARE COUNTY SHERIFF’S OFFICE TRANSPORT REPORT FOR THE MONTH OF JANUARY 2017:**

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

WHEREAS, section 325.07 of the Revised Code requires the County Sheriff to submit monthly expense reports to the Board of County Commissioners; and

WHEREAS, the Delaware County Sheriff has submitted a monthly report for January 2017;

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

Section 1. The Board hereby accepts and approves the Delaware County Sheriff’s Office Transport Report for the month of January 2017.

Section 2. The Board hereby allows the expenses contained in the monthly report.

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

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

6

**RESOLUTION NO. 17-139**

**IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT FOR THE PROJECT KNOWN AS DEL CR 10-0.90:**

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

**DEL CR 10-0.90 S. Old State Road Improvements  
 Bid Opening of January 24, 2017**

Whereas, as the result of the above referenced bid opening, the Engineer recommends that a bid award be made to Kenmore Construction Company, Inc., the low bidder for the project; and

Whereas, all necessary documentation for this approval has been received; and

Whereas, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and Kenmore Construction Company, Inc. for DEL CR 10-0.90;

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

**CONTRACT**

THIS AGREEMENT is made this 13<sup>th</sup> day of February, 2017 by and between **Kenmore Construction Company, Inc., 700 Home Avenue, Akron, OH 44310** hereinafter called the “Contractor” and the Delaware County Commissioners, hereinafter called the “Owner”.

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

**ARTICLE 1. Statement of Work**

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named “**DEL-CR 10-0.90, S. Old State Road Improvements**”, and required supplemental work for the project all in strict accordance with the Contract Documents.

**ARTICLE 2. The Contract Price**

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed **Fifteen Million Forty Nine Thousand Four Hundred Thirty Dollars and Sixty-Four Cents. (\$15,049,430.64)**, subject to additions and deductions as provided in the Contract Documents.

**ARTICLE 3. Contract**

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The executed Contract Documents shall consist of the following:

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

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

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

**7**  
**RESOLUTION NO. 17-140**

**IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2017 ASPHALT MATERIALS:**

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

Whereas, the Delaware County Engineer recommends and approves the Bid Specifications and the Bid Opening Date and Time for 2017 Asphalt Materials;

Now Therefore Be It Resolved, that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for 2017 Asphalt Materials

**Public Notice  
Advertisement for Bids**

Bids shall be submitted electronically through the [www.bidexpress.com](http://www.bidexpress.com) webservice until 10:00 am on Tuesday, March 14, 2017, at which time they will be publicly received and read aloud, for the project known as:

**2017 Asphalt Materials  
Supply Contract**

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from [www.bidexpress.com](http://www.bidexpress.com). All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at [www.co.delaware.oh.us](http://www.co.delaware.oh.us) and may be accessed by selecting "Bids and Notices"

The Owner requires that all work associated with the project be completed before December 31, 2017. The estimated commencement of work date is February 6, 2017.

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 Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates: February 24, 2017

**SPECIFICATIONS  
2017 Asphalt Materials  
Supply Contract  
Delaware County, Ohio**

**GENERAL**

This contract is an agreement to furnish the materials listed in the bid blank at stated unit prices when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer

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(collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to furnish any materials ordered under this contract promptly as requested by the Owner. Failure to furnish such materials within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

**COOPERATIVE PURCHASING PROGRAM**

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- All political subdivisions within Delaware County
- Delaware County Preservations Parks District
- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

**NON-EXCLUSIVE AWARD**

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

**TERM OF CONTRACT**

This contract shall be in effect from March 27, 2017 to December 31, 2017. The County reserves the right to cancel the contract at any time, in the best interest of the County.

**MATERIAL SPECIFICATIONS**

2016 ODOT Construction and Material Specifications (CMS). 441 asphalt concrete materials shall be produced from a Job Mix Formula (JMF) approved by the County.

Cutback Asphalts (702.02):	MC-30 (medium curing cutback asphalt)
Asphalt Emulsions (702.04):	RS-2 (rapid setting emulsion) RS-2P (polymer modified rapid setting emulsion) CRS-2 (cationic rapid setting emulsion) CRS-2P (cationic, polymer modified rapid setting emulsion) SS-1 (slow setting asphalt emulsion) SS-1H (slow setting asphalt emulsion, hard pen)
Asphalt Concrete Base -HMA (301.02, 302.02):	301 Asphalt Concrete Base 302 Asphalt Concrete Base
Asphalt Concrete-HMA (441):	Type 1 Surface Mix Type 1 Intermediate Mix Type 2 Intermediate Mix

**ORDERS AND DELIVERY**

Delivery of liquid asphalt products, if ordered FOB Job Site, shall be by insulated transport trucks (5000 gallon minimum) to any designated location in Delaware County, Ohio. Transports shall arrive at times designated by the County. Failure to provide proper delivery shall be cause for the County to make the purchase order from the next lower bidder and to consider such failures in the award of future bids under Lowest and Best considerations.

Bid prices shall include a minimum 1-hour free unloading time (laytime) for liquid asphalts and HMA materials, or the time required by the Bidder to unload, whichever is greater. Provide demurrage rates per hour on the bid blanks. Unloading time shall start upon arrival at the unloading point.

No cancellation fees will be paid by the County for any loading, unloading or travel time due to rain or wet weather. The County will make all reasonable efforts to cancel orders in a timely manner.

**LIQUID ASPHALTS**

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The County performs chip sealing at various locations throughout Delaware County and operates with a portable 7000 gallon liquid asphalt storage tank located by the County at the delivery point. When the County is chip sealing at full operation, orders are placed by 4:00 p.m. the day preceding delivery. Delivery of the first 6000+/- gallon load may be made at any time prior to 7:00 a.m. on the delivery day and placed in the temporary storage tank. Delivery of the second 7000+/- gallon load will typically occur at approximately 11:00 a.m. unless canceled due to weather conditions.

**ASPHALT CONCRETE MATERIALS**

The County performs spot paving at various locations throughout Delaware County. Asphalt delivered to the site shall be unloaded as directed by the County representative.

**MISCELLANEOUS TERMS AND CONDITIONS**

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.

Prohibited Interests: Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder 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.

Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, 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.

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.

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.

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.

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

Independent Contractor: The Contractor acknowledge and agrees 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 Contractor and Delaware County. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor shall certify 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.**

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

**8**  
**RESOLUTION NO. 17-141**

**IN THE MATTER OF ESTABLISHING A MAINTENANCE BONDS FOR VINMAR VILLAGE SECTION 2:**

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

WHEREAS, the roadway construction has been completed for the project known as Vinmar Village Section 2 ("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

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period; and

WHEREAS, The Engineer recommends that in accordance with the Owner's Agreement, the Maintenance Bond be set at \$123,860 (10% of the original construction estimate) and the project be placed on the required one year maintenance period; and

WHEREAS, Vinnar Investment Limited ("Owner") has provided a Maintenance Bond in the amount of \$123,860 as surety to cover the one year maintenance period.

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners (Board) accepts the Maintenance Bond in the amount of \$123,860 for the Project and places the Project on the required one year maintenance period.

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

**9**

**RESOLUTION NO. 17-142**

**IN THE MATTER OF APPROVING OWNER'S AGREEMENT FOR GLENMEAD SECTION 1 PHASE A:**

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

Whereas, The Engineer recommends approving the Owner's Agreement for Glenmead Section 1 Phase A.

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Owner's Agreement for Glenmead Section 1 Phase A.

**OWNER'S AGREEMENT**  
**PROJECT NUMBER: 13023**

**THIS AGREEMENT**, executed on this 13<sup>th</sup> day of February, 2017 between **ROMANELLI AND HUGHES**, hereinafter called "**OWNER**" and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **GLENMEAD SECTION 1 PHASE A**, further identified as Project Number 13023 is governed by the following considerations to wit:

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

**OPTIONS:**

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

**OWNER** hereby elects to use Option 2 for this project.

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

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

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

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

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **TWENTY-SEVEN THOUSAND DOLLARS (\$27,000)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

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

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

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

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

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

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

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

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

**10  
RESOLUTION NO. 17-143**

**IN THE MATTER OF APPROVING A DRAINAGE MAINTENANCE PETITION FOR GREEN LAWN SPECIALIST AND GLENMEAD & MCKENZIE DITCH:**

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

**Green Lawn Specialists:**

WHEREAS, on January 23, 2017, a Drainage Maintenance Petition for Green Lawn Specialists was filed with the Board of Commissioners of Delaware County (the “Board”), and

WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Green Lawn Specialists located off of 774 Peachblow Road in Berlin Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$10,441.37 and a detailed cost estimate is attached. The drainage

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improvements are being constructed for the benefit of the lot(s) being created in the subject site. The developed area of 5.04 acres will receive benefits (costs) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$2,071.70 per lot. An annual maintenance fee equal to 2% of this basis (\$41.43) will be collected for each lot. It is understood that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year's assessment for all of the lots in the amount of \$41.43 has been paid to Delaware County.

**Glenmead & McKenzie Ditch**

WHEREAS, on January 23, 2017, a Ditch Maintenance Petition for Glenmead & McKenzie Ditch was filed with the Board of Commissioners of Delaware County (the "Board"), and

WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Glenmead & McKenzie Ditch located off of Glenmead Drive in Belin Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$888,245.11 and a detailed cost estimates are attached. The drainage improvements are being constructed for the benefit of the lots being created in this subdivision. 65 lots are created in these plats and each lot received an equal share of the benefit (cost) of the project. The basis for calculating the assessment for each lot is therefore \$13,665.31 per lot. An annual maintenance fee equal to 2% of this basis (\$271.31) will be collected for each lot. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year's assessment for Section 1 Phase 1 lots (9) in the amount of \$2,459.79 has been paid to Delaware County.

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

**11**

**RESOLUTION NO. 17-144**

**IN THE MATTER OF APPROVING A DRAINAGE EASEMENT VACATION FOR THE VILLAGE OF BALE KENYON:**

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

Whereas, the Delaware County Engineer has received a request from Rowland Giller III, President of The Village at Bale Kenyon LLC, owner of premises as recorded in Official Records Volume 633, Page 261 of the Records Office, Delaware County, Ohio, Orange Township, commonly known as 7264 Bale Kenyon Road, Delaware, Ohio 43015, to vacate a portion of the original drainage easement as recorded in Official Records Volume 1268, Page 1924 of the Records Office; and

Whereas, the Delaware County Engineer has determined that the portion of the easement as described below is no longer required, that vacating the portion of the easement as described below will allow the owner to develop the property without encroaching into the Drainage Easement, and that the remaining easement, along with a new drainage easement recorded in Official Records Volume 1471, Page 2237 of the Records Office, Delaware County, are of sufficient width to provide the County the ability to properly maintain the existing drainage facilities; and

Whereas, the Delaware County Engineer recommends vacating the portion of the easement as described below and to include a marginal reference on the Easement recorded in Official Records Volume 1268, Page 1924 of the Records Office of this action to vacate this portion of this easement;  
Now, Therefore, Be It Resolved, that the Delaware County Board of Commissioners approves the Drainage Easement Vacation for premises as recorded in Official Records Volume 633, Page 261 of the Records Office,



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Delaware County, Ohio, being a portion of the drainage easement recorded in Official Records Volume 1268, Page 1924 and described as follows:

**Description of a 0.017 Acre and 0.001 Acre  
Drainage Easement Vacation**

**0.001 ACRES DESCRIPTION**

Situate in the State of Ohio, County of Delaware, Township of Orange, lying in Farm Lot 6, Section 4, Township 3, Range 18, United States Military Lands and being a portion of an existing Drainage Easement of record in deed book 1268 page 1924-1938, all records herein are from the Recorder's Office, Delaware County, Ohio. Said Drainage Easement Vacation being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point located at the intersection of the easterly right-of-way line of Interstate 71 and the southerly line of a 141.75 acre tract conveyed to Marjorie Mae McCammon by deed of record in deed book 661, page 112; Thence South 86°16'49" East, a distance of 1004.59 feet, along the southerly line of said 141.75 acre tract, to a point; Thence South 03°43'11" West, a distance of 120.74 feet across an original 53.623 acre tract conveyed to The Village at Bale Kenyon, LLC., by deed of record in Official Record 633, Page 261, to a point on said existing ditch maintenance easement, and being the **TRUE POINT OF BEGINNING**;

Thence with the perimeter of said sanitary sewer easement the following courses: South 11°18'53" West, a distance of 44.28 feet, to a point; North 8°59'02" East, a distance of 38.46 feet, to a point; North 26°18'05" East, a distance of 6.05 feet to the **TRUE POINT OF BEGINNING**, containing 0.001 acres, more or less.

**0.017 ACRES DESCRIPTION**

Situate in the State of Ohio, County of Delaware, Township of Orange, lying in Farm Lot 6, Section 4, Township 3, Range 18, United States Military Lands and being a portion of an existing Drainage Easement of record in deed book 1268 page 1924-1938, all records herein are from the Recorder's Office, Delaware County, Ohio. Said Drainage Easement Vacation being more particularly described as follows:

**BEGINNING FOR REFERENCE**, at a point located at the intersection of the easterly right-of-way line of Interstate 71 and the southerly line of a 141.75 acre tract conveyed to Marjorie Mae McCammon by deed of record in deed book 661, page 112; Thence South 86°16'49" East, a distance of 945.51 feet, along the southerly line of said 141.75 acre tract, to a point; Thence South 03°43'11" West, a distance of 148.09 feet across an original 53.623 acre tract conveyed to The Village at Bale Kenyon, LLC., by deed of record in Official Record 633, Page 261, to a point on said existing ditch maintenance easement, and being the **TRUE POINT OF BEGINNING**;

Thence with the perimeter of said sanitary sewer easement the following courses: North 79°07'06" West, a distance of 75.84 feet, to a point; North 71°07'01" West, a distance of 12.85 feet, to a point; North 61°26'08" West, a distance of 53.83 feet to a point; South 71°43'42" East, a distance of 141.02 feet to the **TRUE POINT OF BEGINNING**, containing 0.017 acres, more or less.

The bearings shown above are based on the southerly line of Farm Lot 2 as being South 78°56'52" West as shown in Deed Book 1071, Page 474, in the Delaware County Recorder's Office.

CIVIL & ENVIRONMENTAL CONSULTANTS, INC. Jeffrey A. Miller Registered Surveyor No. 7211

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

**12**

**RESOLUTION NO. 17-145**

**IN THE MATTER OF CONVEYING RIGHT OF WAY PURCHASED FOR THE DEL-CR124-1.88 IMPROVEMENTS TO THE OHIO DEPARTMENT OF TRANSPORTATION:**

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

WHEREAS, land was purchased by Delaware County for the improvement of State Route 257 and Home Road (DEL-CR124-1.88); and,

WHEREAS, the Ohio Department of Transportation (ODOT) requests Delaware County convey to ODOT any parcels of right of way obtained for construction and maintenance of State Route 257;

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

Section 1. The County Administrator is authorized to execute Quit Claim Deeds conveying the following parcels to ODOT, as further described in the right of way plans for DEL-CR124-1.88 as recorded in the Delaware County Recorder's Office, Book 1081, Page 2185:

PARCEL	PROJECT/PARCEL ID	PRIOR INSTRUMENT REF #
(recorded in Delaware Co. Recorder's Office)		
1-WD1/1-WD2/1-WDV1,1-WDV2	DEL-CR124-1.88 PID 83217	BK 1225, PG 1315

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500-310-01-002-000		
2-WD/ 2-WDV	DEL-CR124-1.88 PID 83217	BK 1169, PG 435
320-140-01-006-000		
5-WD/5-WDV1/5-WDV2	DEL-CR124-1.88 PID 83217	BK 1187, PG 783
320-140-02-001-000		
7-WD	DEL-CR124-1.88 PID 83217	BK 1277, PG 2421
320-140-01-007-000		
8-WD	DEL-CR124-1.88 PID 83217	BK 1161, PG 957
320-140-01-008-000		
9-WD	DEL-CR124-1.88 PID 83217	BK 1184, PG 2117
320-140-01-009-000		
10-WD	DEL-CR124-1.88 PID 83217	BK1184 ,PG 2117
320-140-01-010-000		
11-WD	DEL-CR124-1.88 PID 83217	BK 1213, PG 1509
320-110-02-054-000		
12-WD	DEL-CR124-1.88 PID 83217	BK 1177, PG 1031
320-110-02-053-000		

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

**13**

**RESOLUTION NO. 17-146**

**IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO KLONDIKE ROAD AND APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATE FOR DEL-TR149-2.57:**

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

WHEREAS, except as provided in section 5501.49 of the Revised Code, the board of county commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state, county, and improved roads; and

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 existing steel multi-plate culvert/bridge structure on Klondike Road carrying Steel Cryder Ditch, which is a bridge maintained by Delaware County, requires emergency replacement due to damage resulting from flooding in June 2016 and recommends proceeding with an improvement to replace the structure; and

WHEREAS, the County Engineer has prepared plans and specifications and estimates the cost to construct the improvement to be \$640,000.00; and

WHEREAS, the County Engineer has obtained a commitment of emergency funding from the Ohio Public Works Commission to pay for up to \$297,000 of the replacement cost of the structure;

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

Section 1. The public convenience and welfare require replacement of the existing steel multi-plate culvert/bridge structure on Klondike Road carrying Steel Cryder ditch, and the improvement known as DEL-TR149-2.57 is hereby initiated for such purpose.

Section 2. The cost of the improvement shall be paid from any funds appropriated for road and bridge construction, and no assessments shall be made to pay for the improvement.

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Section 3. This resolution shall serve as the Board's commitment to proceed with the Improvement, and Commissioner Benton is authorized to sign any acknowledgement on behalf of the Board required by the Ohio Public Works Commission to affirm the County's commitment to proceed with the Improvement.

Section 4. The plans, specifications and estimates for said improvement are hereby approved.

Section 5. The County Engineer is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Public Notice:

**Public Notice  
Advertisement for Bids**

Bids shall be submitted electronically through the [www.bidexpress.com](http://www.bidexpress.com) webservice until 10:00 am on Tuesday, March 14, 2017, at which time they will be publicly received and read aloud, for the project known as:

**DEL-TR 149-02.57  
Klondike Road Bridge Replacement Project**

All proposals shall be submitted electrically through the web service [www.bidexpress.com](http://www.bidexpress.com). The 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.

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from [www.bidexpress.com](http://www.bidexpress.com). All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at [www.co.delaware.oh.us](http://www.co.delaware.oh.us) and may be accessed by selecting "Bids and Notices"

The Owner requires that all work associated with the project be completed before June 30, 2017. The estimated commencement of work date is March 27, 2017.

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 Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates: February 24, 2017

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

**14  
RESOLUTION NO. 17-147**

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

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

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

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

Permit #	Applicant	Location	Type of Work
U17-013	Charter Communications	Woodtown Road	Directional Bore

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

**15  
RESOLUTION NO. 17-148**

**RESOLUTION OF NECESSITY FOR PURCHASE OR LEASE OF AUTOMOBILES FOR THE USE OF THE COUNTY SHERIFF OR HIS EMPLOYEES:**

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

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WHEREAS, pursuant to section 307.41 of the Revised Code, the Board of Commissioners of Delaware County, Ohio (the "Board") may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, the Board has before it a request from the Sheriff's Office to expend county monies for the purchase of new cruisers; and

WHEREAS, the cruisers are available for purchase through the State of Ohio's cooperative purchasing program (the "Program"); and

WHEREAS, pursuant to section 125.04(C) of the Revised Code, the Board may purchase supplies from another party instead of through participation in Program contracts if the Board can purchase those supplies or services from the other party upon equivalent terms, conditions, and specification but at a lower price than it can through the Program contract; and

WHEREAS, the vehicles are available from another party, Statewide Ford Lincoln Mercury, upon equivalent terms, conditions, and specifications but at a lower price than through the Program contract;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. The Board hereby declares that it is necessary to expend county monies for the purchase of new automobiles to be used by the County Sheriff or his employees for the following reasons: (1) existing cruisers have reached the end of their useful service lives; (2) new cruisers are necessary to provide safe and reliable transportation for the County Sheriff and his employees; and (3) new cruisers will ensure optimal service, safety, and security for the citizens of Delaware County.

Section 2. The Board hereby authorizes the purchase of seven (7) 2017 Ford Utility Police Interceptors at a cost of \$34,075.00 each from Statewide Ford Lincoln Mercury, upon the equivalent terms, conditions, and specifications of State of Ohio STS Contract #RS900917.

Section 3. The Board hereby authorizes the Sheriff's Office to initiate the necessary purchase order(s) to one or more approved vendors and hereby approves the purchase order(s) from fund number 41711436-5450.

Section 4. The Clerk of the Board is hereby directed to certify a copy of this Resolution to the County Sheriff and the County Auditor.

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

**16**  
**RESOLUTION NO. 17-149**

**IN THE MATTER OF AUTHORIZING THE ACCEPTANCE AND AWARDED OF THE BID AND APPROVING THE CONTRACT SUBMITTED BY INSPEC COATINGS, INC. FOR THE PROJECT KNOWN AS THE CDBG PY2016 ACTIVITY 2 ASHLEY WATER TOWER:**

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

WHEREAS, the Board of Delaware County Commissioners approved the Program Year 2016 Small Cities Community Development Block Grant Agreement B-F-16-1AT-1 with the Ohio Development Services Agency per Resolution No. 16-1004; and

WHEREAS, the Delaware County Economic Development Coordinator and OHM Advisors reviewed the bids received, and the bid submitted by Inspec Coatings, Inc., in the amount of \$249,000.00 has been determined to be the lowest and best bid, and

WHEREAS, the Delaware County Economic Development Coordinator and the Village of Ashley jointly recommend approving the acceptance and award of the bid and approving the contract for the project;

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

Section 1. That the Delaware County Board of Commissioners awards the bid to Inspec Coatings, Inc. in the amount of \$249,000.00 for CDBG PY2016 Activity 2 Ashley Water Tower.

Section 2. That this resolution shall take effect and be in force immediately after its passage.

**AGREEMENT**

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This Agreement entered into by and between the Village of Ashley and Delaware County Board of Commissioners, located in Delaware County, Ohio, hereinafter referred to at times as Owner and Inspec Coatings, Inc. hereinafter referred to at all times as "Contractor".

WITNESSETH

WHEREAS, the Owner, Delaware County Board of Commissioners, Ohio, advertised for bids for the CDBG PY2016 Activity II, Ashley Water Tower in accordance with the plans and specifications for said work, prepared by OHM Advisors / Darrell Miller, PE, and on file in the office of the County; and

WHEREAS, certain bids were received by the County pursuant to the aforesaid authority of the Delaware County Board of Commissioners, Ohio, for the aforesaid purpose, and the Owner has determined that the bid by Inspec Coatings, Inc. was the lowest and best bid submitted therefore; and

WHEREAS, it is the mutual desire of the parties to consummate the improvement pursuant to the plans and specifications prepared by OHM Advisors / Darrell Miller, P.E., and on file in the office of the County, the advertisement for bids and/or the proposal, as well as the bid and/or proposal submitted by Inspec Coatings, Inc. for said improvement therefore.

In consideration of the premises, the covenants and promises of the parties hereto which are set forth herein, said parties have agreed and do hereby agree as follows:

1. The Contractor agrees to complete the CDBG PY2016 Activity II, Ashley Water Tower in the Village of Ashley Ohio in accordance with the plans and specifications prepared OHM Advisors / Darrell Miller, P.E. and on file in the office of the Clerk and, the advertisement for bids for said improvement as well as the bid and/or proposal of the Contractor submitted for the improvement.

2. The Owner agrees to pay to the Contractor for the said work in accordance with the terms and conditions specified in the bid or proposal of the Contractor submitted to the Owner. Delaware County Board of Commissioners shall be responsible for \$215,000 from the PY2016 CDGB Allocation Grant and the Village of Ashley is responsible for the remaining \$34,000 subject to any additions or deductions made by change order.

3. It is further mutually agreed that the plans and specifications prepared OHM Advisors / Darrell Miller, P.E., and on file in the office of the Clerk, the advertisement for bids, the bid and/or proposal of the Contractor submitted for the CDBG PY2016 Activity II, Ashley Water Tower in the Village of Ashley the instructions to bidders, the affidavit, performance bond, the Contractor's certificate of having Workman's Compensation insurance with the State of Ohio, the Contractor's proof of property damage and liability insurance in a suitable amount are incorporated, and by reference hereto, made a part of this agreement as though fully rewritten herein.

4. It is further mutually agreed by and between the parties hereto that no escrow account for the CDBG PY2016 Activity II, Ashley Water Tower in the Village of Ashley, Ohio, will be established pursuant to Sections 153.13, 153.14, and 153.63 of the Ohio Revised Code nor shall any interest be paid on any retainage.

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

**17**

**RESOLUTION NO. 17- 150**

**RESOLUTION OF NECESSITY FOR PURCHASE OR LEASE OF AUTOMOBILE FOR THE USE OF THE DELAWARE COUNTY FACILITIES MAINTENANCE:**

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

WHEREAS, pursuant to section 307.41 of the Revised Code, the Board of Commissioners of Delaware County, Ohio (the "Board") may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees; and

WHEREAS, the Board has before it a request from the Director of Facilities to expend county monies for the purchase of a new automobile; and

WHEREAS, the automobile is available for purchase through the State of Ohio's cooperative purchasing program (the "Program");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. The Board hereby declares that it is necessary to expend county monies for the purchase of a new automobile to be used by the Delaware County Facilities Maintenance office for the following reasons: (1) existing automobile has reached the end of the useful service life; (2) a new automobile is necessary to provide safe and reliable transportation for the Facilities Maintenance employees.

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Section 2. The Board hereby approves the purchase of one (1) 2017 Ford Transit Cargo vehicle at a cost of \$25,147.00 per vehicle from Middletown Ford and declares that the purchase of said vehicle shall be in accordance with the State of Ohio’s cooperative purchasing program, pursuant to the contract and terms and conditions set forth in Contract # RS901017, which is, by this reference, fully incorporated herein and of which the purchase orders approved herein shall be made a part.

Section 3. The Board hereby authorizes the Director of Facilities to initiate the necessary purchase order(s) to one or more approved vendors and hereby approves the purchase order(s) from fund number 41711436-5450.

Section 4. The Clerk of the Board is hereby directed to certify a copy of this Resolution to the Director of Facilities and the County Auditor.

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

**19**

**ADMINISTRATOR REPORTS**

Ferzan Ahmed, County Administrator

- Will be speaking at the Delaware Rotary today on the county departments
- 120 student from Shanahan Middle School come to visit the EMS, Sheriff, EMA and Emergency Communications Departments on Friday. Well done event by Director Sean Miller and Sandy Mackey.

**20**

**COMMISSIONERS’ COMMITTEES REPORTS**

Commissioner Lewis

- No reports

Commissioner Merrell

- Received an email from Auditor Kaitsa from Coshocton County stating their position on the Medicade/Medicare Sales Tax. Thinks this Board should also do something similar
- Ferzan will be the guest speaker at the Delaware Rotary today

Commissioner Benton

- The DKMM board meeting is tomorrow
- There is an active shooter training on Wednesday

**21**

**RESOLUTION NO. 17-151**

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn into Executive Session at 9:58 AM.

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

**RESOLUTION NO. 17-152**

**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 10:07 AM.

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

**22**

**OTHER BUSINESS**

**RECESS 10:08/RECONVENE 1:32 PM**

**18**

**RESOLUTION NO. 17-153**

**IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN MP2 ENERGY NE LLC AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR ELECTRICITY GENERATION:**

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

Whereas, the Director of Facilities Department recommends the agreement with MP2 Energy NE LLC for Electricity Generation;

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Therefore, be it resolved, that the Delaware County Board of Commissioners approve the agreement with MP2 Energy NE LLC for Electricity Generation:

**MP2 ENERGY NE LLC**

This Master Retail Energy Sales Agreement (this "MSA") is entered into effective as of February 13, 2017 (the "Effective Date") by and between MP2 ENERGY NE LLC ("MP2"), a Texas limited liability company, and Delaware County Board of Commissioners ("Customer"). MP2 and Customer are also referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms are as defined in Section 1.20 or elsewhere in this MSA.

**1.1 Form and Construction of Agreement.** MP2 shall sell and Customer shall purchase and receive Energy pursuant to the terms and conditions of this MSA and any applicable transaction confirmation ("TC") entered into by the Parties during the term of this MSA. Any conflict between the terms and conditions of this MSA and a TC shall be resolved in favor of the TC. The MSA, together with any and all TCs, shall form a single, integrated agreement among the Parties (the "Agreement") which shall be in writing and signed by both Parties in order to be valid. This Agreement sets forth the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings among the Parties with respect to the subject matter hereof. This Agreement may only be modified by a written agreement signed by both Parties.

**1.2 Term.** This MSA commences on the Effective Date and continues month to month thereafter, unless terminated in writing by MP2 or Customer, however, this MSA shall continue to apply until i) all TCs are completed or terminated; ii) final invoices are issued; and iii) all amounts owed by Customer are paid in full. The term of a TC shall begin for each of Customer's Facility Account Numbers ("FANS") on the respective Utility Transfer Date occurring on or after the Start Date and will continue for the Term as specified on the TC. Upon the end of the term of a TC, unless Customer and MP2 have executed a new TC, Customer shall continue to purchase and receive the Energy delivered to Customer's FANS at the Hold-over Rate, until either Party terminates this Agreement and Customer either a) switches to a new energy supplier, or b) MP2 removes Customer and its FANS from MP2's service in accordance with the applicable Electric Distribution Company's ("EDC") tariff, rules and procedures. All obligations regarding payment of Taxes, limitations of liability and waivers, shall survive termination indefinitely, and confidentiality obligations survive termination for two (2) years.

**1.3 Delivery Point(s), Title, Risk of Loss.** The Delivery Point is defined as FANS that are served pursuant to a TC. Title, liability and risk of loss associated with the Energy purchased and sold hereunder shall pass from MP2 to Customer at the Delivery Point(s).

**1.4 Credit** If a Customer's payment history, credit or financial condition becomes unsatisfactory as determined by MP2 in a commercially reasonable manner, MP2 may request that Customer post Performance Assurance. In no event will the amount of the Performance Assurance be more than three (3) times Customer's estimated largest monthly invoice amount.

**1.5 Billing and Payment.** Customer may elect to receive a single monthly invoice, a Utility Consolidated Bill ("UCB"), where Customer's EDC will invoice Customer monthly for a) the Energy supplied by MP2 under this Agreement, b) the EDC Delivery Charges, and c) any applicable taxes. If Customer elects UCB, then payment will be made directly to the EDC by the date specified on the UCB invoice. If Customer elects to instead receive both a monthly invoice from MP2 for Energy and a separate monthly invoice from the EDC for Delivery charges and taxes, known as a Dual Bill Option ("DBO"), then following each meter read date, MP2 will deliver to Customer an invoice setting forth the charges due for Energy. In the event that MP2 does not receive usage data from the EDC, MP2 may reasonably estimate Customer's use and such estimate shall be adjusted when the actual consumption is received from the EDC. The invoice will be sent via email or mail to the address provided in Section 1.21 of this Agreement. The day the invoice is sent is hereafter referred to as the "Sent Date." Payment shall be made by ACH, wire transfer, credit card, or check within twenty-one (21) days of the Sent Date (the "Payment Term"). Overdue bills will be assessed a Late Payment Charge and will thereafter accrue interest at the rate of 1% (one percent) per month until the amount is paid. If any amount of an invoice is disputed in good faith, the amount in dispute may be withheld until the dispute is resolved. If the amount disputed is determined to be correct, or if a different amount is determined to be correct, it shall be paid (plus interest accrued under the above calculation method) within five (5) days of such determination. If Customer claims exemption from Taxes, Customer will provide a certificate of exemption. MP2 is responsible for Taxes arising prior to the Delivery Point and Customer is responsible for Taxes arising at and after the Delivery Point.

**1.6 Force Majeure.** If a Party is unable because of Force Majeure to perform its obligations and that Party gives Notice of the event to the other Party as soon as practicable after its occurrence, then the obligations of the Party affected by the event (other than payment for Energy received and performance of other transactions or other obligations incurred before the Force Majeure event) will be suspended for the duration of the Force Majeure event.

**1.7 Events of Default.** An "Event of Default" by a Party (the "Defaulting Party") means any one of the following: (a) the failure by the Defaulting Party to make, when due, any payment required under this Agreement and such failure is not remedied within five (5) Business Days after written notice is given to the Defaulting Party; (b) any assignment or general arrangement for the benefit of creditors made by either Party; or the Bankruptcy or Insolvency of either Party; (c) any unauthorized assignment of a Party's rights or obligations hereunder; (d) failure to provide Performance Assurance pursuant to Section 1.4 of this MSA and such failure is not remedied within five (5) Business Days after

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written notice of such failure is given to the Defaulting Party; or (e) Customer consolidates or merges into or transfers all or substantially all of its assets to another entity and the resulting transferee or surviving entity fails to assume the obligations of such party under this MSA or any applicable TC. If an Event of Default listed in subsection (b) above occurs, the Event of Default will be deemed to have automatically occurred just prior to such event.

**1.8 Remedies Upon an Event of Default or Early Termination.** If an Event of Default occurs, the Non-Defaulting Party shall have the right to: (a) designate a day, no earlier than the day such notice is effective, as an early termination date (the "Early Termination Date"); (b) liquidate and terminate any and all related transactions hereunder; (c) withhold any payments due to the Defaulting Party; and/or (d) immediately suspend performance under this Agreement. In the event the Non-Defaulting Party elects to terminate this Agreement, it shall calculate, in a commercially reasonable manner and in accordance with this Agreement, an Early Termination Payment for this Agreement effective as of the Early Termination Date. The Early Termination Payment shall be due to the Non-Defaulting Party within (5) days of written notice being delivered by the Non-Defaulting Party. The notice shall include the supporting calculation of the Early Termination Payment. The provisions of this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

**1.9 Limitation of Liability.** FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES HEREBY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

**1.10 Representations and Warranties.** As a material inducement to entering into this Agreement, each Party, with respect to itself, represents and warrants to the other Party as of the Effective Date of the Agreement as follows: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (c) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (d) it is not Bankrupt or Insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; (e) any claims of Exemption from Taxes are consistent with the laws and regulations of the applicable taxing authorities, and (f) it fully understands its rights and obligations under this Agreement.

**1.11 Confidentiality.** Unless in response to a request under the Ohio Public Records Act, codified in Section 149.43, Chapter 149, Title 1 of the Ohio Revised Code, neither Party shall disclose, unless authorized in writing by the other Party, the terms of this Agreement except that: a) a Party may disclose the terms of this Agreement to any of its employees and confidential advisors (e.g., attorneys, accountants), who have a need to know the information in order to allow the Party to perform its obligations under this Agreement; and b) MP2 may disclose the terms of this Agreement to Pacific Summit Energy, LLC ("PSE"), MP2's Energy credit supplier.

**1.12 Material Regulatory Changes.** In the event that there is a change in law, administrative regulation, or change in market design, or material change to Customer's Capacity Charge and/or Transmission Charge (collectively a "Material Regulatory Change" or "MRC") imposed by a Utility Regulatory Body or any Governmental Authority, and as a result of the MRC, MP2 incurs material incremental cost in order to maintain the same level, location and/or quantity of services contemplated in this Agreement, then MP2 shall pass through the cost of such MRC, without markup, to Customer.

**1.13 Material Consumption Variance.** If during the Term, Customer's actual consumption increases or decreases from the Contract Quantity shown on a TC by twenty-five percent (25%) or more (a "Material Consumption Variance" or "MCV"), then MP2 may charge Customer for the purchase of, or liquidation of, Energy and related services including transmission and capacity, bought or sold as a result of the MCV.

**1.14 Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the State set forth on the TC, without reference to principles of conflict of laws.

**1.15 Waiver Of Jury Trial.** EACH PARTY HEREBY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**1.16 Severability and Counterparts.** In the event any provision of this Agreement is found to be invalid or unenforceable, such provision shall be invalid and unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision. This Agreement may be executed in multiple counterparts to be construed as one as of the Effective Date.



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**1.17 Assignment.** This Agreement shall be binding upon and shall inure to the benefit of, and may be performed by, the successors and assigns of the Parties, except that, no assignment by either Party shall operate to release the assignor from any of its obligations under this Agreement, unless: (a) the other Party consents in writing to such assignment and releases, the assignor from any of its obligations hereunder (such assignment not to be unreasonably withheld or delayed); or (b) such transfer is incident to a merger or consolidation with, or transfer of all, or substantially all, of the assets of the transferor to another person or entity that shall have the financial capability to assume, and who does assume all of the obligations of the assignor under this Agreement. Customer acknowledges that under some circumstances MP2 may be required to assign MP2's future interests, rights, and obligations in the Agreement to PSE, and Customer hereby consents to any such assignment.

**1.18 Forward Contract.** The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

**1.19 Definitions.** The following definitions shall apply hereunder whether stated in the singular or plural.

**"Bankrupt" or "Bankruptcy"** means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under a Bankrupt, Insolvent, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes Bankrupt or Insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

**"Broker / Aggregator"** means, by definition of the Public Utilities Commission of Ohio ("PUCO"), a Broker to be a person who assumes the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer without taking title to the power supplied, and Aggregators are an entity that contracts with customers to combine the customers' electric load for the purpose of purchasing retail electric generation service on an aggregated basis but does not include a governmental aggregator.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

**"Capacity Charge"** means the product of the total kW demand value for the FANs as determined by the EDC, and the applicable capacity rate with respect to PJM's Locational Reliability charge.

**"Contract Price"** means that "Contract Price" set forth on a TC.

**"Contract Quantity"** means that "Contract Quantity" set forth on a TC.

**"Early Termination Payment"** means:

1) in the case that MP2 is the Defaulting Party the net sum of the positive dollar amount obtained by multiplying (i) Underlying Value minus the Contract Price by (ii) the remaining amount of Contract Quantity that would have been delivered under this Agreement had it not been terminated early less amounts owed for Energy delivered, but not paid plus fees and expenses, including reasonable attorneys' fees incurred by Customer in connection with collecting all amounts due under this Agreement.

2) in the case that Customer is the Defaulting Party the sum of the positive dollar amount obtained by multiplying (i) Contract Price minus the Underlying Value by (ii) the remaining amount of Contract Quantity that would have been delivered under this Agreement had it not been terminated early; plus amounts owed for Energy delivered but not paid plus fees and expenses, including reasonable attorneys' fees incurred by MP2 in connection with collecting all amounts due under this Agreement; or

**"EDC"** means the entity that has control of the transmission and / or distribution system and associated metering that is connected to a FAN.

**"Energy"** means electric energy and related products and services, and includes transmission and capacity in certain markets.

**"Force Majeure"** means an event (a) not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party), (b) not caused by the negligence of the Claiming Party, and (c) which, the claiming Party exercising due diligence, is unable to overcome or for which a Claiming Party is unable to obtain commercially reasonable substitute performance. Force Majeure includes: (a) an event of Force Majeure affecting the local EDC or ISO, (b) a suspension, curtailment, or service interruption by the local EDC or ISO, and (c) acts of terrorism, civil insurrection or war. "Claiming Party" means the Party claiming suspension due to Force Majeure.

**"Governmental Authority"** means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise jurisdiction over the Parties or any transaction contemplated herein.

**"Hold-over Rate"** means that "Hold-over Rate" as set forth on a TC.

**"Insolvent" or "Insolvency"** means with respect to any Party, when such Party shall be unable to pay liabilities as they mature or such entity shall admit in writing its inability to pay its debts generally as they become due.

**"ISO"** means the applicable Independent System Operator as identified on each TC.

**"Late Payment Charge"** means an amount equal to four percent (4%) of the amount that is overdue.

**"Performance Assurance"** means collateral in the form of any of cash, letter(s) of credit, corporate guarantees, or other security reasonably acceptable to the Party in favor of whom Performance Assurance is posted.

**"Regulatory Charges"** means those costs as listed on a TC which are levied by an EDC and taxing authorities and shall be invoiced to Customer on an actual cost basis without any markup.

**"Taxes"** means any and all sales, use, gross receipts, ad valorem, franchise, excise, or any other taxes or similar charges imposed by any Governmental Authority on, or with respect to the Energy or other products sold hereunder, but excluding income taxes imposed on the respective Parties.

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**"Transmission Charge"** means the product of the total kW demand value for the FANs as determined by the EDC, and the applicable transmission rate with respect to PJM's Network Integration Transmission Service charge (NITS).

**"Underlying Value"** means the price a third-party who is active in the Energy market would transact (sell or purchase as applicable) for Energy and related services

**"Utility Regulatory Body"** means an ISO, EDC, State Utility Commission, FERC, CFTC and other similar regulatory bodies.

**"Utility Transfer Date"** means the time and date that the applicable EDC has completed the process necessary to permit MP2 to commence or discontinue providing the services hereunder.

**1.20 Notices.** Notices required or permitted to be given under this Agreement shall be in writing. If Customer gives MP2 a Notice of a breach or termination of this MSA or a TC because of a breach of this Agreement by MP2, Customer shall simultaneously give PSE a copy of such notice by sending it to 24 Waterway Ave., Suite 725, The Woodlands, Texas 77380. Unless directed otherwise by PSE, Customer is directed to make all payments due to MP2 under this Agreement to:

Bank: Wells Fargo Bank N.A., San Francisco  
Account Number: 2325990253  
ABA Routing#: (Wire) 121000248 / (ACH) 111900659

The addresses of the Parties are as follows:

	Customer Notices	
	Contract Issues	Invoicing
Attention:		
E-mail:		
Address:		
City, State, Zip:		
Telephone:		

	MP2 Notices	
	Primary	With a copy to Counsel
Attention:	Chief Operating Officer	Amanda L. Mussalli
E-mail:	contracts@mp2energy.com	amanda@mussallilaw.com
Address:	21 Waterway Ave, Suite 450	2441 High Timbers Drive, Suite 220
City, State, Zip:	The Woodlands, TX 77380	The Woodlands, TX 77380
Telephone:	832-510-1040	281-651-5577

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

**1:30 PM Final Hearing By The Commissioners For The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project**

**23**

**RESOLUTION NO. 17-154**

**1:30PM FINAL HEARING FOR THE LATERAL #2 OF THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to open the hearing at 1:35 PM.

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

**23 Continued**

**RESOLUTION NO. 17-155**

**IN THE MATTER OF APPROVING, FOR A SPECIFIC OCCURRENCE, A SUSPENSION OF RULE 3-SPEAKER REGISTRATION; RULE 4-LIMITATIONS AND RULE 7-PUBLIC COMMENT PROCEDURE FROM THE RULES GOVERNING PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve, for a specific occurrence, a suspension of Rule 3-Speaker Registration; Rule 4-Limitations; Rule 7-Public Comment Procedure from the Rules Governing Public Comment Before The Board Of County Commissioners Of Delaware County, Ohio

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

**23 Continued**

**RESOLUTION NO. 17-156**

**IN THE MATTER OF CLOSING THE PUBLIC HEARING TO ADDRESS THE LATERAL #2 OF**

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**THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

It was moved by Mr. Merrell, seconded by Mrs. Lewis to close the hearing at 3:31 PM.

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

**SCOTT #604 LATERAL #2  
MAIN**

**MAIN**

**RESOLUTION NO. 17-157**

**IN THE MATTER OF FINDING IN FAVOR OF THE IMPROVEMENT AND AFFIRMING THE ORDER FOR THE MAIN PART OF THE LATERAL #2 OF THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

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

Whereas, on June 9, 2015, a Drainage Improvement Petition For The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project was filed with the Board of Commissioners of Delaware County (the "Board"); and

Whereas, the Board on November 19, 2015 with Resolution #15-1395 found in favor of the improvement and directed The Delaware County Engineer To Proceed With Preparation Of Plans, Reports, And Schedules For The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project, and

Whereas, the Board on February 13, 2017, held a final public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for The MAIN PART OF THE Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project; and

Whereas, after hearing testimony from property owners; considering the schedules, plans, and reports filed by the County Engineer; and-considering the cost of location and construction, the compensation for land taken, the effect on land along or in the vicinity of the route of the improvement, the effect on land below the lower terminus of the improvement that may be caused by constructing the improvement, the sufficiency of the outlet, the benefits to the public welfare, and the special benefits to land needing the improvement, the Board is prepared to issue its findings on the proposed improvements.

THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Delaware County, Ohio as follows:

The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the cost of the proposed improvement will be less than the benefits. Accordingly, the Board hereby affirms its order granting the prayer of the petition and approves the maps, profiles, plans, schedules and reports prepared by the Delaware County Engineer, and

This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

**MAIN**

**RESOLUTION NO. 17-158**

**IN THE MATTER OF COMMISSIONERS CONFIRMING THE ASSESSMENTS; APPROVING THE PAYMENT SCHEDULE AND ORDERING THE LETTING OF THE CONTRACTS FOR THE MAIN PART OF THE LATERAL #2 OF THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

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

Whereas, the Board on February 13, 2017, held a final public hearing and with resolution NO. 17- 157 found affirming order for The MAIN PART OF THE Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project; and

Whereas, after hearing testimony from property owners on the assessments for the improvement, the Board is prepared to issue its findings on the assessments.

Therefore, Be It Resolved, by the Board of Commissioners of Delaware County, Ohio as follows:

The Board hereby approves the MAIN PART OF THE Lateral #2 Of The Scott #604 Watershed Drainage

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Improvement Project assessments prepared by the Delaware County Engineer, and

FURTHER BE IT RESOLVED, That once the watershed is confirmed, the Delaware County Engineer’s estimated assessments are hereby approved and confirmed, and the Engineer is ordered to receive bids for the construction of the improvement, and

FURTHER BE IT RESOLVED, The County Engineer is hereby directed to prepare the necessary bid documents and legal advertisements; and

FURTHER BE IT RESOLVED, That the County Engineer be and he is hereby directed to give at least two weeks public notice as required by law of the time when and the place where bids will be received for furnishing any material for the improvement, or for the construction of the improvement, and

FURTHER BE IT RESOLVED, That the Board fixes April 18, 2017 as the date and time for the County Engineer to receive bids for the construction of the improvement, and all bids shall be received at the office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio, and

FURTHER BE IT RESOLVED, That county borrow funds to pay for the improvement, and that eight years shall be the period of time, in semi-annual installments, as taxes are paid, given the owners of land benefited, to pay the assessments that may be made for the improvement, and that interest shall be charged on the installments at the same rate charged to the Commissioners for the borrowing of the money, if after the deadline for the landowners to pay their assessments upfront passes and the total remaining construction cost to be borrowed is less than \$10,000.00 then the County will up front the remaining cost of the Construction and Commissioners will no longer borrow the money.

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

SCOTT #604 LATERAL #2  
LATERALS A, B, C

**LATERALS A, B, C**

**RESOLUTION NO. 17-159**

**IN THE MATTER OF FINDING IN FAVOR OF THE IMPROVEMENT AND AFFIRMING THE ORDER FOR THE LATERALS A, B, AND C OF THE LATERAL #2 OF THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

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

Whereas, on June 9, 2015, a Drainage Improvement Petition For The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project was filed with the Board of Commissioners of Delaware County (the “Board”); and

Whereas, the Board on November 19, 2015 with Resolution #15-1395 found in favor of the improvement and directed The Delaware County Engineer To Proceed With Preparation Of Plans, Reports, And Schedules For The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project, and

Whereas, the Board on February 13, 2017, held a final public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for The LATERALS A, B, AND C Of The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project; and

Whereas, after hearing testimony from property owners; considering the schedules, plans, and reports filed by the County Engineer; and-considering the cost of location and construction, the compensation for land taken, the effect on land along or in the vicinity of the route of the improvement, the effect on land below the lower terminus of the improvement that may be caused by constructing the improvement, the sufficiency of the outlet, the benefits to the public welfare, and the special benefits to land needing the improvement, the Board is prepared to issue its findings on the proposed improvements.

THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Delaware County, Ohio as follows:

The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the cost of the proposed improvement will be less than the benefits. Accordingly, the Board hereby affirms its order granting the prayer of the petition and approves the maps, profiles, plans, schedules and reports prepared by the Delaware County Engineer, and

This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

**LATERALS A, B, C**

**RESOLUTION NO. 17-160**

**IN THE MATTER OF COMMISSIONERS CONFIRMING THE ASSESSMENTS; APPROVING THE PAYMENT SCHEDULE AND ORDERING THE LETTING OF THE CONTRACTS FOR THE LATERALS A, B, AND C OF THE LATERAL #2 OF THE SCOTT #604 WATERSHED DRAINAGE IMPROVEMENT PROJECT:**

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

Whereas, the Board on February 13, 2017, held a final public hearing and with resolution NO. 17-159 found affirming order for The LATERALS A, B, AND C Of The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project; and

Whereas, after hearing testimony from property owners on the assessments for the improvement, the Board is prepared to issue its findings on the assessments.

Therefore, Be It Resolved, by the Board of Commissioners of Delaware County, Ohio as follows:

The Board hereby approves the LATERALS A, B, AND C Of The Lateral #2 Of The Scott #604 Watershed Drainage Improvement Project assessments prepared by the Delaware County Engineer, and

FURTHER BE IT RESOLVED, That once the watershed is confirmed, the Delaware County Engineer's estimated assessments are hereby approved and confirmed, and the Engineer is ordered to receive bids for the construction of the improvement, and

FURTHER BE IT RESOLVED, The County Engineer is hereby directed to prepare the necessary bid documents and legal advertisements; and

FURTHER BE IT RESOLVED, That the County Engineer be and he is hereby directed to give at least two weeks public notice as required by law of the time when and the place where bids will be received for furnishing any material for the improvement, or for the construction of the improvement, and

FURTHER BE IT RESOLVED, That the Board fixes April 18, 2017 as the date and time for the County Engineer to receive bids for the construction of the improvement, and all bids shall be received at the office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio, and

FURTHER BE IT RESOLVED, That county borrow funds to pay for the improvement, and that eight years shall be the period of time, in semi-annual installments, as taxes are paid, given the owners of land benefited, to pay the assessments that may be made for the improvement, and that interest shall be charged on the installments at the same rate charged to the Commissioners for the borrowing of the money, if after the deadline for the landowners to pay their assessments upfront passes and the total remaining construction cost to be borrowed is less than \$10,000.00 then the County will up front the remaining cost of the Construction and Commissioners will no longer borrow the money.

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

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

\_\_\_\_\_  
Barb Lewis

\_\_\_\_\_  
Jeff Benton

\_\_\_\_\_  
Jennifer Walraven, Clerk to the Commissioners