



**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

406 Justice Drive, Lebanon, Ohio 45036

www.co.warren.oh.us

commissioners@co.warren.oh.us

Telephone (513) 695-1250

Facsimile (513) 695-2054

TOM GROSSMANN

SHANNON JONES

DAVID G. YOUNG

GENERAL SESSION AGENDA

November 1, 2022

- #1** **Clerk—General**
- #2** **9:00** **Work Session—Susanne Mason, Director of Grants Administration,
Relative To Termination of Contract**
- #3** **9:05** **Work Session — Neil Tunison, County Engineer, Presentation of Mercy
Health Development Agreement**
- #4** **9:20** **Executive Session—Acquisition of Property**
- #5** **9:30** **Work Session—Budget**

The Board of Commissioners' public meetings can now be streamed live at [Warren County Board of Commissioners - YouTube](#).

APPROVE REQUISITIONS AND AUTHORIZE COUNTY ADMINISTRATOR TO SIGN DOCUMENTS RELATIVE THERETO

BE IT RESOLVED, to approve requisitions as listed in the attached document and authorize Tiffany Zindel, County Administrator, to sign on behalf of this Board of County Commissioners.

moved for adoption of the foregoing resolution, being seconded by . Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this 1st day of November 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

/tao

cc:

Commissioners' file

REQUISITIONS

Department	Vendor Name	Description	Amount
ENG	SOUTHEASTERN EQUIPMENT CO INC	ENG 2023 TRACKHOE W/BUCKETS &	\$ 115,219.00
HUM	LIFESPAN INC	HUM APS GUARDIANSHIP SERVICES	\$ 1,600.00
WAT	RED VALVE COMPANY	SEW KG COARSE BUBBLE MIXING SY	\$ 137,950.00

PO CHANGE ORDER

Department	Vendor Name	Description	Amount
WAT	WARREN COUNTY ENGINEER	KING AVE BRIDGE WATER CONSTRUCTION	\$ 1,032,666.25 DECREASE

11/1/2022 APPROVED:

Tiffany Zindel, County Administrator

CONSENT AGENDA*

November 1, 2022

1. *Approve the minutes of the October 25, 2022, Commissioners' Meeting.*

PERSONNEL

2. *Approve promotion of Zach Thompson from Deputy Dog Warden II to Deputy Dog Warden III*
3. *Approve reclassification and wage increases for multiple employees within OhioMeansJobs Warren County*
4. *Approve reclassification of Matthew Atkins to Service Worker II position in Facilities Management*
5. *Hire Nick Vearil as Water Treatment Plant Technical within W/S Department*
6. *Appoint Matt Fetty, Director of OhioMeansJobs Warren County, as Warren County's Representative on the Warren County Metropolitan Housing Authority to fill the unexpired term of Lauren Cavanaugh*
7. *Approve appointment of Human Services Interim Director Arlen Byrd to the Warren County Family Services Planning Committee*

GENERAL

8. *Acknowledge and accept renewal verification with United Healthcare effective January 1, 2023*
9. *Approve Satisfaction of Mortgage for Karen M. Ball relative to down payment assistance and home repair on behalf of Grants Administration*
10. *Transfer temporary evidence lockers no longer being utilized by the Sheriff's Office to the City of South Lebanon and Deerfield Township*
11. *Approve destruction of equipment from the Warren County Sheriff's Office*
12. *Authorize Juvenile Court Staff to initiate contract negotiations for medical services within the Juvenile Detention Center and Mary Haven Youth Center*
13. *Amend contract with Lifespan Inc. on behalf of Human Services*
14. *Enter into agreement with Agape for Youth, Inc. for reunification services, enhanced visitation services and preservation services for families of Warren County Children Services*
15. *Enter in host agency training agreement with AARP Foundation on behalf of OhioMeansJobs Warren County*
16. *Enter into youth worksite agreement with Little Miami High School on behalf of OhioMeansJobs Warren County*
17. *Declare various items as surplus and authorize disposal through internet auction*
18. *Acknowledge payment of bills*
19. *Acknowledge approval of financial transaction*

FINANCIALS

20. *Approve supplemental appropriations within Local Fiscal Recovery 2211, Road Infrastructure 4451 and Health Insurance 6637*
21. *Approve appropriation adjustments from Commissioners 11011110 into Facilities Management 11011600 and Common Pleas Court 11011223 for payouts*
22. *Approve appropriation adjustments within Domestic Relations 11011230, Juvenile Court 1101240, Board of Elections 1011300, Coroner 11012100, Sheriff 11012200, Telecomm 11012810, Emergency Services 11012850, Human Services 2203, Workforce Investment 2238, Children Services 2273 and Water 5510*

**Please contact the Commissioners' Office at (513) 695-1250 for additional information or questions on any of the items listed on the Consent Agenda*

FOR CONSIDERATION NOT ON CONSENT AGENDA

1. Approve appointment of Gary Hubbs, Chief Building Official, to the Warren County Rehab Board to fill the unexpired term of Lauren Cavanaugh
2. Enter into subrecipient agreement with the Warren County Park Board relative to the Landen Deerfield Park Pond Project and the American Rescue Plan Act—Coronavirus State and Local Fiscal Recovery Funds-\$504,000
3. Enter into subrecipient agreement with the Warren County Park Board relative to the Armco Park Turf Field Project and the American Rescue Plan Act—Coronavirus State and Local Fiscal Recovery Funds-\$800,000
4. Authorize County Engineer to executive Ohio Department of Transportation State Funds Exchange Agreement for the McClure Road Bridge Rehab Project (\$670,000 awarded from Federal Local Bridge Replacement Funds)
5. Authorize changes to the Warren County Healthcare Plan Effective January 1, 2023

APPROVE APPOINTMENT OF GARY HUBBS, CHIEF BUILDING OFFICIAL, TO THE WARREN COUNTY REHAB BOARD TO FILL THE UNEXPIRED TERM OF LAUREN CAVANAUGH DUE TO RESIGNATION

BE IT RESOLVED, to approve the appointment of Gary Hubbs, Chief Building Official, to the Warren County Rehab Board to fill the unexpired term of Lauren Cavanaugh due to resignation; said term to expire December 31, 2022.

M. moved for adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this 1st day of November 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

cc: OGA (file)
Appointments file
Appointees
L. Lander

ENTER INTO A SUBRECIPIENT AGREEMENT WITH WARREN COUNTY PARK DISTRICT RELATIVE TO THE LANDEN DEERFIELD PARK POND PROJECT AND THE AMERICAN RESCUE PLAN ACT – CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

BE IT RESOLVED, to enter into a subrecipient agreement with The Warren County Park District relative to the Landen Deerfield Park Pond Project and the American Rescue Plan Act – Coronavirus State and Local Fiscal Recovery Funds, as attached hereto and made a part hereof; said agreement to be effective upon execution.

M moved for adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this ___ day of ___ 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

/sm

cc: c/a—
OGA (File)

ARPA Agreement
for Landen-
Deerfield Park

-Sus x1210

RECEIVED
AM 9:05
COMMISSIONERS

**AMERICAN RESCUE PLAN – CORONAVIRUS STATE AND LOCAL FISCAL
RECOVERY FUNDS
BENEFICIARY GRANT AGREEMENT
between the
WARREN COUNTY BOARD OF COUNTY COMMISSIONERS
and the
WARREN COUNTY PARK DISTRICT PARK BOARD OF COMMISSIONERS**

THIS GRANT AGREEMENT is made as of the date of the last signature below by and between the Board of County Commissioners of Warren County, Ohio (the “County”), with its principal place of business located at 406 Justice Drive, Lebanon, Ohio 45036 and the Warren County Park District Park Board of Commissioners (the “GRANTEE”), a political subdivision of Ohio, with its principal place of business located at 1267 N. State Route 741, Lebanon, Ohio 45036.

WHEREAS, the County is a local government recipient of funding pursuant to Section 9901 of the American Rescue Plan Act which amended Title VI of the Social Security Act to add section 603 which established the Coronavirus State and Local Fiscal Recovery Fund (hereinafter “ARPA”);

WHEREAS, ARPA funds received by the County may only be used, as follows: (a) to respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; (c) for provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and, (d) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, the County seeks to make expenditures to respond directly to the COVID-19 public health emergency and its negative economic impacts by providing direct assistance to certain government entities in part by making necessary investments in water infrastructure; and

WHEREAS, Grantee owns and operates public park lands with significant stormwater and subsurface water drainage infrastructure projects that are a necessary investment, and an eligible

expenditure of ARPA funds pursuant to 31 CFR Part 35, Subpart A, Section 35.6(e)(1)(ii), also known as the U.S. Department of Treasury Final Rule (hereinafter “the Final Rule”), and

WHEREAS, the County has authorized a grant of ARPA funds to GRANTEE to make a necessary investment in stormwater management projects that meets the other criteria of section 603 of the Social Security Act and the Final Rule, as set forth more fully below.

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is agreed between the parties as follows:

SECTION 1 PURPOSE.

The parties hereby agree that the Final Rule and 31 CFR Part 35, Subpart A, Section 35.6(e)(1)(ii) identifies eligible uses of ARPA funds to include stormwater projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5),

GRANTEE has identified projects under this eligible expenditure category to include retention or detention pond sediment dredging and lake drainage valve repair at Landen Deerfield Park.

The COUNTY agrees to pay to the GRANTEE an amount of five hundred and four thousand dollars (**\$504,000.00**) for the purpose of completing the eligible project described above. GRANTEE shall use the funds for necessary expenditures related to measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water, stormwater sewer overflow management, and sediment control. The expenditures may include costs for planning, design, and pre-project costs.

GRANTEE shall not use the funds to satisfy a judgment or settlement, nor to contribute to a rainy day or reserve fund, nor shall the grant funds be used for any project which conflicts with or contravenes the purposes of the American Rescue Plan Act. GRANTEE shall follow all applicable local, State, and federal procurement laws and regulations. Before expending any of

the grant funds granted herein, GRANTEE shall follow the County's procurement policy with regards to competitive bidding. County will provide a copy of its procurement policy to GRANTEE upon execution of the agreement.

SECTION 2 GRANT TERM

This Agreement shall be effective upon the date last signed by the parties below and shall terminate effective December 31, 2025.

SECTION 3 DISSOLUTION.

If for any reason, the GRANTEE is dissolved between the execution of this Agreement and December 31, 2025, the County has the absolute right to receive repayment by the GRANTEE of all grant monies disbursed to it by the County remaining in the GRANTEE'S possession or control, including, but not limited to, the grant monies disbursed under this Grant Agreement.

SECTION 4 NON-DISCRIMINATION.

The GRANTEE, its employees, agents, representatives, and any other party working on its behalf shall not discriminate in any manner in its performance under this Grant Agreement by reason of race, color, sex, age, religion, national origin, ancestry, veteran status, disability, sexual orientation, gender identity or any other characteristic to the extent protected by law, and shall comply with all federal, State of Ohio non-discrimination and intimidation laws, as amended, and any applicable related rules, regulations and executive orders, as amended.

SECTION 5 WORKERS' COMPENSATION.

The GRANTEE shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this contract, and shall require any contractors hired to perform work on the grant project to provide workers' compensation insurance coverage.

SECTION 6 ACCOUNTABILITY FOR GRANT PROPERTY.

The GRANTEE must maintain effective internal control and accountability for all grant cash, real and personal property and other assets. All grant property must be only used for the purpose authorized in this Grant Agreement. Grantee certifies that it has reviewed the terms of ARPA and

the Final Rule and warrants that the expenditures made in relation to this agreement comply with the rules and guidance of the United States Department of Treasury. The Chief Executive and Fiscal Officer of the Grantee indicate that they have provided sufficient documentation to demonstrate that the expenditures comply, and any findings of recovery by the Department of Treasury, the Ohio Auditor of State or any other auditing agency authorized under ARPA will be held against the Grantee officials and not Warren County.

SECTION 7 REPORTS AND RECORDS.

The GRANTEE agrees to maintain and provide to the County upon demand the following reports and records:

- Accounting and fiscal records adequate to allow the County and/or State of Ohio to audit and verify that the funds provided under this Grant Agreement are used for the purpose(s) stated in this Grant Agreement.
- The GRANTEE shall maintain all financial records and supporting documents related to the grant award until December 31, 2031, or for a period of 5 years after all funds have been expended or returned to the Treasury. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 5-year period, the GRANTEE shall retain the records until completion of the action and all issues which arise from it or until the end of the 5-year period, whichever is later.

The County shall have the right of access to any pertinent book, document, paper or other records of the GRANTEE which are pertinent to grant in order to make audits or examinations.

SECTION 8 FEDERAL, STATE AND LOCAL LAWS.

The GRANTEE agrees to abide by all Federal, State and local laws, statutes, resolutions, ordinances, rules and/or regulations applicable to this Grant Agreement.

SECTION 9 RELATIONSHIP OF THE PARTIES.

Nothing contained in this Grant Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. The GRANTEE shall at all times remain a Beneficiary with respect to its performance under this Grant

Agreement.

SECTION 10 SUCCESSORS AND ASSIGNMENT.

The County and the GRANTEE each binds itself and its successors, executors, administrators, and assigns to the terms, conditions, and covenants of this Grant Agreement. Neither the County nor the GRANTEE shall assign or transfer its rights, interests, duties, or obligations under this Grant Agreement without the express written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 11 NOTICES.

Any notice required or permitted under this Grant Agreement shall be given in writing and shall be deemed to have been given when personally delivered to any officer of the party receiving notice or when posted in the United States mail by certified mail addressed to the last known address of the party being served.

SECTION 12 LAW OF OHIO.

This Grant Agreement shall be construed and enforced in accordance with the laws of the State of Ohio, without giving effect to its conflict of laws principles. The parties agree that any legal action, suit, or proceeding that arises out of this Grant Agreement shall be brought solely and exclusively in the Warren County, Ohio Court of Common Pleas.

SECTION 13 ENTIRE AGREEMENT, MODIFICATION AND SEVERABILITY.

This written Grant Agreement represents the entire agreement between the parties and supersedes all previous agreements, written and oral, between the parties. This Grant Agreement shall not be modified except in writing signed by both parties. In the event any provision of this Grant Agreement is determined to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of other provisions in the Grant Agreement which shall be severable.

SECTION 14 PUBLIC RECOGNITION AND COUNTY SUPPORT.

The GRANTEE shall recognize the County on all printed materials and promotional media related to this grant. When there are press releases, photographs, newsletters or any published materials about this grant, the County shall be included on any and all mailing distributions.

(End of text. Execution on the following page.)

SECTION 15 EXECUTION

IN EXECUTION WHEREOF, the parties hereto have executed this Agreement on the dates show below.

Warren County Board of Commissioners,

This Agreement is entered into by the president or vice president as authorized in Resolution No. _____ of the Warren County Board of Commissioners dated _____, 2022:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form,



Assistant Prosecuting Attorney

Warren County, Ohio

Warren County Park District,

This Agreement is hereby entered into by [GRANTEE] Warren County Park District Park Board of Commissioners by its duly authorized signatory, as authorized in Resolution No.

22-10

Signature: Ben Yoder

Printed Name: Ben Yoder

Title: Board President

Date: 10/21/22

ENTER INTO A SUBRECIPIENT AGREEMENT WITH WARREN COUNTY PARK DISTRICT RELATIVE TO THE ARMCO PARK TURF FIELD PROJECT AND THE AMERICAN RESCUE PLAN ACT – CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

BE IT RESOLVED, to enter into a subrecipient agreement with The Warren County Park District relative to the Armco Park Turf Field Project and the American Rescue Plan Act – Coronavirus State and Local Fiscal Recovery Funds, as attached hereto and made a part hereof; said agreement to be effective upon execution.

M moved for adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

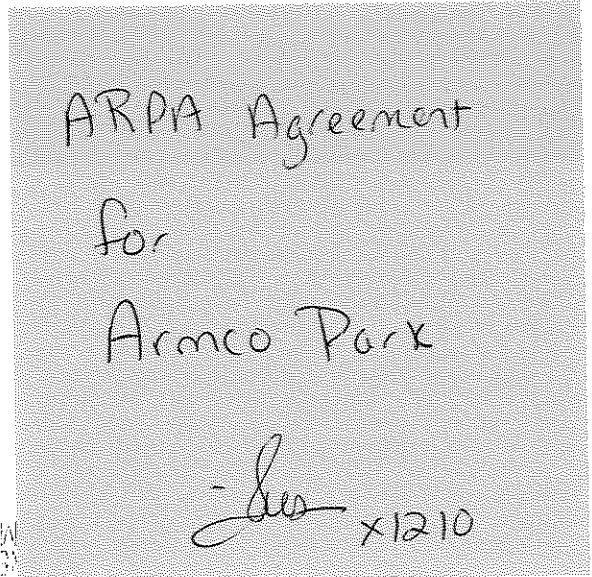
Resolution adopted this ___ day of ___ 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

/sm

cc: c/a—
OGA (File)



WARREN COUNTY
COMMISSIONERS

2022 OCT 26 AM 9:05

RECEIVED

**AMERICAN RESCUE PLAN – CORONAVIRUS STATE AND LOCAL FISCAL
RECOVERY FUNDS
BENEFICIARY GRANT AGREEMENT
between the
WARREN COUNTY BOARD OF COUNTY COMMISSIONERS
and the
WARREN COUNTY PARK DISTRICT PARK BOARD OF COMMISSIONERS**

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WHEREAS, the County is a local government recipient of funding pursuant to Section 9901 of the American Rescue Plan Act which amended Title VI of the Social Security Act to add section 603 which established the Coronavirus State and Local Fiscal Recovery Fund (hereinafter “ARPA”);

WHEREAS, ARPA funds received by the County may only be used, as follows: (a) to respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; (c) for provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and, (d) to make necessary investments in water, sewer, or broadband infrastructure.

WHEREAS, the County seeks to make expenditures to respond directly to the COVID-19 public health emergency and its negative economic impacts in part by making necessary investments in government services to avoid cuts in government services; and

WHEREAS, County desires to use ARPA funds for the provision of government services to the extent of the County’s reduction in revenue due to the COVID-19 public health emergency

pursuant to 31 CFR Part 35, Subpart A, Section 35.6(d)(1), also known as the U.S. Department of Treasury Final Rule (hereinafter “the Final Rule”), namely, contributions for park projects as authorized by Section 307.281 of the Ohio Revised Code.

WHEREAS, GRANTEE owns and operates public park lands that require significant expenditures in maintenance and upgrades of park facilities, and

WHEREAS, County has authorized a grant of ARPA funds to GRANTEE to maintain these above-described government services.

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is agreed between the parties as follows:

SECTION 1 PURPOSE.

The parties hereby agree that the Final Rule and 31 CFR Part 35, Subpart A, Section 35.6(d) identifies eligible uses of ARPA funds to include provision of government services to the extent of the reduction in the County’s general revenue due to the public health emergency. Further, County has the authority under Section 307.281 of the Ohio Revised Code to provide contributions for park projects as a government services.

GRANTEE has identified projects under this eligible expenditure category to include turnkey services for converting natural grass to synthetic turf on up to four existing baseball fields, to ensure ongoing and expanded use of the public park known as Armco Park [hereinafter “Identified Project”]

The COUNTY agrees to pay to the GRANTEE an amount of eight hundred thousand dollars (**\$800,000.00**) for the purpose of completing the eligible project described above. GRANTEE shall use the funds for necessary expenditures related to the above Identified Project.

GRANTEE shall not use the funds to satisfy a judgment or settlement, nor to contribute to a rainy day or reserve fund, nor shall the grant funds be used for any project which conflicts with or contravenes the purposes of the American Rescue Plan Act. GRANTEE shall follow all applicable local, State, and federal procurement laws and regulations. Before expending any of

the grant funds granted herein, GRANTEE shall follow the County's procurement policy with regards to competitive bidding. County will provide a copy of its procurement policy to GRANTEE upon execution of the agreement.

SECTION 2 GRANT TERM

This Agreement shall be effective upon the date last signed by the parties below and shall terminate effective December 31, 2025.

SECTION 3 DISSOLUTION.

If for any reason, the GRANTEE is dissolved between the execution of this Agreement and December 31, 2025, the County has the absolute right to receive repayment by the GRANTEE of all grant monies disbursed to it by the County remaining in the GRANTEE'S possession or control, including, but not limited to, the grant monies disbursed under this Grant Agreement.

SECTION 4 NON-DISCRIMINATION.

The GRANTEE, its employees, agents, representatives, and any other party working on its behalf shall not discriminate in any manner in its performance under this Grant Agreement by reason of race, color, sex, age, religion, national origin, ancestry, veteran status, disability, sexual orientation, gender identity or any other characteristic to the extent protected by law, and shall comply with all federal, State of Ohio non-discrimination and intimidation laws, as amended, and any applicable related rules, regulations and executive orders, as amended.

SECTION 5 WORKERS' COMPENSATION.

The GRANTEE shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this contract and shall require any contractors hired to perform work on the grant project to provide workers' compensation insurance coverage.

SECTION 6 ACCOUNTABILITY FOR GRANT PROPERTY.

The GRANTEE must maintain effective internal control and accountability for all grant cash, real and personal property and other assets. All grant property must be only used for the purpose authorized in this Grant Agreement. Grantee certifies that it has reviewed the terms of ARPA and

the Final Rule and warrants that the expenditures made in relation to this agreement comply with the rules and guidance of the United States Department of Treasury. The Chief Executive and Fiscal Officer of the Grantee indicate that they have provided sufficient documentation to demonstrate that the expenditures comply, and any findings of recovery by the Department of Treasury, the Ohio Auditor of State or any other auditing agency authorized under ARPA will be held against the Grantee officials and not Warren County.

SECTION 7 REPORTS AND RECORDS.

The GRANTEE agrees to maintain and provide to the County upon demand the following reports and records:

- Accounting and fiscal records adequate to allow the County and/or State of Ohio to audit and verify that the funds provided under this Grant Agreement are used for the purpose(s) stated in this Grant Agreement.
- The GRANTEE shall maintain all financial records and supporting documents related to the grant award until December 31, 2031, or for a period of 5 years after all funds have been expended or returned to the Treasury. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 5-year period, the GRANTEE shall retain the records until completion of the action and all issues which arise from it or until the end of the 5-year period, whichever is later.

The County shall have the right of access to any pertinent book, document, paper or other records of the GRANTEE which are pertinent to grant in order to make audits or examinations.

SECTION 8 FEDERAL, STATE AND LOCAL LAWS.

The GRANTEE agrees to abide by all Federal, State and local laws, statutes, resolutions, ordinances, rules and/or regulations applicable to this Grant Agreement.

SECTION 9 RELATIONSHIP OF THE PARTIES.

Nothing contained in this Grant Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the parties. The GRANTEE shall at all times remain a Beneficiary with respect to its performance under this Grant

Agreement.

SECTION 10 SUCCESSORS AND ASSIGNMENT.

The County and the GRANTEE each binds itself and its successors, executors, administrators, and assigns to the terms, conditions, and covenants of this Grant Agreement. Neither the County nor the GRANTEE shall assign or transfer its rights, interests, duties, or obligations under this Grant Agreement without the express written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 11 NOTICES.

Any notice required or permitted under this Grant Agreement shall be given in writing and shall be deemed to have been given when personally delivered to any officer of the party receiving notice or when posted in the United States mail by certified mail addressed to the last known address of the party being served.

SECTION 12 LAW OF OHIO.

This Grant Agreement shall be construed and enforced in accordance with the laws of the State of Ohio, without giving effect to its conflict of laws principles. The parties agree that any legal action, suit, or proceeding that arises out of this Grant Agreement shall be brought solely and exclusively in the Warren County, Ohio Court of Common Pleas.

SECTION 13 ENTIRE AGREEMENT, MODIFICATION AND SEVERABILITY.

This written Grant Agreement represents the entire agreement between the parties and supersedes all previous agreements, written and oral, between the parties. This Grant Agreement shall not be modified except in writing signed by both parties. In the event any provision of this Grant Agreement is determined to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of other provisions in the Grant Agreement which shall be severable.

SECTION 14 PUBLIC RECOGNITION AND COUNTY SUPPORT.

The GRANTEE shall recognize the County on all printed materials and promotional media related to this grant. When there are press releases, photographs, newsletters or any published materials

about this grant, the County shall be included on any and all mailing distributions.

SECTION 15 EXECUTION

IN EXECUTION WHEREOF, the parties hereto have executed this Agreement on the dates show below.

Warren County Board of Commissioners,

This Agreement is entered into by the president or vice president as authorized in Resolution No. _____ of the Warren County Board of Commissioners dated _____, 2022:

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Approved as to Form,



Assistant Prosecuting Attorney
Warren County, Ohio

Warren County Park District,

This Agreement is hereby entered into by [GRANTEE] Warren County Park District Park Board of Commissioners by its duly authorized signatory, as authorized in Resolution No.

22-09

Signature: Ben Yoder
Printed Name: Ben Yoder
Title: Board President
Date: 10/21/22

AUTHORIZE COUNTY ENGINEER TO EXECUTE OHIO DEPARTMENT OF TRANSPORTATION STATE FUNDS EXCHANGE AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE MCCLURE ROAD BRIDGE #71-0.39 REHABILITATION PROJECT (PID #115793) OVER TURTLE CREEK

WHEREAS, the Warren County Engineer determined that the McClure Road Bridge #71-0.39 over Turtle Creek needed to be rehabilitated and improved; and

WHEREAS, in 2021 the Warren County Engineer applied for and received Federal LBR (County Local Bridge Replacement) Funding administered by ODOT for the bridge rehabilitation and roadway improvements on McClure Road (McClure Road Bridge #71-0.39 Rehabilitation Project - PID #115793) between Hamilton Road and US 42 to be constructed and funded in 2024; and

WHEREAS, it is necessary to enter into an Ohio Department of Transportation State Funds Exchange Agreement with ODOT in order for the County Engineer to bid out and complete the construction of the project and for ODOT to exchange the project funding from Federal to State Funding and to reimburse the County Engineer for the State LBR share of the project costs, which is 80% of the eligible costs, up to a maximum of \$787,550; and

NOW THEREFORE BE IT RESOLVED, to Authorize the County Engineer to execute an Ohio Department of Transportation State Funds Exchange Agreement (Agreement #38239 – as attached hereto and made a part hereof) with ODOT for the McClure Road Bridge #71-0.39 Rehabilitation Project (PID #115793) over Turtle Creek;

M moved for the adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this 1st day of November 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

c/a – ODOT
Engineer (file)
Project file
Auditor – B. Quillen

RECEIVED
2022 OCT 28 AM 10:58
WARREN COUNTY COMMISSIONERS

LPA STATE FUNDS EXCHANGE PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **Warren County Engineer's Office**, hereinafter referred to as the LPA, **210 West Main Street, Lebanon, OH 45036**.

1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (hereinafter referred to as ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC Section 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 Section 5501.03 (D) of the Ohio Revised Code provides that the director of transportation may enter into contracts with public agencies including political subdivision, other state agencies, boards, commissions, regional transit authorities, county transit boards, and port authorities, to administer the design, qualification of bidders, competitive bid letting, construction, inspection, research, and acceptance of any projects or transportation facilities administered by ODOT, provided the administration of such projects or transportation facilities is performed in accordance with all applicable state and federal laws and regulations with oversight by ODOT.
- 1.4 ORC Section 5531.08(C) provides upon a written determination by the Director of Transportation that it would be in the best interests of the traveling public, upon the written request of a county, township, or municipal corporation, may declare a waiver of that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay. This is in order to enable the counties of the state to plan, maintain, and repair their roads or to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets.
- 1.5 The **Replacement of the superstructure of Bridge WAR-TR 71-0.39 (SFN: 8334439)**, (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive State funding.
- 1.6 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the administration of State funds on behalf of the Ohio Department of Transportation through the County Engineer Association of Ohio for the PROJECT by ODOT.

2. FUNDING AND PAYMENT

- 2.1 The total cost for the PROJECT is estimated to be **\$670,000**. ODOT shall provide to the LPA **95 percent** of the eligible costs, up to a maximum of **\$787,550** in State funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager and cannot be used as a LPA's match. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation

project improvements, including construction engineering costs. Ohio Revised Code does not allow for the payment of environmental engineering, final engineering and real estate acquisition.

- 2.2 ODOT retains any and all Bridge Credit generated through this program. Information must be submitted to and maintained by the Office of Payroll and Project Accounting.
- 2.3 Federal funds are not permitted for use in the State Funds Exchange Program for the PROJECT identified above.
- 2.4 The LPA, in conjunction with its funding partners, and to the extent permitted, shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.
- 2.5 All funding from ODOT under this Agreement operates on a reimbursement basis. The LPA shall review and/or approve all contractor invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.
- 2.6 The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 2.7 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 2.8 The LPA shall certify in writing that the PROJECT was developed and delivered in compliance with the terms, conditions and requirements of the PROJECT Agreement with his/her Professional Engineer's seal and signature. The LPA shall then provide the final report to the ODOT District within 6 months of the physical completion date of the PROJECT so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, then this process must be repeated until the PROJECT is completed. Failure to follow this process may result in the immediate close-out of the PROJECT and loss of further funding.
- 2.9 Payment or reimbursement to the LPA shall be submitted to:

Neil F. Tunison, P.E., P.S.
Warren County Engineer
210 West Main Street
Lebanon, Ohio 45036

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The LPA is administering this PROJECT and is responsible for all aspects of the PROJECT, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.

- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT is the responsibility of the LPA. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.
- 3.3 In performing right of way planning and acquisition, the LPA shall comply with all applicable provisions of Revised Code 307.08, Revised Code Chapter 163, and Ohio Administrative Code Chapter 5501:2-5, and by entering this agreement certifies such compliance.
- 3.4 The LPA shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regard to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

4. CERTIFICATION AND RECAPTURE OF FUNDS

- 4.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 5.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.
- 5.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

6. NOTICE

- 6.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Neil F. Tunison, P.E., P.S.	Andrea Stevenson
Warren County Engineer	ODOT, Office of Local Programs
210 West Main Street	1980 W. Broad St., Mail Stop 3180
Lebanon, Ohio 45036	Columbus, OH 43223
513-695-3301	614-644-8211
Neil.Tunison@co.warren.oh.us	Andrea.Stevenson@dot.ohio.gov

7. NONDISCRIMINATION

- 7.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, military status, genetic information, or disability as that term is defined in the American with Disabilities Act. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- 7.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, or disability. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 7.3 The LPA shall ensure that all prime contracts it enters into for the performance of the PROJECT contain the following specific language:

PROMPT PAYMENT AND PAYMENT REPORTING

The contractor shall ensure prompt payment to subcontractors and material suppliers per Ohio Revised Code 4113.61. Furthermore, the Contractor must record each individual progress payment as well as each final payment to all subcontractors, service providers, and materials and supplies vendors in such payment reporting system that ODOT shall indicate and in compliance with such timeframe that ODOT shall indicate.

- 7.4 The LPA shall ensure that Encouraging Diversity, Growth and Equity (EDGE) business enterprises, as defined in Ohio Administrative Code 123:2-14, have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with State funds provided in conjunction with this Agreement. An EDGE business enterprise is a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified in the EDGE Program by the Ohio Department of Administrative Services (EDGE business enterprises are listed at <https://eodreporting.oit.ohio.gov/edge-certification>). ODOT shall specify each PROJECT's EDGE goal. If the PROJECT has an EDGE goal above zero, the LPA shall ensure that all prime contracts it enters into for the performance of the PROJECT contain the following specific language:

ENCOURAGING DIVERSITY, GROWTH AND EQUITY (EDGE) REQUIREMENTS

An EDGE goal (subcontracts, materials, services) has been set on this PROJECT. The contractor shall make a good faith effort to comply with the EDGE goal by subcontracting with and/or purchasing from those EDGE business enterprises certified by the Ohio Department of Administrative Services pursuant to Ohio Administrative Code 123:2-14. If the contractor is itself an EDGE

business enterprise, it may count its own contract in its efforts to comply with the EDGE goal.

EDGE GOAL COMPLIANCE

After the allotted timeframe for reporting payments closes, ODOT shall divide the total reported payments made to EDGE business enterprises by the PROJECT's final contract amount to determine the PROJECT's EDGE attainment. If the EDGE attainment meets or exceeds the PROJECT's EDGE goal, ODOT will consider the contractor as being in compliance with the PROJECT's EDGE goal. If the EDGE attainment is short of the PROJECT's EDGE goal, ODOT will consider the contractor as being in noncompliance with the PROJECT's EDGE goal.

GOOD FAITH EFFORTS (GFEs)

If the contractor is unable to comply with the EDGE goal established for the PROJECT and having made a good faith effort (GFE) to comply with the established EDGE goal, the contractor may apply in writing, on a form prescribed by ODOT, to ODOT for a full or partial waiver of the established contract EDGE goal. The form shall be submitted to ODOT in the manner outlined on ODOT's website. ODOT may modify the established EDGE goal for a contract after determining that the contractor made the level of GFEs deemed necessary by ODOT to comply with the established contract EDGE goal and to justify the granting of a waiver. For purposes of such determination, ODOT shall consider whether the contractor has documented all of the following:

- (1) The contractor utilized reasonable and available means to solicit EDGE-certified business(es) that have the capability to perform the work of the contract. To demonstrate reasonable solicitation, the contractor shall provide evidence of such solicitations, including, but not limited to, the following: fax confirmations, website notifications, bid notices, email contact lists, and invitations to bid notices;
- (2) The contractor identified portions of the contracted work that would provide the most opportunity for participation by EDGE-certified business(es). To demonstrate identified portions of the contracted work were selected to increase the likelihood of EDGE participation, the contractor shall provide documentation outlining the rationale used to determine which portions of the contract were bid to EDGE-certified business(es) and why other portions were not selected for bidding by EDGE-certified business(es);
- (3) The contractor provided all appropriate EDGE-certified business(es) with adequate information about the plans, specifications, and requirements of the contract. The information about the plans, specifications, and requirements of the contract were provided in sufficient time for EDGE-certified business(es) to review and provide a bid for the contract. "Sufficient time" means at least twenty-one days prior to the required bid submission date provided by the contractor;
- (4) The contractor negotiated in good faith with interested EDGE-certified business(es). To demonstrate good faith negotiations, the contractor shall provide evidence of such negotiations, including, but not limited to, the following: subcontractor names, addresses, dates of meetings, and telephone numbers of the EDGE-certified business(es) considered. The contractor shall submit bid requests and/or bid submittals of all EDGE-certified business(es) bidders and any correspondence related to the negotiations. A contractor using good business judgment will consider a number of factors when negotiating with EDGE-certified business(es)

and will take into account the bid and capabilities of EDGE-certified business(es) as well as contract goal requirements. However, the fact that there may be some additional costs involved in finding and using an EDGE-certified business(es) are not in itself sufficient reason for a contractor's failure to meet the established EDGE goal. In addition, the ability or desire of a contractor to perform the work with its own organization does not relieve the contractor of its responsibility to locate EDGE-certified business(es) and conduct GFEs;

- (5) The contractor properly rejected interested EDGE-certified business(es) as being unqualified for the work of the contract. A contractor's rejection of an EDGE-certified business(es) based on standing within an appropriate industry, membership, or affiliation in a business social, or political group is not a basis for a proper rejection. To demonstrate EDGE-certified business(es) were properly rejected, the contractor shall provide a copy of each rejection letter sent to EDGE-certified business(es) with the reason(s) for rejection, the EDGE-certified business's name, address, date, and proof of mailing;
- (6) The contractor used the services of one or more organizations that provide business assistance in the identification and recruitment of EDGE-certified business(es). To demonstrate utilization of one or more organizations providing business assistance, the contractor shall provide the name(s), phone number(s), date(s), and method of contact relating to the business assistance organization; and
- (7) The contractor used the directory listing of EDGE-certified business(es) at <https://eodreporting.oit.ohio.gov/edge-certification> or, if this link stops functioning, at such new link provided by the State of Ohio. To demonstrate such a directory listing was used, the contractor shall provide the list, method of contact, and names associated with each EDGE-certified business(es) included on the list.

ODOT will review the contractor's waiver request and issue a written determination on whether the Contractor made the level of GFEs deemed necessary by ODOT to comply with the established contract EDGE goal and to justify the granting of a waiver.

The Contractor may request administrative reconsideration within fourteen (14) days of being informed that it did not make the level of GFEs deemed necessary by ODOT to comply with the established contract EDGE goal and to justify the granting of a waiver. The Contractor must make this request in writing to Jodi Elsass-Locker, Chief Legal Counsel, Jodi.Elsass-Locker@dot.ohio.gov, and Brianne Brown, Deputy Chief Legal Counsel, Brianne.Brown@dot.ohio.gov. This request may also be submitted in writing at the following address:

Ohio Department of Transportation
Attn: Office of Chief Legal Counsel, Mail Stop 1500
1980 West Broad St.
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient GFEs.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it made adequate GFEs. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not comply with the goal or make adequate good faith efforts.

ODOT may issue the following sanctions if the Contractor fails to comply with EDGE-related contract requirements and/or fails to make the level of GFEs deemed necessary by ODOT to comply with the established contract EDGE goal:

1st tier: letter of reprimand;

2nd tier: damages equivalent to the EDGE contract goal shortfall

3rd tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment

Factors to be considered in issuing sanctions include, but are not limited to:

- (1) the magnitude and the type of offense;
- (2) the degree of the Contractor's culpability;
- (3) any steps taken to rectify the situation;
- (4) the Contractor's record of performance on other projects including, but not limited to:
 - (A) EDGE contract goal attainment and GFEs;
 - (B) DBE contract goal attainment and GFEs;
 - (C) number of complaints ODOT has received from DBE/EDGE certified firms regarding the Contractor; and,
 - (D) the number of times the Contractor has been previously sanctioned by ODOT.

8. GENERAL PROVISIONS

8.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system¹, **and**
- (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

¹ A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; are incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.



2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.³

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

³ [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this PROJECT must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the PROJECT may fluctuate to match changes to the ODOT approved rate.

⁴ [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this PROJECT must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the PROJECT may fluctuate to match changes to the ODOT approved rates.

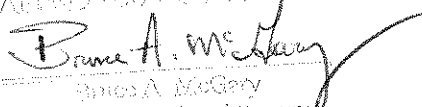
fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LAMP Manual of Procedures.

- 8.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 8.10 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 8.3 The LPA shall comply with all applicable Federal and State laws, regulations, and applicable executive orders applicable to the PROJECT including all Non-Discrimination laws, regulation and executive orders. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.
- 8.4 *Record Retention:* The LPA when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after the completion of the PROJECT. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.
- 8.5 *Ohio Ethics Laws:* LPA agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 8.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policies, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 8.7 *Boycotting:* Pursuant to R.C. 9.76(B), LPA warrants that LPA is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.
- 8.8 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 8.9 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 8.10 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 8.11 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

- 8.12 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. LPA acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the LPA and monitoring by Grantor of the results of the award of Grant Funds.
- 8.13 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 8.14 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: Warren County	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Neil F. Tunison, County Engineer	Jack Marchbanks Director
Date:	Date:

APPROVED AS TO FORM

 James A. McGary
 Asst. Prosecuting Attorney

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS	\$30,455	5	LNTP				\$578,645	95	4C87	\$609,100
INSPECTION	\$3,045	5	LNTP				\$57,855	95	4C87	\$60,900
TOTALS	\$33,500						\$636,500			\$670,000

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

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

We (ININSERT NAME OF LPA) request that all payments for the Federal/State share of the construction costs of this Agreement performed by (CONTRACTOR'S NAME) be paid directly to (CONTRACTOR'S NAME) .

VENDOR Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
LPA signature:	

LPA Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
ODOT Approval signature:	

AUTHORIZE CHANGES TO THE WARREN COUNTY HEALTHCARE PLAN EFFECTIVE JANUARY 1, 2023

WHEREAS, upon review of the Warren County Healthcare Plan, it is the desire of the Board to enhance the Plan in areas where it further encourages covered members health and wellness and is also cost effective to the Plan; and

WHEREAS, it is the desire of the Board to authorize the following changes to the Plan effective January 1, 2023:

Incent employee HSA (or HRA if not eligible for an HSA) in the amount of \$300 employee or \$600 employee/spouse for additional health and wellness measures above and beyond the annual biometric screen and Dave's Day For Life incentive; additional measures include: Have a Primary Care Physician, and Forward Biometric Results to PCP, and Receive a Physical from PCP.

As permitted by the IRS relative to High Deductible Healthcare Plans, provide first dollar coverage for preventive medication as adopted on the Preventive Select Drug List with OptumRx.

Increase the annual Dental maximum per person from \$1000 to \$1500.

Increase the allowance for eye glass frames from \$130 every two years to \$170 every two years per covered member.

Increase Flexible Spending Account limit from \$2500 annual to \$2850 annually.

NOW THEREFORE BE IT RESOLVED, to authorize the changes to the healthcare plan listed and effective January 1, 2023.

M moved for adoption of the foregoing resolution, being seconded by
M . Upon the call of the roll, the following vote resulted:

M
M
M

Resolution adopted this day of November, 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

HR/ 2023 Plan Changes

C: Horan Assoc, United Healthcare, OptumRX, Dental Care Plus, EyeMed
Tammy Whitaker, OMB
Benefits File



**REQUEST FOR AUTHORIZATION TO ATTEND ASSOCIATION MEETING,
CONVENTION OR TRAINING SEMINAR/SESSION**

This form is to be completed by Department Head/Elected Official requesting authorization to attend an Association Meeting or Convention or Training Seminar/Session sponsored by an Association as required by O.R.C. Section 325.20. Additionally, authorization is required for any training seminar/session held more than 250 miles from county campus;

*NAME OF ATTENDEE: Shannon Jones DEPARTMENT: BOCC

*POSITION: Commissioner DATE: 10/25/22

REQUEST FOR AUTHORIZATION FOR THE ABOVE-NAMED EMPLOYEE/ELECTED OFFICIAL TO ATTEND THE FOLLOWING:

ASSOCIATION MEETING CONVENTION ASSOCIATION SPONSORED TRAINING SEMINAR/SESSION
TRAINING MORE THAN 250 MILES

PURPOSE: CCAO Annual Winter Conference

LOCATION: Columbus

DATE(S): December 7-9, 2022

TYPE OF TRAVEL: (Check one)

AIRLINE STAFF CAR PRIVATE VEHICLE OTHER

LODGING: Hyatt Regency Columbus

ESTIMATED COST OF TRIP: \$800

I CERTIFY THAT DIRECTION HAS BEEN GIVEN TO ALL EMPLOYEES ATTENDING THIS FUNCTION, THAT IT IS EXPECTED OF THEM TO ATTEND APPLICABLE SESSIONS.

DEPARTMENT HEAD/ELECTED OFFICIAL REQUESTING AUTHORIZATION:

Shannon Jones
Signature/Title Date

BOARD OF COMMISSIONERS' APPROVAL:

Commissioner Date

Shannon Jones
Commissioner Date

Commissioner Date

*If additional employees will be attending the Association Meeting, Convention or Training Seminar/Session please list names and positions here:



**REQUEST FOR AUTHORIZATION TO ATTEND ASSOCIATION MEETING,
CONVENTION OR TRAINING SEMINAR/SESSION**

This form is to be completed by Department Head/Elected Official requesting authorization to attend an Association Meeting or Convention or Training Seminar/Session sponsored by an Association as required by O.R.C. Section 325.20. Additionally, authorization is required for any training seminar/session held more than 250 miles from county campus;

*NAME OF ATTENDEE: Shannon Jones DEPARTMENT: BOCC

*POSITION: Commissioner DATE: 10/18/2022

REQUEST FOR AUTHORIZATION FOR THE ABOVE-NAMED EMPLOYEE/ELECTED OFFICIAL TO ATTEND THE FOLLOWING:

ASSOCIATION MEETING CONVENTION ASSOCIATION SPONSORED TRAINING SEMINAR/SESSION
TRAINING MORE THAN 250 MILES

PURPOSE: 2023 NACo Legislative Conference

LOCATION: Washington DC

DATE(S): February 11-14, 2023

TYPE OF TRAVEL: (Check one)

AIRLINE STAFF CAR PRIVATE VEHICLE OTHER

LODGING: Washington Hilton \$265/night

ESTIMATED COST OF TRIP: \$3,000

I CERTIFY THAT DIRECTION HAS BEEN GIVEN TO ALL EMPLOYEES ATTENDING THIS FUNCTION, THAT IT IS EXPECTED OF THEM TO ATTEND APPLICABLE SESSIONS.

DEPARTMENT HEAD/ELECTED OFFICIAL REQUESTING AUTHORIZATION:

Shannon Jones
Signature/Title Date

BOARD OF COMMISSIONERS' APPROVAL:

Commissioner Date

Commissioner Date

Commissioner Date

*If additional employees will be attending the Association Meeting, Convention or Training Seminar/Session please list names and positions here:



**REQUEST FOR AUTHORIZATION TO ATTEND ASSOCIATION MEETING,
CONVENTION OR TRAINING SEMINAR/SESSION**

This form is to be completed by Department Head/Elected Official requesting authorization to attend an Association Meeting or Convention or Training Seminar/Session sponsored by an Association as required by O.R.C. Section 325.20. Additionally, authorization is required for any training seminar/session held more than 250 miles from county campus;

*NAME OF ATTENDEE: Kathryn Gilbert DEPARTMENT: Water & Sewer

*POSITION: Staff Engineer DATE: 10/26/2022

REQUEST FOR AUTHORIZATION FOR THE ABOVE-NAMED EMPLOYEE/ELECTED OFFICIAL TO ATTEND THE FOLLOWING:

ASSOCIATION MEETING CONVENTION ASSOCIATION SPONSORED TRAINING SEMINAR/SESSION
TRAINING MORE THAN 250 MILES

PURPOSE: Attend County Sanitary Engineer Association of Ohio Winter Conference to obtain continuing education credits for professional engineering license renewal

LOCATION: Hyatt Regency, Columbus, Ohio

DATE(S): December 8-9, 2022

TYPE OF TRAVEL: (Check one)

AIRLINE STAFF CAR PRIVATE VEHICLE OTHER

LODGING: Hyatt Regency

ESTIMATED COST OF TRIP: \$400

I CERTIFY THAT DIRECTION HAS BEEN GIVEN TO ALL EMPLOYEES ATTENDING THIS FUNCTION, THAT IT IS EXPECTED OF THEM TO ATTEND APPLICABLE SESSIONS.

DEPARTMENT HEAD/ELECTED OFFICIAL REQUESTING AUTHORIZATION:

Chris Brumby
Signature/Title Date

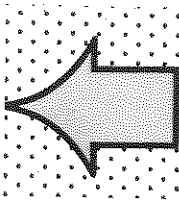
BOARD OF COMMISSIONERS' APPROVAL:

Commissioner Date

Commissioner Date

Commissioner Date

*If additional employees will be attending the Association Meeting, Convention or Training Seminar/Session please list names and positions here:





**REQUEST FOR AUTHORIZATION TO ATTEND ASSOCIATION MEETING,
CONVENTION OR TRAINING SEMINAR/SESSION**

This form is to be completed by Department Head/Elected Official requesting authorization to attend an Association Meeting or Convention or Training Seminar/Session sponsored by an Association as required by O.R.C. Section 325.20. Additionally, authorization is required for any training seminar/session held more than 250 miles from county campus;

*NAME OF ATTENDEE: David Swigert DEPARTMENT: Treasurer's Office

*POSITION: Chief Deputy DATE: 10/24/22

REQUEST FOR AUTHORIZATION FOR THE ABOVE-NAMED EMPLOYEE/ELECTED OFFICIAL TO ATTEND THE FOLLOWING:

ASSOCIATION MEETING CONVENTION ASSOCIATION SPONSORED TRAINING SEMINAR/SESSION
TRAINING MORE THAN 250 MILES

PURPOSE: Continuing education conference for The County Treasurer's Association of Ohio

LOCATION: Columbus Marriott Northwest ; Dublin, OH

DATE(S): 11/16/22 - 11/18/22

TYPE OF TRAVEL: (Check one)

AIRLINE STAFF CAR PRIVATE VEHICLE OTHER
LODGING: \$389.21 ; conference \$150.00 ; mileage \$104.00
ESTIMATED COST OF TRIP: \$643.21

I CERTIFY THAT DIRECTION HAS BEEN GIVEN TO ALL EMPLOYEES ATTENDING THIS FUNCTION, THAT IT IS EXPECTED OF THEM TO ATTEND APPLICABLE SESSIONS.

DEPARTMENT HEAD/ELECTED OFFICIAL REQUESTING AUTHORIZATION:

[Signature] 10/25/22
Signature/Title Date

BOARD OF COMMISSIONERS' APPROVAL:

Commissioner Date

Commissioner Date

Commissioner Date

*If additional employees will be attending the Association Meeting, Convention or Training Seminar/Session please list names and positions here:

TERMINATE THE CONTRACT BETWEEN JONES-WARNER CONSULTANTS, INC. AND WARREN COUNTY RELATIVE TO THE FY2021 PLEASANT PLAIN PLAYGROUND COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT

WHEREAS, Warren County entered into an agreement with Jones-Warner Consultants, Inc. on June 15, 2021 by Resolution # 21-0815, and

WHEREAS, the Consultant has not produced plans within forty-five days as outlined in the contract, and

BE IT RESOLVED, to terminate the contract between Jones-Warner Consultants, Inc. and Warren County relative to the FY2021 Pleasant Plain Playground CDBG project, and

BE IT FURTHER RESOLVED to authorize the Warren County Prosecutor's Office to notify Jones-Warner with a five-day notice letter on behalf of the County Commissioners.

M. moved for adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this ___ day of November 2022.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

/sm

cc: c/a—Jones Warner Consultants, Inc.
OGA (File)

Prosecutor's Office

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 21-0815

Adopted Date June 15, 2021

APPROVE AND AUTHORIZE THE PRESIDENT OF THE BOARD TO ENTER INTO CONTRACT WITH JONES-WARNER CONSULTANTS, INC. FOR ENGINEERING SERVICES RELATIVE TO THE FY21 PLEASANT PLAIN PLAYGROUND COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT

BE IT RESOLVED, to approve and authorize the President of the Board to enter into contract with Jones-Warner Consultants, Inc., 8401 Claude-Thomas Road, Suite 51, Franklin, OH 45005, for engineering services for the FY 2021 Pleasant Plain Park CDBG Project, for a total contract price not to exceed \$9,500.00, as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young – yea
Mr. Grossmann – yea
Mrs. Jones – yea

Resolution adopted this 15th day of June 2021.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/sm

cc: C/A—Jones Warner Consultants, Inc.
OGA (file)
Jones Warner Consultants, Inc.
Village of Pleasant Plain (file)

**CONSULTING CONTRACT
FOR
PROFESSIONAL ENGINEERING SERVICES**

THIS IS AN AGREEMENT made and entered into on the date stated below between the **WARREN COUNTY BOARD OF COMMISSIONERS**, 406 Justice Drive, Lebanon, Ohio 45036, hereinafter referred to as the "COUNTY," and **JONES-WARNER CONSULTANTS, INC, 8401 Claude Thomas Road, Ste 51, Franklin, OH 45005**, doing business as a Corporation organized, duly licensed and existing under the laws of the State of Ohio for the practice of engineering, hereinafter referred to as the "CONSULTANT."

COUNTY intends to make improvements, which includes the FY21 Pleasant Plain Park CDBG Project, hereinafter referred to as the PROJECT, through the FY21 Community Development Block Grant (CDBG) Entitlement Program; and,

COUNTY and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by CONSULTANT and the payment for those services by COUNTY as set forth below.

CONSULTANT shall provide professional engineering services for COUNTY in all phases of the PROJECT to which this Agreement applies, serve as COUNTY'S professional engineering representative for the PROJECT as set forth below and shall give professional engineering consultation and advice to COUNTY during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 Design Phase

Upon execution of this Agreement, CONSULTANT shall:

- 1.1.1 Prepare and submit to the COUNTY final design drawings and detailed specifications for the PROJECT.
- 1.1.2 CONSULTANT shall also prepare an estimate of quantities and costs for the PROJECT.
- 1.1.3 CONSULTANT shall provide ten (10) sets of the plans and specifications to the COUNTY for use during the bidding phase.

1.2 Construction Phase

Upon completion of the Design Phase, CONSULTANT shall:

- 1.2.1 CONSULTANT shall review bids submitted to COUNTY and make a recommendation of award for the construction contract.
- 1.2.2 CONSULTANT shall attend a pre-construction conference with the contractor.
- 1.2.3 CONSULTANT shall make periodic visits during construction and a final inspection to ensure compliance with the plans and specifications.
- 1.2.4 CONSULTANT shall review and approve all payments requests.

SECTION 2 - PERIOD OF SERVICE

CONSULTANT shall submit Schematic Design, Plans and Specifications to the COUNTY no later than forty-five (45) days from the date of this Agreement, unless otherwise agreed upon by both parties.

SECTION 3 - PAYMENTS TO CONSULTANT

3.1 Methods of Payment for Services and Expenses of CONSULTANT

For Basic Services. COUNTY shall pay CONSULTANT for Basic Services set forth in Section 1 for the PROJECT as follows:

Engineering – Plan Prep and Specifications:	\$	7,500.00
Construction Supervision	:	<u>\$ 2,000.00</u>
Total:	\$	9,500.00

3.2 Times of Payments

CONSULTANT shall submit an invoice to COUNTY after completion of each phase.

3.3 Other Provisions Concerning Payments.

If COUNTY fails to make any payment due CONSULTANT for services and expenses within sixty (60) days after receipt of CONSULTANT'S statement therefor, the amounts due CONSULTANT may include a charge at the rate of 1% per month from said 60th day, and in addition, CONSULTANT may, after giving seven days written notice to COUNTY, suspend services under this Agreement until he has been paid in full all amounts due for services and expenses.

SECTION 4 – FEDERAL REGULATIONS

4.1 EQUAL EMPLOYMENT OPPORTUNITY, E.O. 11246

4.1.1 During the performance of this Contract, the CONSULTANT agrees as follows:

4.1.1.2 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms or compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

4.1.1.3 The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants

will receive consideration for employment without regard to race, color, religion, sex or national origin.

- 4.1.1.4 The CONSULTANT will send to each Labor Union or representative of workers with which he has a collective bargaining agreement or other understanding, a notice to be provided by the agency contracting officer, advising the Labor Union or Worker's representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4.1.1.5 The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor.
- 4.1.1.6 The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 4.1.1.7 In the event of the CONSULTANT'S non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanction may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.
- 4.1.1.8 The CONSULTANT will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontractor or purchase order as the Contracting Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Contracting Agency, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

4.2 SEGREGATED FACILITIES

The CONSULTANT will not maintain any facility which is provided for their employees in a segregated manner or permit their employees to perform their services at any location under their control where segregated facilities are maintained except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

4.3 CONFLICT OF INTEREST

The CONSULTANT will abide by the provision that no member, officer or employee of the COUNTY, or its designees or agents, no member of the governing body of the locality or localities, who exercises any functions or responsibilities with respect to the program during the tenure or for one year thereafter, shall have any direct or indirect interest in any contractor, subcontractor or the proceeds thereof, financed in whole or in part with Title I grants.

4.4 COPELAND "ANTI-KICK BACK ACT" (18 U.S.C. 874)

The CONSULTANT agrees to comply with the Copeland "Anti-Kick Back Act" (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). The CONSULTANT shall not induce, by any means, any person employed in the construction, completion or in repair of public work, to give up any part of the compensation to which he is otherwise entitled.

4.5 INTEREST OF CERTAIN FEDERAL OFFICIALS

The CONSULTANT agrees that no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of Title I assistance provided under the Grant Agreement or to any benefit to arise from the same.

4.6 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The CONSULTANT certifies that remuneration under this Contract shall not be requested for the payment of any bonus or commission for the purpose of obtaining HUD approval of applications for additional assistance or any other approval or concurrence of HUD required under the Agreement, Title I of the Housing and Community Development Act of 1974 or HUD regulation with respect thereto; provided, however, that reasonable fees or bona fide technical, CONSULTANT, managerial or other such services other than actual solicitation are now hereby prohibited as remuneration for the professional and technical services described in this Contract are eligible as program costs.

4.7 SECTION 3 CLAUSE FOR THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

4.7.1 During the performance of this Contract, the CONSULTANT agrees as follows:

4.7.1.1 The work to be performed under this Contract is on a PROJECT assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 required that to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the PROJECT area and contracts of work in connection with the PROJECT be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the PROJECT.

4.7.1.2 The parties of this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

4.7.1.3 The CONSULTANT will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4.7.1.4 The CONSULTANT will include this Section 3 in every subcontract for work in connection with the PROJECT and will, at the direction of the applicant or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulation issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The CONSULTANT will not subcontract with any subcontractor where is has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirement of these regulations.

4.7.1.5 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder

prior to the execution of the Contract shall be a condition of the Federal financial assistance provided to the PROJECT, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement on contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135."

4.8 CIVIL RIGHTS ACT OF 1964

Under the Title I of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

4.9 "SECTION 109" OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

4.10 "SECTION 503" HANDICAPPED AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

- 4.10.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 4.10.2 The CONSULTANT agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4.10.3 In the event of the CONSULTANT'S on-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the act.
- 4.10.4 The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by

the Director, provided by or through the contracting officer. Such notices shall state the CONSULTANT'S obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

4.10.5 The CONSULTANT will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONSULTANT is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

4.10.6 The CONSULTANT will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

4.11 ACCESS TO BOOKS

All negotiated contracts awarded by grantees shall include a provision to the effect that the grantee, the Federal Grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, paper, and records of the CONSULTANT which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

SECTION 5 - GENERAL CONSIDERATIONS

5.1 Termination for Cause

If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this contract, the COUNTY shall thereupon have the right to terminate this contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONSULTANT under this contract shall, at the option of the COUNTY, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY, by virtue of any breach of the contract by the CONSULTANT, and the COUNTY may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the COUNTY from the CONSULTANT is determined.

5.2 Termination for Convenience

Either party may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of the COUNTY become its property. If the Agreement is terminated by the COUNTY as provided herein, the CONSULTANT will be paid an amount based on the percent of contract completed by the CONSULTANT prior to the effective date of such termination.

5.3 Reuse of Documents

All documents including reports and maps prepared by CONSULTANT pursuant to this Agreement are instruments of service as part of the PROJECT. They are not intended or represented to be suitable for reuse by COUNTY or others on extensions of the PROJECT or any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at COUNTY risk and without liability or legal exposure to CONSULTANT. Any verification or adaptation requested by COUNTY to be performed by CONSULTANT will entitle CONSULTANT to further compensation at rates to be agreed upon by COUNTY and CONSULTANT.

5.4 Controlling Law and Venue

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall be Warren County, Ohio.

5.5 Successors and Assigns

- 5.5.1 COUNTY and CONSULTANT each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party, to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.
- 5.5.2 Neither COUNTY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 5.6 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.
- 5.5.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than COUNTY and CONSULTANT.

5.6 Modification or Amendment

No modification or amendment of any provisions of this Contract shall be effective unless made by a written instrument, duly executed by the party to be bound thereby, which refers specifically to this Contract and states that an amendment or modification is being made in the respects as set forth in such amendment.

5.7 Construction

Should any portion of this Contract be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Contract shall remain in full force and effect unless revised or terminated pursuant to any other section of this Contract.

5.8 Waiver

No waiver by either party of any breach of any provision of this Contract shall be deemed to be a further or continuing waiver of any breach of any other provision of this Contract. The failure of either party at any time or times to require performance of any provision of this Contract shall in no manner affect such party's right to enforce the same at a later time.

5.9 Relationship of Parties

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Contract.

5.10 Parties

Whenever the terms "COUNTY" AND "CONSULTANT" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of COUNTY and CONSULTANT.

5.11 Headings

Paragraph headings in this Contract are for the purposes of convenience and identification and shall not be used to interpret or construe this Contract.

5.12 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: Warren County Commissioners
Attn. County Administrator
406 Justice Drive
Lebanon, Ohio 45036
513-695-1250

Jones-Warner Consultants, Inc.
8401 Clause Thomas Road, Ste 51
Franklin, OH 45005
937-704-9868

5.13 Insurance

CONSULTANT shall carry comprehensive general or professional liability insurance providing single limit coverage, with no interruption of coverage during the entire term of this Contract. CONSULTANT further agrees that in the event that its comprehensive general or professional liability policy is maintained on a "claims made" basis, and in the event that this contract is terminated, CONSULTANT shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Contract. CONSULTANT shall provide COUNTY with a certificate of insurance evidencing such coverage, and shall provide thirty (30) days notice of cancellation or non-renewal to COUNTY. Cancellation or non-renewal of insurance shall be grounds to terminate this Contract.

CONSULTANT shall carry statutory worker's compensation insurance and statutory employer's liability insurance as required by law and shall provide COUNTY with certificates of insurance evidencing such coverage simultaneous with the execution of this Contract.

SECTION 6 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES.

6.1 The following Exhibits are attached to and made a part of this Agreement:

Exhibit 1 – Proposal Letter dated June 4, 2019.

SECTION 7 – ENTIRE AGREEMENT

This Agreement (consisting of pages 1 to 11, inclusive), together with the Exhibit identified above constitute the entire agreement between COUNTY and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Exhibit may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

SECTION 8 – INDEMNIFICATION:

CONSULTANT will defend, indemnify, protect, and save COUNTY from any and all kinds of loss, claims, expenses, causes of action, costs, damages, and other obligations, financial or otherwise, arising from (a) negligent, reckless, or willful and wanton acts, errors or omissions by CONSULTANT, its agents, employees, licensees, contractors, or subcontractors; (b) the failure of CONSULTANT, its agents, employees, licensees, contractors, or subcontractors, to observe the applicable standard of care in providing services pursuant to this Contract; and (c) the intentional misconduct of CONSULTANT, its agents, employees, licensees, contractor or subcontractors that result in injury to persons or damage to property.

SECTION 9 – EXECUTION:

CONSULTANT:

IN WITNESS WHEREOF, the **JONES-WARNER CONSULTANTS, INC**, has caused this Agreement to be executed on the date stated below by _____ its
(Representative's Name)
_____, pursuant to a corporate resolution authorizing the same.
(Official Capacity)

JONES-WARNER CONSULTANTS, INC.

WITNESS:

S. Mason
Signature of Witness

S. Mason
Printed Name of Witness

BY: [Signature]

PRINTED NAME: T. Shawn Campbell

TITLE: President

DATE: 6-4-21

COUNTY:

IN WITNESS WHEREOF, the **WARREN COUNTY BOARD OF COMMISSIONERS** have caused this Agreement to be executed on the date stated below by David G. Young, its President, pursuant to Resolution No. 21-0815 dated 6.15.21.

WARREN COUNTY BOARD OF COMMISSIONERS

BY: [Signature]

Approved as to Form:

BY: [Signature]
Keith Anderson, Asst. Prosecutor

INFORMAL PRICE QUOTATION FORM

This form is to be filled out in its entirety when purchasing items anticipated to cost \$1,000 or more in the aggregate. If less than 3 quotes are indicated, please note the reason at the bottom of this page and/or attach justifying documentation.

Department/Office: Grants Admin Date: 6/3/21

Purchase Order Number: _____ Item Description:
 FY21 Pleasant Plain Park CDBG - Engineering

Quotation #1:

<u>Jones Warner Consultants Inc #72466</u>	<u>855-704-5924</u>
Vendor Name	Phone Number
<u>8401 Claude Thomas Rd Ste 51</u>	
Street Address	
<u>Franklin, OH 45005</u>	<u>\$ 9500 -</u>
City, State, Zip Code	Total Price Quote

Quotation #2:

<u>Barge Design Solutions</u>	<u>513-504-7688</u>
Vendor Name	Phone Number
<u>250 E Fifth Street, Ste 1500</u>	
Street Address	
<u>Cincinnati, OH 45202</u>	<u>Chose not to quote</u>
City, State, Zip Code	Total Price Quote

Quotation #3:

<u>Stantec Consulting Services</u>	<u>866-782-6832</u>
Vendor Name	Phone Number
<u>11687 Lebanon Rd</u>	
Street Address	
<u>Cincinnati, OH 45241</u>	<u>\$ 10,500 -</u>
City, State, Zip Code	Total Price Quote

AFFIDAVIT OF NON-COLLUSION

STATE OF OHIO
COUNTY OF WARREN

I, T. SHAWN CAMPBELL, holding the title and position of PRESIDENT at the firm JONES WARNER CONSULTANTS affirm that I am authorized to speak on behalf of the company, board directors and owners in setting the price on the contract, bid, or proposal. I understand that any misstatements in the following information will be treated as fraudulent concealment of true facts on the submission of the contract, bid or proposal.

I hereby swear and depose that the following statements are true and factual to the best of my knowledge:

The contract, bid, or proposal is genuine and not made on the behalf of any other person, company or client, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS.

The price of the contract, bid, or proposal was determined independent of outside consultation and was not influenced by other companies, clients, or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS.

No companies, clients, or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS have been solicited to propose a fake contract, bid, or proposal for comparative purposes.

No companies, clients, or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS have been solicited to refrain from bidding or to submit any form of noncompetitive bidding.

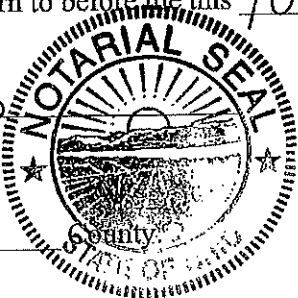
Relative to sealed bids, the price of the bid or proposal has not been disclosed to any client, company, or contractor, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS, and will not be disclosed until the formal bid/proposal opening date.

T. Shawn Campbell
AFFIANT

Subscribed and sworn to before me this 10th day of June 2021

[Signature]
(Notary Public);

Warren



My commission expires 3-31 2023



**Warren County Engineer's Office
105 Markey Road
Lebanon, Ohio 45036**

October 28, 2022

Memo:

To: Warren County Board of Commissioners

From: David Mick, PE, Assistant County Engineer

**Re: November 1, 2022 - Development/Access Agreement for the Mercy Health Development
Kings Mills Road, Kings Island Drive, Columbia Road**

On August 17, 2021 (Resolution 21-1135), this Board approved a request by Bon Secours Mercy Health (BSMH) for a variance to the Warren County Access Management Regulations for their Kings Mills development with the condition that there be an approved access/development agreement memorializing the scope of required improvements to Kings Mills Road, Kings Island Drive, Columbia Road, and Wilson Avenue. This access/development agreement is attached and will be presented for the Board's consideration at your November 1, 2002 meeting.

Summary:

- 1) The Board will recall that the majority of the improvements included in the access development agreement had been identified as a public need for 15+ years prior to this development. Bon Secours Mercy Health is providing the funding necessary to complete the projects as identified in the access/development agreement so that the schedule to construct the public improvements can be accelerated to coincide with the opening of the Mercy Health Mason facility. This Board passed a Resolution of Public Necessity for the improvements on February 22, 2022 (Resolution 22-0271).
- 2) Warren County will acquire highway easements and temporary easements as needed to construct the improvements.
- 3) The County Engineer's Office or Warren County Transportation Improvement District will manage the construction projects as described in the agreement.
- 4) The estimated cost of improvements and right-of-way to be funded by BSMH is \$7,500,000. The agreement includes a schedule of fund transfers in Section 5.
- 5) All improvements are to be either contracted/funded for construction or bonded at 130% of the estimated cost of improvements no later than 30-days prior to the opening of the Mercy Health Mason Development.

{end}

ENTER INTO AN ACCESS/DEVELOPMENT AGREEMENT WITH BSMH FAIRFIELD, LLC. MEMORIALIZING THE WARREN COUNTY ACCESS PERMIT CONDITIONS FOR THE MERCY HEALTH HOSPITAL MASON DEVELOPMENT, LOCATED ON KINGS ISLAND DRIVE IN DEERFIELD TOWNSHIP, AND AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE SAID AGREEMENT

WHEREAS, the MERCY HEALTH HOSPITAL MASON DEVELOPMENT (the "DEVELOPMENT") is located in Deerfield Township within an area bounded by Kings Mills Road (County Road #31) (north), Columbia Road (Township Road #15) (east), Wilson Avenue (Township Road #1117)(south), and Kings Island Drive (County Road #110) (west) and with a combined total land area equal to 33.541 acres as is also shown in Exhibit 1 attached; and

WHEREAS, BSMH Fairfield, LLC. (the "DEVELOPER") plans to develop the said 33.541 acre area with a proposed 156,000 Sq. Ft., 4-story, 60-bed hospital, 30,000 Sq. Ft. medical office building, 611 parking spaces in the initial phase; 45,000 Sq. Ft. and 3,500 Sq. Ft. medical office buildings with 306 and 15 parking spaces respectively in later phases; and

WHEREAS, on June 15, 2021 DEVELOPER applied for an Access Permit for the DEVELOPMENT, with access points located on: (a) Kings Island Drive (1 signalized full access point, 1 right-in/right-out only access), (b) Kings Mills Road (1 right-in/right-out only access), and (c) Columbia Road (2 full access points). DEVELOPER's Access Permit request was denied by COUNTY ENGINEER on July 12, 2021 due to i) non-compliance with Section 401.6 Spacing Requirements for Signalized Intersections, ii) non-compliance with Section 401.6 spacing requirement from a proposed left turn lane, and iii) non-compliance with Section 401.8.2(c) in regard to required spacing for a right-in/right-out driveway from a second driveway. Subsequently, DEVELOPER filed a Request for Variance of Conditions that was required for an Access Permit, which was considered during an administrative hearing conducted by WARREN COUNTY on August 17, 2021; and

WHEREAS, at the aforementioned August 17, 2021 administrative hearing, this Board, by Resolution 21-1135, approved the DEVELOPER'S request for a variance to the Warren County Access Management Regulations subject to the condition that the Developer enter into an Access/Development Agreement with WARREN COUNTY. As stated in Resolution 21-1135, the purpose of this Agreement is to memorialize the scope of improvements that will be designed and constructed by the DEVELOPER in order to mitigate the DEVELOPMENT'S traffic impacts thereby allowing the County Engineer to grant a Permit for the access points requested by the DEVELOPER as shown in the attached Exhibit 2; and

WHEREAS, the County Engineer reviewed the scope of improvements outlined in the Agreement attached hereto and the associated Traffic Impact Study prepared for the DEVELOPMENT and is satisfied that the improvements to be constructed by the DEVELOPER will successfully mitigate their development impacts; and

WHEREAS, with Board approval of this Agreement, the County Engineer will permit the DEVELOPER'S access points where and as shown in Agreement Exhibit 2 as conditioned in the Agreement and specifically noting the following:

- a) In accordance with Section 3 Construction/Bonding Schedule of the Agreement, no later than 30-calendar days prior to the DEVELOPMENT opening for business, all improvements shown in the Agreement Exhibits 2 and 3 and will either be publicly bid and under contract for construction, or, alternately, the DEVELOPER shall provide a bond acceptable to the Board of Commissioners in the amount of 130% of the County Engineer's estimate of the improvements not yet under contract for construction; and,
- b) The proposed traffic signal for the DEVELOPMENT located at the Kings Island Drive and Kings Center Court intersection may be turned on and operational after the improvements shown in the Agreement Exhibit 4, or alternate plan as determined by the County Engineer, are constructed; and,
- c) For land acquisition and construction bid and management to be provided by Warren County, the DEVELOPER will provide sufficient funding to Warren County as described in Section 5 of the Agreement "WARREN COUNTY Land Acquisition and Construction Management".

NOW THEREFORE BE IT RESOLVED, i) that this Board enters into this Agreement memorializing the scope of improvements to be designed and constructed by the DEVELOPER in order to mitigate the DEVELOPMENT'S traffic impacts thereby allowing the County Engineer to grant a Permit for the access points as shown in Exhibit 2 of the Agreement, a copy of said Agreement including exhibits is attached hereto and made apart hereof, and ii) the County Administrator is hereby authorized to execute said agreement.

Bon Secours Mercy Health Development/Access Agreement

This Development/Access Agreement (“**AGREEMENT**”), is made and entered into as of the date of the last party to sign (the “**EFFECTIVE DATE**”), by and between the Board of Warren County Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 (“**WARREN COUNTY**”), on behalf of the Warren County Engineer, (“**COUNTY ENGINEER**”), and BSMH FAIRFIELD, LLC, an Ohio limited liability company, being the owner and developer (“**DEVELOPER**”) of the Mercy Health Hospital Mason development. WARREN COUNTY, COUNTY ENGINEER, and DEVELOPER are at times referred to hereinafter as the “Parties.”

Witnesseth:

WHEREAS, the DEVELOPMENT is located in Deerfield Township within an area bounded by Kings Mills Road {County Road #31} (north), Columbia Road {Township Road #15} (east), Wilson Avenue {Township Road #1117}(south), and Kings Island Drive {County Road #110} (west) and with a combined total land area equal to 33.541 acres as is also shown in Exhibit 1 attached; and

WHEREAS, the DEVELOPER plans to develop the said 33.541 acre area with a proposed 156,000 Sq. Ft., 4-story, 60-bed hospital, 30,000 Sq. Ft. medical office building, 611 parking spaces in the initial phase; 45,000 Sq. Ft. and 3,500 Sq. Ft. medical office buildings with 306 and 15 parking spaces respectively in later phases, (this AGREEMENT considers the entire development including the initial and later phases as described in this paragraph) (the “**DEVELOPMENT**”); and

WHEREAS, on June 15, 2021 DEVELOPER applied for an Access Permit for the DEVELOPMENT, with access points located on: (a) Kings Island Drive (1 signalized full access point, 1 right-in/right-out only access), (b) Kings Mills Road (1 right-in/right-out only access), and (c) Columbia Road (2 full access points). DEVELOPER’s Access Permit request was denied by COUNTY ENGINEER on July 12, 2021 due to i) non-compliance with Section 401.6 Spacing Requirements for Signalized Intersections, ii) non-compliance with Section 401.6 spacing requirement from a proposed left turn lane, and iii) non-compliance with Section 401.8.2(c) in regard to required spacing for a right-in/right-out driveway from a second driveway. Subsequently, DEVELOPER filed a Request for Variance of Conditions that was required for an Access Permit, which was considered during an administrative hearing conducted by WARREN COUNTY on August 17, 2021; and

WHEREAS, at the aforementioned August 17, 2021 administrative hearing, WARREN COUNTY approved DEVELOPER’S request for a variance to the Warren County Access Management Regulations subject to the condition that the Developer enter into an Access/Development Agreement with WARREN COUNTY; and

WHEREAS, the parties desire to enter into this Agreement to satisfy the aforementioned condition of the variance.

NOW THEREFORE, in consideration of ONE DOLLAR (\$1.00), the mutual benefits to be derived by the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged as adequate consideration to legally bind the Parties, and in order to mitigate the impacts to Kings Mills Road, Columbia Road, Wilson Avenue, and Kings Island Drive attributable to the DEVELOPMENT, and in order to comply with the Warren County Official Thoroughfare Plan and Appendix

A of the Warren County Access Management Regulations, except for variances granted by WARREN COUNTY, the Parties agree to the following rights and obligations:

DEVELOPER and WARREN COUNTY, each on their own behalf, and on behalf of their successors and assigns, do hereby agree, covenant and warrant the following:

- 1) Scope of Improvements by DEVELOPER. The DEVELOPER shall design and construct at its cost the following improvements as depicted in Exhibit 2 and more or less described as follows:

(A) With respect to Kings Mills Road:

i) Right-of-way dedicated on the development side of Kings Mills Road equal to 75-Lin. Ft. from the property line in conformance with the Warren County Thoroughfare Plan. OPTION 2, in lieu of the 75-Lin. Ft. width, DEVELOPER may dedicate a lesser width equal to 12-Lin. Ft. minimum from the back of proposed curb also considering the ultimate design section for Kings Mills Road including dual left turn lanes on Kings Mills Road at the Kings Island Drive and Columbia Road intersections as determined by the COUNTY ENGINEER. OPTION 3, the DEVELOPER may also dedicate a lesser right-of-way width equal to the ultimate future back of curb location as determined by the COUNTY ENGINEER plus 6-Lin. Ft. minimum where a pedestrian path easement is provided immediately adjacent to the public road right-of-way. The dedication language of the said pedestrian path easement would allow WARREN COUNTY to remove and replace the pedestrian path facilities and regrade the pedestrian path easement area as needed for public road and/or drainage improvements provided that WARREN COUNTY reconstructs the pedestrian path at its pre-existing location.

(B) With respect to Columbia Road:

i) A 130-Lin. Ft. including 50-Lin. Ft. taper privately-maintained southbound right turn lane for the DEVELOPMENT's north access point on Columbia Road.

ii) A 200-Lin. Ft. including 50-Lin. Ft. taper southbound privately-maintained right turn lane for the DEVELOPMENT's south access point on Columbia Road.

iii) The edge of pavement for the DEVELOPMENT'S right-turn lanes described in B(iii), and B(iv) will be located 28-feet from the existing striped centerline for Columbia Road in anticipation of future widening of Columbia Road (by others) to three-lanes. Curb and gutter is an acceptable alternative to the local open ditch typical section to the benefit of the DEVELOPMENT site grading and buffer requirements.

iv) Minimum right-of-way width dedicated on the DEVELOPMENT side of Columbia Road equal to the Warren County Thoroughfare typical section for a local open ditch section, 35-Lin. Ft., or greater width if needed so that the roadside ditch adjacent to the proposed development right turn lanes is located within the public right-of-way.

(C) With respect to Wilson Avenue:

i) Graded shoulder on the development-side of Wilson Avenue to 18-Lin. Ft. from the existing center roadway also included a 2-Lin. Ft. wide gravel berm.

ii) Minimum right-of-way width dedicated on the DEVELOPMENT side of Wilson Avenue equal to the Warren County Thoroughfare typical section for a local open ditch section, 35-Lin.

Ft., or greater width if needed so that the roadside ditch adjacent to the proposed development right turn lanes is located within the public right-of-way.

With respect to this Section 1(C), DEVELOPER is not obligated to commence installation of these improvements until the date that DEVELOPER receives final approval of its development plan for the southern portion of the DEVELOPMENT site from the appropriate governmental entity.

Until such time as Phase 2 develops, BSMH will construct and maintain a 4' wide asphalt or concrete path on the north side of Wilson Avenue from Kings Island Drive to approximately 170-feet west of the proposed walking path near the east right-of-way line for Kings Island Drive. Then from that point 170-feet east of the Kings Island Drive path, BSMH will grade as needed and maintain a six-foot wide minimum area consisting either of a lawn surface or gravel surface (4-foot wide gravel plus minimum of 1-foot each side cleared and mowed or otherwise cleared) along the north side of Wilson Avenue east to Columbia Road. Up to four culvert crossings will be required for an eight-foot wide path from the north edge of pavement of Wilson Avenue to the BSMH lawn or gravel path. BSMH also agrees to provide a pipe extension or opening for an existing 12-inch storm sewer to drain to the northern of two ditches located north of Wilson Avenue. Exhibit 3 of this Agreement (titled "Wilson Avenue Walk Exhibit") depicts the work to be performed under this paragraph.

(D) With respect to Kings Island Drive, portion south of Kings Mills Road:

i) A new traffic signal at Kings Island/main access/Kings Center Ct. Until the time that the required right-of-way is acquired by WARREN COUNTY, DEVELOPER may install a temporary signal in the right-of-way. Once the right-of-way is acquired by WARREN COUNTY, WARREN COUNTY will install a permanent signal with the WARREN COUNTY-managed projects.

ii) Right-of-way dedicated on the development side of Kings Island Drive equal to 86 Lin. Ft from the center of the existing 100-Lin. Ft. wide dedicated right-of-way for Kings Island Drive north of the Kings Center Ct/DEVELOPMENT drive (75-Lin. Ft. in conformance with the Warren County Thoroughfare Plan plus 11-Lin. Ft. for the DEVELOPMENT-added southbound left turn lane), 75-Lin. Ft. the remainder of the site development frontage between Kings Center Ct./DEVELOPMENT drive and Wilson Avenue. OPTION 2, in lieu of the 86-Lin. Ft or 75-Lin. Ft. width, the DEVELOPER may dedicate a lesser width equal to 12-Lin. Ft. minimum from the back of proposed curb also considering the ultimate design section for Kings Island Drive to include two (2) northbound through lanes and a dedicated northbound right turn lane onto Kings Mills Road as determined by the COUNTY ENGINEER. OPTION 3, the DEVELOPER may also dedicate a lesser right-of-way width equal to the ultimate future back of curb location as determined by the COUNTY ENGINEER plus 6-Lin. Ft. minimum where a pedestrian path easement is provided immediately adjacent to the public road right-of-way. The dedication language of the said pedestrian path easement would allow WARREN COUNTY to remove and replace the pedestrian path facilities and regrade the pedestrian path easement area as needed for public road and/or drainage improvements provided that WARREN COUNTY reconstructs the pedestrian path at its pre-existing location.

(E) With respect to miscellaneous work to be performed by DEVELOPER:

i) Way Finding signage acceptable to Warren County and the City of Mason.

- 2) Scope of Improvements by WARREN COUNTY. Concurrent with DEVELOPER'S performance of the Improvements stated in Section 1, WARREN COUNTY shall cause the following improvements to be performed in furtherance of the DEVELOPMENT at the sole cost of DEVELOPER, including without limitation costs directly relating to the design, right-of-way acquisition, utility relocations (unless otherwise addressed by the responsible utility company), and construction:

(A) With respect to Kings Center Court:

i) A dedicated left turn-only lane eastbound Kings Center Court at Kings Island Drive 200-Lin. Ft. including 50-Lin. Ft. taper.

ii) The existing southbound Kings Island Drive travel edge (existing edge line) will remain where it is located currently due to the close proximity of the existing commercial drives to the intersection.

(B) With respect to Kings Island Drive, portion south of Kings Mills Road:

i) Widen Kings Island Drive between Kings Center Court and Kings Mills Road to seven (7) lanes, including two southbound thru-lanes, one southbound left turn lane for the DEVELOPMENT access, two northbound left-turn lanes, one northbound thru-lane, and one northbound right-turn lane.

ii) A left-turn lane at Kings Center Drive ahead of the new traffic signal at Kings Center Court 225-Lin. Ft. including 50-Lin. Ft. taper.

iii) A left-turn lane at the Kings Center Court/DEVELOPMENT signalized intersection 225-Lin. Ft. including 50-Lin. Ft. taper.

iv) Dual northbound left turn lanes with 250 Lin. Ft. and 350 Lin. Ft storage plus tapers developed in accordance with the Ohio Department of Transportation Location and Design Manual on the approach to the proposed new Kings Center Ct/DEVELOPMENT traffic signal for the left turns onto Kings Mills Road.

v) The DEVELOPMENT's south access point on Kings Island Drive will be constructed with a concrete island restricting access at this location to right-in/right-out only.

(C) With respect to Kings Island Drive, portion north of Kings Mills Road:

i) A dedicated right turn lane southbound between Kingsview Drive and Kings Mills Road.

ii) Add pavement as needed to maintain the current 5-lane roadway section with an alignment shift of some lanes as needed to accommodate the proposed southbound left turn lane for the hospital site entrance opposite of Kings Center Ct. The southbound thru-lane is to be located on a straight line approximately opposite of the inside (east) southbound thru-lane south of the Kings Mills Road intersection. The southbound left turn lane is to be located opposite of the outside (east) northbound Kings Island Drive left turn lane. WARREN COUNTY will fund the added expense associated with constructing the southbound left turn lane and the additional lane width east to align with the outside (east) northbound Kings Island left turn lane.

(D) With respect to Kings Mills Road:

i) A second dedicated thru-only lane eastbound Kings Mills Road from the northbound I71 ramps east to Columbia Road where only a single eastbound thru-only lane exists currently. The south thru-only lane will terminate as a right-turn only lane at Columbia Road.

ii) A dedicated right turn-only lane eastbound on Kings Mills Road from Kings Center Drive to Kings Island Drive.

iii) A concrete median designed to restrict turning movements to/from Kings Center Drive at Kings Mills Road to right-in/right-out movements only.

iv) A second dedicated thru-only lane westbound King Avenue/Kings Mills Road beginning on King Avenue 450-Lin. Ft. east of the east edge of pavement for Columbia Road and continuing to Kings Island Drive.

v) New traffic signals at the Kings Mills Road/Kings Island Drive and Kings Mills Road/Columbia Road intersections designed to accommodate the improved roadway sections.

vi) A 200-Lin. Ft. privately-maintained right turn lane for the DEVELOPMENT's Kings Mills Road access point and concrete island restricting access to right-in/right-out only.

(E) With respect to Columbia Road:

i) Extend the northbound Columbia Road left-turn lane at Kings Mills Road to 300-Lin. Ft. including a 50-Lin. Ft. taper.

ii) A dedicated right turn-only lane northbound Columbia Road at Kings Mills Road 350-Lin. Ft. including 50-Lin. Ft. taper.

(F) With respect to miscellaneous work to be performed by WARREN COUNTY:

i) Way Finding signage acceptable to Warren County and the City of Mason.

3) Construction/Bonding Schedule. As a condition of WARREN COUNTY permitting access to the DEVELOPMENT:

i) The DEVELOPER will complete that portion of the improvements described above under Section 1 "Scope of Improvements by DEVELOPER."

ii) No later than 30-calendar days prior to the DEVELOPER'S opening the DEVELOPMENT for business, the DEVELOPER shall provide a surety bond or other security acceptable to WARREN COUNTY in the amount of 130% of the COUNTY ENGINEER'S estimated cost for the performance and 12 months' maintenance of the remaining unconstructed improvements not including the Wilson Avenue improvements that are deferred until the development plan for the southern portion of the DEVELOPMENT area fronting Wilson Avenue is approved as described in Section 1(C).

iii) WARREN COUNTY acknowledges and agrees that DEVELOPER'S opening for business on the DEVELOPMENT site is not contingent upon the completion of the improvements stated in Section 2 "Scope of Improvements by WARREN COUNTY." Furthermore, WARREN COUNTY shall use best efforts to complete the improvements stated in Section 2 "Scope of Improvements by WARREN COUNTY" by not later than November 1, 2023. However, for the traffic signal at Kings Island Drive/Kings Center Court to be permitted to be turned on and

operational, the eastbound lanes on Kings Mills Road shown in Exhibit 2 will be completed along with full improvements on Kings Island Drive less the curb and pavement for the east-most northbound lane on Kings Island Drive north of Kings Center Court. In the event permanent traffic conditions cannot be constructed in accordance with Exhibit 2, the DEVELOPER will be permitted to activate the traffic signals under a temporary traffic control plan ("Temporary Traffic Plan"). The Temporary Traffic Plan may be constructed in accordance with Exhibit 4 or an alternative design, as determined by the COUNTY ENGINEER.

- 4) Maintaining Traffic During Construction. The DEVELOPER'S construction schedule will provide for maintaining all existing lanes and turn lanes in certain directions during peak periods as determined by the COUNTY ENGINEER in consultation with DEVELOPER.
- 5) WARREN COUNTY Land Acquisition and Construction Management. Certain DEVELOPMENT improvements defined in Sections 1 and 2 above require right-of-way acquisition by WARREN COUNTY in order to perform construction. By virtue of WARREN COUNTY Board of County Commissioners Resolution No. 22-0271, adopted February 22, 2022 (the "Resolution"), WARREN COUNTY has determined such DEVELOPMENT improvements to be necessary and for public use. WARREN COUNTY will acquire the land and/or right-of-way necessary for the improvements, contract to construct the improvements and manage the roadway improvement construction for the improvement package components. WARREN COUNTY agrees that such right of way acquisition shall not operate as a condition precedent to DEVELOPER'S opening for business on the DEVELOPMENT site. Because the DEVELOPER needs such public improvements that are attributable to the DEVELOPMENT to be constructed on the DEVELOPER'S accelerated schedule, the DEVELOPER agrees to follow the processes described below.

Right-of-Way Acquisition:

- a) The DEVELOPER will provide plans reasonably acceptable to the COUNTY ENGINEER.
- b) Prior to WARREN COUNTY executing a professional services contract for right-of-way acquisition, the DEVELOPER will deposit an amount equal to the cost of the professional services contract with WARREN COUNTY, a complete and accurate copy of which shall be provided to DEVELOPER in advance.
- c) Prior to WARREN COUNTY negotiating with landowners to purchase the land comprising the right-of-way, the DEVELOPER will deposit with WARREN COUNTY an amount equal to 300% of the appraised value of the land to be acquired.
- d) WARREN COUNTY will obtain the consent of DEVELOPER prior to executing a contract to purchase the land for an amount greater than 125% of the appraised value.
- e) If necessary and all legal requirements can be satisfied, WARREN COUNTY may file appropriation proceedings if the DEVELOPER will deposit the anticipated cost of legal proceedings and settlement as determined by mutual agreement of WARREN COUNTY and DEVELOPER.
- f) Any remaining funds deposited in accordance with this process that are not disbursed by WARREN COUNTY will be returned to the DEVELOPER upon completion of the land acquisition phase.

Road Construction:

- a) The DEVELOPER will provide the plans, specifications, bid quantities for COUNTY ENGINEER approval, which shall not be unreasonably withheld, conditioned, or delayed.
- b) Prior to WARREN COUNTY advertising the COUNTY ENGINEER-approved plans for construction, the DEVELOPER will deposit an amount equal to the ENGINEER'S ESTIMATE for construction with WARREN COUNTY, subject to DEVELOPER'S prior approval of such ENGINEER'S ESTIMATE.
- c) Prior to WARREN COUNTY awarding and executing the construction contract, DEVELOPER and WARREN COUNTY will adjust the deposit made under (b) above so that the amount equals 110% of the lowest and best bid amount. If the deposit made under (b) above is in excess of 110% of the lowest and best bid amount, WARREN COUNTY will refund the difference to DEVELOPER. Conversely, if the deposit made under (b) above is less than 110% of the lowest and best bid amount, DEVELOPER will deposit an additional amount with WARREN COUNTY so that the aggregate deposit equals 110% of the lowest and best bid amount. Should the deposit ever drop below the 107% minimum balance during the project, within ten (10) business days after receipt of the written request by the County Engineer, the Developer shall deposit sufficient funds to restore the balance of the deposit to 110% of the cost of the items remaining in the contract to be paid.
- d) Any remaining funds deposited with WARREN COUNTY in accordance with this process that are not disbursed by WARREN COUNTY will be returned to the DEVELOPER upon completion of the roadway construction phase.

Other costs: WARREN COUNTY may elect, in its sole discretion and upon written notice to DEVELOPER, to utilize the WARREN COUNTY TRANSPORTATION IMPROVEMENT DISTRICT (WCTID) to manage the right-of-way acquisition and/or road construction projects. If WARREN COUNTY uses WCTID for such responsibility, the DEVELOPER will reimburse WARREN COUNTY for WCTID management fees equal to three percent (3%) of the total cost of the portion of the right-of-way acquisition and construction managed by WCTID.

Prevailing Wage: WARREN COUNTY will follow the Ohio Prevailing Wage Law for publicly bid roadway construction projects.

- 6) DEVELOPER to Provide Permits, Agreements. For DEVELOPER-constructed improvements as stated in Section 1, the DEVELOPER will provide to the COUNTY ENGINEER, as applicable: (a) executed copies of all necessary right-of-way agreements, easements, and other permits needed to complete the improvements to the reasonable satisfaction of the COUNTY ENGINEER prior to the COUNTY ENGINEER'S issuing a permit to construct improvements in the public right-of-way.
- 7) The Parties to Consult Throughout. The DEVELOPER acknowledges that WARREN COUNTY cannot make any warranties on the final cost or schedule of completion of the improvements; provided, however, both Parties will consult with the other on an ongoing basis regarding such cost and the schedule of completion of the improvements. Such consultation shall occur at regular intervals and, at minimum, at the following times: (i) monthly or other interval agreed upon throughout the project; (ii) prior to the WARREN COUNTY'S execution of professional services, or either Party executing a construction contract involving construction within the public right-of-way with

DEVELOPER funds, (iii) the commencement and the completion of an eminent domain proceeding on right-of-way required for the improvements; (iv) during the review of contractor bids and prior to the selection of a contractor by either Party; and (v) prior to the acceptance by either Party of any request for design changes.

8) Design and Construction Standards.

(A) *Design Standards.* All publicly-maintained improvements will be designed in accordance with generally accepted principles of roadway and drainage design as provided in the Ohio Department of Transportation Location and Design Manual (ODOT L&D Manual), Warren County Storm Water Regulations, and AASHTO – A Policy of Geometric Design of Highways and Streets (Green Book) or other standard approved by the COUNTY ENGINEER.

(B) *Other Public Improvements to be Considered.* The construction design will also consider the potential for improvements by WARREN COUNTY or others to be constructed either with the DEVELOPER's improvements described in "1) Scope of Improvements" or at a later undetermined date. The DEVELOPER agrees that, subject to the mutual agreement of the Parties and provided that WARREN COUNTY is not in default under this Agreement, the COUNTY ENGINEER may increase the DEVELOPMENT design scope to include the consideration, and potentially the construction, of additional improvements provided that all costs, including but not limited to the construction costs, attributable to the change in design scope by the COUNTY ENGINEER will be paid solely by WARREN COUNTY. DEVELOPER'S opening for business on the DEVELOPMENT site shall not be conditioned upon the completion of such additional improvements.

(C) *Location of Improvements.* The DEVELOPMENT's public improvements will be located and situated within the public right-of-way in a manner that most appropriately satisfies the shared interests of the DEVELOPER, adjacent property owners, and the health, safety, convenience, and welfare of the public as determined by the COUNTY ENGINEER with the COUNTY ENGINEER considering the proposed DEVELOPMENT improvements and any other future public improvements anticipated within the project area.

(D) *Construction standards.* All publicly-maintained improvements will be constructed in accordance with generally accepted principles of roadway and drainage construction as provided in the Ohio Department of Transportation Construction and Material Specifications (ODOT CMS), Warren County Supplemental Specifications, or other standard approved by the COUNTY ENGINEER.

(E) *Pavement Section.* The public roadway typical section will be determined by the COUNTY ENGINEER after review of the geotechnical analysis provided by the DEVELOPER.

(F) *ODOT Prequalified Contractors Required.* For DEVELOPER and WARREN COUNTY construction, the General Contractor and all sub-contractors performing work within the public road right-of-way must be pre-qualified for the bid item or task being completed. An index of contractor's that are prequalified by ODOT is located on ODOT's website under [Prequalification & Certification / Ohio Department of Transportation](#).

(G) *Punch List*. The DEVELOPER AND WARREN COUNTY public road construction contracts will include the following provisions: a) video inspection and report of all public storm sewer improvements will be performed per ODOT CMS Specification 611, b) the Contractor and County Engineer's Office representatives will complete a punch list walk through inspection 9-months after the substantial project completion date with all punch list items to be completed within 12-months of the substantial project completion date. Upon satisfactory completion of such punch list items, WARREN COUNTY will be responsible for the maintenance of the improvements and the improvements shall be publicly dedicated to WARREN COUNTY.

- 9) Change in Scope. In the event that the COUNTY ENGINEER makes a request to increase the DEVELOPMENT scope of improvements beyond those improvements listed in Section 1 and Section 2, the design, construction, and right-of-way costs associated with the increased scope of improvements will be paid by WARREN COUNTY.
- 10) Utilities. Pursuant to the Resolution No. 22-0271, dated February 22, 2022, WARREN COUNTY has determined that the DEVELOPMENT improvements are a necessity in furtherance of the public safety, convenience and welfare. WARREN COUNTY agrees to contact any and all utility companies who make use of the rights-of-way affected by the DEVELOPMENT improvements and, in accordance with statutory authority, to have such utility companies relocate their equipment and any easements so as not to interfere with the proposed improvement, maintenance or repair of such improvements. Such relocation is to include, as necessary, the shutdown of utilities, the relocation of any utility easements or utility lines, and the provision of temporary utility services. At its sole discretion, WARREN COUNTY may, but is under no obligation, to dispute a utility owner's claim that the utility is entitled to be reimbursed for costs associated with the relocation of the utility owner's facilities. Utility relocation costs are the sole responsibility of the Developer.

12) Insurance.

WARREN COUNTY and DEVELOPER agree to maintain, at their respective sole expense, Commercial General Liability Insurance coverage covering all the work to be provided by such party and any of its agents, employees, representatives, contractors, and subcontractors under this Agreement. Notwithstanding the foregoing or anything herein to the contrary, DEVELOPER may elect to self-insure for coverage through participation in a corporate insurance and/or deductible policy with coverage limits commensurate with a project in the amount of \$10,000,000, and such limits may be satisfied in combination with excess coverage. WARREN COUNTY has elected to insure through the County Commissioners Association of Ohio's County Risk Sharing Authority, with general liability limits of \$1,000,000 each occurrence, and excess liability limits of \$9,000,000.

13) Indemnification.

Each party shall be responsible for its own acts and omissions and those of its employees, staff, agents, representatives, and/or contractors. Neither party shall be responsible for the acts or omissions of the other party's employees, staff, agents, representatives, and/or contractors. Each party shall defend itself and its employees, staff, agent, representatives and contractors, and pay any judgments and costs arising out of its/their own acts and omissions. Nothing in this Agreement shall transfer responsibilities of the acts or omissions of one party to the other party. Nothing in this Agreement shall prohibit a party from contracting with its contractors and

subcontractors to provide indemnification for own acts and omissions of such contractors and subcontractors.

- 14) Notices. Any notice, request, or demand permitted or required to be given hereunder shall be in writing, signed by or on behalf of the party giving the notice, and shall be deemed to have been given when delivered personally to an authorized agent of the other party in interest, or on the next business day after the same has been deposited for overnight delivery with any nationally recognized overnight courier service, addressed to the other party at the address stated below (which address may be updated from time to time by written notice to the other party):

County Engineer
210 W. Main Street
Lebanon, Ohio 45036

Board of Warren County Commissioners
406 Justice Drive
Lebanon, Ohio 45036

BSMH Fairfield, LLC

BSMH Fairfield, LLC
1701 Mercy Health Place
Cincinnati, Ohio 45237
Attn: Dan McCarthy, Vice President, Real Estate Development
Email: dmccarthy@mercy.com

with a copy to:

Daniel G. Dutro, Jr.
Bon Secours Mercy Health
1701 Mercy Health Place
Cincinnati, Ohio 45237
Email: DGDutro1@mercy.com

- 15) Waiver. No waiver of any breach or default by either party to this Agreement shall be implied from any omission or failure to take any action or delay in taking action with respect to such breach or default if the same breach or default continues or is repeated. No express waiver of any breach or default shall affect any other breach or default or cover any period of time other than the period of time specified in the express waiver. One or more waivers of any breach or default in the performance of any term or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent breach or default in the performance of the same term or covenant or any other term or covenant contained in this Agreement.
- 16) Amendments. Except updates to notice addresses as effectuated herein, this Agreement may be amended, modified, or supplemented only by a written agreement signed by all of the parties.
- 17) Remedies. Each party shall have the right to prosecute any proceedings at law or in equity, including remedies of temporary restraining order, injunction, or specific performance, against the other party or against an occupant or other third party claiming through or under the other party, or any other person or entity violating, attempting to violate, or defaulting upon any of the provisions contained in this Agreement, in order to prevent or cause the cessation of any violation,

attempted violation, or default upon the provisions of this Agreement and to recover damages for any such violation or default. The rights and remedies expressly given to the parties under this Agreement shall be cumulative and no single right or remedy shall be exclusive of any others or of any other right or remedy at law or in equity that the parties might otherwise have by virtue of a breach or default under this Agreement.

- 18) Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The venue for any and all disputes, interpretations, claims or causes of action of any kind shall be brought exclusively in the Warren County Court of Common Pleas, General Division (unless the parties mutually agree in writing to mediation to be conducted in Warren County, Ohio). The parties irrevocably waive the right to bring or remove any and all disputes, interpretations, claims or causes of action of any kind in any other county, state or federal court. Should either party breach this exclusive venue provision, the breaching party shall pay the reasonable attorney's fees and court costs that the other party incurs relating to such action having to be removed to the venue provided herein.
- 19) Miscellaneous. The rights, obligations, and interests created and granted under this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior written or oral negotiations and understanding. The rights, obligations, and interests created and granted under this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the Parties. Except updates to notice addresses as effectuated herein, this Agreement may be amended, modified, or supplemented only by a written agreement signed by all of the Parties. This Agreement may be executed in counterparts, facsimile, electronic transmission, pdf format, or otherwise, each of which shall constitute one and the same instrument.
- 20) Recorded Affidavit. This Agreement shall be incorporated by reference into an affidavit relating to title per R.C. 5301.252 (B)(3) and recorded of public record. DEVELOPER shall execute and cause the affidavit to be recorded in the Warren County, Ohio Recorder's Office, at DEVELOPER's sole expense.
- 21) Termination of Agreement. There is no termination date for the DEVELOPER'S obligations specified in Section 1(C) with respect to the DEVELOPER'S improvements to be constructed along Wilson Avenue. All other provisions of this Agreement shall terminate as of the date that is the earlier of: (a) the date when all improvements are accepted for public dedication by WARREN COUNTY; and (b) the date that is the five (5)-year anniversary of the EFFECTIVE DATE; unless otherwise extended by mutual agreement of the Parties.

[Remainder of this page is left blank intentionally. Signature page follows.]

IN EXECUTION WHEREOF, DEVELOPER has caused this AGREEMENT to be executed on the date stated below by its authorized representative, in accordance with its operating agreement or by resolution after having the opportunity to review the AGREEMENT with legal counsel.

DEVELOPER:
BSMH FAIRFIELD, LLC,
an Ohio limited liability company

By: [Signature]
Print Name: John M. Starck
Title: CEO
Date: 10/26/22

STATE OF Ohio, COUNTY OF Hamilton, ss:

The foregoing instrument was acknowledged before me this 27th day of October, 2022, by John M. Starck, the CEO of BSMH Fairfield, LLC, an Ohio limited liability company, on behalf of the limited liability company. This notarial act is in compliance with R.C. 147.542 (D)(1).

[seal]



KELLY C. MEDER
Notary Public
State of Ohio
My Comm. Expires
October 18, 2025

[Signature]
Notary Public
My Commission Expires: _____

[the remainder of this page intentionally left blank, one signature page to follow]

IN EXECUTION WHEREOF, upon written recommendation of the County Engineer, the Board of Warren County Commissioners has caused this Agreement to be executed on the date stated below by County Administrator, Tiffany Zindel, pursuant to Resolution No. _____ dated _____.

RECOMMENDED BY:

WARREN COUNTY ENGINEER

BOARD OF WARREN COUNTY COMMISSIONERS

By: _____
Neil F. Tunison, P.E., P.S., County Engineer
Date: _____

By: _____
Tiffany Zindel, County Administrator
Date: _____

STATE OF OHIO, COUNTY OF WARREN, ss:

BE IT REMEMBERED, on this _____ day of _____, 2022, before me, the subscriber, a Notary Public in and for said state, personally came an individual known or proven to be **Tiffany Zindel**, County Administrator of Warren County, Ohio, and pursuant to the authority granted to her to act on behalf of the Board of Warren County Commissioners, and while acting in such official capacity, did acknowledge the signing thereof to be her voluntary act and deed. This notarial action is in compliance with R.C. 147.542 (D)(1).

[seal]

Notary Public
My Commission Expires: _____

APPROVED AS TO FORM:

DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO

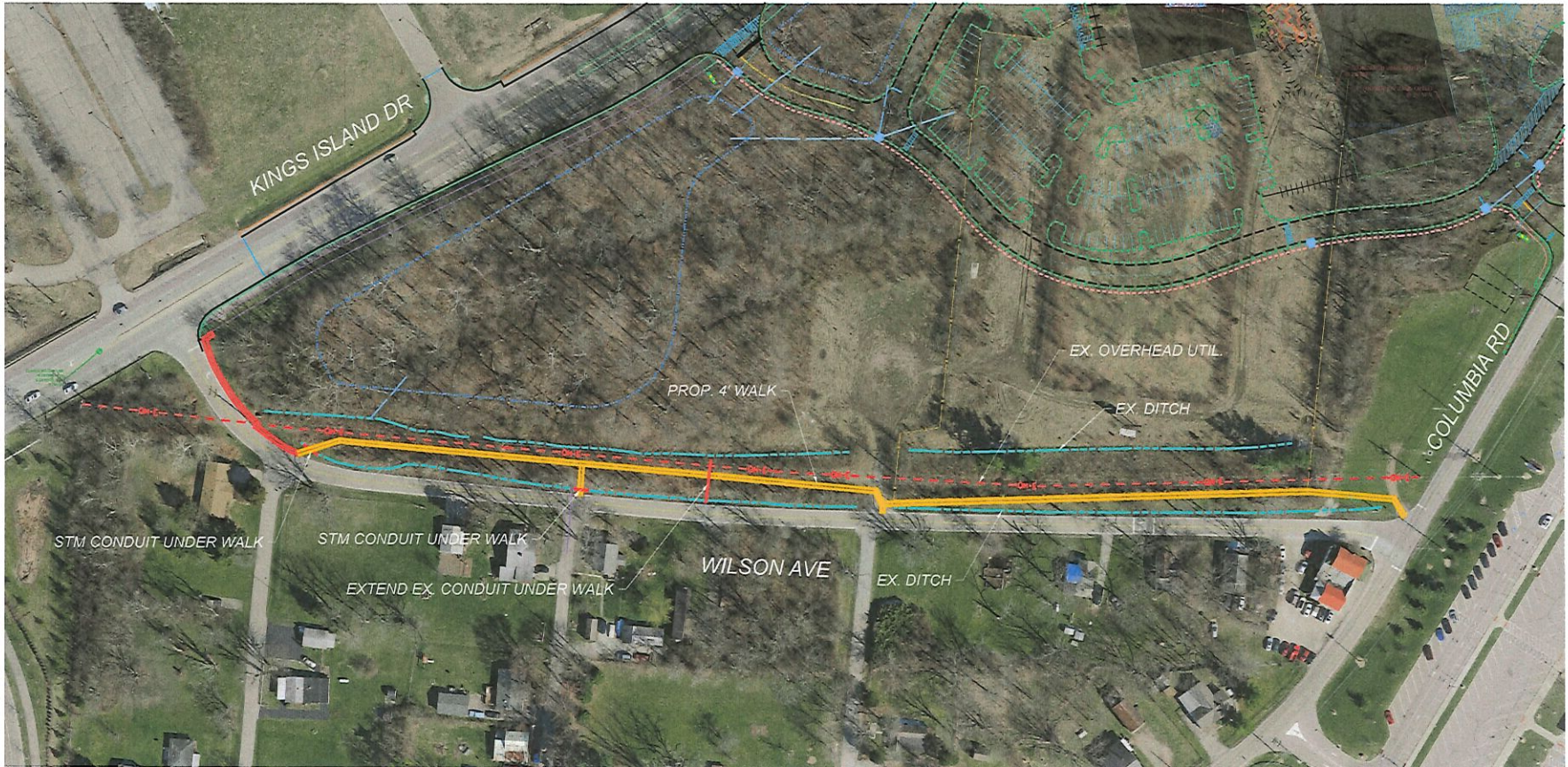
By: _____
Bruce A. McGary, Assistant Prosecutor
Date: _____



DESIGNER	LAS
REVIEWER	VM 01-07-22
PROJECT ID	0
SHEET TOTAL	P 0



DESIGN AGENT



- LEGEND**
- 4' GRAVEL OR TURF WALK
 - 4' ASPHALT WALK

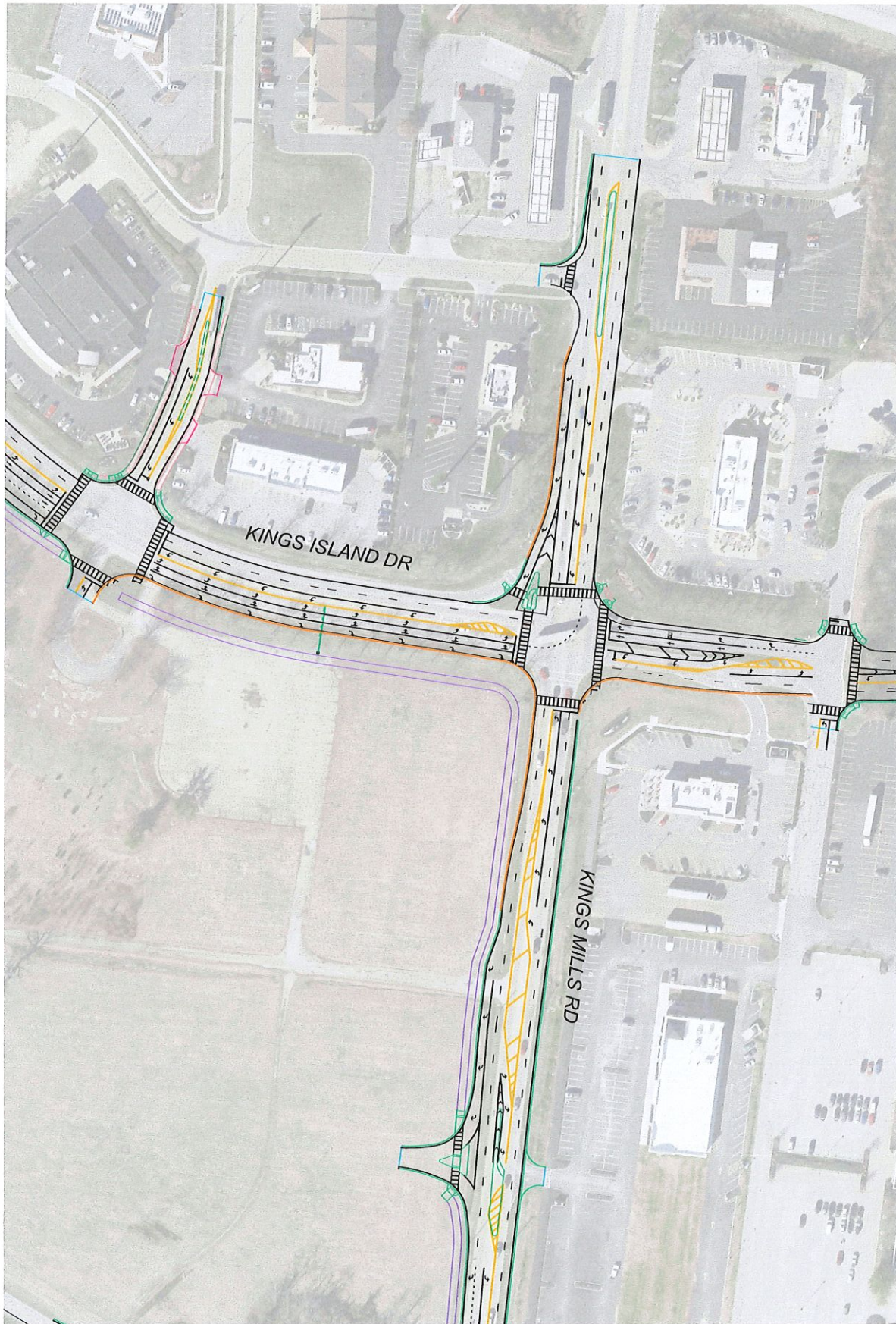
MODEL: \\hobas\Draw\BARR\BARR\17111.DWG DATE: 04/10/2022 TIME: 12:23:59 PM USER: jacob@hobas.com
C:\Users\jacob@hobas.com\Public\Barr\17111.DWG Engineering\Barr\Draw\Wilson Path Exhibit.dwg


WILSON AVE WALK EXHIBIT

DESIGN AGENCY	
DESIGNER	
REVIEWER	
PROJECT ID	
SHEET TOTAL	

KINGS MILLS ROAD (CR 31) / KINGS ISLAND DRIVE (CR 110) IMPROVEMENTS 2023

MODEL: Unlited Sheet PAPER SIZE: 34x22 (in) DATE: 9/14/2022 TIME: 4:18:06 PM USER: jespelage
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DESIGNER	
REVIEWER	
PROJECT ID	
SHEET TOTAL	

INTERIM CONDITIONS