

ORIGINAL

**DELAWARE COUNTY COMMISSIONER'S MEETING
TUESDAY, FEBRUARY 16, 2021 @ 9:01 A.M.
ZOOM MEETING**

QUESTIONS MAY BE DIRECTED TO COMMISSIONERS @CO.DELAWARE.IN.US

Mr. Shannon Henry
Mr. James King
Ms. Sherry Riggan
Mr. John Brooke, County Attorney
Mr. Steven G Craycraft, Auditor

TABLED BUSINESS

DEVELOPMENT AGREEMENT WITH WJH LLC/COUNTRY VILLAGE PROPERTY

Ms. Angie Moyer, Project Manager, said Ms. Marta Moody, Plan Commission Director, made revisions to the agreement, which had been sent to WJH and Mr. John Brooke, County Attorney.

Ms. Moody said revisions had been made to be in line with other county development agreements. WJH agreed on street improvements, drainage correction and repair improvements. Ms. Moody said this would be accomplished through the revised agreement.

Mr. Mark Connor, WJH LLC, said WJH and Ms. Moody have worked for months on coming up with an agreement that is for the best interest of Country Village. Mr. Connor said unfinished development improvements from back in the day will be paid for by WJH LLC.

Mr. Brooke recommended approval of the agreement that was revised by Ms. Moody.

MOTION: Commissioner Henry made a motion to remove WJH LLC Development agreement from the table.

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

MOTION: Commissioner Henry made a motion to approve a Development Agreement with WJH LLC as revised by Ms. Moody.

SECOND: Commissioner Riggan

Mr. Connor is in agreement with Ms. Moody's draft. All Commissioners are in agreement.

YEAS: Commissioner Henry, Commissioner Riggan, President King

SUBDIVISION DEVELOPMENT AGREEMENT

IN RE

THE MATTER OF: Improvements within **Country Village, Section T**, a subdivision of land situated in Hamilton Township, Delaware County, Indiana, consisting of Lots 363 through 416; 902.80 linear feet for Shasta Drive; 957.85 linear feet for the extension of the existing Seneca Drive; and 1,299.43 linear feet for Kings Canyon Drive.

BE IT AGREED by the undersigned and the Board of Commissioners of Delaware County, Indiana, as follows:

Section 1. That Richard E. Case, Sr., President, Partuck Corporation, 5000 N. Isabella Lane, Muncie, Indiana, was the developer of the land described herein as Country Village, Section T, a subdivision located in Hamilton Township, Delaware County, Indiana (see attachment).

Section 2. That WJH LLC, a Delaware LLC, by Donald Chesney, Regional President, is the proposed purchaser of Lots 363 through 416, excluding lots 363 and 381, in said County Village, Section T from said Richard E. Case, Sr.

Section 3. That, as a part of the development of Country Village, Section T, certain street, drainage and related improvements have been partially installed within the areas shown on the plat for said Section T but not including the surface asphalt, and any other minor finish work as may be found necessary by the Delaware County Engineer as well as final drainage improvements.

Section 4. That performance bonds in an amount sufficient to complete the unfinished improvements, and satisfactory to the County Engineering Department, will be provided in favor of the Board of Commissioners of Delaware County for completion of public road and drainage improvements contained in Country Village, Section T which shall be accomplished within one year from the date of this agreement. Further, that this Development Agreement shall be considered in effect upon receipt and acceptance of said performance bonds.

Section 5. That 40% of the lots in said Section T (20 lots) may be developed based upon the provision of the one-year performance bonds cited in Section 4 based on the following schedule:

Percentage of Lots Available for Permitting	Conditions of Permit Approval
20% (10 lots)	Approved Development Agreement and acceptance of Performance Bonds
40% (20 lots – 10 previously approved plus an additional 10 lots)	Drainage Improvements have been completed and required Roadway Improvements have been started

Section 6. That, upon completion of roadway and drainage improvements, the contractor and/or owner of the lots shall contact the County Engineer for final inspection and approval and shall provide a one-year maintenance bond, in an amount equal to 10% of the total cost of all public improvements referenced in Section 3, to become effective upon the official acceptance by the Board of Commissioners.

Section 7. That upon acceptance of the public roadway and drainage improvements by the Board of Commissioners, permits may be issued for the remaining lots contained in said Section T in accordance with all normal and applicable requirements.

Section 8. That the terms of this agreement shall be binding on the undersigned and his successors, assigns, executors, administrators, heirs and devisees.

Section 9. Nothing in this agreement shall be construed as a limitation upon the Board of Commissioners in terms of design, construction standards, surety, and normal like matters relating to the installation and dedication of public improvements.

Section 10. This Agreement represents the total complete agreement between the parties hereto and may not be amended or altered except in a written amendment executed by both parties.

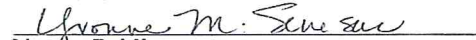
IN WITNESS WHEREOF, we, the undersigned, have hereunto set our hands and seals this 16 day of FEBRUARY, 2021.

DEVELOPER/OWNER
WJH LLC, a Delaware limited liability company


Donald Chesney, Regional President

Before me, the undersigned Notary Public, in and for the County and State, personally appeared Donald Chesney who has separately acknowledged the execution of the foregoing instrument as his voluntary act and deed, for the purpose therein expressed.


Witness my hand and seal this 16th day of February, 2021.

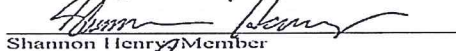

Notary Public
Yvonne M. Senesac
Printed Name

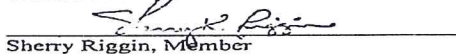


Resident of Hamilton County,
State of INDIANA
My Commission Expires: February 19, 2023
Commission No: 0664315

BOARD OF COMMISSIONERS
DELAWARE COUNTY, INDIANA


James King, President


Shannon Henry, Member


Sherry Riggins, Member

Approved and signed this 16th day of February, 2021.

ATTEST:

Steven Craycraft, Delaware County Auditor

APPROVAL OF MINUTES

MOTION: Commissioner Riggin made a motion to approve February 1, 2021 Commissioner Minutes.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggin, President King

CONTRACTS OR AGREEMENTS FOR APPROVAL

EMERGENCY DECLARATION 2021-04

Mr. Brooke said the Emergency Declaration will continue through March 1, 2021. Delaware County COVID status is currently yellow.

MOTION: Commissioner Henry made a motion to approve Emergency Declaration 2020-04, as presented.

SECOND: Commissioner Riggin

YEAS: Commissioner Henry, Commissioner Riggin, President King

**Disaster Emergency Declaration
2021-04**

Delaware County, Indiana

- WHEREAS, the President of the United States, on March 13, 2020, has declared a nationwide emergency concerning the spread of COVID-19 viral infections, and
- WHEREAS, the Governor of the State of Indiana, on March 16, 2020, has made an emergency declaration in response to the Coronavirus (COVID-19) disease epidemic wherein he has extended the public health emergency for an eleventh time up to and including March 1, 2021; and
- WHEREAS, the County Health Officer has determined that certain measures should be put into place to lessen the potential spread of the COVID-19 virus including the closing of some local businesses; and
- WHEREAS, pursuant to I. C. 10-14-3-29(a) the Board of Commissioners of Delaware County, IN hereby makes a local disaster emergency declaration; and
- WHEREAS, the trend in Delaware County for the past month has shown a significant increase in COVID-19 cases and the positivity rate for the last 7 days is 6.4% ending on January 31, 2021 for the County; and
- WHEREAS, there have been a total of 9,672 cases in Delaware County to date with an increase of 325 cases and 170 deaths since the start of the pandemic and more than an average of 99 cases per day; a positivity rate of 7.1% currently and IU Ball Memorial Hospital has a total of 24 inpatient COVID-19 patients; and
- WHEREAS, Delaware County has a positivity rate that has decreased from two weeks ago and has improved and moved into a yellow category according to the State Board of Health metrics; and
- WHEREAS, the Board of Commissioners of Delaware County, Indiana have determined that in response to the emergency believes that an Emergency Declaration is appropriate for the citizens of Delaware County and that the Emergency Declaration should be extended.

NOW THEREFORE WE, THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA HEREBY DECLARE THAT:

1. A local public health disaster continues to exist in the County and that we hereby invoke and declare those portions of the Indiana Code which are applicable to the conditions and have caused the issuance of this

proclamation, to be in full force and effect in the entire County, including incorporated areas for the exercise of all necessary emergency authority for protection of the lives and property of the people of this County and the restoration of local government with a minimum of interruption. **This Emergency Order is effective immediately and shall be in place until the end of business March 1, 2021.**

2. Governor Eric Holcomb's Executive Orders 20-48; 20-49, 20-50, 20-52, 20-53, 21-02 and 21-03 are incorporated in their entirety in this Emergency Declaration.
3. All employees in any county facility shall wear a face covering their nose and mouth at all times except while working in their own workspace, provided that the workspace is spaced more than 6' from other work spaces. Additionally, employees shall not be required to wear facial coverings when working outside (if they are working in an environment that allows for social distancing), in a vehicle by themselves or working remotely. Employees of the County shall also wear facial coverings when moving about the hallways, common areas, restrooms or other areas of the County facilities when not at their work space.
4. Department heads and Elected officials shall reduce the number of employees and personnel permitted to congregate in break rooms or common areas and to ensure social distancing occurs at all times.
5. All members of the public that conduct business in any county building or facility shall maintain a social distance of at least 6 feet between individuals at all times and shall wear a face covering over the nose and mouth when inside any public building or other indoor space open to the public. This does NOT apply to private offices, private workplaces or meetings where

social distancing can be achieved and maintained between people not in the same household. Member of the public are required to wear a face covering which may consist of a face mask or shield or other covering which covers the person's mouth and nose during their business in the County Building unless the member of public prohibits a face covering because of an underlying health condition prohibits wearing a face covering.

6. In instances where an individual must visit a retail business, the business shall follow the proper social distancing requirements in Executive Order 20-48, 21-03 and the guidelines from the Center for Disease Control (CDC).
7. Those residents that meet the below stated criteria are not required to wear a facial covering:
 - a. Under 2 years of age;
 - b. Over age 2 years and under age 8 years;
 - c. Any person with a medical condition, mental health condition or disability which prevents face coverings.
 - d. Any other exemption set forth in Executive Order 20-48, section 3(f)(i-xv).
8. Those members of the public that are at least 65 and older and those with known high-risk health conditions should adhere to social distancing requirements and be cautious at work and in their communities and should wear facial coverings.
9. Citizens that have symptoms, may have been exposed, been in close contact (as defined by the CDC), have high-risk health conditions as well as others that desire peace of mind are encouraged to be tested for COVID-19 at the local facilities.

10. Pursuant to Executive Order 21-03; Delaware County currently is placed in the "Yellow" zone because community spread is occurring and the County has a point score of 1.5 according to the Indiana Department of Health.
11. Delaware County has the ability to increase the threat level to a "Red" zone where the community spread is high and the County could achieve a point score of 3.0 or higher by the Indiana Department of Health.
12. As a result of the County achieving the "Yellow Zone" level from the State Health Department social gatherings and events of greater than 100 people are prohibited from occurring or 50% of facility's capacity.
13. In the event that the County achieves a "Red Zone" level from the State Health Department, then social gatherings and events of greater than 25 people are prohibited from occurring.
14. All businesses are required to place clearly visible signage at their public and employee entrances notifying that face coverages are required for all individuals entering the business.
15. Businesses should only admit those customers, clients, vendors and visitors that wear a face covering.
16. Religious services shall be governed by Executive Order 2020-48, section 7(a).
17. This Emergency Declaration shall supersede and replace all prior Emergency Declarations made the by Board of Commissioners prior to this Emergency Order.
18. The Commissioners determine that all government operations are essential and the government operations from March 23, 2020 to the present and all essential governmental functions are operating and available to the public through remote or electronic access, as needed.

19. Violations of this order will be turned over to ISDH, Indiana Department of Homeland Security, Indiana Alcohol & Tobacco Commission or the local board of health as the facts may impose the sanctions set forth in Executive Order 20-48(10) (b).

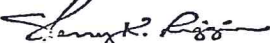
20. This Emergency Order shall remain valid until the end of business on March 1, 2021 unless superseded.

In witness, whereof, we have hereunto set our hand this 16th day of February, 2021.

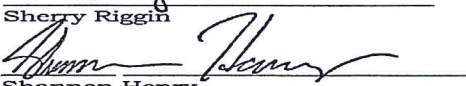
Delaware County Board of Commissioners



James King



Sherry Riggan



Shannon Henry

Attest: 
Steven G. Craycraft, County Auditor

WEATHER EMERGENCY DECLARATION FOR DELAWARE COUNTY

MOTION: Commissioner Henry made a motion to approve Weather Emergency Declaration.

SECOND: Commissioner Rigglin

YEAS: Commissioner Henry, Commissioner Rigglin, President King

Emergency Declaration 2021-005

AN EMERGENCY DECLARATION RELATED TO SEVERE WEATHER CONDITIONS IN THE COUNTY

- WHEREAS, Delaware County has been impacted by or is immediately threatened by the following emergency conditions:
- a. A significant accumulation of snow;
 - b. Blowing and drifting snow which makes travel on the roads difficult;
 - c. Consistent sustained winds over 15 mph with gusts exceeding 30 mph which make clearing the roads difficult now
- WHEREAS, the emergency conditions threaten the lives, property and general welfare of the citizens of Delaware County; and
- WHEREAS, a declaration of emergency due to the conditions is warranted by the Board of Commissioners.

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

1. An emergency condition exists or threatens to exist in Delaware County by virtue of the snowfall and sustained winds and that said disaster emergency for these conditions as setforth herein shall be in existence for the next few days and shall expire on the 16th day of February, 2021 at the end of business on said date, unless renewed or extended.
2. This emergency declaration is in addition to Emergency Declaration 2021-04 as a result of the COVID-19 pandemic which has existed in the County for more than 10 months previous.
3. The County has the following options to consider during the course of the emergency as to the travel conditions of the roads. Those options are as follow:
 - a. A travel advisory status of "Caution" means that a condition may develop that limits or hinders travel in isolated areas. Under "Caution", no travel restrictions have been placed in effect by county officials but citizens should be alert to changing conditions. The county's travel advisory status begins at a starting level of "Caution," and will remain at that level unless and until it is changed by the EMA office.
 - b. A travel advisory status of "Advisory" means that routine travel or activities may be restricted in areas because of a hazardous situation. Citizens should use caution or avoid these areas. Schools and businesses may begin to implement their emergency action plans. Also considered to be a "yellow" level.
 - c. A travel advisory status of "Watch" means that conditions are threatening to the safety of the public. Only essential travel is recommended (i.e. to and from work, emergency situation, etc.). Emergency action plans have been or should now be implemented by businesses, schools, government agencies and other organizations. Also considered to be an "orange" level.
 - d. A travel advisory status of "Warning" means that travel may be restricted to emergency personnel only. During a Travel Warning, all citizens are called upon and directed to refrain from all travel, to comply with necessary emergency measures, to cooperative with public officials and disaster services forces in executing emergency operations plans, and to obey and comply with the lawful directions of properly identified officers. Also considered to be a "Red" level.
4. The County road condition level shall be placed at "Orange" until modified based upon the recommendation of the Delaware County Emergency Management Agency.

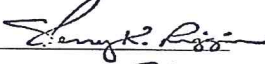
5. This declaration shall do the following:

- A. Activate the response and recovery aspects of all applicable disaster emergency plans as set out and administered by the Delaware County Emergency Management Agency (DCEMA).
- B. Authorize the DCEMA to arrange for or furnish aid and assistance under its weather emergency disaster plan.
- C. Authorize the DCEMA to declare travel advisory, watches or warnings as determined by the conditions of the roads, bridges and highways in the County during the emergency conditions.
- D. The County building and Delaware County Justice and Rehabilitation Center shall be closed to employees and the public except for 24 hour operations and employees.
- E. All operating forces will direct their communications and requests for assistance and operations directly to DCEMA.

6. The Board of Commissioners reserve to themselves all appropriate emergency measures to deal with the weather emergency as per I.C. 10-14-3-29; 10-14-3-22.5 and 10-14-3-22.6.

Dated this 15th day of February, 2021.

James King 
James King, President

Sherry Riggan 
Sherry Riggan, Vice President

Shannon Henry 
Shannon Henry, Member

Attest:
Steven G. Craycraft 
Steven G. Craycraft, Auditor

CITY/COUNTY INTERLOCAL AGREEMENT

Ms. Angie Moyer, Project Manager, presented City/County Interlocal agreement for local roads and streets. This was approved by Muncie Board of Works.

Mr. Brooke reviewed the Interlocal City/County agreement.

MOTION: Commissioner Riggin made a motion to approve City/County Interlocal agreement.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggin, President King

ORIGINAL

INTERLOCAL AGREEMENT

This Agreement, entered into this 16 day of February, 2021, between the City of Muncie, Indiana ("City") and Delaware County, Indiana ("County") is for the purpose of delegating duties of maintenance and operation of certain segments of roads and certain electronic traffic signals and the implementation of snow and ice control on bridges within the City limits and identified further in this Agreement.

- I. With this Agreement, the City and County agree to divide the duties of maintenance and operations of the following described portions of roads in the following manner:
 - a. Maintenance and operations are referred to in this Agreement shall include the following activities:
 - i. Snow and ice control except as described elsewhere in this Agreement;
 - ii. Pavement marking and traffic signage;
 - iii. Minor maintenance (mowing, patching, tree trimming, etc.); and
 - iv. Issuance of permits and monitoring of the work completed under such permits for activities within the right-of-way (street-cuts, driveway/mailbox permits, temporary closure, etc.).
- II. The City and County shall share the aforementioned duties as follows (See Attachment A for map of the below descriptions):
 - a. The County shall be responsible for the following segments of roads:
 - i. Walnut Street from Riggin Road to the north city limit boundary line.
 - ii. Butterfield Road from SR 32 to Memorial Drive
 - iii. Fuson Road (CR 300 S) between Walnut Street to Madison Street
 - iv. Hoyt Avenue from Cornbread Road to the south city limit boundary line.
 - v. 26th Street between Tillotson Avenue and Hoyt Avenue
 - vi. Proctor Road from Kilgore Avenue/State Road 32 to south Cornbread Road (CR 150 S)
 - vii. Country Club Road from the CSX railroad tracks to the north city limit boundary line.
 - viii. Tillotson Avenue between Cornbread Road and 26th Street
 - ix. CR 25 N west of Country Club Road
 - x. Nebo Road from 332 McGalliard Rd to the north city limit boundary line.


- xi. Eaton Avenue south of the Muncie Bypass to the south city limit boundary line.
- b. The City shall be responsible for the following segments of roads:
 - i. Wheeling Avenue from Airway Drive (Dice Acres) to Riggins Road
 - ii. Riggins Road between Everett Road and Muncie By-pass
 - iii. McGalliard Road from Muncie By-pass to the west
 - iv. Shirey Road between McGalliard Road and Centennial Avenue
 - v. Centennial Avenue from Muncie By-pass to the west
 - vi. 23rd Street between Cowan Road and the Norfolk & Southern railroad tracks
 - vii. Cornbread Road between Perdieu Road and Tillotson Avenue
 - viii. Perdieu Road between Cornbread Road and Kilgore Avenue
 - ix. Morrison Road between Bethel Avenue and CR 350 N
 - x. Benton Road from Bethel Avenue to SR 332
 - xi. Hessler Road between Benton Road and Morrison Road
 - xii. Bethel Avenue from Morrison Road to Benton Road/CR 350 W
 - xiii. Burlington Drive from Muncie By-pass to the south city limit boundary line.
 - xiv. Walnut Street from South Madison Street to CR 300 S
- III. City shall, when treating roads for snow and ice control and applying pavement markings, treat bridges within its boundaries the same as it would the streets approaching the bridge
- IV. The City shall be responsible for minor maintenance of all traffic signals and bridge lighting within the County's jurisdiction. In exchange, the County will provide materials to repair signals and lighting within the County's jurisdiction
- V. The City shall be responsible for snow and ice removal on bridges including sidewalks within City limits. In exchange, the County will provide, as needed, 75-tons of product for snow and ice removal. The purchasing of such product shall include the option of a City/County co-op purchase.
- VI. The City shall, for repair, replacement or installation of guardrails, be responsible to provide materials and call for utility locations, in exchange, the County will provide labor and installation.
- VII. If the City shall be secure funding for restoration and preventative maintenance for the section of McGalliard Road, including from Shirey Road to approximately 2,600 feet west of Shirey Road which is currently included in the County's road inventory, the County would be supportive of the prescribed road improvements.

- VIII. The City and County shall coordinate all paving or major projects on boundary roads and reach an agreement for joint efforts on a case by case basis. A typical scenario would generally involve the City providing the material cost and risers for structures, while the County would provide the labor and installation of material for boundary roads.
- IX. Either party may terminate this Agreement upon thirty (30) days written notice.

Delaware County Commissioners


James King


Sherry Riffin


Shannon Henry

Muncie Board of Public Works and Safety


Linda Gregory, President


Lola Mauer, VP


Ted Baker, Secretary

2/16/2021


Steve Crawford

2021 HIGHWAY DEPARTMENT ANNUAL MATERIAL BIDS

Mr. Brooke opened bids from AGBEST, Petroleum Traders (fuel), E & B Paving (Asphalt Mixes & Liquid Asphalt) Milestone Construction (Asphalt Mixes & Liquid Asphalt) and Irving Materials (crushed stone and/or sand asphalt mixes and liquid asphalt).

MOTION: Commissioner Henry made a motion to take bids under advisement.

SECOND: Commissioner Riggin

YEAS: Commissioner Henry, Commissioner Riggin, President King

A bid was received from Petroleum Traders after the deadline. The bid will be returned, per Ms. Moyer.

Ms. Moyer said two paving projects had been approved through Community Crossing Funds.

2021-01 ROAD PAVING PROJECTS

EATON-WHEELING PIKE BETWEEN WHEELING AVENUE AND BR 321

JONESBORO ROAD/EATON-WHEELING PIKE BETWEEN

GRANT COUNTY LINE AND WHEELING AVENUE IN DELAWARE COUNTY

Mr. Brooke opened bids from Brooks Construction and E & B Paving.

MOTION: Commissioner Henry made a motion to take bids under advisement

SECOND: Commissioner Riggin

YEAS: Commissioner Henry, Commissioner Riggin, President King

BR #501 – BRIDGE REHAB / COWAN RD @ BUCK CREEK

Mr. Brooke opened bids from Hoosier Pride, Duncan Robertson, Beaty Construction.

MOTION: Commissioner Henry made a motion to take bids under advisement.

SECOND: Commissioner Riggin

YEAS: Commissioner Henry, Commissioner Riggin, President King

Ms. Moyer will create bid tabulation and email to Commissioners before the next Commissioner Meeting on March 1, 2021.

AGREEMENT FOR EMPLOYMENT OF DELAWARE COUNTY ATTORNEY

MOTION: Commissioner Riggan made a motion to approve the agreement with Mr. Brooke.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

CONFIDENTIAL

AGREEMENT FOR EMPLOYMENT OF DELAWARE COUNTY ATTORNEY

THIS AGREEMENT is made and entered into by and between the Commissioners of Delaware County, Indiana, hereinafter referred to as "Commissioners" and John H. Brooke, attorney at Brooke Stevens, PC, 112 East Gilbert St., Muncie, Indiana, hereafter referred to as "Attorney."

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. That the Commissioners hereby employ Attorney to perform legal services and give legal advice, excluding litigation services, in relation to legal matters involving Delaware County and the Commissioners. Attorney hereby accepts said appointment and will render services described above during the term of the Agreement.
2. As compensation for services rendered by Attorneys pursuant to this Agreement, the Commissioners agree to pay Attorney the sum of Twenty-nine Thousand Four Hundred Forty-three Dollars (\$29,443.00) annually for the year 2021, payable in the same manner as other employees of Delaware County. The Attorney shall not accept the County's Health Insurance and specifically waives said insurance coverage for the reason that he presently has his own health insurance coverage.
3. The Commissioners agree to pay as additional compensation to Attorneys the amount of One Hundred Ninety-five Dollars (\$195.00) per hour as reasonable attorney fees for legal services provided by said Attorneys or their firm for any legal work involving litigation issues or extraordinary work tasks such as bond financings or major revisions to personnel policies, assigned by the Commissioners. The Commissioners also agree that to help reduce costs, they shall pay the rate of Eighty-five Dollars (\$85.00) for work performed by paralegals of the law firm on matters assigned. Nothing in this Agreement obligates Commissioners to assign extraordinary work tasks to the Attorneys. This additional compensation will be billed monthly to the Commissioners by invoices from Brooke Stevens, PC.
4. Delaware County and the Commissioners will be responsible for payment of any and all discovery related costs, expert witness fees, other consultation services, deposition costs, witness

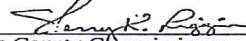
fees, court costs, and other costs which may be necessary in the defense of Delaware County or to prosecute on behalf of Delaware County or any of their officers, agents or assigns.

5. This Agreement shall be effective as of January 1, 2021, and shall continue in effect until termination.

Dated this 16 day of FEBRUARY 2021.


John H. Brooke


President, Delaware County Commissioners


Delaware County Commissioner


Delaware County Commissioner

Attest:

Delaware County Auditor

THE HOWARD E. NYHART COMPANY, INC. (GAAP) SERVICE AGREEMENT

Mr. Brooke said he had reviewed the agreement.

The Commissioners had no questions regarding the agreement.

Commissioner Riggan said she appreciates Mr. Steven G Craycraft working with this company (see services below).

MOTION: Commissioner Henry made a motion to approve Howard E. Nyhart Company, Inc.

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

ORIGINAL



THE HOWARD E. NYHART COMPANY, INC. ("NYHART")
SERVICE AGREEMENT ("AGREEMENT")

Agreement Between Nyhart, and:

Client Name:	Delaware County, IN
Primary Contact Name:	Steven Craycraft; Delaware County Auditor
Primary Contact Address:	100 W Main Street
	Muncie, IN 47305
Primary Contact Phone:	(765) 747-7717
Primary Contact Fax:	
Primary Contact Email:	scraycraft@co.delaware.in.us

Services to be provided by Nyhart

All services to be provided by Nyhart are subject to your full cooperation and prompt submission of complete and accurate information. Nyhart will rely on any and all information that you provide pursuant to this Agreement and on file at our office as to accuracy and completeness. Nyhart will have no responsibility to verify such information and no liability for errors or omissions as a result of relying on such information, except to the extent required by generally accepted professional standards and practices. Nyhart is not a law firm or a public accounting firm and does not provide legal or tax advice.

For the fiscal year ending December 31, 2020, Nyhart will provide the following actuarial services:

- Data collection and analysis
- Preparation of a comprehensive annual report / actuarial valuation
- Disclosures as required by GASB 75

For the fiscal year ending December 31, 2021, Nyhart will provide the following actuarial services:

- Interim GASB 75 report

Fees for services provided by Nyhart

<u>Service</u>	<u>Fee</u>
FYE 12/31/2020 - Full GASB 75 actuarial update	\$6,500
FYE 12/31/2021 - Interim GASB 75 actuarial update	\$3,000

If a GASB results breakdown by employee groups is required additional fees will apply. The additional cost will be a 10% of project fee increase for a two group breakdowns plus an additional 1% for each extra group breakdown requested. The additional fee will be limited to 1/3 of the current year's fees.

The fee for the interim GASB 75 report will be revised if there have been any significant events subsequent to our last full update. Examples of significant events include, but are not limited to, large premium rate and enrollment changes, material benefit design amendments, and participant contribution policy modification.



Client will be invoiced prior to the beginning of the project for 50% of the estimated fees for services outlined above. Once the labor accrued towards completion of the services exceeds 50% of the estimated fees, billing will occur monthly until the completion of the project. Each invoice is due upon receipt. If any invoice remains unpaid for longer than 90 days from the date of the invoice, Nyhart may either suspend the provision of the Services until payment is received, or terminate this Agreement with immediate effect. Failure of Nyhart to exercise any remedy set forth above shall not prevent Nyhart from doing so with respect to any future unpaid invoice or taking any other actions available to Nyhart under law.

Please select the method of delivery of your invoice:

- I would like my invoice sent electronically to the primary contact's email address.
- I would like my invoice sent via regular mail to the attention of the primary contact at the address shown on the first page.

For an alternative invoice recipient, please provide their information below. If this section is left blank, we will send the invoice to the primary contact's email address on file or address shown above.

Invoice recipient name _____
Invoice recipient email address _____
Invoice recipient address _____

There will be additional fees for revisions to preliminary or final results that are due to:

- Incorrect information provided to us, typical examples include to material changes to census data, changes to eligibility requirements or employer subsidies. The additional fee will be limited to 1/3 of the current year's fee for this type of revision.
- Changes to actuarial assumptions requested by the client that are expected to need more than four hours of labor to update the results. The additional fee will be based on billed labor in excess of four hours at our current hourly rates.

Additional services available if requested by Client

In addition to GASB 75 services, Nyhart offers the following additional services. Fee estimates will be provided upon request. Please visit www.nyhart.com or contact your Nyhart consultant for more information.

- Health Care Reform financial impact consulting
- Actuarial Value and Minimum Value determination
- Section 105(h) non-discrimination testing
- Calculation of self-funded and COBRA premium rates
- Incurred But Not Reported (IBNR) Reserve calculations
- Medicare Part D Attestation
- What-if Modeling for health plan design and carrier changes
- Defined Benefit & Pension consulting and administration
- Defined Contribution, 401(k) & 403(b)
- Flex Accounts – FSA, HRA, & HSA consulting and administration



Relationship of the Parties

The legal relationship between Client and Nyhart shall be exclusively that of principal and agent. The parties hereto specifically agree and acknowledge that Nyhart shall not:

- Have discretionary authority over any aspect of the Plan;
- Be a fiduciary;
- Be responsible for ensuring that the Plan complies with any requirement to which the Plan is subject, or be liable to the Plan, Client, or any person if the Plan fails to comply with any such requirement;
- Have any duty or authority to enforce the payment of any contribution owed under the Plan;
- Be responsible for the adequacy of the trust established as part of the Plan, or be liable for any benefits owed under the Plan;
- Exercise discretion as to any Plan function; or
- Have any obligation to perform any service not specified in this Agreement or otherwise agreed to in writing by the parties (regardless of whether such service may be considered "customary" services to be provided by Nyhart).

Client agrees that Nyhart shall use all information and data supplied by or on behalf of the Client without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices. If any documentation or information supplied to Nyhart at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, Nyhart will not be responsible for any delays or liability arising therefrom, and will be entitled to charge the Client in respect of any resulting additional work actually carried out.

The Client further understands that the failure to provide, or cause to provide, complete, accurate, up-to-date, and timely documentation and information to Nyhart, whether intentional or by error, could result in an impairment of Nyhart's services.

Client Responsibilities and Representations

The Client has general responsibilities with respect to the Plan, including

- Providing all information required by Nyhart to perform its services under this Agreement on a timely basis;
- Serving as fiduciary for the Plan;
- Communicating Plan details to employees and answering employee questions;
- Ensuring adequate funding of the Plan; and
- Authorizing plan disbursements and ensuring accuracy of information provided.

Dispute Resolution

Nyhart and Client agree that before commencing any action or proceeding with respect to any dispute between the parties arising out of or relating to this Agreement or the Services they first shall attempt to settle such dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. Any such dispute will be submitted in writing to a panel of one (1) senior executive or official of each of Nyhart and Client, who will promptly meet and confer in an effort to resolve such dispute. Each party's representative will be identified by notice to the other, and may be changed at any time thereafter by notice to the other. Any mutually agreed decisions of the executives will be final and binding on the parties. In the event the executives are unable to resolve any dispute within thirty (30) days after submission to them, either party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by Nyhart and Client within forty-five (45) days after written notice by either party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. All communications and discussions in



furtherance of this paragraph shall be treated as confidential settlement negotiations, which are not subject to discovery. The costs of the mediator shall be shared equally, but each party shall pay its own attorneys' fees.

Any dispute which cannot be resolved between the parties through negotiation, mediation or other form of alternative dispute resolution within six months of the date of the initial demand for mediation by one of the parties may then be submitted to a court of competent jurisdiction. To facilitate an expeditious and economical judicial resolution of such dispute, Nyhart and Client agree to waive and not to demand a trial by jury, and not to include any employee, officer, director or trustee of either as a party, in any action, proceeding or counterclaim relating to such dispute. Nothing in this section will prevent either party from resorting to judicial proceedings if interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others. Any claim, action or proceeding against Nyhart will be barred unless Client initiates the dispute resolution procedures outlined below within one year of first discovering the act, error or omission that is the basis for such claim.

Indemnification and Limitation of Liability

The liability of Nyhart, in tort, contract or otherwise, to Client, a Plan and the officers, directors, trustees, employees or shareholders of any of them, and to any other third party, for all claims arising in connection with or contributed to by this Agreement and the Services (including without limitation multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions) shall not include loss of profit or incidental, consequential, indirect, punitive or similar damages and shall be further limited to the amount of fees for Services received by Nyhart under this Agreement for the twelve (12) months immediately preceding the act, error or omission upon which such liability is based. Nothing in this paragraph shall apply to any liability which has been finally determined to have arisen from willful misconduct or fraud on the part of Nyhart or which cannot lawfully be limited, modified or excluded.

Client shall indemnify Nyhart from and against any and all claim, loss, liability or damage (including attorney's fees) which Nyhart may incur by reason of its good faith service delivery to Client.


Nyhart shall indemnify the Client from and against any and all claim, loss, liability or damage (including attorney's fees) which the Client may incur: (i) arising out of any material breach by Nyhart of any of its material obligations, representations or warranties contained in this Agreement; or (ii) arising out of Nyhart's negligence, gross negligence or willful, fraudulent, or criminal misconduct associated with its performance of services under this Agreement. The parties further recognize that clerical errors and variations may occur. When discovered, they will be corrected or adjusted by Nyhart, in accordance with its normal procedures, to the extent reasonable and possible.




Acceptance

The items and conditions of this Agreement are agreed to and accepted by Client on behalf of the Plan. This Agreement is effective only when signed by all parties.

Delaware County, IN

By: 
Printed Name: JAMES KING
Date: 2/14/2021

Nyhart

By: 
Printed Name: Suraj Datta
Date: 2/16/2021

 AUDITOR

DEPARTMENT HEADS AND ELECTED OFFICIALS

Mr. Joe Rhett, County Attorney, presented the easement agreement. Mr. Rhett will record the agreement and then provide to the Auditor's office. The easement is for the trail project.

MOTION: Commissioner Riggin made a motion to approve, as presented.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggin, President King

ORIGINAL

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement"), made and entered into as of the 16 day of February, 2021 by and between The Board of Commissioners of Delaware County, Indiana, having an address of 100 West Main Street, Room 309, Muncie, IN 47305 (hereinafter "Grantor"), and **The Board of Commissioners of Delaware County** (hereinafter "Grantee");

WITNESSETH THAT:

WHEREAS, Grantor is the owner of certain real estate located in Delaware County, Indiana, as described in those deeds listed below, all of which deeds are recorded in the Office of the Recorder of Delaware County, Indiana, ("Grantor's Real Estate").

Cross-referencing Instrument Number: **2020R14303**
Dated: **October 1, 2020**
Parcel Numbers: **18-11-20-351-005.000-003**
18-11-20-301-004.000-003
18-11-20-301-010.000-003

WHEREAS, Grantor desires to grant unto Grantee a non-exclusive easement for purposes of the Muncie Industrial Center Trail (the "Trail") over the Grantor's Real Estate upon the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and no pecuniary consideration, the parties agree as follows:

1. **GRANT OF EASEMENT.** Grantor does hereby grant and convey unto Grantee non-exclusive easements upon, along, through and across those portions of Grantor's Real Estate which are shown and more particularly described in the drawing and legal descriptions attached hereto as Exhibit "A" incorporated by reference, together with the right to install, construct, operate, maintain, repair, supplement, remove, and replace structures and improvements appurtenant and necessary to the Trail (collectively, the "Facilities").
2. **RESTRICTIONS.** Provided there is no material interference with the rights of Grantee herein set forth, Grantor reserves the right to the use and enjoyment of the Easement Area, provided, however, Grantor shall not erect or maintain any buildings or other above or below ground improvements that interfere with use of the trail including but not limited to fences or utilities in the Easement Area without consent of the Grantee. Signs, mailboxes and landscaping are permissible within the Easement Area, but may not be within five feet of the trail pavement and must be approved by Grantee. All items placed within the easement by Grantor are subject to removal, if necessary, for maintenance of the trail by Grantee.
3. **RESTORATION AND CONSTRUCTION.** During any period of construction, inspection, operation,

maintenance, repair or alteration of the Facilities, Grantee shall not unreasonably interfere with Grantor's use of Grantor's Real Estate and following such activities, Grantee shall promptly repair and restore any other portions of Grantor's Real Estate to the condition that existed prior to such activities, which restoration activities shall be completed in no event more than thirty days after completing the work.

4. **TERMINATION.** Grantor agrees that this Easement Agreement, and the rights hereby granted, shall remain in full force and effect until such time as Grantee, or its successors and assigns, executes and delivers to Grantor a written release which shall be recorded in the office of the Recorder of Delaware County.
5. **COVENANTS RUNNING WITH LAND.** The terms, conditions, and easement rights contained herein shall for all purposes be construed and considered as covenants and agreements running with Grantor's Real Estate and shall be binding upon and inure to the benefit of Grantee and Grantor and their respective successors and assigns.
6. **INTERPRETATION.** This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. In the event that any of the provisions of this Easement Agreement shall be held by a court of other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portions of the Easement Agreement shall remain in full force and effect. This Easement Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof in relation to any other provision in determining such construction. As used in this Easement Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall include any other gender. THIS PROVISION AND EACH AND EVERY OTHER PROVISION OF THIS EASEMENT AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR WAIVED, EXCEPT BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

The undersigned person executing this easement on behalf of GRANTOR represents and certifies that he has been authorized to execute and deliver this easement.

[***** Signature pages to follow. *****]

Commissioner Henry said Muncie Fire Chief requested a letter of support from the County Commissioners. The Chief said they are applying for a FEMA grant to purchase radios. All Commissioners agreed to send a letter of support.

Commissioner Riggin thanked employees for their hard work and efforts that was given regarding the snow and blowing on February 15, 2021.

Commissioner minutes February 16, 2021

Commissioner Henry thanked those that worked long hours on the roads and for keeping Delaware County safe during the storm.

Mr. John Coutinho, EMS Director, said the roads are getting cleared by the County Highway Department, City of Muncie is doing the same. All worked together in a team effort.

Mr. Mike Ashley, EMA Director, echoed Mr. Coutinho.

Mr. Paul Singleton, 911 Director, said many calls came in and are still coming but overall 911 Center ran well. .

Mr. Tommy Humbert, Highway Department, said the Highway crews worked well during the night shift in dangerous conditions. They left the dayshift in good shape. Mr. Humbert said some areas got up to 12 to 13 inches. The night shift done a great job and the radios they used worked out well.

Mr. Troy Landers, Highway Department, said they are in good shape with salt, 300 tons will be in the barn and they will replenish again on February 17, 2021. .

All Commissioners thanked everyone for their efforts during the snow storm on February 15, 2021.

Mr. Steven Craycraft, Auditor, said he has a few employees come in to finish payroll. Once they are finished they will return home due to the bad weather. .

Commissioner Riggin thanked Mr. Charlie Walker, Maintenance Superintendent, for covering three county buildings.

President King said Delaware County employees work as a team to get everything done.

Ms. Moody said the Plan Commission office is going to be doing a survey on solar energy to get input from citizens. The survey will be on the county website along with Plan Commission site.

Ms. Moody said the Plan Commissioner will be doing a joint project by partnering with the city, county, Muncie Action Plan, Next Muncie to create a Comprehensive Land use Plan and Comprehensive Plan Strategic Investment Plan.

PAYMENTS OF CLAIMS

MOTION: Commissioner Riggin made a motion to approve claims in the amount of \$1,679,729.27.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggin, President King

PUBLIC COMMENTS, QUESTIONS, OTHER BUSINESS & DISCUSSION

Mr. Brooke said the county received compliments on Facebook regarding the Highway Department and the efforts that the county made during the snow/wind on Monday, February 15, 2021.

Commissioner Riggin said the Justice Center will open on February 17, 2021 at 8:30 p.m. Commissioner Riggin reminded everyone that MITS (route number is 17) is testing the new route for 180 day and appreciates them doing this. Please consider riding the bus.

RECESS

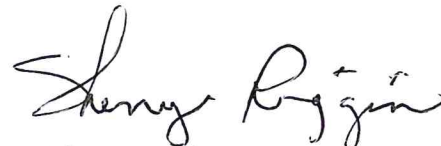
MOTION: Commissioner Riggin made a motion to recess until March 1, 2021.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggin, President King

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'K' intertwined.

President, Mr. James King

A handwritten signature in black ink, reading 'Sherry Riggin' in a cursive style.

Vice President, Ms. Sherry Riggin

A handwritten signature in black ink, appearing to read 'Shannon Henry' in a cursive style.

Member, Mr. Shannon Henry

A handwritten signature in blue ink, reading 'Steven G Craycraft' in a cursive style.

Auditor, Mr. Steven G Craycraft