

**ORDINANCE NO. 18-24**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN  
AGREEMENT WITH O.R. COLAN ASSOCIATES, LLC TO PERFORM RIGHT-OF-  
WAY ACQUISITION SERVICES FOR THE STATE ROUTE 254 & STATE ROUTE 83  
INTERSECTION IMPROVEMENT PROJECT (LOR 254 – 05.66)  
AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Avon applied for and was awarded a Safety Grant by the Ohio Department of Transportation (ODOT) to improve the State Route 254 (Detroit Road) and State Route 83 (Center Road) corridors in and around the Detroit Road and Center Road intersection, said project being known as the State Route 254 & State Route 83 Intersection Improvement Project and also as Ohio Department of Transportation (ODOT) LOR 254 -05.66, designated as PID 111283; and

**WHEREAS**, information about the proposed project is summarized in the attached public involvement press release document, attached hereto as Exhibit A, which was posted on the City of Avon website for a month in late 2023; and

**WHEREAS**, the Administration posted a Request For Qualifications (RFQs) for right-of-way acquisition services via the public ODOT professional services portal and received valid responses from four qualified consultant teams; and

**WHEREAS**, the four RFQs were evaluated and scored by a committee which included the City Engineer, the Safety/Service Director, and a representative of the design engineer (Chagrin Valley Engineering, Ltd.) who determined that O.R. Colan Associates, LLC was the most qualified firm based on a qualification-based selection process; and

**WHEREAS**, O.R. Colan Associates, LLC thence prepared a cost proposal for the right-of-way acquisition services needed to obtain various types of property rights from twenty-one different parcels, said proposal attached hereto as Exhibit B, which was then reviewed by the City Engineer who found the cost proposal to be responsive to the project scope and reflecting unit task rates in line with similar services performed for other similar ODOT related projects; and

**WHEREAS**, City Council has reviewed the contract for professional right-of-way acquisition services submitted by O.R. Colan Associates, LLC and finds the agreement to be in the best interests of the health, safety, and welfare of the citizens of Avon in facilitating the acquisition of property rights needed for the construction of the State Route 254 & State Route 83 Intersection Improvement Project together with all appurtenances thereto.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
AVON, LORAIN COUNTY, OHIO:**

Section 1 - That the Mayor is hereby authorized to execute a contract with O.R. Colan Associates, LLC for right-of-way acquisition services related to the State Route 254 & State Route 83 Intersection Improvement Project together with all appurtenances thereto, in substantially the form as set forth in the attached Exhibit B, which when finalized, shall be incorporated herein and made a part of this ordinance.

Section 2 – Payment in the amount of One Hundred Sixty-Two Thousand Seven Hundred Twenty Dollars and 00/100 Cents (\$162,720.00) shall be made from the SR 83 & SR 254 Intersection Improvements Fund No. 415 to meet the obligations incurred under the terms of this proposal. Further, the Finance Director is authorized to increase this appropriation by a reasonable amount for additional engineering and/or legal services associated with this project.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to meet established ODOT project milestone dates established for the noted project and its associated requirements; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: February 12, 2024

DATE SIGNED: February 12, 2024

By: Brian Fischer  
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR February 13, 2024

Bryan K. Jensen  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior  
John A. Gasior, Law Director

ATTEST:

Barbara Brooks  
Barbara Brooks, Clerk of Council

POSTED: February 14, 2024  
Electronically and at City Hall as  
Provided by Council

Prepared by:  
John A. Gasior, Esq.  
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 18-24, passed by the Council of said City on February 12, 2024.

IN WITNESS WHEREOF, I have on this 13th day of February, 2024, affixed my signature and official seal.

Barbara J. Brooks  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio



# EXHIBIT A

TO ORD. NO. 18-24

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*~PRESS RELEASE~*

**November 14, 2023**

**Detroit Road & Center Road Intersection & Corridor Improvement Project  
LOR-SR 0254-05.66  
PID 111283**

- The City of Avon, working in cooperation with the Ohio Department of Transportation (ODOT), will be improving both the Detroit Road (State Route 254) and Center Road (State Route 83) corridors in the vicinity of the Detroit Road & Center Road intersection. The project will improve safety aspects within the City of Avon and improve traffic continuity through the corridors in the vicinity of the intersection. The project includes improvements at the following intersections: Healthway Drive, French Creek Square, Old Center Road, and Avon Commons Drive; and the addition of a through lane on Detroit Road from 580 feet west of Healthway Drive to 800 feet east of Avon Commons Drive and a through lane on Center Road from 1,270 feet south of Detroit Road to 800 feet north of Detroit Road in the City of Avon. The intersection of Detroit Road and Center Road shall be widened to accommodate a dedicated right turn lane in all directions, two dedicated left turn lanes on Center Road in both directions, and two dedicated left turn lanes on Detroit Road in the eastbound direction and one dedicated left turn lane on Detroit in the westbound direction. The widening is occurring on the south side of Detroit Road and on both sides of Center Road. Property impacts as a result of the proposed widening will require land acquisition and this will be performed ahead of the construction to accommodate utility relocations and roadway improvements.
- A safety study concluded there were 205 crashes along this corridor between 2015 and 2017, with several sections and intersections ranking high on ODOT's Highway Safety Improvement Program, as well as NOACA's Regional Safety Priority listing. The majority of the crashes were rear end crashes and there is also a high frequency of sideswipe passing crashes. These are mostly due to lane continuity issues at intersections and along mainline Detroit Road (State Route 254). There are also visibility issues with signal indications associated with horizontal and vertical curvature of Center Road (State Route 83) north of Detroit Road as well as Detroit Road east of Center Road. Therefore, several countermeasures have been included in the project to improve signal visibility, the lane continuity issues, as well as address poor operations at the intersections along this corridor.

## ***Press Release***

### ***Detroit Road & Center Road Intersection & Corridor Improvement Project***

***LOR-SR 0254-05.66, PID 111283***

***November 14, 2023***

- The project construction work will occur in four phases, each with a different maintenance of traffic plan. For all phases, two-way traffic will be always maintained with a minimum of one 11 ft lane in each direction on Center Road (State Route 83) and Detroit Road (State Route 254), while also maintaining as many additional lanes and turn lanes as possible where space provides, either via existing pavement surfaces, proposed permanent pavement areas, or on temporary pavement areas constructed as needed. A concrete barrier will separate the active work zone from the travel lanes to increase safety. Business and residential property access will be maintained but may experience short periods of disruption with advanced notice from the contractor. Off roadway impacts are limited but do include modifications to the City Centre stormwater management system and retention basin.
- ***Project Schedule:***
  - ❖ Design Complete – October 1, 2024
  - ❖ Project Award – March 1, 2025
  - ❖ Construction Begin – April 1, 2025
  - ❖ Construction Completion – May 1, 2026
- ***Estimated Construction Cost:***
  - ❖ \$7,010,000 – with \$4,616,000 in federal funds
- ***Project Funding Sources:***
  - ❖ ODOT 4HJ7 Safety
  - ❖ Local City Funds
- ***Representative:***
  - ❖ Ward 2 - Dennis McBride
  - ❖ Ward 3 – Tony Moore
- ***Public Input:***
  - ❖ The City of Avon is seeking public input regarding this project. Comments may be sent to:  
Ryan Cummins, PE, Avon City Engineer  
22999 Forbes Road, Suite B  
Oakwood Village, Ohio 44146  
(440) 399-0815  
[cummins@cvelimited.com](mailto:cummins@cvelimited.com)
  - ❖ Comments will be received until December 15, 2023

## TERMS & CONDITIONS

**TERMS & CONDITIONS** ("**Agreement**") entered into are effective as of February 2, 2024 (the "**Effective Date**") by the City of Avon Ohio ("**City**"), an Ohio municipality with an address of 36080 Chester Road, Avon, OH 44011, and O.R. Colan Associates, LLC ("**Consultant**"), a Florida limited liability company, with a business address of 7005 Shannon Willow Road, Suite 100, Charlotte, NC 28226. **City** and **Consultant** are hereafter collectively referred to as the "Parties" and individually as a "Party." This Agreement contemplates services being provided by Consultant pursuant to the terms and conditions contained herein. The term of this Agreement shall begin as of the Effective Date and shall end upon the completion of Services as describe in the attached Cost Proposal or subsequent Change Orders, unless or except the Parties mutually agree otherwise.

### 1. SERVICES AND PERFORMANCE SCHEDULE.

- a. **Cost Proposal.** As of the Effective Date of this Agreement, **Consultant** agrees to provide those specific land and right-of-way related services to **City** as described and set forth in Consultant's Cost Proposal, agreed to by the Parties attached hereto as Exhibit A, which is incorporated herein by reference.
  - i. All services to be provided by **Consultant** pursuant to this Agreement are referred to herein as the "Services."
  - ii. **Consultant** represents that by submission of the Cost Proposal it is qualified and equipped to undertake the Services set forth therein.
  - iii. As used herein, "Cost Proposal" shall mean the initial Cost Proposal submitted by **Consultant** as well as any "Change Orders" that change, extend, expand or retract the Services to be provided by **Consultant**.
- b. **Change Order.** Changes to the scope of work appearing in the original Cost Proposal shall be documented by a "Change Order" in the format to be agreed upon by both Parties, which shall be in writing and signed by the Parties, which Change Order shall incorporate this Agreement by reference and describe with particularity the Services to be or not to be performed.
  - i. The Change Order shall be prospective, not retroactive, and shall allow at least seven (7) business days before implementation upon receipt by the **Consultant**.
  - ii. The Change Order shall be deemed accepted by **City** when **City** countersigns it or otherwise provides written confirmation of its acceptance.
  - iii. **Consultant** represents that by execution of a Change Order it is qualified and equipped to undertake the Services set forth therein.
  - iv. **Consultant** will be entitled to charge for additional Services enumerated in any Change Order or resulting therefor pursuant to the Rate Schedule described in Section 2 and attached hereto as Exhibit C.
- c. **Purchase Order.** At its option, **City** may stagger the authorization to start segments of the Services to be provided either through insertion of a commencement date in a Change Order which expands/contracts the scope of work or through a Purchase Order ("Purchase Order") requested for its administrative purposes in budgeting, which such Purchase Order shall incorporate this Agreement by reference. If Purchase Orders are utilized, **Consultant** shall not commence work other than that authorized by the individual Purchase Orders notwithstanding the Cost Proposal.
- d. **Schedule.** Services performed under this Agreement shall be undertaken in accordance with the schedule provided in the initial Cost Proposal or subsequent Change Order; **Consultant** recognizing that timeliness with respect to its Services is essential to the success of the project. **Consultant** shall be permitted meaningful input into assisting with the design of the schedule as it relates to land and right-of-way services. Schedule changes shall be documented by a Change Order.
- e. **Independent Contractor.** All performance of Services shall be undertaken by **Consultant** in the capacity as an independent contractor as provided in Section 14. **City** agrees to provide **Consultant** with such information, data and criteria as may be required from time to time by Contract to perform the Services efficiently and in accordance with this Agreement. The Services provided by **Consultant** are of a non-exclusive nature and **Consultant** shall not be restricted from contracting with other parties for performance of similar Services, subject to compliance with all other terms of this Agreement.
- f. **Extra Services.** **Consultant** shall be obligated under this Agreement only to provide those Services described in a Cost Proposal or Change Order that it has signed or otherwise provided written confirmation

of its acceptance and may decline to perform any Services outside the scope of services normally provided by it or beyond its capability.

## **2. FEES AND EXPENSES.**

- a. Rate Schedule and Fees. In consideration for the Services performed, **City** agrees to pay the charges in fees and reimbursements (the "Fees") in the rate schedule attached hereto as Exhibit C (Rate Schedule) and incorporated herein by reference, or as otherwise provided in the Cost Proposal.
  - i. The Rate Schedule shall remain in effect without revision for a minimum period as set forth therein, except as otherwise provided in Exhibit C. (Example: The per diem rates in the attached rate schedule which are based on CONUS shall change pursuant to the effective date of changes to CONUS made by the Government Services Administration, which periodically reviews rates annually and publishes them in October of each calendar year.)
  - ii. Further, any Fees in effect at the time a Cost Proposal is accepted shall remain in effect until all Services to be performed under the Cost Proposal are completed. Should either Party desire to revise such Fees after that time, such Party shall provide the other Party with a minimum sixty (60) days written notice of such desire. Revisions may be made only by a written Amendment to the Cost Proposal ("Amendment") executed by both parties. Oral modifications to the Rate Schedule shall have no effect.
- b. Expenses and Reimbursement. Subject to reimbursement by **City** pursuant to the Rate Schedule, **Consultant** shall be responsible for direct payment of all expenses incurred by it in the performance of the Services, including but not limited to compensation paid to its staff, travel, per diem and/or lodging and meal reimbursements, whether incurred as employees or independent contractors, together with facility and equipment rentals, mileage, copy charges for courthouse records and/or charges for copier usage) postage and delivery fees, and other like costs incurred by **Consultant**. **Consultant** shall be entitled to a markup of such reimbursable costs pursuant to the Rate Schedule.
- c. Acquisition Payments. **City** shall be responsible for directly funding payment of acquisition payments for interests in land (including but not limited to fee purchases, easements, license and permit fees) either through a client account established by **Consultant** and pre-funded by **City** or payment directly by the **City**.

## **3. INVOICES.** **Consultant** shall submit invoices for all applicable Fees and expenses in accordance with the procedures set forth in the applicable Cost Proposal or, if no procedures are specified, every month.

- a. General matters. Each invoice shall reference the applicable Cost Proposal or Purchase Order number. If more than one Purchase Order is being undertaken, the invoice shall break out the charges pursuant to each Purchase Order. If Services are being performed on a time-and-materials basis, the invoice shall include a statement or be accompanied by time sheets showing each employee's name, classification, hours worked, and the applicable rate of compensation to **Consultant**. If any equipment has been used for which a charge applies, the invoice must also specify the equipment used, and rate of reimbursement for use.
- b. Payment within Thirty (30) Days. **City** shall pay invoices within thirty (30) calendar days following receipt of such invoice (all reference to "days" in this Agreement shall be calendar days unless expressly otherwise noted).
  - i. Disputed Amounts. **City** may withhold and offset from any payment, including the final payment, that portion of any invoice that is demonstrated to be incorrect or reasonably disputed, provided however, the undisputed portion of any invoice shall be paid by **City** without delay.
  - ii. Late Payments. All invoices will be paid within forty-five (45) days of receipt (or that portion not disputed)
  - iii. Should the Parties disagree as to a disputed amount, it shall employ the resolution procedures found in Section 15.  
Notwithstanding the above clauses 3 b (i) through (iii), should a disputed amount or late payment by **City** result in the imposition of fees for penalty payments due a subcontractor to be paid by **Consultant**, then **City** shall be liable for and shall reimburse **Consultant** any such additional fees or penalties assessed or paid by **Consultant**, other than with respect to such portion of any fees of such subcontractor(s) assessed for their services or materials which subsequently are proven incorrectly billed by subcontractor to **Consultant**.
- c. Taxes Included. The Fees shall include all applicable foreign, federal, state, and local taxes payable with respect to this Agreement if allowed by law. **Consultant** shall be responsible for, and shall pay directly, any and all corporate and individual taxes that are measured by its net income, profit or gross receipts imposed

- by any governmental authority on **Consultant**, its employees or subcontractors due to the execution of any agreement or the performance of or payment for Services in accordance with the Agreement.
- i. **Consultant** assumes exclusive liability for all sales, use or privilege taxes applicable to any materials, supplies, equipment or tools purchased, rented, leased, used or otherwise consumed by **Consultant** in conjunction with the performance of the Services.
  - ii. Any taxes paid by **Consultant** that are reimbursable to it by **City**, shall be billed as a separate line item on the original invoice for taxable purchases. When sales tax is not billed on the original invoice for taxable purchases, **City** is not responsible for the sales tax and such tax is the sole obligation of the **Consultant**. If professional services are exempt from certain state's sales and use tax they shall be separately stated from charges for taxable services on invoices by other states. When Services are to be performed in any such state, **Consultant** shall submit prior to commencement of Services, the properly completed paperwork with the state if required.
- d. **Employee Taxes, Withholdings.** As an independent contractor, **Consultant** assumes exclusive liability for all contributions, taxes or payments required to be made under the applicable federal and state Unemployment Compensation Act, Social Security Acts, tax withholding laws, and by all other current or future acts, federal or state, requiring payment by the **Consultant** on account of the person hired, employed or paid by **Consultant** for Services performed under this Agreement. Nothing in this paragraph is to be construed to prevent **Consultant** with respect to such people engaged, employed or paid by **Consultant** from requiring such individuals to participate in withholdings and/or payments in the case of employees, or require self-employment taxes to be assumed/undertaken/paid by individuals working as independent contractors.
  - e. **Retainage.** This Agreement does not permit a retainage amount to be held back from any invoice for any services, materials or reimbursements of expenses.
  - f. **Books and Records.** **Consultant** shall maintain accurate and reasonably detailed books, records, and accounts, of all Fees and expenses billed to **City** under this Agreement and the Cost Proposal consistent with Generally Accepted Accounting Principles ("GAAP") during the course of the performance of the work. Within forty-five days (45) following completion of the project, **Consultant** shall deliver all records related to the project that **City** will need to own and operate the assets, limited to completed land and right of way files, an electronic copy of any data base created by **Consultant** in Microsoft Excel format and a final line list. Should **City** seek right-of-way agent contact notes, other electronic data, or other information beyond the described land and right of way files, a copy of the data base in Microsoft Excel format, and final line list, then **Consultant** shall be entitled to charge **City** for the duplication, creation and/or provision of such records with a five percent (5%) markup. Should **City** seek to continue to utilize any proprietary database or GIS technology, **City** shall contract with **Consultant** to obtain use of such at the rates and fees **Consultant** charges other like users. This provision is intended to and shall relieve **Consultant** of any obligation to provide records after the forty-five (45) day period other than that information subpoenaed in litigation or requested of **City** by a state or federal agency that might remain in **Consultant's** possession. **City** shall pay **Consultant** for providing such materials with a five percent (5%) markup.
  - g. **Audit.** **City** shall have the right to commence an audit of **Consultant's** records at any time during performance of the Services, or within 180 days after completion of the Services or termination of a Cost Proposal to the extent necessary to permit evaluation and verification of invoices, notices, or claims submitted with respect to and **Consultant's** compliance with this Agreement and **Consultant's** dealings with **City**. Any such audit will be diligently pursued by **City** and completed within ninety (90) days absent extraordinary circumstances. **City** may examine and copy such information and records at **Consultant's** premises during regular business hours, subject to reimbursement to **Consultant** for copying charges as may be set forth in the Rate Schedule, or such rate customarily charged by a third party copying service if the rate schedule fails to set out such a charge for such services. **Consultant** shall make any materials to be audited available within ten (10) days or less of the request for them, provided the request is specific as to what records are sought. In the event that any audit shows an overcharge to **City** that the Parties jointly agree upon, then **Consultant** shall immediately refund such overcharged amount without interest or penalty having been accrued, provided however, if payment of such agreed upon amount does not take place within (30) days of such agreement as to the amount, then interest shall accrue at the annual rate of 12%. **City** shall be entitled to conduct an audit not more than once a year. There shall be only one final audit after completion of the Services or termination of a Cost Proposal.

#### 4. DELIVERABLES.

- a. For the purposes of this Agreement, "Deliverables" may include any and all work product or materials to be created, written, developed, or delivered by or for **Consultant** to **City** pursuant to any Cost Proposal, including without limitation:
  - i. All reports, writings, abstracts, summaries, drawings, flow charts, images, artwork, and documents;
  - ii. Deliverables with respect to each Cost Proposal shall be identified and set forth in the applicable Cost Proposal.
  - iii. The Cost Proposal shall state what Deliverables are to be expected at the conclusion of the project.
- b. Excluded Items. Deliverables shall not include **Consultant's** intellectual and technical property including but not limited to its written procedures and training modules, computer programs (both source code and object code), software, firmware, designs, application programs, operating systems, scripts, animation sequences, interfaces, programming code, applets, executables, objects, formats or page descriptions, data, databases, computer architecture or hierarchies, files, and utilities utilized by Contract in creation of such reports, writings, abstracts, summaries, drawings, flow charts, images, artwork, and documents, nor shall Deliverables include proprietary software developed or purchased by **Consultant** for accounting, GIS work and mapping, or data base(s). During the term of this Agreement, **Consultant** may provide **City** with licensed software and applications, or specially create an ancillary program or software revision of such items for the project. All rights, title, and interests in and to the **Consultants** software and applications, including revisions made for the project will remain solely those of **Consultant**. Should **Company** seek to continue to utilize such software and applications upon completion of the project, **Company** shall enter into a licensing agreement with **Consultant** pursuant to terms and conditions, including prices, generally offered by **Consultant** to others.
- c. **Consultant** shall have the right to charge a licensing fee to **Company** for the use of such excluded items.
- d. Delivery. The timetable for delivery of the Deliverables and the acceptance procedures for the Deliverables shall also be set forth in the applicable Cost Proposal.

#### 5. PROFESSIONAL SKILL AND CARE.

**Consultant** agrees that during the Services; (a) it shall exercise the degree of skill and care generally exercised by other professional right-of-way service providers and that the Services and Deliverables provided will be performed, created, and supervised in a professional manner by qualified personnel; (b) the Services and Deliverables provided will conform to any applicable specifications set forth in the applicable Cost Proposal. **Consultant** shall, at **City's** option, re-perform at its cost any Services or Deliverables that fail to comply with the Cost Proposal. If **Consultant** fails to commence and pursue corrective action as required, **City** may correct the defective Services itself or hire others to do so and all reasonable costs to make such correction shall be paid by or back charged to the **Consultant**. All rights, title, and interests in and to the Deliverables shall be owned by **City**.

#### 6. PERSONNEL; WORK CONDITIONS AND COMPLIANCE WITH CITY POLICIES AND FEDERAL AND STATE LAWS.

- a. Personnel. **Consultant** shall assign properly licensed, qualified and competent supervisors and personnel to perform the Services. Key management personnel including the **Consultant's** key project executive and field Project Manager shall not be removed or replaced without prior consent of **City**, which consent shall not be unreasonably withheld. Personnel provided by **Consultant** under this Agreement shall at all times remain the sole responsibility of said **Consultant** for purposes of personal and professional liability. **Consultant** is solely responsible for all aspects of the labor relations of its personnel, including but not limited to, wages, benefits, discipline, hiring, firing, promotions, pay raises, overtime and job and shift assignments. **City** shall have no responsibility for or power over these areas.
- b. Federal Contracting Provisions. Where required by federal or state law for projects undertaken by **City** that require **City** and its consultants to comply, **Consultant** and its subcontractors, if any, shall observe and abide by all applicable laws, federal, state and local, and the rules and regulations of any lawful regulatory body acting thereunder in connection with the Services, including but not limited to the following: Executive Order 11246, Executive Order 13672 and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), and all amendments of the foregoing that may be made from time to time, the Americans with Disabilities

Act, Fair Labor Standards Act of 1938, the Rehabilitation Act of 1973, and their respective implementing regulations, which are made a part hereof as if set out herein. Where required of **City**, **Consultant** shall further abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a) (Equal Opportunity Clauses). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. To the extent applicable, during the performance of this Agreement, **Consultant** shall observe and abide by the Equal Employment Opportunity provisions contained in 41 C.F.R 60-1.4, 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), and the reporting clause set forth in 41 CFR 61-300.10, and all amendments of the foregoing that may be made from time to time, all of which are incorporated herein by reference.

- c. Other Labor Laws and Immigration Laws. **Consultant** shall comply, and shall require its subcontractors to comply, with all applicable labor, employment, and immigration laws that may impact **Consultant's** obligations under this Agreement, including but not limited to federal, state and local laws, rules and regulations, and executive orders that are now or that become applicable to the **Consultant** during the period the **Consultant** is performing the Services hereunder. Without limiting the foregoing, **Consultant** shall comply strictly with all laws relating to the verification of its workers' eligibility to work in the United States, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements.

## 7. TERMINATION.

- a. Termination without Cause. **City** may terminate for its convenience and without cause this Agreement or any Cost Proposal, in whole or in part, upon written notice to **Consultant**.
- b. Termination with Cause. **City** may terminate or suspend all or any portion of this Agreement or applicable Cost Proposal for cause after giving **Consultant** notice of any default and if **Consultant** has not commenced to cure such default within 10 days following receipt of such notice. **Consultant** must thereafter continuously and diligently pursue curative activities. For purposes of this Agreement, "cause" shall mean that a default in the performance of, or fails to perform, any of its material obligations under a Cost Proposal.
- c. Final invoicing. Upon notice of termination under either Subsection a or Subsection b from **City**, **Consultant** shall immediately stop work on the terminated portion of the applicable Cost Proposal unless otherwise directed by **City**, and shall submit to **City** an invoice with supporting information setting forth the Fees for the Services properly performed prior to **Consultant's** receipt of the notice of termination. **Consultant** shall be entitled to any undisputed payment for that portion of the Services earned through the date of termination, together with its reasonable direct, out-of-pocket termination expenses actually incurred by **Consultant**, including but not limited to travel home for its field staff and organizing, boxing and delivering Deliverables. **Consultant** shall not be entitled to any profit or overhead on that portion of the Services not performed, nor any other damages.
- d. Deliverables. Upon termination of a Cost Proposal, **Consultant** shall provide to **City** all portions of any Deliverable created prior to such termination but shall have no obligation to complete any unfinished work on any Deliverable.
- e. Temporary Suspension of Work. **City** may, for any reason, elect to temporarily suspend performance of any or all of the Work to be performed under this Agreement or any Cost Proposal for a reasonable period of time. Upon notice of such suspension, **Consultant** shall immediately cease all efforts to perform the Services or that part of the Services which is suspended. The time for completion of the suspended Services will be extended by a period of time at least equal to the period of suspension plus a period attributable to restart needs of **Consultant**. In the event a temporary suspension of work exceeds ninety (90) days, **Consultant** shall not be obligated to provide the same staffing during the suspension, including the key executive or Project Manager except or unless **City** is willing to continue paying for such services during the suspended period.
- f. Should **City** breach any of its obligations under this Agreement or related Cost Proposal, **Consultant** may terminate or suspend all or any portion of its services after giving **City** written notice of any such default, if **City** has not commenced to cure such default within 10 days following receipt of such notice. **City** must thereafter continuously and diligently pursue curative activities.

## 8. CONFIDENTIALITY

- a. **City's Information.** **Consultant** agrees that any information relating to **City's** business, including but not limited to generation plans and customer or supplier information, or technical, financial, administrative and internal activities or any business plans and methods, operating and technical data, reports, drawings, operating documents, project documents, reports, and all non-public data specific to **City** and its business or its customer or group of customers, and any and all other data written, oral or other media form that, in the case of written material, is marked with the label "Confidential" or similar legend or, in the case of oral or other media disclosure, is reasonably identified in writing as confidential within 30 days of the disclosure shall be deemed confidential information ( "Confidential Information").
- b. **Confidentiality of City's Information.** Such Confidential Information shall not be disclosed by the **Consultant** for any reason unless approved in writing by **City**. "Confidential Information" shall not include any information that: (i) was already known to **Consultant** at the time it was disclosed by **City** (unless previously disclosed under a confidentiality agreement) ; (ii) was available to the public at the time it was disclosed by **City**; (iii) becomes available to the public after being disclosed by **City** through no wrongful act of, or breach of this Agreement by **Consultant**; (iv) is received by **Consultant** without restriction as to use or disclosure from a third party; or (v) is independently developed by **Consultant** without benefit of any disclosure of information by **Consultant**. **Consultant** agrees to use **City's** Confidential Information solely for the purpose of providing the Services to **City**. The Parties agree that in the event of a breach of this section, **City** shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity. **Consultant** agrees (a) to protect the Confidential Information of **City** with at least the same degree of care used to protect its own most confidential information; (b) not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information of **City**; and (c) upon the request of **City**, to promptly deliver to **City** all written copies of **City's** Confidential Information.
- c. **Consultant's Information.** **City** agrees that any information relating to **Consultant's** business, including but not limited to **Consultant's** written procedures, training modules and materials, **Consultant's** business plans and computer application programs, whether purchased or internally developed, are confidential ("Confidential Information").
- d. **Confidentiality of Consultant's Information.** Such Confidential Information shall not be disclosed by the **City** for any reason unless approved in writing by **Consultant**. "Confidential Information" shall not include any information that: (i) was already known to **City** at the time it was disclosed by **Consultant** (unless previously disclosed under a confidentiality agreement); (ii) was available to the public at the time it was disclosed by **Consultant**; (iii) becomes available to the public after being disclosed by **Consultant** through no wrongful act of, or breach of this Agreement by **City**; (iv) is received by **City** without restriction as to use or disclosure from a third party; or (v) is independently developed by **City** without benefit of any disclosure of information by **City**. **Consultant** agrees to use Confidential Information solely for the purpose of providing the Services to **City**. The Parties agree that in the event of a breach of this section, **Consultant** shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity. **City** agrees (a) to protect the Confidential Information of **Consultant** with at least the same degree of care used to protect its own most confidential information; (b) not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information of **Consultant**; and (c) upon the request of **Consultant**, to promptly deliver to **Consultant** all written copies of **Consultant's** Confidential Information.
- e. **Discovery and Court Ordered Disclosure.** If either Party is requested or ordered in litigation or through injunctive relief by a court or governmental entity to disclose any or all of the Confidential Information of the other, such Party shall (i) promptly notify the other Party of the existence, terms and circumstances surrounding the request or order; (ii) consult with the other Party on the advisability of taking steps to resist or narrow the request or order; (iii) cooperate with the other Party in any lawful effort such other Party undertakes to obtain any such relief and with any efforts to obtain reliable assurance that confidential treatment will be given to that portion of Confidential Information that is disclosed; and (iv) furnish only such portions of Confidential Information as the other Party is advised by counsel is legally required to be disclosed, unless such other Party expressly authorizes broader disclosure. In any litigation matter, whether or not involving Confidential Information, the costs of compliance by **Consultant** to any discovery request or court ordered disclosure, including the costs of labor to comply, representation by legal counsel, and the

assemblage and/or reproduction of documents and electronic data shall be reimbursed to **Consultant** with the 5% mark-up fee.

- f. Prior Agreements. To the extent the Parties have an existing non-disclosure or other confidentiality agreement which covers the same subject matter as this Agreement in effect as of the effective date of this Agreement, this section shall supersede such agreement unless otherwise agreed by the Parties.
- g. Survival. The non-disclosure obligations of this section shall continue for so long as this Agreement is in effect and for a period of one (1) year thereafter.

#### **9. CROSS INDEMNIFICATION.**

- a. **Consultant Indemnity:** **Consultant** shall indemnify, defend and hold harmless **City** (including its parent, subsidiary and affiliate companies), its officers, employees, agents, and any other party with an ownership interest in the premises, from and against all liability, loss, costs, claims, damages, expenses, judgments, and awards, whether or not covered by insurance, arising or claimed to have arisen in whole or in part from acts or omissions of, or as a result of Services performed or omitted from being performed, or as a result of negligence by **Consultant**, its subcontractors, and **Consultant's** agents or employees, which resulted in:
  - i. Injury (including mental or emotional) to or death of any person, including employees of **City** (including its parent, subsidiary and affiliate companies), or
  - ii. Damage to or destruction of any property, real or personal, including without limitation property of **City** (including its parent, subsidiary and affiliate companies) and its other contractors, **City's** (including its parent, subsidiary and affiliate companies') employees, and fellow employees; and
  - iii. From demands, actions or disputes asserted by any subcontractors, employees or suppliers of **Consultant**; provided however, should the services provided by **Consultant** have been directly controlled, managed or directed by **City**, or through an agent or representative of **City** other than that of **Consultant**, then **City** shall assume the obligation of covering and responding to any injury, damage to property or demands, actions or disputes other than those liabilities, losses, costs, claims, damages, expenses, judgments, and awards arising from the intentional misconduct of an employee of **Consultant**, and **City** shall not be indemnified by **Consultant** in such case of control, management or direction by **City**.
- b. Claims. In the event of a claim under this section, either Party shall promptly advise the other in writing of any claim which could give rise to a right of indemnification under this section. The indemnifying Party shall have the right to control the defense and settlement of all such claims; provided that it will not settle any claim without the other party's prior written consent unless that settlement includes a full and final release of all claims against the indemnified party.
- c. Attorney's Fees. Indemnification shall include all costs including attorney's fees reasonably incurred in pursuing indemnity claims under or enforcement of this Agreement.

#### **10. COOPERATION.**

The Parties shall reasonably cooperate in the performance of the Services, including without limitation, **Consultant** coordinating with **City** and others who are performing work at or near the area of the Services and **City** providing **Consultant** with timely access to relevant and available data and information of **City** from work and services arising out of the Agreement and/or Cost Proposal.

#### **11. INSURANCE.**

- a. Minimum Coverage. Commencing with the performance of the Services hereunder, and continuing until the termination of the Agreement including during the performance of any warranty services, **Consultant** (and any tier subcontractors) shall maintain or cause to be maintained occurrence form insurance policies as follows:
  - i. Workers' Compensation specific to the applicable statutory requirements for the Services to be performed; provided that **Consultant** (or its subcontractor(s)) must notify **City** if it is exempt from the statutory Workers' Compensation requirements;

- ii. Commercial General Liability Insurance having an available limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, and premises liability coverage
  - iii. Comprehensive Automobile Liability Insurance covering owned, non-owned or hired autos in connection with Services performed having an available limit of at least \$1,000,000 for each accident for bodily injury, death, property damage;
  - iv. Umbrella/Excess Liability insurance with available limits of at least \$1,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and provide at least the same scope of coverages thereunder; and
  - v. Professional Liability/Errors & Omissions (E&O) Insurance (claims-made form) with no bodily injury or property damage exclusion with available limits of at least \$1,000,000 each claim.
- b. Certificate of Insurance. Evidence of such coverage shall be provided via **Consultant's** certificate of insurance furnished to **City** prior to the start of Services, upon any policy replacement or renewal and upon **City's** reasonable request. All insurance policies shall provide that the insurer will provide at least thirty (30) days' written notice to **Consultant**, who in turn shall provide at least thirty (30) days' written notice to **City** prior to cancellation or non-renewal of any policy (or ten (10) days' notice in the case of non-payment of premium).
- c. Failure to Comply – Suspension. Any failure to comply with all of these provisions shall permit **City** to suspend all Services until compliance is achieved.

## **12. WAIVER OF CONSEQUENTIAL DAMAGES.**

Neither Party shall be liable to the other Party for any incidental, indirect, special, punitive or consequential damages (including without limitation any damages relating to loss of use, loss of goodwill or lost profits) ("Consequential Damages") arising in connection with this Agreement unless such Consequential Damages are due in whole or in part to either Party's misrepresentation; fraud; willful, wanton, or reckless act or omission; or any other intentional conduct of either Party. Any statutory damage award under the Copyright Act or any increased damage award under the Lanham Act or Patent Act shall not be considered as "punitive" damages under this Section.

## **13. FORCE MAJEURE.**

Force Majeure shall mean: (a) war, riots, insurrection, rebellion, floods, hurricanes, tornadoes, earthquakes, extreme and unanticipated weather conditions, and other natural calamities; (b) acts or inaction of any government authority which directly impact the Services; (c) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; or (d) delays in obtaining goods or services from any subcontractor caused solely by the occurrence of any of the events described in the immediately preceding subparts (a) through (c). Such acts, events or conditions listed in (a) through (d) above shall only be deemed a Force Majeure to the extent they: (i) directly impact the Services and are beyond the reasonable control of the Party claiming a delay, (ii) are not the result of the willful misconduct or negligent act or omission of such Party claiming a delay (or any person over whom that Party has control), and (iii) are not an act, event or condition, the risk or consequence of which such Party has expressly assumed under the Agreement. Any delays in performance by **City** or **Consultant** shall not constitute a default hereunder if and to the extent such delays of performance are caused by a Force Majeure event. The scheduled completion date shall be adjusted to account for any Force Majeure delay. The affected Party shall exercise all reasonable efforts to overcome and mitigate the effects of any force majeure event at its own cost.

## **14. INDEPENDENT CONTRACTOR STATUS.**

**Consultant** and **City** acknowledge and agree that the relationship between **Consultant** and **City** hereunder shall be that of independent contractor, and nothing contained herein shall be construed or interpreted as creating any other relationship between the Parties, including without limitation employer/employee, principal/agent, partnership or joint venture. The Fees shall include, and **Consultant** shall be responsible for the payment to its employees of, all compensation, taxes, assessments for unemployment insurance, social security and disability benefits, and other fees, benefits (including health and retirement) and taxes which are based upon the compensation paid to persons employed by **Consultant** or its subcontractors for the performance of any Services. **Consultant** agrees to indemnify, defend, and hold **City** harmless from all claims, liabilities, or expenses related to such compensation.

## **15. DISPUTE RESOLUTION.**

Disputes. Notice of any claim by **Consultant** shall be made in writing to **City** within five (5) calendar days after the first day of the event giving rise to such claim or **Consultant** shall be deemed to have waived the claim. Written documentation and supporting data shall be submitted to **City** within thirty (30) calendar days after the occurrence of the event giving rise to the claim, unless **City** grants additional time in writing. **Consultant** shall proceed diligently with the performance of the Services, as directed by **City**, regardless of any pending claim or dispute. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "**Disputes**") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute which has not been resolved in the normal course of business. Executives of both Parties shall meet at a mutually acceptable time and place, and as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this clause are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Dispute has not been resolved by negotiation within sixty (60) Days of the disputing Party's initial notice, then either Party may initiate litigation.

#### **16. CONSULTANT'S EMPLOYEES**

**City** agrees that it will not hire any employee of **Consultant** during the performance of services under a Cost Proposal in which such employee is engaged or do so for a period of one (1) year after the termination/completion of the Cost Proposal except with the express written permission of **Consultant's** president and/or CEO. In the event **City** should hire any employee of **Consultant**, **City** shall pay **Consultant** a fee equal to fifty percent (50%) of the employee's prior twelve (12) month's wages (if the employee has not received wages for twelve (12) months, the calculation shall be based upon an annualization of the wages the employee has received to date).

#### **17. CHOICE OF LAW AND VENUE**

The laws of the State of Ohio shall govern this Agreement, except that the conflict of law provisions shall not be invoked in order to apply the laws of any other state or jurisdiction. Either Party shall have the right, in its discretion, to include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in any litigation. Venue for any such action shall lie exclusively in the appropriate state or federal courts in and for the State of Ohio, County of Lorain..

#### **18. RESERVED.**

#### **19. ASSIGNMENT AND SUBCONTRACTING.**

**Consultant** shall not subcontract, assign, or otherwise transfer this Agreement or any obligation hereunder without the prior written consent of **City**, which shall be at **City's** sole discretion. **Consultant** will remain fully responsible for the performance of any subcontracted or assigned Services. **City** may assign this Agreement to an affiliate or to a third party providing administrative or management support services to **City**.

#### **20. NOTICES.**

Each Party shall designate a representative for the receipt of notices in the Purchase Order or Cost Proposal. All notices required to be given under this Agreement shall be in writing and delivered by fax, personal delivery, email, or U.S. mail using the contact information set forth below. Notices shall be effective upon receipt or such later date

specified in the notice. A Party may change the contact information or the designated representative by notifying the other Party of such change in accordance with the notice procedures in this section.

**Consultant:**

O.R. Colan Associates  
Attn: Ben Zera  
22710 Fairview Center Drive  
Fairview Park, OH 44126  
Email: [bzera@orcolan.com](mailto:bzera@orcolan.com)

**City:**

City of Avon  
Attn: Bryan K. Jensen, Mayor  
36080 Chester Road  
Avon, OH 44011

**21. AMENDMENTS; ORDER OF PRECEDENCE.**

Any modification or amendment of any provision of this Agreement must be made in writing and signed by an authorized representative of each Party. The "Agreement" shall mean and shall consist of the following documents, listed in their order of priority in the event of a conflict: (a) any Amendment or Change Order signed by both Parties; (b) either the Purchase Order or Cost Proposal issued to **Consultant**, as applicable; (c) the terms of this document; (d) any exhibit(s), schedule(s), or descriptions and specifications incorporated into the Agreement. Additional or different terms contained in **Consultant's** proposal forms, **Consultant's** acceptance forms or any order confirmation, quotation, invoice or other documents exchanged between the Parties shall not become a part of this Agreement unless expressly agreed to in writing as an amendment to this Agreement and signed by an authorized purchasing agent of **City**.

**22. NONWAIVER.**

The failure of either Party in any one or more instances to insist upon performance of any of the terms or conditions of this Agreement, or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms or conditions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in full force and effect as if no waiver had occurred.

**23. SEVERABILITY.**

Should any provision of this Agreement or part hereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

**24. SURVIVAL.**

Those provisions that would require survival in order to give them full force and effect, including without limitation all or parts of Sections 3 (Invoices), 8 (Confidentiality), 9 (Cross Indemnification), 12 (Waiver of Consequential Damages), 15 (Dispute Resolution), 16 (Choice of Law and Venue) and 19 (Notices), shall survive the termination or expiration of this Agreement, regardless of the date, cause or manner of such termination, and shall remain in full force and effect pursuant to the time in the relevant Section, or if not time stated for one (1) year after termination or expiration of any Cost Proposal (as supplemented by Change Orders).

**25. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior contemporaneous or other oral or written statements, representations, or agreements by the Parties with respect to the subject matter hereof are superseded hereby. Each Party to this Agreement and its counsel have participated in the creation of it. As such, the Parties agree that the normal rule of construction to the effect that ambiguities to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

**26. COUNTERPARTS; FACSIMILE SIGNATURES.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution by electronic, facsimile signature or photocopy signature, (e.g., a pdf executed document), shall be deemed to be, and shall have the same effect as,

execution by original signature. Further, **City** and **Consultant** acknowledge that Cost Proposals and Purchase Orders and any amendments to this Agreement requiring signatures may also be transmitted electronically and that the electronic transmittal of original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

**IN WITNESS THEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

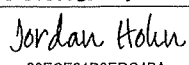
| <b>CONSULTANT</b>                                                                     |  | <b>CITY</b>                                                                            |  |
|---------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------|--|
| By:  |  | By:  |  |
| Print: Jordan Hohn                                                                    |  | Print: Bryan K. Jensen                                                                 |  |
| Title: Executive Vice President                                                       |  | Title: Mayor                                                                           |  |
| Date: 2/2/2024                                                                        |  | Date: 2-13-24                                                                          |  |

EXHIBIT A

CONSULTANT COST PROPOSAL

**ORC**® REAL ESTATE SOLUTIONS  
FOR INFRASTRUCTURE

January 10, 2023

Ryan Cummins, PE, CPESC  
City of Avon, c/o Chagrin Valley Engineering, Limited  
22999 Forbes Road – Suite B  
Oakwood, Ohio 44146-5667  
cummins@cvelimited.com

**Re: Right-of-Way Acquisition Services – LOR 254-05.66 (Detroit Road)**  
**REVISION #1**

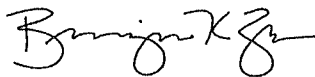
Dear Mr. Cummins:

O.R. Colan Associates (ORC) is pleased to provide a price proposal to perform turnkey Right of Way acquisition services for the **LOR 254 – 05.66** project. The services, scope and fees proposed are based on ORC following the Ohio Department of Transportation's (ODOT) Policy and Procedures related to property acquisition and fall with ODOT's Fee Guidance. ORC has proposed our fees between medium and high based on the commercial nature of the corridor and impacts to large commercial entities and plazas.

Our price proposal is presented on a "per task/per parcel" basis and we have proposed services that include Project Management, Title Research, Appraisal, Negotiation and Closings. To assist, I have provided a breakdown within this proposal for all fees and the appraisal formats for each project parcel. ORC will bill the city for what is performed on a unit/task basis. ORC has proposed abbreviated title reports for those parcels with only easements. If these parcels are appropriated, ORC's cost to perform a 42-year search and update for appropriation would be the collective cost for a full search and update. There are some scope tasks that are unknown at the time of this proposal that include Title Updates for Appropriation, Bill of Sale parcels, mortgage releases and RE-95's. Based on the nature of the project corridor we expect to utilize these services and have estimated parcel counts for planning purposes. I have also added in an additional \$5,000 as a miscellaneous cost for anything unforeseen at this time. This is primarily for planning purposes and to ensure that the city will not have to go back to council for any additional funding should project scope change once we are authorized. Any task needed from this would require City approval with detailed explanation including support from ORC.

ORC greatly appreciates the City of Avon selecting ORC to perform the needed R/W Acquisition on this project. If you have any questions or require further information, please do not hesitate to contact me at (440) 827-6116 ext. 205. I look forward to the opportunity to work together on this project.

Respectfully,



Benjamin Zera  
Project Manager

cc: Project File  
Beth Fulton, PE, Chagrin Valley Engineering  
Tracy Jones, Divisional Director, O.R. Colan Associates

## RW ACQUISITION SERVICES COST PROPOSAL

**Company Name:** O.R. Colan Associates

**District:** 3

**Date:** January 10, 2023

**PID NO.:** 111283

**Task No.:** N/A

**Project CRS:** LOR SR 254 - 05.66

| Pay Item                                                          | Type of Unit | No. of Units | Fee Per Unit | Total Amount       |
|-------------------------------------------------------------------|--------------|--------------|--------------|--------------------|
| <b>1. Project Management - line items found in sections below</b> | parcel       |              |              |                    |
| <b>2. Appraisal</b>                                               |              |              |              |                    |
| a. RE 95 Preparation                                              | parcel       | 10           | \$350.00     | \$3,500.00         |
| b. R/W Appraisal Report (RE 25-17)                                | parcel       | 2            | \$7,150.00   | \$14,300.00        |
| c. Limited Scope R/W Appraisal Report (RE 25-17)                  | parcel       | 2            | \$2,420.00   | \$4,840.00         |
| d. Value Finding (RE 90)                                          | parcel       | 8            | \$1,650.00   | \$13,200.00        |
| e. Value Analysis                                                 | parcel       | 9            | \$770.00     | \$6,930.00         |
| f. Project Data Book                                              | parcel       |              |              | \$0.00             |
| g. Project Management                                             | parcel       | 21           | \$225.00     | \$4,725.00         |
| <b>SECTION SUBTOTAL</b>                                           |              |              |              | <b>\$47,495.00</b> |
| <b>3. Appraisal Review</b>                                        |              |              |              |                    |
| a. R/W Appraisal Report(RE 25-16)                                 | parcel       |              |              | \$0.00             |
| b. Limited Scope R/W Appraisal Report (RE 25-16)                  | parcel       |              |              | \$0.00             |
| c. Value Finding (RE 25-14)                                       | parcel       |              |              | \$0.00             |
| d. Value Analysis (RE 25-13)                                      | parcel       |              |              | \$0.00             |
| e. USPAP Review (RE 25-12)                                        | parcel       |              |              | \$0.00             |
| f. Parcel Impact Note                                             | parcel       |              |              | \$0.00             |
| g. Appraisal Problem Analysis                                     | parcel       |              |              | \$0.00             |
| h. Project Management                                             | parcel       |              |              | \$0.00             |
| <b>SECTION SUBTOTAL</b>                                           |              |              |              | <b>\$0.00</b>      |
| <b>4. Title Researches</b>                                        |              |              |              |                    |
| a. Abbreviated Titles                                             | parcel       | 7            | \$450.00     | \$3,150.00         |
| b. Full Title (42 year)                                           | parcel       | 14           | \$825.00     | \$11,550.00        |
| c. Title Update                                                   | parcel       |              |              | \$0.00             |
| d. Project Management                                             | parcel       | 21           | \$225.00     | \$4,725.00         |
| <b>SECTION SUBTOTAL</b>                                           |              |              |              | <b>\$19,425.00</b> |

**SECTION TOTAL****\$66,920.00**

Table split for Federal Authorization for Right of Way Acquisition

| Pay Item                                                                                                                   | Type of Unit  | No. of Units | Fee Per Unit | Total Amount       |
|----------------------------------------------------------------------------------------------------------------------------|---------------|--------------|--------------|--------------------|
| <b>5. Negotiation</b>                                                                                                      |               |              |              |                    |
| a. Negotiation (includes letters, packets, negotiations, billings, document preparation, plan revision coordination, etc.) | parcel        | 19           | \$2,100.00   | \$39,900.00        |
| b. Bill of Sale Negotiation                                                                                                | Per BS Parcel | 8            | \$1,600.00   | \$12,800.00        |
| c. Negotiation Trainee                                                                                                     | parcel        |              |              | \$0.00             |
| d. Project Management                                                                                                      | parcel        | 27           | \$225.00     | \$6,075.00         |
| <b>SECTION SUBTOTAL</b>                                                                                                    |               |              |              | <b>\$58,775.00</b> |
| <b>6. Closings</b>                                                                                                         |               |              |              |                    |
| a. Mail Out                                                                                                                | parcel        | 15           | \$400.00     | \$6,000.00         |
| b. Formal (includes forms RE 30, 31, 44, 45 & 57 and etc.)                                                                 | parcel        | 12           | \$650.00     | \$7,800.00         |
| c. Formal - structure parcels                                                                                              | parcel        |              |              | \$0.00             |
| d. Title Update for Appropriation                                                                                          | parcel        | 8            | \$250.00     | \$2,000.00         |
| e. Mortgage Release                                                                                                        | per release   | 8            | \$400.00     | \$3,200.00         |
| f. Project Management                                                                                                      | per release   | 27           | \$225.00     | \$6,075.00         |
| <b>SECTION SUBTOTAL</b>                                                                                                    |               |              |              | <b>\$25,075.00</b> |
| <b>7. Relocation Assistance Services</b>                                                                                   |               |              |              |                    |
| a. Residential offer made                                                                                                  | parcel        |              |              | \$0.00             |
| b. Residential final billing                                                                                               | parcel        |              |              | \$0.00             |
| c. Commercial Offer made                                                                                                   | parcel        |              |              | \$0.00             |
| d. Commercial final billing                                                                                                | parcel        |              |              | \$0.00             |
| e. Personal Property final billing                                                                                         | parcel        |              |              | \$0.00             |
| f. Pre-Acquisition Survey/Interview                                                                                        | parcel        |              |              | \$0.00             |
| g Pre-Acquisition Report                                                                                                   | parcel        |              |              | \$0.00             |
| Project Management for<br>h Relocation/Relocation Review                                                                   | parcel        |              |              | \$0.00             |
| <b>SECTION SUBTOTAL</b>                                                                                                    |               |              |              | <b>\$0.00</b>      |
| <b>8 Relocation Review</b>                                                                                                 |               |              |              |                    |
| a. Residential Review                                                                                                      | parcel        |              |              | \$0.00             |
| b. Commercial Review                                                                                                       | parcel        |              |              | \$0.00             |
| c. Personal Property Review                                                                                                | parcel        |              |              | \$0.00             |

|                         |        |  |  |               |
|-------------------------|--------|--|--|---------------|
| d. Project Management   | parcel |  |  | \$0.00        |
| <b>SECTION SUBTOTAL</b> |        |  |  | <b>\$0.00</b> |

| Pay Item                                                                                                                  | Type of Unit | No. of Units | Fee Per Unit | Total Amount        |
|---------------------------------------------------------------------------------------------------------------------------|--------------|--------------|--------------|---------------------|
| <b>9. Asbestos</b>                                                                                                        |              |              |              |                     |
| a. Collection/Reporting                                                                                                   | parcel       |              |              | \$0.00              |
| b. Testing                                                                                                                | parcel       |              |              | \$0.00              |
| <b>SECTION SUBTOTAL</b>                                                                                                   |              |              |              | <b>\$0.00</b>       |
| <b>10. Miscellaneous</b>                                                                                                  |              |              |              |                     |
| a. Red Books                                                                                                              | parcel       |              |              | \$0.00              |
| b. Meetings and Testimony for appropriations                                                                              | parcel       |              |              | \$0.00              |
| c. Property Management                                                                                                    | parcel       |              |              | \$0.00              |
| d. Specialty Appraisal Studies (Parking, Rent, Architectural etc.)                                                        | parcel       |              |              | \$0.00              |
| e.<br>Copies and Recording fees<br>(reimbursable based on actual cost<br>for Titles and Closings - receipts<br>necessary) | parcel       | 19           | \$125.00     | \$2,375.00          |
| f. Miscellaneous                                                                                                          | parcel       | 1            | \$5,000.00   | \$5,000.00          |
| <b>SECTION SUBTOTAL</b>                                                                                                   |              |              |              | <b>\$7,375.00</b>   |
| <b>SECTION TOTAL</b>                                                                                                      |              |              |              | <b>\$91,225.00</b>  |
|                                                                                                                           |              |              |              |                     |
| <b>GRAND TOTAL</b>                                                                                                        |              |              |              | <b>\$158,145.00</b> |

## ATTACHMENT - Property List Fee Breakdown

LOR SR 254 - 05.66

PID 111283

| Parcel | Take Type     | Owner Name                     | PM Appraisal | Appraisal Format | Appraisal Fee | PM Title    | Title Report - Full/Abbreviated | PM Negotiation | Negotiations | PM Closing  | Closings - Formal / Informal | Copying/ Recording Fees |
|--------|---------------|--------------------------------|--------------|------------------|---------------|-------------|---------------------------------|----------------|--------------|-------------|------------------------------|-------------------------|
| 2      | T1,T2, T3     | B & L Trio Properties, LLC     | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 4      | WD, T         | CFPF, LTD                      | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 6      | WD, T         | Peak, Trustees                 | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 14     | U1, U2        | 36000 Westminster Road, LLC    | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 15     | T             | French Creek Square            | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 18     | U             | WEC 2000A-28, LLC              | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 19     | WD,T, et al   | City Center of Avon Retail LLC | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
|        |               |                                | \$ 225.00    | Limited Summary  | \$ 2,420.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
|        |               |                                | \$ 225.00    | Limited Summary  | \$ 2,420.00   | \$ 225.00   | \$ 825.00                       |                |              |             |                              |                         |
|        |               |                                | \$ 225.00    | Summary          | \$ 7,150.00   | \$ 225.00   | \$ 825.00                       |                |              |             |                              |                         |
| 21     | T             | First Interstate Avon Ltd      | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 24     | WD, T         | Orion Properties Eleven LLC    | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 25     | WD            | Pickering, Trustee             | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 27     | WD1,2 & T1,2  | Picks, LLC                     | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 30     | WD,T,S        | Westgate                       | \$ 225.00    | Value Analysis   | \$ 7,150.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 31     | WD,T,S        | Turza                          | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 32     | S,T           | 9117, LLC                      | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 33     | WD,T,S, et al | Helmuth, Trustees              | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 35     | T             | SL Avon Center Fund, LLC       | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 450.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 400.00                    | \$ 125.00               |
| 36     | T1, WD, T2    | City Center of Avon Outlots    | \$ 225.00    | Value Finding    | \$ 1,650.00   | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 37     | WD,T          | City Centre of Avon Retail LLC | \$ 225.00    | Value Analysis   | \$ 770.00     | \$ 225.00   | \$ 825.00                       | \$ 225.00      | \$ 2,100.00  | \$ 225.00   | \$ 650.00                    | \$ 125.00               |
| 18     |               |                                | \$ 4,725.00  |                  | \$ 39,270.00  | \$ 4,725.00 | \$ 14,700.00                    | \$ 4,275.00    | \$ 39,900.00 | \$ 4,275.00 | \$ 10,600.00                 | \$ 2,375.00             |
|        |               |                                | 21           | 21               | 21            | 21          | 21                              | 19             | 19           | 19          | 19                           | 19                      |

Sub Total \$ 124,845.00

| Task                | Fee         | Units | Total        |
|---------------------|-------------|-------|--------------|
| RE - 95             | \$ 350.00   | 10    | \$ 3,500.00  |
| Mortgage Releases   | \$ 400.00   | 8     | \$ 3,200.00  |
| Title Updates (App) | \$ 250.00   | 8     | \$ 2,000.00  |
| Bill of Sales (BS)  | \$ 1,600.00 | 8     | \$ 12,800.00 |
| BS - PM Fee         | \$ 225.00   | 8     | \$ 1,800.00  |
| BS - PM Closing     | \$ 225.00   | 8     | \$ 1,800.00  |
| BS - Closing Fee    | \$ 400.00   | 8     | \$ 3,200.00  |
| Miscellaneous       | \$ 5,000.00 | 1     | \$ 5,000.00  |

Project Total \$ 158,145.00