

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

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

Present:
Barb Lewis, Vice President
Jeff Benton, Commissioner

Absent:
Gary Merrell, President

10:00 A.M. Public Hearing For Consideration Of The Villas At Walnut Grove Condominium Drainage Maintenance Improvement Petition

1
RESOLUTION NO. 18-1363

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD DECEMBER 6, 2018:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on December 6, 2018; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

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

2
PUBLIC COMMENT

3
ELECTED OFFICIAL COMMENT

4
RETIREMENT TRIBUTE
Debra Benjamin, With The Child Support Enforcement Agency

5
RESOLUTION NO. 18-1364

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1212:

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1212 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Soil & Water	Fees /Code Compliance	10011301-5301	\$11,000.00

PR Number	Vendor Name	Line Description	Account	Amount
R1805797	CAPITAL COLLISION SERVICES LLC	REPAIR BUCKET TRUCK	60111901 - 5370	\$ 5,305.45
R1805962	HORTON EMERGENCY VEHICLES CO	REPAIR MEDIC 2	60111901 - 5370	\$10,707.90
R1805966	INTERNATIONAL CHEMTEX CORPORATION	TC-4 DUAL SAMPLER	66211912 - 5450	\$13,707.13
R1805776	WORLD MICROGRAPHICS INC	SCANPRO 3000 AUTOSCAN PRO ULTRA SONIC FILM SPLICER UNIT	10011103- 5450	\$34,447.50

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

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

**6
RESOLUTION NO. 18-1365**

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Emergency Medical Services department is requesting that Capt. Bob Fish, Capt. Tim Davis, Capt. Jude James, Capt. Joe Farmer and Capt. Sam Moore participate in a NaCO on-line course for High Performance Leadership Academy from January 1-April 230, 2019 at the cost of \$8,970.00

The Administrative Services Department is requesting that Dawn Huston attend the NPLERA Conference in Scottsdale, AZ April 7-11, 2019; at the cost of \$1,600.00 (fund number 10011108; registration previously approved and cover by NPLERA).

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

**7
RESOLUTION NO. 18-1366**

IN THE MATTER OF A TRANSFER OF LIQUOR LICENSE STOCK REQUEST FROM C DEES LIL STORE TO KILBOURNE MARKET LLC AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

Whereas, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a transfer liquor license request from C Dees Lil Store to Kilbourne Market LLC (located at 5620 SR 521 Kilbourne, Ohio 43032); and

Whereas, the Delaware County Board of Commissioners has found no reason to file an objection;

Now, Therefore, Be it Resolved, that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

**8
RESOLUTION NO. 18-1367**

IN THE MATTER OF EXTENDING THE FILING DATE FOR THE FILING OF PLANS, REPORTS, AND SCHEDULES FOR THE WEBSTER ARNOLD DRAINAGE IMPROVEMENT PETITION PROJECT:

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

Whereas, Resolution No. 16-1283 granted the prayer of the petition and directed the Delaware County Engineer to proceed with preparation of plans, reports, and schedules for the Webster Arnold Drainage Improvement Petition Project; and

Whereas, the resolution references the date of December 15, 2018 for filing of the reports, plans and schedules; and

Whereas, additional time is required to allow for field survey, design, and engineer review; and

Whereas, upon filing of the reports, plans, and schedules, the Board of County Commissioners shall set a date and time for a public hearing for the Webster Arnold Drainage Improvement Petition Project; and

Whereas, the date of the hearing shall be after 25 days and before 90 days from the filing date of the reports, plans, and schedules;

Now, Therefore, Be It Resolved that the Board of County Commissioners approves December 15, 2020 as the date for filing of the reports, plans, and schedule for the Webster Arnold Drainage Improvement Petition Project.

Further, Be It Resolved upon filing of the reports, plans, and schedule for the Webster Arnold Drainage Improvement Petition Project the Clerk of the Board of Commissioners will prepare a resolution setting the date and time of the Public Hearing for a date after 25 days and before 90 days from the filing date of the

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

reports, plans, and schedules.

Further, Be It Resolved that proper notification will be given to property owners in the affected watershed of the date and time of the hearing for the Webster Arnold Drainage Improvement Petition Project.

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

9
SHELIA HIDDLESON, HEALTH COMMISSIONER DELAWARE GENERAL HEALTH DISTRICT
-NEW COMMUNITY HEALTH IMPROVEMENT PLAN
-GENERAL UPDATE

10
DEB SHATZER,
EXECUTIVE DIRECTOR DELAWARE COUNTY CONVENTION & VISITORS BUREAU
-ANNUAL REPORT AND PRESENTATION

11
RESOLUTION NO. 18-1368

IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND DECKER CONSTRUCTION COMPANY FOR THE PROJECT KNOWN AS CURB AND SIDEWALK REPLACEMENT PROJECT – DELAWARE COUNTY COURTHOUSE/HAYES BUILDING:

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

Curb and Sidewalk Replacement Project – Delaware County Courthouse/Hayes Building
Bid Opening of November 20, 2018

Whereas, as the result of the above referenced bid opening, the Director of Facilities recommends that a bid award be made to Decker Construction Company, the low bidder for the project; and

Whereas, the Director of Facilities recommends approval of the Contract between the Delaware County Commissioners and Decker Construction Company for the project known as Curb and Sidewalk Replacement Project – Delaware County Courthouse/Hayes Building;

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

CONTRACT

THIS AGREEMENT is made this 13th day of December, 2018 by and between **Decker Construction Company, 3040 McKinley Avenue, Columbus, Ohio 43204**, hereinafter called the “Contractor” and the Delaware County Commissioners, hereinafter called the “Owner”.

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

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project named **“Curb and Sidewalk Replacement Project – Delaware County Courthouse/Hayes Building”**, and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed ***Fifty-Five Thousand One Hundred Twenty Dollars and Eighty-Three Cents (\$55,120.83)***, subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation to Bid
- d. Instructions to Bidders

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

- e. Signed copy of bid
- f. Work Specifications (including all plans, drawings, etc.)
- g. Specifications – General Provisions
- h. Federal and State Requirements

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

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two original copies on the day and year first above written.

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

12

RESOLUTION NO. 18-1369

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR FACILITIES:

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

Transfer of Appropriation

From:	To:	
10011106-5328	10011106-5228	5,000.00
County Garage/Maint & Repair Services	County Garage/Vehicle Maint & Repair Supply	
10011105-5201	10011106-5228	25,000.00
Land & Buildings/Gen Supplies & Equipment	County Garage/Vehicle Maint & Repair Supply	
10011105-5001	10011105-5328	10,000.00
Land & Buildings/Compensation	Land & Buildings/Main & Repair Services	

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

13

RESOLUTION NO. 18-1370

IN THE MATTER OF APPROVING AN AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND TITLE FIRST AGENCY, INC. FOR TITLE SERVICES FOR THE AGRICULTURAL EASEMENT PURCHASE PROGRAM:

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

AGREEMENT FOR TITLE SERVICES

This Agreement is made and entered into on this 13th day of December 2018 by and between the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015, ("Commissioners"), and Title First Agency, Inc., 999 Polaris Parkway, Suite 101, Columbus, OH 43240 ("Contractor"), the Ohio Department of Agriculture, 8995 East Main Street, Reynoldsburg, Ohio 43068 ("ODA") shall be considered a third party beneficiary of this agreement who hereby agree as follows:

WHEREAS, the Commissioners desire to engage Contractor to perform title search, commitment, escrow and closing services; and

WHEREAS, Ohio Revised Code Section 901.21 empowers the Ohio Department of Agriculture (ODA) in Cooperative Agreement with the Commissioners to acquire agricultural easements and to do all things necessary to retain land acquired thereby predominantly in agricultural use; and

WHEREAS, the Commissioners and ODA are proposing to purchase agricultural easements using funds from the Clean Ohio Agricultural Easement Purchase Program; and

WHEREAS, the Commissioners are required by Cooperative Agreement and deems it necessary to conduct a title search, obtain title insurance and secure an escrow agent for closing for such purposes; and

WHEREAS, Contractor desires to perform such services for the Commissioners in accordance with the terms and conditions prescribed by the Commissioners;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

parties hereto agree as follows:

ARTICLE I: NATURE OF CONTRACT

1.1 Contractor shall be employed as an independent contractor, to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a nature that the Commissioners are the sole judge of the adequacy of such services.

1.2 The Commissioners enter into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.

1.3 Contractor shall perform the services to be rendered under this Agreement and the Commissioners shall not hire, supervise, or pay any assistants to Contractor in its performance under this Agreement. The Commissioners shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

1.4 The Commissioners may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this Agreement. Upon such notice and within a reasonable time, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of the Commissioners. It is expressly understood by the parties that the instructions and requests are for the sole purpose of performing the specific tasks requested and to ensure satisfactory completion of the work described in this Agreement.

ARTICLE II. SCOPE OF WORK

2.1 The Contractor shall perform the services set forth in Exhibit A, Scope of Work, for the property described in Exhibit B, both attached hereto and incorporated by reference as if fully rewritten herein.

2.2 The closing shall occur within ten (10) business days ("Closing Date") after the Commissioners via the Delaware Soil and Water Conservation District ("District") and ODA forwards the Escrow Agreement with Purchase Payment to Escrow Agent.

2.3 The Commissioners may, from time to time as it deems appropriate, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this contract. Upon such notice, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of the Commissioners. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this contract. The Contractor shall retain responsibility for the management of the work, including the exclusive right to control or direct the manner or means by which the work described herein is performed. The Commissioners retains the right to ensure that the work of the Contractor is in conformity with the terms and conditions of the Agreement. Contractor is to accept direction from the District and ODA in the performance of work contained in this Agreement and set forth in Exhibit A, unless explicitly stated otherwise in writing by the Commissioners.

ARTICLE III. TIME OF PERFORMANCE.

3.1 The services as stated in Exhibit A, Scope of Work, shall be commenced on the date this agreement is entered into and concluded on or before the due date set forth in Exhibit B, excluding the recording of the easement. The recording of the easement shall occur on or before 24 - 48 hours after execution.

3.2 This Agreement shall remain in effect until the work described in Exhibit A, Scope of Work, is completed to the satisfaction of the Commissioners and until Contractor is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Contractor's Services, whichever is sooner.

3.3 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the tem1s of Ohio Revised Code ("R.C.") 3517 .13, R.C. 127.16, or R.C. Chapter 102.

ARTICLE IV. COMPENSATION.

4.1 Initial title examination fees shall be paid, upon completion of the initial services by the Landowners who the District issued Notices of Selection to proceed to Phase 3, in accordance with the Ohio Administrative Code (OAC) 901-2-06 in Exhibit C. The Contractor shall be paid for services rendered as outlined in Exhibit B. Contractor shall be paid at the closing out of the proceeds to be deducted from the ODA 's purchase funds.

4.2 The total amount due was computed according to the cost schedule set forth in Exhibit B.

4.3 Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

4.4 Contractor shall submit an invoice for the services performed at least thirty (30) days prior to closing consistent with this Article IV, Compensation. The invoice shall contain a description of the services performed and the sum due at that time pursuant to this Agreement.

4.5 Payment for Contractor services shall be made after all documents are recorded as required by the closing of the agricultural easement.

4.6 If, after costs are incurred for services, Landowners become ineligible for any reason or withdraws from receiving funding, Landowners shall be held completely responsible and shall reimburse the Commissioners or Contractor for all such costs in Exhibit B.

4.7 All additional attorney fees accrued from additional services required to secure a title commitment shall be paid by the landowner under separate agreement, and under no circumstances shall the Commissioners be required to pay the cost, expense, or fees incurred for any services performed by Contractor by, through, or in connection with this Agreement.

ARTICLE V: CERTIFICATION OF FUNDS

5.1 It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, and the Commissioners shall receive written notice that such funds have been made available to the Commissioners by the Clean Ohio Agricultural Easement Purchase Program funding source.

ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES

6.1 The Commissioners may, at any time prior to the completion of services by the Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to the Contractor.

6.2 Upon notice of suspension or termination, Contractor shall cease all work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary steps to limit disbursements and minimize costs, and if requested by the Commissioners, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters the Commissioners require.

6.3 Contractor shall be paid for services rendered up to the date the Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supplied such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Commissioners for which Contractor has not rendered services shall be refunded.

6.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Commissioners all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of the Commissioners, to be used in such manner and for such purpose as the Commissioners may choose.

6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the Commissioners by reason of such suspension or termination.

6.6 Contractor may terminate this Agreement upon thirty (30) days prior written notice provided to the Commissioners.

ARTICLE VII: RELATIONSHIP OF PARTIES

7.1 The Commissioners and Contractor agree that Contractor shall be engaged by the Commissioners solely on an independent contractor basis, and Contractor shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Contractor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7.2 While Contractor shall be required to render services described hereunder for the Commissioners during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder as an independent contractor, that the Commissioners shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

hereunder.

7.3 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

7.4 It is fully understood and agreed that the Contractor is an independent contractor and is not an agent, servant or employee of the Commissioners or the State of Ohio.

ARTICLE VIII: RECORD KEEPING

8.1 During the performance of the services required by this Agreement and for a period of three years after its completion, the Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the Commissioners as the Commissioners may reasonably require.

ARTICLE IX: RELATED AGREEMENTS

9.1 The work contemplated in this Agreement is to be performed by Contractor, who may subcontract without the Commissioner's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Exhibit A, Scope of Work, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by the Commissioners. All work subcontracted shall be at Contractor's expense.

9.2 Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Commissioners to terms inconsistent with, or at variance from, this Agreement.

9.3 Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Commissioners, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

9.4 Contractor shall furnish to the Commissioners a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

ARTICLE X: CONFLICTS OF INTEREST AND OFFSHORE LABOR PROHIBITION

10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

10.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Commissioners in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Commissioners shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

10.3 The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Agreement. Contractor shall perform no services required under this Agreement outside the United States and agrees to immediately notify the Commissioners of any Change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside the United States.

10.4 By signing this Agreement, Contractor certifies that it is in, and will remain in, compliance with Executive Order 2011-12K and will not assign or subcontract the work under this Agreement to an entity outside the United States. Contractor has completed and signed the Affirmation and Disclosure Form found in Exhibit D and will return it to the Commissioners along with this Agreement.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

11.1 Pursuant to R.C. 125.11 1, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, sexual orientation, military status, ancestry, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.

11.2 Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age,

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

national origin, sexual orientation, military status, ancestry, or disability.

11.3 Contractor represents that it has a written affirmative action program for the employment and effective Utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Commissioners of Administrative Services.

ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

12.1 The Commissioners shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by the Commissioners shall be subject to copyright by Contractor in the United States or any other country.

12.2 Contractor agrees that all deliverables or original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by Jaw until and unless specified otherwise by the Commissioners. Any requests received by Contractor should be referred to the Commissioners.

ARTICLE XIII: CONFIDENTIALITY

13.1 Contractor shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Commissioners.

13.2 All provisions of this Agreement relating to "confidentiality" shall remain binding upon Contractor in the event of cancellation.

ARTICLE XIV: LIABILITY

14.1 Contractor agrees to indemnify and to hold the Commissioners and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint ventures while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

14.2 Contractor shall bear all costs associated with defending the Commissioners and the State of Ohio against any claims as outlined in paragraph 14.1.

14.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

ARTICLE XV: COMPLIANCE WITH LAWS

15.1 Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

15.2 Contractor affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the contract period Contractor, for any reason, becomes disqualified from conducting business in the State of Ohio, Contractor will immediately notify the Commissioners in writing and will immediately cease performance of contract activities.

ARTICLE XVI: DRUG FREE WORKPLACE

16.1 Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way when they are engaged in the work being performed hereunder.

ARTICLE XVII: CAMPAIGN CONTRIBUTIONS

17.1 Contractor hereby certifies that neither Contractor nor any of Contractor's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. 3517.13.

ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER

18.1 This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

18.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

18.3 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XIX: NOTICES

19.1 All notices, consents, requests and other communications hereunder shall be in writing and shall be deemed to be given upon receipt thereof, and shall be sent to the addresses set forth hereunder or to such other address as the other party hereto may designate by written notice transmitted in accordance with this provision.

- 1). In case of the Commissioners to: 101 North Sandusky Street Delaware, Ohio 43015
- 2). In case of the Contractor, to: Title First Agency, Inc., 999 Polaris Parkway, Suite 100, Columbus, OH 43240

ARTICLE XX: HEADINGS

20.1 The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

ARTICLE XXI: SEVERABILITY

21 .1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.

ARTICLE XXII: CONTROLLING LAW

22.1 This Agreement and the rights of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Contractor agrees that only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performances thereunder.

ARTICLE XXIII: SUCCESSORS AND ASSIGNS

23.1 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Contractor, without the prior written consent of the Commissioners.

ARTICLE XXIV: FINDINGS FOR RECOVERY

24.1 Contractor warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is found to be false, this Agreement is void ab initio and the Contractor shall immediately repay to the Commissioners any funds paid under this Agreement.

ARTICLE XXV: DEBARMENT

25.1 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Commissioners of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Contractor shall immediately repay to the Commissioners any funds paid under this Agreement.

ARTICLE XXVI: EXECUTION

27.1 This Agreement is not binding upon the Commissioners unless executed in full.

ARTICLE XXVII: ANTITRUST ASSIGNMENT

28.1 Contractor agrees to assign to the Commissioners all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

ARTICLE XXVIII: CONFLICT

29.1 In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

Exhibit A SCOPE OF WORK

A. Title Search. The Contractor, under the direction and to the satisfaction of the Commissioners, shall search the public records concerning the titles to the parcels of such real estate as delineated in the

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Agricultural Easement Parcel Number List attached hereto as Exhibit B and incorporated herein by reference. The Contractor shall submit a written report, in a form acceptable to the Commissioners, as to each parcel, each of which shall include the factual information enumerated below, to the extent that such information can be ascertained from a search of the public records relating to the title of said real estate. The search shall cover a period sufficient to satisfy the State that all matters presently affecting the title have been found, but in no event for a period less than ninety (90) years with legible copies of the source documents. The search shall be documented in a Commitment for Title Insurance, which should include at a minimum the following:

1. The name, address, and marital status of record holder or holders of title.
2. The name, address of spouse, if any, a record holder or holders of title.
3. List of the combined actual total acreage for the entire interest in land being acquired in the Easement.
4. The names, and if it appears of record, the address, of the owners of any encumbrances upon or interest in the real estate. such as mortgages, land contract, leases, easements, rights-of-way, mineral rights or reservations, together with the recording references and dates thereof.
5. Unsatisfied executions and lien judgments, foreign or domestic, or pending suits of record in the courts of records and on file in the Sheriff's office and the Clerk of Court's office of said county, which may affect the title to the real estate examination.
6. Any other tax liens, mechanics liens, recognizance liens, unemployment compensation liens, workers compensation liens or any other infirmity, encumbrances, liens, or cloud on title disclosed by the public records of the County where the real estate is located.
7. The tax duplicate description, auditor's parcel number, current agricultural recoupment or use valuation, if applicable, and current tax valuation, including statement of taxes, assessment liens, penalties, and interest which have not been paid and are a lien.
8. The gross acres of all parcels, minus highway rights-of-way and all other exclusions or transfers, in order to provide a net acreage of all parcels for the agricultural easement.
9. Attach a complete copy of recorded deed of the land or parcels of land which make up an owner's property which are used as a unit of land acquired for the Commissioners and the Ohio Department of Agriculture's (ODA) purposes, together with the recording reference and dates thereof, and a statement of the total acreage to be acquired by the agricultural easement.

B. Title Insurance Commitment

1. Contractor shall provide a title insurance commitment naming the Ohio Department of Agriculture as an insured party.

C. Escrow Services

1. Contractor shall provide escrow services and shall serve as escrow agent at closing specified by The Commissioners and the Ohio Department of Agriculture for the purchase of the agricultural easement.
2. Costs incurred for title services will be reimbursed to the Commissioners and ODA through the title insurance company, as escrow agent, at closing by the respective landowner noted in Exhibit B as documented in the ODA approved settlement statement (HUD-1).

D. Closing

1. Contractor shall provide recording services surrounding the agricultural easement acquisition in the most cost effective manner on behalf of the Commissioners and ODA subject to the pre- approval of the Commissioners and ODA.
2. Unless otherwise agreed to in advance by the Commissioners and ODA, Contractor shall schedule and conduct a "roundtable" closing for the agricultural easement at a mutually convenient place and time for all necessary parties.
3. The title agent will collect all required signatures for necessary documents and record the easement and any other necessary documents, in addition to any other items outlined in the Closing Letter.
4. The Commissioners and ODA shall tender a lump sum payment to title insurance company, as escrow agent, for distribution to the landowner and/or landowner's assignee(s) in the proportions directed by the landowner.

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

- 5. All recorded original documents as requested in the Closing Letter must be returned to the Commissioners and ODA as soon as possible.
- 6. Secure a policy of title insurance if the federal government is involved on A.L.T.A U.S. Policy Form 1991 for an amount specified by the Commissioners and ODA or an A.L.T.A. U.S. Policy Form 2006 to the local sponsor when requested.
- 7. Secure an Owners Policy of title insurance for ODA.

(Exhibits Available In The Commissioners’ Office And Delaware County Soil And Water Conservation Office Until No Longer Of Administrative Value)

Property described in Exhibit B

Bright

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: Michelle R. Bright
 Property Location: State Route 203
 County: Delaware
 Township: Radnor

Parcel Number(s):	Acres:
62048001011000	102.917
62030001002000	49.75

Sherman

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: Robert Sherman
 Property Location: 16140 Peerless Rd. County: Delaware
 Township: Porter

Parcel Number(s):	Acres:
51610001021000	6.37
51610001186000	33.34

Newhouse & Newhouse

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: Gary L. Newhouse and Yvonne G. Newhouse
 Property Location: Ostrander Rd.
 County: Delaware
 Township: Scioto

Parcel Number(s):	Acres:
20040003009000	18.46
20040004025000	23.06

Newhouse & Wade

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: Gary L. Newhouse and Sharon N. Wade
 Property Location: 1335 Ostrander Rd.
 County: Delaware
 Township: Scioto

Parcel Number(s):	Acres:
20040004019001	18.884

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

14

RESOLUTION NO. 18-1371

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO REPRESENT THE BOARD AT, AND APPROVE AND EXECUTE ALL DOCUMENTS ASSOCIATED WITH, THE

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

**CLOSING OF THE GARY L. NEWHOUSE AND SHARON N. WADE AGRICULTURAL
EASEMENT, 2016 OHIO DEPARTMENT OF AGRICULTURE LOCAL AGRICULTURAL
EASEMENT PURCHASE PROGRAM:**

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

WHEREAS, on April 11, 2016, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 16-341, authorizing participation in the Ohio Department of Agriculture Local Agricultural Easement Purchase Program (LAEPP) for the property owned by Gary I. Newhouse and Sharon N. Wade (the "Newhouse Farm"); and

WHEREAS, the Newhouse Farm was approved for participation in the LAEPP, and all requirements have been met and documents prepared to proceed to closing;

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

Section 1. The Board hereby approves proceeding to closing for the Newhouse Farm Agricultural Easement, 2016 Ohio Department of Agriculture LAEPP.

Section 2. The Board hereby authorizes the County Administrator to represent the Board at the closing for the Newhouse Farm Agricultural Easement and to approve and execute all the documents associated therewith.

Section 3. This Resolution shall take immediate effect upon adoption.

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

15

RESOLUTION NO. 18-1372

**IN THE MATTER OF AMENDING THE CHILD PLACEMENT SERVICES CONTRACT
BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE
DELAWARE COUNTY BOARD OF COMMISSIONERS, AND ADVANTAGE FAMILY
OUTREACH AND FOSTER CARE:**

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

Whereas, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations; and

Whereas, the Director of Job & Family Services recommends approval of the following contract amendment with Advantage Family Outreach and Foster Care;

Now, Therefore, Be It Resolved that the Delaware County Board of Commissioners approves the following contract amendment for Child Care Placement providers:

**Second Amendment
To
Contract for the Provision of Child Placement
And Related Services
Between
Delaware County
and
Advantage Family Outreach and Foster Care**

This Second Amendment of the Contract For The Provision of Child Placement And Related Services is entered into this 13th day of December, 2018 by and between the Delaware County, Ohio Board of County Commissioners (hereinafter "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, the Delaware County, Ohio Department of Job and Family Services, a Title IV-E Agency, (hereinafter "Agency") whose address is 140 North Sandusky Street, 2nd Floor, Delaware, Ohio 43015, and Advantage Family Outreach and Foster Care (hereinafter "Provider") whose address is 445 Longview Avenue West, Mansfield, Ohio 44903 (hereinafter collectively the "Parties").

WHEREAS, the Parties entered into the Contract for the Provision of Child Placement and Related Services on December 14, 2017.

WHEREAS, the parties agree to the addition of certain provisions to the Contract (collectively, "Provisions").

NOW THEREFORE, the Parties agree as follows:

- 1. The Parties agree to amend the Agreement to add the following Provisions:

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

A. The contract service period shall be adjusted to expire December 31, 2018.

2. Signatures

Any person executing this Second Amendment in a representative capacity hereby warrants that he/she has authority to sign this Second Amendment or has been duly authorized by his/her principal to execute this Second Amendment on such principal's behalf.

3. Conflicts

In the event of a conflict between the terms of the Contract, the First Amendment, and this Second Amendment, the terms of the Second Amendment shall prevail.

4. Terms of Agreement Unchanged

All terms and conditions of the Contract and First Amendment not changed by this Second Amendment remain the same, unchanged, and in full force and effect.

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

16

RESOLUTION NO. 18-1373

**IN THE MATTER OF APPROVING REVISION NO. 1 TO THE SANITARY SEWER
SUBDIVIDER'S AGREEMENT FOR THE COTTAGES AT HYATTS:**

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

Whereas, the Board of County Commissioners approved the original Subdivider's Agreement for the Cottages at Hyatts on August 27, 2018 per Resolution No. 18-935;

WHEREAS, the Sanitary Engineer recommends approval of Revision No. 1 to the Subdivider's Agreement;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approves Revision No. 1 to the Sanitary Sewer Subdivider's Agreement for The Cottages at Hyatts:

**REVISION NO.1 TO SUBDIVIDER'S AGREEMENT
THE COTTAGES AT HYATTS
DELAWARE COUNTY SANITARY ENGINEER**

THIS REVISION NO.1 to the Original Agreement approved by Resolution 18-935 is made and entered into this 13th day of December 2018, by and between **Schottenstein Homes, LLC**, (the "Subdivider") and the Board of County Commissioners of Delaware County, Ohio (the "County").

RECITALS

WHEREAS, the Original Agreement approved capacity for 57 single family residential equivalent connections to be constructed as part of "Sanitary Sewer Improvement Plan The Cottages at Hyatts" and,

WHEREAS, the Sanitary Engineer recommends amending the Original Agreement to include an initial phase (everything downstream of manhole 4 and downstream of manhole 2) and a final phase (all remaining proposed sanitary) of the Cottages at Hyatts Development and,

WHEREAS, the Sanitary Engineer also recommends editing the wording of portions of the Original Agreement in order to clarify the approved capacities for each phase of the development, and

WHEREAS, all other terms and conditions of the Original Agreement not specifically amended herein shall remain in full force and effect.

NOW, THEREFORE, in light of the Recitals set forth herein, which are deemed to be an integral part of this Revision No. 1, the SUBDIVIDER and the COUNTY mutually agree to the following revisions to the Original Agreement as presented in the underlined italic and stricken text below:

SECTION I: INTRODUCTION

This Agreement is entered into on this 27th day of August 2018, by and between **Schottenstein Homes, LLC**, hereinafter called "Subdivider", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the **Sanitary Sewer Improvement Plan The Cottages at Hyatts** and its corresponding Subdivision Plat or condominium amendments on said development parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **Sanitary Sewer Improvement Plan The Cottages at Hyatts**, dated **June 13, 2018**, and approved by the County on **August 16, 2018**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **26** single family residential equivalent connections approved *for the Cottages at Hyatts initial phase*, and **31** single family residential equivalent connections approved *for the Cottages at Hyatts final phase* with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

For on-site improvements the following options for financial warranty apply:

OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$205,046.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 2 for this project.

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance *of each phase*, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost *for that phase*.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **The Cottages at Hyatts**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Sanitary Sewer Improvement Plan The Cottages at Hyatts (\$7,176.61)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight and one-half percent (8½%) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of **Sanitary Sewer Improvement Plan The Cottages at Hyatts (\$17,428.00)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Sanitary Sewer Improvement Plan The Cottages at Hyatts** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this *Revision No. 1 to this* Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

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

SECTION VI: EASEMENTS

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format. *If each phase is accepted separately, Subdivider agrees to provide as built drawings for each phase as requested and one complete set of as built drawings for the Cottages at Hyatts Sanitary Sewer Improvement Plan with the last final acceptance.*
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County’s sole discretion.

The Subdivider, for a period of five (5) years after acceptance *of each phase* of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements. A list of corrective items shall be provided to the Subdivider prior to expiration of the five (5) year period.

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer. User fee charges will commence the day the sanitary tap is made, regardless of completeness of construction.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

17

RESOLUTION NO. 18-1374

IN THE MATTER OF APPROVING A MASTER INTERGOVERNMENTAL AGREEMENT BETWEEN DELAWARE COUNTY BOARD OF COMMISSIONERS, DELAWARE COUNTY ENGINEER AND THE DELAWARE COUNTY TRANSPORTATION IMPROVEMENT DISTRICT:

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

**MASTER INTERGOVERNMENTAL AGREEMENT
REGARDING COOPERATION ON TRANSPORTATION PROJECTS
BY AND BETWEEN
THE DELAWARE COUNTY BOARD OF COMMISSIONERS,
THE DELAWARE COUNTY ENGINEER,
AND
THE DELAWARE COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
AGREEMENT #2018-05**

This Agreement is made and entered into this 13th day of December, 2018, by and among the **Delaware County Board of Commissioners** (hereinafter the “Commissioners”), the **Delaware County Engineer** (hereinafter the “Engineer”), and the **Board of Trustees of the Delaware County Transportation Improvement District** (hereinafter the “TID”), hereinafter referred to individually as a “Party” and collectively as “the Parties.”

WITNESSETH:

WHEREAS, the Commissioners created the TID, a political subdivision under authority of Chapter 5540 of the Revised Code, by Resolution No. 18-536 on May 17, 2018; and

WHEREAS, Section 5543.01 of the Revised Code provides that the county engineer shall have general charge of construction, reconstruction, improvement, maintenance and repair of all bridges and highways within the engineer’s county, under the jurisdiction of the board of county commissioners, and general charge of construction, reconstruction, resurfacing or improvement of roads by boards of township trustees; and

WHEREAS, Section 9.482 of the Revised Code provides that when legally authorized to do so, a political subdivision may enter into an agreement with another political subdivision or a state agency whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render; and

WHEREAS, the Parties have determined it to be mutually beneficial to develop certain Transportation Projects in a cooperative manner;

NOW, THEREFORE, in consideration of the mutual promises and covenants described herein, the Parties agree as follows:

Article 1. RESPONSIBILITIES OF THE COMMISSIONERS

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Section 1.1. The Commissioners will cooperate with the TID to develop, construct, reconstruct, improve and/or maintain transportation Projects throughout Delaware County. For the purposes of this Agreement, "Transportation Project" or "Project" shall have the same definition as "Project" used in Section 5540.01 of the Revised Code.

Section 1.2. The Commissioners will make a Startup Contribution to the TID in the amount of **Two Hundred Thousand Dollars (\$200,000.00)**, payable within 30 days of execution of this Agreement by the Parties, if completed in 2018, for the purpose of assisting the TID to perform administrative and engineering functions of the TID.

Section 1.3. The Commissioners will consider participation in any Project brought forth by any Party to this Agreement involving highways or related transportation facilities within Delaware County through formal deliberation and allow for public comment on such matters.

Section 1.4. The Commissioners, upon advice of the County Engineer and/or County Administrator, will consider assignment of any county obligations under existing agreement(s) involving construction of transportation infrastructure to the TID.

Section 1.5. The Commissioners may, in its sole discretion, contribute loans, grants, or other aid or contributions of money, property, labor, services, or other things of value to the TID for or in aid of the planning, development, design, construction, maintenance or repair of any Project.

Article 2. RESPONSIBILITIES OF THE ENGINEER

Section 2.1. The Engineer, notwithstanding his status of appointment to the Board of Trustees of the TID, shall cooperate with the TID for the purpose of developing Transportation Projects and shall act in the role of advisor and assistant to the TID in matters relating to construction, maintenance, operation or improvement of public roads under the jurisdiction of the Commissioners, or of any Board of Township Trustees within Delaware County.

Section 2.2. The scope of such advisory and assisting duties includes the planning, programming, budgeting, inspecting, managing, testing, preparing surveys, plans, profiles, cross sections, specifications and estimates for any project or program of projects undertaken by the TID, and any other duties that the Engineer may determine to be necessary and incidental to performance of these duties.

Section 2.3. The Engineer may assign any of his assistants to perform any duties described above and may make available to the TID any tools, computers, information systems and networks, vehicles, offices or any other supplies or equipment provided for the use of the Engineer in performance of his official duties.

Section 2.4. Conflict of Interest. The Engineer, as provided by the Revised Code, serves in general charge of the construction, reconstruction and maintenance of county and township roads, and in various other capacities relating to the planning and improving of roads within Delaware County. The Commissioners and the TID acknowledge and consent that the statutory role and duties of the Engineer are generally compatible with his appointment to the Board of Trustees of the TID or his furnishing of assistance to the TID. If the Engineer serves as a member of the Board of Trustees of the TID, and in the event the Engineer determines that he has a conflict of interest between his duties as County Engineer and his appointment to the Board of Trustees of the TID, the Engineer shall:

- (A) Abstain from any action relating to the matter in his capacity as member of the TID;
or
- (B) If, and only if, the Engineer determines that abstention from such matter as a member of the Board of Trustees of the TID is not possible or such abstention would unreasonably hinder the operation of, or be detrimental to the functions of, the TID, the County Engineer shall notify the Commissioners in writing at the earliest possible date of such conflict, and shall appoint a competent assistant Engineer under his employ to carry out the duties of the County Engineer in such matters.

Section 2.5. The Engineer may use any funds that are appropriated by the Commissioners for the operation of the County Engineer's Office and the performance of his official duties as County Engineer to advise and assist the TID in any of the ways described above, so long as the funds are not restricted from use for such purposes.

Section 2.6. The Engineer shall obtain, from the TID, all records of any improvements involving any highways, roads, bridges or other transportation facilities owned or maintained by Delaware County or any township within its jurisdiction, and shall make record of any such improvements in his books and records of improvements to county and township roads. Upon request of the County Auditor, or any interested person, he shall furnish copies of the same.

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Section 2.7. Upon request of the TID, the Engineer shall furnish copies of records relating to any improvement of any highways, roads, bridges or other transportation facilities owned or maintained by Delaware County or maintained by the Engineer.

Article 3. RESPONSIBILITIES OF THE TID

Section 3.1. The TID will develop and deliver a program of Projects determined by the TID to be necessary for the public safety and welfare and of benefit to Delaware County and/or any political subdivision of the State within Delaware County.

Section 3.2. The TID will cooperate with the Commissioners and the Engineer in any Project and will conduct formal proceedings to consider any Project proposed by the Engineer or the Commissioners through formal deliberation and allow for public comment on such matters.

Section 3.3. The TID will actively seek federal, state and other funding to assist with development of its program of Projects. The TID will cooperate with the Commissioners and Engineer and, to the extent reasonable and appropriate, not engage in competition against the Commissioners and Engineer without the consent of all Parties in seeking such funds.

Section 3.4. Unless otherwise stated in an agreement between the TID and the agency which would otherwise be charged with maintenance and operation of such a transportation facility were it not for the involvement of the TID, for all Projects undertaken by the TID upon an existing state, county, township or municipal road, the cost and responsibility for ongoing maintenance of the public road after completion of the Project and acceptance by the TID, such highway, bridge or other facility shall be the responsibility of the political subdivision who currently maintains the highway, bridge or other transportation facility.

Section 3.5. The TID shall keep necessary records of all improvements with Delaware County and, upon request of the Engineer, the TID shall furnish copies of records relating to any improvement of any highways, roads, bridges or other transportation facilities owned or maintained by Delaware County or maintained by the Engineer.

Article 4. MISCELLANEOUS TERMS AND CONDITIONS

Section 4.1. Relationship of the Parties: Neither this Agreement nor the relationship between the Parties established pursuant to this Agreement shall constitute or be deemed to be that of a partnership, joint venture, employment, or principal and agent. The Parties do not have authority to make any representations, warranties or statements on behalf of any other, and no Party shall bind or be liable for the debts or obligations of any other. In the performance of their respective duties herein, each Party is and shall at times remain an independent contractor, free and clear of any dominion or control by the others, except as specifically provided herein.

Section 4.2. Extent of Covenants, No Personal Liability: All covenants, obligations and agreements herein shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, trustee, officer, agent, elected official or employee of any party to this Agreement other than his/her official capacity; and neither the Commissioners nor the Trustees of the TID, nor the County Engineer or other official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 4.3. Other Beneficiaries: Only those Parties signatory to this Agreement shall have rights under this Agreement. No other persons or entities shall have any rights under this Agreement or be deemed to be a third-party beneficiary of this Agreement.

Section 4.4. Challenge to Agreement: In the event of a court action by a third party challenging the validity or enforceability of this Agreement or any of its provisions, the Parties shall fully cooperate to defend the Agreement. If only one or two parties are named as a party to the action, the other party(ies) shall seek to intervene and the named party(ies) shall support such intervention.

Section 4.5. Assignment: Except as specifically enumerated within this Agreement regarding assignment of certain responsibilities, powers, duties or agreements of one named Party to another named party within this Agreement, the Parties may not assign this Agreement, in whole or in part, voluntarily or involuntarily, by operation of law, or otherwise, to any other party without the prior written consent of all other Parties, which consent shall not be unreasonably withheld.

Section 4.6. Term; Termination: This Agreement shall take effect on the date first written above. Unless earlier terminated as provided in this Section 4.6, this Agreement shall continue in effect until December 31, 2023, whereupon the Parties may review the Agreement for potential renewal by written agreement of the Parties. Either the Commissioners or the TID may terminate this Agreement, without cause, by written notice of termination to the other Parties no less than one-hundred eighty (180) days prior to the date upon which termination is to be effective.

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Section 4.7. Remedies: In the event of a breach of this Agreement, an Aggrieved Party(ies) may seek specific performance of this Agreement by the Breaching Party in addition to any other remedies at law or in equity.

Section 4.8. Mediation: In the case of dispute arising from this Agreement for which the Parties cannot resolve through good faith efforts, any Party may request and the other Parties shall participate in such mediation, unless participation in mediation is specifically excluded under some other Agreement or court order. The Parties will agree on a mediator(s) and the mediation shall commence within 60 days of the request of any Party and shall not conclude until a period of at least 90 days has elapsed after the first mediation. In the event the Parties cannot agree on a mediator(s), each party shall select a neutral third party representatives and direct the representatives to select a mediator.

Section 4.9. Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

Section 4.10. Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

Section 4.11. Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

Section 4.12. Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

Section 4.13. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Article 5. NOTICES

Section 5.1. Notices shall be in writing and shall be deemed to have been duly given upon receipt, when delivered personally to a Party at its address as stated herein; or, one Business Day after being delivered to a reputable overnight courier service, prepaid, marked for next-day delivery to a Party at its address as stated herein.

All notices to be given to the Commissioners pursuant to this Agreement shall be sent to the following address:

Delaware County Board of Commissioners
Attn: Jennifer Walraven, Clerk of the Board of Commissioners
101 North Sandusky Street
Delaware, Ohio 43015

All notices to be given to the Engineer pursuant to this Agreement shall be sent to the following address:

Delaware County Engineer
50 Channing Street
Delaware, Ohio 43015

All notices to be given to the TID pursuant to this Agreement shall be sent to the following address:

Delaware County Transportation Improvement District
Attn: Seiji Kille, Secretary-Treasurer
140 North Sandusky Street
Delaware, Ohio 43015

Any Party may change its address at any time for notices upon providing written notice to the other Parties.

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

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

18

RESOLUTION NO. 18-1375

IN THE MATTER OF APPROVING A DITCH MAINTENANCE PETITION AND THE DITCH MAINTENANCE ASSESSMENTS FOR MIRASOL SECTION 2:

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

WHEREAS, on December 13, 2018, a Ditch Maintenance Petition for Mirasol Section 2 was filed with the Board of Commissioners of Delaware County (the "Board"); and

WHEREAS, the Petition sets forth the drainage improvements that have been or will be constructed within Mirasol Section 2 off of Lewis Center Road in Genoa Township; and

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

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

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

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

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

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

The cost of the drainage improvements is \$599,562.19. The drainage improvements are being constructed for the benefit of the lot(s) being created in this subdivision. 53 lots are created in these plats and each lot received an equal share of the benefit (cost) of the project. The basis for calculating the assessment for each lot is therefore \$11,312.49 per lot. An annual maintenance fee equal to 2% of this basis (\$226.25) will be collected for each lot. The basis for calculating the maintenance assessment shall be reviewed and subject to revision every six (6) years. The first year's assessment for all the lots in the amount of \$11,991.24 has been paid to Delaware County, receipt of which is hereby acknowledged.

Section 3. This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

19

RESOLUTION NO. 18-1376

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR MIRASOL SECTION 2:

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

Whereas, Romanelli and Hughes Building Company has submitted the Plat of Subdivision ("Plat") for Mirasol Section 2, including related development plans ("Plans") and requests approval thereof by the Board of Commissioners of Delaware County; and

Whereas, the Genoa Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on October 31, 2018; and

Whereas, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on November 8, 2018; and

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

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on November 8, 2018; and

Whereas, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on November 16, 2018; and

Whereas, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on December 3, 2018;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for Mirasol Section 2.

Mirasol Section 2:

Situate in the State of Ohio, County of Delaware, Township of Genoa, lying in Farm Lot 14, Quarter Township 2, Township 3 North, Range 17 West, United States Military District, containing 41.825 acres, more or less, including 6.226 acres of right-of-way area, consisting of 12.032 acres out of the 29.075 acre tract of record in Official Record 1155, Page 312, and all of the 29.793 acre tract of record in Official Record 1206, Page 2211, as conveyed to Romanelli and Hughes Building Company. All Records of the Recorder's Office, Delaware County, Ohio. Cost: \$159.

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

20

RESOLUTION NO. 18-1377

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES CONTRACT WITH DLZ OHIO, INC. FOR CONSTRUCTION MONITORING, MATERIAL TESTING AND ENGINEERING SERVICES:

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

Whereas, Section 305.15 of the Revised Code provides that a Board of Commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from engineering firms interested in providing services for Construction Monitoring, Material Testing and Engineering Services; and

WHEREAS, the County Engineer has selected the consulting firm of DLZ Ohio, Inc. through a Qualifications-Based Selection Process and has negotiated fee and agreement to provide the required services for construction monitoring, material testing and engineering services and requests that the Board enter into Contract with said firm;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that the following Professional Services Contract is hereby approved:

PROFESSIONAL SERVICES CONTRACT

Construction Monitoring, Material Testing and Engineering Services

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 13th day of December, 2018, by and between the Delaware County Board of Commissioners, Delaware County, Ohio (“County”), and the firm of **DLZ Ohio, Inc., 6121 Huntley Road, Columbus, Ohio 43229** (“Consultant”)

Section 2 – Contract Administrator

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

Section 3 – Scope of Services (Work)

Consultant agrees to furnish, unto the County, professional Construction Monitoring, Material Testing and Engineering Services, including the work specifically itemized in **Construction Inspection Contract Unit Prices (EXHIBIT A)** by this reference hereby made part of this Contract, Consultant further agrees to perform said work promptly, in a skillfully and competent manner in accordance with the standards applicable to this work, and under the direction of the Delaware County Engineer.

Section 4 – Compensation

Payment shall be based on a Fee Proposal submitted by the Consultant as **Construction Inspection Unit Prices (EXHIBIT A)**, by this reference made a part of this contract, to be paid to the Consultant as specified hereinafter

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

for an amount not to exceed One Million Six Hundred Thousand Dollars (\$1,600,000) over the two year period.

Section 5 – Payment

Compensation shall be paid based on work performed verified by The Delaware County Engineer, made no more than once per month. Estimates shall be submitted by the Consultant, on company letterhead clearly listing the words “Invoice # ___” and shall be reviewed and approved by the County Engineer. Consultant shall not commence any task listed in the Fee Proposal until authorization for such work is provided by the County.

Section 6 – Completion of Work, Delays and Extensions

All work associated with the Contract, in accordance with Section 3 above, shall be through December 31, 2020.

Section 7 – Insurance

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

Section 8 – Indemnification

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

Section 9 – Suspension or Termination of Agreement

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Consultant ordering termination of Work. The Consultant shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work

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

Section 11 – Ownership of Engineering Documents

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

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

Section 12 – Change of Key Consultant Staff

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

Section 13 – Miscellaneous Terms & Conditions

- 13.1 **Prohibited Interests:** Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 13.2 **Independent Contractor:** The Parties acknowledge and agree that contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 13.3 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.4 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.5 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.6 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 13.7 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 13.8 **Findings for Recovery:** Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.9 **Non-Discrimination/Equal Opportunity:** Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.
- Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.
- Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.
- Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.
- 13.10 **Authority to Sign:** Any person executing this Agreement in a representative capacity hereby warrants that

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.

13.11 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

13.12 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

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

21

RESOLUTION NO. 18-1378

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

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

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

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

Permit #	Applicant	Location	Type of Work
U18-185	Del-Co Water	North Road/Lewis Center Road	Road bore/Install waterline
U18-186	Suburban Natural Gas	The Pines Phase 1A & 1B	Lay gas main
U18-187	Columbia Gas	Polaris Parkway	Relocate gas main
U18-188	MCI	Green Meadows Drive	Install fiber-optic cable via bore
U18-189	MCI	Meadow Park Ave.	Install above grade cabinet
U18-190	WOW	South Old State Road	Place conduit by directional bore

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

22

RESOLUTION NO. 18-1379

IN THE MATTER OF ESTABLISHING MAINTENANCE BOND AND RELEASING CONSTRUCTION BOND FOR BERLIN MANOR SECTION 1:

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

WHEREAS, the roadway construction has been completed for the project known as Berlin Manor Section 1 ("Project"); and

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

WHEREAS, the Engineer recommends that in accordance with the Owner's Agreement the Maintenance Bond be set at **\$143,340** (10% of the original construction estimate) and the Project be placed on the required one year maintenance period; and

WHEREAS, Berlin Manor One, LLC ("Owner") has provided a Maintenance Bond in the amount of \$143,340 as surety to cover the one year maintenance period; and

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

WHEREAS, the Engineer recommends that in accordance with the Owner’s Agreement, the Construction Bond being held as surety for the Project be returned to the Owner;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners accepts the Maintenance Bond in the amount of \$143,340 for the Project, places the Project on the required one year maintenance period, and returns the construction bond being held for the Project to the Owner.

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

23

RESOLUTION NO. 18-1380

IN THE MATTER OF ACCEPTING ROADS, APPROVING RECOMMENDED SPEED LIMITS, ESTABLISHING STOP CONDITIONS AND RELEASING SURETIES FOR GLENMEAD SECTION 1:

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

Whereas, the Engineer has reviewed the roadway construction of the roads within Glenmead Section 1 (the “Subdivision”) and finds them to be constructed in accordance with the approved plans; and

Whereas, the Engineer recommends that the following roadways within the Subdivision be accepted into the public system:

- An addition of 0.13 mile to County Road Number 99, Piatt Road
- Glenmead Drive, to be known as Township Road Number 1724
- Glenvale Drive, to be known as Township Road Number 1725

Whereas, the Engineer also recommends that a 25 mph speed limit be established throughout the Subdivision; and

Whereas, the Engineer also requests that stop conditions be established at the following intersections within the Subdivision:

- On Township Road Number 1724, Glenmead Drive, at its intersection with County Road Number 96, Gregory Road
- Two Stop Conditions on Township Road Number 1724, Glenmead Drive, at its intersection with Township Road Number 99, Piatt Road
- On Township Road Number 1725, Glenvale Drive, at its intersection with Township Road Number 1724, Glenmead Drive

Whereas, the Engineer also requests approval to return the bond being held as maintenance surety to the owner, Romanelli and Hughes;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby accepts the Engineer’s recommendations stated herein and accepts the roads, approves speed limits, establishes stop conditions, and returns sureties to the owners in accordance with the Engineer’s recommendations stated herein.

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

24

RESOLUTION NO. 18-1381

IN THE MATTER OF RE-APPOINTING MEMBERS TO THE BERKSHIRE LANDING NEW COMMUNITY AUTHORITY BOARD OF TRUSTEES:

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

WHEREAS, on February 5, 2015, the Delaware County Board of Commissioners (the “Board of Commissioners”) adopted Resolution No. 15-147, establishing the Berkshire Landing New Community Authority, pursuant to Chapter 349 of the Revised Code; and

WHEREAS, as the organizational board of commissioners, the Board of Commissioners shall make appointments to the Berkshire Landing New Community Authority Board of Trustees, pursuant to Resolution No. 15-147 and section 349.04 of the Revised Code;

WHEREAS, on June 20, 2013, the Board of Commissioners adopted Resolution No. 13-645, adopting a policy for the appointment of members to boards and commissions (the “Policy”), which requires posting of all available positions for at least fourteen (14) days and permits the Board of Commissioners to conduct interviews of any applicants; and

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

WHEREAS, the Board of Commissioners desires to approve an exception to the Policy in order to re-appoint two current members of the Berkshire Landing New Community Authority Board of Trustees;

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

Section 1. The Board of Commissioners hereby approves the re-appointment of the following members to the Berkshire Landing New Community Authority Board of Trustees for the terms specified herein:

Position	Appointee	Term Ends
Citizen Member	Patrick Blayney	February 4, 2021
Local Government Representative	Rob Riley	February 4, 2021

Section 2. The re-appointments approved herein shall be effective February 5, 2019.

Section 3. The Clerk of the Board of Commissioners is hereby directed to certify a copy of this Resolution to Berkshire Crossing Development, LLC, as the statutory developer for the Berkshire Landing New Community Authority.

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

25

RESOLUTION NO. 18-1382

IN THE MATTER OF RE-APPOINTING A MEMBER TO THE DELAWARE COUNTY DISTRICT LIBRARY BOARD OF TRUSTEES:

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

WHEREAS, the Delaware County Board of Commissioners (the “Board of Commissioners”) is responsible for making several appointments to the Delaware County District Library Board of Trustees; and

WHEREAS, the term for Trustee Holly Quaine will expire on December 31, 2018, and Ms. Quaine has applied for re-appointment;

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

Section 1. The Board of Commissioners hereby approves the re-appointment of Holly Quaine to the Delaware County District Library Board of Trustees for the term commencing January 1, 2019, and ending December 31, 2025.

Section 2. The appointment approved herein shall be effective on January 1, 2019.

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

26

RESOLUTION NO. 18-1383

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS, SUPPLEMENTAL APPROPRIATIONS AND ESTABLISHING NEW ORGANIZATION KEYS:

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

Transfer of Appropriation		
From:	To:	
10010101-5001 Auditor/Compensation	10010102-5001 Weights & Measures/Compensation	1,000.00
10010101-5001 Auditor/Compensation	10010102-5101 Weights & Measures/Health Insurance	1,000.00
10011103-5201 Records Center/General Supplies	10011103-5101 Records Center/Health Insurance	850.00
10011101-5001 Commissioners Admin/Compensation	10011139-5001 Public Info-Community Relations/Compensation	2,000.00
10011101-5101 Commissioners Admin/Health Insurance	10011139-5101 Public Info-Community Relations/Health Insurance	800.00
10011202-5301 Public Defender/Contracted Prof. Services	10011202-5101 Public Defender/Health Insurance	300.00

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018**

10030301-5342	10030301-5101	800.00
Coroner/Medical Services	Coroner/Health Insurance	
10031303-5001	10031301-5001	100,000.00
Sheriff Jail/Compensation	Sheriff-Deputies/Compensation	
24113102-5301	24113102-5450	280.00
County Recorder Equip/Contracted Prof Services	County Recorder Equip/Capital Equipment	

Supplemental Appropriation

10214108-5319	Excess Foreclosure Funds/Reimbursements	17,000.00
25422301-5101	Intensive Supervision/Health Insurance	500.00
26726323-5001	Juv Care & Custody/Compensation	4,500.00
26726323-5101	Juv Care & Custody/Health Insurance	5,500.00
21681309-5365	HMGP Park Safe Rooms Project/Grant Related Services	(.90)
40411414-5410	Courts Building/Building & Improvements	(79,207.51)

New Organization Keys

66211900	SRF Operations & Maintenance
66611900	URF Operations & Maint Projects
66711900	Capital Development Projects
29440448	2019 CSTP Guardrail

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

28

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator
 -Will be attending the 22nd Annual Keep Delaware County Beautiful Awards this evening at the Stratford Ecological Center.
 -Attended the T.I.D. meeting yesterday.

29

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Benton
 -Attended the CCAO Winter Conference. At the County Engineer Association of Ohio Conference, our own County Engineer, Chris Bauserman received the Engineer of the Year Award.
 -The BIA released the findings of a study they commissioned. It looks as though Delaware County is only about half of where we should be in housing to be built.
 -There will be a Legislative Update meeting Friday at 3:00, here in our Meeting Room.
 -Friday will also be Judge Krueger's retirement reception from 2:00-4:00 PM.
 -Attended Ohio Wesleyan's Lifelong Learning meeting yesterday.
 -The Agriculture Society re-vote will be held today.
 -Will be attending MORPC this afternoon.

Commissioner Lewis
 -The PIN Clearing House was held this past weekend. The event was very successful.

27

RESOLUTION NO. 18-1384

10:00A.M. PUBLIC HEARING FOR CONSIDERATION OF THE VILLAS AT WALNUT GROVE CONDOMINIUM DRAINAGE MAINTENANCE IMPROVEMENT PETITION FILED BY VILLAS AT WALNUT GROVE CONDO ASSOCIATION AND OTHERS:

It was moved by Mr. Benton, seconded by Mrs. Lewis to open the hearing at 10:34 A.M..

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

27 Continued

RESOLUTION NO. 18-1385

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

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

COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD DECEMBER 13, 2018

30

RESOLUTION NO. 18-1388

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

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

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)-(7) of the Revised Code; and

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

Section 1. The Board hereby adjourns into executive session for pending or imminent litigation.

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

RESOLUTION NO. 18-1389

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mrs. Lewis to adjourn out of Executive Session.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners