

**COMMISSIONERS JOURNAL NO. 70 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD FEBRUARY 4, 2019**

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

Present:
Barb Lewis, President
Jeff Benton, Vice President
Gary Merrell, Commissioner

9:30 A.M. Regular Session

11:00 A.M. Special Joint Board Meeting With Licking County for Public Hearing For Consideration Of A Joint County Drainage Petition Filed By The Harlem Township Board Of Trustees For The Gorsuch Joint County #588

1
RESOLUTION NO. 19-94

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JANUARY 31, 2019:

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 January 31, 2019; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 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 Aye Mrs. Lewis Aye Mr. Benton Aye

2
PUBLIC COMMENT

3
RESOLUTION NO. 19-95

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0201 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0201:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0201, memo transfers in batch numbers MTAPR0201 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
PR Number	Vendor Name	Line Description	Account
R1901715	INSIGHT PUBLIC SECTOR INC	IN-CAR CAMERAS	41711436 - 5450
R1901717	MOTOROLA SOLUTIONS INC	MOBILE RADIOS - NEW PATROL SUV'S	41711436 - 5450
R1901806	B & C COMMUNICATIONS	JANUARY 2020	21411306 - 5325
R1901807	G & G ENTERPRISES COMPLETE	FANCHER ROAD DRAINAGE IMPROVEMENTS	40311454 - 5301
R1901888	XYLEM WATER SOLUTIONS USA INC	RAS PUMP - TARTAN FIELDS	66211900 - 5450
R1901891	CITY ELECTRIC SUPPLY	METER UPGRADE - WILLIS BUILDING	40111402 - 5450
Amount			

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

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4

RESOLUTION NO. 19-96

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Economic Development Department is requesting that Jenna Goehring attend a Global Fluency Training in Columbus, Ohio on February 5, 2019 at the cost of \$38.77 (fund number 21011113).

The Regional Sewer District is requesting that Erik McPeek and Cory Smith attend Dude University 2019 in Raleigh, NC from May 5, 2019 to May 8, 2019 at a total cost of \$4,725.00 from fund 66211900.

The Commissioners’ Office is requesting that Bob Lamb and Tiffany Maag attend a Third Thursday luncheon at SourcePoint on February 21, 2019 at the cost of \$40.00 (fund number 10011101).

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

5

RESOLUTION NO. 19-97

IN THE MATTER OF APPROVING AN AUDIO/VIDEO SYSTEMS MAINTENANCE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY COMMON PLEAS COURT, GENERAL DIVISION; THE DELAWARE COUNTY COMMON PLEAS COURT, DOMESTIC RELATIONS DIVISION; AND ELECTRONIC SPECIALTY COMPANY:

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

WHEREAS, the Delaware County Common Pleas Court Administrators recommend approval of the Audio/Video Systems Maintenance Agreement between the Delaware County Board of Commissioners, the Delaware County Common Pleas Court, General Division; the Delaware County Common Pleas Court, Domestic Relations Division; and Electronic Specialty Company;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the Audio/Video Systems Maintenance Agreement between the Delaware County Board of Commissioners, the Delaware County Common Pleas Court, General Division; the Delaware County Common Pleas Court, Domestic Relations Division; and Electronic Specialty Company:

AUDIO/VIDEO SYSTEMS MAINTENANCE AGREEMENT

This Agreement is entered into this 4th day of February, 2019 by and between the Board of Commissioners, Delaware County, Ohio (“BOC”), whose principal place of business is located at 101 North Sandusky Street, Delaware, Ohio 43015, the Common Pleas Court, General Division, Delaware County, Ohio (“General Division”), whose principal place of business is located at 117 North Union Street, 500 Level, Delaware, Ohio 43015, the Common Pleas Court, Domestic Relations Division, Delaware County, Ohio (“DR Division”), whose principal place of business is located at 117 North Union Street, 400 Level, Delaware, Ohio 43015 (General Division and DR Division collectively “Court”)(Court and BOC collectively “County”) and Electronic Specialty Company (“ESC”), whose principal place of business is located at 1325 Dunbar Avenue, P.O. Box 400, Dunbar, West Virginia 25064 (individually “Party,” collectively, “Parties”).

1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to state the covenants and conditions under which ESC will provide maintenance and service for Audio/Video Equipment and Systems (collectively “AV Systems”) owned by the County and used by the Court (collectively “Services”). Such AV Systems are located at 117 North Union Street, Delaware, Ohio 43015.

2. TERM

This Agreement shall become effective on and be inclusive of the date the last Party signs this Agreement. Notwithstanding any statement to the contrary on Exhibit 1, Services shall begin on January 1, 2019 and continue through December 31, 2021, unless otherwise terminated as provided in this Agreement.

3. RENEWAL

Upon written agreement of the Parties, this Agreement may be renewed for successive one (1) year periods subject to the same terms and conditions provided herein and upon any such terms and conditions as may be specifically agreed upon, added and/or amended in writing by the Parties. Notwithstanding the foregoing, the combined total cost of this Agreement and any renewal shall not exceed \$49,999.

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4. SCOPE OF SERVICES

ESC shall provide all of the Services listed under “Proposed Scope of Service Agreement” on page 2 of ESC Quote 180921-MW2 dated September 21, 2018 (“Quote”), attached as Exhibit 1. The Services listed in the Quote as being provided at 6 and 12 months shall be fully provided during such months of each year of the Agreement.

Before beginning the Services, ESC shall provide to the Court the following items as listed in the Quote:

- Detailed information regarding the onsite training;
- Detailed information regarding the offsite remote services;
- A complete copy of the Onsite Labor Warranty;
- A complete copy of the Factory Sponsored Equipment Warranty; and,
- A complete copy of the Factory Sponsored Technical Services, Software & Firmware Agreement.

ESC shall coordinate and schedule the performance of all Services in advance with the court administrator for the respective Court. All firmware updates shall be scheduled to be installed after regular business hours and when the Court is not in session and hearings are not being held. All Services shall be performed in a timely, professional, and ethical manner.

5. FINANCIAL AGREEMENT

A. Fees.

In exchange for ESC satisfactorily performing the Services, as solely determined by the Court, the Court shall pay ESC a total fee of \$36,000.00.

B. Maximum Payment

The maximum amount payable pursuant to this Agreement is \$36,000.00.

C. Taxes

The County and all boards, departments, offices, and agencies thereof are exempt from all federal, state, and local taxes. As such, the Court shall not be invoiced for and shall not pay any taxes. A tax exempt certificate shall be provided to ESC upon request.

D. Competitive Bidding Not Required

Consistent with R.C. § 307.86 this Agreement is not required to be competitively bid.

E. Invoice and Payment

To receive payment, ESC shall:

- Submit to the Court a completed federal IRS W-9 form (Exhibit 2).
- Submit to the Court a proper detailed invoice. A proper invoice is defined as an invoice free from defects, discrepancies, errors, and/or other improprieties and shall include, but is not limited to including, the following:
 - ESC's full name, address, telephone number, and facsimile number;
 - Name of a contact person with ESC in charge of billing, including a telephone number and email address for such contact person;
 - ESC's federal employer identification number;
 - Court's full name and address;
 - Detail, including, but not limited to, a description of the Services to be provided and term (dates) the Services will be provided.
 - Itemized costs, including, but not limited to, rates, applicable discounts, the formula/means of arriving at the total amount owed, and total owed.

As applicable, the invoice shall be accompanied by documentation, satisfactory to the Court, supporting the invoiced amount.

Upon submission of a proper invoice and, if applicable, any accompanying documentation, payment shall be made to ESC within thirty (30) days of the date of the invoice.

Defective invoices shall be returned to ESC noting areas for correction. When such notification of defect is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.

6. INDEPENDENT CONTRACTOR

ESC agrees that it shall act in performance of this Agreement as an independent contractor. No agency,

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employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement.

ESC assumes all responsibility for any and all federal, state, municipal, or other tax liabilities, along with workers compensation, unemployment compensation, contributions to retirement plans, and/or insurance premiums which may accrue and/or become due as a result of compensation received for performance of this Agreement and/or other services and/or deliverables rendered and/or received under or pursuant to this Agreement.

ESC and/or its officers, officials, employees, representatives, agents, and/or volunteers are not entitled to any benefits enjoyed by employees of the BOC, Court, or Delaware County, Ohio.

**7. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT/
NO CONTRIBUTION TO OPERS**

The County is a public employer as defined in R.C. § 145.01(D). The County has classified ESC as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System (“OPERS”) for or on behalf of ESC and/or any of its officers, officials, directors, employees, representatives, agents, and/or volunteers for performance of this Agreement and/or other services and/or deliverables rendered and/or received under or pursuant to this Agreement. ESC acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If ESC is an individual or has less than five (5) employees, ESC, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor/Worker Acknowledgement Form (“OPERS Form”). The OPERS Form is attached to this Agreement as Exhibit 3. The Court shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

If ESC has five (5) or more employees, ESC, by signature of its authorized representative below, hereby certifies such fact in lieu of completing the OPERS Form:

Owen S. Higgins II
Vice President
Electronic Specialty Company

8. INDEMNITY

ESC shall provide indemnity as follows:

- A. To the fullest extent of the law and without limitation, ESC agrees to and shall indemnify and hold free and harmless the BOC, Court, Delaware County, Ohio, and all of their respective boards, officers, officials, directors, employees, volunteers, agents, and representatives (collectively “Indemnified Parties”) from any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney’s fees, arising out of or resulting from any accident, damage, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to ESC’s or any subcontractor’s performance of this Agreement or the actions, inactions, or omissions of ESC or any subcontractor, including, but not limited to the performance, actions, inactions, or omissions of ESC’s or any subcontractor’s boards, officers, officials, directors, employees, volunteers, agents, or representatives. ESC agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that ESC shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney’s fees, costs, and expenses. ESC further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that ESC shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney’s fees.
- B. ESC shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from any actions, inactions, or omissions negligent or accidental, actual or threatened, intentional or unintentional of ESC, its subcontractors, and/or their respective boards, officers, officials, directors, employees, volunteers, agents, or representatives.

9. INSURANCE

ESC shall be bonded and shall carry and maintain throughout the term of the Agreement, without lapse, the

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following policies of insurance with the following minimum coverage limits.

- A. Commercial General Liability Insurance with minimum coverage limits of at least one million dollars (\$1,000,000.00) per occurrence, with an annual aggregate of at least two million dollars (\$2,000,000.00), including coverage for subcontractors, if any are used. This insurance shall include, but not be limited to, the following coverage:
 1. Premises-Operations
 2. Product and Completed Operation
 3. Broad Form Property Damage
 4. Contractual
 5. Personal Injury

- B. Umbrella or Excess Liability Insurance (over and above Commercial General Liability) with minimum coverage limits of at least two million dollars (\$2,000,000.00).

- C. If vehicles are to be used by ESC in connection with this Agreement, Auto/Vehicle Liability Insurance covering all owned, leased, non-owned, and/or hired vehicles so used with minimum coverage limits of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

Prior to commencement of this Agreement, ESC shall present to the Court current certificates of insurance for the required insurance and shall maintain current, without lapse, such insurance during and throughout the entire term of this Agreement.

The BOC, Court, and Delaware County, Ohio shall be named as additional insureds on all required policy(ies) of insurance.

ESC shall be responsible for any and all premiums for all required policy(ies) of insurance.

The insurance company needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance company to bind coverage on its behalf.

All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance.

The above required insurance coverage shall be primary insurance as respects the Indemnified Parties and any insurance maintained by the Indemnified Parties shall be excess to the above required insurance and shall not contribute to it.

The insurer shall provide at least thirty (30) days written notice to Court before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place.

If there is any change in insurance carrier or liability amounts, a new certificate of insurance must be provided to the Court within seven (7) calendar days of change.

During the term of this Agreement, the Court may require ESC to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default.

In addition to the rights and protections provided by the insurance policies as required above, the BOC, Court, and Delaware County, Ohio shall retain all such other and further rights and remedies as are available to them at law or in equity.

10. WORKER'S COMPENSATION INSURANCE

ESC shall carry and maintain throughout the term of the Agreement and without lapse Worker's Compensation Insurance as required by Ohio law and any other state in which work will be performed. ESC shall be responsible for any and all premiums for such policy(ies). At any time throughout the term of the Agreement the Court may request proof of such insurance. Proof of such insurance shall be promptly provided upon request.

11. WARRANTY

ESC hereby warrants that all of its and its subcontractor's officers, employees, directors, volunteers, representatives, and/or agents that have or will perform this Agreement were or, will be at the time of performance, legally and properly trained and/or licensed to perform the tasks they are required to perform under this Agreement.

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ESC also hereby warrants that the Services that it provides pursuant to this Agreement are correct, accurate, performed properly, and are free from defect. ESC, without cost to the Court, shall promptly and properly fix, correct, re-perform, and/or replace the Services, any deliverable, or any portion thereof provided pursuant to this Agreement that, in the sole discretion of the Court, is/are defective and/or not satisfactorily performed.

12. CONFIDENTIALITY

ESC understands and agrees that in the performance of this Agreement it may have access to confidential information of the Court or parties to litigation before the Court or that is required to remain confidential by law, rule, or regulation. ESC shall hold such information in confidence and shall not, without the prior written consent of the Court, disclose it to any third party or use it for any purpose other than in performance of this Agreement. This obligation of confidentiality shall not apply to any of the following types of information:

- Information that is generally available to the public through no act or omission of ESC; or,
- Information that becomes known to ESC through a third party with no obligation of confidentiality.

Notwithstanding any other termination provision contained in this Agreement, the Court may immediately terminate this Agreement, if, in the sole discretion of the Court, the Court determines that actions of ESC, any ESC employee, or any subcontractor resulted in a breach of confidentiality and/or any violation of this obligation to maintain confidentiality. In the event of such termination, all unearned compensation shall be immediately refunded by ESC to the Court.

To the fullest extent of the law and without limitation, ESC agrees to indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any breach or violation of confidentiality, in whole or in part, by ESC, any ESC employee, or any subcontractor. In the event of a breach or violation of confidentiality, ESC shall take any and all necessary and appropriate action and cooperate with the Court to arrest the breach or violation, mitigate the effects of the breach or violation, and protect any victims of the breach or violation, by including, but not limited to, if required by the event, the purchase and payment for, at no cost to the BOC, the Court, or Delaware County, Ohio, of appropriate identify theft protection and/or insurance for the victims of such breach or violation. Additionally, ESC agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that ESC shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. ESC further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that ESC shall pay, settle, compromise and/or procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees.

13. LICENSES

ESC certifies and warrants that it, its employees, and/or subcontractors have obtained and maintain current all approvals, licenses, including operator licenses, certifications, permits, and/or other qualifications or prerequisites (collectively "Licenses") necessary to fully perform this Agreement and to conduct business in the state of Ohio. ESC further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason. Proof of such Licenses shall be promptly provided upon request.

14. ACCESS TO RECORDS

At any time during regular business hours, with reasonable notice, and as often as the Court or other agency or individual authorized by the Court may deem necessary, ESC shall make available to any or all the above named parties or their authorized representatives, at no cost, all contracts, subcontracts, invoices, receipts, reports, documents, and all other information or data, regardless of form or media, relating to all matters covered by this Agreement (collectively "Records"). The Court and the above named parties shall be permitted by ESC and shall be entitled to inspect or audit and/or make excerpts, copies, and/or transcripts of the Records.

15. RETENTION OF RECORDS

For a minimum of three (3) years after expiration or termination of this Agreement, ESC shall retain and maintain and assure that all of its subcontractors retain and maintain all Records. If an audit, litigation, or other action related to this Agreement is initiated during the term of this Agreement or the three (3) year retention period, ESC shall retain and maintain, and assure that all of its subcontractors retain and maintain the Records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever occurs last.

16. TERMINATION

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This Agreement may be terminated as follows:

A. Convenience:

The Court may terminate this Agreement at any time and for any reason by giving at least seven (7) days advance notice, in writing, to ESC.

The Parties may terminate this Agreement at any time and for any reason upon the mutual written consent of the Parties.

B. Breach or Default:

Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a reasonable period of time. If the breach or default is not satisfactorily remedied within the stated period of time, this Agreement may, at the election of the aggrieved Party, be immediately terminated. The terminating Party shall provide prompt written notice of such termination to the other Party.

Termination pursuant to this section shall relieve the Parties of any and all further obligations under this Agreement, except that ESC shall be entitled to receive compensation for any Services satisfactorily performed hereunder through the date specified on the notice as the effective date of termination. All unearned compensation shall be immediately refunded by ESC to the Court.

If the Agreement is terminated pursuant to this Section, ESC shall have no cause of action against the BOC, Court, and/or Delaware County, Ohio, except for a cause of action for non-payment for Services rendered prior to the effective date of termination. The County, without limitation, retains and reserves and may exercise any available administrative, contractual, or equitable rights, legal actions, or remedies.

17. WAIVER

The waiver of any provision or requirement of this Agreement or any occurrence of breach or default is not and shall not be interpreted as a waiver of any such subsequent occurrences. If either Party fails to perform an obligation(s) under this Agreement and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive any other failure(s). Waiver by either Party shall be authorized in writing and signed by an authorized representative(s) of the waiving Party. In the case of the County, any waiver shall be approved by the Court.

18. NOTICES

All notices which may be required by this Agreement or by operation of any rule of law shall be sent via certified mail, return receipt requested, by nationally recognized and reputable overnight courier, return receipt requested, by email, read receipt requested, or hand delivered to the following individuals at the following addresses and shall be effective on the date sent or hand delivered:

GENERAL DIVISION

Kristin Schultz
Court Administrator
Delaware County Common Pleas Court
General Division
117 North Union Street, 500 Level
Delaware, OH 43015

Email:
kschultz@co.delaware.oh.us

DR DIVISION

Denise Martin
Court Administrator
Delaware County Common Pleas Court
Domestic Relations Division
117 North Union Street, 500 Level
Delaware, OH 43015

Email:
dmartin@co.delaware.oh.us

ESC

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Mark Wood
A/V Manager
Electronic Specialty Company
1325 Dunbar Avenue
P.O. Box 400
Dunbar, WV 25064

Email:
mark@electronicspecialty.com

19. CERTIFICATION REGARDING FINDINGS FOR RECOVERY

ESC, by signature of its authorized representative below, hereby certifies that it is not subject to any current unresolved findings for recovery pending with or issued by the Ohio Auditor of State.

Owen S. Higgins II
Vice President
Electronic Specialty Company

20. CERTIFICATION REGARDING PERSONAL PROPERTY TAXES

ESC, by signature of its authorized representative below, hereby certifies that it is not charged with delinquent personal property taxes on the general list of personal property in Delaware County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio.

Owen S. Higgins II
Vice President
Electronic Specialty Company

21. CAMPAIGN FINANCE – COMPLIANCE WITH R.C. § 3517.13

R.C. §§ 3517.13 I(3) and J(3) require that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in R.C. §§ 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. ESC, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13" ("Campaign Finance Form") Failure to complete and submit the required Campaign Finance Form with the Agreement will prohibit the County from entering, proceeding with, and/or performing the Agreement. The Campaign Finance Form is attached to this Agreement as Exhibit 4.

22. NON-DISCRIMINATION/EQUAL OPPORTUNITY/CIVIL RIGHTS

All contracts with Delaware County, Ohio must contain and all contractors with Delaware County, Ohio must agree to enter a contract containing language similar to that contained in R.C. § 125.111, which requires the following:

Every contract for or on behalf of the state or any of its political subdivisions for any purchase shall contain provisions similar to those required by R.C. § 153.59 in the case of construction contracts by which the contractor agrees to both of the following:

- A. That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in R.C. § [4112.01](#), 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 contract relates;
- B. That no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the contract on account of race, color, religion, sex, age, disability or military status as defined in R.C. § [4112.01](#), national origin, or ancestry.

All contractors from whom the state or any of its political subdivisions make purchases shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in R.C. § 122.71 [\(E\)\(1\)](#). Annually, each such contractor shall file a description of the

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affirmative action program and a progress report on its implementation with the equal employment opportunity office of the department of administrative services.

ESC agrees to the above and, by the signature of its authorized representative on attached Exhibit 5 (Non-Discrimination/Equal Opportunity/Civil Rights), certifies that it complies with all applicable federal, state, and local laws regarding non-discrimination, equal opportunity, and/or civil rights and will not discriminate.

23. PROHIBIT INTEREST

ESC agrees that no employee of the County during his/her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. ESC agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the date this Agreement expires or is terminated without the prior express signed written consent of the County.

24. CONFLICT OF INTEREST

ESC is unaware of and certifies that there are no conflicts of interest, either involving it or its employees, that would prohibit ESC from entering this Agreement and agrees to immediately notify the Court when and if it becomes aware of any actual or potential conflict(s) of interest that arises during the term of the Agreement.

25. DRUG FREE ENVIRONMENT

ESC agrees to comply with all applicable federal, state, and local laws regarding drug-free environment and shall have established and have in place a drug free workplace policy. ESC shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

26. COUNTY/COURT POLICIES

ESC shall be bound by, conform to, comply with, and abide by all current applicable Court and Delaware County policies, including, but not limited to, the Contractor Safety Policy, Computer Use Policy, Social Media Policy, and Internet Use Policy (collectively "County Policy") and shall require any and all of its boards, board members, officers, officials, directors, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County (collectively "Employees") and subcontractors to comply with County Policy and shall be responsible for such compliance. Notwithstanding any other termination provision of this Agreement, the County may, in its sole discretion, immediately terminate this Agreement for failure of ESC or any of its Employees or subcontractors to comply with Court or County Policy. Copies of Court and County Policy are available upon request or County Policy is available online at:

<http://www.co.delaware.oh.us/index.php/policies>.

The Court and County reserve the authority to change, amend, replace, enact, repeal, and/or rescind Court and/or County Policy at any time and without notice.

27. AUDIT

ESC agrees to submit to audit and accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority. ESC agrees to reimburse the Court the amount of any identified audit exception.

28. SUBCONTRACTING

ESC may subcontract any portion of this Agreement with prior written approval of the Court, such approval not to be unreasonably withheld. If all or any portion of this Agreement is subcontracted, any subcontractor shall be bound by all applicable terms of this Agreement and ESC shall continue to act as the prime contractor for all subcontracted work and shall assume full responsibility for the performance of the work. ESC shall remain the sole point of contact and shall be ultimately responsible for the performance of the work.

29. ASSIGNMENT

This Agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the prior express signed written consent of the County, except that ESC may assign this Agreement to a successor in interest in all its business.

30. AUTHORITY

The County is authorized by including, but not limited to, R.C § 307.843 to enter this Agreement.

31. NO EXCLUSIVITY

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ESC shall not be an exclusive provider to the Court. The Court, in the Court's sole discretion, may utilize other contractors to provide or perform the same or similar products, work, or services.

32. GOVERNING LAW AND VENUE

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties irrevocably agree that venue is proper in the courts of Delaware County, Ohio.

33. INCORPORATION OF EXHIBITS

The following exhibits are attached to this Agreement and by this reference incorporated into and made a part of this Agreement:

- Exhibit 1 - ESC Quote 180921-MW2
- Exhibit 2 - IRS W-9 Form
- Exhibit 3 - OPERS Form
- Exhibit 4 - Campaign Finance Form
- Exhibit 5 - Non-Discrimination/Equal Opportunity/Civil Rights Form

To the extent that any terms and conditions of this Agreement conflict with those contained in the attached exhibits, the terms and conditions of this Agreement shall prevail.

34. HEADINGS

The subject headings of the paragraphs in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

35. DRAFTING

This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

36. SURVIVAL

Sections 8, 9, 10, 11, 12, 14 and 15 shall survive termination or expiration of this Agreement.

37. FORCE MAJEURE

The Parties shall be temporarily excused from performance under this Agreement and shall not be entitled to impose any penalty as a result of any delay in performance or interruption of payments caused by reason of war, insurrection, terrorism, riots, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Agreement are to be executed, strike, supplier and third party failure, lockouts, or labor difficulties automobile fuel shortage, weather, explosion, act of God, order of Court or other public authority, or any other cause beyond the reasonable control of the Parties. Such excusal from performance or interruption of payments shall continue until such force *majeure* ceases to exist or the Agreement is terminated as provided herein.

38. SEVERABILITY

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

39. COUNTERPARTS

This Agreement may be executed in counterparts.

40. SIGNATURES

Any person executing this Agreement in a representative capacity hereby warrants that 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.

41. ENTIRE CONTRACT

This Agreement, including its exhibits, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements/contracts relating to the subject matter hereof, and may only be amended in writing with the mutual written and signed consent of the Parties.

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

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RESOLUTION NO. 19-98

IN THE MATTER OF ACCEPTING SANITARY SEWER IMPROVEMENTS FOR NORTHLAKE WOODS SECTION 1 AND EVANS FARM SECTION 1 ALUM CREEK WATER RECLAMATION AREA:

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

WHEREAS, the construction of new sanitary sewers at the Northlake Woods Section 1 and Evans Farm Section 1 Alum Creek Water Reclamation Area have been completed to meet Delaware County Sewer District requirements; and

WHEREAS, the Sewer District has received the necessary items required by the Subdivider’s Agreements; and

WHEREAS, the Sanitary Engineer recommends accepting sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

Northlake Woods Section 1	2,071’ of 8- inch sewer	\$224,089.00
	10 ea. manholes	\$ 36,270.00
Evans Farm Section 1 Alum Creek Water Reclamation Area	26 Ea. Manholes	\$ 41,310.00
	4895’ of 8-inch sewer	\$178,802.00
	1210’ of 12-inch sewer	\$ 61,688.32

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

Section 1. The Board hereby approves and accepts the above sanitary sewer improvements for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 2. The Board hereby releases any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed to insure faithful performance for construction of the above sanitary sewer improvements, if applicable.

Section 3. The Board hereby accepts any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed per the requirements of the subdivider’s agreements for the five-year maintenance period for the above sanitary sewer improvements.

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

7

RESOLUTION NO. 19-99

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

It was moved by Mr. Merrell, seconded by Mr. Benton 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
U19-012	Columbia Gas	Hanover Road	Install Gas Main
U19-013	WOW!	Lewis Center Road	Directional Bore
U19-014	Spectrum	Fancher Road	Place cable in ROW
U19-015	AT&T	Sawmill Road	Bore Road and place conduit
U19-016	Del-Co Water	Piatt Road	Road bore & install waterline

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

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RESOLUTION NO 19-100**IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE HIGHFIELD DRIVE AND GREEN MEADOWS DRIVE INTERSECTION IMPROVEMENTS:**

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

**INTERGOVERNMENTAL COOPERATION AGREEMENT
FOR THE
HIGHFIELD DRIVE AND GREEN MEADOWS DRIVE
INTERSECTION IMPROVEMENTS**

This Agreement made by and between the Board of Commissioners of Delaware County ("County"), the Delaware County Engineer ("Engineer") and Orange Township ("Township"), hereinafter known as the Parties to the Agreement;

WHEREAS, it has been determined by the Township that improvements to the intersection of Green Meadows Drive and Highfield Drive are necessary (the "Improvements"); 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, Section 5543.01 of the Revised Code provides that the county engineer shall have general charge of construction, reconstruction, resurfacing or improvement by boards of township trustees; and

WHEREAS, the Parties desire to cooperate for the purpose of undertaking a Project to develop the Improvements;

WITNESSETH:

In consideration of the mutual benefits accruing to both Parties, each Party hereby agrees as follows:

1 SCOPE OF PROJECT

1.1 The Project will consist of constructing a single-lane modern roundabout at the intersection of Green Meadows Drive (Township Road 409) and Highfield Drive (Township Road 426) to improve mobility at the intersection.

2 AUTHORITY OF THE COUNTY ENGINEER AND TOWNSHIP ADMINISTRATOR

2.1 The Engineer is authorized to carry out any necessary actions and duties on behalf of the County provided by this Agreement in addition to any other required duties as provided by Ohio Law.

2.2 The Orange Township Administrator is authorized to act on behalf of the Township in carrying out the provisions of this Agreement.

3 ACQUISITION OF PROPERTY

3.1 The County will acquire, on behalf of Orange Township, through good faith negotiation, all necessary rights of way and other property(ies) required for the Project in accordance with Chapter 163 of the Revised Code.

3.2 Prior to making any expenditures for property required for the improvement, the County will obtain authorization from the Township for such expenditures. When requested, the County will furnish any necessary documents, including appraisals, title reports, offers or other records relating to the acquisition of property as are required for the Township's review.

3.3 If the County is unable to acquire the necessary rights of way through good faith negotiation, the Township will consider filing for appropriation of any required property, will deposit the estimated compensation due the property owner, litigate the case and make any additional payments as are required by settlements or judgments.

3.4 All right of way, easements or work agreements will be acquired in the name and for the use of the "Delaware County Board of Commissioners".

4 UTILITY COORDINATION AND RELOCATION

4.1 The County will coordinate the relocation of affected utilities for the Project and order relocation or

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removal of any facilities that are determined to be in conflict with the Project.

4.2 For any reimbursable utility relocations, the County will provide an estimate of the cost of such relocations to the Township for approval prior to authorizing the work.

5 CONSTRUCTION

5.1 The Township will pay all construction contract expenses for the Improvement, except for any funding provided by the Ohio Public Works Commission pursuant to a Project Agreement with the State of Ohio approved by Resolution 18-269 of the Township and for matching funds provided by the County pursuant to a Cooperation Agreement approved by Resolution #17-993 of the County.

5.2 The Township will hold the construction contract(s) for the Improvement and will be considered the Owner of the Project.

5.3 The County will administer and pay for all costs associated with the advertisement and bidding of the construction contract and upon authorization of the Township, will advertise and bid the construction contract, will receive bids and furnish copies of such bids along with a recommendation of award.

5.4 The County will provide and pay for all costs associated with construction engineering, testing, inspection, and management.

6 MAINTENANCE

6.1 The Township will assume the responsibility and all costs associated with maintenance of the completed improvements upon the acceptance of work by the Engineer.

7 GENERAL PROVISIONS

7.1 Entire Agreement: This Agreement, and those documents incorporated by reference herein, will constitute the entire understanding and agreement, will 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.

7.2 Financial Audits: The agency managing the respective phase of work of the Project will be responsible for conducting and coordinating any federal or state audits of funds provided in those phases.

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

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

7.5 Waivers: No waiver of breach of any provision of this Agreement will 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 will 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 will not constitute and will 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.

7.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance will 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 will be held invalid or unenforceable will not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof will, in all other respects, continue to be effective and to be complied with.

7.7 Consideration: The Parties hereby agree and acknowledge that the mutual benefits accruing from this Agreement are good and valuable and that neither party will contest the validity and enforceability of this Agreement for lack of consideration.

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

**9
RESOLUTION NO. 19-101**

**IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE
DELAWARE COUNTY COMMISSIONERS AND G&G ENTERPRISES COMPLETE**

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**EXCAVATING SERVICE, LLC FOR THE PROJECT KNOWN AS FANCHER ROAD
WATERSHED DRAINAGE IMPROVEMENTS:**

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

**Fancher Road Watershed Drainage Improvements
Bid Opening of December 18, 2018**

WHEREAS, as the result of the above referenced bid opening, the Engineer recommends that a bid award be made to G&G Enterprises Complete Excavating Service, LLC, the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the Contract between the Delaware County Commissioners and G&G Enterprises Complete Excavating Service, LLC for the project known as Fancher Road Watershed Drainage Improvements;

NOW, THEREFORE BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby awards the bid to and approves the Contract with G&G Enterprises Complete Excavating Service, LLC for the project known as Fancher Road Watershed Drainage Improvements:

CONTRACT

THIS AGREEMENT is made this 4th day of February, 2019 by and between **G&G Enterprises Complete Excavating Service, LLC, 5907 Renie Road, Belleville, Ohio 44813**, hereinafter called the "Contractor" and the **Delaware County Board of 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 "**Fancher Road Watershed Drainage Improvement**" 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 Thousand Eight Hundred Twenty-Two Dollars and Eighty-Seven Cents (\$50,822.87)**, 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
- 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 three original copies on the day and year first above written.

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

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RESOLUTION NO. 19-102

IN THE MATTER OF ESTABLISHING MAINTENANCE BONDS AND RELEASING

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CONSTRUCTION BONDS FOR NORTHLAKE WOODS SECTION 1 AND CLARK SHAW MOORS SECTION 3:

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

Northlake Woods Section 1

WHEREAS, the roadway construction has been completed for the project known as Northlake Woods 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 **\$115,300** (10% of the original construction estimate) and the Project be placed on the required one year maintenance period; and

WHEREAS, Homewood Corporation (“Owner”) has provided a Maintenance Bond in the amount of \$115,300 as surety to cover the one year maintenance period; and

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 \$115,300 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.

Clark Shaw Moors Section 3

WHEREAS, the roadway construction has been completed for the project known as Clark Shaw Moors Section 3 (“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 **\$33,000** (10% of the original construction estimate) and the Project be placed on the required one year maintenance period; and

WHEREAS, M/I Homes of Central Ohio, LLC (“Owner”) has provided a Maintenance Bond in the amount of \$33,000 as surety to cover the one year maintenance period; and

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 \$33,000 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 Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

**11
RESOLUTION NO. 19-103**

IN THE MATTER OF ACCEPTING IMPROVEMENTS WITHIN THE PROJECTS KNOWN AS SWAN LAKE – LIBERTY ROAD CULVERT EXTENSION AND GLENMEAD SECTION 1 – PIATT ROAD CONSTRUCTION AND RELEASING CONSTRUCTION SURETIES:

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

Swan Lake – Liberty Road Culvert Extension

WHEREAS, on September 25, 2017, the Board of County Commissioners (the “Board”) entered into an Owner’s Agreement with Sparrow Ventures, Ltd. (the “Owner”) for the project known as Swan Lake – Liberty Road Culvert Extension (“Improvement”); and

WHEREAS, the County Engineer has inspected the Improvement and finds it to be constructed in accordance with the approved plans; and

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WHEREAS, the County Engineer recommends the Board accept the Improvement in accordance with the Owner’s Agreement and release the bond being held as construction surety to the Owner;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio hereby accepts the Improvements made for Swan Lake – Liberty Road Culvert Extension in accordance with the Owner’s Agreement and releases the Bond being held as construction surety to the Owner.

Glenmead Section 1 – Piatt Road Construction

WHEREAS, on February 27, 2017, the Board of County Commissioners (the “Board”) entered into an Owner’s Agreement with Romanelli and Hughes (the “Owner”) for the project known as Glenmead Section 1 – Piatt Road Construction (“Improvement”); and

WHEREAS, the County Engineer has inspected the Improvement and finds it to be constructed in accordance with the approved plans; and

WHEREAS, the County Engineer recommends the Board accept the Improvement in accordance with the Owner’s Agreement and release the bond being held as construction surety to the Owner;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio hereby accepts the Improvements made for Glenmead Section 1 – Piatt Road Construction in accordance with the Owner’s Agreement and releases the Bond being held as construction surety to the Owner.

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

12

RESOLUTION NO. 19-104

IN THE MATTER OF DECLARING THE NECESSITY FOR THE IMPROVEMENTS TO PIATT ROAD, ALONG WITH APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ADR & ASSOCIATES FOR THE PREPARATION OF PLANS FOR THE PROJECT KNOWN AS DEL-PIATT ROAD-BERLIN TWP.:

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

WHEREAS, Section 5555.022 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the improvement and may authorize such improvement; and

WHEREAS Berlin Township declared necessity for improvements to Piatt Road and ordered the County Engineer to prepare surveys, plans, profiles, cross-sections, estimates and specifications as are required for the improvement per Berlin Township Resolution No. 17-10-12; and

WHEREAS, the County Engineer has determined that minor widening and performing related drainage improvements on Piatt Road extending from the Piatt Road/Peachblow Road Intersection, terminating at the southern limit of planned upgrades to Piatt Road/Cheshire Road Intersection Improvements being made by the County along with performing grading to accommodate a future shared use path on the east side of Piatt Road are required for the improvement of traffic flow thru the area, and recommends that the Board proceed with improvement thereof; and

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 the project known ad DEL-Piatt Road-Berlin Twp.; and

WHEREAS, the County Engineer has selected the consulting firm of ADR & Associates to provide the required services for engineering and design of the Improvement, and requests that the Board enter into Contract with said firm;

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

Section 1: The public convenience and welfare require the minor widening and performing related drainage improvements on Piatt Road extending from the Piatt Road/Peachblow Road Intersection, terminating at the southern limit of planned upgrades to Piatt Road/Cheshire Road Intersection Improvements being made by the County along with performing grading to accommodate a future shared use path on the east side of Piatt Road are required for the improvement of traffic flow thru the area, and that the Improvement known as DEL-Piatt Road-Berlin Twp. be initiated for such purpose.

Section 2: The costs of said Improvement will be paid for from funds appropriated for road and bridge

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construction, and that no special levies or assessments shall be made to pay for the Improvement.

Section 3: The Board hereby enters into the following Contract, and due compensation will be paid from any funds appropriated for road and bridge construction:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 4th day of February, 2019, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and ADR & Associates, Ltd., 88 West Church Street., Newark, Ohio 43055 (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide “Services” in connection with the following “Project”: DEL-Piatt Road-Berlin Twp.
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Fee Proposal Price dated December 12, 2018

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as the “Project Manager” and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

3 AGREEMENT AND MODIFICATIONS

- 3.1 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 Project, and may only be modified or amended in writing with the mutual consent and agreement of the parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal noted in Section 1.3.
- 4.2 For all services described in the Scope of Services and Price Proposal, the lump sum fee shall not exceed \$99,996.00, which amount shall not be exceeded without subsequent modification.
- 4.3 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

- 5.1 “Notices” issued under this Agreement shall be served to the parties listed below in writing. The parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

Project Manager:

Name: Delaware County Engineer
Attn: Ryan J. Mraz

Address: 50 Channing Street, Delaware, OH 43015

Telephone: (740) 833-2425

Email: Rmraz@co.delaware.oh.us

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Consultant:

Name of Principal in Charge: Russell B. Krock, P.E.
 Address of Firm: 88 West Church Street
 City, State, Zip: Newark, OH 43055
 Telephone: 740-345-1921
 Email: www.adrinnovation.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the Project Manager and on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED, COMPLETION OF SERVICES, DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Project Manager and shall complete the Services no later than December 31, 2019.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, 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.

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 10.2 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.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

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

11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and 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.

13 INSURANCE

13.1 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.

13.2 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.

13.3 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.

13.4 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 services hereunder. 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.

13.5 Additional Insureds: Delaware 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 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.

13.6 Proof of Insurance: Prior to the commencement of any Services 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. 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 Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

14.1 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.

14.2 Independent Contractor: The Parties acknowledge and agree that Consultant 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. Consultant also agrees that, as an independent contractor, Consultant 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.**

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- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.
- 14.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that 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.
- 14.9 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 Services 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.
- 14.10 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 Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of Services 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 Services 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 Services 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.

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

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ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-No reports

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

-Will be attending the Annual Dinner for the Delaware County Chamber tonight.

-Will be attending the MainStreet Delaware Luncheon Wednesday.

Commission Benton

-Will be attending the MainStreet Delaware Luncheon Wednesday at the Old Dog Alehouse.

Commissioner Lewis

-No reports

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RESOLUTION NO. 19-105

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES:

It was moved by Mr. Merrell, seconded by Mr. Benton 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 consideration of the purchase of property for public purposes.

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

RESOLUTION NO. 19-106

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners