

**COMMISSIONERS JOURNAL NO. 71 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JULY 1, 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**

**Absent:**  
**Gary Merrell, Commissioner**

**1**  
**RESOLUTION NO. 19-624**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 27, 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 June 27, 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              Absent      Mrs. Lewis              Aye              Mr. Benton              Aye

**2**  
**PUBLIC COMMENT**

**3**  
**RESOLUTION NO. 19-625**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0628:**

It was moved by Mr. Benton, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0628 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO' Increase</b>			
Treasurer Del Co (P1901992)	Retainage for Alum Creek Upgrade	66611900-5410	\$ 50,000.00
<b>PO' Decrease</b>			
Peterson Const. (P1901268)	Alum Creek Upgrade	66611900-5410	\$ 50,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>
R1903717	INFORMATION	IMAGELINK i9610 DIGITAL	10011103-	\$7,500.00
	MANAGEMENT SRVCS	ARCHIVE WRITER SERVICE	5325	

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

**4**  
**RESOLUTION NO. 19-626**

**IN THE MATTER OF ACCEPTING AND APPROVING THE DELAWARE COUNTY SHERIFF'S OFFICE TRANSPORT REPORT FOR THE MONTH OF MAY 2019:**

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

WHEREAS, section 325.07 of the Revised Code requires the County Sheriff to submit monthly expense reports to the Board of County Commissioners; and

WHEREAS, the Delaware County Sheriff has submitted a monthly report for May 2019;

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

Section 1. The Board hereby accepts and approves the Delaware County Sheriff's Office Transport Reports for

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the month of May 2019.

Section 2. The Board hereby allows the expenses contained in the monthly report.

(Copies available for review at the Commissioners’ Office until no longer of administrative value.)

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

**5**  
**RESOLUTION NO 19-627**

**IN THE MATTER OF SETTING THE DATE AND TIME TO RECEIVE PROPOSALS FOR THE DELAWARE COUNTY TRANSFER AND RECYCLING CENTER DESIGN-BUILD-FINANCE-OPERATE CONTRACT:**

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

WHEREAS, the Regional Sewer District requested and has received statements of qualifications for firms to design, build, finance, and operate a new Delaware County Transfer and Recycling Center; and

WHEREAS, the Regional Sewer District has reviewed the statements of qualifications and desires to receive pricing proposals for the Delaware County Transfer and Recycling Center Design-Build-Finance-Operate Contract from the firms selected and ranked most qualified to provide the desired services; and

WHEREAS, the Regional Sewer District will provide the proposal request documents, including proposal requirements, format, and forms to the firms shortlisted through the Request for Qualifications per Resolution No. 19-1316;

NOW, THEREFORE, BE IT RESOLVED that the Request for Proposal Documents for the Delaware County Transfer and Recycling Center Design-Build-Finance-Operate Contract are hereby approved, and the Sanitary Engineer is authorized to issue and receive proposals on behalf of the Board in accordance with the following Request for Proposals:

**REQUEST FOR PROPOSALS**  
**Delaware County Regional Sewer District**  
**50 Channing Street Delaware, Ohio 43015**

Project Name:            Delaware County Transfer and Recycling Center (“TRC”)  
Project Location:        1020 US Highway 42 N, Delaware, Ohio 43015  
Owner:                    Delaware County Board of Commissioners  
Project Delivery:        Design-Build, Finance, Operate  
Submit Responses to:    Brad Stanton, Delaware County Sewer District  
                                  50 Channing Street  
                                  Delaware, Ohio 43015

Responses Due:    August 15, 2019

Respondents shall submit Pricing Proposals directly to Brad Stanton at 50 Channing Street, Delaware, OH 43015.

All questions regarding this RFP shall be submitted in writing to Brad Stanton at BStanton@co.delaware.oh.us with the Project Name included in the subject line. Questions will be answered and posted at <https://regionalsewer.co.delaware.oh.us/rfp/> on a regular basis until one week prior to the response due date. The name of the party submitting a question will not be included in the posted answer.

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

**6**  
**RESOLUTION NO. 19-628**

**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;

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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
U19-099	MCI/Verizon	Tussic Street Road	Install fiber optic cable via directional bore
U19-100	Centurylink	Miller Paul Road	Road Bore
U19-101	Aspire Energy	Dent Road	Install gas main
U19-102	Aspire Energy	Green Cook Road	Install gas main
U19-103	Aspire Energy	Trenton Road	Install gas main
U19-104	MCI/Verizon	Greif Parkway	Install fiber optic cable via directional bore
U19-105	Columbia Gas	Africa Road	Test digs
U19-106	MCI/Verizon	Old Liberty Road	Install fiber optic cable via directional bore
U19-107	MCI/Verizon	Sawmill Parkway	Install fiber optic cable via directional bore
U19-108	Spectrum	E. Hidden Ravines Drive	Replace cable in ROW
U19-109	AEP	Worthington Road	Replace and install new poles

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

**7**

**RESOLUTION NO. 19-629**

**IN THE MATTER OF AUTHORIZING THE PURCHASE OF MOWERS FOR THE COUNTY ENGINEER’S OFFICE:**

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

WHEREAS, pursuant to section 5549.01 of the Revised Code, the Board of Commissioners (the “Board”) may purchase machinery and equipment for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary and may also purchase, hire, or lease automobiles, motorcycles or other conveyances and maintain them for the use of the county engineer and the county engineer’s assistants when on official business; and

WHEREAS, the County Engineer’s Office has a need for two additional mowers for use in performing the office’s official duties; and

WHEREAS, the Board participates in the State of Ohio’s cooperative purchasing program (the “Program”); and

WHEREAS, the mowers are available for purchase via the Program;

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

Section 1. The Board hereby authorizes the purchase of two 2019 John Deere Z950R ZTrak Mowers at the price of \$10,984.35 each, for a total price of \$21,968.70 from Deere & Company thru Ag-Pro Companies.

Section 2. The purchase authorized in Section 1 hereof shall be subject to the terms and conditions of Contract #800750, Index #STS-515 in the Program, which is fully incorporated herein and of which the purchase order shall be made a part.

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

**8**

**RESOLUTION NO. 19-630**

**IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2019 DRAINAGE MAINTENANCE PART II ANNUAL CONTRACT:**

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

WHEREAS, the Delaware County Engineer recommends and approves the Bid Specifications and the Bid

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Opening Date and Time for the 2019 Drainage Maintenance Part II Annual Contract;

NOW, THEREFORE, BE IT RESOLVED that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for 2019 Drainage Maintenance Part II Annual Contract:

**2019 Drainage Maintenance Part II Annual Contract**

**Public Notice  
Advertisement for Bids**

Bid shall be submitted electronically through the [www.bidexpress.com](http://www.bidexpress.com) web service until 10:00am Tuesday, July 30, 2019, at which time they will be publicly received and read aloud, for the project known as

**2019 Drainage Maintenance Part II Annual Contract.**

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from [www.bidexpress.com](http://www.bidexpress.com). All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at [www.co.delaware.oh.us](http://www.co.delaware.oh.us) and may be accessed by selecting "Public Notices and Bids"

The prices of this contract shall be in effect from August 12, 2019 to December 31, 2019. The Board of Commissioners reserves the right to make a non-exclusive award and to issue purchase orders on an as needed basis.

Contract prices shall also be made available for cooperative purchasing with the Delaware Soil and Water Conservation District.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:  
July 5, 2019

**SPECIFICATIONS  
2019 Drainage Maintenance Part II  
Annual Contract  
Delaware County, Ohio**

**GENERAL**

This contract is an agreement to perform construction of agricultural drainage improvements including swales, ditches, subsurface tile repairs, and seeding and mulching operations at various locations within Delaware County when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer (collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to perform all work ordered under this contract promptly as requested by the Owner. Failure to complete the requested work within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

**COOPERATIVE PURCHASING PROGRAM**

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

**NON EXCLUSIVE AWARD**

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or

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before the specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

**CONSTRUCTION AND MATERIAL SPECIFICATIONS**

The 2016 ODOT Construction and Material Specifications (CMS) shall govern the work except as follows:

The following are NRCS Specifications for the appropriate line items.

**582 Open Channel**

[https://efotg.sc.egov.usda.gov/references/public/OH/OH\\_582\\_OpenChan\\_11-12-14.pdf](https://efotg.sc.egov.usda.gov/references/public/OH/OH_582_OpenChan_11-12-14.pdf)

**606 Subsurface Drain**

[https://efotg.sc.egov.usda.gov/references/public/OH/OH\\_Subsurface\\_Drain\\_606\\_1-31-14.pdf](https://efotg.sc.egov.usda.gov/references/public/OH/OH_Subsurface_Drain_606_1-31-14.pdf)

**608 Surface Drain**

[https://efotg.sc.egov.usda.gov/references/public/OH/Surface\\_Drainage\\_Main\\_or\\_Lateral\\_608.pdf](https://efotg.sc.egov.usda.gov/references/public/OH/Surface_Drainage_Main_or_Lateral_608.pdf)

**MINIMUM QUANTITIES**

The bid blank provides minimum payment quantities for a single work order, which may include multiple locations when authorized under the same authorization. Payment shall be made for the minimum quantity for each item of work performed under a single work order if the quantity performed is less than the minimum amount listed.

**MISCELLANEOUS TERMS AND CONDITIONS**

**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.

**Prohibited Interests:** Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder 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 project, without the prior express written consent of County.

**Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, 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.

**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.

**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.

**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.

**Findings for Recovery:** Bidder certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

**Independent Contractor:** The Contractor acknowledge and agrees 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 Contractor and Delaware County. 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. **Contractor shall certify 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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Vote on Motion            Mr. Merrell            Absent   Mrs. Lewis            Aye            Mr. Benton            Aye

**9**  
**RESOLUTION NO. 19-631**

**IN THE MATTER OF APPROVING OWNER’S AGREEMENT FOR HAWKS NEST AT HIGHLAND LAKES – WORTHINGTON ROAD IMPROVEMENTS:**

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Hawks Nest at Highland Lakes - Worthington Road Improvements;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreement for Hawks Nest at Highland Lakes – Worthington Road Improvements as follows:

**OWNER’S AGREEMENT**

**THIS AGREEMENT** made and entered into this 1<sup>st</sup> day of July, 2019 by and between the **COUNTY OF DELAWARE** (acting through its **BOARD OF COUNTY COMMISSIONERS**), hereinafter called the **COUNTY**, and **BOB WEBB HAWKS NEST LLC**, hereinafter called the **OWNER**, as evidenced by the Engineering and Construction Plan entitled **HAWKS NEST AT HIGHLAND LAKES – WORTHINGTON ROAD IMPROVEMENTS**, hereinafter called the **Plan**, is governed by the following considerations to wit:

- 1) The **OWNER** is to have surveyed, engineered, constructed, installed and/or otherwise make all of the improvements according to the **PLAN**.
- 2) The **OWNER** shall pay the entire cost and expense of said improvements.
- 3) The **OWNER** is to provide an irrevocable letter of credit or other approved financial warranties in the amount of **THREE HUNDRED FORTY-THREE THOUSAND SIX HUNDRED DOLLARS (\$343,600)** payable to the **BOARD OF COUNTY COMMISSIONERS** to insure the faithful performance of this **AGREEMENT** and the completion of all of the said improvements in accordance with the current **“Delaware County Engineering and Surveying Standards for Subdivision Development”** and current **“Subdivision Regulations of Delaware County, Ohio”**. Said financial warranty will be released and returned to the **OWNER** within thirty (30) days of the acceptance of the improvements by the **COUNTY**.
- 4) Before beginning construction, the **OWNER** shall deposit inspection fees in the amount of **TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the project and acceptance of the improvements by the **DELAWARE COUNTY COMMISSIONERS**, the remaining amount in the fund shall be returned to the **OWNER**.
- 5) The **OWNER** is to complete all construction to the satisfaction of the **COUNTY no later than November 1, 2019** and will receive an approval letter from the **Delaware County Engineer** as evidence of the **OWNER’S** release from responsibility to said project.
- 6) The **OWNER** shall indemnify and hold the **COUNTY** free and harmless from any and all claims for damages of every nature arising or growing out of the construction of said improvements that result from the **OWNER’S** negligence or intentional misconduct.
- 7) The **OWNER** will at all times during the construction of said improvements maintain thru traffic on the public roadway and keep the same free of unreasonable hazards to the public. Said roadway shall not be closed to traffic except as approved by the **Delaware County Engineer**. Construction signs, barricades and lights shall be placed as needed on the job site as in accordance with the **Ohio Department of Transportation “Uniform Traffic Control Devices”** and **“Traffic Control for Construction and Maintenance”**.
- 8) The **OWNER** further agrees that any violation of or noncompliance with any of the provisions as stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **Delaware County Engineer** shall have the right to stop work forthwith and use the surety for the completion of the improvements.
- 9) If the **OWNER** should become unable to carry out the provisions of this **AGREEMENT**, the **OWNER’S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.
- 10) Upon approval and acceptance of the improvements, the original copy of the **PLAN** shall become the property of the **COUNTY** and shall be filed in the office of the **Delaware County Engineer**.
- 11) In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants to the **OWNER** or his agent the right and privilege to make the said improvements stipulated herein.

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

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**10****RESOLUTION NO. 19-632**

**IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN JOHN MICHAEL DURBIN AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR DEL-CR13-1.65:**

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

WHEREAS, the County Engineer recommends approval of the contract of sale and purchase with John Michael Durbin for the project known as DEL-CR13-1.65;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Delaware County Board of Commissioners approves the contract of sale and purchase with John Michael Durbin for the project known as DEL-CR13-1.65 as follows:

**CONTRACT OF SALE AND PURCHASE  
VACANT LAND/IMPROVEMENTS**

**WITNESSETH:** On this 1st day of July, 2019, John Michael Durbin, unmarried 7390 Africa Road Galena, Ohio 43021 hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)  
7 WD  
DEL-CR13-1.65

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

**TERMS OF PURCHASE:**

1. PURCHASER promises and agrees to pay to the SELLER the total sum of \$300,000.00 which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
  - (A) All title, rights, and interest in and to the PROPERTY; and,
  - (B) For damages to any residual lands of the SELLER; and,
  - (C) For SELLER's covenants herein; and,
  - (D) *Not Applicable*
  - (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, whatever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to

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any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.



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- 13. This CONTRACT shall be binding upon the SELLER and the SELLER’s heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
- 14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
- 16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, 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.
- 17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Section 2. The Board approves a Purchase Order and Voucher for the above contract.

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

**11**

**RESOLUTION NO. 19-633**

**IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR BROOKVIEW MANOR SECTION 3:**

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

WHEREAS, Pulte Homes of Ohio, LLC has submitted the Plat of Subdivision (“Plat”) for Brookview Manor Section 3, including related development plans (“Plans”) and requests approval thereof by the Board of Commissioners of Delaware County; and

WHEREAS, the Berlin Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on May 2, 2019; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on May 1, 2019; and

WHEREAS, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on May 9, 2019; 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 May 13, 2019; 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 May 31, 2019;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for Brookview Manor Section 3.

**Brookview Manor Section 3:**

Situated in the State of Ohio, County of Delaware, Township of Berlin, Farm Lots 7 and 10, Quarter Township 1, Township 4, Range 18, United States Military Lands, Being 29.016 Acres of Land all out of that 87.845 Acre Tract Conveyed to Pulte Homes of Ohio, LLC, a Michigan Limited Liability Company by Deed of Record in Official Record 1310, Page 2276-2279, Being of Record in the Recorder’s Office, Delaware County, Ohio. Cost: \$78.

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

**12**

**RESOLUTION NO. 19-634**

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**IN THE MATTER OF APPROVING A WETLAND MITIGATION PURCHASE AGREEMENT FOR DEL-CR 124-7.89, HOME ROAD EXTENSION PROJECT:**

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

**WETLAND AND STREAM MITIGATION AGREEMENT  
GREAT MIAMI MITIGATION BANK**

**WHEREAS**, the discharge of dredged or fill material into waters of the United States and waters of the State of Ohio, including wetlands, is regulated pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and/or Ohio Revised Code Chapter 6111; and

**WHEREAS**, entities planning to place dredged or fill material into waters of the United States or waters of the State of Ohio, including wetlands, must comply with standards and conditions imposed by the Army Corps of Engineers (the "Corps") and/or the Ohio Environmental Protection Agency (the "Ohio EPA") including, in many cases, the mitigation of wetland impacts; and

**WHEREAS**, efforts to restore wetlands are often most successful when directed toward the establishment of large, varied wetland ecosystems rather than small, isolated wetlands which are often threatened by urban encroachment; and

**WHEREAS**, Five Rivers Metroparks ("FRMP") has participated in the Interagency Review Team ("IRT") review process and received approval from the IRT (which includes the Corps and Ohio EPA) to establish the Big Darby Hellbranch Wetlands Mitigation Bank and to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands and other waters pursuant to the Section 404/401 permit process and Ohio's Isolated Wetland Permit process; and

**WHEREAS**, the Corps and the Ohio EPA have agreed to consider the purchase of wetland mitigation credits in an appropriate service area approved by the IRT to fulfill an entity's requirement to mitigate wetland impacts.

**THEREFORE**, Delaware County Engineer ("Customer") and FRMP agree they will comply with the following guidelines and procedures by which Customer will purchase wetland mitigation credits from S+W, representing the restoration of wetlands in the State of Ohio which will be permanently maintained and which will serve to mitigate wetland impacts permitted under Sections 404 and 401 of the Clean Water Act and in accordance with ORC Chapter 6111.

**I. OBLIGATIONS OF CUSTOMER**

A. Pursuant to the requirements of Sections 401 and 404 of the Clean Water Act and the regulations promulgated thereunder and/or ORC Chapter 6111, Customer is obligated to mitigate for impacts to 0.309 acres of wetlands at itsdel-cr124-7.69, Home Road Extension site located at the intersection of US 23 and Home Road in Orange Township of Lewis Center, Delaware County, Ohio. The Customer's initial 10% deposit is refundable if within the initial 6-month Reservation Period the Corps or the Ohio EPA denies Customer's request for a permit for the wetland impact or if Customer elects to withdraw their permit application provided the Customer notifies S+W in writing of the denial of its permit or its intention to withdraw its permit application prior to the expiration of the initial 6-month Reservation Period. After the initial 6-month Reservation Period all deposit payments are non-refundable. If the Reservation Period expires due to lack of timely deposit payments, the wetlands credits will not be reserved for Customer but will be available on a first-come basis to all Customers of S+W. S+W will provide written notification of the termination of this Agreement to the Corps and/or Ohio EPA as applicable.

B. Customer hereby agrees to pay to FRMP the amount of \$32,500 in consideration for the purchase of 0.5 wetland mitigation credits or N/A stream mitigation credits at the Great Miami (Trotwood) Mitigation Bank. Each credit has been approved by the Ohio EPA and the Corps as equivalent to the restoration of one (1) acre of wetland and one (1) LF of stream. FRMP will reserve the necessary credits for 180 days for a deposit of \$3,250 (10%). If Customer has not received the necessary approvals pursuant to Section 404 and/or 401 of the Clean Water Act or the Ohio Isolated Wetland Permit program after 180 days, FRMP will continue to reserve the necessary credits for an additional 180 days upon receipt of an additional 10% deposit. If after 180 days an additional deposit is not made, the wetlands credits will not be reserved for Customer but will be available for a first-come basis to all FRMP Customers.

C. If within the initial 180 day reservation period the Corps or the Ohio EPA denies Customer's request for a permit for the wetland impact or if Customer elects to withdraw their permit application, FRMP will refund Customer's deposit and provide written notification of the termination of this Agreement to the Corps. All deposits become non-refundable 181 days after the contract initiation date (as defined in paragraph I.E of this Agreement). Customer must provide written notification to FRMP of the denial of its permit or its intention to withdraw its permit application prior to the expiration of the 180 day reservation period in order to obtain a refund of its deposit.

D. Customer and FRMP are aware that the Section 4040 permit process, and, if necessary, the Section 401 Certification process, of the Ohio Isolated Wetland Permit program must be completed by the Corps and/or the Ohio EPA and that this Wetland Mitigation Agreement will be used by the Corps and/or the Ohio EPA to document Customer's mitigation plan. Therefore, subject to paragraph I.B of this Agreement, Customer's

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deposit/payment(s) will be held by FRMP until such time as the Corps and/or the Ohio EPA issues the required permits.

E. **Within thirty (30) days of issuance of the Section 404 permit and, if necessary, the Section 401 Certification or Ohio Isolated Wetland Permit, Customer will tender the outstanding balance of the cost of the mitigation credits.** Customer will also provide FRMP with a copy of the Section 404 permit and, if applicable, the Section 401 Certification or the Ohio Isolated Wetland Permit or other approval to proceed. If payment is not received by the thirtieth day after the issuance of the appropriate permit (if more than one wetland permit is required the most recent (i.e. the latest) permit date will be utilized to determine the payment due date), an interest penalty of 1.0% per month will be assessed to the balance from the permit issuance date for each month or portion thereof until payment is received in full. The contract initiation date shall be the date the agreement is signed by the Customer or the permit issuance date should no contract be in place at the time the permit is issued. Under no circumstances do the payment terms of this Agreement alter or change the conditions or terms of the permit(s) issued to Customer. It is the sole responsibility of Customer to ensure that it adheres to the terms of its permit(s).

F. Customer shall have no other obligation or responsibility for future payments for maintenance of the restored wetland areas at the Great Miami Mitigation Bank.

G. Customer shall submit a completed Montgomery County Vendor Application to FRMP at the same time this Agreement is submitted.

**II. OBLIGATIONS OF FIVE RIVERS METROPARKS**

A. FRMP has available for sale mitigation credits at the Great Miami Mitigation Bank which have been approved by the IRT to mitigate for certain wetland impacts.

B. In consideration for the payment of \$32,500 (plus penalties, if applicable, as per paragraph I.E of this Agreement) by Customer, FRMP hereby agrees to provide 0.5 acres of wetlands mitigation credit (and N/A linear feet of stream mitigation credit at the Great Miami Mitigation Bank for the benefit of Customer hereunder. FRMP shall have all responsibility for assuring the restoration and the monitoring and maintenance of the wetlands as provided herein.

C. FRMP will provide written confirmation to the Corps and the Ohio EPA of the purchase of wetland and/or stream mitigation credits on behalf of Customer. The confirmation will notify the number of credits purchased pursuant to this Agreement.

D. Customer may submit the executed copy of this Agreement to the Corps and /or the Ohio EPA to document its commitment to mitigate anticipated wetland and/or stream impacts.

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

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**ADMINISTRATOR REPORTS**

Mike Frommer, County Administrator

- Gave a brief update on the funding of the Transfer Station Project.
- Attended the EMS picnic yesterday. Proud owner of the smoked meats trophy for this year.
- Today is Director Jeff Fishel’s first day.

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**COMMISSIONERS’ COMMITTEES REPORTS**

Commissioner Benton

- Welcome to Jeff Fishel
- Attended the Regional Planning meeting last Thursday evening. The commercial and industrial overlays were approved for the Berlin Business Park.
- The Senate sent the Commissioners a proclamation for “Superb Success” on receiving a 2019 Public Service Award from the Ohio Water Environment Authority Southwest section.
- Happy 4<sup>th</sup> of July to everyone. Hope it is a safe and happy holiday.

Commissioner Lewis

- Thank you to Mike Frommer on the work he has done on the Transfer Station.
- Would like to wish everyone a happy 4<sup>th</sup> of July.

**15**

**RESOLUTION NO. 19-635**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING 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

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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 pending litigation.

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

**RESOLUTION NO. 19-636**

**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. Benton        Aye       Mr. Merrell        Absent

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

\_\_\_\_\_  
Barb Lewis

\_\_\_\_\_  
Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners