

COMMISSIONERS JOURNAL NO. 72 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 9, 2020

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

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

1
RESOLUTION NO. 20-319

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 2, 2020:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 2, 2020; and

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

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

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

2
RESOLUTION NO. 20-320

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0408:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0408 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Altman Company	Building Improvements	42011438-5410	\$13,768.58
Life Start	Residential Treatment	22511607-5342	\$49,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2002884	4IMPRINT INC	FOSTER PARENT RECRUITMENT	22511607 - 5317	\$6,600.00
R2002895	RITE-WAY COMPLIANCE GROUP LLC	FOG BMP MUNICIPAL PROGRAM ANNUAL SUBSCRIPTION	66211900 - 5301	\$5,100.00
R2002908	MOTOROLA SOLUTIONS INC	SCHEDULE #573077-0	21411306 - 5450	\$61,927.00

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

3
RESOLUTION NO. 20-321

IN THE MATTER OF APPROVING A RESOLUTION FROM THE DELAWARE COUNTY BOARD OF COMMISSIONERS DECLARING APRIL 12-18, 2020, AS NATIONAL PUBLIC SAFETY TELECOMMUNICATOR WEEK IN THE COUNTY OF DELAWARE, OHIO:

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

WHEREAS, the Congress of the United States, and the President of the United States have, since 1992, established the second week of April as National Public Safety Telecommunicator Week; and

WHEREAS, emergencies can occur at any time; and

WHEREAS, public safety telecommunicators daily serve the citizens of Delaware County by providing that first and most critical contact between our citizens and their need for a public safety response; and

WHEREAS, public safety telecommunicators are the single vital communications link for monitoring,

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dispatching, providing information and ensuring the safety of law enforcement, fire, emergency medical and emergency management responders; and

WHEREAS, this board believes that the public safety telecommunicators that serve the citizens of Delaware County are a highly trained and dedicated corps of personnel; and

WHEREAS, the services of public safety telecommunicators is a "silent service" that is seldom observed by the public that deserves recognition; and

NOW, THEREFORE, be it resolved by the Board of County Commissioners, Delaware County, State of Ohio, enthusiastically supports recognition of all our professional public safety telecommunicators declaring the second full week of April as the National Public Safety Telecommunicator Week in Delaware County, and that all our residents are invited to observe this event.

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

4
RESOLUTION NO. 20-322

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF DEVELOPMENTAL DISABILITIES AND THE BOARD OF COUNTY COMMISSIONERS, ON BEHALF OF THE DELAWARE COUNTY SHERIFF'S OFFICE, FOR CERTAIN REAL PROPERTY LOCATED AT 149 EAST ORANGE ROAD, LEWIS CENTER, OHIO 43035:

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

WHEREAS, the Sheriff recommends approval of the Lease Agreement by and between the Delaware County Board of Developmental Disabilities and the Board of County Commissioners, on behalf of the Delaware County Sheriff's Office, for certain real property located at 149 East Orange Road, Lewis Center, Ohio 43035;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the lease agreement by and between the Delaware County Board of Developmental Disabilities and the Board of County Commissioners, on behalf of the Delaware County Sheriff's Office, for certain real property located at 149 East Orange Road, Lewis Center, Ohio 43035:

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), dated this 9th day of April 2020, is made and entered into by and between the Delaware County Board of Developmental Disabilities, Delaware County, Ohio, hereinafter referred to as "Lessor" and the Board of County Commissioners, Delaware County, Ohio, on behalf of the Delaware County Sheriff's Office, hereinafter referred to as "Lessee" (individually, "Party"; collectively, "Parties");

W I T N E S S E T H:

1. **LEASED PREMISES:** In consideration of the terms, provisions and covenants of this Lease, Lessor hereby leases, lets, and demises to Lessee certain real property located at 149 East Orange Road, Lewis Center, Ohio 43035, more specifically being the rooms, restrooms, closets, stairwell, and lobby and the DelCo Sheriff's Office Space contained within Exhibit A, which by this reference is hereby incorporated, of the Delaware County Board of Developmental Disabilities facility, Delaware County Auditor Property Identification Number 318-234-04-003- 500 (referred to as the "Leased Premises" or the "Rooms").
2. **TERM:** Subject to and upon the conditions set forth below, the term of this Lease shall commence as of the date the last party affixing its signature to this Lease, the "Commencement Date", and upon the Commencement Date this Lease shall act as to expressly terminate and replace any and all previously entered into leases or amendments between the Parties, and shall terminate on May 1, 2022, the "Termination Date" (collectively referred to as the "Term" or "Lease Term") This Lease shall be renewable by and through such written mutually agreeable terms between the Parties. In no event shall the Lessee be required to vacate the premises sooner than 90 days after receiving notice of termination.
3. **RENT:** On or before May 1 of every year during the Lease Term, Lessee shall pay to Lessor as rent for the Leased Premises the annual sum of Fifty-Five Thousand, Eight Hundred Seventy Dollars and Forty-Three Cents (\$55,870.43), constituting a rate of Seven Dollars and Zero Cents (\$7.00) per square foot for all 7,981.49 square feet of the Rooms.
4. **COMMUNICATION I VOICE OVER INTERNET PROTOCOL (VOIP):** Lessee shall allow up to sixty (60) days to port telephone numbers.
5. **IT SERVICES:** Lessee shall be responsible for providing Information Technology ("IT") services and support for the Leased Premises. Lessee agrees to work with the Lessor's IT services and supports for the

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Leased Premises.

6. OFFICE EQUIPMENT AND SUPPLIES: Lessee shall furnish its own office equipment, including but not limited to workstation dividers, computers, printers, copiers and copier equipment, chairs, and office supplies.
7. ENTRANCE: Lessee, including all staff and visitors of Lessee, shall enter and exit the Leased Premises via the South-East entrance and South Parking Lot, located at 149 East Orange Road, Lewis Center, Ohio 43035.
8. MAILBOX: Lessee shall be permitted to use a secure mailbox for the address located at 149 East Orange Road, Lewis Center, Ohio 43035.
9. JANITORIAL SERVICES; TRASH; RESTROOMS: Lessee shall furnish its own janitorial services and shall be permitted to share a dumpster for proper and lawful trash disposal with Lessor. Lessee shall have access to restrooms available in the South Wing of the Delaware County Board of Developmental Disabilities facility ("Facility").
10. PARKING; SNOW REMOVAL; VENDING; BUILDING ACCESS: Lessee shall be permitted to reserve twelve (12) parking spaces for patrol cruisers in the South Parking Lot of the Facility. In addition, Lessee's employees shall be permitted to park personal vehicles in the East Parking Lot of the Facility. Parking lot and sidewalk snow removal for the entire Facility will normally occur between 6:00 a.m. and 8:00 a.m. on weekdays. If the Lessee requires snow removal outside of these hours, Lessee is permitted to independently perform snow removal on Lessor's property to allow for ingress, egress, and parking for the Leased Premises. Lessee shall have access to vending located in the Facility's East Wing.
11. SIGNS: Lessee may, at its cost, place or install exterior signage directing individuals to the Leased Premises with approval by the landowner.
12. USE: Lessee warrants and represents to Lessor that Lessee shall use and occupy the Leased Premises exclusively for law enforcement purposes in accordance with the Delaware County Sheriff's Office and in accordance with the laws of the State of Ohio.
13. RENOVATIONS: Lessee shall be responsible for securing estimates and/or bids, executing contracts, and coordinating work for any renovations of the Leased Premises based on Lessee's needs. Lessee and Lessor agree to certain renovation estimates based on the needs expressed by Lessee. The following provides renovation estimates previously secured for the Leased Premises:
 - A. Security: Lessee shall be permitted to install a keyless entry access point on the exterior and interior doors to the Leased Premises, in conjunction with cameras and a monitoring surveillance system to allow access for visitors to the Leased Premises. The estimated cost is One Thousand, Six Hundred Fifty Dollars and Zero Cents (\$1,650.00). Lessee shall also be permitted to install card readers for employee access to the exterior and interior doors to the Leased Premises. The estimated cost is Three Thousand, Nine Hundred Ninety-Two Dollars and Zero Cents (\$3,992.00). If card reader access is able to be provided through Delaware County, the actual cost may be significantly less.
 - B. Fire Door: Lessor agrees to install a fire door in the wall currently separating the Rooms and to invoice Lessee for the cost of construction/installation. The estimated cost is Four Thousand, Six Hundred Forty-Five Dollars and Zero Cents (\$4,645.00).
14. UTILITIES AND ASSESSMENTS: Lessor shall pay for all utilities for the Leased Premises, except for IT. Lessee shall pay real estate assessments, if any, relating to its use and occupancy of the Leased Premises as they become due and payable.
15. REPAIRS AND MAINTENANCE:
 - (a) Lessor is not required to make any improvements, replacements, or repairs of any kind or character to the Leased Premises during the term of this Lease. Lessee shall operate and shall maintain, repair, and replace as appropriate to maintain in good repair all portions of the Leased Premises in coordination with Lessor.
 - (b) Lessee shall not allow any damage to be committed on any portion of the Leased Premises. At the termination of this Lease, by lapse of time or otherwise, Lessee shall deliver the Leased Premises to Lessor in as good condition as existed at the Commencement Date or Termination Date of this Lease, ordinary wear and tear excepted.
16. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS: Lessee, at Lessee's expense, shall comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having jurisdiction relating to the use, condition, and occupancy of the Leased Premises.
17. LESSEE ALTERATIONS AND IMPROVEMENTS: Lessee may make, at Lessee's cost, any non-

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structural alterations, physical additions, or improvements to the Leased Premises that Lessee deems appropriate. Lessee shall consult with Lessor regarding any proposed structural alteration to the Building. Lessee may make a major structural alteration only with the written consent of Lessor, which shall not be withheld unreasonably. Lessee shall be responsible for all costs of any such major structural alteration to the Building. Any alterations, physical additions, or improvements to the Leased Premises shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease, to the extent that the alterations, physical additions, or improvements cannot be removed without causing damage to the Leased Premises. Lessor, at its option, may require Lessee to remove any physical additions and/or repair any alterations in order to restore the Leased Premises to the condition existing at the time Lessee took possession, all costs of removal and/or alterations to be borne by Lessee.

18. **INSURANCE:** Lessor shall maintain property and casualty insurance coverage on the Leased Premises. Lessee shall maintain insurance on all its contents, as well as general liability insurance, listing the Lessor as additional insured with respect to Lessee's use of the Leased Premises.

19. **QUIET ENJOYMENT:** Lessor warrants that it has full right to execute and to perform this Lease and to grant the estate demised and that Lessee, performing the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease as well as any extension or renewal thereof. Lessor shall not be responsible for the acts or omissions of any third party that may interfere with Lessee's use and enjoyment of the Leased Premises.

20. **LESSOR'S RIGHT OF ENTRY:** Lessor acknowledges that it shall only be provided access to the Leased Premises through the exterior door. Further, Lessor agrees not to enter the Leased Premises except with an agent and/or employee of Lessee present. Upon the request to enter being made by Lessor, Lessee shall forthwith arrange for an agent and/or employee of Lessee to accompany Lessor to enter the Leased Premises.

21. **SUBLEASE AND ASSIGNABILITY:** Lessee shall not sublease nor assign the Leased Premises or any portion thereof during the term of this Lease.

22. **DEFAULT BY LESSEE:** The following shall be deemed to be events of default by Lessee under this Lease:

(a) Lessee shall fail to pay when due any payment required pursuant to this Lease, and the failure is not cured within thirty (30) days after written notice to Lessee;

(b) Lessee shall fail to comply with any term, provision or covenant of this Lease, other than the payment of money, and the failure is not cured or Lessee has not begun taking action to cure within forty-five (45) days after written notice to Lessee;

(c) Lessee shall file a petition or be adjudged bankrupt or insolvent under the National Bankruptcy Act, as amended, or any similar law or statute of the United States or any state; or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee; or Lessee shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or

(d) Lessee shall do or permit to be done any act that results in a lien being filed against the Leased Premises, which lien is not removed or bonded within 120 days after Lessee has actual notice of the lien.

23. **REMEDIES FOR LESSEE'S DEFAULT:** Upon the occurrence of any event of default set forth in this Lease, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand:

(a) Terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to surrender the Leased Premises, Lessor may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel, or remove Lessee and any other person who may be occupying all or any part of the Leased Premises without being liable for prosecution of any claim for damages. Lessee agrees to pay on demand the amount of all loss and damage, including attorney fees, which Lessor may suffer by reason of the termination of the Lease under this subparagraph, whether through inability to re-let the Leased Premises on satisfactory terms or otherwise.

(b) Enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Lessee and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, and re-let the Leased Premises on behalf of Lessee and receive directly the rent by reason of the re-letting. Lessee agrees to pay Lessor on demand any deficiency that may arise because of any re-letting of the Leased Premises; further, Lessee agrees to reimburse Lessor for any expenditure made by it for maintaining the building in a usable manner, including remodeling or repairing in order to re-let the Leased Premises.

(c) Enter upon the Leased Premises, by picking or changing locks if necessary, without being

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liable for prosecution of any claim for damages, and do whatever Lessee is obligated to do under the terms of this Lease. Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in effecting compliance with Lessee's obligations under this Lease; further, Lessee agrees that Lessor shall not be liable for any damages resulting to Lessee from effecting compliance with Lessee's obligations under this subparagraph caused by the negligence of Lessor or otherwise.

(d) Terminate this Lease as an expiration of this Lease.

24. WAIVER OF DEFAULT OR REMEDY: Failure of Lessor to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Lessor shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth in paragraph 23 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by Lessor to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions, and covenants contained in this Lease.

25. FORCE MAJEURE: The Parties shall be temporarily excused from performance and shall not be entitled to impose any penalty as a result of any delay in performance caused by reason of war, insurrection, strike, automobile fuel shortage, weather, explosion, act of God, order of Court or other public authority, interruption of payments due under this Lease, or any other cause beyond the reasonable control of the Parties. Such excusal from performance shall continue until such force majeure ceases to exist or the Lease is terminated as provided herein.

26. EARLY TERMINATION: Either Party, on ninety (90) days' written notice to the other Party, may terminate this Lease.

27. SEVERABILITY: The provisions of this Lease 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.

28. COUNTY POLICIES: The Parties shall be bound by, conform to, comply with, and abide by all current applicable Delaware County, Ohio policies, including, but not limited to, the Contractor Safety Policy, Computer Usage Policy, Social Media Policy, and Internet Use Policy. Copies of such policies can be found at <http://www.co.delaware.oh.us/index.php/policies>.

29. NOTICE: All payments required to be made by Lessee shall be payable to Lessor at the address set forth below, and any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Parties at the respective addresses set out below:

LESSOR:
Board of Developmental Disabilities Delaware County, Ohio
7991 Columbus Pike
Lewis Center, OH 43035

LESSEE:
Board of County Commissioners, Delaware County, Ohio
101 North Sandusky Street
Delaware, OH 43015

30. ENTIRE AGREEMENT AND LIMITATION OF WARRANTIES: IT IS EXPRESSLY AGREED BY LESSOR AND LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE. IT IS LIKEWISE AGREED THAT THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED, OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BOTH LESSOR AND LESSEE.

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

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5**RESOLUTION NO. 20-323**

IN THE MATTER OF AWARDING THE BID TO AND APPROVING THE CONTRACT WITH ZIGZAG LAWN CARE FOR ITB #20-01 – FACILITIES TURF MOWING SERVICES FOR DELAWARE COUNTY:

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

WHEREAS, the Delaware County Board of Commissioners (the “Board”) received bids for Facilities Turf Mowing Services (ITB #20-01) on March 25, 2020; and

WHEREAS, after carefully reviewing the bids received, the Director of Facilities has determined that the bid submitted by Zigzag Lawn Care is the lowest and best bid for Facilities Turf Mowing Services and recommends awarding the bid to and approving the contract with Zigzag Lawn Care;

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

Section 1. The Board hereby determines that the bid submitted by Zigzag Lawn Care for ITB #20-01 Facilities Turf Mowing Services for Delaware County is the lowest and best bid and awards the bid to Zigzag Lawn Care.

Section 2. The Board hereby approves the following contract with Zigzag Lawn Care:

SERVICES AGREEMENT

This Agreement is made and entered into this 9th day of April, 2020, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Zigzag Lawn Care, 1723 Carr Rd., Ostrander, OH 43061 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide facilities turf mowing services for the County (the “Services”).
- 1.2 Services shall be defined in and rendered by the Contractor in accordance with the following documents, by this reference made part of this Agreement:
ITB #20-01 Facilities Turf Mowing Services bid documents and electronic bid forms.
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 6, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities as the Project Manager and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review of changes, commencement, and suspension 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 Contractor, 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 Bid Documents and Contractor’s Bid noted in Section 1.2.
- 4.2 For all Services, the estimated annual lump sum fee shall be \$24,940.00.
- 4.3 Total compensation under this Agreement shall not exceed \$49,880.00 without subsequent modification.
- 4.4 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.

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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.

County:

Name: Jon Melvin, Director of Facilities
 Address: 1405 US Highway 23 North, Delaware, OH 43015
 Telephone: 740 833-2283
 Email: jmelvin@co.delaware.oh.us

Contractor:

Name of Principal in Charge: Brad Grooms
 Address of Firm: 1723 Carr Rd.
 City, State, Zip: Ostrander, OH 43061
 Telephone: (740) 272-1499
 Email: bradgrm@gmail.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Project Manager and shall be in accordance with the Bid Documents.
- 6.2 Invoices shall be submitted to the Project Manager by the Contractor 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 Contractor 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, DELAYS AND EXTENSIONS

- 7.1 The Contractor shall commence Services upon written Notice to Proceed (“Authorization”) from the Project Manager and shall complete the Services in accordance with the Bid Documents.
- 7.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor 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 Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of termination, the Contractor 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 INDEMNIFICATION

- 9.1 The Contractor 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 Contractor, 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.

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10 INSURANCE

- 10.1 General Liability Coverage: Contractor 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.
- 10.2 Automobile Liability Coverage: Contractor 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.
- 10.3 Workers' Compensation Coverage: Contractor 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.
- 10.4 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 10.1 and 10.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 10.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, 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. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

11 MISCELLANEOUS TERMS AND CONDITIONS

- 11.1 Prohibited Interests: Contractor 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. Contractor 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.
- 11.2 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor 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.**
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.

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- 11.8 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.
- 11.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor 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.
- 11.10 Drug-Free Workplace: The Contractor 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 Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 11.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Contractor 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.

Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

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

6
RESOLUTION NO. 20-324

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR EMERGENCY MEDICAL SERVICES:

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

Supplemental Appropriation		
10011303-5266	Emergency Medical Services/COVID 19 Supplies	65,000.00
10011303-5366	Emergency Medical Services/COVID 19 Services	25,000.00

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

7
RESOLUTION NO. 20-325

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER’S AGREEMENT FOR LIBERTY GRAND COMMUNITIES SECTION 4:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider’s Agreement for Liberty Grand Communities Section 4;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Sanitary Sewer Subdivider’s Agreement for Liberty Grand Communities Section 4:

SUBDIVIDER’S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

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SECTION I: INTRODUCTION

This Agreement is entered into on this 9th day of April 2020, by and between **Liberty Grand, LLC**, hereinafter called "Subdivider", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the **Liberty Grand Communities Section 4** Subdivision Plat or condominium amendments on said development parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **Sanitary Sewer Improvements Plan for Liberty Grand Communities Section 4**, dated **January 31, 2020**, and approved by the County on **March 9, 2020**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are **289** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

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

OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$300,800**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

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

Initials _____

Date _____

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

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **Sanitary Sewer Improvements Plan for Liberty Grand Communities Section 4**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Sanitary Sewer Improvements Plan for Liberty Grand Communities Section 1 (\$10,528.00)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight and one-half percent (8½ %) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of **Sanitary Sewer Improvements Plan for Liberty Grand Communities Section 4 (\$25,568.00)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight and one-half percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Sanitary Sewer Improvements Plan for Liberty Grand Communities Section 4** as required by the County.

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SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

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

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

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

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

SECTION VI: EASEMENTS

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

SECTION VII: COMPLETION OF CONSTRUCTION

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

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

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.

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- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

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

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

SECTION VIII: SIGNATURES

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

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

8

RESOLUTION NO. 20-326

**IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE SANITARY SEWER
SUBDIVIDER'S AGREEMENT FOR HYATTS CROSSING PHASE 1:**

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

WHEREAS, the Sanitary Engineer recommends approval of Amendment No. 1 to the Sanitary Sewer Subdivider's Agreement for Hyatts Crossing Phase 1;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Amendment No. 1 to the Sanitary Sewer Subdivider's Agreement for Hyatts Crossing Phase 1;

**AMENDMENT NO. 1 TO SUBDIVIDER'S AGREEMENT
HYATTS CROSSING PHASE 1**

This Amendment No. 1 to the original Subdivider's Agreement, which was entered into on September 12, 2019, is made and entered into this 9th day of April, 2020, by and between Pulte Homes (the "Subdivider"), and the Delaware County Board of Commissioners (the "County").

RECITALS

WHEREAS, the Subdivider wishes to revise the Original Agreement by allowing partial acceptance of the Improvements including service connections for 64 single family residential equivalent connections, and,

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

AMENDMENT

A new SECTION IX shall be inserted as follows:

SECTION IX: PARTIAL ACCEPTANCE

The County shall permit the Subdivider to phase the acceptance of the Improvements within Hyatts Crossing Phase 1. The first phase shall consist of lot numbers 22 to 60 and 76 to 100 and extend from the existing manhole 38 to manhole 23 (excluding manholes 11 through 15) on the approved engineering drawings for Hyatts Crossing, dated June 13, 2019, and approved by the County on July 18, 2019, subject to the following conditions:

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1. The Subdivider shall install mechanical sewer plugs in the main line at manholes as directed by the Sanitary Engineer. The plugs must be inspected by the Subdivider with the County present weekly and immediately after rain events.
2. The installation of the plugs is subject to inspection by the County. The Subdivider shall be liable for any failures thereof and resulting damage until the Improvements have been accepted by the County and the maintenance period has expired.
3. Only upon final acceptance of upstream improvements shall the County permit the plugs installed as specified herein to be removed.
4. The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance of each Section/Phase/Part, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost for that Section/Phase/Part.
5. The acceptance of the remainder of the Improvements shall remain as set forth in the original Agreement. As each or any Section/Phase/Part is accepted separately, Subdivider agrees to provide as built drawings for each Section/Phase/Part as requested and one complete set of as built drawings for the Hyatts Crossing Sanitary Sewer Improvement Plan with the last final acceptance.

REMAINING PROVISIONS

All remaining provisions of the Agreement shall continue in full force and effect unless specifically amended herein.

IN WITNESS WHEREOF, the Subdivider and the County have executed this Amendment No. 1 as of the date first written above.

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

**9
RESOLUTION NO. 20-327**

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR FOURWINDS RESIDENTIAL HOTEL:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval:

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans for Fourwinds Residential Hotel;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners approves the sanitary sewer improvement plans for Fourwinds Residential Hotel for submittal to the Ohio EPA for their approval.

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

**10
RESOLUTION NO. 20-328**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MS CONSULTANTS, INC. FOR THE 36/37 PUMP STATION AND FORCEMAIN PROJECT:

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

WHEREAS, the Sanitary Engineer recommends approval of an agreement with MS Consultants, Inc. to perform the services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with MS Consultants, Inc.:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 9th day of April, 2020, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and MS Consultants, Inc., 2221 Schrock Road, Columbus, Ohio 43229 (“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”:
36/37 Pump Station and Forcemain Project. The Project includes professional engineering services associated with planning and design of a new sanitary pump station and new force mains to be

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installed in the median of 36/37 between Lackey Old State Road and Africa Road.

- 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 are defined in and shall be rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Attachment A: Scope of Services & Fee Proposal, Dated 3/23/2020

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the Project Manager and agent of the County for this Agreement.
- 2.2 The Sanitary Engineer or his designee 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 Attachment A.
- 4.2 For all Services described in the project scope, except “If Authorized” tasks, the fee shall be the lump sum fees provided by phase in Attachment A, not to exceed \$45,300.00.
- 4.3 For all Services identified in the project scope as “If Authorized” tasks, the fee for each authorized task shall be the fee specified in Attachment A for said task. “If Authorized” tasks shall only be performed upon written Notice from the Sanitary Engineer.
- 4.4 Total compensation under this Agreement shall not exceed \$45,300.00 without subsequent modification.
- 4.5 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 Services.

5 NOTICES

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

Sanitary Engineer:

Name: Delaware County Sanitary Engineer’s Office
Attn: Julie McGill

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: jmcgill@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Bill Johngrass

Address of Firm: 2221 Schrock Road

City, State, Zip: Columbus, OH 43229

Telephone: 614-898-7100

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Email: bjohngrass@msconsultants.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 Sanitary Engineer 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") from the Sanitary Engineer and shall complete the work in accordance with the schedule in Attachment A.
- 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 Sanitary Engineer 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 work performed after the date of termination.

9 CHANGE/ADDITIONS 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.

For services in addition to those included in Section 1 as authorized or "if authorized", a scope and fee shall be negotiated and agreed to by both Parties prior to performance of the services. This agreement shall be modified or amended in writing with the mutual consent and agreement of the Parties prior to performance of the additional services.

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

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or sub-consultants 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

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- 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 Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 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 work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

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.**
- 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,

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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 work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 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 work 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 work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

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

11
RESOLUTION NO. 20-329

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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:

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Permit #	Applicant	Location	Type of Work
UT20-0054	Spectrum	Berlin Station Road	Place cable in ROW
UT20-0055	Spectrum	Concord Road	Place cable in ROW
UT20-0056	Spectrum	Sawmill Parkway	Place cable in ROW
UT20-0057	AEP	Dustin Road	Replace poles
UT20-0058	AEP	Plumb Road	Replace poles
UT20-0059	Del-Co Water	Woodtown Road	Install Waterline
UT20-0060	Team Fishel	Home Road	3 test digs

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

12

RESOLUTION NO. 20-330

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

It was moved by Mr. Merrell, 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 a single axle snow and ice control dump body package and a dump truck chassis for use in performing the office’s official duties; and

WHEREAS, the Board participates in the Sourcewell (formerly NJPA) cooperative purchasing program and the dump body package is available for purchase via Sourcewell; and

WHEREAS, the Board participates in the Ohio Department of Transportation’s cooperative purchasing program (the “Program”), and the dump truck chassis is 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 one 2020 single axle snow and ice control dump truck package at a price of \$81,320 from Henderson Products, Inc. The purchase authorized in this Section shall be subject to Sourcewell Contract #080818-HPI, which is fully incorporated herein and of which the purchase order shall be made a part.

Section 2. The Board hereby authorizes the purchase of one 2021 dump truck chassis at a price of \$86,420.13 from Rush Truck Centers. The purchase authorized in this Section shall be subject to the ODOT Program Contract #023-20, which is fully incorporated herein and of which the purchase orders shall be made a part.

Section 3. The Board authorizes payment for the installation of the dump truck package onto the dump truck chassis at a price of \$20,899 from Wurm Hydraulics Equipment.

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

13

RESOLUTION NO. 20-331

IN THE MATTER OF APPROVING THE OWNERS’ AGREEMENT FOR IRONWOOD SUBDIVISION:

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

WHEREAS, the Engineer recommends approving the Owners’ Agreement for Ironwood Subdivision;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owners’ Agreement for Ironwood Subdivision:

OWNERS’ AGREEMENT
PROJECT NUMBER: 9019

THIS AGREEMENT, executed on this 9th day of April, 2020 between **GREGORY T. & KARI L. SHAKLEY**, hereinafter called ‘OWNERS’ and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **Ironwood**

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Subdivision, further identified as Project Number 9019 is governed by the following considerations to wit:

Said **OWNERS** are to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

1. Should **OWNERS** elect to record the plat prior to beginning construction, **OWNERS** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNERS** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNERS** elect to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNERS hereby elect to use Option 2 for this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNERS** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNERS** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNERS** further agree that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNERS** shall deposit **TWENTY-SEVEN THOUSAND FOUR HUNDRED DOLLARS (\$27,400)** 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 **OWNERS** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNERS**.

Upon completion of construction, the **OWNERS** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNERS'** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNERS'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNERS**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNERS** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNERS** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNERS** shall indemnify and hold harmless **Delaware County and all Townships and/or Villages** within Delaware County and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

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

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

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provisions and requirements of this AGREEMENT.

In consideration whereof, the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO hereby grants the OWNERS or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$342,000
CONSTRUCTION BOND AMOUNT	\$ N/A
MAINTENANCE BOND AMOUNT	\$ 34,200
INSPECTION FEE DEPOSIT	\$ 27,400

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

14

RESOLUTION NO. 20-332

IN THE MATTER OF APPROVING THE PLATS OF SUBDIVISION FOR THE PINES SECTION 2 AND THE PINES SECTION 3

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

The Pines Section 2

WHEREAS, M/I Homes of Central Ohio, LLC, has submitted the Plat of Subdivision ("Plat") for The Pines Section 2, 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 February 14, 2020; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on February 18, 2020; 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 February 19, 2020; 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 February 26, 2020; 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 March 17, 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for The Pines Section 2:

The Pines Section 2

Situated in the State of Ohio, County of Delaware, Township of Berlin, in Farm Lots 8 (0.327 acre) and 9 (0.060 acre), Quarter Township 3, and Farm Lot 6 (13.883 acres), Quarter Township 2, Township 4, Range 18, United States Military Lands, containing 14.270 acres of land, more or less, said 14.270 acres being part of each of those tracts of land conveyed to M/I Homes of Central Ohio, LLC by deed of record in Official Record 1552, Page 2814, Official Record 1561, Page 447, and Official Record 1617, Page 1782, Recorder's Office, Delaware County, Ohio. Cost: \$87.

The Pines Section 3

WHEREAS, M/I Homes of Central Ohio, LLC, has submitted the Plat of Subdivision ("Plat") for The Pines Section 4, 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 February 14, 2020; and

WHEREAS, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on February 18, 2020; 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 February 19, 2020; and

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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 February 26, 2020; 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 March 17, 2020;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for The Pines Section 3:

The Pines Section 3

Situated in the State of Ohio, County of Delaware, Township of Berlin, in Farm Lot 6, Quarter Township 2, Township 4, Range 18, United States Military Lands, containing 69.986 acres of land, more or less, said 69.986 acres being comprised of a part of each those tracts of land conveyed to M/I Homes of Central Ohio, LLC by deed of record in Official Record 1561, Page 447, Official Record 1617, Page 1782, and Official Record 2695, Page 2328, Recorder’s Office, Delaware County, Ohio. Cost: \$180.

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

15

RESOLUTION NO. 20-333

IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO PLANTATION ROAD AND KELLY-MCMASTER ROAD, INCLUDING THE FURNISHING AND INSTALLING OF CULVERTS; AND APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATE FOR 2020 CULVERT SUPPLY CONTRACT:

It was moved by Mrs. Lewis, 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, the County Engineer has determined that existing culverts on DEL-TR054-02.00, Plantation Road over tributary to Big Walnut Creek in Porter Township, and DEL-TR219-1.85, Kelly McMaster Road over Pittman Ditch in Brown Township are deficient and recommends that the Board proceed with improvements thereof (collectively, the Improvement”); and

WHEREAS, the County Engineer has prepared plans, specifications and estimates for the Improvement; and

WHEREAS, the County Engineer has estimated the construction cost of the Improvement to be \$133,480;

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

Section 1: The public convenience and welfare require the replacement of two culverts, one on Planation Road over tributary to Big Walnut Creek in Porter Township, and one on Kelly-McMaster Road over Pittman Ditch in Brown Township, and that the Improvement known as 2020 Culvert Supply Contract be initiated for such purpose.

Section 2: The costs for said Improvement will be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay for the Improvement.

Section 3: The plans, specifications and estimate for the project known as 2020 Culvert Supply Contact are hereby approved.

Section 4: The County Engineer is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Invitation to Bid:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, May 5, 2020, at which time they will be publicly received and read aloud, for the project known as:

2020 Culvert Supply Contract

All proposals shall be submitted electronically through the web service www.bidexpress.com. The bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a

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Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

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. 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 and may be accessed by selecting "Public Notices and Bids."

The Owner requires that all work associated with the project be completed before August 31, 2020. The estimated commencement of work date is May 18, 2020.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4115 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

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 Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
April 17, 2020

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

16

RESOLUTION NO. 20-334

IN THE MATTER OF DECLARING THE NECESSITY OF IMPROVEMENTS FOR THE PROJECT KNOWN AS 2020 DELAWARE COUNTY ROAD IMPROVEMENT PROGRAM, RESURFACING OF VARIOUS COUNTY AND TOWNSHIP ROADWAYS, APPROVING PLANS, SPECIFICATIONS, ESTIMATES AND SETTING THE BID DATE:

It was moved by Mr. Merrell, seconded by Mrs. Lewis 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, the County Engineer has determined that various roads within the County require resurfacing and pavement reconstruction and recommends that the Board proceed with improvements thereof (collectively, the "Improvement"); and

WHEREAS, the County Engineer has prepared plans, specifications and estimates for the Improvement; and

WHEREAS, the County Engineer has estimated the construction cost of the Improvement to be \$4,079,000 for County portion; \$4,406,000 for Township portion; \$2,423,000 for OPWC Alternate Bid #1 portion (Townships);

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

Section 1: The public convenience and welfare require resurfacing and pavement reconstruction or various roads within Delaware County, and that the Improvement known as 2020 Delaware County Road Improvement Program, Resurfacing Various County and Township Roadways be initiated for such purpose.

Section 2: The costs for said Improvement will be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay for the Improvement.

Section 3: The plans, specifications and estimates for the project known as 2020 Delaware County Road Improvement Program, Resurfacing of Various County and Township Roadways are hereby approved.

Section 4: The County Engineer is authorized to advertise for and received bids on behalf of the Board in accordance with the following Invitation to Bid:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until Tuesday, May 5, 2020, at which time they will be publicly received and read aloud, for the project known as:

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**2020 Delaware County Road Improvement Program
Resurfacing of Various County and Township Roadways**

All proposals shall be submitted electronically through the web service www.bidexpress.com. The bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

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. 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 and may be accessed by selecting "Public Notices and Bids."

The Owner requires that all work associated with the project be completed before October 1, 2020. The estimated commencement of work date is May 18, 2020.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4115 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

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 Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
April 17, 2020

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

17

RESOLUTION NO. 20-335

**IN THE MATTER OF SETTING THE BID DATE FOR THE DEL-CR21-3.85/DEL-CR72-3.45,
AFRICA AND CHESHIRE ROAD WIDENING RE-BID:**

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

WHEREAS, On February 24, 2020, the Board adopted Resolution No. 20-187, approving plans, specifications, and estimates for the Improvement known as DEL-CR21-3.85/DEL-CR72-3.45, Africa and Cheshire Road Widening, and authorized the County Engineer to solicit bids for the Improvement; and

WHEREAS, all bids received by the County Engineer were more than 10 percent in excess of the Engineer's estimated cost, and no award can be made in accordance with section 5555.61 of the Revised Code; and

WHEREAS, the County Engineer has revised the plans, specifications and estimates for the Improvement and estimates the cost to construct the improvement as revised to be \$5,476,000;

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

Section 1. The revised plans, specifications and estimates for said Improvement are hereby approved.

Section 2. The County Engineer is authorized to advertise for and receive bids on behalf of the Board in accordance with the following Public Notice:

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, May 12, 2020, at which time they will be publicly received and read aloud, for the project known as:

**DEL-CR21-3.85/DEL-CR72-3.45
Africa and Cheshire Road Widening Rebid**

All proposals shall be submitted electronically through the web service www.bidexpress.com. The bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one

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(1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost.

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. 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 and may be accessed by selecting "Public Notices and Bids."

The Owner requires that all work associated with the project be completed before September 30, 2020. The estimated commencement of work date is May 25, 2020.

Bidders must be pre-qualified as a Contractor by the Ohio Department of Transportation.

This is a Federal-Aid project and the Federal Equal Employment Opportunity regulations listed in the proposal shall govern. There is an 8% Disadvantaged Business Enterprises (DBE's) participation goal on this contract.

This is a prevailing wage contract in accordance with the U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution. Bidders shall comply with all applicable provisions.

Disadvantaged Business (DBE) Requirement. DBE participation goals (Subcontracts, materials, supplies) have been set on this project for those certified as DBE's in accordance with the TEA - 21 (1998) and 49 CFR, Part 26, and qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code (O.R.C.).

At the beginning of the project proposal, following the project identification, the DBE goal designation is written, i.e.

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 Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:

April 17, 2020
April 24, 2020
May 1, 2020

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

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RESOLUTION NO. 20-336

IN THE MATTER OF AWARDING THE BIDS FOR ASPHALT MATERIALS TO BE USED BY THE COUNTY ENGINEER DURING 2020:

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

Bid Award Recommendations; Bids Opened March 31, 2020:

WHEREAS, as the result of the referenced bid opening, the Engineer recommends that the following bid awards be made;

MC 30 as per ODOT Spec 702.02, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

MC 30 as per ODOT Spec 702.02, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

RS-2 as per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

RS-2 as per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil

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Company.

RS-2P, Per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

RS-2P, Per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

CRS-2 Per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc.

CRS-2 Per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc.

CRS-2P Per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc.

CRS-2P Per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc.

SS-1 as per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

SS-1 Per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

SS-1H Per ODOT Spec 702.04, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

SS-1H as per ODOT Spec 702.04, FOB Jobsite:

The Engineer recommends that a non-exclusive bid award be made to Asphalt Materials, Inc. and Phillips Oil Company.

Number 301 Asphalt Concrete Base Per ODOT Spec 301.02, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Mid-Ohio Paving, Inc.; Scioto Materials; Shelly and Sands, Inc.; and The Shelly Company.

Number 302 Asphalt Concrete Base Per ODOT Spec 302.02, FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Mid-Ohio Paving, Inc.; Scioto Materials; Shelly and Sands, Inc.; and The Shelly Company.

Surface, Type 1 (Item 441), FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Mid-Ohio Paving, Inc.; Scioto Materials; Shelly and Sands, Inc.; and The Shelly Company.

Intermediate, Type 1 (Item 441) FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Mid-Ohio Paving, Inc.; Scioto Materials; Shelly and Sands, Inc.; and The Shelly Company.

Intermediate, Type 2 (Item 441), FOB Plant:

The Engineer recommends that a non-exclusive bid award be made to Mid-Ohio Paving, Inc.; Scioto

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Materials; Shelly and Sands, Inc.; and The Shelly Company;

NOW, THEREFORE, BE IT RESOLVED that the non-exclusive bid awards as recommended by the Engineer are hereby approved by the Board of Delaware County Commissioners.

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

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RESOLUTION NO. 20-337

IN THE MATTER OF APPROVING AGREEMENT BETWEEN THE SCHOTTENSTEIN REAL ESTATE GROUP, LLC, AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR TRAFFIC IMPROVEMENTS ASSOCIATED WITH THE LIBERTY GRAND COMMUNITIES DEVELOPMENT:

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

**AGREEMENT FOR TRAFFIC IMPROVEMENTS
ASSOCIATED WITH THE
LIBERTY GRAND COMMUNITIES DEVELOPMENT**

THIS AGREEMENT (“Agreement”) is between Schottenstein Real Estate Group, LLC, an Ohio limited liability company, with an office located at 2 Easton Oval, #510, Columbus, OH 43219, (“Developer”) and the Delaware County Board of Commissioners, (“County”), with an office located at 101 North Sandusky Street, Delaware, Ohio 43015.

RECITALS

A. Developer is presently engaged in the improvement of certain real property in Liberty Township, Ohio, located within Delaware County on ±287 acres, more or less, bounded generally on the east by Sawmill Parkway, to the north by Hyatts Road, to the west by Steitz Road and to the south by Home Road (the “Project Area”) as generally depicted on Exhibit A attached hereto and, by this reference, incorporated herein.

B. Developer proposes to develop within the Project Area a residential development consisting of a mix of single family and multi-family residential units, to be known as the “Liberty Grand Communities Development” (the “Project”). The Project is planned for build out on a sub area by sub area basis, as depicted on Exhibit B attached hereto and, by this reference, incorporated herein. The Project includes construction of a new public roadway commencing at Sawmill Parkway, traversing the Project Area, and terminating at Steitz Road (the “LGC Boulevard”).

C. A traffic impact study, titled “Liberty Grand Communities Traffic Study Rev 1.1,” dated January 2020, and approved by the Delaware County Engineer on or about January 6, 2020 (the “TIS”), was conducted by Smart Services, Inc., for the Project Area. The TIS provides recommended and required public road improvements (together with the LGC Boulevard, collectively referred to herein as the “Traffic Improvements”), that will benefit, and mitigate the traffic impacts of, the Project.

WHEREFORE, the parties, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree to the preceding recitals, which are fully incorporated herein, and the following terms and conditions:

1. Contingent Obligations.

The obligations of the Developer in this Agreement are contingent on the Developer closing on the purchase of the real property comprising the Project Area and the construction loan for not less than 308 multi-family units. Further, in the event that the sale of the Subareas is not consummated from Developer to a third-party developer, or the Developer does not obtain a fully funded construction loan for not less than 308 multi-family units on terms and conditions satisfactory to the Developer at its sole discretion, the County agrees to negotiate in good faith for a phased construction schedule of the LGC Boulevard and associated approvals/ improvements.

2. Scope of Agreement.

The scope of this Agreement is limited solely to Traffic Improvements identified within the TIS. This Agreement is not intended to govern other internal street, stormwater management and water supply infrastructure improvements that are ordinarily and customarily governed by an Owner’s Project Agreement (“Owner’s Agreement”) pursuant to the Delaware County Engineer’s Design, Construction and Surveying Standards (“DCE Standards”), or sanitary sewer improvements customarily governed by a Developer’s Agreement pursuant to Delaware County Regional Sewer District Rules and Regulations (“DCRSD Regulations”).

3. Construction of the Traffic Improvements.

The Developer is to construct, install or otherwise make the Traffic Improvements and dedicate the same for public use, on a sub area by sub area basis as set forth herein, except for those Traffic Improvements for which the Developer is providing a cash contribution in lieu of construction, as enumerated in Section 4 herein.

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The Developer shall indemnify and hold harmless Delaware County and its officials, employees and agents from all claims, suits, actions, costs, or other liabilities which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of the Developer, or any of its officials, employees, agents, contractors or subcontractors (the "Indemnitors"), or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of the Indemnitors in furtherance of this Agreement. Developer's indemnification obligations hereunder shall cease upon the County's acceptance of the LGC Boulevard.

4. Contributions in Lieu of Construction

A. In lieu of constructing the required 285' southbound left turn lane on Steitz Road at Location 9, the Developer, or its assignee, shall pay to the County a cash contribution in the amount of \$359,000, or shall provide an acceptable guarantee according to Section 504.E. of the DCE Standards, in the same amount, prior to and as a condition of the Delaware County Engineer or the County approving a plat of subdivision for any portion of Subarea A or Subarea B1 of the Project as defined in Exhibit B.

B. In lieu of constructing the required eastbound lane at Location 1 of the TIS, the Developer, or its assignee, shall pay to the County a cash contribution in the amount of \$100,000 upon 30 days written demand of the County not earlier than **December 31, 2022**. If the Developer, or its assignee, wishes to record a plat in any portion of the Project Area prior to such date, it shall provide an acceptable guarantee according to Section 504.E. of the DCE Standards, in the same amount, prior to and as a condition of the Delaware County Engineer or the County approving a plat of subdivision for any portion of the Project or pay the \$100,000 cash contribution.

5. Time for Performance. The County shall permit the Developer to commence horizontal and vertical (i.e., building permits) construction of multi-family units in Subareas E and G contemporaneous with the construction of the LGC Boulevard, prior to platting or posting a bond, provided that the Developer has properly secured all necessary plan approvals and permits to construct such units. Construction for Subareas E and G may include accessory structures, clubhouse, entry features and signage provided the Developer has property secured all necessary plan approvals and permits for such construction.

The Developer shall have the LGC Boulevard constructed and completed not later than January 31, 2021 (the "Deadline"). All other Traffic Improvements shall be constructed and completed within one year of the date of this Agreement, except for the Traffic Improvements enumerated in Section 4 of this Agreement, for which the Developer is providing a contribution in lieu of construction, and except for the improvements listed below which shall be constructed concurrently with their respective sub area: (1) Location 7, 150' northbound left turn lane with Subarea G3, which shall be constructed concurrently with the commencement of construction within Subarea G3; (2) Location 9, 150' west bound left turn lane with either sub area A or B1.

If the Developer fails to complete construction of the LGC Boulevard by the Deadline and the Developer or any third party elects to record a plat for any subarea of the Project prior to completion of construction of the LGC Boulevard, then the Developer or that third party shall provide, in favor of the County, a guarantee in accordance with Section 504.E. of the DCE Standards equal to the cost of construction of the LGC Boulevard. Notwithstanding any applicable law or regulation, failure by the Developer to complete construction of the LGC Boulevard or provide a performance guarantee as provided herein shall be cause for the County to withhold the issuance of occupancy permits for any or all of the subareas of the Project, and, in such event, the Developer hereby waives any right to issuance thereof until such time as construction of the LGC Boulevard is completed or a guarantee in accordance with Section 504.E. of the DCE Standards been provided.

6. Breach. The Developer and the County agree that any material violations of or noncompliance with any of the terms and conditions of this Agreement shall constitute a breach of contract, and, subject to the notification and cure provisions outlined below, the Developer and the County shall have the right to stop work forthwith and seek any and all remedies available at law or equity. In the event of a breach by the Developer, and failure to reasonably address a cure as provided for in Section 7 herein below, the County shall have the right to act against the guarantee for the purpose of completing the Traffic Improvements. Nothing herein shall be construed to obligate the County to complete the Traffic Improvements, which shall be a decision within the County's sole and exclusive discretion.

7. Notice and Opportunity to Cure. Prior to either party acting to stop its work in connection with an alleged breach of this Agreement, the non-breaching party shall provide a written notice to the breaching party, which written notice shall contain information about the alleged material violations of or noncompliance with any material term(s) and condition(s) of this Agreement. The breaching party shall have not more than thirty (30) days after receiving the written notice to cure the alleged breach. If the breach is not cured within that time period, the non-breaching party may act to stop its work in connection with this Agreement and seek any and all remedies available at law or equity. Notwithstanding the foregoing, if the nature of the breach is such that it cannot be reasonably cured within said 30-day period, then the breaching party shall have some additional period in which to cure as is reasonable under the circumstances, so long as the cure is commenced within said 30-day period, is diligently prosecuted to completion thereafter, and such additional time period is not adverse to the general health, safety and welfare of the County. Notwithstanding any other provision of this Agreement, the above-described notification and cure provisions shall not apply when (i) the non-breaching party reasonably believes that it will be materially harmed if a thirty (30) day notice period is observed, (ii) the County's Building Official issues a stop

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work order for local, county or state code violations related to construction defects, or (iii) DCEO issues a stop work order for local, county or state construction code violations.

8. Plan Review and Inspection Costs. The Developer shall pay for all necessary inspection fees for the Traffic Improvements in accordance with the DCE Standards.

9. Other Infrastructure Obligations. Developer or its assignees agree(s) to obtain approvals for all other required public and private infrastructure within the Project Area and to enter into necessary agreements for the faithful completion of infrastructure required by applicable DCE Standards and DCRSD Regulations. Failure to obtain any other required approvals shall not be considered a material breach of this Agreement but shall be subject to the notice and cure provisions hereof.

10. Representations. The Developer represents and warrants that to the best of Developer's knowledge and information, the execution and delivery by the Developer of this Agreement and the compliance by the Developer with all of the provisions herein (i) are within the authority and powers of the Developer; (ii) will not conflict with or result in any breach of any of the provisions of, or constitute default under, any agreement, its articles of organization or operating agreement, or other instrument to which the Developer is a party or by which it may be bound, or, to the Developer's knowledge, any license, judgment, decree, law, statute, order, rule or regulation or any court or governmental agency or body having jurisdiction over the Developer or any of its activities or properties; and (iii) have been duly authorized by all necessary action on the part of the Developer.

Should the Developer be unable to carry out the terms and conditions of this Agreement, the Developer's heirs, successors and/or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this Agreement.

The County hereby represents and warrants that (i) execution of this Agreement has been approved and authorized by County Resolution No. _____, passed on _____; and (ii) the County has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder.

11. Waiver. In the event that any covenant, agreement, or obligation under this Agreement shall be breached by either the Developer or the County and the breach shall have been waived thereafter in writing by the Developer or the County, as the case may be, the waiver shall be limited to the particular breaches so waived and shall not be deemed to waive any other or any subsequent breach thereunder.

12. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason, and to the extent that the bargained for terms and conditions, as benefits and burdens of the parties are not materially changed, hindered or not met, in which case this Agreement would be renegotiated to effectuate those benefits and burdens then:

- (a) that illegality or invalidity shall not affect the remainder hereof or thereof; any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,
- (b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and
- (c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

13. Assignment. Except as otherwise provided in this Section, this Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld. Notwithstanding any provisions to the contrary in this Section, the Developer may assign its interest in this Agreement to an entity controlled by or under common control with the Developer without the prior written consent of the County, conditioned upon an assignment including the assignment of both the rights and obligations of the Developer hereunder, and a copy of such assignment being timely provided to the County. All representations and warranties of the Developer and the County herein shall survive the execution and delivery of this Agreement.

14. Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the County, its agents and employees, and the Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.

15. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections in this Agreement.

16. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original

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copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Electronic or facsimile signatures shall be acceptable.

17. Entire Agreement. This Agreement is the entire agreement between the parties with regard to the subject matters set forth herein. There shall be no additional payments, contributions of land or money for off-site improvements for roads or infrastructure for the Project required by County as a pre-condition to construction, development or occupancy of the Project other than those as set forth herein and as set forth by the TIS. If Project sub areas A, B, C or D seek material changes in the assumption conditions (ie., change of density or change of use) from those as set forth in the TIS, then the County may separately review and additional payments, contributions or land or money may be required.

18. Force Majeure. The Parties acknowledge and agree that the timing of this Agreement may coincide with events of force majeure, including but not limited to acts of God or government. In the event that such conditions occur or continue for such time that Developer’s ability to perform any commitments as set forth herein become impossible or impracticable, County agrees to negotiate in good faith to revise or amend the terms of this Agreement so as to allow the Developer and Project to move forward and in a manner that provides reasonable security to the County that Developer will substantially comply with the terms hereof. County and Developer agree to negotiate and/or work in good faith through any administrative or other non-essential delay in plan approvals or other permits which may be delayed due to such events beyond the control of the Parties.

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

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ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-No reports

Dawn Huston, Assistant County Administrator

-One of our Job and Family Services employees, Amanda Burns, has started making fabric masks.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis

-Congratulations to our residents who have been staying at home as much as possible.

-Thank you to Governor DeWine and Dr. Acton for their planning.

Commissioner Merrell

-Asked the County Administrator if he had received any feedback from the Elected Officials in our county about the financial update last week.

-There are two new township administrators in the County. Andrew King is the new administrator for Orange Township and Kevin Vaughn is the new administrator for Berkshire Township.

-V.P. Hydraulics owner, Judd Scott, wrote a nice email (Commissioner Merrell read the email aloud).

-Attended a CORSA conference call.

-Voting can still be done by absentee ballot if postmarked by April 27, 2020.

Commissioner Benton

-Number of conference calls and online meetings are definitely up.

-Remember to fill out your Census form.

-No State Capital Awards will be made this year.

-BWC has been instructed to pay \$1.6 billion in dividends to contributors.

-The Masters Golf tournament has been rescheduled for November 12, 2020.

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RESOLUTION NO. 20-338

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR TO CONSIDER THE SALE OF PROPERTY AT COMPETITIVE BIDDING; FOR SECURITY ARRANGEMENTS AND EMERGENCY RESPONSE PROTOCOLS AND CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:

It was moved by Mr. Merrell, 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

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic

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development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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 sale of property at competitive bidding; for security arrangements and emergency response protocols and confidential information related to economic development.

Section 2. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Section 3. The Board hereby finds and determines that the information listed in Section 2 is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

Section 4. The Board hereby finds and determines that the executive session held pursuant to Section 2 is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

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

RESOLUTION NO. 20-339

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

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

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

Other business:

Discussion about the Economic Development, along with the Finance Authority, contracting for services regarding small business help with whatever their needs would be.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton