

RESOLUTION #17-0821-08

Accepting the Master Utility Construction and Maintenance Agreement

WHEREAS, the Board of Trustees recognizes and appreciates the need for the Township to enter into a construction and maintenance agreement with Del-Co Water Company, Inc. for certain right-of-ways and easements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO to approve and sign the attached Master Utility Construction and Maintenance Agreement with Del-Co Water Company, LLC.

Motion made by Leneghan and seconded by Eichhorn.

Vote: Yes Mrs. Eichhorn Yes Mrs. Leneghan Yes Dr. Mitchell

This Resolution shall be in force and become effective immediately upon its execution.

8-21-2017

Date

Melanie Leneghan
Melanie Leneghan, Trustee

Dr. Thomas Mitchell
Dr. Thomas Mitchell, Trustee

Shyra Eichhorn
Shyra Eichhorn, Trustee

CERTIFIED BY:

Nancy Denutte
Nancy Denutte, Fiscal Officer

Master Utility Construction and Maintenance Agreement

This master utility construction and maintenance agreement (“Agreement”) is made by and between the Liberty Township Board of Trustees (“Board”) and Del-Co Water Company, Inc. (“Del-Co”) effective as of August 21, 2017.

Background Recitals

- A. The parties agree and acknowledge that the growing population of Liberty Township can and will continue to lead to multiple condemnations and appropriations by the Board for the purpose of widening and extending township roads (“Township Condemnations”).
- B. Township Condemnations frequently impact Del-Co’s property rights as documented in recorded easements/right-of-ways.
- C. In light of past co-operation between the Board and Del-Co, the parties share an interest in certain administrative efficiencies that could be achieved by memorializing and documenting certain policies and preferences of the parties and thereby promote a more efficient coordination and exchange of information for design, plan development and construction, to the mutual benefit of both township roadway users and Del-Co customers.
- D. To facilitate these administrative efficiencies, the Board, in the exercising of its appropriation and condemnation rights, acknowledges Del-Co’s constitutional rights in Del-Co’s easements/right-of-ways, as well Del-Co’s statutory rights under ORC Chapter 163, including, by way of example rather than limitation, Del-Co’s rights to: receive notice of intent to acquire and purchase offer from the Board (ORC § 163.04); arbitration/mediation (ORC § 163.051); depositing of the value of the easement/right-of-way being taken with the court by the Board (ORC § 163.06); and appraisal and valuation of the easement/right-of-way being taken (ORC § 163.09).

NOW THEREFORE, in consideration of the covenants and conditions herein contained, including the Background Recitals stated above, the parties mutually agree as follows:

1. **Scope:** The parties agree and acknowledge this Agreement applies only to those Township Condemnations that involve widening and/or extending Township road right-of-ways and the resultant taking of Del-Co’s right-of-ways/easements. In addition, the parties agree and acknowledge that the term Township Condemnation shall apply in instances of the threat of condemnation, that is, the Board will make all commercially reasonable efforts to notify Del-Co by copying Del-Co on notices of intent to acquire and purchase sent by the Board to any property owners, in advance of the Board naming Del-Co in any condemnation complaint.

2. Condemnations and Proceedings:

- a. In consideration of the Township reimbursing Del-Co's relocation costs, as provided for further below, in Township Condemnations, for so long as this Agreement is in effect between the Board and Del-Co, Del-Co hereby waives its statutory rights enumerated here (and only as enumerated here) under:
 - i. ORC § 163.04;
 - ii. ORC § 163.051;
 - iii. ORC § 163.06; and
 - iv. ORC § 163.09

Further, Del-Co agrees that if named in any Township Condemnation action that it will not assert any of the above enumerated statutory rights as defenses or claims, or file a mandamus action.

- b. For any Township Condemnation involving the taking of a Del-Co right-of-way/ easement on a property on which Del-Co has a pre-existing water user agreement, Del-Co will, depending on site conditions and engineering recommendations, in the Township Condemnation action or in a separate action:
 - i. Claim or cross-claim against the defendant property owner(s) for a new easement/right-of-way for its relocated waterline and appurtenances, and/or
 - ii. Relocate its waterline and appurtenances into the Township's road right-of-way.
- c. For any Township Condemnation in which Del-Co has a right-of-way/easement on the property subject to the Township Condemnation, but does not have a pre-existing water user agreement for the property, Del-Co will, depending on site conditions and engineer's recommendations:
 - i. Reach an agreement with the property owner(s) for a new right-of-way/easement for its relocated waterline and appurtenances,
 - ii. Relocate into the Township's road right-of-way, and/or
 - iii. In cases in which Del-Co cannot reach agreement with the property owner(s), condemn and obtain a private easement/right-of-way.
- d. The parties agree and acknowledge that the alternatives listed above are in Del-Co's order of preference, provided, however, that the final location for a Del-Co line to be re-located shall always be in Del-Co's sole and absolute discretion.

3. Relocation into the Township's Road Right-of-Way: Board and Del-Co agree that with respect to any Township Condemnation that:

- a. To the extent Del-Co determines that joint usage for both highway and utility purposes is the most efficient, the parties agree to complete all work according to applicable local, state and federal laws and regulations.
- b. To take all commercially reasonable steps to avoid placing any in-ground utilities between any Del-Co facility and the final grading above ground.
- c. That any relocated Del-Co facilities shall have a minimum distance of:
 - i. Ten feet (10.0') to either side from any sanitary sewer or storm sewer.
 - ii. Five feet (5.0') to either side from all other utilities.
- d. Del-Co shall be responsible for the design and adjustment of its facilities within the road right-of-way.
- e. Del-Co may choose to exercise a variety of bidding and contract options without any effect on the Township's obligations to reimburse Del-Co as provided under this Agreement or any specific relocation agreement entered into pursuant to this Agreement.
- f. After the Board has notified Del-Co of a Township Condemnation, the parties shall document each individual relocation with:
 - i. An **Application for Utility Construction Permit**, in substantially the same form as attached hereto as **Exhibit A** or as may be modified in the future by the Board;
 - ii. The **Attachment to Utility Construction Permit**, in substantially the same form as attached hereto as **Exhibit B**; Del-Co's plans, specifications, and estimated costs;
 - iii. Del-Co's Schedule of Work and Estimated Date of Completion; and
 - iv. Del-Co's final actual costs.
- g. Del-Co will, by written notice, advise the Board of the scheduled beginning and completion dates of any adjustment, removal and/or relocation of its facilities. The Board may approve or deny the work schedule based on it being reasonable and proper with consideration given to any scheduled work to be performed on the Condemnation project and/or inconvenience caused to the public by such work. In the event that the Board denies approval of the submitted work schedule, the Board and Del-Co agree to cooperate in good faith to reschedule the work to dates acceptable to both parties, and, thereafter, Del-Co will perform such work diligently, and conclude such work by the stated completion date.
- h. Del-Co's obligations to timely perform pursuant to this Agreement and any specific relocation agreement entered into pursuant to this Agreement are and shall be subject to and shall be extended by delays caused by events outside

Del-Co's control, including an event of Force Majeure, such as a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, flood, fire or other act of God, sabotage, or other events, interference by the State of Ohio, U.S. government or any other party, or any other event in which Del-Co has exercised all commercially reasonable due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of Del-Co.

4. Township Reimbursement of Del-Co: Board and Del-Co agree that with respect to any Township Condemnation that:

- a. The Board will reimburse Del-Co for all "soft" and "hard" costs of a Township Condemnation, including, by way of example rather than limitation: engineering; legal; materials; drainage, erosion and soil control; excavation; finish grading; testing; and payments to property owners for replacement easements. Reasonable facility enhancements may be included at Del-Co's option.
- b. The Board will, upon satisfactory completion of the relocation of the Del-Co facilities, and within thirty (30) calendar days of the receipt of a final billing prepared by Del-Co, pay Del-Co in full.
- c. When requested in writing by Del-Co, the Board will make intermediate payments at not less than monthly intervals to Del-Co when properly invoiced by Del-Co. Intermediate payments shall not be considered final payment for any listed items.
- d. Del-Co agrees to submit bills for work pursuant to this Agreement and any specific relocation agreement entered into pursuant to this Agreement not later than ninety (90) days after completion of the work.

5. Miscellaneous:

- a. This Agreement shall remain in effect until January 1, 2018, and thereafter, shall be automatically renewed annually for successive one-year periods, provided, however, that either party may terminate this Agreement at any time for any reason after giving ninety (90) days written notice to the other party.
- b. This Agreement constitutes the full agreement and understanding between the parties as to Township Condemnations, and any prior discussions or understandings as to the items herein are hereby merged into this Agreement. This Agreement may not be modified or amended except in writing.
- c. Except as expressly provided herein, neither the Board nor Del-Co waive or relinquish any right that they may have under the law.

d. The parties to this Agreement represent and warrant to each other that each of them, along with the signatories signing on behalf of the party represented, have the authority to enter into this Agreement.

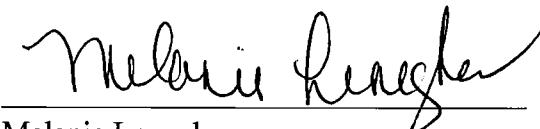
**BOARD OF TRUSTEES
LIBERTY TOWNSHIP,
DELAWARE COUNTY, OHIO**



Shyra Eichhorn
Trustee



Tom Mitchell
Trustee



Melanie Leneghan
Trustee

DEL-CO WATER COMPANY, INC.

Glenn Marzluf, General Manager/CEO

CONTINUED SIGNATURE PAGE

MASTER UTILITY CONSTRUCTION AND MAINTENANCE AGREEMENT

Approved as to form:



CHB /COB

Carol Hamilton O'Brien (0026965)
Delaware County Prosecutor

4-27-17

Date

FISCAL OFFICER'S CERTIFICATION (RC 5705.41(D)):

No actual funds are to be exchanged between the parties (Board and Del-Co) in connection with this Agreement. No Fiscal Officer's Certification is required.

EXHIBIT "A"

APPLICATION FOR UTILITY CONSTRUCTION PERMIT

Date: _____

To: The Board of Commissioners of Delaware County, Ohio, and the Delaware County Engineer
Application is hereby made by (1) Company Name Del-Co Water Co. Inc.
(2) Address 6658 Olentangy River Road
Delaware, Ohio 43015

to (action) (3) _____ at the following described
location (4), (T.R. or C.R.) number _____, and in accordance with attached plan(s) (5). (6) Work will
commence on or about (date) _____ will require _____ days. (7) The proposed (type of
utility) Waterline will be placed within the public road right of way at a minimum depth of _____
inches, and at approximately _____ feet from the edge of pavement. (8) All road crossings where said road
is hard surfaced (hot mix, chip & seal, etc.) will be made using boring method, unless further application is
made to your office regarding cutting the pavement. (9) All mailboxes, signs, yards, driveways, roads, drainage
structures, including tile, fences, ditches and sidewalks damaged or removed during initial construction or
future maintenance will be replaced or repaired as good as or better than existing. All conditions, restrictions,
and regulations issued from your office including location of proposed facility and handling of traffic will be
complied with to your satisfaction. At no time, will the governing authority as signed below, be held responsible
for damage to the facilities placed under this work order. (10) Traffic will be maintained at all times, unless
permission is granted by the county to close the road. (11) Construction signs, barricades and lights placed on
the job shall be in accordance with the "Uniform Traffic Control Devices" or "Traffic Control for Construction
& Maintenance." (12) Del-Co Water Co., Inc. hereby agrees to hold Delaware County harmless from any
and all claims for personal injuries and property damage that might be brought due to this work and/or the
installation of the facilities covered by this Agreement and agree to indemnify the County for any and all claims
paid for personal injuries and/or property damage which might arise due to this work and/or the installation of
the facilities covered by this Agreement, the reimbursement to include but not limited to the court costs and
attorney fees. When work is performed by contract, the applicant and/or Company shall contract with a reliable
contracting firm for the construction of the aforementioned facility under the terms of which, contractor shall be
required to maintain and keep in force and effect with respect to all work to be performed, a policy or policies
of public liability insurance with a minimum limit of \$300,000, for one person injured or killed and \$1,000,000,
for any one accident and property damage insurance with minimum limits of \$300,000. Certificate of Insurance
must be on file with the county naming Delaware County as loss beneficiary.

On all projects, an inspector employed by the applicant shall be on the project 100% of the time to assure that
quality construction practices are followed and that the intent of this permit is satisfied.

*This application must be received no later than 4 weeks, and no earlier than 8 weeks, prior to project start date.
Delaware County must be notified at (740) 833-2439, 48 hours before starting work.*

Signed _____

(Applicant)

By Del-Co Water Co. Inc.
Address 6658 Olentangy River Road
Delaware, Ohio 43015
Telephone # (740) 548-7746
Fax # (740) 549-1149

**THIS PERMIT IS NOT A SUBSTITUTE FOR SATISFYING THE RIGHTS OF ANY
OTHER PARTY THAT MAY HAVE AN INTEREST IN THE UNDERLYING FEE.**

EXHIBIT "B"

ATTACHMENT

TO APPLICATION FOR UTILITY CONSTRUCTION

DATED _____ BY DEL-CO WATER COMPANY, INC.

Del-Co Water Company, Inc. ("Del-Co") makes this Application regarding several of its water lines as set out below:

I Lines Never Within Previously Granted Easements

(A) The water lines described in this section have never been within a private easement granted to Del-Co but may have been the subject of one or more previous Right-of-Way permits.

(1) Water mains **crossing** _____ [insert name of road]
(a) Guaranteed rights to access and maintain the **proposed** [insert site specific information on Del-Co facilities and the county road right-of-way] _____

(b) Guaranteed right to access and maintain the **existing** [insert site specific information on Del-Co facilities and the county road right-of-way] _____

(c) Attach additional sheet / schedule if necessary.

(2) Water mains **running parallel to** _____ [insert name of road]

(a) Guaranteed rights to access and maintain the **proposed** [insert site specific information on Del-Co facilities and the county road right-of-way] _____

(b) Guaranteed right to access and maintain the **existing** [insert site specific information on Del-Co facilities and the county road right-of-way] _____

(c) Attach additional sheet / schedule if necessary.

(B) Guaranteed rights to access and maintain the service lines and meter vaults described below:

(1) _____

(2) _____

(3) Attach additional sheet / schedule if necessary.

II Lines Subject to Previously Granted Easements to Del-Co

Each of the water lines described in this section have been the subject of a previously granted easement from a private property owner to Del-Co. Each of the lines within a previously granted easement was outside the road Right-of-Way at the time of granting of the easement to Del-Co. Some of the lines remain within the original easement area, which easement area is now or will become located, as a result of _____ [insert name of Township Road Right-of-Way condemnation], within the road Right-of-Way. Some of the lines have been relocated from their original easement area to a new location within the road Right-of-Way.

(A) Guaranteed rights to access and maintain the water lines described below:

(1) Lines Remaining Within Previously Granted Easements

(a) Service lines, meter vaults, and meters

(i) _____

(ii) Attach additional sheet / schedule if necessary.

(b) Distribution and Transmission Lines

(i) _____

(ii) Attach additional sheet / schedule if necessary.

(2) Relocated From Previously Granted Easement to Right-of-Way

(a) _____

Attach additional sheet / schedule if necessary.

(B) In addition to the right to access and maintain the lines described above that are subject to previously granted easements, the Liberty Township Trustees ("LT") agrees that, with respect to any Del-Co lines subject to a previously granted easement from a private property owner to Del-Co, but which are now in the for a Right-of-Way due to the Township's taking or granting of additional road Right-of-Way:

- (1) The LTT will include relocating such a line due to future road improvements or other uses of the right-of-way inconsistent with the continued presence of the Del-Co waterlines within the previously granted easements as part of the project that makes relocating the Del-Co line(s) necessary or appropriate, without cost to Del-Co; and
- (2) The LTT will reimburse Del-Co for any additional cost or expense of maintaining or repairing such lines due to changes to the surface above the lines, including but not limited to the presence of pavement of any sort or a change in the grade elevation, provided such changes are the direct result of an improvement undertaken by the LTT or a private improvement undertaken pursuant to a license, permit, or other written consent issued by the LTT.

III Relinquished Rights of Access

(A) Del-Co will relinquish rights to access the following lines as the replacements for the following lines become operational:

- (1) the existing _____, abandoned after the new _____ [insert line, meter vault, etc. being abandoned] becomes operational.
- (2) the existing _____, abandoned after the new _____ [insert line, meter vault, etc. being abandoned] becomes operational.

(3) Attach additional sheet / schedule if necessary.