

REGULAR SESSION OCTOBER 7, 2020

This day the Board of Morrow County Commissioners met in their office at 80 North Walnut St., Ste. A, Mt. Gilead, Ohio with the following members present: Mr. Davis, Mr. Whiston and Mr. Castle.

Public in attendance: Dixie Shinaberry (Recorder) and Mike Baker.

The meeting was opened with prayer and pledge of allegiance to the flag, and then called to order by Mr. Castle, who then proceeded with the business at hand. The following matters came before the Board for their consideration and approval.

**IN THE MATTER OF
APPROVAL OF THE MINUTES
OF REGULAR SESSION OF OCTOBER 5, 2020: 20-R-752**

Mr. Davis made a motion to approve the minutes of regular session of October 5, 2020, as recorded in the Commissioners Journal # 48.

Mr. Castle duly seconded this motion

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

**IN THE MATTER OF
APPROVAL OF BILLS FOR PAYMENT: 20-R-753**

Mr. Whiston made a motion to approve payment of bills numbered 1 through 137 submitted by the Morrow County Auditor's office.

Mr. Davis duly seconded this motion

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

**IN THE MATTER OF
PAY-INS: 20-R-754**

The following pay-ins were made to Patricia K. Davies, Morrow County Auditor:

- Pay-in #202911 Payment received from Ketterman customers for sewer fund 5121 \$55.84
- Pay-in #202912 Payment received from Johnsville customers for sewer fund 5100 \$118.00
- Pay-in #202913 Payment received from Chesterville customers for sewer fund 5159 \$1,592.77
- Pay-in #202914 Payment received from Somoco customers for sewer fund 5110 \$1,208.19
- Pay-in #202930 Payment received from Chesterville customers for sewer fund 5159 \$1,790.18

**IN THE MATTER OF
APPROPRIATION OF UNAPPROPRIATED CERTIFIED MONIES – EMA FUND
2012: 20-A-123**

At the request of John Harsch, EMA Director, a motion was made by Mr. Castle to appropriate from the unappropriated certified monies to the following accounts as the original amount appropriated was insufficient to cover the shift to COVID related activities:

2012-1012-510120	Employee Wages	\$15,000.00
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Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

**IN THE MATTER OF
APPROPRIATION OF UNAPPROPRIATED CERTIFIED MONIES – KETTERMAN SEWER
FUND 5121: 20-A-124**

Mr. Castle made a motion to appropriate from the unappropriated certified monies to the following account to pay first invoice for our new VIP utility billing software and cover next billing from City of Galion for Ketterman sewer:

5121-5101-550745	Computer Software (Ketterman)	\$577.62
5121-5101-530370	Service Fees (Ketterman)	\$12,182.40

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
 APPROPRIATION OF UNAPPROPRIATED CERTIFIED MONIES – FUND 4119
 CORONAVIRUS RELIEF FUND – TREASURER: 20-A-125**

At the request of Michael D. Goff, Morrow County Treasurer, a motion was made by Mr. Whiston to appropriate from the unappropriated certified monies to the following account (purchase of lap tops, initial dollar amount was short):

4119-3003-550740	Equipment/Computer/Furniture	\$119.89
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Mr. Castle duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
 TRANSFER OF FUNDS – RECYCLING FUND 2006: 20-T-134**

At the request of Lindsey Grimm, Director, a motion was made by Mr. Davis to approve the following transfer of funds:

**Reason – to cover printing costs for the Recycle Right Cards that will be used as part of the Special Project – Join the Recycle Right Challenge

From 2006-2006-530344 Printing to 2006-2006-530349 OTHER – Communications, Printing and Advertising in the amount of \$600.00

Mr. Whiston duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
 TRANSFER OF FUNDS – GENERAL FUND, AUDITOR: 20-T-135**

At the request of Patricia Davies, Morrow County Auditor, a motion was made by Mr. Castle to approve the following transfer of funds:

**Reason – in need of appropriations for Weights and Measures gasoline

From 1000-7002-530325 Vehicle Maintenance to 1000-7002-540420 Operational Supplies in the amount of \$250.00

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
 TRANSFER OF FUNDS – SEWER FUNDS, JOHNSVILLE, SOMOCO AND
 CHESTERVILLE: 20-T-136**

Mr. Davis made a motion to approve the following transfer of funds:

**Reason – transfer needed to pay Software Solutions first invoice for the new VIP utility billing software

From 5100-5101-530302 Program Administration (Johnsville) to 5100-5101-550745 Computer Software in the amount of \$577.62

From 5110-5101-530301 Connections/Permits (Somoco) to 5110-5101-550745 Computer Software in the amount of \$577.63

From 5159-5101-530327 Taxes (Chesterville) to 5159-5101-550745 Computer Software in the amount of \$577.63

Mr. Castle duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
TRANSFER OF FUNDS – ENGINEER’S FUND 2202: 20-T-137**

At the request of Bart Dennison, Morrow County Engineer, a motion was made by Mr. Davis to approve the following transfer of funds:

**Reason – we need to pay for our share of the ESRI license for the GIS site

From 2202-2002-530325 Vehicle Maintenance to 2202-2002-530330 Program Support Services in the amount of \$6,900.00

**Reason – currently there is not enough money in the account to cover the upcoming invoices

From 2202-2002-540430 Small Tools & Equipment to 2202-2002-530322 Garbage & Trash Removal in the amount of \$1,500.00

Mr. Whiston duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle.., “yea”

**IN THE MATTER OF
APPROVAL TO JOURNALIZE REPORT FROM THE MORROW COUNTY TREASURER
FOR GAP SHEET AS OF THE CLOSE OF BUSINESS ON SEPTEMBER 30, 2020: 20-R-755**

Mr. Castle made a motion to journalize receipt of the Gap sheet 9.30.2020 report from the Morrow County Treasurer, Michael Goff and acknowledged and signed by the Morrow County Auditor, Pat Davies and the Board of County Commissioners as presented:

Receipts/Disbursements balance close of business			
Recon. Items	\$0.00		
Vault	\$3,000.00		
Checking Account	\$2,013,186.52		
Sweep ICS	\$3,082,822.33		
Star Ohio	\$143,329.15		
Star Ohio Plus	\$393,541.71		
CDARS 1 59491	\$0.00		
CDARS 11234	\$511,072.94		
CDARS 2 59505	\$511,531.92		
CDARS 3 59513	\$1,023,565.31		
Wire	\$0.00		
Fifth Third	\$13,368,909.86		
Engineer Note	\$450,486.03		
Commissioners	\$208,000.00		
Adjustment	\$(.01)		
Point N Pay	\$4,369.97		
Warrant	\$0.00		
Balance	\$21,713,815.73		
Monthly Investments Balance		Interest pd in	
Star Ohio	\$143,329.15	\$26.70	
Fifth Third	\$13,368,909.86	\$6,797.15	
Star Ohio Plus	\$393,541.71	\$80.85	
CDARS 11234	\$511,072.94	\$9.80	
CDARS 1	\$0.00	\$716.07	9.30.20

CDARS 2	\$511,531.92	\$955.17	
CDARS 3	\$1,023,565.31	\$1,952.30	
Balance Engineer Note	\$450,486.03	\$1,354.36	9.30.20
Commissioners Note	\$208,000.00		
Daily Investments Balance			
Rounding	\$(.01)		
Checking Account	\$2,013,186.52	Bank Balance	
Vault	\$3,000.00		
Wire Acct	\$0.00		
FKNB Sweep ICS	\$3,082,822.33		
Warrant	\$0.00		
Point N Pay	\$4,369.97		
	\$21,713,815.73	Funds and Banks VIP	

Mr. Whiston duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle..., “yea”

**IN THE MATTER OF
APPROVAL FOR MORROW COUNTY COMMISSIONER CHAIRMAN TO SIGN
ADDITIONAL DOCUMENTS IN REGARDS TO MORROW COUNTY ENGINEER’S
EQUIPMENT PURCHASE: 20-R-756**

WHEREAS, on September 30, 2020, the Morrow County Commissioners approved the Chairman to sign the Obligor Resolution for the purchase of a Case 590 SN Loader Backhoe and Case 721G Wheel Loader from Southeastern Equipment; and

WHEREAS, correspondence has been received from the Morrow County Engineer that additional documents are needed to be signed by the Chairman in order to finish the purchase of the equipment which includes the following documents:

- Government Obligation Contract
- Exhibit B – Payment Schedule
- Exhibit C – Certificate of Acceptance
- Exhibit F – Bank Qualified Certificate
- Form 8038-G Information Return for Tax-Exempt Governmental Obligations

THEREFORE, Mr. Whiston made a motion to approve Chairman Burgess W. Castle to sign the above mentioned documents to complete the purchase of the equipment.

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., “yea” ...,Mr. Davis..., “yea” .., Mr. Castle..., “yea”

**IN THE MATTER OF
APPROVAL OF RESOLUTION AUTHORIZING PARTICIPATION IN A SUBLEASE-
PURCHASE ARRANGEMENT WITH THE OHIO SECRETARY OF STATE FOR THE
PURPOSE OF ACQUIRING AND IMPLEMENTING VOTING MACHINES AND
EQUIPMENT AND FINANCING CERTAIN COSTS THEREOF, A SUB-LEASE PURCHASE
AGREEMENT EVIDENCING SUCH ARRANGEMENT, AND MATTERS RELATED
THERE TO: 20-R-757**

Mr. Whiston made a motion to approve the following resolution in relation to voting machines and equipment and the financing of such:

RESOLUTION NO. 20-R-757

AUTHORIZING PARTICIPATION IN A SUBLEASE-PURCHASE ARRANGEMENT WITH THE OHIO SECRETARY OF STATE FOR THE PURPOSE OF ACQUIRING AND IMPLEMENTING VOTING MACHINES AND EQUIPMENT AND FINANCING

CERTAIN COSTS THEREOF, A SUBLEASE-PURCHASE AGREEMENT
EVIDENCING SUCH ARRANGEMENT, AND MATTERS RELATED THERETO.

WHEREAS, pursuant to Amended Substitute Senate Bill 135 of the 132nd Ohio General Assembly (as the same may be amended, modified, revised, supplemented or superseded from time to time, the "Act") and the financing program authorized thereunder (the "SoS Financing Program"), the Secretary of State of the State of the Ohio (the "Sublessor") is providing financing to Ohio counties for the acquisition of voting systems, including, but not limited to, voting machines, marking devices, automatic tabulating equipment, and direct record electronic voting machines, as defined in Ohio Revised Code ("ORC") Section 3506.01, together with associated allowable expenditures, as defined in the Act; and

WHEREAS, in accordance with ORC Section 3506.02, it has been determined that the equipment used by the citizens of the County of Morrow, Ohio (the "Sublessee") to vote in federal, state and local elections shall be changed to that equipment described in the Proposal of Election Systems and Software, LLC (the "Vendor") dated August 12, 2020 (the "Proposal"); and

WHEREAS, the Vendor has submitted a draft contract for the implementation of the Proposal to the Sublessee (the "Project Contract"), and the Sublessor has reviewed and approved the Project Contract (as it relates to the SoS Financing Program) and the Project Equipment (as hereinafter defined); and

WHEREAS, the Proposal requires the Sublessee to acquire certain voting machines and equipment (the "Project Equipment") and pay certain costs related to implementing the Proposal (along with the acquisition of the Project Equipment, the "Project") and this Board of County Commissioners of the Sublessee (the "Legislative Authority") desires to accept the Proposal, enter into the Project Contract, undertake the Project, and finance a portion of the cost of the Project by utilizing the provisions of the SoS Financing Program;

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

SECTION 1. It is hereby determined to be necessary, desirable and expedient, and in the best interests of the Sublessee and its citizens, for the Sublessee (i) to accept the Proposal, (ii) enter into the Project Contract, (iii) acquire the Project Equipment, and (iv) finance a portion of the costs of the Project Equipment (the "State-Financed Equipment") and other costs of the Project by participating in the SoS Financing Program.

SECTION 2. The Sublessee's participation in the SoS Financing Program shall be evidenced by a Sublease-Purchase Agreement between the Sublessor and the Sublessee (together with all exhibits and appendices thereto, the "Sublease"). At least two members of the Legislative Authority and the Sublessee's County Auditor (collectively, the "County Signers") are hereby separately and individually authorized, alone or with others, to execute and deliver the Sublease on behalf of the Sublessee in substantially the form presently on file with the Legislative Authority, which is hereby approved, with such changes not substantially adverse to the Sublessee as the County Signers may approve; the approval of such changes and that the same are not substantially adverse to the Sublessee shall be conclusively evidenced by the execution of the Sublease by the County Signers.

SECTION 3. All of the obligations of the Sublessee set forth and covenants made by the Sublessee under the Sublease are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Sublessee within the meaning of ORC Section 2731.01 *et seq.*

SECTION 4. Pursuant to the SoS Financing Program, the Sublessee shall not be required to make any scheduled payments towards the purchase of the State-Financed Equipment to the Sublessor or any other entity. To pay that portion of the cost of the Project not financed through the SoS Financing Program, there is hereby appropriated from the Sublessee's General Fund (i) the amount of \$120,583.88, and (ii) to pay the Sublessee's other obligations under the Sublease during this 2020 fiscal year, the amount of \$40,503.88.

SECTION 5. The County Signers and other appropriate officers of the Sublessee, or any of them, are hereby separately and individually authorized and directed to (i) make the necessary arrangements with the Sublessor to establish the date, location, procedure and conditions for executing and delivering the Sublease, and delivering the Sublease to, the Sublessor, and (ii) give all appropriate notices and execute and deliver, on behalf of the Sublessee, such additional instruments, documents, agreements, certificates, and other papers as may be in their discretion necessary or appropriate in order to carry out, give effect to and consummate the transaction contemplated thereby in such forms as the official executing the same may approve, and to take all other steps necessary or appropriate to effect the due execution, delivery and performance of the Sublease pursuant to the provisions of this

resolution. The Clerk of the Board of County Commissioners shall furnish to the Sublessor a true transcript of proceedings pertaining to the Sublease containing such information from the records of the Sublessee as is necessary to evidence or determine the regularity and validity of the authorization, execution and delivery of the Sublease. Each of the County Signers is hereby separately and individually designated to act as the authorized representative of the Sublessee for purposes of the Sublease until such time as the Legislative Authority shall designate any other or different authorized representatives for such purpose.

SECTION 6. The Sublease shall constitute a special obligation of the Sublessee. Nothing in the Sublease or any agreements or documents relating thereto shall constitute or be construed or deemed to constitute a debt, bonded indebtedness or a general obligation of the Sublessee. Neither the taxing power nor the full faith and credit of the Sublessee are pledged or shall be pledged for the payment or security of the Sublease, or any other related agreement or document.

SECTION 7. The Legislative Authority acknowledges that the Sublessor has obtained funds for the SoS Financing Program by utilizing a sublease-purchase / certificates of participation arrangement, and that the interest component of the Sublessor's lease payments thereunder is intended to be exempt from federal income taxation under the Internal Revenue Code of 1986, as amended and the regulations prescribed thereunder (the "Code"). The Legislative Authority hereby covenants that it will restrict the use of the State-Financed Equipment in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the Sublease is entered into, so that the interest portion of such lease payments by the Sublessor will not be subject to federal income taxation under the Code. Any County Signer or any other officer having responsibility with respect to the execution and delivery of the Sublease is authorized and directed to give an appropriate certificate on behalf of the Sublessee on the date of delivery of the Sublease, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the State-Financed Equipment and other matters under the Code.

SECTION 8. It is hereby determined that the terms of the Sublease and this resolution are in compliance with all legal requirements. If any section, paragraph, clause or provision of this resolution or the Sublease shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any remaining provisions of this resolution or the Sublease, respectively. Any provisions of any ordinance or resolution inconsistent with this resolution are hereby repealed, but only to the extent of such inconsistency; this provision shall not be construed as reviving any ordinance or resolution or any part thereof.

SECTION 9. It is found and determined that all formal actions of the Legislative Authority concerning and relating to the adoption of this resolution were adopted in an open meeting of the Legislative Authority, and that all deliberations of the Legislative Authority and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including ORC Section 121.22.

SECTION 10. This resolution shall take effect and be in force upon its adoption.

ADOPTED OCTOBER 7, 2020.

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

**IN THE MATTER OF
 APPROVAL OF SUBLEASE-PURCHASE AGREEMENT BETWEEN THE SECRETARY OF
 STATE OF THE STATE OF OHIO AND THE COUNTY OF MORROW, OHIO - VOTING
 MACHINES: 20-R-758**

Mr. Whiston made a motion to approve the following Sublease-Purchase Agreement:

SUBLEASE-PURCHASE AGREEMENT

This Sublease-Purchase Agreement (as the same may be amended and supplemented in accordance with its terms, the "Sublease Agreement") is dated October 7, 2020 and entered into between the Secretary of State of the State of Ohio (the "Sublessor") and the County of Morrow, Ohio (the "Sublessee") under the following circumstances:

A. Pursuant to Amended Substitute Senate Bill 135 of the 132nd Ohio General Assembly (as the same may be amended, modified, revised, supplemented or superseded from time to time, the

“Act”) and the financing program authorized thereunder (the “SoS Financing Program”), the Sublessor is providing financing to Ohio counties for the acquisition of voting systems, including, but not limited to, voting machines, marking devices, automatic tabulating equipment, and direct record electronic voting machines, as defined in Ohio Revised Code (“ORC”) Section 3506.01, together with associated allowable expenditures, as defined in the Act.

B. In accordance with ORC Section 3506.02, it has been determined that the equipment used by the citizens of the Sublessee to vote in federal, state and local elections shall be changed to that equipment described in the Proposal of Election Systems and Software, LLC (the “Vendor”) dated August 12, 2020 (the “Proposal”).

C. The Proposal requires the Sublessee to acquire certain voting machines and equipment (the “Project Equipment”) and pay certain costs related to implementing the Proposal (along with the acquisition of the Project Equipment, the “Project”), and the Sublessee has determined to accept the Proposal and undertake the Project.

D. The Vendor has submitted a draft contract for the implementation of the Proposal to the Sublessee (the “Project Contract”), and the Sublessor has reviewed and approved the Project Contract (as it relates to the SoS Financing Program) and the Project Equipment.

E. The Sublessee has determined to finance a portion of the cost of the Project, including a portion of the Project Equipment described in Exhibit A hereto (the “State-Financed Equipment”), by utilizing the provisions of the SoS Financing Program upon the terms set forth in this Sublease Agreement, and the Sublessor has agreed to make the sum of \$535,787.12 (the “State Contribution”) available for such purpose.

F. The Sublessee’s Board of County Commissioners (the “Legislative Authority”) has authorized this Sublease Agreement by a resolution adopted October 7, 2020 (the “Authorizing Resolution”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Sublessor and the Sublessee, acting through the Legislative Authority, hereby represent, warrant and covenant as follows:

1. **TERM OF AGREEMENT.** This Sublease Agreement shall be effective as of October 7, 2020 (the “Commencement Date”). The term of this Sublease Agreement for the purposes of payments shall commence as of the Commencement Date, and shall continue until the date the Sublessee receives the notice of the State COPs Termination, as defined in Paragraph 7 hereof (the "Agreement Term").

2. **PROJECT CONTRACT.** The Sublessee shall enter into the Project Contract contemporaneously with the execution and delivery of this Sublease Agreement and perform all of its obligations thereunder in the manner and at the times set forth therein. Promptly upon the execution and delivery of this Sublease Agreement by the Sublessor and the Sublessee, the Sublessee, acting through its Board of Elections, shall diligently and expeditiously proceed to acquire the Project Equipment and implement the Project in accordance with the Project Contract. The State-Financed Equipment shall be located as described in Exhibit A hereto. The Sublessor shall pay, or cause to be paid, the State Contribution, and the Sublessee shall pay all costs of the Project in excess of the State Contribution and for any costs not payable under the SoS Financing Program, in accordance with the Project Contract and the SoS Financing Program, and the Sublessee and the Sublessor shall coordinate their respective payments under the Project Contract with the Vendor so that such payments conform to the requirements of the Project Contract and the SoS Financing Program.

3. **USE OF THE STATE-FINANCED EQUIPMENT.** The Sublessee represents that all of the State-Financed Equipment that it will acquire in accordance with this Sublease Agreement will constitute a “voting system” within the meaning of the Act.

4. **TRANSFER OF TITLE TO THE SUBLESSOR.** Upon the delivery of the State-Financed Equipment to the Sublessee, all of the Sublessee’s right, title and interest to and in the State-Financed Equipment shall be immediately transferred to the Sublessor without any further action on the part of the Sublessee. The Sublessee shall deliver to the Sublessor all documents which are or may be necessary to vest all of the Sublessee's right, title and interest in and to the State Financed Equipment in the Sublessor, and will release or cause to be released all liens and encumbrances with respect to the State-Financed Equipment.

5. **LEASE.** The Sublessee hereby leases from the Sublessor, for eventual acquisition and ownership, and the Sublessor hereby leases to the Sublessee, for eventual transfer of ownership to the

Sublessee, all the State-Financed Equipment, in accordance with the provisions of this Sublease Agreement, to have and to hold for the Agreement Term.

6. **LEASE PAYMENTS.** Pursuant to the SoS Financing Program, the Sublessee shall not be required to make any scheduled payments towards the purchase of the State-Financed Equipment to the Sublessor or any other entity.

7. **PURCHASE AND CONVEYANCE.** The Sublessee shall not have the option to purchase the State-Financed Equipment prior to the end of the Agreement Term. The Sublessor has obtained funds for the SoS Financing Program by utilizing a lease-purchase / certificates of participation arrangement (the "State COPs Financing"), which by its terms, prevents the Sublessor from conveying title to the State-Financed Equipment to the Sublessee until all of the Sublessor's obligations under the State COPs Financing relating to the State-Finance Equipment have been provided for. Upon such event (the "State COPs Termination"), the Sublessor shall so notify the Sublessee and upon receipt of such notice, (i) the Sublessee shall be deemed to have purchased and acquired all of the State-Financed Equipment, (ii) title to the State-Financed Equipment, and all rights in the State-Financed Equipment granted by the Sublessee to the Sublessor under this Sublease Agreement, shall vest in the Sublessee, without any further action on the part of the Sublessor, and (iii) the Sublessor will deliver to the Sublessee all documents which are or may be necessary to vest all of the Sublessor's right, title and interest in and to the Equipment in the Sublessee, and will release all liens and encumbrances created under this Sublease Agreement with respect to the State-Financed Equipment.

8. **CARE AND USE.** The Sublessee (i) solely at its own cost and expense, shall maintain the Project in good operating order and condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; (ii) solely at its own cost and expense, make all necessary, proper or appropriate repairs, replacements and renewals thereof, ordinary and extraordinary, foreseen and unforeseen, (iii) shall permit the use of the State-Financed Equipment only by the Sublessee's Board of Elections, within its normal capacity, without abuse, and in a manner contemplated by the Vendor; (iv) shall not make modifications, alterations or additions to the State-Financed Equipment (other than normal operating accessories or controls) without the prior written consent of the Sublessor, which shall not be unreasonably withheld, (v) comply with all laws, insurance policies and regulations relating to, and obtain and maintain any governmental licenses and permits required for, the use, maintenance, repair and operation of the State-Financed Equipment, (vi) shall not dispose, assign, transfer, pledge or otherwise encumber all or any part of the State-Financed Equipment with any mortgage, security interest, or lien, through the Agreement Term, without the prior written consent of the Sublessor, which consent may be withheld in the absolute discretion of the Sublessor, and (vii) pay all costs, claims, damages, fees and all utilities and other charges arising out of its possession, use, operation, maintenance and use of the Project. All modifications, repairs, alterations, additions, replacements, substitutions, operating accessories and controls shall accrue to the State-Financed Equipment and, unless leased from the Sublessor, become the property of the Sublessee. The Sublessor shall have the right, during normal hours and in compliance with appropriate security protocols employed by the Sublessee's Board of Elections, to enter upon the premises where the State-Financed Equipment is located in order to inspect, observe or otherwise protect the Sublessor's interest, and the Sublessee shall cooperate in affording the Sublessor the opportunity to so inspect. For the purpose of assuring the Sublessor that the State-Financed Equipment will be properly serviced, the Sublessee agrees to cause the State-Financed Equipment to be maintained pursuant to the Vendor's standard preventive maintenance contract and/or recommendations. The Sublessee agrees that the Sublessor shall not be responsible for any loss or damage whatsoever to the State-Financed Equipment, nor shall the Sublessor be responsible for latent defects, wear and tear or gradual deterioration or loss of service or use of the State-Financed Equipment or any part thereof, the Sublessor shall not be liable to the Sublessee or anyone else for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the inadequacy of the Project or any item supplied by the Vendor or any other party, any interruption of use or loss of service or use of performance of any equipment, any loss of business or other consequence or damage, whether or not resulting from any of the foregoing. The Sublessee shall not do, or permit to be done, any act or thing which might materially impair the value of the State-Financed Equipment, will not commit or permit any material waste thereof, and will not permit any unlawful use to be made thereof. The Sublessee covenants that it will assist the Secretary of State in fulfilling its obligations (other than any payment obligations) under the Master Lease Agreement dated as of November 1, 2018, between the State of Ohio Leasing Corporation, Inc., as lessor, and the Secretary of State, as lessee, for the State COPs Financing as the Secretary of State may reasonably request.

9. **TAXES, PERMITS.** The Sublessee agrees to pay all license, sales, use, personal property, real property or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the State-Financed Equipment or the ownership, delivery, lease, possession, use, operation, sale or other disposition thereof or upon the rentals or earnings arising therefrom. The Sublessee may in good faith and by appropriate proceedings contest any such taxes so long as such

proceedings do not involve any danger of sale, forfeiture or loss of the State-Financed Equipment or any interest therein. Furthermore, the Sublessee shall provide all permits and licenses necessary for the installation, operation and use of the State-Financed Equipment. The Sublessee shall comply with all laws, rules, regulations, ordinances and resolutions applicable to the installation, use, possession and operation of the State-Financed Equipment. If compliance with any law, rule, regulation, resolution, resolution, permit or license requires changes or additions to be made to the State-Financed Equipment, the Sublessee shall notify the Sublessor and upon the written consent of the Sublessor, such changes or additions shall be made by the Sublessee at its own expense.

10. **UTILITIES.** The Sublessee shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished to or used in connection with the State-Financed Equipment (including charges for installation of such services) during the Agreement Term. There shall be no abatement of any amount owed hereunder on account of the interruption of any such services.

11. **SUBLESSEE'S RESPONSIBILITIES; RELEASE OF LIABILITY.** Sublessee shall be responsible for any negligent acts and/or negligent omissions committed by itself, its agents, and/or its employees. Sublessee shall be responsible to defend itself, its agents, and/or its employees and shall pay any judgments and costs arising out of such negligent acts and/or negligent omissions, and nothing in this Sublease Agreement shall impute or transfer any such responsibility from Sublessee to the Sublessor.

On and after the date of this Sublease, the Sublessee agrees not to seek any determination of liability against the Sublessor or, any department, agency or official of the State of Ohio in the case of claim or suit arising with respect to the Project including acquisition of property or any future condition, construction, operation, maintenance or use of property or facilities which may be developed in relation to the Project. To the extent permitted by law, the Sublessee forever releases and waives any and all claims it may ever possess or assert against the Sublessor and all employees, agents, officials and contractors and attorneys of same in relation to the Project.

12. **DISCLAIMER OF WARRANTIES: THE SUBLESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY OF THE STATE-FINANCED EQUIPMENT OR AS TO ITS TITLE THERETO OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE STATE-FINANCED EQUIPMENT.** The Sublessor hereby assigns to the Sublessee for and during the Agreement Term all manufacturer's warranties or guaranties, express or implied, issued on or applicable to the State-Financed Equipment and the Sublessor authorizes the Sublessee to obtain the customary services furnished in connection with such warranties or guaranties at the Sublessee's expense. The Sublessee acknowledges that the State-Financed Equipment has been acquired and installed by the Vendor selected by the Sublessee; that the Sublessor is not a manufacturer, contractor or dealer with respect to the components of the State-Financed Equipment and takes no part in or responsibility for the installation of the State-Financed Equipment, and that the Sublessor has made no representation or warranty and assumes no obligation with respect to the merchantability, condition, quality or fitness of the State-Financed Equipment or the enforcement of the manufacturer's warranties or guaranties.

13. **QUIET ENJOYMENT.** The Sublessor hereby covenants to provide the Sublessee during the Agreement Term with quiet use and enjoyment of the State-Financed Equipment, without suit, trouble or hindrance from the Sublessor except as expressly set forth in this Sublease Agreement. Any assignee of the Sublessor shall not interfere with such quiet use and enjoyment during the Agreement Terms so long as the Sublessee is not in default pursuant to this Sublease Agreement.

14. **INSURANCE.** Commencing the date risk of loss passes to the Sublessee from the Vendor and continuing thereafter until the end of the Agreement Term, the Sublessee, solely at its expense, shall keep the State-Financed Equipment insured against all risks of loss or damage from every cause whatsoever in an amount sufficient to cover the full replacement cost of the State-Financed Equipment set forth on Exhibit A, and shall carry public liability insurance, both personal injury and property damage, covering the State-Financed Equipment and its use. All insurance shall be of a type, form, in amounts and with companies or provided by a self-insurance program established and maintained by the Sublessee as permitted by ORC Section 2744.08 or a joint self-insurance pool established pursuant to ORC Section 2744.081 that Sublessee has entered a written agreement to join and contain terms and conditions satisfactory to the Sublessor. The Sublessee shall also carry worker's compensation insurance covering all its employees working on, in or about the State-Financed Equipment and shall require any other person, corporation, partnership or other entity working on, in or about the State-Financed Equipment to carry such coverage. Certificates of insurance or other evidence satisfactory to the Sublessor, including the original

or certified copies of the actual policies showing the existence of insurance in accordance herewith, and payments therefor, shall be delivered to the Sublessor forthwith. All insurance policies shall name the Sublessor as additional insured and shall provide the Sublessor at least thirty (30) days written notice prior to cancellation. In lieu of the foregoing and with the consent of the Sublessor, the Sublessee may self-insure for some or all of the foregoing. Any proceeds of insurance payable as a result of loss of or damage to the State-Financed Equipment shall be applied as provided in Paragraph 15 hereof.

15. **DAMAGE OR DESTRUCTION.** In the event the State-Financed Equipment is totally or partially damaged or destroyed, the Sublessee will promptly replace or repair and restore the State-Financed Equipment to working order for the purpose intended. The Sublessee shall not be entitled to any reimbursement for any such damage or destruction from the Sublessor, nor shall the Sublessee be entitled to any diminution of the amounts payable by it pursuant to this Sublease Agreement; provided, however, that any proceeds of insurance paid to the Sublessor pursuant to Paragraph 14 hereof shall be credited against the Sublessee's payment obligations under this Paragraph.

16. **EVENTS OF DEFAULT AND REMEDIES.** The Sublessee shall be deemed to be in default hereunder upon the happening of any of the following events of default: (a) the Sublessee shall fail to make any payments required to be paid hereunder, (b) the Sublessee shall fail to keep any such other term, covenant or condition contained herein, or (c) if any representation or warranty by the Sublessee herein or in any agreement, document or certificate delivered to the Sublessor in connection herewith which, at any time, proves to be incorrect in any material respect. Upon the occurrence of an event of default as specified above, and the Sublessee shall fail to remedy such event of default with all reasonable dispatch within a period of 10 days for a default under subparagraph (a) hereof and 30 days for all other defaults, then the Sublessor or its assigns shall have the right, at its option without any further demand or notice, to pursue any one or more of the following remedies: (i) re-enter and take possession of the State-Financed Equipment, and sell or lease the State-Financed Equipment or sublease it for the account of the Sublessee, holding the Sublessee liable for all payments due to the effective date of such sale, lease or sublease; (ii) by mandamus or other suit, action or proceeding at law or in equity enforce all the Sublessor's rights hereunder, including the compelling of the performance of all duties of the Sublessee hereunder and the enforcement of the payment of any amounts hereunder then outstanding; and (iii) take any other action at law or in equity may appear necessary or desirable to collect the payments due during the then current agreement or to enforce performance and observance of any obligation, agreement or covenant of the Sublessee under this Sublease Agreement.

17. **SURRENDER UPON DEFAULT.** In the event of default as set forth in Paragraph 16 hereof, the Sublessee shall, upon the request of the Sublessor, peaceably surrender possession of the State-Financed Equipment to the Sublessor in the same condition as when delivered to the Sublessee by the Vendor less reasonable wear and tear.

18. **NATURE OF THE OBLIGATIONS OF THE SUBLESSEE.** All of the obligations of the Sublessee set forth and covenants made by the Sublessee under this Sublease Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Sublessee within the meaning of ORC Section 2731.01 *et seq.* To the extent permitted by law, any payment obligation of the Sublessee under this Sublease Agreement shall be an absolute and unconditional obligation of the Sublessee in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever. Notwithstanding any dispute between or among the Sublessee, the Sublessor and the Vendor, the Sublessee shall make all payments required of it hereunder when due and shall not withhold any payments or portions thereof pending final resolution of such dispute. The Sublessee hereby covenants that it will not assert any right of set-off or counterclaim against its obligation to make the payments required hereunder and that it will take such action as is necessary under the laws applicable to the Sublessee to budget for, seek appropriation for, and include and maintain funds sufficient and available to discharge its obligations to meet all payments due pursuant to provisions of this Sublease Agreement. Notwithstanding the foregoing and any other provision of this Sublease Agreement, the obligation of the Sublessee to make any expenditure of money hereunder is subject to the lawful appropriation of funds for such purpose by the Legislative Authority, and is not a debt of the Sublessee subject to payment from the general revenues or taxes of the Sublessee or within the meaning of any constitutional or statutory provision. Neither the Sublessor nor any other person shall have any right to have excises or taxes levied by the Legislative Authority for any such expenditure.

19. **ASSIGNABILITY.** The Sublessor may assign its right and interest in and to the State-Financed Equipment without notice to the Sublessee. Such assignee shall have full benefit of all the covenants made by the Sublessee and all rights and remedies of the Sublessor contained herein. The Sublessee shall not have the right to assign its rights, duties and obligations under this Sublease Agreement either in part or in whole without prior written consent to the Sublessor or its assignee.

20. **COVENANTS OF THE SUBLESSEE.** The Sublessee represents, covenants and warrants that it is a county and political subdivision of the State of Ohio and is authorized by the Constitution and laws of the State of Ohio to enter into the transactions contemplated by this Sublease Agreement and to carry out its obligations hereunder. The Sublessee has been duly authorized to execute and deliver this Sublease Agreement and agrees that it will do or cause to be done all things necessary to preserve and keep its existence in full force and effect. The Sublessee further represents, covenants and warrants that all procedures have been met so that this Sublease Agreement is enforceable and the Sublessee has complied with all bidding requirements if required.

21. **NOTICES.** All notices to be given under this Sublease Agreement shall be made in writing and mailed to the other party at its address set forth below or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received ten days subsequent to mailing.

As to the Sublessor:

Ohio Secretary of State
 180 E. Broad Street, 16th Floor
 Columbus, Ohio 43215
 Attention: Voting Equipment
 Acquisition Program

As to the Sublessee:

County of Morrow, Ohio
 619 W Marion Road
 Mt. Gilead, Ohio 43338
 Attention: Director

22. **FURTHER ASSURANCES.** The Sublessee will, upon request of the Sublessor, at the Sublessee's sole cost and expense do and perform any other act and will execute, acknowledge, deliver, file, record and deposit (and will re-file, re-register, re-record, and re-deposit whenever required) any and all further instruments required by law or the Sublessor including, without limitation, financing statements or other documents needed for the protection of the Sublessor's interest.

23. **GOVERNING LAW; COUNTERPARTS.** This Sublease Agreement shall be governed by and in accordance with the laws of the State of Ohio. This Sublease Agreement may be signed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one contract.

24. **CHOICE OF VENUE.** The Sublessee agrees that, to the extent permitted by law, the state and federal courts located in Columbus, Ohio, or any other court in which the Sublessor initiates proceedings shall have exclusive jurisdiction over all matters arising out of this Sublease Agreement and that service of process in any such proceeding shall be effective if mailed to the Sublessee at its address set forth in Paragraph 21 hereof.

25. **ENTIRE AGREEMENT.** This Sublease Agreement correctly sets forth the entire agreement between the Sublessor and the Sublessee and no amendments or modifications of this Sublease Agreement shall be effective unless in writing and signed by both parties.

26. **THE SUBLESSEE'S RESPONSIBILITIES.** Nothing in this Sublease Agreement shall impute or transfer any responsibility from Sublessee to Sublessor.

27. **FEDERAL INCOME TAX MATTERS.** The Sublessee acknowledges that the Sublessor has obtained funds for the SoS Financing Program by utilizing the State COPs financing, and that the interest component of the Sublessor's lease payments thereunder is intended to be exempt from federal income taxation under the Internal Revenue Code of 1986, as amended and the regulations prescribed thereunder (the "Code"). The Sublessor hereby covenants that it will restrict the use of the State-Financed Equipment in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the Sublease is entered into, so that the interest portion of such lease payments by the Sublessor will not be subject to federal income taxation under the Code. To the extent permitted by law, the Sublessor shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax-exempt status of the State COPs Financing, and any other costs, resulting in whole or in part from actions taken by the Sublessee, including the failure of the Sublessee to comply with federal income tax laws applicable to such obligation.

28. **MAINTENANCE OF RECORDS.** The Sublessee will keep and make all reports and records associated with the State-Financed Equipment available to the Auditor of the State of Ohio (the "State Auditor"), or the State Auditor's designee, or the Sublessee, for a period of not less than thirteen (13) years after the date of this Agreement. This data shall include a description of the State-Financed Equipment, a detailed overview of the scope of work, and disbursement detail (including amount, date,

nature/object of expenditure), and Vendor information. The Sublessee acknowledges that the State Auditor and other departments, agencies and officials of the State of Ohio may audit the Project at any time, including before, during and after completion. To the extent permitted by law, the Sublessee agrees that any costs of any audit by the State Auditor or any other department, agency or official of the State of Ohio will be borne exclusively by and paid solely by the Sublessee. The Sublessee will be solely responsible for all costs associated with any such audit.

29. **MISCELLANEOUS.** The waiver by the Sublessor of the Sublessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. Any provision of this Sublease Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Sublease Agreement, and any provision of this Sublease Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Sublease Agreement.

THE EXHIBITS ATTACHED HERETO HAVE BEEN READ BY THE SUBLESSEE AND ARE INCLUDED IN AND MADE A PART HEREOF.

IN WITNESS WHEREOF, the Sublessor and the Sublessee, acting through the Legislative Authority, have caused this Sublease Agreement to be executed by their duly authorized signers as of the Agreement Date.

THE SUBLESSOR: SECRETARY OF STATE
OF THE STATE OF OHIO

Frank LaRose

THE SUBLESSEE: COUNTY OF MORROW,
OHIO

By: _____
County Commissioner

By: _____
County Commissioner

By: _____
County Commissioner

Approved and Agreed To:

MORROW COUNTY BOARD OF ELECTIONS

By: _____
Director of Board of Elections

s/Prosecuting Attorney of County of Morrow

s/County Auditor County of Morrow, Ohio

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle..., "yea"

**IN THE MATTER OF
APPROVAL TO RECESS SESSION: 20-R-759**

Mr. Whiston made a motion to recess session at 9:18 a.m.

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

**IN THE MATTER OF
APPROVAL TO RETURN TO REGULAR SESSION: 20-R-760**

Mr. Castle made a motion to return to regular session at 9:56 a.m.

Mr. Davis duly seconded this motion.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., .., Mr. Castle.,

**MCKIBBEN DITCH CONFERENCE CALL AT 10:00 A.M
REQUEST FOR EXTENSION OF TIME TO COMPLETE SURVEY, REPORTS AND
SCHEDULES BY COUNTY ENGINEER FOR MCKIBBEN JOINT DITCH PROJECT**

There being no further matters to bring before the board, a motion to adjourn was made by Mr. Castle and duly seconded by Mr. Whiston.

Roll Call Vote: ...,Mr. Whiston..., "yea" ...,Mr. Davis..., "yea" .., Mr. Castle., "yea"

We hereby certify the foregoing to be true and correct.

CHAIRMAN

CLERK

ASSISTANT CLERK

MORROW COUNTY COMMISSIONERS