

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PARMA HEIGHTS, OHIO, TO ENTER INTO AN AGREEMENT WITH ELLET NEON SALES AND SERVICE INC. TO IMPLEMENT PHASE 2 OF THE POGGEMEYER DESIGN GROUP'S WAYFINDING MASTER PLAN AND DECLARING AN EMERGENCY

WHEREAS, the city of Parma Heights and Ellet Neon Sales and Service, Inc. [Ellet] previously entered into a Contract to install Phase I Wayfinding Signs at various locations throughout the City of Parma Heights in accordance with the approved and adopted Community Wayfinding Signage Design as prepared by the Poggemeyer Design Group in accordance with the Drawings and Specifications assembled by the city engineer; and

WHEREAS, the Director of Economic Development applied for a Community Development Supplemental Grant (CDSG) award for additional Phase 2 Wayfinding Signage;

WHEREAS, on March 16, 2020 the Cuyahoga County Council awarded the city of Parma Heights an amount not to exceed \$50,000.00 for the signage project; and

WHEREAS, the Director of Economic Development recommends the Council approve an Agreement between the city of Parma Heights and Ellet to install Phase II Wayfinding Signs; and

WHEREAS, this Council desires to accept the CDSG award in the amount of \$50,000 and proceed with the installation of Phase II signage by Ellet.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. The Mayor of the Municipality of Parma Heights, Ohio is authorized and directed to execute the Agreement between the city of Parma Heights and Ellet for Phase II Wayfinding Signage, substantially in the form as is attached and approved by the Director of Law in accordance with Exhibit "A", attached hereto and made a part hereof by reference as if fully rewritten.

Section 2. This Council finds and determines that all formal action of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 3. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of said City and for the further reason it is necessary to enter into this Agreement with Ellet to implement Phase 2 of the Poggemeyer Design Group's Wayfinding Master Plan; wherefore, this ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 10-26-2020


PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan

10-26-2020
APPROVED

FILED WITH
THE MAYOR: 10-26-2020


MAYOR

**AN AGREEMENT BETWEEN ELLET NEON SALES AND SERVICE INC. AND THE
CITY OF PARMA HEIGHTS TO IMPLEMENT PHASE 2 OF THE POGGEMEYER
DESIGN GROUP'S WAYFINDING MASTER PLAN**

This contract made this ____ day of _____, 2020 by and between Ellet Neon Sales and Service Inc. (Ellet) and the City of Parma Heights (City) to implement Phase 2 of the Poggemeyer Design Group's Wayfinding Master Plan

The City and Ellet for the consideration stated herein agree as follows:

ARTICLE I - SCOPE OF THE WORK

Ellet shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner all the work required to:

Install Phase II Wayfinding Signs at various locations throughout the City of Parma Heights in accordance with the approved and adopted Community Wayfinding Signage, as prepared by Poggemeyer Design Group for Phase II of the signage project in accordance with the Drawings and Specifications assembled by the City Engineer, and in compliance with the Contract Documents herein mentioned which are a part of this Agreement and Ellet shall do everything required by this Agreement and other Documents constituting a part hereof, and as set forth below;

This project is comprised of a total of 10 signs: [Ex. A. & Ex D].

- a. Six (6) wayfinding signs located on the Pearl Road Corridor.
- b. Replacement of the large sign on Ackley Rd at Westminster at the Parma border with a smaller version.
- c. A dedication sign in the Greenbrier Commons.
- d. A Reservoir Park identification sign.
- e. A Nathan Hale vehicular directional sign (VO-2) on Pearl Road southbound.

ARTICLE II - THE CONTRACT PRICE

The contract price to install Phase II Wayfinding Signage shall not exceed Forty Nine Thousand Five Hundred and Seventy Two Dollars [\$49,572.00] for Ellet to install ten [10] as set forth in Exhibit B and Exhibit C.

Ellet covenants and agrees to pay to all persons and corporations furnishing materials or rendering services in connection with the performance of the contract, and any person or corporation furnishing such materials or rendering such services may, as provided by Section 10A of the Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended, maintain an action to recover for the same under said labor and material payment bond as though such person or corporation were named therein, provided that action is brought within one year after the time the cause of action shall have occurred.

ARTICLE III - PAYMENT

The City shall make payments on account of this Agreement as follows:

PAYMENT METHOD: At least ten (10) days before each progress payment falls due (but not more often than once a month), Ellet shall submit to the Engineer a partial payment estimate filled out and signed by Ellet covering the work performed during the period covered by the partial payment estimate and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the City as will establish the City's title to the material and equipment and protect his interest therein, including applicable insurance.

The Engineer will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the City, or return the partial payment estimate to Ellet indicating in writing his reasons for refusing to approve payment. In the latter case, Ellet shall make the necessary corrections and resubmit the partial payment estimate.

The City will within 30 days of presentation of an approved partial payment estimate, pay Ellet for labor performed and material incorporated in the work, at the rate of 92 percent of the amount of the estimate as approved by the Engineer until 50 percent of the work is completed. All labor performed and material incorporated in the work after the job is 50 percent completed shall be paid for at the rate of 100 percent of the amount of additional labor and material furnished and approved, and the amount previously retained shall be deposited in an escrow account. The funds in the escrow account, less accumulated interest, are to be paid to Ellet at the same time and in the same manner as specified for payment of the retained amount. Payment for material and equipment delivered and not incorporated shall be at the rate of 92 percent of the invoice value of such material and equipment.

Partial payment to Ellet for work performed under a lump sum price shall be based on the schedule of quantities and cost submitted.

Any money due from City shall, on the day that it is due, be paid to Ellet, or deposited in an escrow account, whichever is applicable, with one or more banks or building and loan associates in the state selected by mutual agreement between Ellet and the City. The agreement shall contain the following provisions:

1. The money shall be deposited in a savings account, or the escrow agent shall properly invest all the escrow principal in obligations selected by the escrow agent, as stipulated in the agreement.
2. The escrow agent shall hold the escrow principal and income until receipt of notice from the City and Ellet, or until receipt of an arbitration order specifying the amount of escrow principal to be released and the person to whom it is to be released. Upon receipt of

the notice or order, the agent shall properly pay such amount of principal and the portion of amount of the escrow income to the person indicated.

3. The escrow agent shall be compensated for its services as agreed to by the City and Ellet from the income from the escrow account.

The request for payment may also include an allowance for the cost of such major materials and equipment, which are suitably stored either at the site or near the site.

Prior to substantial completion, the City, with the approval of the Engineer and with the concurrence of Ellet, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

The City shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving Ellet of the sole and exclusive responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the owner.

Upon completion and acceptance of the work, the Engineer shall issue a certificate attached to the final payment request that he has accepted the work under the conditions of the contract documents.

The entire balance found to be due Ellet, including the retained percentages, but except such sums as may be lawfully retained by the City, shall be paid within thirty (30) days of completion and acceptance of work.

Ellet shall indemnify and save the City or the City's agents harmless from claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the work.

Ellet shall, at the City's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If Ellet fails to do so, the City may, after having notified Ellet, either pay unpaid bills or withhold from Ellet's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to Ellet shall be resumed, in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the City to either Ellet, its Surety, or any third party.

In paying any unpaid bills of Ellet, any payment so made by the City shall be considered as a payment made by the City to Ellet, and the City shall not be liable to Ellet for any such payments made in good faith.

Ellet shall indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of owner,

and shall defend, indemnify and save harmless owner from any and all claims, demands, suits, actions or proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of the operations in connection herewith, including operations of subcontractors and acts or omissions of employees or agents of Ellet or its subcontractors.

Insurance coverage specified herein and in the special conditions constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of Ellet under the terms of this Agreement. Ellet shall procure and maintain at this own cost and expense, any additional kinds and amounts of insurance that, in his own judgment, may be necessary for his proper protection in the performance of the work.

At the completion of the project and after passage of the final inspection, an approved two (2) year MAINTENANCE BOND in the amount of twenty percent (20%) of the construction cost, specifying the City of Parma Heights (client) as the protected party, must be supplied.

ARTICLE IV - TIME OF COMPLETION

Time is of the essence in the performance and completion of this work.

ARTICLE V - LIQUIDATED DAMAGES

The parties mutually agree that time is of the essence in the completion of the work included in this Agreement and such work shall be completed within the time specified in this Agreement.

Ellet shall compensate the City for any damages caused to or losses incurred by the City as a result of the failure to complete the work included in the Agreement within the time specified in the Agreement. Such damages and losses shall include all damages and losses suffered by the City and, in order that Ellet may recognize the seriousness of such damages and losses to the City, the following examples are set forth not in limitation but as illustration of some of the kinds of damages and losses which may result from a failure to complete the work on time and for which the City will be compensated, which include but are not limited to: [1] Additional interest on notes or bonds issued to finance the cost of the work is included in the Agreement, [2] The increased cost of operating or maintaining existing facilities that will be replaced by the work covered under this contract, [3] The cost of field engineering crews repeating work previously completed and [4] Any costs or payments resulting from the failure to have construction completed when required to meet the work included under other contracts.

Such liquidated damages shall not be considered as a penalty. The City will deduct and retain out of any money due or to become due under the Agreement, the amount of the liquidated damages, and in case these amounts are less than the amount of the liquidated damages, Ellet shall be liable for the payment of the difference upon demand of the City.

ARTICLE VI – INSURANCE

Ellet shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations

performed in connection with this Agreement.

1. Mandatory Insurance Requirements

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio.

Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) **Commercial General Liability Insurance** with limits of liability not less than: \$1,000,000 each occurrence bodily injury & property damage; \$1,000,000 personal & advertising injury;

\$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent,

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Insurance Coverage Terms and Conditions

1. The insurance policies of the Group required for this Agreement, shall:
 - (i) Name the "City of Parma Heights, Ohio and its employees" as an Additional Insured, to the extent of loss suffered in connection with the City's role under this Agreement, as its interest may appear. This does not apply to Workers Compensation, All Risk Equipment Insurance, Professional Liability/Errors & Omissions Insurance and Technology Professional/Errors & Omissions Insurance.
 - (ii) Contain a waiver of subrogation provision wherein the insurer(s) waives all rights of recovery against the City.
 - (iii) Be primary and not in excess or contingent on any other basis;
 - (iv) The Certificates of Insurance evidencing these coverages shall contain the following additional insured and waiver of subrogation language where applicable:

- (v) "City of Parma Heights and its employees are additional insureds for purposes of commercial general liability and automobile liability"; and/or
- (vi) "Waiver of subrogation in favor of the City."

2. The insurance required for this Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A-VII or above.
3. The terms of this Agreement shall be controlling and shall not be limited by any insurance policy provision.
4. High-risk activities may require higher insurance limits.
5. These insurance provisions shall not affect or limit the liability of the Group stated elsewhere in this Agreement or as provided by law.
6. The Group shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
7. The City reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the City.
8. Where coverages are made on a claims made basis the claims-made retroactive date on the policy shall be prior to the commencement of professional activity related to this Agreement.
9. The Group shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the City shall not constitute a waiver of any rights of the parties under this Agreement.

ARTICLE VIII- PERFORMANCE BOND AND MATERIAL PAYMENT BOND

Ellet shall furnish to the City of Parma Heights a satisfactory performance bond and a satisfactory labor and material payment bond, each in the amount of the Agreement, and each with corporate Surety satisfactory to the City of Parma Heights. Upon completion of the project, Ellet is to issue the City a Maintenance Bond in the amount of 20 percent (20%) of the original contract amount for a period of two (2) years.

ARTICLE IX - ARBITRATION CLAUSE

Ellet and the City agree that any controversy or claim arising out of, or related to this Agreement, or the breach thereof, shall be settled by Arbitration in accordance with the construction Industry Arbitration Rules and the Expedited Dispute Settlement Rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise; provided, however, that, subject to the reasonable control of the Arbitrator as to manner and time, and so as not to delay in

any way the resolution of the dispute, the Parties shall have the right to utilize those means of discovery available to litigants under the Ohio Rules of Civil Procedure and, subject to the consent of the Arbitrator, which consent shall not be unreasonably withheld, may present testimony of witnesses by way of deposition. Unless the Parties mutually agree otherwise, the arbitration panel shall consist of one attorney-at-law knowledgeable in the areas of real estate and construction law. The Arbitration decision shall be binding upon both the Ellet and City, and judgment upon the award rendered by the Arbitrator or Arbitrators may be entered in any Court having jurisdiction thereof. Notice of the request for Arbitration should be sent to the other Party hereto and to the Cleveland office of the American Arbitration Association.

ARTICLE X. - TERMINATION FOR CONVENIENCE.

In addition to any other rights the City may have at law or under this Agreement with respect to cancellation or termination, the City may, without cause, terminate this Agreement in whole or in part, if the City determines that a termination is appropriate for its convenience. The City shall give Ellet at least thirty (30) days written notice of the termination.

ARTICLE XI. - MODIFICATIONS OF THE AGREEMENT.

It is understood and agreed that this Agreement shall not be changed, modified, or altered except by and instrument, in writing, signed by both parties and duly approved and authorized by the legislative authority in accordance with the laws of the State of Ohio.

ARTICLE XII. - MULTIPLE COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

ARTICLE XIII. - SEVERABILITY.

If any provision of this Agreement, or any covenant, obligation or agreement contained here is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

ARTICLE XIV - INDEPENDENT CONTRACTOR.

Ellet acknowledges that it is an independent contractor and neither it nor its employees or agents are employees of the City. Ellet shall be responsible for the payment or withholding of any federal, state or local taxes, including, but not limited to, income, unemployment, and workers' compensation for its employees, and the City will not provide or contribute to any plan which provides for benefits, including but not limited to unemployment insurance, workers' compensation, retirement benefits, liability insurance or health insurance. All individuals employed by Ellet are not public employees of the City under Ohio law.

No agency, employment, joint venture or partnership has been or will be created between the parties pursuant to the terms and conditions of this Agreement.

ARTICLE XV - ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements, representations or understandings, whether written or oral, as to the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in five original counter parts the day and year first above written.

FOR THE CITY OF PARMA HEIGHTS:

Michael P. Byrne
Mayor

Date: _____

FOR ELLET NEON SALES AND SERVICE INC.

Albert Haddad
Project Manager

Date: _____