

COMMISSIONERS JOURNAL NO. 56 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 22, 2012

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

Present:
Dennis Stapleton, President
Ken O'Brien, Vice President

Absent:
Tommy Thompson, Commissioner

RESOLUTION NO. 12-270

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 19, 2012:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 19, 2012; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

Vote on Motion Mr. Thompson Absent Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 12-271

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0321, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0321 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR0321:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0321, memo transfers in batch numbers MTAPR0321 Procurement Card Payments in batch number PCAPR0321 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Nancy Axline	Case Reviewer	22411601-5301	\$ 7,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Desc</u>	<u>Line Account</u>	<u>Amount</u>	<u>Line</u>
R1203272	MCNAUGHTON MCKAY INC	VFD - REPAIRS	66211903 - 5450	\$37,229.5	0001

Vote on Motion Mr. Stapleton Aye Mr. Thompson Absent Mr. O'Brien Aye

RESOLUTION NO. 12-272

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

The Court of Common Pleas (Adult Court Services) is requesting that Doug Missman attend a Thinking for a Change Facilitator Training in Orient, Ohio March 13-16, 2012; at the cost of \$160.00 (Fund Number 25722304).

The Child Support Enforcement Agency is requesting that Wendy Shannon, Erynn Ringle, Aaron Howard, Kelly Mills, Matt Smith, Deb Benjamin attend the Ohio Child Support Spring Symposium in Columbus, Ohio at various times April 16-17, 2012; at the cost of \$975.00 (Fund Number 23711630).

The Economic Development Department is requesting that Dottie Brown attend a CDBG Formula Training 2012 Class in Columbus, Ohio April 18, 2012; at no cost.

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The Economic Development Department is requesting that Dottie Brown attend Consolidated Plan FY 2013- Planning Work Groups in Columbus, Ohio various days April–August, 2012; at no cost.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Absent Mr. Stapleton Aye

RESOLUTION NO. 12-273

IN THE MATTER OF SETTING THE DATE AND TIME FOR VIEWING AND PUBLIC HEARING FOR CONSIDERATION OF THE OAK CREEK PHASE 1, 1-2, 1-3, 1-4, 1-5, 1-6 SUBDIVISION DRAINAGE PETITION FILED BY BRUCE KULLBERG, TRUSTEE WITH THE OAK CREEK HOMEOWNERS ASSOCIATION, AND OTHERS:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

WHEREAS, on February 29, 2012, the Clerk of this Board gave notice to the Board of County Commissioners and the County Engineer of Delaware County, Ohio, on the filing with her of a petition signed by Bruce Kullberg, Trustee with the Oak Creek Homeowners Association, And Others, to:

1. To replace, repair or alter the existing improvements as required and to maintain these improvements per attached Exhibit C and associated engineering design plan.
2. In Delaware County, Orange Township, in the Oak Creek Phase 1, 1-2, 1-3, 1-4, 1-5, 1-6 Subdivision site and generally following the existing course and terrain of the improvement shown on document labeled Exhibit C.

(Exhibit C available for review in the Delaware County Commissioners' Office and Engineer's Office until no longer of administrative value).

WHEREAS, the proper bond has been filed with the clerk, approved, conditioned for the payment of costs of notices, plus any other incidental expenses, except the cost incurred by the Engineer in making his preliminary reports, if the prayer of this petition is not granted, or if the petition is for any cause dismissed, unless the Board decides to pay the Engineer's cost from the bond in accordance with Section 6131.09 of the Revised Code;

THEREFORE, BE IT RESOLVED, BY THE Board of County Commissioners, that **Monday May 21st, 2012, at 1:30PM** at the corner of Cottonwood Drive and Wilhoit Ave., be and the same is hereby fixed as the time and place for the view thereon, and

BE IT FURTHER RESOLVED, That **Monday August 6th, 2012, at 10:30AM** at the Office of the Board of County Commissioners, 101 North Sandusky Street Delaware, Ohio be and the same is hereby fixed as the time and place for the first hearing on the petition, and

BE IT FURTHER RESOLVED, that notice of said view and hearing be given, as required by law.

Vote on Motion Mr. Thompson Absent Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 12-274

IN THE MATTER OF ACCEPTING THE TREASURER'S REPORT FOR THE MONTH OF FEBRUARY 2012:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to accept the Treasurer's Report for the month of February 2012.

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

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Absent

RESOLUTION NO. 12-275

IN THE MATTER OF APPROVING TRANSFER OF FUNDS, TRANSFER OF APPROPRIATIONS, AND SUPPLEMENTAL APPROPRIATIONS:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

Supplemental Appropriation			
10011102-5403	Commissioners General/Fiber Improvements	\$	100,000.00
21411306-5450	911 Operations//Equipment	\$	34,500.00
24820101-5801	Title Administration/Transfers		\$15,515.00

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10020201-5001	Clerk of Courts/Compensation	\$9,180.00
10020201-5101	Clerk of Courts/Health Insurance	\$4,833.00
10020201-5102	Clerk of Courts/Workers Comp	\$82.62
10020201-5120	Clerk of Courts/PERS	\$1,285.20
10020201-5131	Clerk of Courts/Medicare	\$133.11

Transfer of Appropriations

From	To	
10011102-5801	10011102-5403	\$150,000.00
Commissioners General/Transfers	Commissioners General/Fiber Improvements	
21411306-5320	21411306-5450	\$10,000.00
911 Operations/Services	911 Operations/Equipment	

Transfer of Funds

From	To	
24820201-5801	10020201-4601	\$15,515.00
Title Administration/Transfers	Clerk of Courts/Interfund Transfer	

Vote on Motion Mr. O'Brien Aye Mr. Thompson Absent Mr. Stapleton Aye

RESOLUTION NO. 12-276

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF DISCIPLINE OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adjourn into Executive Session at 10:10AM.

Vote on Motion Mr. Thompson Absent Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 12-277

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adjourn out of Executive Session at 10:40AM.

Vote on Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Absent

RESOLUTION NO. 12-278

IN THE MATTER OF APPROVING CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND GUDENKAUF CORPORATION FOR THE CONSTRUCTION OF THE DELAWARE FIBER LATERAL PROJECT:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

Whereas, the County Auditor and Data Center Administrator recommend approval of the contract with Gudenkauf Corporation for the construction of The Delaware Fiber Lateral Project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract with Gudenkauf Corporation for the construction of the Delaware Fiber Lateral Project;

**CONTRACT FOR THE CONSTRUCTION OF
THE DELAWARE FIBER LATERAL PROJECT**

This Agreement is made this 22nd day of March, 2012 by and between Gudenkauf Corporation, whose address is 2679 McKinley Avenue, Columbus, Ohio 43204 (hereinafter called the "Contractor"), and the Delaware County Board of Commissioners, whose address is 101 North Sandusky Street, Delaware, Ohio 43015 (hereinafter called the "Owner").

The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work required for the installation of the fiber and conduit embraced in the project known as the Delaware Fiber Lateral (the "Project"), and required supplemental work for the Project all in strict accordance with the Contract Documents. The Owner designates the Delaware County Data Center Administrator as the Owner's representative and contract administrator for this

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Agreement, and he shall have general supervision of the Work hereunder.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at prices stipulated in the Bid for the respective items of work completed for the sum not to exceed Four Hundred Forty-One Thousand Twenty Dollars and Zero Cents (\$441,020.00), subject to additions and deductions as provided in the Contract Documents, and the amount not to exceed per segment as follows:

Segment A: 440 to 10 Court St. (288 strands option, with 144 terminated)	\$101,190
Segment B(2): Alum Creek (288 strands in existing conduit, with 48 terminated)	\$197,460
Segment C: Orange Township fire 361 (144 strands, with 48 terminated)	\$ 24,600
Segment D: Orange Township Pool (revised 12 count option, with 12 terminated)	\$ 18,000
Segment F: DCBDD (48 strands in new conduit, with 48 terminated)	\$ 21,320
Segment G: Orange Township Hall (144 strands in new conduit, with 12 terminated)	\$11,550
Segment H: Orange Township Fire 362 (144 strands in new conduit, with 12 terminated)	\$11,550
Segment I: OECC (288 strand option, with 48 terminated)	\$55,350

The Contractor shall not proceed with Segments D, F, G, or H unless and until the Owner provides a written notice to proceed within forty-five (45) days after approval of this Agreement. If a written notice to proceed with Segments D, F, G, or H is not provided within forty-five (45) days after approval of this Agreement, the Contractor and Owner mutually acknowledge and agree that the Segments for which a notice to proceed is not issued shall be deleted from the Project, and the Contractor shall receive no compensation therefor.

Payments to the Contractor shall be in accordance with section 153.12 of the Revised Code and based upon proper invoices submitted to the Owner. The Contractor shall provide additional documentation in support of invoices upon Owner's request. The Owner shall pay approved invoices within thirty (30) days of receipt.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- I. This Agreement
- II. Invitation to Bid
- III. Signed copy of bid
- IV. Any documents incorporated by reference in any of the above mentioned documents.

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Agreement as if hereto attached or herein repeated, forms the Agreement between the parties hereto. In the event that any provision in any component part of this Agreement conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern except as otherwise specifically stated.

Vote on Motion Mr. Thompson Absent Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 12-279

IN THE MATTER OF APPROVING A CONTRACT OF SALE BY AND BETWEEN COLUMBUS FIBERNET LLC, AND DELAWARE COUNTY FOR THE DELAWARE FIBER LATERAL PROJECT:

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

Whereas, the County Auditor and Data Center Administrator recommend approval of the contract of sale by and between Columbus Fibernet Llc, And Delaware County For The Delaware Fiber Lateral Project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale by and between Columbus Fibernet Llc, And Delaware County For The Delaware Fiber Lateral Project;

CONTRACT OF SALE

This Contract of Sale ("Contract") is entered into this 22nd day of March, 2012 by and between Columbus Fibernet LLC, 1366 Dublin Rd, Columbus, Ohio 43215, an Ohio limited liability company ("Seller") and Delaware County

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("Buyer) (sometimes Buyer or Seller referred to as Party, Each Party, or Other Party).

RECITALS

WHEREAS, Seller has constructed and owns an organized system of multi-duct underground conduit and related facilities in and around the city of Columbus, Ohio and certain municipalities contiguous thereto (the "Conduit System"); and

WHEREAS, Seller wishes to sell ducts within the Conduit System to providers of telecommunications services for use by such providers in supplying such services to their end-user customers and/or leasing duct space to other providers of telecommunications services; and

WHEREAS, Buyer is a governmental entity that is expanding its telecommunications network and wishes to acquire a segment of duct within the Conduit System for the purpose of installing fiber to provide telecommunications services to its facilities and other governmental entities' facilities;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Seller agrees to sell, and Buyer agrees to buy, the segment of duct identified herein, subject to the promises, covenants, and warranties set forth in this Contract.

ARTICLE I

PROPERTY CONVEYED

1.1 Conduit System. The Conduit System consists of approximately seventy-two (72) miles of sixteen (16) 1.5 (inside diameter) HDPE ducts located in and around the city of Columbus, Ohio and certain municipalities contiguous thereto as shown on the map attached hereto as Exhibit A. The Conduit System includes all manholes and other appurtenances constructed by Seller to facilitate access to the ducts. In each underground segment of the Conduit System, the sixteen (16) ducts are segregated, for purposes of access, into two (2) six (6)-duct subsets and one (1) four (4)-duct subset, with each such subset served by separate manholes.

1.2 Property To Be Conveyed. Seller agrees to sell, and Buyer agrees to buy the portion of the Conduit System consisting of five thousand two hundred fifty nine (5259') linear feet of one (1) 1.5 (inside diameter) duct as shown on the drawings attached hereto as Exhibit A (the "Property").

ARTICLE II

PURCHASE PRICE

2.1 Purchase Price. Buyer will pay to Seller at closing the purchase price of Thirty-nine Thousand Four Hundred Forty-two Dollars (\$39,442) for the Property as described in Section 1.2 of this Contract and as depicted on Exhibit B hereto.

ARTICLE III

EVIDENCE OF OWNERSHIP

3.1 Ownership Documents. On the effective date of this Contract, Seller shall furnish to Buyer a true and correct copy of a complete set of plans and specifications for the portion of the Conduit System in which the Property is located. In addition, upon the request of Buyer, Seller shall make available for inspection:

a. All existing approvals and authorizations secured by Seller from governmental authorities in connection with the routing and construction of the Conduit System;

b. Any existing private right-of-way agreements or private easements secured by Seller in connection with the routing of the Conduit System; and

ARTICLE IV

SELLER'S REPRESENTATIONS AND WARRANTIES

4.1 Condition of Property. Seller warrants that as of the date of closing the Property will materially and substantially comply with the plans and specifications provided pursuant to Sections 3.1 of this Contract and that the Property is free from material defects, deviations, errors, or omissions in construction as a fiber conduit system. If, within twelve (12) months from the date of closing, Buyer discovers any material defect in the construction of the Property, Seller will, within fifteen (15) days after receipt of written notice of such defect from Buyer, inspect the portion of the Property in question and, within thirty (30) days thereafter, correct such defect at no cost to Buyer or notify Buyer that it disputes that the defect identified in the notice exists, in which case the parties will proceed as provided in Section XVI.

4.2 Ownership. Seller is the owner of the entire right, title, and interest in and to the Property.

4.3 Seller's Power and Authority. Seller and its representatives have all power and authority legally necessary to enter into this Contract, execute and deliver the Closing documents, and sell the Property in

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accordance with the terms of this Contract.

4.4 No Actions Against Seller. Seller knows of no action, suit, proceeding, or assessment pending or threatened against Seller, which would, if determined against Seller, adversely and materially affect Seller's ability to perform its obligations under this Contract.

4.5 No Additional Approvals Required. Neither Seller's execution of this Contract nor Seller's performance of any of its obligations hereunder:

a. Violates any written or oral contract, agreement or instrument to which Seller is bound or which affects the Property or any part of it;

b. Constitutes or will result in the violation or breach by Seller of any judgment, order, writ, injunction or decree issued or imposed upon Seller, or result in violation of any federal, state, local and other laws, statutes, regulations, codes, orders, ordinances and rules; or

c. Requires that Seller obtain any approval, consent, order, authorization, designation, filing (other than recording), registration, notification of, by, or with any judicial or governmental authority except as expressly provided in this Contract.

ARTICLE V

BUYER'S REPRESENTATIONS AND WARRANTIES

5.1 Buyer's Power and Authority. Buyer and its representatives have all power and authority legally necessary to enter into this Contract, execute and deliver the Closing documents, and purchase the Property in accordance with the terms of this Contract.

5.2 No Actions Against Buyer. Buyer knows of no action, suit, or proceeding, pending or threatened against Buyer, which would, if determined against Buyer, adversely and materially affect Buyer's ability to perform its obligations under this Contract.

5.3 Submission to All Applicable Local Right-of-Way Controls. Buyer understands and acknowledges that the Property is subject to all applicable local right of way controls as enacted, either currently or in the future, by those municipalities in which the Property is located. Buyer represents and warrants that it shall own and operate the Property subject to, and in accordance with, the requirements of those municipalities and will secure all necessary permits, approvals, and authorizations from such municipalities. On the effective date of this Contract, or on such later date as Seller and Buyer may agree, Buyer represents to Seller that it has secured all such necessary permits, approvals, and authorizations

ARTICLE VI

UNDERLYING RIGHTS

6.1 Underlying Rights. The Conduit System is subject to the terms of certain right-of-way agreements that Seller has obtained for the construction and operation of the Conduit System, to such terms as the grantors of such right of way may be subject as owners of the underlying real property, to the rights of tenants and licensees in possession of such real property, and to the prior rights of the grantors to use the right of way for their own business or other purposes (collectively, the "Underlying Rights"). The Property conveyed and other rights granted herein are subject to the Underlying Rights applicable to that portion of the Conduit System in which the Property is located as well as to the rights of Seller granted under the Underlying Rights

ARTICLE VII

ACCESS

7.1 Access to Duct. Seller hereby grants Buyer a non-exclusive license to use all manholes and hand holes that provide access to the Property.

7.2 Notice. Buyer understands that other providers of telecommunications services have acquired, or may acquire, ducts within the same subset as the Property. In order that Seller may coordinate access to the manholes and hand holes by all such providers, Buyer shall notify Seller, in writing, no fewer than three (3) days in advance of its desire to access the Property. In case of emergency, Buyer shall notify Seller of its need for immediate access to the Property. Seller shall respond within two (2) hours of the receipt of such emergency notice. If Seller does not respond within this two (2) hour period, Seller shall be deemed to have approved the requested emergency access. Seller shall have a representative present during any Buyer access to manholes or hand holes and Buyer shall pay to Seller all reasonable costs related to the services provided by such Seller's representative.

7.3 Use of Manholes. Because other providers of telecommunications services have acquired, or may acquire ducts within the same subset as the Property, space within each manhole will be allocated based on the ratio of the number of ducts purchased to the number of ducts in the subset. Buyer's license to use the manhole

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includes the right to use one-eighth (1/8) of the space therein.

**ARTICLE VIII
Additional Construction**

8.1 Additional Construction. Seller agrees to cooperate with Buyer on any additional construction services for purposes of additional access points to the Conduit System.

**ARTICLE IX
CONDUIT SYSTEM MAINTENANCE, REPAIR, AND RELOCATION**

9.1 Scheduled Maintenance. Seller shall use commercially reasonable methods to maintain the Property in a secure and good condition. Such routine maintenance ("Scheduled Maintenance") shall include, but is not limited to, locating and marking the Property and pumping, venting, air quality testing, and proofing the Property when necessary. Buyer shall pay to Seller for Seller's services under this Section 9.1, an amount equal to One Thousand Dollars (\$1,000) a year for the period commencing with the Closing date and continuing on the anniversary date of the Closing for 5 years ("Initial Term"). After the Initial Term expires, Buyer shall pay to Seller an amount of \$1,040 per year for year 6 and each year thereafter such amount shall increase by 4%. This fee shall continue for so long as Seller is providing Scheduled Maintenance services to Buyer hereunder. Such payments are due up front on the first day of each anniversary of the Closing date.

9.2 Unscheduled Maintenance. Non-routine maintenance and repairs ("Unscheduled Maintenance") of the Property shall be performed by Seller or, in Seller's sole discretion, by its agent, affiliate, or a subcontractor. Unscheduled Maintenance shall include, but is not limited to, relocation of a portion of the Conduit System in which the Property is located, emergency repairs, or any other maintenance necessary to prevent any failure, interruption, or impairment in the operation of the Conduit System; provided, however, that in no event shall Seller be responsible for repairing, moving, or relocating Buyer's cable. The cost of any Unscheduled Maintenance performed solely for the benefit of Buyer will be charged directly to the Buyer. With respect to all other Unscheduled Maintenance, Buyer shall be charged one-eighth (1/8th) of the cost of the services performed. Seller will provide Buyer with a statement of the applicable charges within thirty (30) days of the date the costs are incurred. This invoice will be due and payable by Buyer thirty (30) days after receipt. Unscheduled Maintenance charges not paid within five (5) days of the due date will interest at a rate of one and one half percent (1.5%) per month until paid in full. Seller will promptly notify Buyer of any required relocation of the Property.

**ARTICLE X
TAXES**

Responsibility for Taxes. The Buyer is exempt from paying Ohio sales and use taxes. The Buyer shall provide the Seller with an exemption certificate in a form acceptable to the Ohio Tax Commissioner.

**ARTICLE XI
INSURANCE**

11.1 Insurance Coverage. Seller and Buyer shall maintain insurance coverage with respect to their respective interest in the Conduit System consistent with commercially reasonable business practice. Upon request by one party, the other party shall provide evidence that such insurance coverage is in place within (10) days after receipt of such request.

**ARTICLE XII
INDEMNIFICATION**

12.1 Seller's Indemnity. Seller agrees to indemnify, protect, and defend Buyer against, and hold Buyer harmless from, any and all claims, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable attorney's fees, asserted against, incurred, or suffered by Buyer resulting from any personal injury or property damage occurring in, on, or about the Property or relating thereto on or before the date of closing from any cause whatsoever other than as a consequence of the acts or omissions of Buyer, its agents, employees, or contractors. Neither the foregoing nor any other provision of this Contract shall limit the rights and remedies available to Buyer at law or in equity.

**ARTICLE XIII
LIMITATION OF LIABILITY**

13.1 Liability. Notwithstanding any other provision of this Contract, it is the intent of the parties that each shall be liable to the other for any actual and direct damages incurred as a result of a party's failure to perform its obligations as required by this Contract; provided, however, that, in no event, will either party, nor any of their contractors, subcontractors, agents, or employees be liable for any loss of revenue, lost profit, or other indirect, special, or consequential damages suffered as a result of either party's breach of its obligations under this Contract.

ARTICLE XIV

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CLOSING

14.1 Place and Date of Closing. The closing for the purchase and sale shall take place at a time and date agreed upon by the parties within 30 days of approval of the agreement at Seller's office at 1366 Dublin Road, Columbus, Ohio.

14.2 Seller's Closing Obligations. At closing, Seller shall deliver to Buyer each of the following items:

- a. A bill of sale;
- b. Any private right-of-way agreements or private easements executed by Seller in favor of Buyer as may be necessary to transfer the Property or portions thereof; and
- c. A certificate of Seller dated as of the date closing confirming, without exception or qualification, that all of the representations of Seller contained in this Contract are true and correct as of the date of closing as if made on and as of the date of closing.

14.3 Buyer's Closing Obligations. At closing, Buyer shall deliver to Seller each of the following items:

- a. The purchase price as set forth in Section 2.1 in immediately available funds; and
- b. A certificate of Buyer dated as of the date of closing confirming, without exception or qualification, that all of the representations of Buyer contained in this Contract are true and correct as of the date of closing as if made on and as of the date of closing.

14.4 Possession at Closing. Possession of the Property shall be delivered to Buyer by Seller at closing.

14.5 Closing Costs. Each party will be responsible for its own legal fees.

ARTICLE XV

TERMINATION OR DEFAULT

15.1 Buyer's Termination. If Seller is unable to convey title to the Property or any portion thereof, Buyer may, at Buyer's option, terminate this Contract in its entirety or with respect to that portion of the Property which Seller is unable to convey. Buyer shall provide written notice to Seller of its intention in this regard not later than the closing date.

15.2 Default. If either Seller or Buyer fails or refuses to perform their respective obligations hereunder, including the failure to pay any amount when due, for any reason other than the other party's default or a duly-noticed termination expressly permitted under this Contract, Seller or Buyer, as applicable, may pursue any remedies available to such party at law or equity or may terminate this Contract.

ARTICLE XVI

REMEDIES

16.1 Dispute Resolution. Any claim, controversy, or dispute between Buyer and Seller that is related directly to this Contract, whether sounding in contract, tort, statute, fraud, misrepresentation or other legal theory, shall be filed in and heard before the courts of Delaware County, Ohio.

ARTICLE XVII

DAMAGE OR DESTRUCTION PRIOR TO CLOSING

17.1 Damage or Destruction. If the Property is destroyed or partially damaged by any casualty prior to the closing date, the Buyer (i) may request Seller to repair such damage at Seller's sole cost or (ii) terminate this Agreement.

ARTICLE XVIII

CONDEMNATION PRIOR TO CLOSING

18.1 Eminent Domain. If, prior to closing, any portion of the Property is taken by any governmental authority under the power of eminent domain or by any private entity possessing the power of eminent domain, Buyer may, at Buyer's option, terminate the Contract with respect to that portion of the Property subject to such taking and the parties shall thereafter be released of any obligation or liability by reason of the execution of this Contract as it relates to the purchase and sale of such portion of the Property.

ARTICLE XIX

MISCELLANEOUS

19.1 Assignment. Buyer may not assign or transfer this Contract, or any rights and obligations arising hereunder, without the prior written consent of the Seller; which such consent shall not be unreasonably withheld.

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19.2 Notices. All notices, approvals, waivers, objections or other communications under this Agreement shall, unless otherwise specified, be in writing and deemed to be duly delivered if delivered in person, by overnight courier with evidence of delivery, by facsimile transmission with confirmation of receipt, or by certified or registered mail:

- a. If to Buyer, to: Delaware County Data Center
Attn: Steve Lewis, Administrator
10 Court Street
Delaware, Ohio 43015

- Copy to: Delaware County Prosecutor
Civil Division
140 North Sandusky Street, 3d Floor
P.O. Box 8006
Delaware, Ohio 43015

- b. If to Seller, to: Columbus Fibernet LLC
Attention: General Manager
1366 Dublin Road
Columbus, Ohio 43215
Fax: (614) 274-6794

19.3 Entire Agreement. The Invitation to Bid (“ITB”) for the Delaware Fiber Lateral Project is, by this reference, fully incorporated herein. In the event of a conflict between the ITB and this Contract, the terms of the ITB shall prevail. This Contract, the ITB, and the exhibits attached hereto constitute the entire agreement between the Seller and Buyer and supersede all prior agreements and understandings between them as to the subject matter of the Contract. There are no restrictions, arrangements, or undertakings, oral or written, between the parties relating to the transaction contemplated hereby which are not expressed or expressly referred to herein.

19.4 Binding Effect. This Contract shall be binding upon, and inure to the benefit of, the Buyer and Seller and their respective successors and permitted assigns.

19.5 Amendments and Waivers. This contract may not be amended except by a written instrument executed by each of the parties. No waiver, change, modification, consent or discharge shall be effected except by a written instrument executed by the party from which such waiver, change, modification, consent, or discharge is sought.

19.6 Severability. If any term or provision of this Contract is invalid, illegal, or incapable of being enforced by any rule, law, or public policy, all other terms and provisions of the Contract shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to either party. Upon a determination that any term or provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to greatest extent possible. If any term or provision is capable of two constructions, one of which would render the term or provision invalid and the other of which would render the provision valid, then the provision shall have the meaning which renders the term of provision valid.

19.7 Counterparts. This Contract may be executed in counterparts, each of which will, for all purposes, be deemed to be an original and all of which, together, will constitute one and the same instrument. In pleading or proving any provision of this Contract, it shall not be necessary to produce more than one complete set of such counterparts.

19.8 Governing Law. This Contract shall be construed, governed, and enforced in accordance with the laws of the state of Ohio, without reference to its conflict of laws principles.

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

Vote on Motion Mr. Stapleton Aye Mr. Thompson Absent Mr. O'Brien Aye

RESOLUTION NO. 12-280

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O’Brien, seconded by Mr. Stapleton to approve the following:

The Director of Job and Family Services recommends accepting the resignation of Mary Palotta an Employment Counselor with Department of Job and Family Services; effective May 31, 2012;

Therefore Be It Resolved, that the Board of Commissioners accept the resignation of Mary Palotta an Employment Counselor with Department of Job and Family Services; effective May 31, 2012.

COMMISSIONERS JOURNAL NO. 56 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 22, 2012

Vote on Motion Mr. O'Brien Aye Mr. Thompson Absent Mr. Stapleton Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioners O'Brien

- Later Today Will Attend A 911 Board Administrative Committee Meeting
- Attend A Regional Planning Executive Committee Meeting; Participation Discussion

Commissioner Stapleton

- Several MORPC Meetings Have Occurred In The Last Week
- Attended A Job And Family Workforce DKMM Meeting; Knox And Marion Presentation On A "Jobs Motor Home" Program
- Tonight Township Association Annual Dinner
- Friday CORSA Meeting

There being no further business, the meeting adjourned.

Ken O'Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners