

COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 27, 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
Tommy Thompson, Commissioner

RESOLUTION NO. 12-852

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD AUGUST 23, 2012:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on August 23, 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 Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 12-853

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0824:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0824 and Purchase Orders as listed below:

| PR Number | Vendor Name | Line Desc | Line Account | Amount | Line |
|-----------|-------------------|-------------------------|-----------------|--------------|------|
| R1205062 | BULL CONSTRUCTION | Strand Theatre Interior | 23111709 - 5365 | \$134,900.00 | 0001 |

| <u>Vendor</u> | <u>Description</u> | <u>Account</u> | <u>Amount</u> |
|----------------------------------|--------------------------|----------------|---------------|
| PO' Increase | | | |
| Board Developmental Disabilities | Job and Family Program | 22511607-5342 | \$ 1,000.00 |
| Board Developmental Disabilities | Job and Family Program | 22511607-5342 | \$ 6,000.00 |
| Northwoods Consulting | Job and Family/ Services | 22411605-5325 | \$ 2,293.00 |
| Delaware Motive Parts | Service Center | 10011106-5228 | \$ 10,000.00 |
| Westech | Alum Creek /Clarifiers | 66211904-5201 | \$ 7,708.00 |
| Frontier | 911 Department | 21411306-5330 | \$ 6,800.00 |
| Ohio Edison | 911 Department | 21411306-5338 | \$ 5,000.00 |
| AEP | 911 Department | 21411306-5338 | \$ 10,000.00 |
| Consolidated Electric | 911 Department | 21411306-5338 | \$ 4,500.00 |

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

RESOLUTION NO. 12-854

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Environmental Services is requesting that Joseph Amato, Chris Bean, Ken Bruen, Fred Fowler, Duane Matlack and Greg Miller attend the 2009 International Residential Code Significant Changes Seminar in Columbus, Ohio on September 12, 2012 at no cost.

The 911 Department is requesting that 3 DelComm Employees attend a Protecting Law Enforcement Responders Training at the Streetsboro Police Department November 14, 2012; at the cost of \$627.00 (fund number 21411306).

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

RESOLUTION NO. 12-855

IN THE MATTER OF ACCEPTING ROADS AND APPROVING RECOMMENDED SPEED LIMITS FOR MEADOWS AT LEWIS CENTER SECTION 1, PHASE A:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to release letter of credit and accept roads within the following:

Meadows at Lewis Center Section 1, Phase A

Please be advised that The Engineer has reviewed the roadway construction of the roads within the referenced subdivision and find them to be constructed in accordance with the approved plans. Therefore, it is his recommendation that the roadways within the referenced subdivision be accepted into the public system and that the **Orange Township Trustees** be notified of your action.

The roadways to be accepted are as follows:

- **Kilborn Way**, to be known as **Township Road Number 1614**
- **Koester Trace**, to be known as **Township Road Number 1615**
- **McCumber Lane**, to be known as **Township Road Number 1616**
- **McCumber Loop**, to be known as **Township Road Number 1617**
- **Delano Avenue**, to be known as **Township Road Number 1618**

The Engineer also recommends that 25 mile per hour speed limits be established throughout the project.

The Engineer requests approval to return the Letter of Credit being held as maintenance surety to the developer, Jones Lewis Center LLC.

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

RESOLUTION NO. 12-856

IN THE MATTER OF ESTABLISHING STOP CONDITIONS FOR MEADOWS AT LEWIS CENTER SECTION 1, PHASE A:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to establish stop conditions for the following:

Stop Conditions – Meadows at Lewis Center Section 1, Phase A

It is hereby requested that a stop condition be established at the following roads within the above referenced subdivision:

- On Township Road Number 1614, Kilborn Way, at its intersection with County Road Number 106, Lewis Center Road
- On Township Road Number 1615, Koester Trace, at its intersection with Township Road Number 1614, Kilborn Way
- On Township Road Number 1615, Koester Trace, at its intersection with Township Road Number 1616, McCumber Lane
- On Township Road Number 1617, McCumber Loop, at tis intersection with Township Road Number 1615, Koester Trace
- On Township Road Number 1617, McCumber Loop, at its intersection with Township Road Number 1616, McCumber Lane
- On Township Road Number 1618, Delano Avenue, at its intersection with Township Road Number 1615, Koester Trace
- On Township Road Number 1618, Delano Avenue, at its intersection with Township Road Number 1616, McCumber Lane

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

RESOLUTION NO. 12-857

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN JACK L. AMUNDSON AND EMMALEE W. AMUNDSON, HUSBAND AND WIFE, AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE DEL-CR124-1.88 HOME ROAD/SR 257/SECTION LINE ROAD INTERSECTIONS IMPROVEMENTS:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 27, 2012**

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Jack L. Amundson and Emmalee W. Amundson, husband and wife for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the contract of sale and purchase with Jack L. Amundson and Emmalee W. Amundson, husband and wife for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)**

**PARCEL(S): 20-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners ["Purchaser"] and Jack L. Amundson and Emmalee W. Amundson, husband and wife ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$4,000.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now

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in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

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

RESOLUTION NO. 12-858

**COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 27, 2012**

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN THOMAS J. BESHARA, AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE DEL-CR124-1.88 HOME ROAD/SR 257/SECTION LINE ROAD INTERSECTIONS IMPROVEMENTS:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Thomas J. Beshara for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the contract of sale and purchase with Thomas J. Beshara for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)**

**PARCEL(S): 8WD, T
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners ["Purchaser"] and Thomas J. Beshara["Seller"]; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$15,988.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes.

The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

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6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

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

RESOLUTION NO. 12-859

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN JACK A. MORENO AND JAYNE E. MORENO, HUSBAND AND WIFE, AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE DEL-CR124-1.88 HOME ROAD/SR 257/SECTION LINE ROAD INTERSECTIONS IMPROVEMENTS:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Jack A. Moreno and Jayne E. Moreno, husband and wife for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the contract of sale and purchase with Jack A. Moreno and Jayne E. Moreno, husband and wife for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)**

**PARCEL(S): 18-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners ["Purchaser"] and Jack A. Moreno and Jayne E. Moreno, husband and wife ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$15,168.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

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5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and

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agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

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

RESOLUTION NO. 12-860

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN DEBORAH M. LONG, TRUSTEE, AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE HARRIOTT ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Deborah M. Long, Trustee for the Harriott Road Bridge Project;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the contract of sale and purchase with Deborah M. Long, Trustee for the Harriott Road Bridge Project.

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 27th day of August, 2012, Deborah M. Long, Trustee, whose address is 7332 Harriott Road, Powell, Ohio 43065, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
2-SH, Harriott Road Bridge Project

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of Twenty-Seven Thousand One Hundred Twenty Dollars (\$27,120.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
 - (A) All title, rights, and interest in and to the PROPERTY; and,
 - (B) For damages to any residual lands of the SELLER; and,
 - (C) For SELLER's covenants herein; and,
 - (D) For expenses related to the relocation of the SELLER, their family, and business; and,
 - (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the

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appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.

4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all

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claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

RESOLUTION NO. 12-861

**IN THE MATTER OF SETTING BID OPENING DATE AND TIME FOR DELAWARE COUNTY
FORMULA 2011 VILLAGE OF SUNBURY ADA SIDEWALK IMPROVEMENTS AND APPROVING
THE NOTICE TO CONTRACTORS:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, on December 8, 2011, the Delaware County Commissioners adopted Resolution No. 11-1418, approving CDBG Formula 2011 funds for the Village of Sunbury ADA Sidewalk Improvements; and

WHEREAS, the Economic Development Director recommends the Bid Opening date and time of 9:30am Thursday, September 13, 2012, at 101 North Sandusky Street, Delaware, Ohio 43015, for the Village of Sunbury ADA Sidewalk Improvements;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Commissioners approve the Bid Opening date and time of 9:30am on Thursday, September 13, 2012, at 101 North Sandusky Street, Delaware, Ohio 43015, and the approval of advertising the project:

NOTICE TO CONTRACTORS

Sealed proposals will be received by Delaware County, located at 101 N. Sandusky St., Delaware, Ohio, until 9:30 AM on Thursday, September 13, 2012, for the Village of Sunbury, ADA Sidewalk Improvements set forth in the plans and specifications on file in the above office. At the time hereinbefore mentioned and at the above-indicated office, sealed bids will be publicly opened and read. Work to be performed is described in the bid form.

**VILLAGE OF SUNBURY
ADA SIDEWALK IMPROVEMENTS**

The proposed work includes curb ramp replacement at twelve locations on Sunbury Streets.

The estimated cost for this project is \$23,000.00

All proposals shall be sealed and endorsed for Village of Sunbury – ADA Sidewalk Improvements, and mailed or delivered to the Delaware Commissioners Office located at 101 N. Sandusky St., Delaware, Ohio 43015. Proposals are to be on forms furnished in the Contract Documents and included with the specifications.

Plans, specifications, bid forms, and contract documents may be viewed online at www.ctconsultants.com/bidinfo/

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and viewed and secured from the Village Engineer's Office, CT Consultants, Inc., Two Crosswoods, 150 East Campus View Blvd., Suite 130, Columbus, Ohio 43235.

A \$50.00 non-refundable deposit will be required for each set of drawings, specifications, and contract documents, plus \$10.00 for shipping expenses if required. Checks for bidding documents should be made payable to CT Consultants, Inc.

Each bid must be accompanied by a bid guaranty in the form of a bond with an approved surety company as surety for the execution of the contract. The bid guaranty and contract bond shall be for the full amount of the bid proposal and in the form as contained in the contract documents. Alternately, a certified check, cashier's check or letter of credit pursuant to Chapter 1305 of the revised code, in the amount of 10 percent of the bid will be accepted as a bid guaranty. Each proposal must contain the full name and address of every person or company interested in the same.

The County of Delaware hereby notifies all bidders that they affirmatively insure that with regard to any contract entered into pursuant to this advertisement, Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. The County of Delaware is an equal opportunity employer and requires all persons contracting with the County to certify that they are equal opportunity employers and that they do not discriminate on the grounds of race, color, religion, sex or national origin.

Bidders are required to comply with the MBE/WBE requirements. In part, this means that any bidder, to the extent that it subcontracts work, shall award subcontracts to certified Minority Business Enterprise/Women's Business Enterprise in an aggregate dollar value of no less than 7.3% of the contract for MBE and 6.9% of the contract for WBE. This percent can include materials and supplies. The bid specifications provide further details on these requirements.

Domestic steel use requirements as specified in section 153.011 of the Ohio Revised Code apply to this project. Copies of section 153.011 of the Revised Code can be obtained from any of the offices of the department of administrative services.

All Contractors and subcontractors involved with the project will, to the extent practicable, use Ohio products, materials, services, and labor in the implementation of their project. Additionally contractor compliance with the equal employment opportunity requirements of Ohio Administrative Code Chapter 123, as authorized by the Governor's Executive Order of 1972, and Governor's Executive Order 84-9 regarding goals for women working on state construction projects shall be required.

Attention of bidders is called to all of the requirements contained in this bid packet, particularly to the Federal Labor Standards Provisions and Davis-Bacon Act Wages, various insurance requirements and various equal opportunity provisions. Bidders must comply with the provisions of the Americans with Disabilities Act of 1990.

A Pre-bid conference will be held at 10:30 am on September 5, 2012 , at the Village of Sunbury Municipal Building located at 9 E. Granville St., Sunbury, Ohio 43074. It is recommended that all bidders attend the pre-bid conference. If you can't attend please make arrangement with Dave Martin, Village Administrator.

No bidder may withdraw his bid within thirty (30) days after the actual date of the opening thereof. The County reserves the right to reject any and all bids for any reason whatsoever and to waive any irregularities. All bids will be considered based on lowest and best bid.

DELAWARE COUNTY COMMISSIONERS
VILLAGE OF SUNBURY

Published Dates: August 29, 2012 and September 4, 2012

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

RESOLUTION NO. 12-862

IN THE MATTER OF AUTHORIZING THE ACCEPTANCE AND AWARDING OF THE BID AND APPROVING THE CONTRACT SUBMITTED BY COLUMBUS ASPHALT PAVING, INC. FOR THE VILLAGE OF OSTRANDER CDBG FORMULA 2011 STREET IMPROVEMENT PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Ohio Department of Development provides financial assistance to local governments under the Community Development Block Grant (CDBG) Formula Program to Delaware County; and

WHEREAS, bids were received on August 10, 2012, from Columbus Asphalt Paving, Inc. in the amount of \$45,062.62, Decker Construction in the amount of \$65,899.84, and Strawser Paving Company in the amount of

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\$54,972.84 for the Village of Ostrander Street Improvements; and

WHEREAS, Doug Holz, the engineer for the Village, reviewed the bids, and the bid submitted by Columbus Asphalt Paving, Inc. in the amount of \$45,062.62, has been determined to be the lowest and best bid; and

WHEREAS, the Village of Ostrander Formula 2011 grant amount was for \$42,100.00; and

WHEREAS, the Village of Ostrander has agreed to be responsible for the \$2,962.62 over the County's CDBG Formula 2011 approved fund of \$42,100.00; and

WHEREAS, the Director of the Economic Development Department and the Village of Ostrander recommends approval of this Resolution;

NOW, THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. The Delaware County Board of Commissioners awards the bid to, and approves the contract with, Columbus Asphalt Paving, Inc., in the amount of \$45,062.62 for Village of Ostrander Street Improvements.

Section 2. This Resolution shall take effect and be in force immediately after its passage.

CONTRACT

THIS AGREEMENT made this 27th day of August, 2012, by and among, Columbus Asphalt Paving, Inc., a corporation organized and existing under the laws of the State of Ohio (hereinafter called the "Contractor"), the Delaware County Commissioners (hereinafter called the "Owner"), and the Village of Ostrander (hereinafter called the "Village").

WITNESSETH, that the Contractor, the Owner, and the Village, for the consideration 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 Village of Ostrander Street Improvements.

Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows: paving base repair on Huston., and crack sealing on Main St. This project will also replace 117 street and traffic signs throughout the Village.

ARTICLE 2. The Contract Price.

The Contractor shall be paid for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum of up to Forty-Five Thousand Sixty-Two Dollars and Sixty-Two Cents (\$45,062.62), subject to additions and deductions as provided in the Contract Documents. The Owner shall be responsible for paying the sum of up to Forty-Two Thousand One Hundred Dollars and Zero Cents (\$42,100.00), and the Village shall be responsible for paying the remainder amount of Two Thousand Nine Hundred and Sixty-Two Dollars and Sixty-Two Cents (\$2,962.62).

ARTICLE 3. Contract.

The executed contract documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation for Bids
- d. Instructions to Bidders
- e. Signed copy of Bid
- f. General Conditions, Parts I and II
- g. Special Conditions
- h. Technical Specifications
- i. Drawings (as listed in the Schedule of Drawings)

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 entire 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.

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Article 4. Miscellaneous Terms & Conditions

- 4.1 Contractor agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Contractor also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities alone with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.
- 4.2 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 4.3 No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 4.4 If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with to the fullest extent permissible under the law.
- 4.5 Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 4.6 Contractor shall indemnify and hold harmless the Owner and the Recipient, and their respective officers, agents and employees, from any and all losses, claims, damages, lawsuits, costs, judgments, expenses or any other liabilities which they may incur as a result of bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused by the negligent act or omission of the Contractor, any subcontractor, any person directly or indirectly employed by any of them or any person for whose acts any of them may be liable.

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

RESOLUTION NO. 12-863

IN THE MATTER OF APPROVING THE MAINTENANCE SERVICE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND EASTMAN PARK MICROGRAPHICS, INC. FOR THE ARCHIVE WRITER, ARCHIVE CASSETTE AND ARCHIVE INTERFACE FOR THE DELAWARE COUNTY RECORDS CENTER:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the Director of Administrative Services and Record Center Manager recommend approval of a maintenance service contract between The Delaware County Board Commissioners and Eastman Park Micrographics, Inc. For The Archive Writer, Archive Cassette and Archive Interface for the Delaware County Records Center;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approves the maintenance service contract between The Delaware County Board of Commissioners and Eastman Park Micrographics, Inc. For The Archive Writer, Archive Cassette and Archive Interface for the Delaware County Records Center.

**EASTMAN PARK MICROGRAPHICS, INC.
Document Imaging Products
Standard Maintenance Services Terms and Conditions**

Eastman Park Micrographics ("EPM") and you, the customer ("Customer") enter into these Standard Maintenance Service Terms and Conditions Agreement (the "Agreement") and agree that the terms and conditions of this Agreement will apply to the provision of services by EPM for the products defined below located in the United States, Hawaii and Alaska (a ten percent (10%) premium applies in Alaska).

Generally, the mainframe and all components of a Product (as defined herein) that are mechanically, electronically, or remotely interconnected must be inspected, tested and adjusted as one operating unit to diagnose and correct malfunctions effectively. Therefore, if a Product is covered under an Agreement, all interconnected components of that product must also be covered by warranty or the same level of service that is provided under this Agreement.

The term of the Agreement ("Term") between Customer and EPM shall be for one year. Thereafter, the

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Agreement can be renewed at EPM's then effective policies, support plans and current price schedule for successive twelve (12) month periods (each, a "Renewal Term") The terms and conditions set forth below plus the description of services and charges contained in the EPM invoice and the provisions of the Agreement shall govern the relationship between the parties. Any additional or inconsistent terms and conditions included in the Customer's purchase orders shall be deemed null and void and of no effect.

1. Products. Products covered by this Agreement are commercial office equipment non make or model specific, used by customers in an office environment.

2. Customer Responsibilities. Customer will designate an authorized representative for the purpose of interacting with EPM's service personnel. The Customer representative and the Customer must:

- a) provide initial problem-solving assistance to site users;
- b) coordinate all requests for assistance and act as liaison with EPM service personnel;
- c) perform appropriate problem analysis and corrective actions by following troubleshooting instructions and remedial actions as prescribed by EPM;
- d) maintain system and Product documentation and install software updates, maintenance upgrades and patches supplied by manufacturers;
- e) perform preventative maintenance and error recovery procedures as defined in the individual Products' users manual;
- f) supply consumable items or other components that are replaced due to normal wear and/or as specified in the relevant manufacturer's manual(s);
- g) provide service personnel with immediate access to the Products when service is requested;
- h) when necessary, supply and maintain a modem and communication software approved by EPM which satisfies the respective manufacturer's Product specifications,
- i) keep the site environmental ranges within the specifications set forth by the manufacturer of the relevant Product;
- j) provide continuous and appropriate resource availability during problem resolution; and
- k) Have a telephone available in the work area,

Failure to meet these obligations may result, at EPM's sole option, in the imposition of additional charges at prevailing Per-Call rates or immediate termination of this Agreement upon notice to Customer.

2.1 Customer Software. Prior to service commencing on computers with hard drives, Customer is responsible for creating a back-up copy of the file from the hard drive. EPM is only responsible for formatting (if required) and transferring those files deemed necessary for formatting as more precisely outlined in the EPM formatting procedures for specific Products. Customer is responsible for restoring data. EPM shall not be held liable for any damages arising from or relating to the loss of data, any software or any other information contained on a computer or similar device, or contained in or stored on a Product

2.2 Product Condition, Customer warrants that the Product covered by this Agreement (a) is in proper operating condition, (b) is without any unauthorized modifications, (c) has all safety features in working condition, and (d) has been maintained in accordance with manufacturer's Product performance specifications. EPM reserves the right to inspect the Product and site installation to confirm that Products meet those conditions. At EPM's discretion, such inspection and any repairs necessary to bring the Product up to those conditions shall be treated as Per-Call Service. If at any time Customer fails to maintain the Product in proper operating condition as described above, EPM may cancel this Agreement immediately upon written notice to Customer.

3. How to Obtain Service. In order to obtain service, End User must call EPM's End User Support Center and provide the Products K-number or serial number, which number shall be located on the respective Product(s).

4. Types of Service Available

4.1 Telephone Support EPM will provide toll-free telephone support between 8:00 a.m. and 5:00 p.m., Monday through Friday, Customer local time.

4.2 On-Site Service. EPM will provide on-site service between 8:00a.m. and 5:00 p.m., Monday through Friday, Customer local time. On-Site Service includes adjustments and/or replacement of parts required to maintain Products operating consistently within manufacturer's published specifications.

4.3 Periodic Maintenance. Periodic Maintenance ("PM") services will consist of routine maintenance services required to keep the Products in proper operating condition. Additional scheduled PMs maybe purchased to supplement coverage. Note: PM services MAY NOT be Included in the Standard Plan for a particular Product.

4.4 Extended Hours. Depending upon local service capabilities, available extended hour plans include 5-, 6-, and 7-day, 8-, 16-, and 24-hour options at additional cost. EPM will use commercially reasonable

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efforts to provide Service outside of Agreement Hours as shown below. Any such service performed will be billed at prevailing EPM Per Call Overtime rates.

4.5 Holidays. Contract support will not be provided on National holidays (New Years, Memorial, Independence, Labor, Thanksgiving and Christmas Days). Support is available on a best efforts basis at prevailing Per-Call Holiday rates.

4.6 Response Time EPM's objective is to provide service during EPM's normal working hours, within the following time frames:

In the USA

| OEM Products and EPM Analog Products | |
|---|--|
| Distance From EMP Service City | Within Agreement Hours |
| Zone 1 (0 to 50 Miles) | Next Business Day |
| Zone 2 (51 to 100 Miles) | Next Business Day |
| Zone 3 (Over 100 miles) | Next Business Day @12% uplift for non-Kodak or Non_EPM Branded products only |
| Over 200 Miles | Contact EPM |

EPM will use its best commercial efforts to meet its response time objectives, provided however, EPM is not liable for any failure to do so.

4.7 Advanced Unit Replacement ("AUR") Support (if applicable). If EPM determines a Product is not operating consistently within manufacturer's specifications, EPM will provide next day AUR subject to availability of courier service. The replacement Product will perform at the minimum specifications of the current Product, but may not be the exact make and model. When AUR support is necessary, EPM will ship the replacement unit to Customer's location, transportation prepaid. Upon delivery of a replacement unit, Customer must place the malfunctioning unit in the shipping case, apply the enclosed labels and call the carrier for pickup within 5 business days after receiving the AUR. EPM will pay the return transportation charges. If the Customer has not returned the malfunctioning unit within 10 business days, Customer will be invoiced the list price of the unit and becomes responsible for such charge.

4.8 Depot Service (if applicable). If EPM determines the Product is not operating consistently within manufacturer's specifications, EPM will instruct the Customer regarding shipment of the Product to EPM for repair. EPM will repair the Product and return the Product to Customer.

4.9 Software Product

EPM will provide Maintenance Upgrades, Software Patches and telephone assistance of a technical nature on licensed EPM Software Product only. EPM may issue Maintenance Upgrades or Patches and/or provide for on-site services necessary to correct errors that significantly affect software performance in accordance with EPM's Software Product operating specifications. Unless Product documentation states otherwise, support will be provided for the current and previous Version Release. Maintenance Upgrades and Patches are at no charge and include one copy of the user's manual and/or changes.

EPM reserves the right to develop new features and functionality improvements, which maybe offered to Customers as separately priced product.

All software and/or changes are subject to the terms and conditions of the EPM Software License Agreement that was in effect at the time the software was licensed from EPM. License Terms are applicable as long as the software is being used, even if maintenance services are no longer available.

Some EPM Software Products are licensed under a Renewable Software License Agreement which includes an annual license fee that entitles Customer with a "Right to Use" the software and to receive the maintenance services defined above as long as maintenance services are available.

4.10 Parts, teams as referenced in the manufacturer's manual(s) required to maintain Products operating consistently within manufacturers published specifications may not be included in this Agreement and will be invoiced separately. Parts or components replaced by EPM will be either new or remanufactured to EPM new product standards. Parts removed from the system and replaced at no charge become the property of EPM. NOTE: If EPM determines that Parts, service publications or technical support needed to maintain or repair Products are not available, EPM will cancel the Agreement and issue a prorated credit for any remaining prepaid coverage.

5. Property of EPM. Maintenance material, tools, documentation, diagnostics and test equipment provided by EPM shall remain the exclusive property of EPM.

6. Limitations. Tire Services outlined in these terms are EPM's only obligation. EPM will not be responsible for any indirect, incidental, consequential or special damages resulting from the safe, use or improper functioning or inability to use the Products and/or related software, regardless of the cause, nor will EPM be responsible for damages of any nature that are not caused by EPM or are caused by circumstances out of EPM's control. Such damages for which EPM will not be responsible include, but are not limited to, loss of revenue or profit loss of data, downtime costs, loss of use of the Product, cost of any substitute Product, facilities or services. This limitation of liability will not apply to claims for injury to persons or damage to tangible property caused by the

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sole negligence or fault of EPM or by persons under its direction or control.

7. This Agreement does not cover, and EPM shall not be responsible for:
operating system services (e.g., database maintenance(recovery, product integration or
- a. application support,
 - b. system administration services (e.g., system restarts, error monitoring and reporting basic system matters, including restoring the database);
 - c. network system administration (e.g., installation of new software packages, maintenance of user and group accounts, solving network problems, performing system maintenance functions, monitoring networks, installing application software, maintaining configurations
 - d. consultation services;
 - e. version release or software support to other than licensed RPM Software Products;
 - f. Product installation, set-up, configuration or other non-repair services;
 - g. cable and installation of cable runs or any acquisition of permits
 - h. Customer training;
 - i. circumstances beyond RPM's control (such as customer overriding, bypassing or defeating interlock switches on equipment or devices sold by RPM or any other party);
 - j. problems due to failure of Customer to conform to RPM's site specifications provided in the manufacturer's documentation;
 - k. time spent in locating Product not at the specified location or waiting for Product availability;
 - l. relocation of Product or service associated with relocation;
 - m. seasonal hibernation (de-installation) and reactivation (re-installation);
 - n. service or parts associated with any unauthorized modifications, attachments or service;
 - o. rebuilding or reconditioning of Product;
 - p. misuse or abuse of Product; or
 - q. failure to follow RPM's operating instructions or instructions provided by the manufacturer.

EPM may provide, at its sole discretion, service in these situations under the Per-Call terms and at prevailing Per-Call rates.

8. Confidentiality of Customer Data. EPM does not wish to receive any confidential information of Customer in the course of providing maintenance services, and Customer is expected to take all reasonable precautions to avoid disclosing any of its confidential information or that of its customers, employees or clients ("Confidential Information") to EPM and its employees or contractors. However, in the event that EPM's employees or contractors become exposed to Confidential Information, EPM will ensure that such information is protected against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as Customer uses to protect its own information of like nature.

9. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Ohio as applied to agreements entered into between two residents of the State Ohio without regard to its conflict of laws principles.

10. Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither party may make any reference to the other party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other party.

11. Severability, if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement remains in effect, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision the parties shall negotiate in good faith to add a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12. Waiver Of Default Any failure of either party at any time, or from time to time, to require or enforce the strict keeping and performance by either party of any of the terms and conditions of this Agreement shall not constitute a waiver by either party of a breach of any such terms or conditions in the future and shall not affect or impair such terms or conditions in any way, or the right of either party at any time to avail itself of such remedy as it may have for any such breach of any term or condition. No waiver of any right or remedy hereunder shall be effective unless expressly stated in writing by the waiving party.

13. Independent Contractor. Customer shall act as an independent contractor and nothing herein shall be construed to make Customer, or any of its employees, officers, directors or representatives, the agent employee or servant of EPM.

14. Assignment. Neither party may assign this Agreement without the prior written consent of the other party. Any attempted assignment, whether by divestiture, operation of law, change of control, merger, or otherwise, in contravention of the above shall be null and void and of no force or effect. EPM, however, may assign this Agreement without the Customer's consent to any third party which acquires all or substantially all of that portion of the business assets of RPM to which this Agreement pertains whether by merger, reorganization, acquisition, sale or otherwise.

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15. Forum. All actions arising out of or related to this Agreement must be filed in a court of competent jurisdiction in the State where the Services were delivered.

16. Billing and Terms of Payment. Commercial billings arc in advance and prices will vary depending upon billing arrangements (annual, quarterly, etc.) and a premium may apply. Payment terms are net 30 days from date of invoice.

17. Force Majeure. With the exception of any payments due hereunder, neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of cause(s) beyond the control and without fault or negligence of the non-performing party. Such cause(s) may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics and unusually severe weather, material shortages, strikes or similar labor disruptions.

18. Termination, a) Either party may terminate this Agreement upon ninety (90) days prior written notice except as set forth in Sections 2.2 and/or 4.10; b) Either party may terminate this Agreement immediately if the other party ceases to conduct its operations in the normal course of business, becomes insolvent, or files for or becomes the subject of a bankruptcy petition, or is placed in receivership. c) EPM may terminate this Agreement immediately if Customer attempts to assign this Agreement without EPM's prior written consent,

19. Effect of Termination or Expiration. Each party will remain liable under this Agreement for any obligations incurred prior to the effective date of termination or expiration.

20. No Liability for Termination. To the full extent allowed by any applicable law, Customer agrees that it will have no rights to damages or indemnification of any nature due to any expiration, rightful termination, or non-renewal of this Agreement by RPM. Customer waives any right or claim it may have under local law or otherwise to receive any payment from RPM or expiration, termination or non-renewal, whether for actual, consequential, indirect, special or incidental damages, costs or expenses, whether foreseeable or unforeseeable.

21. Additional Terms. These terms may be amended or supplemented only by the express agreement of the Parties, in writing and signed by each Party.

22. Entire Agreement/Amendment. This Agreement may be amended or supplemented only by the express agreement of the parties. This Agreement and the terms and conditions set forth in the original equipment warranty, which are incorporated herein, represents the entire agreement and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement. Furthermore, in the event of a conflict of terms between this Agreement and the original equipment warranty, this Agreement shall be the controlling document.

Further Be It Resolved, that the Delaware County Board of Commissioners approves a purchase order (R1205201) to Eastman Park Micrographics Inc. line 1 (10011103-5325) \$6,736.00; line 2 (10011103-5325) \$1,152.00 and line 3 (10011103-5325) \$151.00

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

RESOLUTION NO. 12-864

IN THE MATTER OF APPROVING A MAINTENANCE SERVICE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND EASTMAN PARK MICROGRAPHICS, INC. FOR THE ABR506 DIAZO PROCESSOR AND THE 404/504 DIAZO PRINTER FOR THE DELAWARE COUNTY RECORDS CENTER:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the Director of Administrative Services and Record Center Manager recommend approval of a maintenance service contract between The Delaware County Board Commissioners and Eastman Park Micrographics, Inc. for the ABR506 Diazo Processor and the 404/504 Diazo Printer for the Delaware County Records Center;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approves the maintenance service contract between The Delaware County Board of Commissioners and Eastman Park Micrographics, Inc. for the ABR506 Diazo Processor and the 404/504 Diazo Printer for the Delaware County Records Center.

**EASTMAN PARK MICROGRAPHICS, INC.
Document Imaging Products
Standard Maintenance Services Terms and Conditions**

Eastman Park Micrographics ("EPM") and you, the customer ("Customer") enter into these Standard Maintenance Service Terms and Conditions Agreement (the "Agreement") and agree that the terms and conditions of this Agreement will apply to the provision of services by EPM for the products defined below located in the United States, Hawaii and Alaska (a ten percent (10%) premium applies in Alaska).

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Generally, the mainframe and all components of a Product (as defined herein) that are mechanically, electronically, or remotely interconnected must be inspected, tested and adjusted as one operating unit to diagnose and correct malfunctions effectively. Therefore, if a Product is covered under an Agreement, all interconnected components of that product must also be covered by warranty or the same level of service that is provided under this Agreement.

The term of the Agreement ("Term") between Customer and EPM shall be for one year. Thereafter, the Agreement can be renewed at EPM's then effective policies, support plans and current price schedule for successive twelve (12) month periods (each, a "Renewal Term") The terms and conditions set forth below plus the description of services and charges contained in the EPM invoice and the provisions of the Agreement shall govern the relationship between the parties. Any additional or inconsistent terms and conditions included in the Customer's purchase orders shall be deemed null and void and of no effect.

1. Products. Products covered by this Agreement are commercial office equipment non make or model specific, used by customers in an office environment.

2. Customer Responsibilities. Customer will designate an authorized representative for the purpose of interacting with EPM's service personnel. The Customer representative and the Customer must:

- a) provide initial problem-solving assistance to site users;
- b) coordinate all requests for assistance and act as liaison with EPM service personnel;
- c) perform appropriate problem analysis and corrective actions by following troubleshooting instructions and remedial actions as prescribed by EPM;
- d) maintain system and Product documentation and install software updates, maintenance upgrades and patches supplied by manufacturers;
- e) perform preventative maintenance and error recovery procedures as defined in the individual Products' users manual;
- f) supply consumable items or other components that are replaced due to normal wear and/or as specified in the relevant manufacturer's manual(s);
- g) provide service personnel with immediate access to the Products when service is requested;
- h) when necessary, supply and maintain a modem and communication software approved by EPM which satisfies the respective manufacturer's Product specifications,
- i) keep the site environmental ranges within the specifications set forth by the manufacturer of the relevant Product;
- j) provide continuous and appropriate resource availability during problem resolution; and
- k) Have a telephone available in the work area,

Failure to meet these obligations may result, at EPM's sole option, in the imposition of additional charges at prevailing Per-Call rates or immediate termination of this Agreement upon notice to Customer.

2.1 Customer Software. Prior to service commencing on computers with hard drives, Customer is responsible for creating a back-up copy of the file from the hard drive. EPM is only responsible for formatting (if required) and transferring those files deemed necessary for formatting as more precisely outlined in the EPM formatting procedures for specific Products. Customer is responsible for restoring data. EPM shall not be held liable for any damages arising from or relating to the loss of data, any software or any other information contained on a computer or similar device, or contained in or stored on a Product

2.2 Product Condition, Customer warrants that the Product covered by this Agreement (a) is in proper operating condition, (b) is without any unauthorized modifications, (c) has all safety features in working condition, and (d) has been maintained in accordance with manufacturer's Product performance specifications. EPM reserves the right to inspect the Product and site installation to confirm that Products meet those conditions. At EPM's discretion, such inspection and any repairs necessary to bring the Product up to those conditions shall be treated as Per-Call Service. If at any time Customer fails to maintain the Product in proper operating condition as described above, EPM may cancel this Agreement immediately upon written notice to Customer.

3. How to Obtain Service. In order to obtain service, End User must call EPM's End User Support Center and provide the Products K-number or serial number, which number shall be located on the respective Product(s).

4. Types of Service Available

4.1 Telephone Support EPM will provide toll-free telephone support between 8:00 a.m. and 5:00 p.m., Monday through Friday, Customer local time.

4.2 On-Site Service. EPM will provide on-site service between 8:00a.m. and 5:00 p.m., Monday through Friday, Customer local time. On-Site Service includes adjustments and/or replacement of parts required to maintain Products operating consistently within manufacturer's published specifications.

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4.3 Periodic Maintenance. Periodic Maintenance ("PM") services will consist of routine maintenance services required to keep the Products in proper operating condition. Additional scheduled PMs maybe purchased to supplement coverage. Note: PM services MAY NOT be Included in the Standard Plan for a particular Product.

4.4 Extended Hours. Depending upon local service capabilities, available extended hour plans include 5-, 6-, and 7-day, 8-, 16-, and 24-hour options at additional cost. EPM will use commercially reasonable efforts to provide Service outside of Agreement Hours as shown below. Any such service performed will be billed at prevailing EPM Per Call Overtime rates.

4.5 Holidays. Contract support will not be provided on National holidays (New Years, Memorial, Independence, Labor, Thanksgiving and Christmas Days). Support is available on a best efforts basis at prevailing Per-Call Holiday rates.

4.6 Response Time EPM's objective is to provide service during EPM's normal working hours, within the following time frames:

In the USA

| OEM Products and EPM Analog Products | |
|---|--|
| Distance From EMP Service City | Within Agreement Hours |
| Zone 1 (0 to 50 Miles) | Next Business Day |
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| Over 200 Miles | Contact EPM |

EPM will use its best commercial efforts to meet its response time objectives, provided however, EPM is not liable for any failure to do so.

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4.10 Parts, teams as referenced in the manufacturer's manual(s) required to maintain Products operating consistently within manufacturers published specifications may not be included in this Agreement and will be invoiced separately. Parts or components replaced by EPM will be either new or remanufactured to EPM new product standards. Parts removed from the system and replaced at no charge become the property of EPM. NOTE: If EPM determines that Parts, service publications or technical support needed to maintain or repair Products are not available, EPM will cancel the Agreement and issue a prorated credit for any remaining prepaid coverage.

5. Property of EPM. Maintenance material, tools, documentation, diagnostics and test equipment provided by EPM shall remain the exclusive property of EPM.

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6. Limitations. Tire Services outlined in these terms are EPM's only obligation. EPM will not be responsible for any indirect, incidental, consequential or special damages resulting from the safe use or improper functioning or inability to use the Products and/or related software, regardless of the cause, nor will EPM be responsible for damages of any nature that are not caused by EPM or are caused by circumstances out of EPM's control. Such damages for which EPM will not be responsible include, but are not limited to, loss of revenue or profit loss of data, downtime costs, loss of use of the Product, cost of any substitute Product, facilities or services. This limitation of liability will not apply to claims for injury to persons or damage to tangible property caused by the sole negligence or fault of EPM or by persons under its direction or control.

7. This Agreement does not cover, and EPM shall not be responsible for:

- operating system services (e.g., database maintenance (recovery, product integration or
- a. application support,
- b. system administration services (e.g., system restarts, error monitoring and reporting basic system matters, including restoring the database);
- c. network system administration (e.g., installation of new software packages, maintenance of user and group accounts, solving network problems, performing system maintenance functions, monitoring networks, installing application software, maintaining configurations
- d. consultation services;
- e. version release or software support to other than licensed RPM Software Products;
- f. Product installation, set-up, configuration or other non-repair services;
- g. cable and installation of cable runs or any acquisition of permits
- h. Customer training;
- i. circumstances beyond RPM's control (such as customer overriding, bypassing or defeating interlock switches on equipment or devices sold by RPM or any other party);
- j. problems due to failure of Customer to conform to RPM's site specifications provided in the manufacturer's documentation;
- k. time spent in locating Product not at the specified location or waiting for Product availability;
- l. relocation of Product or service associated with relocation;
- m. seasonal hibernation (de-installation) and reactivation (re-installation);
- n. service or parts associated with any unauthorized modifications, attachments or service;
- o. rebuilding or reconditioning of Product;
- p. misuse or abuse of Product; or
- q. failure to follow RPM's operating instructions or instructions provided by the manufacturer.

EPM may provide, at its sole discretion, service in these situations under the Per-Call terms and at prevailing Per-Call rates.

8. Confidentiality of Customer Data. EPM does not wish to receive any confidential information of Customer in the course of providing maintenance services, and Customer is expected to take all reasonable precautions to avoid disclosing any of its confidential information or that of its customers, employees or clients ("Confidential Information") to EPM and its employees or contractors. However, in the event that EPM's employees or contractors become exposed to Confidential Information, EPM will ensure that such information is protected against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as Customer uses to protect its own information of like nature.

9. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Ohio as applied to agreements entered into between two residents of the State Ohio without regard to its conflict of laws principles.

10. Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither party may make any reference to the other party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other party.

11. Severability, if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement remains in effect, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision the parties shall negotiate in good faith to add a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12. Waiver Of Default Any failure of either party at any time, or from time to time, to require or enforce the strict keeping and performance by either party of any of the terms and conditions of this Agreement shall not constitute a waiver by either party of a breach of any such terms or conditions in the future and shall not affect or impair such terms or conditions in any way, or the right of either party at any time to avail itself of such remedy as it may have for any such breach of any term or condition. No waiver of any right or remedy hereunder shall be effective unless expressly stated in writing by the waiving party.

13. Independent Contractor. Customer shall act as an independent contractor and nothing herein shall be construed to make Customer, or any of its employees, officers, directors or representatives, the agent employee or servant of EPM.

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14. Assignment. Neither party may assign this Agreement without the prior written consent of the other party. Any attempted assignment, whether by divestiture, operation of law, change of control, merger, or otherwise, in contravention of the above shall be null and void and of no force or effect. EPM, however, may assign this Agreement without the Customer's consent to any third party which acquires all or substantially all of that portion of the business assets of RPM to which this Agreement pertains whether by merger, reorganization, acquisition, sale or otherwise.

15. Forum. All actions arising out of or related to this Agreement must be filed in a court of competent jurisdiction in the State where the Services were delivered.

16. Billing and Terms of Payment. Commercial billings are in advance and prices will vary depending upon billing arrangements (annual, quarterly, etc.) and a premium may apply. Payment terms are net 30 days from date of invoice.

17. Force Majeure. With the exception of any payments due hereunder, neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of cause(s) beyond the control and without fault or negligence of the non-performing party. Such cause(s) may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics and unusually severe weather, material shortages, strikes or similar labor disruptions.

18. Termination. a) Either party may terminate this Agreement upon ninety (90) days prior written notice except as set forth in Sections 2.2 and/or 4.10; b) Either party may terminate this Agreement immediately if the other party ceases to conduct its operations in the normal course of business, becomes insolvent, or files for or becomes the subject of a bankruptcy petition, or is placed in receivership. c) EPM may terminate this Agreement immediately if Customer attempts to assign this Agreement without EPM's prior written consent,

19. Effect of Termination or Expiration. Each party will remain liable under this Agreement for any obligations incurred prior to the effective date of termination or expiration.

20. No Liability for Termination. To the full extent allowed by any applicable law, Customer agrees that it will have no rights to damages or indemnification of any nature due to any expiration, rightful termination, or non-renewal of this Agreement by RPM. Customer waives any right or claim it may have under local law or otherwise to receive any payment from RPM or expiration, termination or non-renewal, whether for actual, consequential, indirect, special or incidental damages, costs or expenses, whether foreseeable or unforeseeable.

21. Additional Terms. These terms may be amended or supplemented only by the express agreement of the Parties, in writing and signed by each Party.

22. Entire Agreement/Amendment. This Agreement may be amended or supplemented only by the express agreement of the parties. This Agreement and the terms and conditions set forth in the original equipment warranty, which are incorporated herein, represents the entire agreement and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement. Furthermore, in the event of a conflict of terms between this Agreement and the original equipment warranty, this Agreement shall be the controlling document.

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

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien

-Attended And Participated In The Central Ohio Youth Center Meeting Later Today At 4:00PM

Commissioner Thompson

-Also Attended And Participated In The Central Ohio Youth Center Meeting Later Today At 4:00PM

Commissioner Stapleton

-Will Provide An Update On The CORSA Meeting On Thursday When Administrative Services Director Huston Is Available

-Work Session This Afternoon

There being no further business, the meeting adjourned.

1:30PM Work Session

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Jim Schuck and Matt Warnock
Bricker & Eckler LLP
Presentation On Fracking

Ken O'Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners