

COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD SEPTEMBER 24, 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. 12-945

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 17, 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 September 17, 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. 12-946

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0921:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0921 and Purchase Orders as listed below:

	<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>	
PO' Increase					
	Beem's BP District	Fuel	10011106-5228	\$ 60,000.00	
	Commissioners	Job and Family Services	22411605-5380	\$124,473.42	
PR Number	Vendor Name	Line Desc	Line Account	Amount	Line
R1205622	HARRIS INDUSTRIAL	REMOVAL OF AIR VALVES ON AERATION ALUM CREEK	66211904-5328	\$5,800.00	0001
R1205556	BENCHMARK ROOFING INC	REPLACE WEATHERED SIDING ON ADMIN & EFFLUENT	66211903 - 5328	\$19,700.00	0001
R1205559	ENVIROHAB	MOVING FORWARD OHIO	22911716 - 5301	\$12,500.00	0001
R1205575	COUNTRY PAINTING	POWERWASH, SCRAPE AND STAIN ALL OECC AND CENTRAL	66211903 - 5328	\$24,055.00	0001
R1205673	CONCORD/SCIOTO COMMUNITY AUTHORITY	CONSTRUCTION OF LSWRF	66611905 - 5415	\$50,000.00	0001
R1205681	PREMIER HEALTH CARE SERVICES INC	MEDICAL DIRECTOR CONTRACT 07-18-12 TO 07-17-13	10011303 - 5301	\$10,000.00	0001

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

RESOLUTION NO. 12-947

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

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The EMS Department is requesting that Daniel Boone attend a Mass Fatalities Planning Response Seminar in Union County on October 17, 2012, at no cost.

The Child Support Enforcement Agency is requesting that Aaron Howard, Sharon Cole and Joyce Bowens attend an Interstate Responding Seminar in Columbus, Ohio October 24, 2012, at no cost.

The Child Support Enforcement Agency is requesting that Aaron Howard, Sharon Cole and Joyce Bowens attend an Interstate Initiating Seminar in Columbus, Ohio October 17, 2012, at no cost.

The Child Support Enforcement Agency is requesting that Aaron Howard, Sharon Cole and Joyce Bowens attend an Interstate Procedure Seminar in Columbus, Ohio October 1, 2012, at no cost.

The Commissioners' Office and Administrative Services Department is requesting that Teri Morgan attend an Ohio Public Employer Labor Relations Association Conference in Columbus, Ohio October 5, 2012, at the cost of \$175.00 (fund number 10011101).

The Court of Common Pleas (Adult Court Services) is requesting that Laurie Winbigler, Alison Castrilla, Erin Rohrer and Ed Werling attend an Ohio Justice Alliance Training in Columbus, Ohio October 11-12, 2012, at the cost of \$900.00 (fund number 25522309 and 25422301).

The Engineer's Office is requesting that Doug Riedel, Ryan Mraz, Andrew Fortman, Erik Mackling, Bill Stillions and John Piccin attend the 2012 OTEC Conference in Columbus, Ohio October 30-31, 2012 at the cost of \$780.00 (fund number 29214001).

The Engineer's Office is requesting that Ron Ford, Jerry Ungashick, Chris McGrew, Bill Rauchle, Jim Drumm, Phil Viers, Craig Moran and Bob Sears attend the 2012 Superintendents & Mechanics Conference & Trade Show in Mt. Sterling, Ohio October 31-November 1, 2012 at the cost of \$2,024.00 (fund number 29214001).

The Engineer's Office is requesting that Dawn Pack attend an Ohio Forestry Assoc. Chainsaw Level 1 Training in Chillicothe, Ohio October 26, 2012 at the cost of \$166.80 (fund number 29214001).

The Commissioners' Office is requesting that Commissioner Stapleton, and Tim Hansley attend a seminar on "Ohio's New Oil Boom: A Conversation" in Columbus, Ohio October 1, 2012, at the cost of \$50.00 (fund number 10011101).

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

RESOLUTION NO. 12-948

IN THE MATTER OF RECOGNIZING CHILD PASSENGER SAFETY WEEK 2012:

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

Child Passenger Safety Week 2012

WHEREAS, motor vehicle crash injuries are the leading cause of death among children according to the Centers for Disease Control and Prevention, but proper use of child safety seats prevents injuries and deaths;

WHEREAS, studies show too many children do not ride in optimal safety, and that many parents struggle to install and use child safety seats in the safest manner;

WHEREAS, the Delaware General Health District's Delaware County Safe Communities-Safe Kids Coalition works with parents to ensure child passenger safety;

WHEREAS, the Safe Kids Coalition's certified car seat technicians show parents how safety seats protect children, how seats need to be installed and used, and the seat configurations which ensure that a family's children will ride safely;

WHEREAS, since 2010, the local Safe Kids Coalition's certified car seat technicians have corrected 800 seat misuses which could have compromised children's safety;

WHEREAS, the Safe Kids Coalition will conduct 20 scheduled car seat inspection events throughout 2012, including events on evenings each month at fire and police stations throughout Delaware County, with appointments for families' convenience, and these services are free;

Therefore, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, joins with the Delaware County Safe Communities-Safe Kids Coalition, law enforcement, fire and EMS, the National Highway Traffic Safety Administration, the American Academy of Pediatrics, and Safe Kids USA in support of Child Passenger Safety Week and National Car Seat Check Saturday in September, 2012.

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

RESOLUTION NO. 12-949

IN THE MATTER OF APPLYING FOR AUTHORIZATION TO EMPLOY BAKER & HOSTETLER LLP AS LEGAL COUNSEL TO ASSIST THE DELAWARE COUNTY SHERIFF:

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

WHEREAS, the Board of Commissioners (the "Board") desires, in conjunction with the Prosecuting Attorney of the County, to authorize the Board to retain the legal services of Baker & Hostetler LLP (the "Firm"), such legal services to be in the nature of advice, representation, and assistance in matters of public business coming before the Sheriff;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. The Board, in conjunction with the Prosecuting Attorney, hereby makes the following application to the Court of Common Pleas for authorization to employ the Firm to assist the Sheriff:

Now come the Delaware County Prosecuting Attorney (the "Prosecutor") and the Delaware County Board of Commissioners (the "Board") (collectively the "Applicants") and, pursuant to O.R.C. § 305.14(A), jointly move this Court to authorize the Board to employ Baker & Hostetler LLP (the "Firm") as legal counsel to assist the Sheriff. Such employment would be for the purposes of providing advice, representation, and assistance related to employment law and collective bargaining. The length of such employment shall be until the Applicants jointly believe, for whatever reason, that such employment is no longer necessary. The Applicants believe such employment is necessary because the matters involve or concern issues that are complex and/or require a particular or specialized knowledge or expertise. Therefore, the Applicants respectfully request that this Court approve and authorize the Board to employ legal counsel to assist the Sheriff.

Section 2. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 3. This Resolution shall be in full force and effect immediately upon its passage.

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

RESOLUTION NO. 12-950

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR NELSON FARMS SECTION 1, PHASE A, PART 3:

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

Whereas, Nelson Farms Associates, LLC has submitted the Plat of Subdivision ("Plat") for Nelson Farms Section 1, Phase A, Part 3, including related development plans ("Plans") and requests approval thereof by the Board of Commissioners of Delaware County; and

Whereas, the Liberty Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on June 4, 2012; and

Whereas, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on June 25, 2012; and

Whereas, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on June 20, 2012; and

Whereas, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on June 28, 2012; and

Whereas, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on July 27, 2012;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for Nelson Farms Section 1, Phase A, Part 3

Nelson Farms Section 1, Phase A, Part 3:

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Situated in the State of Ohio, County of Delaware, Township of Liberty and in Farm Lot 9, Quarter Township 1, Township 3, Range 19, United States Military District, containing 10.670 acres of land, more or less, said 10.670 acres being part of that tract of land conveyed to Nelson Farms Associates, LLC, by deed of record in Official Record 220, page 1057, Recorder's Office, Delaware, County, Ohio. Cost \$30.00.

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

RESOLUTION NO. 12-951

IN THE MATTER OF APPROVING A DITCH MAINTENANCE PETITION AND THE DITCH MAINTENANCE ASSESSMENTS FOR JASON HATFIELD AUTOMOTIVE:

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

WHEREAS, on September 24, 2012, a Ditch Maintenance Petition for Jason Hatfield Automotive was filed with the Board of Commissioners of Delaware County (the "Board"), and

WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Jason Hatfield Automotive located off of State Route 37 in Berlin Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of Delaware County, Ohio:

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$12,828.50. The drainage improvements are being constructed for the benefit of the lot being created in the subject site. The developed area of 2.419 acres will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$5,303.22 per acre. An annual maintenance fee equal to 2% of this basis (\$106.06) will be collected for each developed acre/lot. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year's assessment for all of the lots in the amount of \$256.56 has been paid to Delaware County.

Section 3: This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

RESOLUTION NO. 12-952

IN THE MATTER OF APPROVING RIGHT-OF-WAY WORK PERMIT SUMMARY SHEET:

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

Whereas the below requests to perform work within the right-of-way have been reviewed and approved by the Delaware County Engineer;

Now Therefore Be It Resolved that the following permits are hereby approved by The Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U12-047	Frontier Communications	Beard Road	Place aerial cable

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U12-048	Frontier Communications	Bale Kenyon Road	Bury fiber cable
U12-049	United Telephone	Monkey Hollow Road	Bury cable
U12-050	Team Fishel	Green Meadows Drive	Place conduit
U12-041	AT&T	Green Meadows Drive	Place cable

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

RESOLUTION NO. 12-953

IN THE MATTER OF ACCEPTING NEW AND MODIFIED ROADS CONSTRUCTED AS PART OF THE HOME ROAD OVER CSX RAILROAD GRADE CROSSING ELIMINATION AS PUBLIC ROADS:

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

WHEREAS, section 5541.02 of the Revised Code requires that the board of county commissioners designate county highways with the approval of the Director of the Ohio Department of Transportation; and

WHEREAS, section 5541.04 of the Revised Code provides that a board of county commissioners may, upon its own motion and when there is good cause, change the name of one or more county or township roads; and

WHEREAS, the Board of Commissioners, by and through the Ohio Department of Transportation, has made improvements to Home Road that required realignment of Home Road (County Road 124) and extension of Old Liberty Road (Township Road 9A) to provide access to several properties; and

WHEREAS, the County Engineer recommends that the frontage road that serves as access to local properties north of Home Road and west of the CSX Railroad be declared a public road and be made a Township Road; and

WHEREAS, the County Engineer recommends that the extended portion of Old Liberty Road (Township Road 9A) that serves as access to local properties north of Home Road and east of the CSX Railroad be declared a public road and made a Township Road;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, as follows:

Section 1. The new roads associated with the construction of the overpass of Home Road over the CSX Railroad, as delineated upon the centerline plat for the road improvement known as DEL-CR124-4.11, being instrument #2012-00019759 of the Delaware County Recorder's Office, are hereby declared public roads and shall be named as follows:

- (a) The road delineated in said plat and named Frontage Road "A" shall be known as OLD HOME ROAD and be assigned road number 124A, and is hereby declared a Township Road;
- (b) The road delineated in said plat and named Frontage Road "C" shall be considered as an extension of OLD LIBERTY ROAD (Township Road 9A) and is hereby declared a Township Road; and
- (c) The newly constructed road delineated in said plat and named Home Road shall be considered as HOME ROAD (County Road 124) and is hereby declared a County Road.

Section 2. The Board hereby directs the Clerk to certify copies of this Resolution to the Delaware County Engineer, the Delaware County Auditor, the Delaware County Recorder, and the Liberty Township Board of Trustees.

Section 3. This Resolution shall take effect immediately upon adoption.

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

RESOLUTION NO. 12-954

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO (COUNTY) AND STATE OF OHIO, DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE MAINTENANCE OF VARIOUS FEATURES AT THE INTERSECTION OF SR257 AND CR124 (HOME ROAD):

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

Whereas, the County Engineer recommends approval of the agreement between The Board of County Commissioners of Delaware County, Ohio (County) and State of Ohio, Department of Transportation (ODOT) for the maintenance of various features at the intersection of SR257 and CR124 (Home Road)/

Now Therefore Be It Resolved, that The Board of County Commissioners of Delaware County, Ohio approve the

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agreement between The Board of County Commissioners of Delaware County, Ohio (County) and State of Ohio, Department of Transportation (ODOT) for the maintenance of various features at the intersection of SR257 and CR124 (Home Road) as follows:

ODOT AGREEMENT NUMBER 25269

**AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS
OF DELAWARE COUNTY, OHIO AND
STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
FOR THE MAINTENANCE OF VARIOUS FEATURES
AT THE INTERSECTION OF SR257 AND CR124 (HOME ROAD)**

This Agreement is made by and between the State of Ohio, acting by and through the Director of the Department of Transportation (hereinafter referred to as ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the Board of County Commissioners of Delaware County, Ohio (hereinafter referred to as the COUNTY), acting on behalf of the Delaware County Engineer, 50 Channing Street, Delaware, OH 43015.

RECITALS:

WHEREAS, Sections 5501.11 and 5501.31 of the Ohio Revised Code provides that the Ohio Department of Transportation (ODOT) may cooperate with county governments in the establishment, construction, reconstruction, maintenance, repair, and improvement of public roads and bridges; and

WHEREAS, Section 5501.03(A)(3) of the Ohio Revised Code provides that the Director of Transportation may coordinate the activities of the Department of Transportation with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions; and

WHEREAS, ODOT and the COUNTY have entered into an Agreement, Number 25257, wherein the COUNTY has agreed to improve the intersection of SR257 and CR124 (Home Road) in Delaware County (DEL-CR124-1.88, PID Number 83217) hereinafter referred to as the PROJECT; and

WHEREAS, the COUNTY and ODOT have agreed that, notwithstanding ODOT's statutory responsibility for maintenance of SR257, the COUNTY shall be responsible for the maintenance of various features within the right-of-way of SR257 and CR124 (Home Road) in Delaware County after the completion of Project;

NOW THEREFORE, for and in consideration of the premises and the performance of the mutual covenants hereinafter set forth, and in anticipation of receipt of any and all requisite approvals, it is agreed by the parties hereto as follows:

SECTION 1: DEFINITIONS

1.1 "Maintenance" means the act of preserving and keeping each type of roadway, roadside structure, or facility, within the right-of-way as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highway transportation. Maintenance includes only routine maintenance of this type and not structural or extraordinary maintenance.

1.2 "Routine Maintenance" means the act of preserving and keeping each type of roadway, roadside structure, or facility, within the right-of-way as nearly as possible in its original condition as constructed or as subsequently improved, to provide satisfactory and safe highway transportation. Routine maintenance shall include, but shall not be limited to: pothole patching, pavement repairs to include partial and limited full depth repair, pavement markings, flat sheet sign replacement and repair, mowing, herbicidal spraying, on-going landscape maintenance, street sweeping, litter pickup, snow and ice control, minor drainage repairs, catch basin cleaning, guardrail repair, and fence repair due to accidents, and crack sealing for the first four years of new pavement.

1.3 "Extraordinary Maintenance" means the act of repairing, replacing, or rehabilitating an item which both parties understand to be of such magnitude as to be beyond the scope of work ordinarily performed by routine maintenance and repair forces. This work shall be categorized as unexpected, emergency, or in need of immediate attention.

1.4 "Lighting Maintenance" means keeping and preserving adequate sign and highway lighting and operation of the highway. Lighting maintenance shall include, but not be limited to: spot and scheduled relamping, pole knockdown, occasional tower lowering and resetting for repair of lowering mechanism, underground circuit repairs, control center or power service replacements as needed, replacement of burned out lamps, defective photo cells, defective ballasts, broken glassware, defective luminaries, defective control centers, defective wiring, group replacement of lamps every 48 months, and washing of glassware once a year.

1.5 "Energy Costs" means the cost of electricity, furnished by an electrical utility company, required to provide adequate lighting and operation of the highway, including roadside structures and facilities within the highway right-of-way.

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SECTION 2: SCOPE OF WORK

- 2.1 The work to be performed under this agreement shall consist of the maintenance, repair and replacement of the following items within the project limits described in the construction plans titled DEL-CR124-1.88 and approved by ODOT and COUNTY by project, PID Number 83217:
- a. Landscaping, including the mowing of grass
 - b. Landscaping irrigation systems, including the cost of the water supply (if applicable)
 - c. Street lights, including energy costs
 - d. Granite pavers around the center island of the intersection (if applicable).
 - e. Sidewalks and leisure paths
 - f. Signage not required for the public highway
 - g. Signage lighting, including energy costs not required for the public highway
 - h. Post-construction stormwater detention/sediment basins
 - i. Snow removal from the sidewalks and leisure paths
 - j. Other tasks considered outside normal roadway / bridge maintenance responsibilities
- 2.2 All work will be accomplished in accordance with the latest Design Criteria, Standard Drawings and Construction and Materials Specifications and LPA-Federal Project Agreement Number 25257, which shall include provisions for a Maintenance of Traffic Plan (Plans and Specifications), as agreed to by the COUNTY.
- 2.3 The COUNTY agrees to maintain all traffic control devices conforming to the Ohio Manual on Uniform Traffic Control Devices in compliance with the provisions of Section 4511.11 of the Ohio Revised Code.

SECTION 3: OBLIGATIONS OF THE COUNTY

- 3.1 The COUNTY agrees to perform all maintenance activities required by industry practices to all of the features described in Section 2.1.
- 3.2 The COUNTY will apply to ODOT for a permit to occupy the highway right-of-way for any feature proposed within the SR257 right-of-way and not installed as part of the PROJECT.
- 3.3 The COUNTY agrees to make ample financial and other provisions for all of the tasks agreed to in this Agreement.
- 3.4 Highway property, disturbed by the COUNTY during maintenance activities, shall be restored using materials, design and workmanship in conformance with the Ohio Department of Transportation Construction and Material Specifications, Location and Design Manual, or other existing Department Standards.
- 3.5 The COUNTY agrees that all work requiring workers or vehicles on the pavement or shoulders shall comply with all of the requirements of the Ohio Manual of Uniform Traffic Control Devices and Item 614 (Maintaining Traffic) of the Ohio Department of Transportation Construction and Materials Specifications. Failure to comply with the requirement will be cause for immediate suspension of maintenance activities until the proper traffic controls have been provided.
- 3.6 The COUNTY, upon completion of the work, shall leave the highway clean of all rubbish, excess materials, temporary structures and equipment; and all parts of the highway disturbed by any maintenance activities shall be left in acceptable condition.
- 3.7 Once the project is complete, the COUNTY will be responsible for any corrective action ODOT deems necessary to make the intersection operate in a satisfactory manner.
- 3.8 In the event that the COUNTY or ODOT believes it to be necessary that extraordinary maintenance work should be performed on the highway, such work shall be performed upon the following conditions:
- a. The COUNTY shall notify ODOT in writing of the conditions which exist that require extraordinary maintenance. Verbal approval of ODOT may be requested by the COUNTY for those conditions in which emergency repairs must be made for safety purposes.
 - b. Upon the mutual agreement of the parties, the COUNTY or ODOT shall agree as to the necessity of the work and how to proceed to accomplish the required work by contract method.
 - c. The COUNTY may have work of this nature performed by COUNTY labor forces For those conditions that require immediate repairs, verbal approval from ODOT must be obtained by the COUNTY prior to starting work.

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SECTION 4: OBLIGATIONS OF THE STATE

- 4.1 ODOT agrees to approve in a timely manner any plans submitted by the COUNTY.
- 4.2 ODOT agrees to grant, if necessary, permits to the COUNTY to use and occupy the rights-of-way of SR257 for maintenance purposes.
- 4.3 ODOT agrees to inspect any bridge structure on SR257 (if applicable) in accordance with the provisions of R.C. 5501.47 and to maintain any bridge deck (> 2", substructure and superstructure), as long as the bridge remains in an unincorporated area of the County.

SECTION 5: NOTICE

- 5.1 Notice under this Agreement shall be directed as follows:

Delaware County Engineer
50 Channing Street
Delaware, OH 43015

Ohio Department of Transportation
District 6
400 East William Street
Delaware, Ohio 43015
Attn: P&E Administrator

SECTION 6: BREACH OF CONTRACT:

- 6.1 Neglect or failure of the COUNTY to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions (EXCEPT THOSE REASONABLY FORESEEABLE IN CONNECTION WITH THE USES CONTEMPLATED BY THIS AGREEMENT), or any other cause not reasonably within the COUNTY's control. The COUNTY, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.
- 6.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the COUNTY shall have thirty (30) days or a time negotiated with ODOT from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days or negotiated time and failure by the COUNTY to remedy the default shall result in termination of this Agreement by ODOT.
- 6.3 Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of all of the features defined in this agreement within the SR257 right-of-way to determine whether or not they have been maintained to a degree acceptable to ODOT. If the feature has not been maintained to a degree and condition acceptable to ODOT, then ODOT may take any measures necessary to bring the feature into an acceptable condition. The COUNTY shall be held responsible for full restitution of all expenses incurred in bringing the feature into an acceptable condition.
- 6.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the COUNTY shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

SECTION 7: GENERAL PROVISIONS

- 7.1 The signing of the Agreement does not in any way abridge the right of the Director of Transportation in his jurisdiction over the state highway system. If, at any time, it becomes necessary, in the opinion of the Director of Transportation to order the removal, reconstruction, relocation, or repair of any of the landscaping or other work performed, under the Agreement, said removal work shall be completed wholly at the expense of the COUNTY, and be made as directed by the Director of Transportation.
- 7.2 This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 7.3 Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 7.4 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.

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- 7.5 The District Deputy Director of District 6 shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 7.6 The signing of the Agreement or the doing of any work thereunder shall constitute an agreement by the COUNTY to comply with all of the conditions and restrictions written herein.
- 7.8 The COUNTY shall comply with the Air Pollution requirements of Rule 3745-17-08 of the Ohio Administrative Code Promulgated and enforced by the Ohio Environmental Protection Agency.

SECTION 8: CERTIFICATION OF FUNDS

- 8.1 It is expressly understood by the parties that all financial obligations of the State of Ohio are subject to the provisions of Section 126.07 of the Ohio Revised Code.
- 8.2 It is expressly understood by both parties that all financial obligations of the Delaware County Engineer are subject to approval by the Delaware County Commissioners.

SECTION 9: DISPUTES

- 9.1 In the event that any dispute arises between ODOT and the COUNTY concerning interpretation of or performance pursuant to the Agreement, such dispute shall be resolved in a mutually acceptable manner by the ODOT Director and the Delaware County Commissioners.

SECTION 10: TERMINATION; EFFECTIVE DATE

- 10.1 Either party may terminate this agreement by giving the other party ninety (90) days written notice.
- 10.2 This Agreement shall be effective as of the above date. This Agreement shall expire on June 30, 2013 and at that time, this Agreement shall automatically renew on the same terms and conditions every two years, coinciding with the State of Ohio’s biennium.

SECTION 11: SIGNATURES

- 11.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal’s behalf.

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

RESOLUTION NO. 12-955

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN SAMUEL D. ANDRIETTI, 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 Samuel D. Andrietti 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 Samuel D. Andrietti for the DEL-CR124-1.88 Home Road/SR 257/Section Line Road Intersections Improvements.

**Contract For Sale And Purchase Of Real Property
With Building(s)**

**PARCEL(S): 2-WD, 2-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners [“Purchaser”] and Samuel D. Andrietti [“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 \$225,000.00, 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.

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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 the appurtenances and hereditaments thereunto belonging and with all buildings and improvements now located thereon, and all fixtures of every nature now attached to or used with said land, buildings and improvements including, but not limited to, all heating, hot water, air conditioning, plumbing, attached electrical fixtures with bulbs or tubes, window shades, venetian blinds, curtain and traverse rods, awnings, storm and screen sashes and doors, and 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 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 structure or fixture 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, including structures and fixtures, 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 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

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MINUTES FROM REGULAR MEETING HELD SEPTEMBER 24, 2012**

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 all structures occupied by Seller, or the portions thereof occupied by Seller, to Purchaser not later than 30 days after Purchaser tenders the purchase price to Seller. Seller agrees that Purchaser may withhold in escrow from the purchase price the sum of \$0.00 to ensure that the subject structures will be vacated on or before the 30 days mentioned above and that the subject structures will be surrendered to Purchaser in the same condition as it was in at the time Seller executed this Agreement. If Seller properly vacates and surrenders possession of the subject structures as aforesaid, then said \$0.00 shall be paid immediately to Seller. If the subject structures are not vacated as aforesaid, a rental agreement for the subject structures shall be entered into by the Parties, in which Seller shall be the lessee and Purchaser shall be the lessor, and upon execution of such rental agreement the said \$0.00 shall be paid immediately to Seller; in the event Seller fails or refuses for any reason to enter into such rental agreement, then Purchaser may retain all or part of the said \$0.00 withheld in escrow to compensate Purchaser for the reasonable amount of rent that Seller owes for holding over possession of the subject structures, plus an amount to pay for any taxes, assessments and for any costs of restoration necessary to put the structures in the same condition as they were at the time Seller executed this Agreement.

12. Physical Possession of Vacant Land and Structures

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. 12-957

IN THE MATTER OF AMENDING AS PRESENTED IN RESOLUTION 12-956, THE APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN THEODORE O. HULLS AND JOAN L. HULLS, 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, TO REFLECT THE CORRECT DOLLAR AMOUNT OF \$8,209.00:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to amend as presented in resolution 12-956, the approving a contract of sale and purchase between Theodore O. Hulls And Joan L. Hulls, 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, To Reflect The Correct Dollar Amount Of \$8,209.00

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

RESOLUTION NO. 12-956

IN THE MATTER OF APPROVING, AS AMENDED, A CONTRACT OF SALE AND PURCHASE BETWEEN THEODORE O. HULLS AND JOAN L. HULLS, 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 SEPTEMBER 24, 2012**

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Theodore O. Hulls and Joan L. Hulls, 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 Theodore O. Hulls and Joan L. Hulls, 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): 16-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners ["Purchaser"] and Theodore O. Hulls and Joan L. Hulls, 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 \$8,209.00, 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 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

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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. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 12-958

**IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN
RUDOLPH L. ZUPANC AND LANI A. ZUPANC, 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 Rudolph L. Zupanc and Lani A. Zupanc, 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 Rudolph L. Zupanc and Lani A. Zupanc, 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

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Without Building(s)

**PARCEL(S): 15-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners [“Purchaser”] and Rudolph L. Zupanc and Lani A. Zupanc, 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 \$36,000.00, 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 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

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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. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 12-959

**IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN
RUDOLPH L. ZUPANC AND LANI A. ZUPANC, 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 Rudolph L. Zupanc and Lani A. Zupanc, 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 Rudolph L. Zupanc and Lani A. Zupanc, 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): 17-WDV
DEL-CR124-1.88**

This Agreement is by and between the Delaware County Board of Commissioners ["Purchaser"] and Rudolph L. Zupanc and Lani A. Zupanc, 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."

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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 \$13,557.00, 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 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

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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. 12-960

**IN THE MATTER OF ACCEPTING THE AWARD OF THE OHIO ATTORNEY GENERAL OFFICE
 VOCA/SVAA GRANT FOR DELAWARE COUNTY JUVENILE COURT:**

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

WHEREAS, the Delaware County Juvenile Court has applied for and been awarded the Ohio Department of Youth Services grant; and

WHEREAS, the Grant will be used to pay for staffing with in the Juvenile Court and

WHEREAS, the Board of County Commissioners accepts this grant award and designates the Delaware County Juvenile Court Administrator David A Hejmanowski to execute the agreement;

WHEREAS, the Board desires uninterrupted compliance with the Grant reporting requirements by maintaining Court Administrator Hejmanowski as the designated official;

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

Section 1. The Board hereby accepts the award of the Grant as follows:

Grant # 2013VACHAE474	\$18,860.00
Grant #2013SACHAE474	\$ 1,918.00
Source: Ohio Attorney General	
Grant Period: 10-1-12 thru 9-30-13	
Federal Grant Amount:	\$ 18,860.00
Local Match:	<u>6,286.00</u>
State Match:	<u>1,918.00</u>
Total Grant Amount:	\$ 20,778.00

Section 2. The Board hereby authorizes Court Administrator Hejmanowski, as the designated official, to execute reports and administrative documents for the Grant.

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Section 3. When reports or administrative documents require execution by the designated official, a copy of the report or documents will be on file at Juvenile Court office of fiscal and grants.

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

RESOLUTION NO. 12-961

IN THE MATTER OF ACCEPTING THE AWARD OF THE OHIO ATTORNEY GENERAL OFFICE VOCA/SVAA GRANT FOR DELAWARE COUNTY JUVENILE COURT:

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

WHEREAS, the Delaware County Juvenile Court has applied for and been awarded the Ohio Department of Youth Services grant; and

WHEREAS, the Grant will be used to pay for staffing with in the Juvenile Court and

WHEREAS, the Board of County Commissioners accepts this grant award and designates the Delaware County Juvenile Court Administrator David A Hejmanowski to execute the agreement;

WHEREAS, the Board desires uninterrupted compliance with the Grant reporting requirements by maintaining Court Administrator Hejmanowski as the designated official;

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

Section 1. The Board hereby accepts the award of the Grant as follows:

Grant # 2013VAGENE035 \$36,765
 Grant #2013SAGENE035 \$22,331
 Source: Ohio Attorney General
 Grant Period: 10-1-12 thru 9-30-13

Federal Grant Amount:	\$ 36,765.00
Local Match:	<u>12,255.00</u>
State Match:	<u>22,331.00</u>
Total Grant Amount:	\$ 59,096.00

Section 2. The Board hereby authorizes Court Administrator Hejmanowski, as the designated official, to execute reports and administrative documents for the Grant.

Section 3. When reports or administrative documents require execution by the designated official, a copy of the report or documents will be on file at Juvenile Court office of fiscal and grants.

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

RESOLUTION NO. 12-962

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR JUVENILE/PROBATE COURT:

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

Transfer of Appropriations		Amount
From	To	
10026318 -5294	10026318- 5101	\$ 500.00
Community service JV Court/Food	Community service JV Court /Health Insurance	

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

RESOLUTION NO. 12-963

IN THE MATTER OF RESCINDING RESOLUTION NO. 12-942 (IN THE MATTER OF APPROVING A SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND GREAT AMERICAN TITLE AGENCY TO PERFORM TITLE EXAMINATION SERVICES FOR DELAWARE COUNTY’S PARTICIPATION IN THE MOVING OHIO FORWARD GRANT PROGRAM):

It was moved by Mr. Thompson, seconded by Mr. Stapleton to rescind Resolution No. 12-942 (In The Matter Of

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Approving A Services Contract Between The Delaware County Board Of Commissioners And Great American Title Agency To Perform Title Examination Services For Delaware County's Participation In The Moving Ohio Forward Grant Program).

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

RESOLUTION NO. 12-964

IN THE MATTER OF ACCEPTING AN EXPENSES PAID TRIP FROM THE MID OHIO DEVELOPMENT EXCHANGE (MODE):

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

WHEREAS, pursuant to section 9.20 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may accept gifts on behalf of Delaware County; and

WHEREAS, MODE awarded an expenses paid trip to Gus Comstock to attend the International Economic Development Council's (IEDC) 2012 Annual Conference in Houston; and

WHEREAS, MODE will pay for registration, flight and hotel with the organization's credit card; food and other expenses will be reimbursed per MODE's travel reimbursement policy; and

WHEREAS, IEDC's 2012 Annual Conference, September 30 - October 3 in Houston, Texas, will address the challenges and opportunities of growing jobs and investment in today's global economy. By energizing and empowering regional partners through shared messaging, resources, and best practices, communities small and large can reap the benefits and remain competitive. The conference will explore key questions facing the economic development profession, including:

- How can communities capture opportunities today to catalyze growth for tomorrow?
- What tools and strategies are essential to making communities relevant and resilient in the changing global economy?
- How can economic developers sharpen their skills to become more flexible, adaptable leaders?
- How can communities identify and develop assets that are cost-effective and complement their strengths? and

WHEREAS, attending an IEDC conference is necessary to maintain Gus Comstock's Certified Economic Developer certification;

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

Section 1. The Board hereby accepts the expenses paid trip awarded by MODE.

Section 2: The Board hereby thanks Dan Whited, PE, the city of Delaware's economic development coordinator and original awardee, for transferring the award to Gus Comstock.

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

RESOLUTION NO. 12-965

IN THE MATTER OF AUTHORIZING THE SUBMITTAL OF THE PROGRAM INCOME SEMI-ANNUAL REPORT WITH THE OHIO DEPARTMENT OF DEVELOPMENT, OFFICE OF COMMUNITY DEVELOPMENT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to authorize the submittal of Program Income Report:

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

WHEREAS, Delaware County has a Program Income Fund, which is capitalized with Community Development Block Grant (CDBG) funds, with use of these funds having a National Objective of assisting eligible low-moderate income households; and

WHEREAS, the Ohio Department of Development requires the County to submit a report of the Program Income Funds for their review.

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 hereby authorizes to accept and submit the Semi-Annual Program Income Report for the period January 1, 2012 – June 30, 2012, to Ohio Department of Development, Office of Community Development.

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Section 2. The Board of Commissioners authorizes the President of the Board to sign the Program Income Report for January 1, 2012 – June 30, 2012.

<u>Housing Semi-Annual Program Income Report</u>				
1. Housing Program Income Status:				
	<u>CDBG Funds</u>		<u>HOME Funds</u>	Receipts/Disbursements (Since Last Report)
=	\$ 55,214.25		\$0.00	Balance as of 12/31/11 (Beginning of Report Period)
+	\$ 0.00		\$0.00	Program Income Received
+	\$ 0.00		\$0.00	Bank Interest Received
-	\$ 0.00		\$0.00	Program Costs (must match total in section 2)
-	\$ 0.00		\$0.00	Administrative Costs
=	\$ 55,214.25		\$0.00	Available Cash Balance as of 6/30/12
	\$ 0.00		\$0.00	Balance Reserved for CHIP Programs
2. Detailed Activity Information for Housing Program Income:				
<u>Program Activity</u>	<u>CDBG Funds</u>	<u>Outcomes*</u>	<u>HOME Funds</u>	<u>Outcomes*</u>
Downpayment Assistance (DPA):	\$ 0.00	0	\$0.00	0
DPA/Private Rehabilitation	\$ 0.00	0	\$0.00	0
Private Rehabilitation:	\$ 0.00	0	\$0.00	0
Home Repair:	\$ 0.00	0	\$0.00	0
Private Rental Rehab:	\$ 0.00	0	\$0.00	0
New Construction	\$ 0.00	0	\$0.00	0
Tenant Based Rental Assist:	\$ 0.00	0	\$0.00	0
Other Program Costs:	\$ 0.00	0	\$0.00	0
Total Program Costs:	\$ 0.00		\$0.00	
On an additional sheet, identify any issues or concerns with the above listed program costs and outcomes. Include all costs but only list as an outcome if the unit/project has been completed and reviewed by local program staff. *Outcomes should be reported in total Units Completed in this Reporting Period.				

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

RESOLUTION NO. 12-966

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ENERNOC, INC. FOR DEMAND RESPONSE SALES AND SERVICES:

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

Whereas, the Director of Environmental Services recommends approval of the following Agreement;

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve the following Agreement with EnerNOC, Inc. for the Demand Response Sales and Services.

Demand Response Sales and Services Agreement

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This Demand Response Sales and Services Agreement (this “Agreement”), effective as of September 24, 2012 (“Effective Date”), the scope of which is described more fully below, is made by and between EnerNOC, Inc. (“EnerNOC”), located at 101 Federal St., Suite 1100, Boston, MA 02110 USA, and Delaware County Ohio Regional Sewer District (“Customer”), located at 10333 Olentangy River Rd., Powell, OH 43065. EnerNOC and Customer are defined herein as the Parties (“Parties”) to this Agreement.

1. **Term.** This Agreement shall commence on the Effective Date and end on 5/31/2018 (the “Term”).
2. **EnerNOC Managed Services**
 - a. **Scope of Services.** EnerNOC agrees to manage Customer’s participation in the demand response program(s), as further described in Attachment(s) A-1 attached hereto (each individually the “Program” and collectively, the “Programs”), in accordance with the rules set forth by the applicable independent system/grid operator and/or utility, which are subject to amendment by the applicable independent system/grid operator and/or utility from time to time. EnerNOC will (i) work with Customer to develop an appropriate curtailment plan for Customer’s business; (ii) complete all necessary permits and associated reporting on Customer’s behalf; (iii) register Customer’s Accepted Capacity (as defined in Attachment(s) A-1); (iv) manage Customer’s curtailable electrical capacity in the Programs and, upon notification by EnerNOC and acceptance by Customer, provide real-time support to Customer during demand response events (“Demand Response Events”) via, at Customer’s sole discretion, direct load control or manual implementation by Customer, as applicable; and (v) reconcile all Program payments in accordance with the rules set forth by the applicable independent system/grid operator and/or utility and as further described in Attachment(s) A-1. In addition, as necessary, EnerNOC will coordinate with Customer’s host utility to capture kilowatt-hour (kWh) pulses from the Customer’s primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.
 - b. **EnerNOC System.** EnerNOC, as it deems necessary and at its sole option, may equip one or more of Customer facility address (each a “Site Address”) as identified on Attachment(s) A-2 hereto with the EnerNOC system, which includes an EnerNOC Site Server (“ESS”) that can, at Customer’s sole discretion, enable remote generator start/stop, and/or direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. Subsequent to the date hereof, Attachment(s) A-2 may be updated in writing from time to time by the Parties to reflect additional Site Addresses.
3. **Customer Support Requirements**
 - a. **ESS Installation.** Within fourteen (14) days of notification from EnerNOC of an ESS installation requirement, Customer shall provide either a static or non-static, as applicable, Internet Protocol (IP) address and Local Area Network (LAN) access that allows for Internet-based communication of Site Address’ electricity consumption and Demand Response Event performance.
 - b. **Acceptance Testing.** Customer agrees to collaborate with EnerNOC in testing the ESS at each Site Address where the ESS is installed in a timely manner prior to registering with the Program(s).
 - c. **Event Performance.** Customer agrees to use commercially reasonable efforts to generate and/or reduce electrical demand to achieve Accepted Capacity as defined in Attachment(s) A-1 at each Site Address when notified by EnerNOC during Demand Response Events. Customer and EnerNOC understand that the curtailable electrical capacity identified in Attachment(s) A-2 does not represent Accepted Capacity and is solely the Parties’ best estimate of performance and that Accepted Capacity may vary.
 - d. **Nondisclosure to Third Parties.** Customer and EnerNOC acknowledge that in its relationship with the other Party, it may receive information including (but without limitation): confidential information, business strategies, financial information, information relating to the ESS and the EnerNOC System, and information contained in this Agreement, including the terms of the revenue sharing arrangement described in Attachment(s) A-1 (all collectively “Confidential information”). Except as required by applicable law or regulation or as expressly set forth in Subsection 3(f) hereof, neither Party shall disclose any Confidential Information to any third party or allow any third party access to such Confidential Information.
 - e. **Trade Secret Protection Obligations.** Customer shall not alter, reverse engineer, disassemble, decompile or copy the ESS or any other EnerNOC System components and shall not allow any third party to use, access, or examine the ESS or any other EnerNOC System components.
 - f. **Use of Confidential Information.** Notwithstanding anything contained herein to the contrary, Customer acknowledges that EnerNOC may receive Confidential Information of Customer through data collected by the ESS and the EnerNOC System, which may be disclosed by EnerNOC (i) to the applicable independent system/grid operator and/or utility as solely necessary for the performance of this Agreement and (ii) to any subcontractors or other agents of EnerNOC.
 - g. **Service Provider Limitation.** Customer agrees not to contract with any other demand response service provider for the Term of this Agreement for the Site Addresses listed on Attachment(s) A-2.
4. **General Terms**
 - a. **Limitation on Liability.** Except for the indemnification obligations contained herein, EnerNOC’s liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages shall not exceed \$100,000. All other remedies or damages (at law, in equity, tort, contract, or otherwise) are expressly waived, including any indirect, punitive, special, consequential, or incidental damages, lost profit, or other business interruption damages.
 - b. **Indemnification.** EnerNOC agrees to defend and indemnify, at its own expense, any third party claim

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against Customer, its parent corporation, affiliates, directors, employees and agents that arise due to any (i) bodily injury, death or damage to tangible personal property to the extent caused by the negligent acts or omissions of EnerNOC or its employees in the performance of this Agreement and (ii) a claim that the EnerNOC System or any goods or services provided by EnerNOC hereunder (so long as the foregoing have not been altered or modified by a party other than EnerNOC) or the use thereof by Customer infringes upon any copyright, trademark, trade secret or proprietary right of any third party. EnerNOC will pay reasonable legal fees as incurred and such damages or costs as are finally awarded against Customer or agreed to in settlement for such claim provided that Customer gives EnerNOC (i) prompt written notice of any such claim or threatened claim, (ii) sole control of the defense, negotiations and settlement of such claim, and (iii) full cooperation in any defense or settlement of the claim.

- c. **Choice of Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio, without giving effect to choice of law rules.
- d. **Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of EnerNOC. This Agreement contains the entire agreement between Customer and EnerNOC and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the Parties together with their successors and assigns.
- e. **Force Majeure.** The Parties shall be excused for any failure or delay in the performance of their obligations hereunder due to acts of God or any other legitimate cause beyond their reasonable control.
- f. **Termination.** Either Party may terminate this Agreement immediately if the Program(s) is materially altered, suspended or ended. Notwithstanding the foregoing, in the event that capacity is not available in the Program for a given Program Period (as defined in Attachment(s) A-1), EnerNOC may reduce Customer's Accepted Capacity to zero and/or terminate this Agreement.
- g. **Notices.** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery company; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): EnerNOC, Inc., Attn: Deputy General Counsel, 101 Federal Street, Suite 1100, Boston, MA 02110; and to the Customer at Delaware County Ohio Regional Sewer District, at 10333 Olentangy River Rd., Powell, OH 43065.
- h. **Insurance.** EnerNOC shall maintain

Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate
 Automobile Liability Insurance with limits of \$1,000,000 per occurrence combined single limit
 Workers' Compensation and Employers' Liability Insurance with limits of not less than \$500,000

All insurance carriers must have an AM Best rating of A-VIII or better. **Upon request of Customer,** Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.

**Attachment A-1
 Emergency Load Response Program**

- 1. **Program Description.** PJM Interconnection's (PJM) Emergency Load Response Program (ELRP) enables program participants to receive revenue for being available to reduce electricity consumption when the reliability of the electric grid is in jeopardy and voltage reductions and rolling brownouts are imminent.
- 2. **Program Rules.** The terms of this Agreement will reflect ELRP program terms and conditions which may be amended from time to time by PJM, the current terms of which are summarized below:

Program Availability	During the program period June 1-September 30 ("Program Period"), Customers must be able to respond during non-holiday weekdays from 12:00 p.m. to 8:00 p.m. (Eastern Prevailing Time). PJM may call events outside of the Program Period; Customer's performance during such events shall not impact Capacity Payments, but will be included in Customer's Energy Payments as defined in Section 4(b) below.
Event Trigger	PJM will initiate Demand Response Events in ELRP in the case of a defined system emergency.
Advanced Notification	Customers are expected to be able to respond to an ELRP Demand Response Event notice within 120 minutes of notification from EnerNOC.
Event Frequency & Duration	Maximum of ten (10) Demand Response Events in a year, with event duration ranging from a minimum of one (1) hour to a maximum of six (6) hours.
Testing Requirement	If no Demand Response Event occurs, PJM requires EnerNOC to hold a Test Event by September 30 of the Program Period.

- 3. **Paid Capacity.** "Paid Capacity" will be either (i) Accepted Capacity, if a Demand Response Event or a Test

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Event (collectively, a “DR Event”) has not been initiated during the Program Period, or (ii) Customer’s average Delivered Capacity for all DR Events initiated during the Program Period.

- a. **Accepted Capacity.** “Accepted Capacity” shall represent the best estimate of Customer’s expected curtailment based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
- b. **Delivered Capacity.** “Delivered Capacity” will be the calculated performance with respect to the Program baselines and as measured by the ESS following each DR Event, up to 100% of Accepted Capacity. Customer’s Delivered Capacity may be adjusted by EnerNOC in the future following PJM approval of performance data from DR Events.

4. **Payments**

- a. **Capacity Payments.** EnerNOC will pay Customer 75.00% of the established PJM market clearing price obtained by EnerNOC multiplied by Paid Capacity (“Capacity Payment”).
- b. **Energy Payments.** In months when one or more Demand Response Events are called, EnerNOC will pay Customer 100.00% of the Energy Payments available from PJM to EnerNOC in connection with Customer responding to a Demand Response Event when notified by EnerNOC.
- c. **Bonus Payment.** EnerNOC agrees to pay Customer a one-time bonus payment of \$2000 for each MW of Accepted Capacity (the “Bonus Payment”). Upon the earlier expiration or termination of this Agreement, in the event the total EnerNOC Margin (as defined below) is less than Bonus Payment, Customer agrees to pay EnerNOC the difference between total EnerNOC Margin and Bonus Payment within thirty (30) days of invoice from EnerNOC.
 - i. For purposes of this Agreement, “EnerNOC Margin” shall mean (i) the revenue received by EnerNOC from PJM in connection with Customer’s participation in the ELRP program, minus (ii) the Capacity Payments and Energy Payments paid to Customer.
- d. **Underperformance.** In no event shall Customer be penalized for underperformance by being required to return money to EnerNOC. If customer underperforms, adjustments will be made to future payments so that total payments made to Customer for the Program Period will reflect Paid Capacity for such Program Period.
- e. **Payment Timing.** EnerNOC shall make all payments associated with Customer’s participation in the ELRP, not including the Bonus Payment, to Customer on a quarterly basis, and such payments shall be made within forty-five (45) days of EnerNOC’s receipt of total payment from PJM.
- f. **Bonus Payment Timing.** EnerNOC shall pay Customer Bonus Payment according to the following schedule:
 - i. If this Agreement is signed before July 1st, 2012, Bonus Payment shall be made no later than August 31st, 2012.
 - ii. If this Agreement is signed before October 1st, 2012, Bonus Payment shall be made no later than November 30th, 2012.

5. **Additional Terms**

- a. **Curtailment Service Provider.** Customer hereby designates EnerNOC as its sole curtailment services provider for the limited purpose of participating in PJM’s Emergency Load Response Program.
- b. **Enrollment.** The Parties hereby acknowledge and agree that Customer will not be enrolled by EnerNOC in the ELRP program or eligible for Capacity Payments or Energy Payments hereunder prior to the 2013-2014 Program Period.

Attachment A-2

Site Name	Site Address	Estim. Capacity (kW)
Alumn Creek/Walker Woods Treatment	7767 Walker Wood Blvd Lewis Center, OH 43035	861
OECC 1	10435 Olentangy River Road Powell, OH 43065	125
Alum Creek Pump Station	7850 Worthington Rd Westerville, OH 43082	182
OECC - Rear	10333 Olentangy River Rd - A Powell, OH 43065	274
OECC 2	10435 Olentangy River Rd Powell, OH 43065	267

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

RESOLUTION NO. 12-967

IN THE MATTER OF APPROVING A SERVICE AGREEMENT WITH SEDGWICK CLAIMS MANAGEMENT SERVICE, INC. TO PROVIDE CLAIMS ADMINISTRATION SERVICES FOR DELAWARE COUNTY’S WORKERS COMPENSATION SELF INSURED PROGRAM:

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

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Whereas, the Director of Administrative Services recommends the service agreement with Sedgwick Claims Management Service, Inc. to provide claims administration services for Delaware County's Workers Compensation Self Insured Program;

Therefore Be It Resolved, that the Board of Commissioners approve the service agreement with Sedgwick Claims Management Service, Inc. to provide claims administration services for Delaware County's Workers Compensation Self Insured Program.

**SERVICE AGREEMENT FOR ADMINISTRATION OF
A CLAIMS PROGRAM**

This Agreement is entered into effective the 24th day of September, 2012, by and between Sedgwick Claims Management Services, Inc. ("Sedgwick") and Delaware County ("Client").

RECITALS

1. Client self-insures its claims administration program for workers' compensation risks and desires to have Sedgwick provide the specific services set forth below in connection with such self-insured program (the "Program," as defined on Exhibit A, attached hereto).
2. Sedgwick is willing to provide such services on the terms and conditions hereinafter stated.

AGREEMENT

1. Services to Be Performed by Sedgwick: Sedgwick agrees to perform the following services:
 - A. With regard to Self-Insured Claims Administration, Sedgwick shall:
 - (1) During the term of this Agreement, review all claim and loss reports received from Client that are required to be reviewed under the Program (a "Qualified Claim"), and process each such claim or loss report in accordance with applicable statutory and administrative regulations;
 - (2) Conduct an investigation of each Qualified Claim to the extent deemed necessary by Sedgwick in the performance of its obligations hereunder;
 - (3) Arrange for independent investigators, appraisers, or medical or other experts to the extent deemed necessary by Sedgwick in connection with processing any Qualified Claim;
 - (4) Pay benefits, expenses, and adjust or settle each Qualified Claim, but only if in the sole judgment of Sedgwick such payment would be prudent for Client and the anticipated amount thereof does not exceed the limit specified in accordance with paragraphs 2F and 2G below, or as Client specifically approves or directs such action in writing;
 - (5) Maintain a file for each Qualified Claim which shall be the property of Client and which shall be available for review by Client during normal business hours upon reasonable notice;
 - (6) Notify excess or umbrella insurers of each Qualified Claim where the values may exceed Client's retention, providing such insurers with necessary information on the current status of those claims, unless relieved of this obligation by Client pursuant to paragraph 2A;
 - (7) Assist Client's counsel, if requested, in preparing the defense of litigated cases arising out of Qualified Claims, negotiating settlements and pursuing subrogation or contribution actions;
 - (8) Maintain a current estimate of the expected total cost of each Qualified Claim which is based on facts known at the estimation date, but is not trended or actuarially developed;
 - (9) Use a proprietary data management system to furnish to Client agreed upon loss and information reports. These reports shall contain information such as each Qualified Claim date, condensed claim description, payments made, estimated future costs and total expected costs of all Qualified Claims, as well as summary and other data deemed relevant by Sedgwick, but not IBNR (incurred but not reported) claims or actuarially developed loss values; and
 - (10) Annually report federal, state and local 1099 information under Sedgwick's tax identification number(s) for vendor payments issued by Sedgwick on bank accounts established and owned by Sedgwick on behalf of Client, but not for payment authorizations when Sedgwick does not issue the checks. Client recognizes and agrees that any earnings credits realized on the account(s) will be utilized to offset banking analysis fees related to any Sedgwick owned claim fund account.
 - B. Sedgwick will provide managed care services as set forth in the attached Managed Care Service

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Schedule which is incorporated by reference.

C. With regard to Ohio state fund claims with a date of loss prior to September 1, 2008, Sedgwick shall:

- (1) Upon request, provide to Client an adequate supply of claim forms. Client shall distribute said forms to employees and medical suppliers as necessary;
- (2) Upon receipt from Client of all claim applications, supporting documentation, and related correspondence, examine all such materials for accuracy, completeness and eligibility. Sedgwick shall forward correspondence to the appropriate agency for further processing;
- (3) Confer with Client's designated representative(s) regarding disputed claims, and, when appropriate, contact the claimant, medical provider(s), and/or the appropriate state agency;
- (4) Review all Indemnity Claims to determine if all awards are made within the rules and regulations of the governing Ohio state fund program. Corrections will be requested in those cases where overpayments have been established, but only to the extent that such errors, when corrected, will result in rate changes and/or refunds;
- (5) Report to Client through personal contact or special bulletins any changes in procedures produced by legislative or administrative revisions, as deemed necessary by Sedgwick;
- (6) In disputed claims, when appropriate, discuss Client's intended action regarding the issue(s). Additional information and supporting documentation may be requested at this time;
- (7) Upon notification of a scheduled administrative hearing, provide information to Client so that Client can arrange for a qualified representative to attend on behalf of Client;
- (8) Notify Client when a claimant has exceeded the normal period of recovery for a particular type of injury or disease and recommend appropriate action;
- (9) Upon authorization by Client, arrange for an employer-sponsored medical examination of a claimant. The cost of such examination shall be the responsibility of Client; and
- (10) Analyze, on an individual claim basis, claims to determine if rehabilitation intervention is appropriate. All costs relating to such intervention must be pre-authorized by Client and shall be Client's financial responsibility.

2. Obligations of Client:

A. Client shall provide Sedgwick in a timely manner with excess insurance or umbrella insurance information for the policy years necessary for proper notification of applicable Qualified Claims to such insurers by Sedgwick. Should Client fail to provide such information, Sedgwick shall be relieved of any obligation to provide any notification to any excess or umbrella insurer.

B. Client shall pay to Sedgwick a service fee which, in the initial term of this Agreement, shall be computed and payable as shown in Exhibit B, attached hereto and made a part of this Agreement, plus applicable taxes, if any.

C. Client shall at all times provide funds adequate for the payment of Qualified Claims, including allocated loss adjustment expenses. For purposes of this Agreement, allocated loss adjustment expenses shall mean all costs, charges or expenses incurred by Sedgwick, its agents or its employees which are properly chargeable to a Qualified Claim including, without limitation, court costs; fees and expenses of attorneys; appeal bonds; independent adjusters; investigators; appraisers; vocational services, training or evaluation; medical expenses and medical cost containment service providers (including those provided by Sedgwick, if applicable); rehabilitation services; experts and witnesses; fees for obtaining statements, diagrams, reports, records, documents, transcripts, depositions, index bureau filings and re-filings, and photographs; costs of file retrieval; cost associated with the pursuit of subrogation and/or Special Injury Fund claims; and travel fees and expenses incurred at Client's request. Prior to issuing checks for payment of expenses or otherwise, Sedgwick will provide to Client, via email, a detail of all such expenses and/or checks for approval by Client.

D. Client shall deposit funds for payment of Qualified Claims, including allocated loss adjustment expenses, in a bank account or accounts (the "Claim Account") established by and belonging to Sedgwick. Sedgwick shall have full responsibility for the care, custody and control of the Claim Account, including the performance of reconciliations, but Client shall be responsible for providing sufficient funds to enable Sedgwick to write checks on the Claim Account for use in the payment of Client's Qualified Claims. Such funds shall be provided by electronic funds transfer at the inception of the Program and replenished by electronic funds transfer promptly from time to time thereafter. The amount of the escrow required for the Claim Account may be modified in the following instances:

- (1) There is a substantial increase or decrease in claims payment activity;

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- (2) Client fails to fund the Claim Account within the agreed upon time period;
- (3) There is a change in funding cycle;
- (4) The escrow is recalculated at Client's request; or
- (5) The escrow amount is automatically recalculated on an annual basis.

E. It is expressly understood that Sedgwick shall not be required to advance its own funds to pay losses or allocated loss adjustment expenses for any Qualified Claim hereunder. It is further understood that if Client fails to promptly provide funds sufficient to allow required payments to be made timely, Sedgwick will have no obligation to perform any further services and may terminate this Agreement upon three (3) days prior written notice to Client.

F. Sedgwick shall obtain approval by the Client prior to making any individual payment of an allocated loss adjustment expense in any amount on any Qualified Claim. Such approvals shall not be unreasonably withheld and shall be provided in a timely manner so as to afford compliance with applicable law and good administration practices. This amount may be changed at any time by Client upon ten (10) days prior written notice to Sedgwick. It is agreed that Sedgwick shall have full authority and control in all matters pertaining to the payment, processing, investigation and administration of Qualified Claims within the limit established by this paragraph.

G. Sedgwick shall have no discretion to redeem, compromise or settle any Qualified Claim. This amount may be changed at any time by Client upon ten (10) days prior written notice to Sedgwick. Failure of Sedgwick to settle a Qualified Claim within such limit, however, shall not subject Sedgwick to any liability whatsoever in the event of an adverse judgment entered by any court or the settlement of such Qualified Claim for an amount in excess of such limit.

H. Should Client fail to make timely payments of any service fees due Sedgwick or should Client in any other way breach a material term of this Agreement, Sedgwick shall then have the right to refuse to perform any further services. If Sedgwick elects to exercise its rights under this paragraph, in addition to all other legal or equitable remedies, Sedgwick will have the right to its full minimum fee, if any, as well as any other fees for which Sedgwick may be eligible.

3. Discontinuance of Operations:

Should Client discontinue its business for any reason, all current fees due Sedgwick through the date of business discontinuance shall be paid immediately. Sedgwick shall have no further obligation to continue to provide the services called for in this Agreement, and, at Sedgwick' option, this Agreement shall be considered terminated as of the date Client ceases operations or is subject to a bankruptcy or receivership filing, either voluntarily or involuntarily.

4. Covered Jurisdictions:

This Agreement shall cover all operations of Client in the state of Ohio.

5. Term of Agreement and Termination:

A. The term of this Agreement shall be for the period commencing on September 1, 2012 and ending on August 31, 2013.

B. This Agreement may be terminated by either party at any time, provided that at least sixty (60) days prior written notice of the effective date of termination is given to the other party.

C. Sedgwick is providing services to Client on a life of contract basis. If requested by Client, Sedgwick will continue to process Client's Qualified Claims remaining open at the expiration or termination of this Agreement, if any, provided that Client shall continue to make adequate funds available for the payment of such Qualified Claims, including any allocated loss adjustment expenses and pay information technology and data tape fees. This provision shall not apply unless the additional fee for this service shall have been negotiated and agreed to in writing prior to the effective date of termination.

D. If Sedgwick is required by Client's excess Insurer to adjust Client's insured Qualified Claims after expiration or termination of this Agreement, Client shall continue to fund claims payments and allocated loss adjustment expenses as otherwise provided herein, and Client shall pay Sedgwick a mutually agreed upon fee, plus the prevailing fee for any information technology or data tapes required by Insurer.

E. Upon expiration or termination of this Agreement, Sedgwick shall deliver, at Client's sole cost, the hard copy and electronic files Sedgwick has maintained for Qualified Claims (but not including any computer hardware, firmware, software or other proprietary information of Sedgwick), except those Sedgwick has agreed in writing to continue to process or files that are owned by Insurer; provided, however, that Sedgwick or its agents,

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employees or attorneys shall continue to be entitled to inspect all such files and make copies or extracts therefrom. If Client does not agree to accept such files, they will be retained or destroyed at Sedgwick's option and Client shall have no recourse against Sedgwick for failure to retain them. Upon request and for the prevailing fees at the time of termination, Sedgwick will also provide its standard tape(s) containing the computer data for the Qualified Claim files stored on Sedgwick's computer system(s). Imaged files will be returned to the Client in their same format.

6. Practice Of Law:

It is understood and agreed that Sedgwick will not perform, and Client will not request performance of, any services which may constitute the unauthorized practice of law.

7. Indemnification:

A. Sedgwick shall be fully responsible for exercising reasonable care at all times in the performance of its obligations hereunder. Client agrees that Sedgwick, its officers, directors, employees and agents are not responsible for any and all losses, damages, claims, causes of actions, costs, judgments and expenses (including attorneys fees and costs) arising from, in connection with, or pertaining in any way to this Agreement and such workers' compensation claims or coverage contemplated herein unless and until a finding is entered to the effect that Sedgwick failed to exercise such reasonable care in the performance of its obligations hereunder. Sedgwick agrees to indemnify, hold harmless and defend Client, its directors, officers, employees and agents from and against any and all liabilities, loss or damage that they may suffer as a result of any claim, demand, cost or judgment against them arising out of the negligence or willful misconduct of Sedgwick in connection with its performance under this Agreement, provided that such acts or omissions do not arise out of or relate to oral or written instructions, procedures or forms supplied by Client or to Client's internal management or adjustment of its claims. Each party reserves the right to appoint its own counsel, at its own expense, regarding any matter defended hereunder and to approve any settlements of same.

B. Notwithstanding anything to the contrary contained in the above paragraph, it is understood and agreed that if Client retains administration of a claim, Sedgwick, its officers, directors, employees and agents are not liable for the losses, damages, costs, judgments and expenses (including attorneys fees and costs) as a result of any litigation or proceeding, fines, penalties, revocation of license, or any other state regulatory investigation or action arising from Client's acts or omissions in administering such claim.

C. If Client's access to claim data includes the ability to add and modify data, Sedgwick shall not be required to verify, or otherwise be responsible for, the accuracy of data added or modified by Client.

D. The provisions of this section shall survive the expiration or termination of the Agreement.

8. Network Security/Confidentiality:

A. If Client's access to the data management system requires a network connection (the "Network Connection") between Client's network and Sedgwick's network, Sedgwick and Client shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.

B. Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean:

(1) any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and

(2) medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.

C. Subject to Ohio Revised Code Section 149.43, each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, Client agrees to permit Sedgwick to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for Qualified Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep Client's data confidential. Further, Sedgwick shall be entitled, without violation of this section and without the prior consent of Client, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein.

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D. The provisions of this section shall survive the expiration or termination of the Agreement.

9. Notices:

Any notice required to be given under this Agreement shall be sent by certified or registered mail, postage prepaid, to General Counsel, Sedgwick Claims Management Services, Inc., 1100 Ridgeway Loop Road, Memphis, TN 38120, in the case of Sedgwick, and to Brad Euans, Delaware County, 10 Court Street, 2nd Floor, Delaware, Ohio 43015 in the case of Client.

10. Successors:

This Agreement shall be binding upon and shall inure to the benefit of all transferees, assigns and successors in interest of any kind of the parties hereto, but no transfer or assignment may be made without the prior written permission of the other party.

11. Entire Agreement and Modification or Amendment:

This Agreement and its attached exhibits and schedules represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.

12. Applicable Law:

The terms and conditions of this Agreement shall be governed by the laws of the State of Ohio without regard to conflicts of law principles.

13. Force Majeure:

Neither party shall be liable to the other party or be deemed to have breached this Agreement for any failure or delay in the performance of all or any portion of its obligations under this Agreement if such failure or delay is due to any contingency beyond its reasonable control (a "force majeure"). Without limiting the generality of the foregoing, such contingency includes, but is not limited to, acts of God, fires, floods, pandemics, storms, earthquakes, riots, boycotts, strikes, lock-outs, acts of terror, wars and war operations, restraints of government, power or communication line failure or other circumstance beyond such party's reasonable control, or by reason of a judgment, ruling or order of any court or agency of competent jurisdiction or change of law or regulation subsequent to the execution of this Agreement. Both parties are obligated to provide reasonable back-up capability to avoid the potential interruptions described above. If a force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party.

14. Headings:

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

15. Relationship of Parties; Expenses:

Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the parties hereto; the only relationship among the parties shall be that of independent parties to a contract. Except as expressly provided herein, no party hereto shall have authority or shall hold itself out as having authority to act for or bind any other party hereto. Except as expressly set forth herein, each party shall bear all expenses it may incur in connection with the execution, delivery and performance of this Agreement.

16. Waiver of Breach:

Failure of either party hereto to require the performance by the other party hereto of any obligation under this Agreement shall not affect its right subsequently to require performance of that or any other obligation. Any waiver by any party hereto of any breach of any provision of this Agreement shall not be construed as a continuing waiver of any such provision or a waiver of any succeeding breach or modification of any other right under this Agreement.

17. Subcontractor Disclosure:

Through contractual arrangements with subcontractors, Sedgwick provides a full range of medical management and investigative services to its clients, as well as structured settlements, Medicare set-aside, claim indexing services, imaging, auto-bill adjudication and extra-territorial claims administration services. Client recognizes and agrees that delivery of some of these services is being provided pursuant to separate agreements between subcontractors and Sedgwick. Invoices for these services will be paid as allocated expenses on individual claims, unless otherwise agreed between Client and Sedgwick. Notwithstanding the foregoing, Client agrees and understands that Client is obligated to make payment to the subcontractors either directly or by remitting such

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payment to Sedgwick, for any money due for subcontracted services which have been provided under this Agreement. Client acknowledges that Sedgwick receives a portion of charges for subcontracted services as reimbursement for cost of program management, administration, and technological and service enhancements. In no event will charges to Client exceed the amount indicated in the Agreement.

**EXHIBIT A
SERVICE PROGRAM OVERVIEW**

I. Introduction

Sedgwick is administering the self insured workers compensation claims for Client as follows:

State Serviced Ohio	Sedgwick Servicing Office Dublin, OH
------------------------	---

II. Account Coordination

On behalf of Client, this service program will be coordinated by:

Brad Euans
Delaware County
10 Court Street, 2nd Floor
Delaware, Ohio 43015
Phone 740-833-2127
Fax 740-833-2119
beuans@co.delaware.oh.us

On behalf of Sedgwick, this service program will be coordinated by:

Kelly Powers
CompManagement, Inc., a Sedgwick Company
6377 Emerald Parkway
P. O. Box 9063
Dublin, Ohio 43017
Phone 614-760-1724
Mobile 614-558-2822
Fax 614-932-1832
kelly.powers@sedgwickcms.com

Each party reserves the right to change its designated representative during the term of the Agreement.

**EXHIBIT B
SERVICE FEES**

Client shall pay the following fees for services provided during the term of this Agreement.

1. Claims Administration Fee

Client shall pay Sedgwick the following claims administration fees for services provided between September 1, 2012 and August 31, 2013:

- A. \$22,140 for administration of the self-insurance claims
- B. \$2,700 for administration of the Ohio state fund runoff claims

2. Miscellaneous

A. For purposes of this Agreement, an "Indemnity Claim" shall mean any workers' compensation Qualified Claim:

- for which a payment is made or reserve is posted under the indemnity portion (i.e. not medical and not expense) of the Qualified Claim or the time lost from work exceeds the state prescribed waiting period; or
- for which an application for adjudication of a claim or hearing notice is received or otherwise involves litigation or communication from or to a petitioner's attorney; or
- where paid medical costs exceed \$3,000; or
- denied claims that otherwise would have been classified as Indemnity Claims; or
- claims which Client requests to be investigated or classified as an Indemnity Claim; or
- any claim for which subrogation is investigated or pursued; or
- any claim open longer than twelve months.

B. Access for three E-Team users shall be provided at no additional charge.

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- C. Bank account maintenance and reconciliation will be provided for \$250 per month
- D. Client is responsible for storage of claim files closed at the time that Sedgwick begins claims administration.

3. Invoicing

The implementation fee is billed upon notification of award.

Sedgwick shall submit its invoice for all other fees on a quarterly basis, in advance, based on an annual fee estimate. Shortly after the expiration of the contract year, or upon termination, Sedgwick shall compare the installment amounts paid by Client to the actual fee due. Client shall pay any additional fee due, or Sedgwick shall reimburse Client for any overpayment, as the case may be.

4. Managed Care Charges

The following fees will be charged to the appropriate Qualified Claim file on an as incurred basis. The charges set forth below are the current fees for the services listed, and these fees may change from time to time upon sixty days prior written notice to Client:

Integrated Injury Management

Telephonic case management: \$355 per claim for the first 30 days; \$265 per claim for the second 30 days; \$175 per each 30 days thereafter

Utilization review: \$98 per review

Bill Review

State Fee Scheduling/ Usual, Customary, and Reasonable: \$8.00 per bill.

Preferred Provider Organization (PPO) networks: 27% of savings

Panel card production: No charge for standardized cards

Out-of-network, Specialty Usual & Customary bill review: 20% of savings with a \$5,000 maximum fee for medical bills less than \$100,000, a \$12,000 maximum fee for medical bills between \$100,000 and \$300,000 and a \$17,000 maximum fee for medical bills greater than \$300,000.

Complex file review (nurse review): \$98 per hour

5. Subrogation Recoveries

Sedgwick shall pursue subrogation and Second Injury Fund recoveries as appropriate and all subrogation/recovery cases will be handled by our centralized recovery unit. Client shall pay Sedgwick fifteen percent (15%) of the recovery received. All expenses, including attorneys' fees or investigations, for pursuit of any recovery shall be charged to the appropriate Qualified Claim file as an allocated loss adjustment expense. Upon receipt of the recovery check, Sedgwick shall deposit such checks into the Client owned bank account (when one exists) or forwarded directly to Client. Sedgwick will subsequently invoice Client for the appropriate fees due Sedgwick.

6. Payment Terms

Client acknowledges that all fees set forth in the Agreement are due and payable within thirty (30) days of the invoice. Any and all past due fees will incur interest at the rate of 1.5% per month, unless otherwise prohibited by law. Client acknowledges that in the event Sedgwick undertakes collection proceedings for any outstanding fees, then Client will reimburse Sedgwick for all costs associated with such collection action, including a reasonable attorney fee and court cost.

All fees set forth herein are conditioned upon the use of integrated injury management and bill review services. In the event that integrated injury management and bill review services are not utilized, then the fees shall be modified accordingly.

Claims open at contract termination will either be transferred to the new administrator or handled by Sedgwick for an additional annual fee.

All applicable state taxes will be added to the service fees in states where this is required.

All fees are contingent upon the use of Sedgwick Managed Care services.

MANAGED CARE SERVICE SCHEDULE

Client has chosen the following managed care services, as defined herein:

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- (1) Provider Fee Management - The bill review process reviews bills against up-to-date and accurate mandated state fee schedules or the usual and customary ("UCR") data base, whichever is appropriate, to reveal excessive, duplicate, or inappropriate charges.
- (2) Preferred Provider Organization ("PPO") Networks - Sedgwick will arrange for access and channeling to national and regional PPO networks including specialty networks (Diagnostics, Physical Therapy, etc under the managed care program in conjunction with the Provider Fee Management service.
- (3) Utilization Review, which includes the following components:
- (a) Prospective Review - a review prior to treatment or admission conducted by an experienced registered nurse to validate or negotiate the necessity, setting, frequency, intensity and duration of care delivery.
- (b) Concurrent Review - during the course of treatment, a review of treatment and planned procedures and establishment of target completion dates.
- (c) Retrospective Utilization Review- a review post treatment conducted by an experienced registered nurse to identify inappropriate treatment utilization.
- (d) Peer Review - physician-to-physician contact to resolve treatment and diagnosis questions.

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

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien

-Busy Past Week At The Fair, Appreciate The Invitation From The Agricultural Society

Commissioner Thompson

-Attended The Delaware County Fair Veterans Event On Friday

Commissioner Stapleton

-Will Attend An Oil And Gas Seminar On Monday

-Work Session Later Today

-CCAO Meeting On Friday; The Board Of Commissioners Needs To Follow The Legislators Actions To The "911 Cellular Fee" That Will Sunset At The End Of The Year

RESOLUTION NO. 12-968

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF
EMPLOYMENT AND PROMOTION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn into Executive Session at 10:30AM.

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

RESOLUTION NO. 12-969

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn out of Executive Session at 10:48AM.

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

There being no further business, the meeting adjourned.

1:30PM WORK SESSION

Tobacco Free Campus

Linda Diamond, Delaware General Health District

Len Fisher, Chair, Tobacco Free Tomorrow Committee of Delaware County

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Ken O'Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners