

**Resolution 05-2010**

**A RESOLUTION AUTHORIZING AND DIRECTING THE ADMINISTRATOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A LEASE AGREEMENT WITH SCIOTO TOWNSHIP AND DECLARING AN EMERGENCY.**

WHEREAS, The Village Administrator is authorized to enter into agreements and contracts on behalf of the Village; and

WHEREAS, Scioto Township desires to lease the old sewer treatment facility land located on Walker Road from the Village of Commercial Point to use as a training area for their Fire Department; and

WHEREAS, Council realizes the need to execute the necessary agreement to lease this land.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, COUNTY OF PICKAWAY, STATE OF OHIO, A MAJORITY OF ITS MEMBERS ELECTED THERETO CONCURRING THAT:

Section 1. The Village Administrator of Commercial Point is hereby authorized and directed to enter into an agreement (Exhibit A) to lease the old sewer treatment facility land located on Walker Road to Scioto Township for use as a Fire Department Training Area.

Section 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, peace, safety and general welfare of the citizens of the Village of Commercial Point and Scioto Township. Emergency passage is necessary to immediately commence the training of the Scioto Township Firemen. This Resolution shall take effect and be in force from and after the earliest period provided by law.

Vote on Suspension of Readings:

Motion by: Kim Gooden-Kinney 2<sup>nd</sup>: Margie Weaver

Roll Call:

Yes Jim Kuzelka                      Yes Janet Hutchins                      Yes Margie Weaver  
Yes Vidal Cruz                      Yes Kimberly Gooden-Kinney                      Yes Don Benedik

Vote on Passage of the Resolution and Declaring an Emergency:

Motion by: Kim Gooden-Kinney 2<sup>nd</sup>: Jim Kuzelka

Roll Call:

Yes Jim Kuzelka                      Yes Janet Hutchins                      Yes Margie Weaver  
Yes Vidal Cruz                      Yes Kimberly Gooden-Kinney                      Yes Don Benedik

Adopted this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Allan D. Goldhardt, Mayor

\_\_\_\_\_  
Wendy Hastings, Fiscal Officer

Approved as to Form:

\_\_\_\_\_  
D. Michael Crites, Law Director

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Exhibit A**

**LEASE AGREEMENT**

By this Lease Agreement ("Lease"), made and entered into on March 3, 2010, the **Village of Commercial Point** ("Landlord") grants, demises, and leases to **Scioto Township** ("Tenant"), the real property located on Walker Road and formerly known as the Village of Commercial Point Water Treatment Plant, situated in the Village of Commercial Point, Township of Scioto, County of Pickaway, State of Ohio ("Premises").

It is further mutually agreed between the parties as follows:

**SECTION I: TERM**

This Lease shall begin on March 3, 2010 and end on December 31, 2014.

**SECTION II: USE AND OCCUPANCY**

The Premises are to be used and occupied by Tenant as a fire training grounds and facility and for no other use or purpose whatsoever. Tenant shall not use or permit the use of the Premises, or any part of the Premises, for any purpose other than as a fire training grounds and facility, without the written consent of Landlord.

**SECTION III: RENT**

The rent for the Premises shall be one dollar and no cents (\$1.00), payable annually by January 31 of each year, during the entire term of this Lease at the office of Landlord, at P.O. Box 56, Commercial Point, Ohio 43116, or to any other person or agent and at any other time that Landlord may designate. Tenant shall also be required to maintain the grounds of the Premises, i.e., periodically mow the grass and trim any trees or shrubs within the fenced-in area.

**SECTION IV: EFFECT OF FAILURE TO DELIVER POSSESSION OF PREMISES**

In the event possession cannot be delivered to Tenant on the date of this Lease, through no fault of Landlord or his agents, there shall be no liability on Landlord or his agents, but the rental provided in this Lease shall abate until possession is given. Landlord or his agents shall have 180 days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the Premises and pay the rental provided in this Lease from that date. In the event possession cannot be delivered within such time, through no fault of Landlord or his agents, then this Lease and all rights under this Lease shall terminate.

**SECTION V: UTILITIES AND TAXES**

Tenant shall pay or cause to be paid all charges for all utilities to the Premises or utilities used on or related to the Premises during the term of this Lease.

Tenant will (ONLY as permitted by and/or required by law), during the term of this Lease, in addition to the rents provided herein, timely pay and discharge whenever they will become due and payable, all real estate taxes, personal property taxes, special and general assessments attributable to the Premises, water rates and charges, sewer charges or fees and other governmental impositions and charges of every kind and nature whatsoever associated with the use or occupancy of the Premises, extraordinary as well as ordinary, if any (collectively, the "Taxes"), and each and every installment thereof which will

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or may during the term of this Lease, and renewals and extensions thereof, as is or may be charged, levied, laid, assessed, imposed, or become liens upon or for or with respect to the Premises or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of Federal, state, county, and city governments, and of all other governmental authorities whatsoever.

**SECTION VI: MAINTENANCE, REPAIRS, REPLACEMENTS AND IMPROVEMENTS**

Tenant shall, at its sole costs and expense, comply with all orders and/or deficiencies issued or determined by any governmental authority having jurisdiction of the Premises requiring repairs, modifications, additions or deletions to fixtures and/or structural aspects of the Premises under all existing laws, rules, regulations, or ordinances governing the same.

Tenant shall make and pay for all maintenance, repairs and replacements to the Premises, including but not limited to structural and non-structural maintenance, repairs and replacements, so that the Premises will remain in the same or better condition as exists on the date of this Lease. Tenant shall at its expense keep the Premises clean and free from all obstructions, refuse, dirt, snow and ice and keep the Premises properly maintained.

Tenant shall have the right during the term of this Lease to make such alterations, changes and improvements to the Premises as may be proper and necessary for the conduct of Tenant's use of the Premises, so long as such Tenant obtains prior written permission from Landlord for any Alterations, changes or improvements which collectively would entail an expenditure of \$5,000.00 or greater, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall pay all costs and expenses of such permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all applicable laws, codes, and regulations, and shall assure Landlord, in form reasonably satisfactory to Landlord, that payment for the same will be made by Tenant. Any liens arising out of such alterations, changes, and/or improvements shall be discharged of record by Tenant within 15 days after the same have been filed by payment, bonding or otherwise, as permitted by law.

Tenant shall deliver up and surrender to Landlord possession of the Premises, including all improvements, alterations and replacements to the Premises during the term of this Lease, upon the expiration of this Lease or its termination in any manner whatsoever, in substantially as good condition and repair and in substantially similar form, character and manner as the same shall be on the date of this Lease with permitted changes, improvements and additions during the term, except as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever, and deliver the Premises to Landlord.

Tenant has made a physical inspection of the Premises and is taking the Premises in its "AS IS", "WHERE IS" condition, and acceptance of possession of the Premises on the date of this Lease shall be deemed an acknowledgement thereof by Tenant.

**SECTION VII: LANDLORD'S RIGHT OF ENTRY**

Landlord or his agents shall have the right to enter the Premises during reasonable business hours with reasonable notice to Tenant to inspect the Premises or to put and keep upon the Premises a notice indicating that the Premises are for rent or sale, at any time within 180 days before the expiration day of this Lease. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions, which do not conform to this agreement.

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**SECTION VIII: INSURANCE**

Throughout the term, Tenant shall maintain with respect to the Premises policies of insurance with minimum coverages of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance may be carried with an insurance company in good standing and authorized to do business and admitted in Ohio. Tenant shall deliver to Landlord a certificate of any policy of such insurance maintained by Tenant. Such policy shall contain a requirement of written notice to Landlord in the event of cancellation. Said policy of insurance shall designate Landlord, and each of Landlord's lenders of whom Tenant has notice, as an additional insured.

Tenant shall keep the Premises insured against risk of loss by fire, casualty and other hazards, as covered by "all risk" fire insurance. The cost of maintaining such insurance shall be paid by Tenant. The proceeds of such insurance shall be disbursed to Landlord for any such claim. Tenant is hereby required to include Landlord as loss payee on this policy and such additional loss payee coverage shall be at Tenant's expense.

Tenant, at its sole cost and expense, shall at all times comply with the provisions of the workers' compensation law and shall insure its liability thereunder.

Upon the date of this Lease, Tenant shall furnish Landlord with appropriate certificates of insurance showing that each type of insurance required under this Lease is in full force and effect and cancelable or modifiable without 30 days prior written notice to the other party.

**SECTION IX: INDEMNIFICATION BY TENANT**

Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, employees, attorneys and agents from and against any and all claims, demands, causes of action, judgments, costs, expenses, losses and damages, attorney fees, incurred in the defense of any such claim or any action or proceeding which may be brought against, out of or in any way arising from: (i) Tenant, its employees, contractors, invitees, or agents use of the Premises, or from the conduct of its business or from any activity, work, or other acts or things done, permitted or suffered by Tenant, its employees, contractors, invitees, or agents, in or about the Premises; (ii) any breach or default in the performance of any obligation of Tenant to be performed under the terms of this Lease, or arising from any gross negligence or willful or criminal misconduct of Tenant, or any officer, agent, employee, contractors or invitees; and (iii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response Compensation and Liability Act, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Material).

**SECTION X: DEFAULT**

The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Lease by Tenant:

- (a) The vacating or abandonment of the Premises by Tenant for thirty (30) days.

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(b) The failure by Tenant to make any payment of rent, Taxes, or other amount due under this Lease and after fifteen (15) days prior written notice.

(d) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

**SECTION XI: REMEDIES**

If any event of Default shall exist beyond any applicable cure period, Landlord may at any time thereafter, exercise any one or more of the following rights or remedies:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all reasonable and necessary damages incurred by Landlord by reason of Tenant's default; or

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and any other charges as may become due hereunder; or

(c) Cure any default or breach of warranty of Tenant hereunder, and perform any covenants which Tenant has materially failed to perform, and any sums expended by Landlord in curing such default or breach of warranty and performing such covenants shall be paid by Tenant to Landlord immediately upon demand.

(d) Pursue any other remedy or combination of remedies now or hereafter available to Landlord under the laws or judicial decisions of the State of Ohio.

**SECTION XII: LOSS OR DESTRUCTION OF PREMISES**

If the Premises become, as a practical matter, totally untenable after a casualty loss such as fire, storm, explosion, earthquake, or other casualty loss, and if the casualty loss is not due to the negligence or fault of the Tenant or the Tenant's family, guests, or invitees, either Landlord or Tenant may terminate this Lease within 30 days after such damage or destruction and Tenant shall deliver to Landlord all insurance proceeds from such damage or destruction. In such event, the Tenant shall only be entitled to a pro-rata refund of rent from the date of move-out and a refund of any security deposit as required by law. If this Lease is not terminated as set forth above, this Lease shall continue under its terms and conditions.

Should only a part of the Premises thereby be rendered untenable, the rental shall abate in the proportion which the injured part bears to the whole Premises, and such part so injured shall be restored

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by Tenant as speedily as practicable, after which the full rent shall recommence and the Lease continue according to its terms.

**SECTION XIII: EMINENT DOMAIN**

If the entire Premises is taken by condemnation or right of eminent domain, this Lease shall terminate as of the day possession shall be taken by the taking authority, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing. In the event only a portion of the Premises shall be taken by condemnation or right of eminent domain, an appropriate reduction of rent will be made by Landlord.

Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Premises or cancellation of this Lease pursuant to this Section shall be deemed an eviction of Tenant, or a breach of any covenants of Landlord hereunder.

**SECTION XIV: ASSIGNMENT OR SUBLEASE**

Tenant shall not assign this Lease or sublet the Premises, or any part of the Premises or this Lease without the prior written consent of the Landlord, which is determined in Landlord's sole and absolute discretion.

**SECTION XV: EFFECT OF FAILURE TO STRICTLY COMPLY WITH LEASE PROVISIONS**

Landlord's failure to object to any default on the part of Tenant shall not be construed as a waiver of such default, nor shall any custom or practice that may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of Landlord to insist on the performance of the provisions of this Lease.

**SECTION XVI: DEFAULT BY LANDLORD**

Landlord agrees to comply with its other obligations hereunder. In the event Landlord breaches any of its duties under this Lease, including its duty to use reasonable diligence regarding repairs, Tenant shall provide Landlord with written notice to remedy conditions specifying the acts or omissions which constitute Landlord's noncompliance with this Lease. Such written notice shall state with specificity the nature of Landlord's alleged breach including a description of any failure of the Landlord to make appropriate repairs. Provided Tenant is current with respect to all rent obligations under this Lease, Landlord shall remedy the conditions set forth in the notice within a reasonable time or thirty (30) days, whichever ever occurs first, from receipt of the notice. In the event that Landlord fails to remedy the conditions set forth in the notice within these time limits, and Tenant's Rent payments pursuant to this Lease are current, Tenant's remedies shall be any and all remedies then available under the current law.

**SECTION XVII: GENERAL**

No oral agreements have been entered into and this Lease shall not be modified unless in writing and signed by all parties. All obligations hereunder are to be performed in the county where the Premises are located. To the extent permitted by law, the prevailing party in any dispute arising out of this Lease will be entitled to recover reasonable attorney's fees and any litigation costs. This Lease shall be construed in accordance with the laws of the State of Ohio.

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**SECTION XVIII: ENTIRE AGREEMENT**

This Lease, together with any addendums, covenants, conditions, and agreements by which reference are herein made a part of this Lease, constitute the entire agreement and there are no other agreements, oral or written, pertaining to this Lease.

**SECTION XIX: SEVERABILITY**

If any provision in this Lease shall be invalid by judgment or court order, all other provisions shall remain in full force and effect.

**SECTION XX: WAIVER**

One or more waivers of any covenant, condition, or term of this Lease by the Landlord or by the Tenant shall not be construed as a waiver or further breach of the same.

**SECTION XXI: CAPTIONS**

The captions are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Lease, nor the intent of the provisions thereof.

**SECTION XXII: RESERVATION**

Landlord reserves any and all rights and protections granted to him/her under the law, including all methods of recovery for Tenant's violation of the law or this Lease. Tenant reserves any and all rights and protections granted to him/her under the law, including all methods of recovery for Landlord's violation of the law or this Lease.

**SECTION XXIII: NO PARTNERSHIP**

By virtue of entering into this Lease, Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of Tenant's business or otherwise, or joint venturer, or a member of a joint enterprise with Tenant. By virtue of entering into this Lease, Tenant does not, in any way or for any purpose, become a partner of Landlord in the conduct of Landlord's business or otherwise, or joint venturer, or a member of a joint enterprise with Landlord.

**SECTION XXIV: ACKNOWLEDGMENT**

Tenant acknowledges that they have carefully read and understand each of the paragraphs of this Lease, any riders, attachments, additions, or conditions to this Lease, before signing in the space provided below. Landlord acknowledges that they have carefully read and understand each of the paragraphs of this Lease, any riders, attachments, additions, or conditions to this Lease, before signing in the space provided below.

*[Signature on Next Page.]*

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**LEASE AGREEMENT**

**Signature Page**

IN WITNESS WHEREOF, the parties have executed or caused the execution of this Lease Agreement as of the day and year set forth below.

**Landlord:**  
**Village of Commercial Point**

**Tenant:**  
**Scioto Township**

\_\_\_\_\_  
By Charles D. Hutchins  
Village Administrator

\_\_\_\_\_  
By

**Acknowledgement**

STATE OF OHIO :  
: SS:  
COUNTY OF \_\_\_\_\_ :

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of **Village of Commercial Point**, on behalf of said entity.

\_\_\_\_\_  
Notary Public

STATE OF OHIO :  
: SS:  
COUNTY OF \_\_\_\_\_ :

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of **Scioto Township**, on behalf of said entity.

\_\_\_\_\_  
Notary Public

*[End of Signatures.]*