



City of North Royalton

Office of the Council

Larry Antoskiewicz

President of Council

Laura J. Haller CPM, CMC
Director of Legislative Services

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Ward 2 **Gary Petrusky**
Ward 3 **Daniel Langshaw**
Ward 4 **Paul F. Marnecheck**
Ward 5 **Steve Muller**
Ward 6 **Dan Kasaris**

NORTH ROYALTON CITY COUNCIL SPECIAL MEETING AGENDA

.....
August 19, 2014
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.....
6:30 p.m.
.....

1. Call to order
2. Opening ceremony
3. Roll call
4. Director to read the notice
5. Discussion by public of current agenda legislation, non-debatable, five minute maximum time
6. **SPECIAL MEETING ITEMS:**
 - Receipt and acknowledgement without objection to Ohio Dept. of Liquor Control request for a D5 and D6 transfer permit for Sand Trap on Bunker LLC, 6824 Bunker Road.

LEGISLATION:

FIRST READING CONSIDERATION

1. **14-97** - AN ORDINANCE ACCEPTING AN EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF A STORM SEWER FROM MICHELLE SHARON BAUER, PPN 484-10-015, AND DECLARING AN EMERGENCY.
2. **14-98** - AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH KONA ENERGY, LLC TO PROVIDE ELECTRICITY TO CERTAIN MUNICIPAL ACCOUNTS, AND DECLARING AN EMERGENCY.
3. **14-99** - AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH DIGITAL INTEGRATED SYSTEMS FOR IT HARDWARE FOR THE NEW CITY HALL PROJECT IN THE AMOUNT OF \$34,024.90 WITH A NECESSARY 8% CONTINGENCY FOR A TOTAL AMOUNT NOT TO EXCEED \$36746.89, AND DECLARING AN EMERGENCY.

4. **14-100** - AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH DIGITAL INTEGRATED SYSTEMS FOR THE INSTALLATION OF THE NEW HARDWARE CONFIGURATION AND TRANSITION TO THE NEW CITY HALL IN AN AMOUNT NOT TO EXCEED \$9909.40, AND DECLARING AN EMERGENCY.
5. **14-101** - AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH CDW GOVERNMENT FOR ADDITIONAL IT EQUIPMENT FOR THE NEW CITY HALL PROJECT FOR AN AMOUNT OF \$2035.96 WITH AN 8% CONTINGENCY FOR A TOTAL AMOUNT NOT TO EXCEED \$2198.84, AND DECLARING AN EMERGENCY.

7. Adjournment

**SEWER EASEMENT
CITY OF NORTH ROYALTON
CUYAHOGA COUNTY, OHIO**

KNOW ALL MEN BY THESE PRESENTS, That Michelle Sharon Bauer, the Grantor herein, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, do grant and release to the City of North Royalton, Cuyahoga County, Ohio, its successors, assigns, employees and/ or agents the right to construct, repair, replace, relay, maintain, operate, inspect, and remove sewers and necessary appurtenances thereto, and forever to have and to hold such rights for the purposes and under the conditions herein set forth across that certain portion of real estate located in the City of North Royalton, Cuyahoga County, Ohio, and further described as follows:

Situated in the City of North Royalton, County of Cuyahoga and State of Ohio and known as being part Original Royalton Township Lot No. 1; being part of the lands conveyed to John Francis Bauer III and Michelle Sharon Bauer (PPN 484-10-015) by deed recorded in AFN 201101310662 of Cuyahoga County Records and being further know as part of Parcel 1 of the Lot Split for Petros Builders, Inc. as shown by the plat recorded in Volume 241, Page 20 of Cuyahoga County Map Records and being further bounded and described as follows:

Beginning at a point in the Northerly line of Applewood Drive, 60 feet wide, at the most Easterly corner of aforesaid Bauer's land and aforesaid Parcel 1;

Thence Southwesterly, along said Northerly line of Applewood Drive along a curved line deflecting to the left a distance of 20.17 feet to a point, said curved line having a radius of 90.00 feet, a central angle of 12°50'23" and a chord which bears South 63°07'16" West, 20.13 feet;

Thence North 20°27'29" West, a distance of 115.10 feet to a point in the Northerly line of aforesaid Bauer's land;

Thence North 88°43'48" East, along said Northerly line a distance of 21.18 feet to the Northeasterly corner of said Bauer's land, being in the Easterly line of aforesaid Parcel 1;

Thence South 20°27'29" East, along the Easterly line of said Bauer's land a distance of 105.89 feet to the principal place of beginning, and containing 0.0506 acres (2,203 square feet) of land, as described by Stephen Hovancsek & Associates, Inc., in July, 2014 under the direction of Robert Smoltz, Registered Surveyor No. 6763, State of Ohio, be the same more or less but subject to all legal highways.

Basis of bearing for this description being as established in the aforesaid deed recorded in AFN 201101310662 of Cuyahoga County Records. Part of PPN. No. 481-10-015.

Exhibit A attached and incorporated herein.

The said Grantors to fully use and enjoy the premises, except for the purposes granted to the said Grantee. Grantors shall not construct nor permit to be constructed any structures or obstructions on or over the easement area described above that will interfere with the

BE IT REMEMBERED, that on this _____ day of _____, 2014 before me, the subscriber, a Notary Public, in and for said County personally came the above named _____ Grantor in the foregoing deed of easement and acknowledged the signing of the same to be her voluntary act and deed for the purposes and uses therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public
My Commission Expires



8127 Mesa Dr., Suite B206-241, Austin, Texas 78759
 1-888-KONA SALES (8:30 am – 5:30 pm CT)
 Fax: 800.420.1138
 Email: sales@konaenergy.com
www.konaenergy.com

Energy Services Sales Confirmation

The Sales Confirmation ("Confirmation") which is made pursuant to the Master Electric Service Agreement between parties is made as part of the Agreement and shall confirm the Agreement of the parties authorizes Kona Energy to become your electricity supplier with respect to (1) the Account(s) identified on the attached Schedule of Accounts, (2) for the period between Supply Start Date and Supply End Date below (Supply Period) and (3) subject to the terms and conditions herein.

CUSTOMER INFORMATION

Requested Flow Start Month/Day/Year: <u>September 2014</u>		Est Annual Usage: <u>3,096,571</u> kWh	
Customer Name/ Business Name (legal entity name): <u>City of North Royalton</u>		D/B/A (if applicable): _____	
Customer Contact: Name: <u>Eric Dean</u> Title: <u>Finance Director</u> E-Mail: <u>edean@northroyalton.org</u> Phone: <u>440-582-6234</u> Fax: <u>440-237-0470</u>		Billing Contact: <input checked="" type="checkbox"/> Same as Customer Contact Name: _____ Title: _____ E-Mail: _____ Phone: _____ Fax: _____	
Billing Address: <input type="checkbox"/> Same as Service Address Street: <u>13834 Ridge Road</u> City: <u>N. Royalton</u> State: <u>OH</u> Zip: <u>44133-489</u>			
FEIN/TIN/SSN: _____ DUNS #: _____	<input type="checkbox"/> Tax Exempt Reduced Rate: _____ %	<input type="checkbox"/> Certificate Attached (Required)	Number of Accounts: <u>2</u> Payment Terms: <u>20 days</u>
Account Information (if more than one account, use Attachment A): Account Number: <u>See Attachment A</u> Service Address: Street: _____ City: _____ State: _____ Zip: _____ Utility: _____ Service Class: _____ Zone: <u>ATSI</u>		Account Transition: <input checked="" type="checkbox"/> Standard Switch <input type="checkbox"/> Self-Selected Switch: _____ Date <input type="checkbox"/> Move-In: _____ Date	

ENERGY SUPPLY SELECTION

Product Type: <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable		<input checked="" type="checkbox"/> Fixed Rate: \$ _____ kWh <input type="checkbox"/> LMP Index + Adder: \$ _____ kWh	
Term: <u>36</u> Months	Swing: <u>100%</u>	<i>The Kona Energy rate does not include Utility distribution and deliver charges, applicable federal, state and local taxes and charges.</i>	
Contract Number: _____		Sales Channel: <u>H. P. Technologies, Inc.</u>	
<p>During each Supply Period for each Account the "Energy Charge" shall be equal to the Contract Price multiplied by the Actual Consumption for such Account. The Contract Price includes only the included Charges and does not include Pass-Through Charges. Buyer acknowledges that the Contract Price offered under this sales Confirmation is based on the number of Accounts and the usage patterns existing or expected to exist during the Supply Period. Buyer represents and warrants that it shall operate and manage the facilities served by this Sales confirmation in a manner that is materially consistent with its past business practices. If there is a material change in Buyer's actual or expected consumptions, or a material change to your actual or expected usage patterns, Seller may seek to modify the contract Price applicable to the increased or decreased consumption. Seller reserves the right to cancel this Agreement if mutually agreeable modified pricing is not negotiated. By signing below, you confirm that you are not under contract with another supplier, you are the legal owner or authorized decision maker ("Authorized Signer") for the purchase of electricity for the Account(s) listed on this Agreement; and that you have received a copy of this Agreement and the Customer Terms and Conditions, have read each of them and understand the contents. Supply of electricity to the Accounts will begin with the first meter read available on or after the Supply Start Date and will end with the first meter read date on or after the Supply End Date. The Sales Confirmation shall become binding upon Seller on the earlier of (1) the date that Seller provides executed counterparts of all portions of the Agreement or (2) Seller undertakes any action to purchase a physical or financial Hedge for all or a portion of the energy to be supplied hereunder.</p>			
_____ Mayor Robert Stefanik Printed Name of Authorized Signer		_____ Agreement Signed Date	
_____ Signature of Authorized Signer		_____ Eric Dean Printed Name of Alternate Authorized Individual (Authorized to receive information on Account(s))	



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Attachment A: Schedule of Accounts

No	Utility	Acct #	Service Address	City	State	Zip	Zone	Start Date
1.	CEI	0800587845 1140000552	11355 W. Sprague Road	North Royalton	Ohio	44133	ATSI	9/14
2.	CEI	0800587845 1030000510	11675 W. Royalton Road	North Royalton	Ohio	44133	ATSI	9/14
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								

Customer Business Name: City of North Royalton

Customer Initials: _____



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Master Retail Electricity Sales and Purchase Agreement

This Master Retail Sales and Purchase Agreement (“Agreement”) is entered into between Kona Energy, LLC (“Seller”) and City of North Royalton (“Buyer”). Seller and Buyer may be referred to individually in this Agreement as a “Party,” and collectively they are referred to as “Parties.” Attachment A of this Agreement sets forth definitions of capitalized terms not defined in the text of the Agreement.

PART 1 – SCOPE OF AGREEMENT

1.1 Electricity Purchase and Supply.

Seller shall sell and Buyer shall purchase and receive 100% of Buyer’s Energy requirements for the Delivery Points specified in the Sales Confirmation, which is attached to this Agreement.

1.2 Duration of Contractual Obligations

This Agreement shall commence on the Effective Date and shall remain in effect for the Initial Term of this Agreement, unless terminated by either Party for the reasons set forth in Section 3.1 of this Agreement. After the end of the Initial Term, the Agreement shall continue on a month-to-month basis, but may be terminated by either Party upon thirty days’ prior written notice to the other Party. Regardless of whether this Agreement has been terminated, all obligations undertaken in this Agreement and the Sales Confirmations will remain in effect until those obligations are completed, final invoices are issued, and all amounts owed are paid in full. All obligations regarding indemnity, payment of Taxes, limitations of liability, and waivers survive termination indefinitely.

PART 2 – TERMS OF TRANSACTIONS

2.1 Sales Confirmations

The Parties shall enter into one or more Sales Confirmations for the purchase and sale of electricity (“Energy”) subject to this Master Agreement. The electric energy will be delivered to Buyer’s electric meters (each a “Delivery Point”) solely for Buyer’s use in accordance with the specified terms and conditions set forth herein and referenced in the Sales Confirmation. The terms of a Sales Confirmation shall control for the period of time the Sales Confirmation is in effect, and to the extent that any provision in a Sales Confirmation conflicts with a provision of this Agreement, the provision of the Sales Confirmation shall control with respect to each covered Delivery Point. If a Sales Confirmation expires before the end of the Initial Term of this Agreement, the Parties shall enter into another Sales Confirmation to ensure that Buyer purchases all of its Energy requirements at the designated Delivery Points from Seller for the entirety of the Initial Term.

2.2 Addition or Deletion of Accounts

At any time during the duration of this Agreement, upon advance written notice to the Seller, Buyer may request to add or delete Delivery Points to be served in accordance with a Sales Confirmation, provided that (a) there is no Event of Default by Buyer and (b) any such Delivery Point to be added is located within the area served by Seller.

2.3 Delivery

Seller does not own or control any of the transmission or distribution facilities used to deliver Energy to the Delivery Points. The transmission and distribution utility has the responsibility to deliver the energy to the Delivery Point(s). Buyer agrees that Seller has no obligation, liability, or responsibility for the operations of the transmission and distribution utility, for the interruption of service, or for the transmission and distribution utility’s failure to deliver Energy to the Delivery Points.



2.4 Indemnity

Seller agrees to indemnify, defend, and hold harmless Buyer from any claims arising from any act or incident with respect to Energy occurring before its delivery to the transmission and distribution utility. Buyer agrees to indemnify, defend, and hold harmless Seller from any claims arising from any act or incident with respect to Energy occurring at or after its delivery to the Delivery Point(s). The foregoing indemnities apply without regard to the cause, including the negligence of any Party, whether sole, joint, or concurrent, or active or passive. Neither Party is liable to the other Party for any claims arising from any act or incident with respect to Energy after its delivery to the transmission and distribution utility and before its delivery to the Delivery Points.

2.5 Billing and Payment

Seller shall invoice Buyer the total amount due for Energy delivered to Buyer during each month, although in some jurisdictions Buyer may be billed instead by Buyer's transmission and distribution utility, or Buyer may receive a separate invoice from Buyer's transmission and distribution utility for delivery of Energy to Buyer's Delivery Points. Amount to be billed shall be calculated based upon Buyer's actual usage consumption information. Seller may estimate usage and charges at the time of invoicing, provided that Seller adjusts subsequent invoices to reflect actual usage and charges. Payment is due and payable by Buyer to Seller in accordance with Seller's invoice instructions on or before the 20th day following the date of the invoice. If Buyer fails to remit the total invoiced amount on or before the due date, interest will then accrue from the date the monies were owed at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by law, whichever is less. Seller shall have the right to adjust bills for up to twelve months after the date of service to reflect actual usage by Buyer; provided however, that Seller may adjust bills at any time if the need for adjustment results from Buyer's theft of service or fraud. Buyer acknowledges that the price it agrees to pay Seller may contain amounts that will be paid to an agent, broker or consultant.

2.6 Taxes

Buyer is responsible for paying all Taxes arising from the transactions under this Agreement, and Buyer agrees to indemnify Seller for such Taxes, whether the law imposes the Taxes on Seller or on Buyer. Seller may collect Taxes from Buyer by including them on the invoice. Seller will recognize a lawful sales tax exemption, but it is Buyer's responsibility to notify Seller of that sales tax exemption in writing, and to provide proper evidence that Buyer is a tax-exempt entity. Buyer is responsible for petitioning the taxing authority for a sales tax exemption or a sales tax refund. To the extent Seller receives a sales tax refund for sales taxes previously collected from Buyer, Seller shall refund those sales taxes to Buyer.

2.7 Billing Disputes

If Buyer disputes any amount of Seller's invoice, Buyer shall remit the undisputed amount by the due date, and Buyer shall submit to Seller a written explanation by the due date specifying the amount of and the basis for the dispute. If such dispute is resolved in Seller's favor, Buyer shall pay the amount owed within fifteen (15) business days of the resolution and shall include interest calculated as of the due date per the original invoice. Buyer's right to dispute an invoice will be deemed waived if not made within twelve (12) months after the date of invoice. In no event shall Buyer withhold payment to Seller because of a billing dispute between Buyer and the transmission and distribution utility serving Buyer.

2.8 Creditworthiness

Seller's obligation to supply electricity is contingent upon Seller's continued review and approval of Buyer's creditworthiness. If Seller becomes reasonably concerned with regard to Buyer's creditworthiness or ability to perform its obligations hereunder, Seller may request from time to time such financial statements and other information as Seller requires to determine Buyer's creditworthiness. If Seller determines in its reasonable discretion that Buyer is not



creditworthy or otherwise lacks the ability to perform under this Agreement, Seller may require that Buyer provide Performance Assurance. Upon a request by Seller, Buyer shall provide Performance Assurance within three business days of receipt of Seller's request. Buyer's failure to provide Performance Assurance within five (5) business days of Seller's request shall be an Event of Default under this Agreement, and Seller shall be entitled to exercise any remedies set forth in this Agreement for an Event of Default. Seller shall be entitled to use the Performance Assurance provided by Buyer to satisfy any past due amounts by Buyer, and Seller may retain such Performance Assurance until all amounts owed to Seller by Buyer are fully paid.

2.9 Force Majeure

A Party's obligations under this Agreement or a Sales Confirmation shall be excused because of an event of Force Majeure. If either Party claims to be unable to carry out its obligations under this Agreement because of an event of Force Majeure, such Party shall give notice and provide full details of the event to the other Party in writing as soon as possible after the event has occurred. During the period of Force Majeure, the obligations of the Parties will be suspended to the extent required. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and to resume performance under this Agreement with all reasonable dispatch. No provision of this Agreement shall be interpreted to require Seller to deliver Energy at points other than the Delivery Point(s).

2.10 Change in Law

If there is a change in law, administrative rule or regulation, market design or structure, order, judicial decision, statute, tariff, or a change in an interpretation, operation, administration or application of any of the foregoing (collectively, a "Change in Law") and such Change in Law causes Seller to directly or indirectly incur any capital, operating, commodity or other costs relating to the provision of services contemplated herein above, or in addition to those existing prior to the date of the Change in Law, then, Seller shall have the right to pass through the economic effects of any such Change in Law to Buyer. Such additional amounts will be included in subsequent invoices to the Buyer. Where a Change in Law occurred prior to the Effective Date but Seller could not ascertain the economic impact of such Change in Law prior to the Effective Date, Seller has the right to pass through the economic effects of any such Change in Law to Buyer at a time when Seller determines such economic impact. In the event such a Change in Law renders the Seller's performance under this Agreement illegal or unenforceable, the Parties shall meet as soon as practicable to attempt to renegotiate this Agreement to comply with such change. If the Parties are unable to reach agreement on a mutually acceptable restructuring of this Agreement, then Seller shall have the right to terminate this Agreement with sixty (60) days' notice and without the consent of the Buyer.

PART 3 – DEFAULT AND REMEDIES

3.1 Event of Default

An Event of Default shall mean, with respect to a Party (a "Defaulting Party") any one of the following: (a) Buyer fails to make a payment required under this Agreement within five (5) business days after that date on which the payment is due; (b) a Party fails to perform any covenant in this Agreement, if such failure is not excused by the other Party in writing, is not excused by Force Majeure, or is not cured within five (5) business days after notice to the Defaulting Party; (c) a Party makes a representation or warranty that is false or misleading in any material respect when made or ceases to be true during the Term of this Agreement; (d) Buyer fails to provide Performance Assurance as provided in this Agreement; (e) Buyer fails to utilize Seller as its sole supplier of Energy for the Delivery Points specified in the Sales Confirmation at any time during the Term; (f) a Party makes an assignment or any general arrangement for the benefit of creditors or otherwise become bankrupt or insolvent.

3.2 Remedies for Default

In the Event of Default, the Non-Defaulting Party shall have the right to pursue all remedies available in law or in equity, including the right to designate an early termination date for this Agreement and all applicable Sales



Confirmations. Upon termination, the Seller may calculate in a commercially reasonable manner a Termination Payment equal to its Losses and Costs resulting from the termination of this Agreement. Buyer shall pay the Termination Payment to Seller within five (5) business days after Seller provides notice to Buyer. Buyer further waives any right it may have regarding prior notification before Seller may transfer Buyer to the applicable provider of last resort or other default service provider designated in Buyer's service area.

3.3 Damage Limitations

LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF SELLER TO BUYER FOR ANY OBLIGATIONS UNDER OR RELATING TO THIS AGREEMENT AND ANY DEFAULT BY THE SELLER SHALL BE LIMITED TO A MAXIMUM AMOUNT EQUAL TO THE CONTRACT PRICE MULTIPLIED BY THREE TIMES THE AVERAGE MONTHLY USAGE FOR SUCH ACCOUNT. BUYER RELEASES SELLER FROM ALL LIABILITIES RELATED TO THE ACT OR OMISSION OF ANY AGENT, BROKER OR CONSULTANT RETAINED BY BUYER.

3.4 Disclaimer of Warranties

BUYER ACKNOWLEDGES THAT ENERGY DELIVERED MAY BE SUPPLIED FROM A VARIETY OF SOURCES AND THAT NO REPRESENTATIONS OR WARRANTIES ARE MADE WITH RESPECT TO SUCH ENERGY. SELLER EXPRESSLY DISCLAIMS AND NEGATES ALL REPRESENTATIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT PERMISSIBLE BY LAW, BUYER HEREBY WAIVES ANY RIGHT IT MAY HAVE (a) TO PARTICIPATE AS A PLAINTIFF IN A CLASS ACTION LAWSUIT AGAINST SELLER, AND (b) TO ASSERT CLAIMS UNDER ANY APPLICABLE CONSUMER PROTECTION LAWS, INCLUDING ANY DECEPTIVE TRADE PRACTICE ACT OF ANY JURISDICTION.

3.5 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages, and each Party covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or failure to perform.

PART 4 – REPRESENTATIONS AND WARRANTIES

4.1 Accuracy of Information

Buyer represents that all information with respect to each Delivery Point is true and accurate as of the date the information is provided to Seller.

4.2 Buyer Assurances

Buyer represents that it is entering into this Agreement for its own account, of its own accord and judgment, and not in reliance upon any information or advice that may or may not have been provided by Seller. Buyer further represents that it has read, understands and accepts the terms, conditions, and risks of this Agreement.

4.3 Legal Authority

Buyer represents that it is the legal owner or authorized decision maker for the purchase of electricity for the specified Accounts, and that it is legally authorized to select or change energy providers for the Accounts listed in each applicable Sales Confirmation.

4.4 Consistency with Past Business Practices



Buyer represents and warrants that it shall operate and manage the facilities served by this Agreement and Sales Confirmation in a manner that is materially consistent with its past business practices.

PART 5 – OTHER PROVISIONS

5.1 Single Agreement

This Agreement and all of its written supplements, exhibits, schedules, attachments and Sales Confirmations form a single integrated agreement between Seller and Buyer.

5.2 Notices

All notices shall be provided to the person and addresses specified in the Sales Confirmation, or to such other person and address as a Party may from time to time specify in writing to the other Party. Notices, correspondence, and address changes shall be in writing and delivered by regular or electronic mail, facsimile, or similar means or in person. Notice by facsimile, electronic mail or hand delivery shall be deemed to have been received on the date transmitted or delivered (after business hours shall be noted as received next business day) and notice by overnight mail or courier is deemed received two (2) business days after it was sent.

Kona Energy
Attn: Contracts
8127 Mesa Dr., Suite B206-241
Austin, TX 78759
Email: contracts@konaenergy.com

Buyer: City of North Royalton
Attn: Eric Dean
13834 Ridge Road
North Royalton, Ohio 44133-4896
Email: edean@northroyalton.org

5.3 Applicable Law

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF. THE PARTIES AGREE THAT ALL DISPUTES BETWEEN THEM WHICH ARISE UNDER THIS AGREEMENT AND WHICH ARE NOT SETTLED SHALL BE DECIDED BY A COURT OF COMPETENT JURISDICTION LOCATED IN DALLAS, TEXAS, AND THE PARTIES SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL DISTRICT COURTS LOCATED IN DALLAS, TEXAS.

5.4 Forward Contract

The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

5.5 Assignment

Buyer may not assign this Agreement without the prior written consent of Seller, which consent will not be unreasonably withheld provided that the assignee meets Seller's credit requirements and agrees to be bound by the terms and conditions of this Agreement. Seller may assign this Agreement without Buyer's consent, including, without limitation, (a) to an affiliate of Seller or to any other person succeeding to all or substantially all of Seller's assets, or (b) in connection with any financing or other financial arrangement. Upon an assignment of this Agreement by Seller, Seller shall have no further obligations regarding future performance hereunder with respect to the Accounts.

5.6 Waiver

Failure to provide notice of an Event of Default under this Agreement will not operate or be construed as a waiver of any future default.



5.7 Severability

If any portion of this Agreement is determined to be invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law, and will be deemed replaced for the invalid provisions such provisions as will most closely carry out the mutual intent of the Parties as expressed in this Agreement in their extent of applicable Law.

5.8 Confidentiality

Neither Party shall disclose, unless authorized in writing by the other Party, the terms of this Agreement to a third party (other than the Party’s employees or its lenders, counselors or accountants who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule, to collect debts owed or to obtain transmission, distribution, ancillary or other regulated services; provided, however, that each Party will notify the other Party of any proceeding of which it is aware which may result in non-routine disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, however, that monetary damages shall be limited to the amounts specified in Section 3.3 of this Agreement, and a breach of this section shall not give rise to a right to suspend or terminate this Agreement. Notwithstanding the foregoing, Buyer agrees to permit Seller to utilize Buyer’s name as a Buyer solely for marketing and publicity purposes.

5.9 Entire Agreement

This Agreement, together with any written supplements, any attached or hereafter incorporated Sales Confirmations, and all Exhibits and Schedules constitute the entire understanding between Parties. This Agreement supersedes and replaces any and all previous understandings in any manner relating to the subject matter contained herein. There are no prior or contemporaneous agreements or representations affecting the content other than those expressed in the Agreement. No amendment, modification or change will be enforceable unless submitted in writing and executed by both Parties.

5.10 Rules of Construction

The rule of construction that any ambiguity is construed against the Party who drafted this Agreement shall not be applied to this Agreement.

5.11 Relationship of Parties

The Parties agree that the relationship between the Parties shall be that of independent contractors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date, as that term is defined in this Agreement.

BUYER
City of North Royalton

By: _____
Printed Name: **Eric Dean**

Title: **Finance Director**

Date: _____

SELLER
Kona Energy LLC

By: _____
Kerry O’Connell
Senior Vice President, Sales

Date: _____



ATTACHMENT A – DEFINITIONS

Costs means all fees, charges or assessments incurred by Seller as a result of termination of this Agreement, including but not limited to reasonable attorney's fees, brokerage fees and commissions.

Effective Date means the date on which the last of the Buyer or Seller executes this Agreement.

Force Majeure means any event that is beyond the control of a Party, that was not caused by the negligence of the party claiming Force Majeure, and that cannot be avoided by the exercise of reasonable diligence. Events of Force Majeure include, but are not limited to, acts of God; explosions, earthquakes, lightning, fires, storms, hurricanes, tornadoes, floods, failure of transmission, distribution, acts of terrorism, acts of governmental authority, accidents, changes in laws, rules, or regulations of any governmental authority or any other cause beyond a Party's reasonable control. Force Majeure events shall not include any inability to perform for financial reasons or any change in Buyer's Energy requirements.

Losses means an amount equal to the economic loss, if any, resulting from the termination of this Agreement. Economic loss is calculated as the Present Value of the difference between: (1) the amount that Seller would have realized under the Agreement had it not been terminated; and (2) the amount that Seller would realize under a Replacement Contract, measured at the time of the termination.

Performance Assurance means (i) cash; (ii) an irrevocable letter of credit in favor of Seller issued and maintained by a major U.S. commercial bank having a credit rating of at least A- by Standard & Poor's, in form and content reasonably acceptable to Seller and continuing in full force and effect until the expiration of termination of the Agreement; or (iii) a prepayment or other form of payment reasonably acceptable to Seller.

Present Value means a discounted value using the one-year London Interbank Offered Rate quoted in the *Wall Street Journal* on the date of termination as the discount rate.

Replacement Contract means a replacement contract that Seller is assumed to have available upon the termination of the Agreement by Buyer, although Seller is not required to enter into a replacement contract in order to calculate and recover damages upon termination of the Agreement by Buyer. For purposes of determining the amount realized by Seller under the Replacement Contract: (1) the replacement buyer's Energy consumption shall be assumed to be identical to Buyer's monthly kilowatt-hour consumption for the 12 months before the date of the termination; and (2) the replacement buyer shall be assumed to pay an amount per kilowatt-hour determined by Seller in its reasonable discretion.

Taxes means all federal, state, and local taxes, fees, assessments, or governmental charges imposed as a result of Buyer's purchase of Energy from Seller; provided however, that the term shall not be construed to include federal or state taxes imposed on Seller's net income.



QUOTE

3046 Brecksville Road, Richfield, OH 44286
t. 330-523-7202 f.

Number AAAQ1828

Date Jun 6, 2014

Sold To

City Of North Royalton - Mayor's Offi
Brian Beals
13834 Ridge Road
North Royalton, OH 44133
United States

Ship To

City Of North Royalton - Mayor's Offi
Brian Beals
13834 Ridge Road
North Royalton, OH 44133
United States

Your Sales Rep

rnajjar
330-523-7202
rnajjar@discomputers.c
om

Phone (440) 759-4658
Fax

Phone (440) 759-4658
Fax

Terms

P.O. Number

Ship Via

Qty

Description

Unit Price

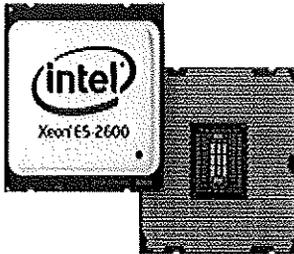
Ext. Price

- | Qty | Description | Unit Price | Ext. Price |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|
| 2 | Lenovo ThinkServer RD630 2594A6U 2U Rack Server - 1 x Intel Xeon E5-2640 2.5GHz - 2 Processor Support - 8 GB Standard - Serial ATA/600 RAID Supported, 6Gb/s SAS Controller - Gigabit Ethernet - RAID Level: 0, 1, 1+0, 5, 5+0, 6, 6+0 - 800 W | \$1,650.00 | \$3,300.00 |



*Reliable roots
Lenovo ThinkServer® systems are powered by proven technology, and value is added to your purchase through the availability of superior technical service and support. To enhance your productivity while reducing your costs, our attractively priced servers are supported by creative financing options.*

- | | | | |
|---|-----------------------------------------------------------------------------------------------------------------------|----------|------------|
| 2 | Lenovo Xeon E5-2640 2.50 GHz Processor Upgrade - Socket R LGA-2013 - Hexa-core (6 Core) - 15 MB Cache - 7.20 GT/s QPI | \$936.00 | \$1,872.00 |
|---|-----------------------------------------------------------------------------------------------------------------------|----------|------------|



*Intel® Xeon® Processor E5-2600 Product Family
The Intel® Xeon® processor E5-2600 product family is at the heart of a flexible and efficient data center that meets your diverse needs. These engineering marvels are designed to deliver the best combination of performance, energy efficiency, built-in capabilities, and cost-effectiveness. From virtualization and cloud computing to design automation or real-time financial transactions, you'll be delighted by better than ever performance and energy efficiency. I/O latency is dramatically reduced with Intel® Integrated I/O, which helps you to eliminate data bottlenecks, streamline your operations, and increase your agility. The Intel® Xeon® processor*

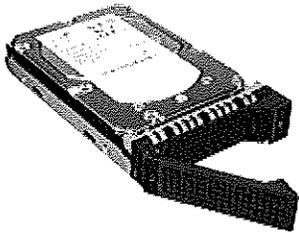
PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - GENERALLY ALL HARDWARE COMPUTER COMPONENTS PROPOSED ABOVE ARE COVERED BY A LIMITED ONE YEAR WARRANTY, COVERING PARTS AND LABOUR FOR HARDWARE ONLY AND ON A DEPOT BASIS - WE SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS,

Qty	Description	Unit Price	Ext. Price
	<i>E5-2600 product family - versatile processors at the heart of today's data center.</i>		
10	Lenovo ThinkServer 8GB DDR3-1600MHz - 8 GB - DDR3 SDRAM - 1600 MHz DDR3-1600/PC3-12800 - ECC - Registered - 240-pin - DIMM	\$100.00	\$1,000.00



Memory is one of the most vital components to keep your ThinkServer operating at maximum performance and push the boundaries of productivity for all of your server applications such as, virtualization, e-commerce, or file and print services. The ThinkServer DDR3 memory enables high I/O data transfer rate (1) and reduced power consumption over DDR2 technology. Faster data transfer rates mean higher performance, and with DDR3 memory this is achieved without straining the system's power needs. This offering covers DDR3 (1.5V) series: ThinkServer 4GB DDR3-1600MHz (1Rx4) RDIMM ThinkServer 8GB DDR3-1600MHz (2Rx4) RDIMM ThinkServer 16GB DDR3-1600MHz (2Rx4) RDIMM-Test-proven 100% compatible on listed ThinkServer Systems(2) -Meets stringent ThinkServer reliability standards -High bandwidth performance, up to 1600M per second -Lenovo Limited Warranty -Authenticity seal on every DIMM (1) Data transfer rate may vary based upon many factors and is often less than the maximum possible. (2) Compatible systems indicated in the Hardware requirements - ThinkServer systems section.

4	Lenovo 500 GB 2.5" Internal Hard Drive - SATA - 7200 rpm - 1 Pack	\$263.00	\$1,052.00
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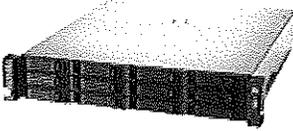


SubTotal

\$7,224.00

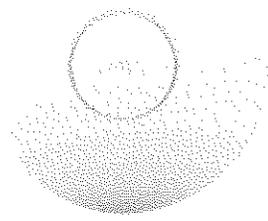
Storage for VMware

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - GENERALLY ALL HARDWARE COMPUTER COMPONENTS PROPOSED ABOVE ARE COVERED BY A LIMITED ONE YEAR WARRANTY, COVERING PARTS AND LABOUR FOR HARDWARE ONLY AND ON A DEPOT BASIS - WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS,

Qty	Description	Unit Price	Ext. Price
1	<p>Lenovo StorCenter (EMC) px12-450r NAS Server - Intel 2.50 GHz - 12 x Total Bays - 12 TB HDD (4 x 3 TB) - 8 GB RAM - RAID Supported - 3 x USB Ports</p>  <p><i>The Iomega®; StorCenter®; px12-450r Network Storage Array is a powerful network storage solution offering the highest levels of performance and advanced data protection for small- to medium-sized businesses and the distributed enterprise. Powered by enterprise-class EMC®; storage technology, the StorCenter px12-450r is ideal for production data stores, server virtualization, backup-to-disk target and video surveillance. The StorCenter px12-450r is available in diskless, partially populated or fully populated in a single array. The px12-450r provides the superior performance and reliability that you need for your mission critical data and with built-in McAfee®; VirusScan®; Enterprise, your data is safe from viruses and other malicious threats. The StorCenter px12-450r includes many enterprise-class features, such as the EMC Atmos Cloud Connector, EMC Avamar data deduplication as well as device-to-device data replication to ensure data integrity at both the source and the replication target. Businesses will appreciate extremely high throughput with quad-Gigabit Ethernet connectivity and an Intel®; Quad-Core Xeon®; Processor plus link aggregation (port bonding), Server Class hard drives, and the option of solid state drives.</i></p>	\$5,550.00	\$5,550.00
	SubTotal		\$5,550.00
1	VMWARE VSPHERE 5 ESSENTIALS PLUS KIT FOR 3 HOSTS (MAX 2 Processors per host)	\$3,297.84	\$3,297.84
1	ONE YEAR PRODUCTION SUPPORT/SUBSCRIPTION VMWARE V	\$1,155.66	\$1,155.66
	SubTotal		\$4,453.50
1	<p>Barracuda 350 Message Archiver Appliance - 1 x 10/100Base-TX Ethernet LAN</p>  <p><i>The Barracuda 350 Message Archiver is a complete and affordable email archiving solution, enabling you to effectively index and preserve all emails, enhance operational efficiencies and achieve regulatory compliance needs. Leveraging standard policies and seamless access to messages, email content is fully indexed and backed up to enable administrators, auditors and end users quick retrieval of any email message stored in an organization's email archive.</i></p>	\$6,255.40	\$6,255.40

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Qty	Description	Unit Price	Ext. Price
3	Ubiquiti UniFi UAP-LR IEEE 802.11n 300 Mbps Wireless Access Point - ISM Band - 600 ft Maximum Indoor Range - 1 x Network (RJ-45) - 3 Pack	\$289.00	\$867.00



Scalable and Unified Enterprise WiFi Management The UniFi® Enterprise WiFi System is a scalable enterprise access point solution designed to be easily deployed and managed. UniFi Access Point (AP) indoor models have a sleek design and can be easily mounted to a ceiling tile or wall using the included mounting hardware. UniFi AP (UAP) outdoor models have a form factor built to last outdoors. The UniFi Enterprise WiFi System includes the UniFi Controller software. The software installs on any PC, Mac, or Linux machine within the network and is easily accessible through any standard web browser. Using the UniFi Controller software, an Enterprise WiFi network can be quickly configured and administered without any special training. Real-time status, automatic UAP device detection, map loading, and advanced security options are all seamlessly integrated.

SubTotal \$7,122.40

2	APC Smart-UPS SMT2200RM2U 2200VA Rack-mountable UPS - 2200 VA/1980 W - 2U Rack-mountable - 5 Minute - 6 x NEMA 5-15R - , 2 x NEMA 5-20R	\$998.00	\$1,996.00
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Switches for City Hall - One is needs before the move and another spare

2	Netgear ProSafe GS752TP Ethernet Switch - 48 Ports - 4 x Expansion Slots	\$785.00	\$1,570.00
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Qty	Description	Unit Price	Ext. Price
	SubTotal		\$3,566.00

Switches for Remote Sites FIBER

2	(Service Center + Fire1) Netgear ProSafe GS752TP Ethernet Switch - 48 Ports - 4 x Expansion Slots	\$785.00	\$1,570.00
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4	(2 x Waste Water + Fire2) Netgear ProSafe GS728PP Ethernet Switch - 24 Ports - Manageable - 24 x POE+ - 4 x Expansion Slots - 10/100/1000Base-T - PoE Ports - Desktop, Rack-mountable	\$699.00	\$2,796.00
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7	(Office on Aging + Animal Control + 4 x Waste Water+Court) Netgear ProSafe GS110TP Gigabit PoE Smart Switch - 8 Ports - Manageable - 8 x POE - 2 x Expansion Slots - 10/100/1000Base-T - PoE Ports	\$249.00	\$1,743.00
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The GS110TP is designed for customers who need a low port density solution with the combination of Gigabit speed and PoE capability. The GS110TP comes with 8 dedicated 10/100/1000 Mbps copper ports to connect to your end devices and two additional Gigabit Fiber ports for uplinks with greater distance.



	SubTotal		\$6,109.00
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1	Shipping & Handling - To be determined	\$0.00	\$0.00
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	SubTotal	\$34,024.90
	Tax	\$300.61
	Shipping	\$0.00
	Total	\$34,325.51
		- 300.61
		<u>34,024.90</u>

** Exempt*

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3046 Brecksville Road, Richfield, OH 44286
 t. 330-523-7202 f.

QUOTE

Number AAAQ1875

Date Jul 9, 2014

Sold To	Ship To	Your Sales Rep
City Of North Royalton - Mayor's Offi Brian Beals 13834 Ridge Road North Royalton, OH 44133 United States Phone (440) 759-4658 Fax	City Of North Royalton - Mayor's Offi Brian Beals 13834 Ridge Road North Royalton, OH 44133 United States Phone (440) 759-4658 Fax	rnajjar 330-523-7202 rnajjar@discomputers.c om

Terms	P.O. Number	Ship Via
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Qty	Description	Unit Price	Ext. Price
55	City Hall - New Hardware Configuration and Moving City Hall - Configure Two New Servers and the EMC Storage with VMWare Essential Plus - Install 3 instances of Windows Server 2008 R2 (DC01-DC02-FS01) - Move the current exchange server to the new hardware - Move the Terminal Server used for the Court software to the new hardware - Format and reconfigure the current server with VMWare and join to the cluster of servers - On the night of the move Shutdown all servers and move to new City Hall - Help Brian with labeling and moving all PCs at Old City Hall and move to New City Hall. - Setup all PCs in the new building and make sure they are operational for the next business day - Provide support on the Monday when all employees return to work	\$89.00	\$4,895.00
6	Configure Email Archiver - Enable Journaling on the current exchange server and setup an agent on every PC and train users on how to use it	\$89.00	\$534.00
20	Fiber Infrastructure - Setup all Switches and insure that all Fiber connections are live and able to connect to City Hall.	\$89.00	\$1,780.00
25	Migrate the Service Department, Engineering and building to the new hardware at the New City Hall - - Transfer all data to new servers - Backup any local profiles on all PCs (about 25 PCS) - Join PCs to the new NorthRoyalton.local (New City Hall) - Configure Outlook - Restore profiles	\$89.00	\$2,225.00
5	Cemetary, Office on Aging, Animal control, Waste Water - Migrate all data and join computers to Domain and configure Outlook.	\$89.00	\$445.00

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Qty	Description	Unit Price	Ext. Price
		SubTotal	\$9,879.00
		Tax	\$30.04
		Shipping	\$0.00
		Total	\$9,909.04

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SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
FMPV622	3988394	8/14/2014

BILL TO:
 CITY OF NORTH ROYALTON
 13834 RIDGE RD

SHIP TO:
 NORTH ROYALTON PD
 Attention To: BRIAN BEALS
 1400 BENNETT RD

Accounts Payable
 NORTH ROYALTON , OH 44133

NORTH ROYALTON , OH 44133-4896
 Contact: BRIAN BEALS 440.582.6216

Customer Phone #

Customer P.O. # STARTECH GB
 TRANS/MS WIN SRV

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
DAVE ENGMARK		UPS Ground (2- 3 Day)	Net 30 Days-Govt State/Local	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
18	2935192	STARTECH GB FIBER SFP TRANSCEIVER LC Mfg#: SFPGLCSXMMST Contract: National IPA Technology Solutions 130733	43.54	783.72
2	3302752	LVO WIN SVR 2012 R2 STD Mfg#: 4XI0E51561 Contract: National IPA Technology Solutions 130733	626.12	1,252.24
SUBTOTAL				2,035.96
FREIGHT				0.00
TAX				0.00

US Currency

TOTAL 2,035.96

CDW Government
 230 North Milwaukee Ave.
 Vernon Hills, IL 60061

Fax: 312.752.3626

Please remit payment to:
 CDW Government
 75 Remittance Drive
 Suite 1515
 Chicago, IL 60675-1515