

CLARE COUNTY ROAD COMMISSION

Minutes of the regular meeting of the Board of County Road Commissioners of Clare County, Michigan, hereinafter referred to as the Board, held at its office at 3900 East Mannsiding Road, Harrison, Michigan on June 19, 2019.

The meeting was called to order at 9:00 a.m. by Commissioner Richard Haynak.

Commissioners present: Timothy Haskin, Richard Haynak and Karen Hulliberger.

Commissioners absent: none.

Staff present: Kimberly Jones, Finance Director/Board Secretary; Al Leonard, Engineer-Tech/Co-Manager.; Aric McNeilly, Road Maintenance Foreman/Co-Manager and David Bondie, Asst. Road Maintenance Foreman.

Pledge of Allegiance.

Guests present: Angelina M. Barnes, Michael R. Kluck and Associates; Dan Dysinger, Grant Township Supervisor; Mike Haley, Hayes Township Trustee; Stacie Wilhelm, SD Consulting; Pat Adams, Hayes Township resident; Denise Pallarito, Michigan Association of Timbermen; Tom Dougherty and Pat Talagrand, Frost Township residents, Jim Korman, Greenwood Township Trustee; Ron and Dena Poremba, Frost Township resident; Tamira Ebersole, 5 Lakes Association; Dave Southworth; Sheryl Beyer, Hatton Township resident; Tracey Connelly, Manager/Clerk for City of Harrison; Sam Russell, DPW Superintendent for City of Harrison; John Marion, Hayes Township resident; David Byl, Garfield Township Supervisor; Tom and Gail Garrity.

Addition to the agenda: New Business #5 – Closed Session, under Section 8(a) to discuss Settlement/Severance Agreement.

The minutes of the June 5, 2019 regular meeting and June 5, 2019 closed meeting were read and approved as read.

The fund balance report was presented and discussed. On a motion by Commissioner Haskin, seconded by Commissioner Hulliberger and approved unanimously, it was moved to approve payments for: Payroll, FICA, PE 6/2, 6/19, (52970-52989 void, 52990-53008), AP (72476-72533), HRA and MERS totaling \$498,642.99.

Pat Adams, Hayes Township resident, discussed cost of road improvements in Oak Shore Sub, Oak Beech Sub, Eberhart (approx. 2.8 – 2.9 miles) and July 6<sup>th</sup> is the next Lake Association meeting. Al Leonard, Engineer-Tech/Co-Manager, commented that a contractor had been contacted for an estimated. CCRC is waiting to hear back from contractor. Commissioner Haskin requested that Al Leonard follow-up on prices and stay in touch in Mr. Adams.

Ron Poremba, Frost Township resident, commented on and questioned Stockwell Road in Hayes and Greenwood Townships. Commissioner Hulliberger stated Stockwell is on a wish list. This year we requested a gravel project list and gravel projects to be prioritized. Frost Township has projects in priority #2 and #4. Mr. Poremba discussed maintenance issues with Ridge Road and E. Long Lake Road.

Sheryl Beyer, Hatton Township resident, discussed maintenance and material concerns on S. Cornwell Avenue. Aric McNeilly, Road Maintenance Foreman/Co-Manager, stated that her concerns are being addressed and will be completed in a timely manner.

Tamira Ebersole, 5 Lakes Association, requested an updated on the Grant Township project in her subdivision and will roads be closed. Al Leonard, Engineer-Tech/Co-Manager, stated that milling will be started, paving to follow and residence should have access during the majority of project, but noted there could be a few minor delays during the overlay process.

Dan Dysinger, Grant Township Supervisor, questioned the following: how a CCRC employee can speak out on the news; why Engineer-Manager Gupta was stopped from speaking at the last meeting. Angelina M. Barnes, Michael R. Kluck and Associates (Labor and Employment counsel for the Clare County Board of Road Commissioners), stated the following: employees even those not represented by a union have rights under the National Labor Relations Act (NLRA). The Board cannot prevent employees from speaking out about their workplace complaints, or prevent an employee from acting to bring to the Board's attention group complaints. Statements made by individual employees were not statements on behalf of, or with permission from the Board.

She continued to clarify regarding Mr. Dysinger's question about Mr. Gupta. Mr. Gupta was acting as the Engineer-Manager of the Road Commission and was violating the Road Commission's policy to not comment on or discuss personnel matters in public. As a manger and agent of the Board he was under the control of the Board and he should not have been using the public board meeting as a forum to attack employees. Furthermore, the reason the Board is not commenting is because it is their general practice to not comment on personnel matters to ensure due process for all involved and to follow their internal policies for handling of employee complaints.

John Marion, Hayes Township resident, discussed concerns with a sign at Woodshaw Estates off Arnold Lake Road. Sign is very small, approximately 50' from boat ramp. He is requesting the sign be larger and further away from boat ramp. Aric McNeilly, Road Maintenance Foreman/Co-Manager, stated that he will discuss with DNR and investigate issue further.

Cost Share Agreement for Vandecar/Mill Creek Pond with Village of Farwell was discussed. Approved by both parties, the following language changes have been made: Line item #1 strike out "project construction costs" and that these costs are included in Line item #5. Agreement has been signed by both CCRC and Village of Farwell.

Spruce Street in the City of Harrison was discussed. Tracey Connelly, Manager/Clerk for City of Harrison, wanted to confirm project was still on task. Project is \$115,112.50, low bidder and will be completed in 2019. The City of Harrison will make payment to vendor in 2020 and in turn invoice CCRC (purchasing their task force dollars). It was a consensus of the Board that project was approved.

2019 Gravel Project Priority List was discussed. Al Leonard, Engineer-Tech/Co-Manager, updated the Board with the changes (requested per the township):

1. Franklin Township Priority #1 Claroskee, move to Priority #4.
2. Franklin Township Priority #4 Meredith Grade, move to Priority #1.
3. Hamilton Township Priority #2 Cranberry, wants to delay project to 2020.

MCRC SIP Board of Directors 3-year term At-Large position and Nominee's were discussed. It was a consensus of the Board to vote for Dorothy Pohl, Ionia CRC.

CCRC has received notification from AFSCME Local 1855.4, that the Local Union wishes to engage in negotiations with the Employer or its authorized representatives. Kimberly Jones, Finance Director/Board Secretary, discussed the following with the Board: who does the Board want to name as spokesperson in collective bargaining negotiations; current contract expires end of August and the following information was provided to AFSCME Secretary, Tina Geller, per Mike Neitzel, AFSCME Staff Representative, Union Employee Listing, 2019 Cash Budget, Financial Audit(s) for fiscal year 2016-2018.

On a motion by Commissioner Haskin, seconded by Commissioner Hulliberger and approved unanimously, it was approved Michael R. Kluck, Attorney At Law, to act as the Spokesperson in collective bargaining negotiations for Board of County Road of Commissioners and that Aric McNeilly, Road Maintenance Foreman/Co-Manager, Al Leonard, Engineer-Tech/Co-Manager and Kimberly Jones, Finance Director/Board Secretary, will be the CCRC Administrative team working in the best interest of the Road Commission.

Kimberly Jones, Finance Director/Board Secretary, discussed the FY2017 MDOT audit results. Total review adjustment was (\$191,724) due to MDOT. Audit results/review were discussed noting that the largest adjustment was made in Equipment Rental. Changes have been made to help offset this issue with equipment in 2018 and CCRC will continue to make changes as necessary.

Al Leonard, Engineer-Tech/Co-Manager, discussed the 2019 Construction Budget. He informed the Board that due to weather related conditions some of the budgeted projects may not be completed but he will ensure the board that the approved construction dollars will be expensed as approved noting that dollars may shift due to contractors, weather, etc.

On a motion by Commissioner Haskin, seconded by Commissioner Hulliberger and approved unanimously, it was moved to go into closed session at 9:49 a.m. as permitted under Section 8(a) of the Open Meeting Act (OMA), to consider the dismissal, suspension, or disciplining of or to hear complaints or charges brought against a public employee of the Road Commission. The session will be closed at the request of Mr. Deepak Gupta. Roll call vote. Tim Haskin, Yes; Richard Hayank, Yes; Karen Hulliberger, Yes.

The Board came out of closed session at 10:03 a.m.

Angelina M. Barnes, Michael R. Kluck and Associates (Labor and Employment counsel for the Clare County Board of Road Commissioners), asked the Board to consider the provisions to the Severance Agreement and Release.

- Deepak Gupta has signed the agreement.
- In lieu of the termination of the employment of Employee, the parties desire to end their employment relationship in a professional and amicable fashion as to allow the Employee to pursue his retirement.
- Effective June 19, 2019, Employee's employment relationship with the Employer shall be terminated.
- Employee's Employment Agreement will be considered cancelled, null and void effective June 19, 2019 and Employee shall receive no further compensation except for what is specifically described in this Severance Agreement and Release.
- Employee will not accrue any benefits or vest in any benefits, except as specifically provided in this Agreement.
- In lieu of medical benefits, as well as Employer payments for dental and vision benefits will cease on Separation Date.
- Employer will not contest the Employee's claim for unemployment benefits.
- In consideration for signing the Agreement and fulfillment of the promises herein, the Employer will pay the Employee the sum of \$58,352.00.
- Pursuant to the Municipal Employees Retirement System (MERS), Mandatory Leave Conversion provision, the Employer shall contribute 100% of the Employee's accrued leave, defined by the Employer as sick and vacation leave, at separation, for a total contribution of \$21,648.00 to MERS HCSP.
- Employee agrees and acknowledges he is fully responsible for any taxes as may be required by law.

On a motion by Commissioner Haynak, seconded by Commissioner Hulliberger and approved unanimously, it was moved to accept the Severance Agreement and Release. Commissioner Haynak, Board Chair, will sign the Agreement. A copy of the complete Severance Agreement and Release may be found following the minutes.

Kimberly Jones, Finance Director/Board Secretary, discussed the following:

1. 2019 Dividend Distribution – Refund from MCRCSIP in the amount of \$10,031.88.
2. CRASIF – Call for Board of Trustee Candidates (3 open Board positions)
3. MCRCSIP – Workshops/Meetings
  - a. Workshop and Annual Membership Meeting – July 17-18, 2019
  - b. MCRCSIP Loss Control Training – August 13, 2019
4. CCRC Fund balance breakdown

Aric McNeilly, Road Maintenance Foreman/Co-Manager and Dave Bondie, Assistant Road Maintenance Foreman, gave an updated road maintenance report.

Commissioner Hulliberger stated that she would like to continue writing monthly articles for local newspapers.

Staffing issues were discussed due to recent the loss of an employee. It was agreed to post for a full-time union position.

Commissioner Haynak discussed mowing. Aric McNeilly, Road Maintenance Foreman/Co-Manager, commented that we have 2 employees mowing in the county and 2 mowing on the state trunkline.

A Workshop will be set up and posted for Angelina M. Barnes, Michael R. Kluck and Associates, to assist with discussion on Manager or Manager/Engineer position, posting, etc.

Reminder: Greenwood Township's picnic is June 29, 2019 at 1:00 p.m. Stacie Wilhelm, SD Consulting, will be providing material for CCRC to display at the picnic. Equipment will be available for display.

There being no further business to come before the Board, the meeting was adjourned at 10:25 a.m.

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Kimberly Jones, Finance Director/Board Secretary

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Richard Haynak, Chairman

## SEVERANCE AGREEMENT AND RELEASE

This Severance Agreement and Release (“Agreement”) is made by and between Deepak Gupta (“Employee”) and the Clare County Road Commission (“Road Commission”) (“Employer.”)

WHEREAS, Employee has worked for the Employer as the Engineer Manager under an Employment Agreement due to expire on October 31, 2021 at 11:59 p.m.;

WHEREAS, in lieu of the termination of the employment of Employee, the parties desire to end their employment relationship in a professional and amicable fashion as to allow the Employee to pursue his retirement, the Employer and Employee agree to the following:

1. Separation from Employment. Effective **June 19, 2019** (“Separation Date”), Employee’s employment relationship with the Employer shall be terminated. Employee’s Employment Agreement will be considered cancelled, null and void effective **June 19, 2019** and Employee shall receive no further compensation except for what is specifically described in this Severance Agreement and Release. As of and following the Separation Date, Employee will not accrue any benefits or vest in any benefits under an Employer policy, plan, or procedure for any purpose except as specifically provided in this Agreement.
2. Health Benefits. Employee acknowledges payments in lieu of medical benefits, as well as Employer payments for dental and vision benefits will cease on the Separation Date. Employee may elect to receive continued health care coverage at his own expense pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), if applicable.
3. Unemployment Benefits. The Employer agrees not to contest the Employee’s claim for unemployment benefits.
4. Severance Payment. In consideration for signing the Agreement and the fulfillment of the promises herein, the Employer will pay the Employee the sum of fifty-eight thousand three hundred and fifty-two dollars (\$58,352.00.) Payments shall be made after the expiration of the seven (7) day revocation period as described in Paragraph 21 below or the first regular payroll period after the adoption of the Agreement by the Employer, whichever date is later. Employee acknowledges the Severance Payment constitutes good and valuable consideration, and satisfies and exceeds any compensation or benefits to which Employee is entitled by law.
5. MERS Health Care Savings Program (HCSP). Pursuant to the Municipal Employees’ Retirement System (MERS) Participation Agreement, *Mandatory Leave Conversion (Before-Tax) Contributions* provision, the Employer shall contribute one-hundred

percent (100%) of Employee's accrued leave, defined by the Employer as sick and vacation leave, at separation, for a total contribution of twenty-one thousand six hundred and forty-eight dollars (\$21,648.00) to Employee's MERS HCSP.

6. Taxes. The Employee agrees and acknowledges he is fully responsible for any taxes as may be required by law and that neither the Employer nor any affiliate or subsidiary has offered advice on or made any representations with respect to the potential tax consequences arising from such payment. The Employee agrees to be responsible and liable for any reallocation by the Internal Revenue Service (IRS) or any state or local tax authority of settlement amounts paid; and the Employee agrees to indemnify and hold the Employer and/or its insurers harmless from any liability, penalties, costs, fees, damages, or losses incurred as a result of such reallocation. Any reallocation by the IRS or any state or local tax authority shall not affect or invalidate this Agreement.
  
7. Release. In further consideration of the terms and conditions of this Agreement, the Employee, his heirs, executors and assigns hereby fully and forever release and discharge the Road Commission, its past and present Board Members, its successors, agents, officers, and employees, past and present in their individual and official capacities, from any and all claims, actions, damages, demands, causes of action, liabilities or lawsuits of every kind, nature, or description whatsoever, whether known or unknown, whether founded in fact, law or equity, which the Employee, his heirs, executors or assigns could pursue against the Employer, its past or present Board Members, its successors, agents, officers, and employees past and present, whether arising from, touching upon, or concerning Employee's past employment relationship with the Employer. This Release includes all claims Employee has or may have whatsoever whether founded upon the Michigan or U.S. Constitution(s), contract, tort, any federal, state, or local statute, rule or regulation, common law or any other theory or grounds, including but not limited to:
  - a. Any claims for compensation and/or fringe benefits, claims relating to arising from wrongful termination, employment discrimination or retaliation under state or federal law including, without limitation, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Michigan Payment of Wages and Fringe Benefits Act, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Equal Pay Act, §510 of the Employee Retirement Income Security Act of 1974, the Rehabilitation Act of 1973, the Public Employment Relations Act, the Michigan Elliott-Larsen Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, the Michigan Whistleblowers Protection Act.

- b. Any and all claims for personal injuries and/or damages of any kind, including those for infliction of emotional or mental distress, invasion of privacy, defamation, injury to reputation and those based on any other tort or theory; and
  - c. Any and all claims, whether contractual, legal or equitable, arising during and/or out of Employee's past employment with Employer and separation therefrom.
- 8. Waiver. Employee specifically understands, acknowledges, and agrees that through this Agreement Employee is waiving any and all claims Employee may have under the Age Discrimination in Employment Act of 1967 and Older Workers' Benefit Protection Act.
- 9. Covenant Not to Sue or Institute Charges. To the fullest extent permitted by law, Employee will not institute or initiate any action, administrative action, grievance, or other suit against the Employer or any other person or entity released under Paragraph 5 with any state, federal, or local court or agency or other tribunal related to claims released through this Agreement. This provision shall not interfere with Employee's right to file a charge with the Equal Employment Opportunity Commission or participate, cooperate, or assist in an investigation or proceeding conducted by any federal or state enforcement agency; but Employee knowingly and voluntarily waives the right to any form of recovery or compensation in any such action arising from or related to the Employee's employment with the Employer.
- 10. Property Return. Employee shall return all Employer property to the Employer, including, but not limited to: cell phone, keys/access cards, vehicle, documents, credit card(s), computer, files, records, and/or any other Employer property under Employee's control or in Employee's possession.
- 11. Future Employment. Employee agrees not to apply for or work as either an employee, contractor, or consultant with or for the Road Commission, including any of its successors, now or in the future.
- 12. Non-Disparagement. The parties shall not make comments or statements that would defame or disparage one another.
- 13. Entire Agreement. This Agreement contains the entire agreement and understanding of the parties and supersedes all prior discussions, agreements, understandings, and practices of every nature between them related to the topics addressed herein, including the claims released in Paragraph 7. This Agreement may not be changed or modified, except through an agreement in writing signed by the Employer and Employee.

14. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan regardless of any state's choice of law rules. If there is a dispute as to the provisions, interpretation, or application of this Agreement, any lawsuit must be filed in a court of competent jurisdiction within the County of Clare and State of Michigan.
15. Invalidity. If one or more of the provisions contained within this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of any other provisions of this Agreement, and such provision(s) shall be deemed modified to the extent necessary to be made enforceable.
16. Voluntary Execution. Employee acknowledges and warrants that no promise or inducement has been offered for this Agreement other than as set forth above, and that this Agreement is executed without reliance on any other Employer statement or representation.
17. Competency. Employee warrants that Employee is legally competent to execute this Agreement, and has had adequate time and opportunity to deliberate over the Agreement's terms.
18. Voluntary Execution. Employee acknowledges he has had adequate opportunity to consult with legal, financial, and other advisors of his choice concerning the propriety of entering into this Severance Agreement and Release. Employee further acknowledges he is entering into this Severance Agreement and Release of his own free will, that he understands the consequences of entering into this Agreement, and that it is his desire to do so.
19. Liability. It is acknowledged by the parties that by entering into this Agreement, no party admits liability on any claim, and the parties specifically deny the same. No issue of fact or law pertaining to any dispute between the parties shall be deemed admitted or considered established as a result of the terms of this Agreement. This Agreement shall not and does not obligate the Employer to enter into similar agreements with any other person and shall not be considered to be either a precedent or constitute an established or binding practice.
20. Consideration Period. Employee acknowledges he has been advised he has a period of twenty-one (21) days to consider the terms of this Severance Agreement and Release prior to accepting and signing it.
  - a. If Employee decides to sign the Agreement prior to the expiration of the twenty-one (21) day period, his initials next to this provision and signature of the Agreement represent his desire to do so, and that he has had an opportunity to

consult with legal counsel of his own choosing, and that he is not waiving his right to consider this Agreement for the entire twenty-one (21) days at the demand, advice, or suggestion of the Employer. DG

Employee Initials

21. Revocation Period. Employee acknowledges he was provided a period of seven (7) days following his execution of this Severance Agreement and Release to revoke his agreement to same. Any waiver of an age discrimination claim shall not be effective or enforceable until the seven (7) day revocation period has expired.

To enter into this Agreement, Employee must sign and return this Agreement by **July 2, 2019**. To revoke this Agreement, Employee must send a written letter revoking the Agreement within the seven (7) days provided. Such communication should be provided to:

Clare County Road Commission  
ATTN: Board Chair  
3900 E. Mansiding Rd.  
Harrison, Michigan 48625

CLARE COUNTY ROAD COMMISSION

Richard Haynak  
By: Richard Haynak,  
Chairperson, Board of County Road Commissioners

Date: 6/19/19

DEEPAK GUPTA

Deepak Gupta  
By: Deepak Gupta

Date: 6-19-19