

RESOLUTION APPROVING CONTRACT WITH THE SHERWIN WILLIAMS COMPANY FOR TRAFFIC PAINT, ENGINEER'S OFFICE

WHEREAS, Tim Martin, Ashtabula County Engineer, has presented a contract for the approval of the Board, to-wit:

Scope: Supplying of traffic paint, Yellow- 4950 gallons and White-825 gallons

Provider: The Sherwin Williams Company 101 Prospect Avenue, 1500 Republic, Cleveland, Ohio 44115

Cost:	Yellow Traffic Paint 4950 gallons	Point of Supply \$11.00/G.	Extension: \$ 54,450.00
	White Traffic Paint 825 gallons	Point of Supply \$10.60/G.	Extension: \$ 8,745.00

Not to Exceed: \$63,195.00

Term: one year from date of execution; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the Contract as noted above is approved in accordance with the copy now on file in this office.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2024-315

June 25, 2024

**RESOLUTION APPROVING CONTRACT WITH THE SHERWIN WILLIAMS
COMPANY FOR TRAFFIC PAINT, ENGINEER'S OFFICE**

Upon the motion of Casey R. Kozlowski, seconded by Kathryn L. Whittington.

VOTE:

**Kathryn L. Whittington
J.P. Ducro IV
Casey R. Kozlowski**

**Aye
Absent
Aye**

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.

Crystal Sturgill
Crystal Sturgill, Clerk of the Board *Acting*
Board of County Commissioners
Ashtabula County, Ohio

AGREEMENT

This AGREEMENT, made this 25th day of June, 2024 (the "Effective Date") between Sherwin-Williams (the "Seller"), with offices at 101 Prospect Ave. NW 720 GH, Cleveland, OH 44115, and Ashtabula County (the "Purchaser") located at 25 West Jefferson Street, Jefferson, OH 44047 for the purchase of traffic zone marking paint.

WITNESSETH: That the parties hereto, for and in consideration of Covenants and Agreement to be performed by each as hereinafter set forth, do hereby agree as follows:

ARTICLE I
THE GOODS

The Seller shall furnish all the products, equipment, and associated parts, labor, and services (collectively called the "Goods") as set forth in Exhibit A and in the bid dated March 27, 2024 (the "Bid") which is incorporated by reference as if fully set forth herein. In the event of inconsistencies within or between this Agreement and the Bid, the Seller shall provide the better quality or greater quantity of Goods and shall comply with the more-strict requirement.

ARTICLE II
COMPENSATION AND PAYMENT

- 2.1 The Seller's total compensation for the Goods shall be \$63,195.00 (the "Contract Price").
- 2.2 Seller is subject to and responsible for paying fees to obtain all applicable licenses, permits, and other permissions necessary to perform its obligations under this Contract. Seller is responsible for paying federal, state, and local taxes. Seller agrees to withhold all income taxes due or payable for qualifying wages, salaries, and commissions paid to its employees and further agrees that any of its sub-Sellers shall be required to agree to withhold any such income taxes due for services performed under this Contract.
- 2.3 The Seller shall submit invoice(s) to the Purchaser for the Goods. The Purchaser shall pay the Seller for the Goods as set forth in Exhibit A within thirty (30) days of receipt of a full and accurate invoice. The invoice(s) shall be supported by documentation substantiating the Seller's right to payment. The Seller shall supply such additional documentation as the Purchaser may request in connection with each payment to the Seller. The Seller shall list on the invoice(s) any approved Change Orders processed and performed during the time covered by the invoice(s).
- 2.4 The Purchaser reserves the right to decline to approve any invoice or part thereof, or because of subsequent evidence or inspection, may nullify any previous invoice, in whole or in

part, to such extent as may be necessary in the Purchaser's opinion to protect the Purchaser from loss because of:

- (a) Defective or nonconforming Goods ("Defective Goods") not remedied;
- (b) Damage caused by the Seller;
- (c) Failure to comply with the requirements of Chapter 4115, ORC, if applicable;

If the basis for withholding payment pursuant to this Section is removed, payment shall be made for amounts withheld because of the basis.

2.5 The making of final payment by the Purchaser shall constitute a waiver of all claims by the Purchaser except those arising after termination of this Agreement and the following:

- (a) Defective Goods;
- (b) Outstanding liens;
- (c) Failure of the Seller to comply with any warranties or guarantees.

The acceptance of final payment by the Seller shall constitute a waiver of all claims against the Purchaser except those that the Seller has previously made in writing in accordance with Article VIII and which remain unresolved at the time of final payment. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

ARTICLE III SCHEDULE

Time is of the essence to this contract. The rate of progress shall be such as to deliver the Goods within the time limit specified herein.

In the event that the Goods is not completed within the time limit aforesaid, the Seller shall reimburse the Purchaser an amount equal to the Purchaser's costs for and expenses of replacement goods and services provided by or for the Purchaser after the expiration of the aforesaid time limit, and until completion and acceptance of the Goods. Such amounts shall be deducted from the partial or final payments to be allowed the Seller.

The Purchaser may for good cause shown, extend the time of completion. Any such extension of time shall not be deemed a waiver by the Purchaser of any other rights provided for under this contract, and shall not operate to release any Surety from any of bond obligations.

ARTICLE IV
CHANGES

The Purchaser, without invalidating the Agreement, may order changes in the Goods consisting of additions, deletions or other revisions, including without limitation revisions resulting from an extension granted in accordance with Article III. To the extent the time of performance or the Contract Price is affected, the Contract may be equitably adjusted by Change Order in accordance with this Article.

The Seller shall not proceed with any change in the Goods without the required written authorization. If the Seller believes that any item is not required by Exhibit A, the Seller shall obtain a Change Order before proceeding with such item. Except as provided in Article VIII, failure to obtain such a Change Order shall constitute a waiver by the Seller of any Claim for additional compensation for such item.

ARTICLE V
WARRANTIES

In addition to any other warranties, guarantees, or obligations set forth in the Bid or applicable as a matter of law and not in limitation of the terms of the Bid, the Seller warrants and guarantees that:

- The Purchaser will have good title to the Goods and all materials and equipment incorporated into the Goods will be new;
- The Goods and all materials and equipment incorporated into the Goods will be free from all defects, including any defects in workmanship or materials;
- The Goods and all equipment incorporated into the Goods will be fit for the purpose for which intended;
- The Goods and all materials and equipment incorporated into the Goods will be merchantable; and,
- The Goods and all materials and equipment incorporated into the Goods will conform in all respects to the Specifications.

Upon notice of the breach of any of the warranties or guarantees, the Seller, in addition to any other requirements set forth herein, shall commence to correct such breach and all damage resulting therefrom within forty-eight (48) hours after written notice thereof, thereafter shall use its best efforts to correct such breach and damage to the satisfaction of the Purchaser and, except

when an extension of time is granted in writing by the Purchaser, correct such breach and damage to the satisfaction of the Purchaser within thirty (30) days of such notice; provided that if such notice is given after final payment hereunder, such 48-hour period shall be extended to seven (7) days. If the Seller fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, the Purchaser, upon written notice to the Seller and without prejudice to any of its other rights or remedies, may correct the deficiencies. The Seller upon written notice from the Purchaser shall pay the Purchaser, within ten (10) days after the date of such notice, all of the Purchaser's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation the Purchaser's administrative, legal, and consulting expenses. The foregoing warranties and obligations of the Seller shall survive the final payment and/or termination of this Agreement. If the Seller fails to pay the Purchaser any amounts due under this Section, the Seller shall pay the Purchaser, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.

ARTICLE VI INSURANCE AND INDEMNIFICATION

6.1 The Seller shall maintain insurance as set forth below:

(a) **General Liability Coverage.** Seller shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence.

Purchaser and its employees shall be named as additional insureds with respect to all activities under this Agreement.

(b) **Automobile Liability Coverage.** Seller shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

(c) **Workers' Compensation.** Seller shall maintain workers' compensation coverage as required by Ohio law.

Prior to the commencement of any work under this Agreement, Seller shall furnish the Seller with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without 30 days' prior written notice to Seller. Purchaser will replace certificates for any insurance expiring prior to completion of work under this Agreement.

6.2 To the maximum extent permitted by law, the Seller shall indemnify and hold harmless the Purchaser and the Purchaser's consultants, agents, and employees from and against all claims, damages, losses, and expenses—whether proven or not—including but not limited to

attorneys' and consultants' fees—whether made by Purchaser or a third-party—arising out of or related to the Seller's performance of the Goods including but not limited to the failure of the Seller to perform its obligations under this Agreement, any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property including the Goods itself, claims for additional storage and handling charges, liens against funds, claims related to the alleged failure of the Seller to perform in accordance with this Agreement, and/or claims related to the removal, handling, or use of any hazardous materials. The Purchaser may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due the Seller under this Agreement.

6.3 The Purchaser's total liability under this Agreement shall be limited to the amount set forth in the Auditor's certificate accompanying this Agreement. Under no circumstances shall the elected officials, officers, employees, council members, or agents of the Purchaser be personally liable for any obligations or claims arising out of or related to this Agreement. No Change Order to the Contract shall be effective against the Purchaser without a new Auditor's certificate.

ARTICLE VII TERMINATION

7.1 The Purchaser may, in its discretion and without cause, by written notice to the Seller terminate this Agreement for the Purchaser's convenience.

If this Agreement is terminated without cause and for the Purchaser's convenience and there exists no event of the Seller's default, as defined in this Agreement, the Purchaser will pay the Seller for Goods performed under this Agreement up to the date the notice of termination is received by the Seller at the rates for Goods performed under this Agreement.

If this Agreement is terminated without cause for the Purchaser's convenience and there exists an event of the Seller's default, as defined in this Agreement, the Seller shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default under this Agreement. The termination of this Agreement shall be without prejudice to any rights or remedies that exist at the time of termination.

7.2 If the Purchaser determines that the Seller has failed to prosecute the Goods with the necessary force or in a timely manner, or has refused to remedy any Defective Goods, the Purchaser's Representative shall notify the Seller of such failure or refusal. The Seller shall begin to cure such failure or refusal within five (5) days of receipt of the notice.

If the Seller fails to cure such failure or refusal within thirty (30) days of receipt of the notice, the Purchaser may terminate the Contract and supply the materials or such part of either as is appropriate, and may remove Defective Goods.

If the Seller is so terminated, the Seller shall not be entitled to any further payment. If the Purchaser completes the Goods and if the cost of completing the Goods exceeds the balance of the Contract Price, including compensation for all direct and consequential damages incurred by the Purchaser, or the Purchaser as a result of the termination, such excess shall be paid by the Seller.

Upon a final determination, by a court of competent jurisdiction, that the termination pursuant to this Section was improper, the termination shall be deemed a termination for convenience to Section 7.2.

ARTICLE VIII DISPUTE RESOLUTION

8.1 If any dispute or difference of any kind (a "Dispute") arises between the Parties in connection with, or arising out of, this Agreement, the Seller and Purchaser within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Seller and Purchaser shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within fifteen (15) Business Days, the Dispute shall be referred within two (2) Business Days of the lapse of the fifteen (15) Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Parties have had at least an additional fifteen (15) Business Days to resolve the Dispute following referral of the Dispute to them.

8.2 The Courts of Ashtabula County shall retain exclusive jurisdiction to resolve any disputes between the parties to the extent in which the parties cannot resolve their disputes within a reasonable amount of time. This agreement does not prohibit the parties from seeking mediation before litigation.

8.3 During the pendency of any mediation or litigation the Parties shall continue to perform their obligations under this Agreement subject to Court Order.

ARTICLE IX MISCELLANEOUS

9.1 No modification or waiver of any of the terms of this Agreement or the Bid shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Purchaser shall require the signature of the Purchaser's Representative acting under the authority of a specific resolution of the Purchaser. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of

the Agreement, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the Bid or to waive any of its or their terms, except as expressly provided in this Paragraph.

9.2 The Seller may not assign this Agreement without the written consent of the Purchaser, which the Purchaser may withhold in its sole discretion.

9.3 All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of Ashtabula Purchaser, Ohio, and each party hereby expressly consents to the jurisdiction of such court.

9.4 Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, or be given by registered or certified mail, return receipt requested, postage prepaid, and, in the case of the Purchaser, addressed to the address number set forth at the beginning of this Agreement which a copy sent to Ashtabula County Prosecutor's Office, 25 West Jefferson Street, Jefferson, Ohio 44047, and, in the case of the Seller, addressed to its address number set forth at the beginning of this Agreement. Any party may change its address number by giving notice hereunder. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; or upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail.

9.5 The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

9.6 If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement shall remain in full force and effect, and such term shall be deemed stricken; provided this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

9.7 The Seller, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Goods. Including, but not limited to, Ohio's Prevailing Wage law if applicable.

9.8 Seller agrees that, in the hiring of employees for the performance of Goods under the Contract or any subcontract, no Seller, subcontractor, or any person acting on a Seller's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the Goods to which the employment relates. Seller further agrees that neither it, its subcontractors, or any person on the Seller's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of Goods under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. That there shall be deducted from the amount payable to the Seller by the Purchaser under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by O.R.C. Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement. That this Agreement may be canceled or terminated by the Purchaser and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

9.9 This Agreement and the Bid constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

The signatories hereto represent that they are authorized to enter into this Agreement on behalf of the party for whom they sign.


Sherwin-Williams Company:

By: 

Date: 5/20/24

Its: Agency Sales Rep
Joanna Carr

Ashtabula County Board of Commissioners:

By: 

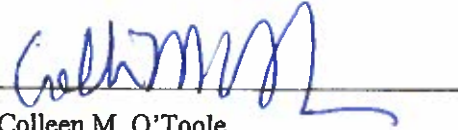
Date: 6-25-24

Ashtabula County Engineer:

By 

Date: 6-20-24

Approved as to Legal Form:



Colleen M. O'Toole,
Ashtabula County Prosecutor

Date: 6-20-24

EXHIBIT A

Traffic Paint, Type 1, fast dry, water-based 100% acrylic type

Amount

Price for Yellow

4,950 gallons

275 Gallon Totes

\$11.00/gallon

Amount

Price for White

825 gallons

275 Gallon Totes

\$10.60/gallon

Grand Total:

275 Gallon Totes

\$63,195.00



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED The Sherwin-Williams Company	
POLICY NUMBER See Certificate Numbe 570105763394			
CARRIER See Certificate Numbe 570105763394	NAIC CODE	EFFECTIVE DATE	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Additional Named Insureds

The following subsidiaries are included as Additional Named Insureds in accordance with the policy provisions of the above mentioned policies.

165 Kirkwood Road Corp.
 Accurate Dispersions
 Acme Quality Paints
 Acquire Sourcing, LLC
 AcromaPro
 AcromaPro Wood Finishes
 Baltimore Paint Group
 Bestt Liebco
 Brod-Dugan Company
 C&M Coatings
 Cabot
 Cabot Stains
 Cabot Woodcare
 CBD Group
 Color Corporation of America
 Color Wheel Paint
 Columbia Paint & Coatings
 Comex North America, Inc.
 Conco Paints
 Con-Lux Coatings
 Consumer Brands Group
 Contract Transportation Systems Co.
 Cover the Earth Media
 Cover the Earth Meetings
 CTE Meetings
 CTS National Corporation
 Cuprinol Group
 Custom Aerosols
 Custom Paint Products Group
 Deshler Products
 Diversified Brands
 Dobco
 Duckback
 Dupli-Color Canada Division
 Dupli-Color Products
 Dur-A-Flex, Inc.
 Duracoat Powder Manufacturing
 DuraSeal Plasti-Kote Co., Inc.
 Duron
 Duron Paint
 Duron Paint & Wallcoverings
 Dutch Boy
 Dutch Boy Group
 Dutch Boy Paints
 Fabulon Products
 Fabulon wood and Floor Finishes
 Flex Bon Paints
 Formby's
 Frazee Paint
 General Polymers
 Geocel
 Geocel Products Group
 H&C Concrete Coatings
 H&C Concrete Stain
 H&C Products Group
 Homeline Products Group
 Independent Dealer Group
 Kool Seal
 Krylon
 Krylon Products Group
 Kwal Paint
 Landmark Office Towers
 Landmark Office Towers Management
 M.A.B. Paints, Co.



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED The Sherwin-Williams Company	
POLICY NUMBER See Certificate Numbe 570105763394			
CARRIER See Certificate Numbe 570105763394		NAIC CODE EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Additional Named Insureds Continued

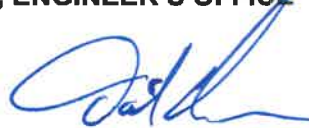
Martin-Senour Paints
 Mautz Paints
 McCloskey
 Mercury Paints
 Minwax
 Minwax Company
 Minwax, wood Care Product
 Moly-white Pigments Group
 National Aerosol Products Company
 Norfolk Paint Company
 Old Quaker Paint
 Omega Specialty Products & Services LLC
 Paint-Safe
 Parker Paint
 PQ Products Group
 Pratt & Lambert
 Pratt & Lambert Paints
 Pro Line Paint
 Purdy
 Purdy Brushes
 Purdy International Corporation
 Raabe
 Ress Realty
 Ress Realty Company
 Rubberset Company
 Sherwin-Williams Automotive Finishes
 Sherwin-Williams Diversified Brands
 Sherwin-Williams International Holdings LLC
 Sherwin-Williams Leasing, Inc.
 Sherwin-Williams Ohio LLC
 Sherwin-Williams Realty Holdings, Inc.
 Sherwin-Williams Russia LLC
 Specialty Aerosols
 Specialty Polymers, Inc.
 Sprayon Products
 SWI Company
 SWIMC, Inc.
 SWIMC, LLC
 The Sherwin-Williams Acceptance Corporation
 The Sherwin-Williams Foundation
 The Sherwin-Williams Headquarters Company
 The Sherwin-Williams Manufacturing Company
 The Sherwin-Williams US Licensing Company
 The Terminal Garage Company
 The Thompson's Company
 U.S. Chemical & Plastics
 Uniflex Coatings
 United Coatings
 Valentine & Co.
 Valspar Coatings
 Watson Adhesives
 Watson Industrial
 Watson Standard
 White Lightning Products
 VALSPAR ENTITIES:
 Engineered Polymer Solutions, Inc.
 Valspar
 Valspar Automotive
 Valspar Coatings
 Valspar Holdings I, Inc.
 Valspar Holdings II, Inc.
 Valspar Industries Holding, LLC
 Valspar Refinish, Inc.
 Valspar Industrial
 Valspar Packaging
 Valspar Specialty Paints Holding Corporation (formerly Quest Specialty Coatings Holding
 General Paint Corporation)
 Valspar Specialty Paints, LLC (formerly Quest Specialty Coatings, LLC)
 Valspar Paint (NZ) Ltd

FISCAL OFFICER'S CERTIFICATE
5705.41 O.R.C.

The undersigned, County Auditor of Ashtabula County, hereby certifies that the amount required to meet the obligations of the County during the year 2024 under the Agreement has been lawfully appropriated for that purpose, and is in the Treasury of the County or in the process of collection and free from any previous encumbrances to the credit of:

2222.007.301-701.0001; not to exceed \$63,195.00.

Agreement Title: RESOLUTION APPROVING CONTRACT WITH THE SHERWIN WILLIAMS COMPANY, FOR TRAFFIC PAINT, ENGINEER'S OFFICE



David Thomas, Ashtabula County
Auditor

Date: June 24, 2024