

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

EASTON TELECOM SERVICES, L.L.C., :  
Plaintiff-Appellant, :  
v. : No. 107861  
VILLAGE OF WOODMERE, ET AL., :  
Defendants-Appellees. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: August 15, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CV-17-887037

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***Appearances:***

Stephen G. Thomas Co., L.P.A., and Stephen G. Thomas,  
*for appellant.*

Consolo Law Firm Co., L.P.A., and Frank Consolo, *for  
appellees.*

MICHELLE J. SHEEHAN, J.:

{¶ 1} Plaintiff-appellant Easton Telecom Services, L.L.C. (“Easton”),  
appeals the trial court’s decision denying its motions for summary judgment against  
defendants-appellees former Mayor Charles E. Smith and the village of Woodmere

("Woodmere" or "the village"). Easton also appeals the trial court's decision granting Smith's and Woodmere's cross-motions for summary judgment. Upon de novo review, we find that no genuine issues of material fact remain to be litigated and Smith is entitled to judgment as a matter of law regarding Easton's claim under R.C. 3.12 and for promissory estoppel. We also find that Woodmere is entitled to judgment as a matter of law regarding Easton's claim in mandamus for its alleged violation of the Ohio Public Records Act and for Easton's claim of breach of contract and promissory estoppel. We therefore affirm.

### I. Procedural History

{¶ 2} On October 6, 2017, Easton filed a complaint against Woodmere and its former mayor, Charles E. Smith, regarding a contract for telecommunications services for the village. The complaint states that Easton agreed to provide "100 MB internet service"<sup>1</sup> to the village through a fiber-optic cable installed by Easton's subcontractor, Everstream, at a price of \$1,370 per month for a term of 36 months. According to the complaint, Easton entered into a contract with Everstream in reliance upon the contract with the village. Thereafter, the village notified Easton that it would not honor the contract.

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<sup>1</sup> Though not relevant to the decision of the court, we are compelled to note inconsistencies contained within the record of this case regarding references to the speed of the internet connection for which Mayor Smith allegedly contracted. Easton's complaint states in its "Factual Allegations" that "[t]he Contract required Easton to provide 100 MB internet service." Easton attached a copy of the contract to its complaint ("Exhibit A"). The contract, however, states that the "speed" of the internet service agreement is "100m." On appeal, Easton asserts in its brief that Easton signed a contract with Mayor Smith for "100 Mbps." (Appellant's Brief, p.9).

**{¶ 3}** The complaint asserts the following causes of action: (1) breach of contract against the village; (2) personal liability against Mayor Smith; (3) promissory estoppel against the village and the former mayor; and (4) mandamus action against the village. In its complaint, Easton sought damages in the amount of \$49,655.28 against the village for breach of contract or against Mayor Smith for damages authorized by statute. Easton also requested reliance damages under its promissory estoppel action. Finally, the complaint sought an order in mandamus for the village to produce the requested public records documents, statutory damages, and reasonable attorney fees.

**{¶ 4}** On July 27, 2018, Easton filed a motion for summary judgment against Mayor Smith for contractual statutory damages under R.C. 3.12 and against Woodmere on its mandamus claim for noncompliance with Easton's public records request. On August 8, 2018, Woodmere and Mayor Smith filed a joint motion for summary judgment against Easton on all claims. All summary judgment motions were opposed. On October 5, 2018, Easton filed a motion to strike the affidavit and exhibit attached to Woodmere's reply brief in support of its summary judgment on Easton's mandamus action, arguing that Woodmere failed to obtain leave of court to file the attached documents. Alternatively, Easton moved for leave of court *instanter* to oppose Woodmere's motion for summary judgment with its evidence and arguments offered in support of its own motion for summary judgment. The trial court did not rule on Easton's motion to strike. The motion is therefore deemed denied. *Lerner v. Giolekas*, 8th Dist. Cuyahoga No. 102768, 2016-Ohio-696, ¶ 8.

**{¶ 5}** On October 9, 2018, the trial court granted summary judgment in favor of the village and Mayor Smith on Easton's R.C. 3.12 claim against Mayor Smith and Easton's claims of breach of contract, promissory estoppel, and mandamus. In this order, the trial court also denied Easton's summary judgment motions on its R.C. 3.12 claim and its mandamus action.

**{¶ 6}** Easton now appeals the trial court's judgment, assigning five errors for our review.

## **II. Assignments of Error**

**I. The trial court erred in granting summary judgment in favor of Mayor Smith on Easton's claim under R.C. 3.12.**

**II. The trial court erred in denying summary judgment in favor of Easton on its R.C. 3.12 claim against Mayor Smith.**

**III. The trial court erred in denying summary judgment in favor of Easton on its public records mandamus claim.**

**IV. The trial court erred in granting summary judgment to Woodmere on Easton's public records mandamus claim.**

**V. The trial court erred in granting summary judgment to Woodmere on Easton's causes of action for breach of contract and promissory estoppel.**

### III. Substantive Facts

#### **The Contract with Mayor Smith**

{¶ 7} On June 19, 2017, Mayor Smith signed a contract for Easton to provide 100 MB internet services to Woodmere via a fiber-optic cable for a term of 36 months at a rate of \$1,370 per month, for a total contract price of \$49,320. According to Easton, in reliance upon the contract Mayor Smith had signed, Easton contracted with Everstream for the installation of the fiber-optic cable for a total contract price of \$26,172 over 36 months. Both contracts included an early-termination fee if the service did not proceed to the full 36-month term. On July 24, 2017, Everstream installed fiber-optic cable to Woodmere's village hall, with an estimated completion date for commencing internet service of August 24, 2017.

{¶ 8} In his deposition, Mayor Smith stated that he signed the contract in his capacity as Mayor and that "just the \$1,370" was within his spending authority. According to the village's treasurer, Thomas M. Cornhoff, Section 107.01(c) of the village's codified ordinances prohibits the mayor from entering into a contract for the provision of services where the provision of services would exceed \$5,000. Cornhoff stated that because the contract with Easton requires an expenditure by the village of more than \$5,000, Mayor Smith had no authority to enter into the contract without council's approval. Additionally, according to Cornhoff, Section 107.01(a) requires the treasurer's signature on the contract, and this contract did not include his signature. Finally, Cornhoff stated that Mayor Smith

never presented the contract for internet services to the village council for authorization, as was required.

{¶ 9} In its opposition to Woodmere's motion for summary judgment, Easton argued that Cornhoff stated in his deposition that Mayor Smith had the discretionary authority to contract with third parties, up to \$25,000. In its reply, Woodmere and Smith disputed Easton's characterization of Cornhoff's testimony, stating that Cornhoff did not testify that Mayor Smith could "contract with third parties" for an amount not to exceed \$25,000, nor does Mayor Smith have such authority. In his deposition, Cornhoff stated that under the annual appropriations, the mayor has a "discretionary line item which is part of the budget \* \* \* a component of Other Operations for Administration." This item, according to Cornhoff, is titled, "Mayor's Discretionary" and is usually for \$24,000 to \$25,000 per year, but is not guaranteed to be renewed each year.

{¶ 10} Prior to the mayor signing the contract with Easton, however, the village council had its council meeting on June 14, 2017, and during the meeting, council placed on its first reading Resolution No. 2017-27, which authorized the mayor to enter into a contract with Spectrum to provide the village with internet services via fiber-optic cable for \$750 per month for 36 months. According to Robert E. Mocas, Easton's president, Mocas received a phone call from Cornhoff on or about July 28, 2017, advising him that the contract with Mayor Smith is not valid until it is approved by council. Easton claims that prior to this phone call, it was unaware Mayor Smith lacked authority to execute the contract. It is unclear in the

record exactly why Mayor Smith executed a contract with Easton when council had already begun the process to authorize the mayor to enter into a contract with Spectrum.

{¶ 11} Thereafter, during a council meeting on August 2, 2017, and after a third reading, council passed Resolution No. 2017-27, which provided that “Council has determined that it is in the best interest of the village to enter into a 36-month agreement with Spectrum to provide the village with internet service at 100 mbps in the amount of \$799 per month \* \* \*.” The resolution, as amended, was signed by the village council president and Mayor Smith. Woodmere’s law director, Frank Consolo, notified Mocas on August 9, 2017, that the agreement between Easton and Mayor Smith is “null and void” because Ohio law and the village’s charter and ordinances required the mayor to receive council approval prior to entering into a contract with Easton.

### **The Public Records Request**

{¶ 12} On August 24, 2017, purportedly in anticipation of litigation, Easton submitted a voluminous public records request to Woodmere via certified mail and hand-delivery, seeking the following:

1. Letters, emails and all other communications with Netcom Communications Networking, Inc. d.b.a NetCom.Com.Net (“NetCom”) and/or with Kenneth W. Dabney or other representative(s) of NetCom, during calendar years 2016 and 2017, to the present.
2. Contracts and other agreements between the Village of Woodmere (“Woodmere) and NetCom for services rendered during calendar years 2016 and 2017.

- 3. Invoices, bills, ledgers and other records of payments by Woodmere to NetCom during calendar years 2016 and 2017.**
- 4. Letters, emails and other communications with Windstream Communications, LLC (“Windstream”) during calendar years 2016 and 2017, to the present.**
- 5. Contracts and other agreements between the Woodmere and Windstream, including any notice of termination, for services rendered during calendar years 2016 and 2017.**
- 6. Invoices, bills, ledgers and other records of payments by Woodmere to Windstream during calendar years 2016 and 2017.**
- 7. Letters, emails and other communications with AltiGen Communications, Inc. (“AltiGen”) during calendar years 2016 and 2017, to the present.**
- 8. Contracts and other agreements between \* \* \* Woodmere and AltiGen for services rendered during calendar years 2016 and 2017.**
- 9. Invoices, bills, ledgers and other records of payments by Woodmere to AltiGen during calendar years 2016 and 2017.**
- 10. Letters, emails and other communications with AT&T, Inc. (“AT&T”) during calendar years 2016 and 2017, to the present.**
- 11. Contracts and other agreements between \* \* \* Woodmere and AT&T for services rendered during calendar years 2016 and 2017.**
- 12. Invoices, bills, ledgers and other records of payments by Woodmere to AT&T during calendar years 2016 and 2017.**
- 13. Letters, emails and other communications with Woodmere’s IT provider, Software Control, Inc. (“SW Control”) during calendar years 2016 and 2017, to the present.**
- 14. Contracts and other agreements between \* \* \* Woodmere and SW Control for services rendered during calendar years 2016 and 2017.**
- 15. Invoices, bills, ledgers and other records of payments by Woodmere to SW Control during calendar years 2016 and 2017.**



**16. Records of interruptions in telecommunications services (including without limitation telephone, internet, wireless and other telecommunication services) for the Woodmere Police Department during calendar years 2016 and 2017, to the present.**

**17. Records of interruptions in telecommunications services (including without limitation telephone, internet, wireless and other telecommunication services) for the Woodmere Fire Department during calendar years 2016 and 2017, to the present.**

**18. Records of interruptions in telecommunications services (including without limitation telephone, internet, wireless and other telecommunication services) for the Woodmere Emergency Medical Service, ambulance or other emergency service departments during calendar years 2016 and 2017, to the present.**

**19. Records of interruptions in telecommunications services (including without limitation telephone, internet, wireless and other telecommunication services) for the councilmanic, departmental, administrative and general office functions of Woodmere during calendar years 2016 and 2017, to the present.**

**20. Records of repair orders issued and repairs effected for any interruptions in telecommunications services for the Woodmere Police Department during calendar years 2016 and 2017, to the present.**

**21. Records of repair orders issued and repairs effected for any interruptions in telecommunications services for the Woodmere Fire Department during calendar years 2016 and 2017, to the present.**

**22. Records of repair orders issued and repairs effected for any interruptions in telecommunications services for the Woodmere Emergency Medical Service, ambulance or other emergency service department during calendar years 2016 and 2017, to the present.**

**23. Records of repair orders issued and repairs effected for any interruptions in telecommunications services for the councilmanic, departmental, administrative and general office functions of Woodmere during calendar years 2016 and 2017, to the present.**

**24. Letters, emails and other communications with representatives of Easton Telecom Services, LLC, including without limitation NetCom and Kenneth W. Dabney, concerning the document signed by Mayor Charles E. Smith on June 19, 2017, copy of which is enclosed here with, and marked as Exhibit A.**

**25. Minutes of all meetings of Woodmere's Village Council during calendar years 2016 and 2017, to the present, at which any discussions occurred in public or executive session concerning the subjects of the public records requested for production in Public Records Requests Nos. 1 through 24, above.**

**26. Minutes of all committee meetings of Woodmere's Village Council during calendar years 2016 and 2017, to the present, including without limitation the Finance Committee, at which any discussions occurred in public or executive session concerning the subjects of the public records requested for production in Public Records Requests Nos. 1 through 24, above.**

**27. Records maintained by Mayor Charles E. Smith and Treasurer Thomas M. Cornhoff concerning the subjects of public records requested for production in Public Records Requests Nos. 1 through 26, above.**

**28. Letters, emails and other records of communications concerning the subjects of the public records requested for Production in Public Records Requests Nos. through 26, above, by, to, from or between any of the persons or entities identified in the City Directory for the Village of Woodmere, copy of which is enclosed herewith, and marked as Exhibit B.**

**29. Letters, emails and other records and communications during calendar years 2016 and 2017, to the present, with the Chagrin Valley Dispatch group concerning the subjects of the public records requested for Production in Public Records Requests Nos. 1 through 26, above.**

**30. Legislation adopted by Woodmere's Village Council during calendar years 2016 and 2017, to the present, concerning the subjects of the public records requested for Production in Public Records Requests Nos. 1 through 26, above.**

**31. Requests by Woodmere for engineering studies, reports or other data to evaluate its needs and capacities for bandwidth improvements to its telecommunications systems during calendar years 2016 and 2017, to the present.**

**32. Engineering studies, reports or other data obtained by Woodmere to evaluate its needs and capacities for bandwidth improvements to its telecommunications systems during calendar years 2016 and 2017, to the present.**

**33. Policy protocols and other regulations of Woodmere in effect during calendar year 2017, for the personal use by Woodmere's employees, officers, elected officials, first responders and other municipal representatives or agents, of Woodmere's telecommunications systems, including without limitation live streaming of programming from the internet, pornography and other material not related to governmental, first responder or other public purposes.**

**34. Records of practices by Woodmere during calendar year 2017, for auditing the personal use by Woodmere's employees, officers, elected officials, first responders, and other municipal representatives or agents, of Woodmere's telecommunications systems, including without limitation live streaming of programming from the internet, pornography and other material not related to governmental, first responder or other public purposes.**

**35. Records of disciplinary procedures and sanctions implemented or enforced by Woodmere during calendar year 2017, as result of any audits of the personal use by Woodmere's employees, officers, elected officials, first responders and other municipal representatives or agents, of Woodmere's telecommunications systems, including without limitation live streaming of programming from the internet, pornography and other material not related to governmental, first responder or other public purposes.**

**36. Reports or other records obtained by Woodmere during calendar year 2017 to evaluate the causes of interruptions to the telecommunications services, internet access and other digital information systems of Woodmere, that contributed to the decisions to install a 10 mg, followed by a 100 mg bandwidth expansion, including without limitation the internal and external IP addresses**

that were consuming available bandwidth prior to each such expansion.

37. Records of actions undertaken during April 2017 by Woodmere to correct or mitigate any deficient internet or telecommunications systems found to have been caused by the personal use of those systems by Woodmere's employees, officers, elected officials, first responders and other municipal representatives or agents, including without limitation the live streaming of programming from the internet, pornography and other material not related to governmental, first responder or other public purposes.

38. Records of the discretionary budget authorized for the use of the Mayor of Woodmere without further Council approval for telecommunications purposes during 2017.

39. Records of the expenses incurred from or appropriated against the Mayor's discretionary budget in 2017 for telecommunications purposes during 2017.

40. Records of the budget authorized for the use of the Mayor of Woodmere without further Council approval for emergency purposes during 2017.

41. Records of the expenses incurred from or appropriated against the Mayor budget in 2017 for emergency purposes during 2017.

42. Records of the budget authorized for the use of the Mayor of Woodmere without further Council approval for police, fire, Emergency Medical Services, ambulance and other first responder purposes during 2017.

43. Records of the expenses incurred from or appropriated against the Mayor's budget in 2017 for police, fire, Emergency Medical Services, ambulance and other first responder purposes.

44. All agendas of the Woodmere Village Council during calendar year 2017, to the present.

45. Records of all proposals received by, including any data, marketing, pricing or other information delivered to, Woodmere for the installation of 100 mg circuit to the internet, including without

limitation recommendations, quotes, orders or other information obtained by Woodmere from the Chagrin Valley Dispatch group.

{¶ 13} Easton requested the availability of the foregoing records, which consisted of a six-page request, within two weeks of the request. More than three weeks later, on September 20, 2017, the village's counsel provided Easton with a status update on the records request and advised that he anticipated completing the collection of responsive documents on or before September 29, 2017. Counsel stated that the village staff was in the process of compiling the records that contained "45 separate requests for hundreds of documents." When the documents had not been received, on October 3, 2017, Easton sent a letter inquiring of the status of the documents. In response, counsel for the village advised Easton in a letter dated October 6, 2017, that "[r]esponsive public records are available for review at my office next week." In this letter, counsel requested that Easton make arrangements with his secretary to view the documents and mark which documents it wished to be copied. Counsel stated that he expected Easton's counsel would wish to review the numerous documents before incurring copying costs. On that same day, unbeknownst to Woodmere's counsel, Easton filed its complaint against the village, which included a cause of action in mandamus.

{¶ 14} According to Easton, it electronically filed the complaint at 1:18 p.m. on October 6, and the village's email was sent at 5:25 p.m., advising that the records were available for inspection before copying. On October 9, 2017, Easton advised Woodmere's counsel that Easton requested "copies" of the documents, not an

“inspection.” And on October 17, 2017, Easton advised Woodmere that it was noncompliant with the records request. One week later, Woodmere informed Easton via email that the responsive documents had been copied digitally to a DVD format and would be available upon payment of \$204.38 for the cost of copying the documents. Easton advised Woodmere one day later that Easton’s counsel would retrieve the documents that day. Easton retrieved the responsive documents on October 24, 2017, two months after Easton submitted its public records request.

{¶ 15} In an affidavit attached to Woodmere’s opposition to Easton’s motion for summary judgment, Woodmere’s counsel provided numerous reasons for the delay in responding to Easton’s initial request: the records request included 45 separate categories and was extremely extensive; the request required input from several part-time employees of the village, including the police chief, the fire chief, the treasurer, and the office manager; and the office manager was suffering from a serious illness to which she ultimately succumbed and was unable to coordinate the village’s response. Counsel also stated that he checked frequently with the treasurer and police and fire chiefs, along with the mayor, as to the status of the procuring, compiling, and assembling the responsive documents. According to Woodmere’s counsel, once the documents were eventually compiled, counsel contracted with a third party to scan the documents and place them on a disc, because the village did not have the capability or manpower to do so. Counsel also stated that he needed additional time to review the documents once they were scanned and placed on the disc, for redaction purposes.

**{¶ 16}** In its reply brief in support of its motion for summary judgment, Woodmere attached another affidavit of Woodmere's counsel offering further explanation of the events of October 6 through October 24. In this affidavit, counsel explained that he received the records from the village on October 6 but required time for review, noting that he discovered approximately 1,100 documents in the file folders. Counsel also explained that after seeing the voluminous amount of documents, he expected that Easton's counsel would also wish to review the documents before paying for all of them to be copied. Woodmere's counsel stated in his affidavit that this is the reason he emailed Easton's counsel on the afternoon of October 6 telling him that the records would be available for inspection and review the following week. He stated that he did not know Easton had filed the mandamus action until October 9, when he received Easton's letter in which Easton's counsel rejected the offer of inspection. According to Woodmere's counsel, after learning that Easton did not wish to review the documents, he worked to obtain copies, which proved more challenging than expected, he reviewed 1,153 documents, and he advised Easton on October 24 that the disc containing copies of the records were available.

#### **IV. Summary Judgment**

**{¶ 17}** Summary judgment is appropriate where: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made,

who is entitled to have the evidence construed most strongly in his or her favor. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978); Civ.R. 56(C).

{¶ 18} Civ.R. 56(C) states that summary judgment shall be rendered if “the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

{¶ 19} “[A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party’s claims.” *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264. The movant must specifically point to evidence contained within the pleadings, depositions, answers to interrogatories, written admissions, affidavits, etc., that affirmatively demonstrate that the nonmovant has no evidence to support his claims. *Id.* Once the moving party meets its initial burden, the nonmovant bears a reciprocal burden to produce competent evidence of the types listed in Civ.R. 56(C) showing that there is a genuine issue for trial. Civ.R. 56(E).

{¶ 20} We review a trial court’s grant of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.



## V. Personal Liability Under R.C. 3.12

**{¶ 21}** In its first and second assignments of error, Easton contends that the trial court erred in granting summary judgment in favor of Mayor Smith and against Easton on Easton's claim under R.C. 3.12 that Mayor Smith was personally liable for signing the contract for Easton to provide internet telecommunications services to Woodmere. In support, Easton claims that Mayor Smith is personally liable because he signed the contract on behalf of Woodmere without legislative authority or fiscal appropriation. On appeal, Mayor Smith concedes that he exceeded his spending authority by signing the agreement with Easton for internet services. The mayor contends, however, that R.C. 3.12 is not applicable here because the agreement does not relate to the construction, improvement, or keeping in repair of a building, nor does it concern the management of a public institution.

**{¶ 22}** R.C. 3.12 provides:

An officer or agent of the state or of any county, township, or municipal corporation who is charged or entrusted with the construction, improvement, or keeping in repair of a building or work of any kind, or with the management of or providing for a public institution, shall make no contract binding or purporting to bind the state, or such county, township, or municipal corporation, to pay any sum of money not previously appropriated for the purpose for which such contract is made, and remaining unexpended and applicable thereto, unless such officer or agent has been authorized to make such contract. If such officer or agent makes or participates in making a contract without such appropriation or authority, he is personally liable thereon, and the state, county, township, or municipal corporation in whose name or behalf the contract was made shall not be liable thereon.

{¶ 23} There is no question that Mayor Smith was an officer or agent of the Woodmere. The issue, however, is whether Mayor Smith, in signing the agreement for internet services, was an officer or agent “charged or entrusted with the construction, improvement, or keeping in repair of a building or work of any kind” or if he was “charged or entrusted \* \* \* with the management of or providing for a public institution.”

{¶ 24} We note initially that the Woodmere is a municipal corporation. “Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages.” *Christensen v. Hagedorn*, 174 Ohio St. 98, 100, 186 N.E.2d 848 (1962), quoting Ohio Constitution, Article XVIII, Section 1. And under R.C. 735.27, a village is charged with the “care, supervision, and management” of public institutions within the village, including “public parks, baths, libraries, market houses, crematories, sewage disposal plants, houses of refuge and correction, workhouses, infirmaries, hospitals, pesthouses, or any of such institutions owned, maintained, or established by such village.” Moreover, courts have construed “public institutions” to mean public hospitals or universities. *See State ex rel. Fox v. Cuyahoga Cty. Hosp. Sys.*, 39 Ohio St.3d 108, 529 N.E.2d 443 (1988) (finding the county owned hospital was a public institution for purposes of a public records request under R.C. 149.43); *Halaby v. Bd. of Dirs. of Univ. of Cincinnati*, 162 Ohio St. 290, 298, 123 N.E.2d 3 (1954) (finding the university a “public institution” as it “stands in the same category as the city’s water service, garbage-collection service,

fire-department service, and its public-school service”); *Denison Univ. v. Bd. of Tax Appeals*, 2 Ohio St.2d 17, 205 N.E.2d 896 (1965) (for purposes of construing “public colleges \* \* \* academies \* \* \* and public institutions of learning” as taxable property under R.C. 5709.07). Thus, based upon the Ohio Supreme Court’s interpretation of “public institutions” in other statutes, the village itself, for purposes of this statute, is not deemed a public institution and the section of R.C. 3.12 providing for personal liability of an officer or agent “charged or entrusted \* \* \* with the management of or providing for a public institution” is therefore inapplicable to Mayor Smith.

{¶ 25} In considering the portion of the statute that requires the officer or agent be “charged or entrusted with the construction, improvement, or keeping in repair of a building or work of any kind,” we cannot find this portion applicable here. As the Fourth District Court of Appeals has stated, “while there is a paucity of authority in this area, R.C. 3.12 has generally been applied only when the contract involved was related to the building or improvement of a public work or public institution.” *Chesapeake v. Justice*, 4th Dist. Lawrence No. 93 CA 07, 1993 Ohio App. LEXIS 6473, 8 (Dec. 28, 1993), citing *Cincinnati v. Cameron*, 33 Ohio St. 336 (1878) (construction of a public hospital); *Dayton v. Thomas*, 20 Ohio N.P. 539, 1916 Ohio Misc. LEXIS 66 (1916) (repairs made to a school building); *Asphalt Material & Constr. Co. v. Durbin*, 5th Dist. Knox No. 81-CA-23, 1982 Ohio App. LEXIS 14833 (Feb. 26, 1982) (asphalt purchased for the maintenance of roads).

{¶ 26} In *Justice*, the village charged that the official had entered into numerous unauthorized contracts on behalf of the village. According to the village,

the official authorized, without council's approval, the hiring of an auxiliary police officer, as well as the payment of overtime. The court found that these acts "ha[ve] nothing to do with the construction or keeping in repair of a building or work of any kind," and it therefore declined to hold the official personally liable under R.C. 3.12. *Justice* at 8-9.

{¶ 27} Similarly, we find the contract Mayor Smith signed is not related to the construction or repair of a building or work of any kind, notwithstanding the allegation that Everstream performed some amount of "construction" in order to run a cable line to the village hall. Rather, the contract with Easton was for the purchase of internet services for Woodmere. We therefore find R.C. 3.12 inapplicable here.

{¶ 28} Based upon the above, we find no genuine issue of material fact exists regarding Mayor Smith's purported personal liability under R.C. 3.12 and he is therefore entitled to judgment as a matter of law. The trial court did not err in granting summary judgment in Smith's favor and against Easton.

{¶ 29} Easton's first and second assignments of error are overruled.

#### VI. Public Records Request Under R.C. 149.43

{¶ 30} In its third and fourth assignments of error, Easton contends the court erred in denying Easton's motion for summary judgment on its public records mandamus claim and in granting summary judgment in favor of Woodmere on this claim. In support, Easton claims that Woodmere's untimely response to its request for copies of Woodmere's public records entitled Easton to statutory damages and

attorney fees. Woodmere in response argues that Easton's mandamus claim is moot because the village provided the requested documents, the village did not unreasonably delay its response to Easton's public records request and made a good-faith effort to comply with R.C. 149.43, and Easton's public records request was overly broad and nonspecific.

### **Mandamus Action**

{¶ 31} Easton filed its complaint against Woodmere on October 6, 2017, which included a mandamus action. Easton alleged in its fourth cause of action that the village failed to respond to Easton's public records requests in a substantive manner and therefore sought a writ of mandamus concerning its requests for records. Thereafter, in a summary judgment motion, Easton sought statutory damages and attorney fees relating to its requests.

{¶ 32} Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, the Ohio Public Records Act. *State ex rel. Cincinnati Enquirer v. Deters*, 148 Ohio St.3d 595, 2016-Ohio-8195, 71 N.E.3d 1076, ¶ 18. To be entitled to a writ of mandamus, a relator must establish a clear legal right to the requested relief and a clear legal duty of the respondents to provide the relief. *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 20. The relator must prove it is entitled to the requested extraordinary relief by clear and convincing evidence. *Id.* at ¶ 19. Where, however, a public office produces the requested records prior to the court's decision, a party's mandamus action is moot. *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952,

¶ 22; *State ex rel. Patituce & Assocs., L.L.C. v. Cleveland*, 2017-Ohio-300, 81 N.E.3d 863, ¶ 4 (8th Dist.).

{¶ 33} Here, the record shows that Easton made a public records request of the village on August 24, 2017. And on October 24, 2017, after being advised that approximately 1,100 documents had been copied and placed on a DVD in response to Easton’s public records request, Easton obtained the requested records. The village’s production of the requested documents therefore rendered Easton’s mandamus action moot.

### **Statutory Damages and Attorney Fees**

{¶ 34} Easton claims, however, that Woodmere did not respond within a reasonable time, stating that they were not produced until after the mandamus action was filed, and the records were not produced as initially promised. Therefore, according to Easton, it is entitled to statutory damages and attorney fees. Woodmere contends that it did not unreasonably delay its response to Easton’s request or act in bad faith. Woodmere also contends that it never promised the documents would be available on a date certain.

{¶ 35} Notwithstanding the mootness of the mandamus claim, a relator may be entitled to other remedies if the production of records was not completed “within a reasonable period of time.” *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 13, quoting R.C. 149.43(B) and (C). “Even when a claim for the production of records has been satisfied, a separate claim based on the untimeliness of the response persists unless copies of all required

records were made available ‘within a reasonable period of time.’” *Id.* at ¶ 19, quoting R.C. 149.43(B)(1).

{¶ 36} To address any remedy still available to Easton, we review the version of the statute in effect at the time Easton instituted its request. *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, ¶ 39; *Kesterson* at ¶ 11, fn. 1. Because Easton submitted its public records request in August 2017 and the mandamus action was filed in October 2017, former R.C. 149.43, as amended by 2015 Am.Sub.H.B. No. 471, effective December 19, 2016, applies.<sup>2</sup>

{¶ 37} Former R.C. 149.43(B)(1), as amended, sets forth the duty of a public office in responding to a public-records request. The version applicable in this case states as follows:

Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. \* \* \* [U]pon request, public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time.

{¶ 38} R.C. 149.43(C) provides a remedy when a public office fails to prepare requested documents pursuant to the statute:

(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in

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<sup>2</sup> All references to R.C. 149.43, Ohio’s Public Records Act, shall refer to the version applicable to this case unless otherwise noted.

accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

\* \* \*

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. \* \* \*

(2) If a requester transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, \* \* \* the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section. The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. \* \* \* The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

{¶ 39} The statute further provides that a court may award reasonable attorney fees to the relator if the court determines any of the following:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.



(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

\* \* \*

R.C. 149.43(C)(3)(b); *Cleveland Assn. of Rescue Emps./ILA Local 1975 v. Cleveland*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602.

{¶ 40} Accordingly, based on the statutory language above, a requester may recover statutory damages where the court determines that the public office failed to comply with a public records request within a reasonable time. R.C. 149.43(C)(2); *State ex rel. Cordell v. Paden*, Slip Opinion No. 2019-Ohio-1216, ¶ 11. A requester may also be entitled to recover reasonable attorney fees where the court finds that the public office (1) failed to respond to the request within a reasonable period of time, (2) promised to permit the requester to inspect or receive the requested documents within a specified time but failed to fulfill that promise, or (3) acted in bad faith. R.C. 149.43(C)(3)(b); *Cleveland Assn. of Rescue Emps./ILA Local 1975* at ¶ 11.

{¶ 41} Easton does not claim that Woodmere acted in bad faith. Easton claims, however, that Woodmere promised to produce the requested documents on September 29, 2017, yet delayed producing them for 26 more days. The purported evidence of this promise is a letter drafted by Woodmere's counsel on September 20, 2017, in which counsel stated:

I want to give you a status update on your August 24, 2017 records request to the village which contained 45 separate requests for

hundreds of documents. The village staff is still compiling the records and anticipate completing the project on or before September 29, 2017. If you need further information or questions contact me as the law director for the village.

{¶ 42} We find that this letter was not a promise to permit Easton “to inspect or receive copies of the public records requested within a specified period of time.” Rather, Woodmere’s counsel was merely providing an update on the village’s progress concerning the task of compiling the responsive records. The letter does not specifically address inspection or copying. And counsel’s statement that he “anticipates” completing the project “on or before September 29, 2017” was a statement of expectation or a prediction that he hoped to have the records compiled by that date; it was not a guarantee or assurance that the responsive documents would be available for Easton’s inspection or copying on September 29. Woodmere therefore did not fail to fulfill such promise, and Easton is not entitled to attorney fees under R.C. 149.43(C)(3)(b)(ii).

{¶ 43} Finally, Easton claims that it is entitled to statutory damages and attorney fees because Woodmere failed to respond to the records request within a reasonable period of time. There is no statutory deadline by which a public office must respond to a public records request. *State ex rel. Patituce & Assocs., L.L.C.*, 2017-Ohio-300, 81 N.E.3d 863, at ¶ 5, citing *Deters*, 148 Ohio St.3d 595, 2016-Ohio-8195, 71 N.E.3d 1076, at ¶ 23. Rather, the statute requires only that a public office respond within a reasonable period of time. *Cleveland Assn. of Rescue Emps./ILA Local 1975*, 8th Dist. Cuyahoga No. 106783, 2018-Ohio-4602, at ¶ 9. Under R.C.

149.43(B)(1), “[t]he primary duty of a public office when it has received a public-records request is to promptly provide any responsive records within a reasonable amount of time \* \* \*.” *Paden*, Slip Opinion No. 2019-Ohio-1216, at ¶ 11. And a determination of what is “reasonable” depends on the facts and circumstances of each case. *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 10, citing *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 37-38.

{¶ 44} Additionally, a public officer cannot evade the public’s right to public records within a reasonable time by claiming the request is too costly or too time-consuming, or that the request creates too much interference with the ordinary duties of the office. *Fox*, 39 Ohio St.3d 108, 111, 529 N.E.2d 443 (1988). However, “R.C. 149.43(A) envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials.” *Kesterson*, 156 Ohio St.3d 22, 2018-Ohio-5110, at ¶ 20, quoting *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 623, 640 N.E.2d 174 (1994); *Patituce* at ¶ 9-10; *Anderson v. Greater Cleveland Regional Transit Auth.*, Ct. of Cl. No. 2018-00593PQ, 2018-Ohio-3653, ¶ 7. Thus, analyzing the timeliness of a public office’s response necessarily requires consideration of “the practical and legal restrictions” a municipality faces. *State ex rel. Shaughnessy v. Cleveland*, 149 Ohio St.3d 612, 2016-Ohio-8447, 76 N.E.3d 1171, ¶ 12. And a public office is not

required to respond to all public records requests within any arbitrary number of days. *Shaughnessy* at ¶ 14.

{¶ 45} The requester bears the burden of demonstrating the public office unreasonably delayed its public-records request. *Kesterson* at ¶ 19, citing *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 44.

{¶ 46} Here, Easton submitted an admittedly voluminous public records request to Woodmere on August 24, 2017. Approximately two months later, Easton received the responsive documents.

{¶ 47} Woodmere, in defending its two-month response time as reasonable, argued that Easton’s public records request consisted of 45 separate categories of records, 1,153 responsive documents, and a two-year period. The request included: “letters, emails, and all other communications,” “contracts and other agreements,” “invoices, bills, ledgers and other records of payments,” concerning five different entities; “records of interruptions in telecommunications services” for the Woodmere police department, the fire department, the emergency medical services, and “councilmanic, departmental, administrative and general office functions” of Woodmere; “records of repair orders issued and repairs effected” for interruptions in telecommunications services for the police department, the fire department, the emergency medical services, and “councilmanic, departmental, administrative and general office functions” of Woodmere; “letters, emails and other communications” with Easton; minutes of all council meetings and committee meetings concerning

any public records requested in “requests nos. 1 through 24”; records maintained by the mayor and the treasurer concerning its “requests nos. 1 through 26”; “letters, emails and other records of communications” concerning request nos. 1 through 26 “by, to, from, or between” any person or entity in the city directory and with Chagrin Valley Dispatch group; legislation concerning “request nos. 1 through 26”; engineering studies and reports concerning bandwidth improvements; Woodmere’s policy protocols, records of practices, and disciplinary procedures and sanctions regarding employees’ personal use of telecommunications systems; reports concerning causes of interruptions in telecommunications services; records of actions taken in mitigation of deficient telecommunications systems; records of the mayor’s discretionary budget, budget for emergency purposes, and budget for police, fire, and emergency services; records of the expenses incurred from the discretionary budget, budget for emergency purposes, and budget for police, fire, and emergency services; all agendas of the Woodmere village council for 2017 to the present; and records of all proposals concerning the installation of a “100 mg circuit” to the internet.

{¶ 48} Woodmere explained that Easton’s request required input from several part-time employees of the village, including the police chief, the fire chief, the treasurer, and the office manager, who was suffering from a major illness to which she ultimately succumbed. According to Woodmere, the village also required assistance from a third party to scan the 1,153 documents onto a disc because the village lacked the capability and manpower to do so. Finally, once Woodmere

received the compiled documents from the various departments in the village, counsel for the village required additional time to review all of the documents and make any necessary redactions.

**{¶ 49}** We find that under the circumstances of this case, the two-month period of time taken by Woodmere to provide responsive records to Easton was reasonable. The request was broad and extensive, comprising requests of several departments and spanning two years. And responding to the request required the involvement of several department officials, all of whom were part-time employees who had to locate, retrieve, and transmit the documents to the village's counsel. Additionally, once all 1,153 documents were compiled and forwarded to counsel, counsel required time to review, analyze, redact, and copy the responsive documents. Moreover, the village maintained communication with Easton, providing status updates on the progress of the village's compilation of the responsive records, and there is no evidence the village ever refused to produce any of the requested records. *See Patituce*, 2017-Ohio-300, 81 N.E.3d 863, at ¶ 10 (finding the public office responded in a reasonable time where the city had to review compiled documents before submitting the responsive documents, the city responded to the requester's "successive requests for status updates," and the city never refused to produce any of the requested records).

**{¶ 50}** For these reasons, we find summary judgment in the village's favor was proper and Easton is not entitled to an award of statutory damages or attorney fees associated with its public records request.

**{¶ 51}** Easton’s third and fourth assignments of error are overruled.

## **VII. Breach of Contract and Promissory Estoppel**

**{¶ 52}** In its final assignment of error, Easton contends that the court erred in granting summary judgment to the village on Easton’s claims of promissory estoppel and breach of contract. In support, it concedes that Ohio does not recognize a cause of action for promissory estoppel against a municipality; however, it urges this court to reject Ohio’s “antiquated” view of quasi-contractual remedies against a governmental entity. Easton also contends that there is sufficient evidence to deny the village’s motion for summary judgment on Easton’s breach of contract claim because the village appears to have conflicting ordinances concerning the mayor’s spending authority.

**{¶ 53}** In their summary judgment motion, Mayor Smith and Woodmere contend that Easton does not have an enforceable contract with the village because (1) the contract lacked the village treasurer’s signature certifying the availability and appropriation of funds, and (2) the contract exceeded \$5,000 and therefore required council approval by a majority vote. Thus, according to the village, because the Mayor lacked the authority to contract with Easton for internet services in excess of \$5,000, there is no valid contract upon which Easton can base its breach of contract action. Easton contends, however, that there is a genuine issue of material fact regarding the mayor’s authority to contract with Easton, where the village has purportedly adopted conflicting ordinances. In support, Easton argues that the mayor signed the contract because he had authority within his \$25,000

discretionary spending authority, regardless of the “\$5,000 limit [the mayor] otherwise identified on his spending authority.”

{¶ 54} It is well-settled in Ohio that a municipality has only powers that are conferred by the Constitution, the statutes of the state, and by charter adopted pursuant to the Constitution and statutes of the state; the officers of a municipality have only the powers as are conferred by the Constitution, statutes, and charter; and these powers may be exercised only in the manner prescribed by statute and the charter. *Zurawski v. N. Olmsted*, 8th Dist. Cuyahoga No. 50711, 1986 Ohio App. LEXIS 6916, 8 (May 22, 1986), citing *Welch v. Lima*, 89 Ohio App. 457, 464, 102 N.E.2d 888 (3d Dist.1950); *Swickrath & Sons, Inc. v. Elida*, 3d Dist. Allen No. 1-03-46, 2003-Ohio-6288, ¶ 21. “[N]o recovery can be had on a contract that is entered into contrary to one or more of the legislated requirements.” *Shampton v. Springboro*, 98 Ohio St.3d 457, 2003-Ohio-1913, 786 N.E.2d 883, ¶ 27, quoting *Lathrop Co. v. Toledo*, 5 Ohio St.2d 165, 172-173, 214 N.E.2d 408 (1966).

{¶ 55} Chapter 107.01 of the village’s ordinances governing contract procedures provides as follows:

(a) Proper Authorization. No contract, or an amendment or a change order to a contract, shall be enforceable against the Village unless it has been duly authorized, as provided for herein, and executed in the name of the Village by the Mayor and bears the signature of Treasurer of the Village, to the extent required by the Ohio Revised Code, certifying the availability and appropriation of funds for the contract or any amendment or change order to the contract.

\* \* \*



**(c) Authorization for Purchase, Lease, Design, Provision of Services.**  
In the event the investigation or a good faith estimate by the Mayor indicates that a proposed project, purchase, lease or provision of services will exceed five thousand dollars (\$5,000), the approval of Council by a motion and majority vote is necessary to authorize the expenditure of such funds.

**{¶ 56}** Here, the record demonstrates that the contract the mayor signed with Easton on behalf of the village did not bear the signature of the village treasurer “certifying the availability and appropriation of funds for the contract,” as required by the village ordinance. Additionally, the contract for internet services was for a three-year period of \$1,370 monthly payments, which totaled \$49,320 for the entirety of the contract. This contract therefore far exceeded the mayor’s \$5,000 authority outlined in the above village ordinance.

**{¶ 57}** Easton claims that according to the village treasurer, the mayor had a discretionary spending authority of \$25,000 to contract with third parties. Cornhoff testified, however, that the mayor has a discretionary \$24,000 to \$25,000 spending per year, which is a “component of Other Operations for Administration” and is categorized as “Mayor’s Discretionary.” This discretionary spending authority does not pertain to the mayor’s authority to contract with third parties on behalf of the village. Chapter 107.01 of the village ordinances, entitled “Contract Procedures,” on the other hand, does indeed reference the proper authorization required to obtain an enforceable contract with the village for “purchase, lease, design, [or] provision of services.” The mayor’s purported discretionary spending authority of \$25,000

therefore does not conflict with, nor does it negate, the village's contract procedures outlined in Chapter 107.01(a) and (c).

{¶ 58} Moreover, at the very least, regardless of the total amount of the internet agreement, the village ordinance requires the village treasurer's signature on the contract, which certifies the availability and appropriation of funds for the contract. The contract in this case does not bear Cornhoff's signature.

{¶ 59} The contract Mayor Smith signed with Easton is therefore void and unenforceable. Accordingly, Easton's claim of breach of contract is without merit.

{¶ 60} Likewise, Easton's cause of action for promissory estoppel against Woodmere or Mayor Smith is also without merit.

{¶ 61} The well-settled law in Ohio is that "all governmental liability ex contractu must be express and must be entered into in the prescribed manner, and that a municipality or county is liable neither on an implied contract nor upon a quantum meruit by reason of benefits received." *Kraft Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio App.3d 33, 44, 713 N.E.2d 1075 (8th Dist.1998), quoting 20 Ohio Jurisprudence 3d, Counties, Townships and Municipal Corporations, Section 278, at 241 (n.d.); *Shampton*, 98 Ohio St.3d 457, 2003-Ohio-1913, 786 N.E.2d 883; *Sylvester Summers, Jr. Co., L.P.A. v. E. Cleveland*, 8th Dist. Cuyahoga No. 98227, 2013-Ohio-1339, ¶ 25.

{¶ 62} An entity entering into a contract with a municipality has the burden of "ascertain[ing] whether the contract complies with the Constitution, statutes, charters, and ordinances so far as they are applicable. If [it] does not, [it] performs

at [its] peril.” *Shampton* at ¶ 28, quoting *Lathrop Co.*, 5 Ohio St.2d at 173, 214 N.E.2d 408; *Sylvester Summers, Jr. Co., L.P.A.* at ¶ 26. One who “seek[s] to enter into a contractual relationship with a governmental entity [is] on constructive notice of the statutory limitations on the power of the entity’s agent to contract.” *Shampton* at ¶ 34, citing *Bohach v. Advery*, 7th Dist. Mahoning No. 00-CA-265, 2002-Ohio-3202.

{¶ 63} Here, based on the foregoing, Easton is charged with the responsibility of ascertaining the limitations of the power of Mayor Smith to enter into a 36-month contract for internet services. Easton is therefore responsible for having the knowledge of the limit of the mayor’s power in making the alleged representation that he had the authority to contract for internet services for the village. And the evidence shows that Mayor Smith did not have the authority to enter into a contract with Easton without prior council approval, because the contract lacked the treasurer’s signature and it exceeded \$5,000. Easton’s claim of promissory estoppel is therefore not actionable against Woodmere.

{¶ 64} Accordingly, summary judgment in favor of Mayor Smith and Woodmere was proper. Easton’s fifth assignment of error is overruled.

{¶ 65} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MICHELLE J. SHEEHAN, JUDGE

KATHLEEN ANN KEOUGH, J., CONCURS;  
SEAN C. GALLAGHER, P.J., CONCURS (WITH SEPARATE CONCURRING  
OPINION ATTACHED)

SEAN C. GALLAGHER, P.J., CONCURRING:

{¶ 66}I concur with the majority decision but write separately to express my concerns with what could be construed as an overly narrow interpretation of the phrase “public institution” as discussed in ¶ 24 of the majority opinion as it relates to R.C. 3.12. Woodmere did not discuss whether the village was a “public institution” in the summary judgment proceedings below. Instead, Woodmere simply claimed that the provision of internet services was not within the province of R.C. 3.12 under the rationale developed in *Chesapeake v. Justice*, 4th Dist. Lawrence No. 93 CA 07, 1993 Ohio App. LEXIS 6473, 8 (Dec. 28, 1993). Because I agree with the majority’s analysis on that point that the provision of services does not fall under the rubric of R.C. 3.12, I would not address the scope of what constitutes a “public institution” for the first time on appeal.