

COMMISSIONERS JOURNAL NO. 45 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 17, 2004

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Kristopher W. Jordan, Deborah B. Martin, James D. Ward

3:00 PM Bid Opening Date And Time For Village Of Ashley Formula FY'03 ADA Playground Equipment Project Bid Opening Will Be Held At 101 East High Street, Ashley, Ohio.

PUBLIC COMMENT

Mr. Ward announced that Delaware County has been recognized by the National Association of Counties with a 2004 NACo Achievement Award for the county's Sewer Master Plan. The award will be presented at the 2004 Annual Conference to be held in Phoenix, Arizona.

RESOLUTION NO. 04-716

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 10, 2004 AS CONTAINED IN THE COUNTY'S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Jordan, seconded by Mr. Ward to approve the resolutions and records of the proceedings from regular meeting held June 10, 2004 as contained in the county's official electronic recordings of the proceedings.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-717

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0616 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0616:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve payment of warrants in batch numbers CMAPR0616, memo transfers in batch numbers MTAPR0616 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO'S			
D & D Agri Hauling	Hauling Biosolids to Landfill	65211905-5270	\$ 8,100.00
Republic Services Inc.	Disposal of Sewage Sludge	65211919-5301	\$ 13,000.00
Newcome Electronic Systems	Liability Insurance Claims/Lightning Damage	60111901-5370	\$ 16,000.00
Williams Insurance Agency	Insurance Renewal/2003-2004	60111901-5370	\$ 25,330.00
Increases			
Polydyne Inc.	Polymer Chemicals/Alum Creek	65211919-5290	\$ 5,000.00
Celeste Brammer	Public Defender	10011202-5301	\$ 15,000.00
Jack Carney-Debord	Public Defender	10011202-5301	\$ 5,000.00
Kindercare Neverland	Day Care	22411601-5348	\$ 20,800.00
Teri Shellhouse	Home Based	22511607-5348	\$ 5,000.00
Vouchers			
County Risk Sharing Authority	CORSA Program Costs	60111901-5370	\$ 398,522.00
WTW Measurement System Inc.	WTW IQ System w/ Comm. Output	65211905-5450	\$ 17,295.23
Marathon Ashland Petroleum	Fuel for Service Center	10011106-522822801	\$ 6,865.20
Scott, Scriven & Wahoff	Legal Services	75110902-5301	\$ 6,367.50
Todays Learning Child	Day Care	22411606-5348	\$ 5,051.00
Don A Del Inc. West	Day Care	22411606-5348	\$ 5,338.00
Kindercare Neverland	Day Care	22411606-5348	\$ 25,985.00
Presbyterian Child Welfare	Residential Treatment	22511607-5342	\$ 17,320.00
Presbyterian Child Welfare	Residential Treatment	22511607-5342	\$ 20,970.00
Delaware Health Dept	Wellness Program Apr/May 04	22411601-5301	\$ 13,757.60
Delaware JVS Area Career	Resource Room	22411603-5348	\$ 5,561.19
Delaware JVS Area Career	ABLE Training	22411603-5348	\$ 6,912.50
Ben Bro Enterprises	Bldg/land rental	1001105-533533502	\$ 14,625.00
Memo Transfers			
From	To		
CSEA/Court Contract 23711630-5360	Juvenile Ct./Court Contract 10026201-4245		\$ 7,760.68
CSEA/Court Contract	Juvenile Ct./Court Contract		\$ 7,761.01

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23711630-5360	10026201-4245					
CSEA/Court Contract	Juvenile Ct./Court Contract	\$	7,760.87			
23711630-5360	10026201-4245					
DJFS	Commissioners/April Costs & Rent	\$	28,595.49			
22411605-5380	10011101-4231					
ODJFS	Commissioners/May Costs & Rent	\$	28,595.49			
22411605-5380	10011101-4231					
ODJFS	Commissioners/June Costs & Rent	\$	28,595.49			
22411605-5380	10011101-4231					

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-718

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

The Administrative Services Department is requesting that Christine Shaw attend an On Base Regional User Group Meeting in Columbus, Ohio June 24, 2004, at the cost of \$29.50.

The Commissioners Office is requesting that Letha George attend an On Base Regional User Group Meeting in Columbus, Ohio June 24, 2004, at no cost.

The Auditor is requesting that Seiji Kille and Jane Tinker attend a GFOA Advanced Governmental Accounting Course at Put-in-Bay August 4 to 5, 2004, at a cost of \$735.00.

CSEA is requesting that Jill Fetzer and Susan Brown attend COGNOS Report Training at Columbus, Ohio June 22, 2004, at a cost of \$20.00

CSEA is requesting that Teresa Farlee, Susan Brown and Joyce Rhodes attend the Monthly Monitoring Regional Meeting June 30, 2004, at Xenia, Ohio at a cost of \$22.50.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

RESOLUTION NO. 04-719

IN THE MATTER OF APPROVING AN AMENDMENT TO THE CONTRACT BETWEEN THE DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY COMMISSIONERS AND JOBS FOR OHIO GRADUATES :

It was moved by Mr. Jordan, seconded by Mr. Ward to approve the following:

AMENDMENT TO JOBS FOR OHIO GRADUATES
AMENDMENT NO. 1

This amendment, effective July 1, 2003, is to amend the Contract between the Delaware County Department of Job and Family Services and Jobs for Ohio Graduates, entered into on October 13, 2003.

This agreement shall amend Article B modifying the amount reimbursable under the agreement to \$150,380.78.

Further be it resolved, that the Commissioners approve a Purchase Order Request for JOG in the amount of \$150,380.78.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-720

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND THE COMMUNITY ACTION ORGANIZATION OF DELAWARE, MORROW & UNION COUNTIES FOR SERVICES TO ASSIST WIA/TANF PARTICIPANTS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following agreement:

This Agreement is entered into by and between the Delaware County Department of Job and Family Services (hereafter, "Department"), the Delaware County Board of Commissioners (hereafter "County:"), and Community Action Organization of Delaware, Morrow & Union Counties (hereafter "CAODMU").

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Whereas the County has accepted State funds and needs to provide services or, contract out for services, and CAODMU is willing to provide those services at an agreed-upon price, the Parties mutually agree that:

- A. CAODMU will provide services for WIA/TANF-eligible participants.
- B. CAODMU services will include supervision of the CHORE program and youth payroll.
Expenditures under this contract will not exceed \$13,281.90.
- C. The time period for this contract is from June 21, 2004 through August 13, 2004.
- D. CAODMU shall submit a monthly invoice and project report to the Department. The Department agrees to review the invoices and make payment within 30 days of the receipt of the invoice, subject to appropriate modifications/corrections.
- E. CAODMU understands and agrees that payment for all services provided in accordance with the provisions of this Agreement depends upon the availability of county, state and federal funds.
- F. This agreement cannot be modified except when reduced to writing and signed by all Parties.
- G. Notwithstanding section (F), in the event that state and/or federal reimbursement is no longer available to the Department, therefore requiring changes or termination of this Agreement, such changes or termination will be effective on the date that state and/or federal reimbursement is no longer available or later, as otherwise stipulated by the Department.
- H. CAODMU agrees that the use or disclosure of any information concerning participants for any purpose not directly connected to the delivery of purchased services is prohibited.
- I. The Parties understand and agree that this written Agreement encompasses the entire understanding between the Parties, and supercedes all oral or prior agreements.
- J. CAODMU agrees to hold harmless the Department, the County, and the Ohio Department of Job and Family Services from all liability, loss, damage, and/or related expenses incurred through the provision of services under this Agreement.
- K. CAODMU agrees to maintain compliance with the state, federal, and local regulations which govern the provision of these services.
- L. The Department and CAODMU agree that in the performance of this Agreement, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, or handicapped condition as specified in the Civil Rights Act of 1964 and subsequent amendments. It is further agreed that CAODMU will fully comply with all appropriate federal and state laws regarding such discrimination, and the right to and method of appeal will be made available to all persons serviced under this Agreement.
- M. This Agreement may be terminated by CAODMU or the Department upon seven days written notice. Failure to honor the terms of this Agreement and/or the related state, federal, or local regulations shall result in immediate termination of this Agreement. If any of the terms of this Agreement change, CAODMU must notify the Department immediately.

Further be it resolved, that the Commissioners approve a Purchase Order Request for CCAO in the amount of \$13,281.90.

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-721

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND GOTCO EXCLUSIVE CARPET CARE FOR CARPET CLEANING SERVICE:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

**Delaware County Board of Commissioners
Contract**

This Contract made by and between:

GOTCO Exclusive Carpet Care

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1270 Great Hunter Ct.
Grove City, Ohio 43123

(the "Contractor") and the Delaware County Board of Commissioners (the "Owner").

In consideration of the mutual promises herein contained, the Delaware County Board of Commissioners and the Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall perform the entire work described in the Bid Documents, which is attached hereto as Exhibit "A" and reasonably inferable by the Contractor as necessary to produce the results intended by the Bid Documents for:

**ITB #04-07 Carpet Cleaning Service
For Delaware County, Ohio**

ARTICLE 2

2.1 The Delaware County Board of Commissioners shall pay the Contractor for the performance of this Contract, subject to additions and deletions as provided in the Bid Documents, not to exceed annually Twenty Five Thousand dollars (\$25,000.00), based upon the unit pricing set forth in the Bid Form, submitted by the Contractor and opened on March 22, 2004.

\$0.06777 per square foot

2.2 The Contract Price shall be paid in current funds by the Owner upon payment requests issued by the Contractor as services are provided and approved by the Delaware County Board of Commissioners as provided in the Bid Documents.

ARTICLE 3

3.1 The original term of this contract shall be for two (2) years, beginning July 1, 2004, and ending June 30, 2006.

3.2 This contract may be renewed at the end of the original period or any renewal period for up to two (2) additional one (1) year periods, if agreed upon in writing by both parties.

3.2 The Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor upon thirty (30) days written notice of its intent to do so. Furthermore, it is understood and agreed that should the contractor fail to provide the quality of service(s) as specified in the bid instructions, such failure shall constitute a breach of this Contract. Upon a breach of the Contract, the Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor effective immediately upon written notice of its intent to do so.

ARTICLE 4

4.1 This Contract shall embody the entire understanding of the parties and form the basis of the Contract between the Delaware County Board of Commissioners and the Contractor. The Bid Documents shall be considered to be incorporated by reference into this Contract as if fully rewritten herein, and made a part hereof.

4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio. Any legal action arising pursuant to this Contract shall be brought in a court of competent jurisdiction in the State of Ohio.

4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Contract shall be binding on the Contractor and the Delaware County Board of Commissioners, their successors and assigns, in respect to all covenants and obligations contained in the Contract, but the Contract may not be assigned by the Contractor without the prior written consent of the Delaware County Board of Commissioners.

ARTICLE 5

5.1 It is expressly understood by the Contractor that none of the rights, duties and obligations described in the Contract shall be valid and enforceable unless the Delaware County Auditor first certifies funds are available.

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5.2 The Contract shall become binding and effective upon the completion of 5.1 and execution by the Delaware County Board of Commissioners.

ARTICLE 6

6.1 This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

Further be it resolved, that the Commissioners approve a Purchase Order Request for GOTCO in the amount of \$20,000.00.

Vote on Motion Mr. Ward Mr. Jordan Mrs. Martin

RESOLUTION NO. 04-722

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND LONGWORTH LAWCARE FOR THE LANDSCAPE AND LAWN CARE SERVICES FOR DELAWARE COUNTY RUTHERFORD B. HAYES SERVICES BUILDING:

It was moved by Mr. Jordan, seconded by Mr. Ward to approve the following:

**Delaware County Board of Commissioners
Contract**

This Contract made by and between:

**Longworth Lawncare
210 W. High Street
Ashley, Ohio 43003-9703**

(the "Contractor") and the Delaware County Board of Commissioners (the "Owner").

In consideration of the mutual promises herein contained, the Delaware County Board of Commissioners and the Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall perform the entire work described in the Bid Documents, which is attached hereto as Exhibit "A" and reasonably inferable by the Contractor as necessary to produce the results intended by the Bid Documents for:

**ITB #04-06
Landscape and Lawn Care Services for the
Delaware County Rutherford B. Hayes Services Building
140 North Sandusky Street
Delaware, Ohio 43015**

ARTICLE 2

2.1 The Delaware County Board of Commissioners shall pay the Contractor for the performance of this Contract, subject to additions and deletions as provided in the Bid Documents, not to exceed annually Six Thousand dollars (\$6,000.00), based upon the unit pricing set forth in the Bid Form, submitted by the Contractor and opened on March 22, 2004.

Landscape Maintenance	\$3,405.00
Lawn Care	<u>\$1,880.00</u>
	\$5,285.00

2.2 The Contract Price shall be paid in current funds by the Owner upon payment requests issued by the Contractor as services are provided and approved by the Delaware County Board of Commissioners as provided in the Bid Documents.

ARTICLE 3

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3.1 The original term of this contract shall be for one (1) season, beginning April 15, 2004, and ending December 31, 2004.

3.2 This contract may be renewed at the end of the original period or any renewal period for up to two (2) additional one (1) year periods, if agreed upon in writing by both parties.

3.2 The Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor upon thirty (30) days written notice of its intent to do so. Furthermore, it is understood and agreed that should the contractor fail to provide the quality of service(s) as specified in the bid instructions, such failure shall constitute a breach of this Contract. Upon a breach of the Contract, the Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor effective immediately upon written notice of its intent to do so.

ARTICLE 4

4.1 This Contract shall embody the entire understanding of the parties and form the basis of the Contract between the Delaware County Board of Commissioners and the Contractor. The Bid Documents shall be considered to be incorporated by reference into this Contract as if fully rewritten herein, and made a part hereof.

4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio. Any legal action arising pursuant to this Contract shall be brought in a court of competent jurisdiction in the State of Ohio.

4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Contract shall be binding on the Contractor and the Delaware County Board of Commissioners, their successors and assigns, in respect to all covenants and obligations contained in the Contract, but the Contract may not be assigned by the Contractor without the prior written consent of the Delaware County Board of Commissioners.

ARTICLE 5

5.1 It is expressly understood by the Contractor that none of the rights, duties and obligations described in the Contract shall be valid and enforceable unless the Delaware County Auditor first certifies funds are available.

5.2 The Contract shall become binding and effective upon the completion of 5.1 and execution by the Delaware County Board of Commissioners.

ARTICLE 6

6.1 This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-723

IN THE MATTER OF APPOINTING LARRY FISHER AS THE DELAWARE BOARD OF COUNTY COMMISSIONERS' REPRESENTATIVE TO THE JUSTICE INFORMATION ALLIANCE FOR CENTRAL OHIO (JIACO):

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

Whereas, The Board of Commissioners of Delaware County is responsible to make appointments from the public or staff to various boards, councils and committees, and

Whereas, the Bylaws of The Justice Information Alliance for Central Ohio Committee call for "one representative appointed by the Board of Commissioners of each participating County".

Therefore, be it resolved that the Board of Commissioners of Delaware County, State of Ohio, appoint Larry Fisher to the Justice Information Alliance for Central Ohio Committee to serve as an Ex/Officio Non-Voting member.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

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RESOLUTION NO. 04-724**IN THE MATTER OF APPROVING THE PURCHASE OF A NEW MEDIC UNIT FOR DELAWARE COUNTY EMERGENCY MEDICAL SERVICE (EMS) AND THE CITY OF DELAWARE:**

It was moved by Mr. Jordan, seconded by Mr. Ward to adopt the following Resolution contingent upon a signed contract approved by City Council including acknowledgement that from this point forward reimbursement for an EMS vehicle is part of the per run cost, and the county will no longer provide EMS vehicles for the City of Delaware:

WHEREAS, the Board of County Commissioners desire to ensure continued emergency medical coverage for our citizens residing in Delaware County, and

WHEREAS, an additional Medical vehicle for Delaware County EMS is required to ensure that a sufficient number of vehicles are maintained to provide daily coverage, and

WHEREAS, another vehicle is required for Delaware City to complete EMS contract requirements; and

WHEREAS, the County and City conducted reviews of apparatus offered on State Bid; and

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby approves the purchase of a 2005 model Chevy 4500 chassis from Horton Industries, Inc., at a not to exceed cost of \$129,312.84 for Delaware County EMS and a 2004 model Ford E-450 for Delaware City at a not to exceed cost of \$117,423.75.

BE IT FURTHER RESOLVED: That the Board authorizes an appropriation in the amount of (\$ 132,423.75) for Account 10011303, object code 5450.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04-725**IN THE MATTER OF APPROVING A CONTRACT AND APPROPRIATION WITH JG CONTRACTING COMPANY OF PENNSYLVANIA FOR PROVIDING TOWERS AND SHELTERS FOR THE COUNTYWIDE DIGITAL 800 MHz RADIO SYSTEM:**

It was moved by Mr. Ward, seconded by Mr. Jordan to adopt the following Resolution:

WHEREAS: the County invited sealed bids for providing towers and shelter site development as part of the digital 800 MHz radio system; and

WHEREAS: JG Contracting was identified as the vendor of choice during public session and the attached contract defines the services to be provided by the contractor.

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners approve the contract with JG Contracting Company to provide for the purchase and installation of the towers and shelters associated with the Countywide 800 MHz radio system and approve an appropriation for the contract price of \$1,989,000.00 in Account 41111421, Object Code 5410.

BE IT FURTHER RESOLVED: That the Clerk of the Board of Commissioners shall cause this Resolution to be spread upon the Board's Official Journal.

DELAWARE COUNTY 800 MHZ RADIO SYSTEM TOWER AND SHELTER CONTRACT

THIS CONTRACT is made this 17th day of June, 2004 by and between Delaware County (hereinafter "County", a political subdivision of the State of Ohio, having its principal offices at 101 North Sandusky Street, Delaware, Delaware County, Ohio 43015, and JG Contracting Company, INC. doing business as a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania having its principal offices at Manor Oak I, Suite 100, 1910 Cochran Road, Pittsburgh, Pennsylvania 15220 (hereinafter the "Contractor").

WITNESSETH:

NOW, THEREFORE, for good and valuable consideration the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. It is understood and agreed that the Contract between the County and the Contractor shall include all the terms and conditions set forth in the following Contract documents, all of

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which are on file in Emergency Services office spaces of the County, and are incorporated herein by reference thereto as if set forth herein at length:

- A. This Contract and all Attachments and Affidavits.
 - B. Delaware County Invitation to Bid dated _____, 2004
 - C. JG Contracting Company's Proposal dated _____, 2004
 - D. County Best and Final Offer (BAFO) dated _____, 2004
 - E. JG Contracting Company's Response to BAFO dated _____, 2004
 - F. County approved Change Orders after effective date of Contract
2. The Contractor agrees to provide the services, goods, materials, equipment and/or supplies as specified in the Project Contract, at the price(s) and locations(s) and within the time period(s) specified therein.
 3. Performance of the work under this Contract is to be completed within one hundred forty five (145) calendar days of the agenda approved date, _____ 2004, unless modified by written change order duly issued during the course of the work.
 4. During the term of this Contract, Contractor agrees to comply with all local, State and Federal laws, statutes, rules and ordinances, including, but not limited to, those prohibiting discrimination in hiring and employment opportunities, and to comply with the provisions of the written policy of the Delaware County Board of Commissioners attached hereto as Attachment "A.". The Contractor shall not discriminate against any employee, applicant for employment, independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, age sex or handicap.
 5. County reserves the right for the County and, if applicable, the governmental source of any grant funding used to pay the Contractor (Federal Government or State of Ohio) to review such books and records of the Contractor as may be necessary to conduct an audit of all services performed, product delivered, and payments made under this Contract. The Contractor agrees to maintain such books and records, and retain them for a period of at least three (3) years after the termination of this Contract, or until final resolution of any audit exceptions.
 6. Conditioned upon Contractor's compliance with the terms and conditions of the Contract, the County agrees to make payment to the Contractor as set forth below.

Contractor shall submit Applications for payment by the 20th of each month for work projected through the end of the month.

County shall make progress payments on the Contract Price, and any approved and completed change orders, on the basis of Contractor's Application for payment on or before the 30th day of the month following the month the Application for payment was submitted. All payments will be on the basis of the progress of the work measured by the Payment Terms and Milestone Payment Schedule provided for in Attachment "C." The Milestone Payment Schedule shall allocate the entire Contract Sum among the various portions of the work. This schedule shall be used as the basis for reviewing the Contractor's Application for payment and may not necessarily reflect the associated value of work.

Upon submission of Close-Out Documentation of each site, County shall pay the remainder of the Contract price not previously paid for that site.

County understands that the scope of work included in this Contract represents only infrastructure construction and not system design.

The Contractor shall have no right to assign or subcontract any of its rights or responsibilities under this Agreement without the prior written consent of the County. If the County consents to any assignment or sub-contract, Contractor shall remain responsible for the quantity and quality of the performance of the assignee or sub-contractor.
 7. If Contractor shall fail to fulfill in a timely and proper manner its obligations under the Agreement, or in the event of violation of any of the terms, conditions or covenants contained herein, the County shall have the right by written notice to declare Contractor to be in breach of the Contract. In the County's notice of breach, the County shall specify a time period within which the Contractor may cure such breach of Contract, and if the Contractor shall fail to effectuate such cure to County's complete satisfaction, the Contract shall be deemed terminated as of the date specified in County's notice of breach. In such event, the County shall have the right to recover damages through forfeiture of the Contractor's Performance Bond, and to enforce any and all rights and remedies that County

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may have at law or in equity.

8. This Contract is entered into under and pursuant to the laws of the State of Ohio, and will in all respects be construed in accordance with the laws of said State.
9. By executing this Contract, the Contractor certifies that Contractor is not currently under suspension or debarment by the State of Ohio, any other state or the federal government. The Contractor further agrees that no sub-contractor who is suspended or debarred by the State of Ohio, any other state or the federal government may be used by Contractor to provide goods or services under this Contract, and the County shall have the right to require the Contractor to terminate any sub-contract with such a debarred sub-contractor.
10. This Agreement, consisting of the Documents specified above, constitutes the entire Contract between the parties, and shall not be modified or amended except by a written instrument signed by both parties.
11. Any legal proceedings to enforce rights under this Contract shall be commenced in the Court of Common Pleas of Delaware County.
12. Contractor agrees to carry at minimum \$1,000,000 liability insurance for any act of negligence by its agents, employees or any other person for whom JG Contracting Company is liable or responsible that causes injury or damages to others and must name the County as an additional insured under such policy. Contractor also agrees to certify that it carries appropriate workers' compensation insurance coverage relating to its performance under the Contract.
13. JG Contracting Company agrees to indemnify, defend and hold harmless the County, its agents, employees or any other person against loss or expense, including attorneys fees, by reason of the liability imposed by law upon the County, for any and all judgments or claims of any character for injury to persons or damage to property arising out of or in any manner connected with the negligent acts or omissions of JG Contracting Company, or its agents and employees, or its subcontractors, or their agents and employees arising out of this Contract. Unless otherwise provided by law, in the event JG Contracting Company has jointly caused injury to person or damage to property, JG Contracting Company shall be responsible for such injury to person or damage to property equal to its respective percentage of negligence. It is further understood and agreed that the Contractor shall, at the option of the County, defend the County with appropriate counsel and shall further bear all costs and expenses, including the expense of counsel, in the defense of any suit arising hereunder.
14. For purposes of this Contract, the Contractor will serve as an independent contractor to the County. As such, the Contractor is responsible for all charges, premiums and taxes, if any, payable on any funds it may receive as a result of its activities, including, without limiting the generality of the foregoing, Social Security, income and withholding taxes; unemployment insurance taxes; unemployment compensation funds; compensation insurance; and income taxes. Contractor will be responsible for obtaining all necessary permits and licenses necessary to fulfill its obligations under the Contract and will be solely responsible for the acts or omissions of its employees relating to or in connection with this Contract.

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-726

IN THE MATTER OF APPROVING A CONTRACT AND APPROPRIATION WITH HARRIS CORPORATION FOR THE PURCHASE AND INSTALLATION OF A MICROWAVE SYSTEM ASSOCIATED WITH THE COUNTYWIDE DIGITAL 800 MHZ RADIO SYSTEM:

It was moved by Mr. Jordan, seconded by Mr. Ward to adopt the following Resolution:

WHEREAS, the Delaware County Board of Commissioners requested and received proposals and bids on the purchase and installation of a Microwave system to support the digital 800 MHz countywide radio system that will provide interoperability among all public safety users, and

WHEREAS, Harris Corporation was identified as the vendor of choice; and

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners approve a contract with Harris Corporation for the purchase, installation, testing, 5-year extended warranty on equipment and training of a Microwave system to support the Countywide digital 800 MHz radio system at a cost of \$1,423,991.00.
BE IT FURTHER RESOLVED: That the Board of County Commissioners approve the appropriation for

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Account 41111421, Object Code 5450 in the amount of \$1,423,991.00.

MICROWAVE SYSTEM AGREEMENT

Harris Corporation, Microwave Communications Division, a Delaware corporation, with offices at 350 Twin Dolphin Drive, Redwood Shores, CA 94065 and Delaware County, OH, ("Customer") enter into this Microwave System Agreement (the "Agreement"), effective as of the last date signed below (the "Effective Date"), pursuant to which Customer will purchase and Harris will provide Customer with a Microwave System.

Section 1 EXHIBITS

The Exhibits below and any amendments thereto are hereby incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits, which appear below.

Exhibit A Harris bid Proposal dated December 4, 2003, including but not limited to, system description ("System Description"), final acceptance and cutover plan ("Acceptance Test Plan"), proposal cost spreadsheet ("Equipment List"), and statement of work ("Statement of Work"), dated December 1, 2003.

Exhibit B Delaware County's Request for Proposal dated October 28, 2003 and Harris' responses.

Section 2 DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined within the Agreement have the following meanings:

"Beneficial Use" of the Microwave System is use of such system other than for training or testing purposes to provide emergency communications services to emergency communications service customers.

"Microwave System" or "System" is the Microwave System described in Exhibit A, including the Equipment and Software described in the System Description, Statement of Work, Acceptance Test Plan and Equipment List.

"Equipment" is the equipment specified in the Equipment List included in Exhibit A.

"Harris Software" is software whose copyright is owned by Harris.

"Non-Harris Software" is software whose copyright is owned by a party other than Harris.

"Software" includes Harris and any Non-Harris Software that may be furnished with the Microwave System.

Section 3 SCOPE OF AGREEMENT

- A. **SCOPE OF WORK.** Harris will assemble and integrate the Equipment and Software, and deliver, install and test the Microwave System at designated sites, as specified in Exhibit A and in accordance with this Agreement. Customer will perform its responsibilities as specified in Exhibit A and in accordance with this Agreement.
- B. **CHANGE ORDERS.** Either party may request changes not anticipated within this Agreement. If a requested change causes an increase or decrease in the cost of or time required for the performance of this Agreement, Harris and Customer will agree to an equitable adjustment in the Agreement price or performance schedule, or both. Harris is not obligated to comply with requested changes unless and until both parties execute a written change order.
- C. **ADDITIONAL PRODUCTS.** For three (3) years after the Effective Date of this Agreement, Customer may submit purchase orders for additional Microwave Systems products manufactured by Harris.
- D. Each purchase order must specifically refer to this Agreement and will be an offer by Customer subject to Harris' acceptance. Except for pricing and delivery terms, which must be stated on the purchase order, Customer and Harris agree that the applicable terms of the main body of this Agreement will be the only terms and conditions that govern the purchase and sale of products identified on such purchase orders, and that this Agreement and any purchase orders issued hereunder will constitute one agreement. Customer and Harris agree that payment for all additional products so purchased will be due within twenty-five (25) days after the date of Harris' invoice for the products.

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- D. **MAINTENANCE SERVICE.** During the first year after System Acceptance, maintenance services and software support are provided pursuant to the terms of this Agreement, as set forth in the Warranty and Maintenance section of Harris' proposal (Exhibit A). Such services are included in the Purchase Price. After the first year following System Acceptance, Customer may purchase maintenance services and software support for the Microwave System pursuant to a separately executed Service Agreement.
- E. **HARRIS SOFTWARE.** Any Harris Software furnished will be licensed to Customer solely according to the terms and restrictions set forth herein..
- F. **NON-HARRIS SOFTWARE.** Any Non-Harris Software furnished by Harris will be subject to the terms and restrictions of its copyright owner unless such copyright owner has granted to Harris the right to sublicense such Non-Harris Software, in which case the terms set forth herein (including any addendum to satisfy such copyright owner's requirements) shall apply.

Section 4 PERFORMANCE SCHEDULE

- A. Harris and Customer agree to perform their responsibilities in accordance with the project schedule (or subsequent revisions thereto) contained within Harris' Proposal, Exhibit A.
- B. By executing this Agreement, Customer authorizes Harris to proceed with the manufacture, assembly, integration, delivery, installation, and testing of the Microwave System. No further notice to proceed, purchase order, authorization, resolution, or any other action will be required.

Section 5 PAYMENT SCHEDULE

- A. Customer agrees to make payments to Harris within twenty-five (25) days after the date of invoices that will be submitted by Harris according to the following payment schedule:
- B. Equipment Received: 35 percent of the contract price for equipment items received.
- C. Installation: 40 percent of the contract price of equipment items installed.
- D. Acceptance of the Microwave System: 25 percent of the contract price for all items of equipment and services accepted.

The payment terms for the following are listed below:

- A. 75 percent of the documentation fees shall be paid upon deliver and acceptance of the documents.
- B. 75 percent of the program management and engineering service fees shall be spread evenly over the contract period and on a bi-monthly basis.
- C. 75 percent of the acceptance-testing fees shall be spread evenly across the acceptance testing period and paid on a bi-monthly basis.
- D. 75 percent of the warranty fees shall be paid on a bi-monthly basis during the warranty period.
- B. Overdue invoices will bear interest at a rate of 10% simple interest per annum, unless such rate exceeds the maximum allowed by law, in which case it shall be reduced to the maximum allowable rate.
- C. **FREIGHT, TITLE, AND RISK OF LOSS.** All freight charges will be paid by Harris (FOB Destination). "Destination" is defined to mean Harris' warehouse located within Delaware County. Harris agrees to provide warehousing for up to six (6) months from shipment from Harris' factory. Title to the Equipment will pass to Customer upon full payment, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon final system acceptance of the Microwave radio portion of the system. Harris will pack and ship all Equipment in accordance with good commercial practices.
- D. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address: 10 Court St. Delaware, Ohio 43015

The city which is the ultimate destination where the Equipment will be delivered to Customer is: Delaware Ohio 43015

The Equipment will be shipped to the Customer at the following address
10 Court St. Delaware, Ohio 43015

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Customer may change this information by giving written notice to Harris.

Section 6 INSTALLATION AND SITE CONDITIONS

- A. In addition to its responsibilities described in the Statement of Work, Customer agrees to provide a designated project director, provide access to the sites identified in the Exhibits as requested by Harris, and have such sites available for installation of the Equipment by Harris in accordance with the performance schedule and Statement of Work.
- B. If either Harris or Customer determines during the course of performance of this Agreement that the sites identified in the Exhibits are no longer available or desired, or, if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated on the specifications in the Exhibits, Harris and Customer will promptly investigate the conditions and jointly select replacement sites or adjust the installation plans and specifications as necessary.
- C. If Customer and Harris determine that any change in sites, site availability, installation plans, or specifications will require an adjustment in the contract price or in the time required for the performance of this Agreement, the parties will agree to an equitable adjustment in the price, performance schedule, or both; and this Agreement will be modified in accordance with Section 3.B of this Agreement.

Section 7 TRAINING

Training is included in this Agreement. Customer and Harris each agree to notify the other immediately if a date change for a scheduled training program is required. A charge will apply to a training program rescheduled by Customer or Harris less than thirty (30) days prior to its scheduled start date.

Section 8 SYSTEM ACCEPTANCE

- A. Harris and Customer or its duly authorized consultant will test the Microwave System in accordance with the Acceptance Test Plan. System acceptance will occur upon the successful completion of such testing ("System Acceptance") at which time both parties shall promptly execute a certificate of system acceptance. If the Acceptance Test Plan includes separate tests for individual subsystems, both parties shall promptly execute certificates of subsystem acceptance upon the successful completion of testing of such subsystems. Minor omissions or variances in performance which do not materially affect the operation of the Microwave System as a whole will not postpone System Acceptance. Customer and Harris will jointly prepare a list of such omissions and variances which Harris will correct according to an agreed upon schedule.
- B. Harris agrees to notify Customer when the Microwave System is ready for acceptance testing. Harris and Customer agree to commence acceptance testing within ten (10) business days after receiving such notification. If testing is unreasonably delayed for reasons within the control of Customer or its contractors, agents and consultants for more than ten (10) business days after notification, final payment will be due within thirty (30) days after such notification and the Warranty Period will commence immediately.
- C. Harris may, but is not obligated to, issue written authorization for Customer's use of the Microwave System or its subsystem(s) for limited training or testing purposes, prior to the completion of testing by Harris. Any Beneficial Use of the Microwave System without prior written authorization by Harris shall constitute System Acceptance.
- D.

Section 9 EQUIPMENT WARRANTIES; SOFTWARE WARRANTIES AND LICENSE

- A. **Equipment Warranty** **In addition to any implied warranties available at law**, Harris warrants that for the applicable warranty period, as specified in this paragraph (the "Equipment Warranty Period") each item of equipment of its own manufacture will be free from defects in materials and workmanship and conform to Harris' published specifications. For Microwave equipment that is manufactured by Harris, the Equipment Warranty Period shall be (a) twelve (12) months from the formal system acceptance of the entire radio network including the microwave portion or (b) twenty-four (24) months from the completion of the microwave installation, testing and acceptance of the microwave radio by Customer. Such warranty will not include any consumable components to which a specific manufacture's guarantee applies. If any Harris equipment should prove to be defective in materials or workmanship under normal intended usage, operation, and maintenance during the applicable Equipment Warranty Period (as accurately determined by Harris after examination of the equipment claimed to be defective), then Harris will, at its sole option, repair or replace the defective equipment, or refund the purchase price of such defective equipment, in accordance with procedures specified below, at its own

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expense, exclusive, however, of the cost of labor by Customer's own employees, agents, or contractors in identifying, removing, returning, or replacing any defective parts of the equipment.

Replacement equipment may be new, refurbished, or remanufactured. Equipment that has been returned and satisfactorily replaced will become the property of Harris.

In composite equipment assemblies and systems, that include equipment not manufactured by Harris, Harris' responsibility under this warranty provision for the non-Harris manufactured portion of the equipment will be limited to the other equipment manufacturer's standard warranty. Provided, however, that if the other manufacturer's standard warranty period is of shorter duration than the Equipment Warranty Period applicable to Harris' manufactured equipment, then Harris will extend additional coverage to such other equipment manufacturer's warranty equal to the differential in time between the expiration of the other manufacturer's warranty and the duration of Harris' Equipment Warranty Period applicable to such order. Harris will, at its sole option, repair, replace or refund the purchase price of such other manufacturer's defective part(s) within sixty (60) days after receipt of such parts by Harris in accordance with the below specified procedures, at Harris' own expense, exclusive, however, of the cost of labor by Customer's own employees, agents or contractors in identifying, removing, returning or replacing the defective part(s) of the equipment. Harris agrees to use commercially reasonable efforts to replace such returned parts in less than sixty (60) days after receipt.

A written return material authorization (RMA) to return equipment to Harris under this warranty must be obtained from an authorized Harris customer service representative prior to making shipment to Harris' plant, and all returns will be shipped freight prepaid. Collect shipments will not be accepted, but Harris will prepay return freight charges on repaired and replaced equipment actually found to be defective. The equipment warranty provided herein does not cover damage, defects, malfunctions or service failures caused by:

- 1) Customer's failure to follow environmental, installation, operation or maintenance specifications or instructions provided by Harris to the Customer;
- 2) Modifications, alterations or repairs made other than by Harris unless Customer obtains consent from Harris for such modifications, alterations or repairs;
- 3) Power failures, surges, fires, floods, accidents, actions of third parties, or other like events outside Harris' control. Repairs necessitated during the Equipment Warranty Period by any of the foregoing causes may be made by Harris, and Customer will pay Harris' standard charges for time and materials, together with all shipping and handling charges arising from such repairs or performance of the equipment when used in combination with equipment not purchased, specified, or approved by Harris.

B. Software License and Warranty

License:

Harris grants to Customer a nontransferable (except as expressly provided herein), nonexclusive license to use the software, firmware, and documentation provided by Harris hereunder (whether one or more than one, the "Licensed Programs") (software, firmware, and documentation) in connection with use of the equipment purchased hereunder. The Licensed Programs furnished with the equipment shall be of the latest generation at the time of shipment of the equipment, and Harris shall be under no obligation to supply updates to such Licensed Programs except where so stated in writing.

This license is limited to object code programs and related documentation only and does not apply to any of the corresponding source code or program listings.

Customer acknowledges that Harris (or its licensor) has valuable property rights in the Licensed Programs, and such property rights will continue to be owned by Harris or its licensor. All rights in patents, copyrights, and trade secrets in relation to the Licensed Programs shall continue to be vested in Harris or its licensor.

Customer shall maintain the Licensed Programs confidential by affording access to the Licensed Programs only to those of its employees, agents, or consultants having a need to know and shall have such individuals agree in writing to the obligations contained herein. In addition, Customer shall employ reasonable measures to prevent any unauthorized use, copying, publishing, reproducing, or disclosing of the Licensed Programs and shall treat such with not lesser care than its own confidential information.

Customer may copy machine-readable Licensed Programs to the extent reasonably necessary for normal use with the equipment. In addition, Customer may make and retain up to three (3) archival copies for purposes such as to replace worn, impaired, damaged, or destroyed original copy. All originals of the Licensed Program(s) provided by Harris and all copies of the Licensed Programs made or generated by Customer pursuant to this Article shall be and remain the property of Harris or its licensor.

Customer shall label each cop of the Licensed Programs with the copyright, trademark, and proprietary notices in the same form, which appears on the Licensed Programs delivered to Customer by Harris. All copies of the Licensed Programs, when not in use, shall be destroyed or maintained in a secure place within Customer's business premises under access and use restrictions compatible with this Agreement. Customer shall be deemed to won only the magnetic or other physical media in which the Licensed Programs (original and all copies) are recorded.

The Licensed Programs may be used only in conjunction with the equipment purchased hereunder. Customer may not rent, lease, transfer, network, display, or distribute the Licensed Programs except as specifically provided herein, nor may Customer reverse engineer, decompile, modify, alter, translate, or adapt

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the Licensed Programs, or create any derivative thereof, except as permitted by the option selections contained within the Licensed Programs.

Customer agrees that a violation of this license would cause irreparable injury to Harris or its licensor, and that Harris or its licensor shall be entitled, in addition to any other rights and remedies may have, at law or in equity, to an injunction enjoining and restraining Customer from doing or continuing to do any such act and any other violations or threatened violations of this license. Furthermore, Customer agrees that if Harris or its licensor should waive any breach of any provision of this license, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this license.

The terms and conditions of this license shall apply to any and all upgrades, enhancements, updates and modified versions of the Software (including documentation) which are provided to Customer by Harris during the term of this Agreement. Such versions of the Licensed Programs may be provided by Harris via electronic download or on media, such as CD's or diskette. If required by Harris, Customer agrees to substitute such version for the previous being used with the equipment and to destroy the previous version and all copies thereof.

The term of this license shall be coextensive with Customer's ownership of the equipment, subject to earlier termination by Harris due to breach of the terms herein. In the event of termination, Customer shall immediately discontinue use of the Licensed Programs and shall promptly return such (including all copies) to Harris. The rights and obligations under this license may not be assigned, sublicensed or otherwise transferred without prior written approval of Harris, with the exception that such may be assigned to a subsequent owner or rightful use of the equipment, provided that such owner or user agrees in writing to comply with the provisions of this license. Customer agrees to pay all taxes owing from the use of the Licensed Programs.

Warranty

Harris warrants all physical media ("Software media") for the Licensed Programs, including custom software and traffic translators, to be free from defects in material or workmanship for a period (the "Software Warranty Period") of shall be twenty-four (24) months from the completion of the microwave installation, testing and acceptance of the microwave radio by Customer. Harris warrants that the Software media documentation is complete and adequate.

This warranty extends on to the Customer as the original licensee. Harris does not warrant that the software programs are error free or that Customer will be able to operate the software programs without minor problems or interruptions.

During the Software Warranty Period, Harris will operate in compliance with Harris' specifications for such Licensed Programs.

During the Software Warranty Period, Harris will bear the material cost and shipment of replacement software at no charge to the end user.

This warranty does not apply to any Software medial or Licensed Program that (a) has been altered or modified, except by or at the direction of Harris; (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Harris; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; or (d) is used in ultra-hazardous activities.

For purposes of Harris' warranties for equipment and Licensed Programs, a defect is defined as a failure of any unit or component manufactured or supplied by Harris which is not attributable to unauthorized modification or alteration, lack of care in operation, maintenance or handling by the Customer. The written notice of claim of defect must include a description of the defect with detailed information, which will enable Harris to identify the defect and determine its probable cause. Components claimed to be defective by Customer must be available to Harris for inspection and test. No defective equipment or parts are to be returned without first receiving written authorization and instructions from Harris. Customs clearance for all replacements under this warranty or otherwise will be the Customer's sole responsibility.

Claims under any of the foregoing warranties are waived unless made within the Equipment Warranty Period, in the case of Equipment, or the Software Warranty Period, in the case of Licensed Programs (Collectively, the "Product Warranty Period"). No person is authorized to give any other warranties or to assume any other liabilities on Harris' behalf, unless made or assumed in writing by a duly authorized representative of Harris. Any failure of the software to conform to any warranty, or the performance by Harris of its warranty obligations, shall not extend the Product Warranty Period.

C. Services and Services Warranties

The following will apply if service(s) is (are) to be provided under this Agreement. In most instances, Harris will submit to Customer a separate SOW that will detail the scope of work for the services, including performance objectives, responsibilities, and procedures. In the event of any inconsistency between the SOW and the provisions provided in this Article, the terms of the SOW shall govern.

Installation Services:

Harris prices are based on non-union labor. If union labor is required, any price and schedule changes will be made on a cost-plus basis and agreed to prior to commencing the work.

All workmanship and installation methods used by Harris and its subcontractors will be done accordance with EIA standards, where applicable. Work to be done to other specific practices or codes is subject to negotiation unless specified in the Customer's Purchase Order and agreed to by Harris.

It is recognized that the various engineering, installation, and other services being furnished hereunder have not been the subject of separate stand-alone pricing. Therefore, any services related requirements hereunder performed by Harris or its subcontractors will not entitle Customer to a reduction or adjustment in price, or the right to any offset or deduction form Harris' invoices, unless expressly agreed to in writing in advance between the parties.

All civil work performed during extreme weather conditions may be subject to premium charges.

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Harris will complete installation services in accordance with Harris' normal installation practices. Harris will perform its standard acceptance testing on the installed equipment and Customer may monitor such testing. Upon completion of testing, as described above, Harris will notify Customer that the equipment has been installed and operates in accordance with applicable test and performance specifications. The date of such notification will be the installation date.

Harris may at its sole discretion use subcontractors to provide installation services.

Harris does not accept responsibility for the integrity of any existing equipment. All existing buildings are considered to be free of asbestos and other hazardous materials. It is Customer's responsibility to ensure that the jobsite is ready and free of hazardous materials prior to mobilization of field crews. Customer will, at its expense, and at all times during the period of Harris' provision of services hereunder, be responsible for the following, including site preparation and clean-up. In addition, Customer shall: (1) allow employees or agents of Harris free access to the premises and facilities where the services are to be provided at all hours consistent with the requirements of the activity; (2) obtain all necessary local, state and federal construction and work permits as required to do the work; (3) obtain and secure pre-construction, conditional use documentation and environmental impact study approvals; (4) provide secure and appropriate storage for all equipment at warehouse and construction site unless otherwise agreed in Harris' SOW; and (5) provide insurance for equipment until on Customer site.

Warranty of Installation Services

Harris warrants that its Installation Services will be performed in a good and workmanlike manner and that any related installation material supplied by Harris shall be free from defects in materials and workmanship for twelve (12) months from the completion of the microwave installation, testing and acceptance of the microwave radio by Customer ("Installation Warranty Period"). If installation services are found defective under normal intended usage, operation, and maintenance during the Installation Warranty Period, Harris will repair or replace or correct installation errors provided written notice of any claimed defect is given to Harris promptly and within the original services warranty period.

Path Engineering Services

Radio path surveys and/or path calculations are performed to determine the normal path loss and antenna heights as defined in TIA/EIA Standard RS-252A.

When Harris performs reliability calculations or paper studies (path profiles from mapping or digitized data only), based solely on information supplied by or on behalf of Customer, it is understood that these are done for budgetary purposes only and are not to be construed as an installable design.

When conducting path survey, Harris will verify site coordinates and ground elevations, and record tree and/or other obstruction heights. This information will be recorded on the profile for that particular path. Harris will assign an appropriate growth factor to tree heights.

Harris performs frequency planning based on the provided interference data at the time of the study. Harris will not be responsible for any interference cases that arise due to errors or omissions in such data. Resurveying at Customer expense may be necessary if it becomes apparent that satellite earth stations may interfere with the functioning of the system.

Warranty of Path Engineering Services

Harris warrants that the installed radio communication path will conform to Customer's multipath performance reliability requirements, when Harris has performed a path survey, recommended the path design, and Harris has performed the installation. The Path Survey shall be warranted for the life of the project, based on the conditions that existed at the time the Path Survey was completed. It is further warranted that all of Harris field activities and path propagation analysis will utilize current hardware, software, engineering practice and judgment with the goal of meeting Normal Path Loss, as defined in Telecommunications Industry Association/Electronic Industry Association Standard RS-252A.

Harris will not be responsible for paths that it does not survey or for changes in path design (beyond those specifically allowed in the path survey report or in writing) after the field survey is completed, including, but not limited to: (1) any change in path design; (2) any movement in site locations; (3) any building or other structure built on path; (4) any disturbance of the terrain which may cause blockage or reflection; (5) any additional frequency interference source; or (6) installation of non-Harris radio equipment. Any one or more of the above changes will nullify this warranty. Customer will in such case bear the total cost of determining that such change was the cause. When non-Harris radio equipment is installed on a surveyed path, Harris' responsibility under the terms of this warranty will be limited to re-surveying the path. Harris will not be responsible for degraded path performance when such degradation is due to anomalous propagation conditions such as: (1) long-term loss of fade margin due to antenna decoupling caused by widely-varying K-factor changes; (2) long-term loss of fade margin due to Atmospheric Boundary Layering (ABL) causing wavefront defocusing (beam spreading), signal entrapment, "blackout" fading, and other such occurrences; (3) excessive rain outage rates beyond the published Crane or ITU data used in the calculation, (4) degradation resulting from certain types of multipath interference attributed to unidentifiable off-path terrain features and/or structures; or (5) any other technological or atmospheric condition not foreseeable through the exercise of prudent engineering knowledge and judgment.

The microwave design is based upon engineering practices and standards common to the industry. Selection of a transmission configuration is based upon the most economical method for meeting the path performance objectives. When path loss or reliability performance is not achieved, exclusive of anomalous propagation or path changes as described above, then Customer's sole remedy, and Harris' exclusive liability in connection with path engineering, will be that Harris will provide incremental labor and material to optimize the antenna system beyond what would have been required during initial installation and will do so within the constraints of the existing facilities (e.g., towers, sites).

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Where anomalous propagation is suspected on an installed microwave path, Harris will work with Customer to obtain reasonable evidence that such conditions exists. The total retroactive costs for such study will be the responsibility of Customer with Harris providing in-office engineering support. The cost of relocating towers, antennas, passive reflectors or other measures required to remedy this type of problem will be the sole responsibility of Customer.

Section 10 FCC LICENSES AND AUTHORIZATIONS

Harris agrees to file for all Federal Communications Commission ("FCC") licenses and authorizations required for installation and use of the Microwave System prior to the scheduled installation of the Equipment. Although Harris may assist in the preparation of license applications, in no event will Harris or any of its employees be an agent or representative of Customer in FCC matters. Customer is solely responsible for complying with FCC rules.

Section 11 DELAYS

- A. Successful project implementation will require cooperation and fairness between the parties. Because it is impractical to provide for every contingency which may arise during the course of performance of this Agreement, the parties agree to notify the other if they become aware that any condition will significantly delay performance. The parties will agree to reasonable extensions of the project schedule including delays in System Acceptance by executing a written change order.
- B. Under no circumstances will either party be responsible for delays or lack of performance resulting from events beyond the reasonable control of that party ("Excusable Delays"). Such events include, but are not limited to, acts of God, weather conditions, compliance with laws and regulations (excluding Customer's failure to properly and timely apply for all required FCC licenses), governmental action, bid protests, fire, strikes, lock-outs, and other labor disruptions, material shortages, riots, acts of war, and an Excusable Delay of a Harris subcontractor.
- C. Customer will make available to Harris the sites when scheduled and Customer will not otherwise unreasonably delay or prevent Harris' performance of its responsibilities. In the event of a Customer delay after the time of shipment, Harris may ship the equipment as scheduled to a Harris designated storage facility for which Customer agrees to pay all fees if such storage exceeds six (6) months after shipment from Harris' factory. If Customer unreasonably delays Harris' performance, the performance schedule will be extended, the Customer will make the milestone payments as if no delay occurred, and the parties will execute a Change Order to compensate Harris for reasonable charges incurred because of such delays. Such charges include, but are not limited to, costs incurred by Harris and/or its subcontractors for additional freight, warehousing and handling; suspending and re-mobilizing the work; additional engineering and standby time calculated at then current man-day rates; and preparing and implementing a "work around" plan.

Section 12 DEFAULT

- A. If Harris fails to complete delivery, installation or acceptance testing in accordance with this Agreement, Customer may consider Harris to be in default, unless such failure has been caused by an Excusable Delay. Customer agrees to give Harris written notice of such default. Harris will have sixty (60) days from the receipt of such notice to provide a plan of action that is acceptable to Customer to cure the default.
- B. If Harris fails to cure the default, Customer may terminate any unfulfilled portion of this Agreement. If in addition to any other remedy provided to the Customer in law or equity, Customer completes the Microwave System through a third party, Customer may recover the actual costs of completing the Microwave System to a capability not exceeding that specified in the Agreement (subject to any bidding requirements applicable to the customer pursuant to the Ohio Revised Code), less the unpaid portion of the Contract Price specifically relating to work actually performed by Harris. Customer agrees to use its best efforts to mitigate such costs. In such event, the County shall have the right to recover damages through forfeiture of the Contractor's Performance Bond, and to enforce any and all rights and remedies that County may have at law or in equity.

Section 13 INDEMNIFICATION

- A. GENERAL INDEMNITY. Harris agrees to and hereby indemnifies and saves Customer harmless from all liabilities which may accrue against Customer on account of direct physical damage to tangible property or personal injury to the extent the damage or injury is caused by Harris' negligence or recklessness, or that of its employees, subcontractors, or agents while performing its obligations under this Agreement.

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- B. **PATENT AND COPYRIGHT INFRINGEMENT.** Customer agrees to notify Harris promptly in writing of any notice, suit, or any action against Customer based upon a claim that any equipment or Licensed Program sold or licensed by Harris hereunder infringes a U.S. patent, copyright, trademark, or trade secret of a third party. Harris will defend, at its expense, any such action, except as excluded below, and will have full control of such defense including all appeals and negotiations, and will pay all settlement costs, or damages awarded against Customer. In the event of such notice, suit or action, Harris will, at its sole option and its expense, either, (a) procure for Customer the right to continue using the equipment or Licensed Program, (b) modify the equipment or Licensed Program to render it non-infringing, (c) accept return of the equipment or Licensed Program and replace it with substantially equivalent non-infringing equipment or Licensed Programs, or (d) accept return of the equipment or Licensed Program and refund or credit to Customer the amount of the original purchase price, less a reasonable charge for depreciation and damage.

The preceding agreements by Harris in this Article will not apply to any equipment or Licensed Program or portion thereof manufactured to specifications furnished by or on behalf of Customer, or to any infringement arising out of the use of the equipment or Licensed Program, in combination with other equipment or software not furnished by Harris, or to any use in a manner not normally intended, or to any patent, copyright, trademark, trade secret in which Customer, or subsidiary or affiliate thereof, has a direct or indirect interest, or if Customer has not provided Harris with prompt notice, authority, information and assistance necessary to defend the action. The foregoing states the entire liability of Harris for patent, copyright, trademark, and trade secret infringements by the equipment or Licensed Program.

Section 14 DISPUTES

- A. Harris and Customer will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, the dispute will be mediated by a mediator chosen jointly by Harris and Customer within thirty days after notice by one of the parties demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator, and Harris and Customer will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding alternate dispute resolution ("ADR") procedure.
- B. Any dispute that cannot be resolved between the parties through negotiation or mediation within two months after the date of the initial demand for non-binding mediation may then be submitted by either party to a court of competent jurisdiction in the State of Ohio. Each party consents to jurisdiction over it by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in this paragraph prior to the expiration of the two-month ADR period if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b) interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, customers, suppliers, or subcontractors.

Section 16 GENERAL

- A. **TITLE AND RISK OF LOSS.** Title to the Equipment will pass to Customer upon full payment of the Equipment, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon final system acceptance of the Microwave radio portion of the system. .
- B. **TAXES.** The purchase price does not include any amount for federal, state, or local excise, sales, lease, service, rental, use, property, occupation, or other taxes, all of which (other than federal, state, and local taxes based on Harris' income or net worth) will be paid by Customer except as exempt by law.
- C. **CONFIDENTIAL INFORMATION.** Customer will not disclose any material or information identified as Harris proprietary and confidential to third parties without Harris' prior written permission, unless Harris makes such material or information public or disclosure is required by law. If Customer is required by law to disclose such material or information, Customer will notify Harris prior to such disclosure.
- D. **DISCLAIMER OF LICENSE.** Except as explicitly provided herein, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any license or right under any patents, patent applications, copyrights, trade marks, trade secrets or other intellectual property of Harris.

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- E. ASSIGNABILITY. This Agreement may not be assigned by either party without the prior consent of the other party except that Harris may assign its right to receive payment without the prior consent of Customer.
- F. BANKRUPTCY. In the event that Harris or its affiliates file for federal bankruptcy protection, the Customer will have the full benefit of section 365(n) of the Federal Bankruptcy Code and filing any claim pursuant to the Federal Bankruptcy Code will not constitute a waiver of sovereign immunity.
- F. WAIVER. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power.
- G. SEVERABILITY. If any portion of this Agreement is held to be invalid or unenforceable, that provision will be considered severable and the remainder of this Agreement will remain in full force and effect as if the invalid provision were not part of this Agreement.
- H. HEADINGS AND SECTION REFERENCES. The headings given to the sections of this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular Section to which the heading refers.
- I. ENTIRE AGREEMENT. This Agreement (including the Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Agreement and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.
- J. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
- K. NOTICES. Notices authorized or required under this Agreement must be in writing and sent to the below addresses:

Customer	Harris Corporation, MCD
Attn: Delaware County	Attn: Contracts Manager Attn:
Director of Emergency Management	350 Twin Dolphin Drive
Services	Redwood Shores, CA 94065 60196
10 Court Street Delaware, OH 43015	

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

RESOLUTION NO. 04- 727

IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATION FOR THE COURT OF COMMON PLEAS/JURY COMMISSION:

It was moved by Mr. Jordan , seconded by Mr. Ward to approve the following:

Transfer of Appropriation		Amount
From	To	
10029201-5360	10029201-5294	\$ 1,000.00
Jury Commission/Court Services	Jury Commission/Food Supplies	

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 04- 728

IN THE MATTER OF APPROVING A SUPPLEMENTAL APPROPRIATIONS:

It was moved by Mr. Ward, seconded by Mr. Jordan to approve the following:

Supplemental Appropriation		Amount
40411413-5450	20/20 Capital Funds - Tech	\$ 131,000.00

Vote on Motion Mr. Jordan Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 04-729

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR

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COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn into Executive Session at 10:15 AM.

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mrs. Martin Aye

RESOLUTION NO. 04-730

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn out of Executive Session at 11:00 AM.

Vote on Motion Mrs. Martin Aye Mr. Jordan Aye Mr. Ward Aye

There being no further business the meeting adjourned.

Kristopher W. Jordan

Deborah B. Martin

James D. Ward

Letha George, Clerk to the Commissioners