

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

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

Present: Todd Hanks, Ken O'Brien, Tommy Thompson

RESOLUTION NO. 09-1362

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 26, 2009:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 26, 2009; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

PUBLIC COMMENT

RESOLUTION NO. 09-1363

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1028, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1028:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1028, memo transfers in batch numbers MTAPR1028 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R0906463	Garland Company	Windstorm Deductible	60111901-5370	\$ 100,000.00	1
R0906463	Garland Company	Windstorm Balance	60111901-5370	\$ 3,723.11	2
R0907090	Motorola Inc	Emergency Radios And Equipment	21411306 - 5260	\$59,100.00	0001

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Garland Company	Windstorm Balance	60111901-5370	\$ 103,357.51

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-1364

IN THE MATTER OF DECLARING THE MONTH OF NOVEMBER "PANCREATIC CANCER AWARENESS MONTH" IN THE COUNTY OF DELAWARE:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

WHEREAS over 42,000 people will be diagnosed with pancreatic cancer this year in the United States and over 38,000 will die from the disease;

WHEREAS pancreatic cancer is the deadliest cancer and the fourth leading cause of cancer death in the United States;

WHEREAS approximately 2000 deaths will occur in Ohio;

WHEREAS 75 percent of pancreatic cancer patients die within the first year of their diagnosis and 95 percent of pancreatic cancer patients die within the first five years;

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

WHEREAS there is no cure for pancreatic cancer and there have been no significant improvements in early detection, treatment methods, or survival rates in the last 30 years;

WHEREAS when symptoms of pancreatic cancer present themselves, it is usually too late for an optimistic prognosis, and the average life expectancy of those diagnosed with metastasis disease is only three to six months;

WHEREAS incidence of pancreatic cancer is 20 to 30 percent higher in men than in women and 40 to 50 percent higher in African Americans than in other ethnic groups;

WHEREAS the Federal Government invests less money in pancreatic cancer research than it does in any of the other leading cancer killers;

WHEREAS the good health and well-being of the residents of Delaware County are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments;

WHEREAS the Pancreatic Cancer Action Network is the first and only national patient advocacy organization that serves the pancreatic cancer community in Delaware County and nationwide by focusing its efforts on public policy, research funding, patient services, and public awareness and education related to developing effective treatments and a cure for pancreatic cancer;

WHEREAS the Pancreatic Cancer Action Network and its affiliates in Delaware County support those patients currently battling pancreatic cancer, as well as to those who have lost their lives to the disease, and are committed to nothing less than a cure;

Therefore be it RESOLVED that the Delaware County Commissioners designate the month of November, 2009 "Pancreatic Cancer Awareness Month" in Delaware County.

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-1365

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE BOARD OF DEVELOPMENTAL DISABILITIES:

It was moved by Mr. Hanks, seconded by Mr. Thompson to approve the following:

Transfer of Appropriation

From	To	
29552501-5101 Developmental Disabilities/Insurance	29552501-5001 Developmental Disabilities/Compensation	\$ 1,000,000.00
29552501-5101 Developmental Disabilities/Insurance	29552501-5120 Developmental Disabilities/PERS	\$ 140,000.00

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-1366

IN THE MATTER OF APPROVING A CONTRACT BETWEEN DELAWARE COUNTY, OHIO/DELAWARE COUNTY EMERGENCY SERVICES 9-1-1 CENTER AND STEPHEN CAMPBELL & ASSOCIATES INC. FOR THE PURCHASE OF A NEW RECORDING SYSTEM:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Whereas, the 911 Communications Director and the Public Safety Systems Administrator recommend approval of the following contract;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following contract **with** Stephen Campbell & Associates for purchase of a New Recording System;

Further Be It Resolved, that the Commissioners approve Purchase Order Request R09070341 from 21411306-5450 to Stephen Campbell & Associates in the amount of \$93,595.00.

PURCHASING AGREEMENT

This Agreement is made by and between Delaware County, Ohio/Delaware County Emergency Services 9-1-1 Center located at 10 Court Street, Delaware, OH43015

-AND

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

INSTALLATION

The installation charge is included in above pricing, providing all telephone/radio audio inputs are terminated to the blocks we provide. It will be necessary for you to supply the proper audio, AC, and data connections to the system's physical location and the necessary LAN and telephony interface components.

State Contract: Index STS066, Contract No. 800047

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE TERM SCHEDULE -- S&LG-BASED**

THIS CONTRACT is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 4200 Surface Road, Columbus, Ohio 43228 —1395 and ("Contractor") with Office(s) at

TABLE OF CONTENTS

BACKGROUND

STANDARD TERMS AND CONDITIONS

- I. Contract Term Provisions
- II. Contract Remedies
- III. Payment Provisions
- IV. Contractor Warranty and Liability Provisions
- V. General Provisions

SPECIAL TERMS AND CONDITIONS

- I. Contract Compliance Provisions
- II. Parties to the Contract
- III. Pricing Provisions
- IV. Merchandise Provisions
- V. Maintenance Provisions
- VI. IT Provisions
- VII. Ownership/Title Provisions
- VIII. General Provisions

EXHIBITS

Exhibit 1 Contractor's Price List

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State will enter into a contract with the manufacturer provided that the manufacturer offers its goods and ancillary services at the same prices that the manufacturer offers those goods and services to its distributors, or if the manufacturer has no distributors, the prices that the manufacturer offers to its similarly situated most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in the service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers. But, if the Contractor is not the manufacturer of the goods or services under this contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract and any extensions to meet the State's needs under the Contract and that the Contractor is an authorized dealer in the manufacturer's goods or services. The letter must identify each product or service that the Contractor will supply under this Contract. The letter must also contain an assurance of the availability through the dealer of repair and spare parts for equipment covered by this Contract for five (5) years from the date of purchase. It must also contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a permanent license fee of less than \$5,000.00 per copy.) The manufacturer's letter must be signed by an authorized official of the manufacturer and submitted with the executed copies of this Contract.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's best pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

**STANDARD
TERMS & CONDITIONS**

I. CONTRACT TERM PROVISIONS:

A. APPROPRIATION OF FUNDS. The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current applicable biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

B. OBM CERTIFICATION. None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.

a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.

c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in anyway.

d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.

e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.

f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current

g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.

h. **Termination for Failure to Retain Certification.** Pursuant to Section § 123.151 and §123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

I. Termination for Convenience. The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

j. Termination, Effectiveness, Contractor Responsibilities. The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.

2. Contract Suspension. If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

A. ACTUAL DAMAGES. Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. LIQUIDATED DAMAGES, If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

C. DEDUCTION OF DAMAGES FROM CONTRACT PRICE. The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

A. INVOICE REQUIREMENTS. The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services.
2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

B. PAYMENT DUE DATE. Payments under this Contract will be due on the 30th calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under CRC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void ab initio.

B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

C. **INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace the Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

D. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:**

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. GENERAL PROVISIONS:

A. AMENDMENTS. No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.

B. ANTITRUST ASSIGNMENT TO THE STATE. Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

C. ASSIGNMENT/DELEGATION. The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without the written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

D. AUDITS. The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred dollars (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

E. CONFIDENTIALITY. The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be served by the original order of production.

The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

F. CONTRACT CONSTRUCTION. This Contract will be constructed in accordance with the plain meaning

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

of its language and neither for nor against the drafting party.

G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:

1. The location(s) where all services will be performed; and
2. The location(s) where any state data applicable to the contract will be maintained or made available; and
3. The principal location of business for the contractor and all subcontractors. Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug — free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: <http://www.das.ohio.gov/Eod/AAEEO.htm>

J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect

L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.

O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

P. **STRICT PERFORMANCE.** The failure of either party, at any time, to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.

Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of State Purchasing, reserves the right to reject any subcontractor submitted by the Contractor.

R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership,

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

indemnification, publicity, construction warranties, limitations of warranties and limitations or damages shall survive the termination of this contract.

S. TAXES. The State is exempt from all state and local taxes and does not agree to pay any taxes.

T. ELECTIONS LAW[MW1]. Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (1)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov

U. In accordance with R. C. 2909.33 (C) I certify that I meet one of the following Conditions:

1. I have not received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

or

b. (1) I have received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.
and,

(2) I have either pre-certified with the Office of Budget and Management, or have completed the attached Declaration of Material Assistance form certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R. C. 2909.21.

SPECIAL TERMS AND CONDITIONS

I. CONTRACT COMPLIANCE PROVISIONS:

A. CONTRACT COMPLIANCE. The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through the Department of Administrative Services, Office of State Purchasing; by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). The State will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).

B. CERTIFICATION OF ACCURACY. The Contractor hereby certifies the following:

1. The Contractor's prices under this Contract are the best prices for which it or any of its distributors has sold each product or provided each service to any of its or its distributor's similarly situated most favored customers within the year before the date the Contractor executed this Contract and added the product or service to this Contract.

2. If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor warrants that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

C. **CONTRACTOR QUARTERLY SALES REPORT.** The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the following address:

Department of Administrative Services General Services Division, STS Program 4200 Surface Road
Columbus, Ohio 43228 - 1395

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

D. **CONTRACTOR REVENUE SHARE.** The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to DAS.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and the reporting period covered.

The Contractor must forward the check to the following address:
Department of Administrative Services General Services Division, STS Program 4200 Surface Road
Columbus, Ohio 43228-1395

Please make check payable to: ;Ohio Treasurer Richard Cordray. Payment currency is to be in United States dollars (USD). [Mw2]

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non - payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner, the State may terminate or cancel this Contract.

E. **DELIVERABLES.** Attached as Exhibit 1 is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the

Contractor may not charge any other prices for these Deliverables other than the prices on the Exhibit 1. If Exhibit 1 contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached as Exhibit 1 is identified as the following commercial price list(s).

F. **INSURANCE.** The Contractor will provide the following insurance coverage at its own expense throughout the term of this Contract:

1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carrier(s). The certificate must also provide thirty (30) days notice to the State before cancellation.

G. LEASES/FINANCING. The State may elect to obtain equipment and software on a finance/lease basis subject to the terms of the State of Ohio, Department of Administrative Services, Master Financing Agreement (Revised 01/20/02) or the Master Lease Agreement (Revised 04/24/02), when the parties execute the applicable agreement.

H. SPECIFIC CHANGES. The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock-speed. The Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not offer to the State any products that are not year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

II. PARTIES TO THE CONTRACT:

A. DEALERS. The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(s) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Purchasing.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.
4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor would indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

B. INDEPENDENT STATUS OF THE CONTRACTOR. The parties will be acting as independent contractors. The partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.

C. POLITICAL SUBDIVISIONS. This Contract may be relied on by Ohio political subdivisions, including Ohio cities and counties ("Political Subdivisions"). Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision's performance, including but not limited to payment, and will hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

III. PRICING PROVISIONS:

A. ECONOMIC PRICE ADJUSTMENT. The State will be entitled to a price decrease any time the Contractor or any of its distributors sells a product or a service to any similarly situated most favored customer for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its distributors sells a product or provides a service to any customer or dealer for less than it is available to the State under this Contract, the Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar days of any general reduction in the price of any product or service covered by this Contract even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State will ask to renegotiate the price under this Contract of the goods and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.

B. NOTIFICATION OF PRICE INCREASE. If this Contract permits any price increases, the Contractor must notify the Department of Administrative Services, Office of State Purchasing and any affected State customers of the increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

IV. MERCHANDISE PROVISIONS:

A. EQUIPMENT WARRANTY. If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or if that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

For all Equipment, the warranty period will be the longer of one (1) year after acceptance or the Equipment's standard warranty period.

B. PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

C. QUALITY ASSURANCE. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

Contract.

D. RETURN GOODS POLICY. The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

1. Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.
3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

V. MAINTENANCE PROVISIONS:

A. EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance will also include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.
2. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

B. EQUIPMENT MAINTENANCE CONTINUITY. This section applies if Equipment will be a Deliverable under this Contract. If the Contractor is unable to provide maintenance services to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. But the State will also be entitled to the following items from the Contractor:

1. All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals and system and unit schematics with all changes noted.
2. A listing of suppliers capable of supplying necessary spare parts.
3. Adequate information to permit the State to have spare parts manufactured elsewhere; and
4. A listing of spare parts and their recommended replacement schedule that will enable the State to create a centralized inventory of spare parts.

Any information in items (1) through (4) above that are rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third-party is necessary for the State to continue the maintenance. However, the State will require any third-party to whom disclosure is made to agree to hold the proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed on completion of such use.

C. EQUIPMENT MAINTENANCE STANDARDS. This section applies if Equipment will be a Deliverable under this Contract. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight (8) business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight (8) hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight (8) hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

D. MAINTENANCE ACCESS (GENERAL). The section applies if any software or Equipment will be a Deliverable under this Contract. The State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires the Deliverable to be inoperable must be performed outside the State's customary working hours except when the Deliverable is already inoperable. Preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

E. PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). This section applies if software or Equipment will be a Deliverable under this Contract. Maintenance will be available nine (9) working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be considered billable but will be included in the price of the maintenance.

VI. IT PROVISIONS:

A. LICENSE IN COMMERCIAL MATERIAL. As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copy able through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in Exhibit I or as an attachment referenced in Exhibit 1, if that scope of license is different than the scope of license contained in this section for Commercial Materials. Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the Federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the Federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the perpetual rights in item (1) through (8) of this section or as

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred.
2. Used or copied for use in with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative.
3. Reproduced for safekeeping (archives) or backup purposes.
4. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use.
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
6. Used or copied for use in or transferred to a replacement computer.

However:

7. If Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions; and
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions unless a statement substantially as follows accompanies the copyright notice: "Unpublished-rights reserved under the copyright laws of the United States". The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

In case any other scope of license (e.g., MIP's, tier, concurrent users, enterprise, site, or otherwise) the foregoing will apply except as modified expressly by the applicable license description, which must be incorporated as part of Exhibit 1. If the Contractor provides greater license rights in and item included in Exhibit 1 to its general customer base for the Software's list price, those additional license rights will also be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use if the use is other than a CPU license.

B. SOFTWARE WARRANTY. If Exhibit 1 includes work to develop custom software as a Deliverable, then, on delivery and for one (1) year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

1. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation.
2. The software will be free of any material defects.
3. The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code.
4. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
5. The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor (if applicable) to make the following warranties and maintenance obligations directly to the State. During the warranty period described in the next paragraph, the Contractor will:

6. Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation.
7. Supply technical bulletins and updated user guides.
8. Supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code.
9. Correct or replace the software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensor; and

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

10. Maintain or obtained a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than \$5,000.00 per license or per copy, the warranty period will be the longer of one (1) year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$5,000.00 per license or per copy, the warranty period will be the longer of three (3) months after acceptance of the licensor's standard warranty period.

For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation will provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The source code will be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

C. SOFTWARE MAINTENANCE. If this Contract involves any custom software as a Deliverable, then, during the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor, within a reasonable time, provided that the State notifies the Contractors, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ work-arounds to fully use the software, Contractor will respond to requests for resolution within four (4) business hours and begin working on a proper solution within one (1) business day, dedicating the resources of one (1) qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor will respond within two (2) business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than \$5,000.00 per copy or license, the Contractor will provide maintenance during the warranty period at no cost to the State. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. But, at a minimum, that maintenance program must include all new releases, updates, patches, and fixes to the commercial Software. It will also include a commitment to keep the software current with the operating environment in which it is designed to function and to correct material defects that the State finds in the software in a timely fashion.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the product for at least five (5) years after the warranty period. The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent (5%) annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one (1) of the following two (2) things: (a) give the State a pro rata refund of the license fee based on a five (5) year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality Section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality Section requires the contractor to do in handling the State's Confidential Information. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$5,000.00 per copy or license, the Contractor will provide the maintenance and/or user assistance during the warranty period at no additional cost to the State that the Contractor or the third-party licensor makes generally available at no additional charge to its other customers. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third-party, normally provides to its client base.

D. UPGRADES. After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform on which to use the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

1. The Contractor's (or third party's) standard upgrade or migration fee.
2. The upgrade or migration fee in Exhibit 1.
3. Or the difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire. This will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$5,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee which is made available to other similarly situated most favored customers or dealers, as appropriate.

VII. OWNERSHIP /TITLE PROVISIONS:

A. **ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to thirty (30) days after installation to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defect have been fixed.

B. **DELIVERIES.** All deliveries will be F.O.B. Destination. Freight Prepaid.

C. **OWNERSHIP OF DELIVERABLES.** Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The Contractor will not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

D. **PASSAGE OF TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

VIII. GENERAL PROVISIONS:

A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of the Department of Administrative Services for a period of one month. Any further renewals will be by mutual agreement between the contractor and the Department of Administrative Services for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.

B. **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

C. OHIO ETHICS).[mw3] All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01 S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01 S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at www.governor.ohio.gov, click on Governor's Office and then on Executive Orders.

D. OHIO PAYMENT CARD. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Department of Administrative Services, Office of State Purchasing website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

E. TRAVEL EXPENSES. Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Section §126-1-02 of the Ohio Administrative Code.

F. ENTIRE AGREEMENT. This Contract consists of this document; the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and Exhibit 1. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-1367

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

The Director of the Child Support Enforcement Agency recommends to approve the resignation of Cynthia Sprague; effective October 19, 2009.

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-1368

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

The Director of Emergency Medical Services recommends to approve the resignation of Chad Cochran a part-time paramedic with the EMS Department; effective November 1, 2009.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-1369

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR COMMON PLEAS COURT JURY COMMISSION:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Supplemental Appropriations

10029201-5313	Jury Commission/Printed Supplies & Services	\$	1,000.00
10029201-5360	Jury Commission/Court Related Services	\$	19,000.00
10029201-5294	Jury Commission/Food & Supplies	\$	1,000.00

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 09-1370

IN THE MATTER OF ESTABLISHING A NEW ORGANIZATIONAL KEY; APPROVING TRANSFER OF APPROPRIATIONS, AND SUPPLEMENTAL APPROPRIATIONS:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to approve the following:

Establish New Fund

23412303 VOCA ARRA

Supplemental Appropriations

27929208-5301	Mediation Foreclosure/Professional Services	\$	20,000.00
---------------	---	----	-----------

Transfer of Appropriation

From	To		
40111402-5410	40111402-5268	\$	5,500.00
Permanent Improvement/Capital	Permanent Improvement/Building Improve		

10011108-5102	10011108-5001		
Human Resources/Workers Comp	Human Resources/Compensation	\$	185.00

10030301-5102	10030301-5001		
Coroner/Workers Comp	Coroner/Workers Comp	\$	5.00

20315101-5102	20315101-5001		
Data Center/Workers Comp	Data Center/Compensation	\$	5.00

24820101-5102	24820101-5001		
Title Admin/Workers Comp	Title Admin/Compensation	\$	5.00

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

ADDRESS RESOLUTION NO. 09-1354; POSTPONED FROM OCTOBER 26, 2009

COMMISSIONER THOMPSON AND COMMISSIONER HANKS RECUSED THEMSELVES FROM VOTING ON RESOLUTION NO. 09-1354; THEREFORE THE RESOLUTION DIED FOR NOT HAVING THE POSSIBILITY OF PASSAGE AS ONLY ONE COMMISSIONER COULD VOTE

RESOLUTION NO. 09-1354

IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND DDP MAILING & PRINTING FOR PRESORT POSTAGE DISCOUNT PROGRAMS FOR DELAWARE COUNTY:

It was moved by Mr. Hanks, seconded by Mr. O'Brien to approve the following:

Whereas, the Facilities Supervisor recommends approval of the following contract;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following contract with DDP Mailing & Printing for Presort Postage Discount Programs For Delaware County:

Delaware County Board of Commissioners

Contract

This Contract made by and between:

DDP Mailing & Printing

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

*320 London Rd.
Delaware, OH 43015*

(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 provide the services as described in the response to the Request for Proposals (RFP), which is attached hereto as Exhibit "A", and as necessary to produce the results intended by the RFP Documents for:

**RFP #09-03 – Presort Postage Discount Programs
For Delaware County, Ohio**

ARTICLE 2

2.1 The Contractor for the performance of this Contract, subject to additions and deletions as provided in the documents, at no cost, based upon the proposal, submitted by the Contractor and opened on September 4, 2009.

ARTICLE 3

3.1 The original term of this contract shall be for Two (2) years, beginning October 15, 2009, and ending October 14, 2011.

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

3.3 The Delaware County Board of Commissioners may, at its sole option, terminate this Contract with the contractor upon written notice of its intent to do so. Furthermore, it is understood and agreed that should the contractor fail to provide the quality of good and/or 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.

3.4 The Contractor may terminate this agreement with the Owner by providing thirty (30) days written notice should changes by United States Postal Service (USPS) or their partner no longer allow the contractor to provide the services as described in the RFP.

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. This Contract, along with all documents incorporated by reference, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

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 filed in and heard before the courts of Delaware County, 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 To the fullest extent permitted by law, the Contractor shall indemnify, save and hold the Delaware County Board of Commissioners, its officers, agents, servants, and employees free and harmless of all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the Contractor's performance of this Contract. The Contractor shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the Delaware County Board of Commissioners by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees. No employee of the Contractor shall at any time be considered an agent or employee of the Delaware County Board of Commissioners.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

4.5 Insurance:

4.5.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000, including coverage for subcontractors, if any.

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

4.5.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.

4.5.4 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Contract in the policies required by Subsection 4.5.

4.5.5 Proof of Insurance: Prior to the commencement of any work under this Contract, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Contract. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Contract.

4.6 No waiver of breach of any provision of this Contract shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Contract or any other provision hereof. No term or provision of this Contract shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

4.7 For all services being provided under this Contract, the Delaware County Board of Commissioners shall have the right and Contractor agrees to allow the inspection and examination of any and all books, accounts, invoices, records, writings, or documentation of any type and in any form which it maintains in relation to performing said services

4.8 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.

4.9 Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

4.10 Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

4.11 Contractor certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Contractor agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Contract is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Contract and by this reference made a part of this Contract.

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.

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

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: COMMISSIONER THOMPSON AND COMMISSIONER HANKS RECUSED THEMSELVES FROM VOTING ON RESOLUTION NO. 09-1354; THEREFORE THE RESOLUTION DIED FOR NOT HAVING THE POSSIBILITY OF PASSAGE AS ONLY ONE COMMISSIONER COULD VOTE

**COMMISSIONERS' COMMITTEES REPORTS
(Refer To Cd Minutes For Entire Record)**

Commissioner O'Brien
-Attended Columbus State Presentation

Commissioner Hanks
-None

Commissioner Thompson
-Will Be Attending The Kroger Grand Opening On US23 With Economic Development Director

RESOLUTION NO. 09-1371

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT LITIGATION AND FOR COLLECTIVE BARGAINING:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn into Executive Session at 9:57AM.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-1372

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn out of Executive Session at 11:18AM.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Hanks Aye

RESOLUTION NO. 09-1373

IN THE MATTER OF APPROVING SETTLEMENT OF BOARD OF COMMISSIONERS DELAWARE COUNTY, OHIO v. PERRY ROAD, LLC, DELAWARE COUNTY COMMON PLEAS COURT CASE NUMBER 08-CVH-12-1643:

It was moved by Mr. O'Brien, and seconded by Mr. Hanks to approve the following:

WHEREFORE: A settlement has been negotiated between legal counsel in the case of Board of Commissioners Delaware County, Ohio v. Perry Road, LLC, Delaware County Common Pleas Court case number 08-CVH-12-1643.

NOW THEREFORE, IT IS HEREBY RESOLVED that this Board approves such negotiated settlement as set forth in the Agreed Judgment Entry (Exhibit A).

BE IT FURTHER RESOLVED, that legal counsel for this Board, without further action of this Board, is hereby given authority to execute on this Board's behalf all documents necessary to effectuate such settlement. Such authority extends to documents concerning settlement executed prior to the date of this Resolution.

This Resolution shall take full effect of at the earliest possible date and time.

(Copy of Entry available in the Commissioners' Office until no longer of administrative value).

(Copy of Exhibits available in the Commissioners' Office and Engineer's Office until no longer of administrative value).

**COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009**

IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, OHIO

**DELAWARE COUNTY
BOARD OF COMMISSIONERS
Plaintiff**

VS

**PERRY ROAD, LLC,
Defendants**

**CASE NUMBER: 08 CVH 12 1643
JUDGE EVERETT H. KRUEGER**

AGREED JUDGMENT ENTRY

This matter is before the Court upon Notice of Settlement of the above-captioned case by the filing of a Settlement Agreement signed by all parties to this action. Said Settlement Agreement is attached hereto as Exhibit A and, by this reference, is fully incorporated herein. It appears to the Court that the Defendant has agreed with Plaintiff upon the amount of compensation and damages due landowner by reason of the appropriation of the landowner's property as described more fully in attached Exhibit A. The parties have agreed that the landowner shall receive the sum of \$344,163, which shall be full payment for appropriation of the property.

1. The landowner in consideration of the agreed upon compensation releases all claims for further compensation, including interest, resulting from the appropriation of property.

2. In conformity with the Settlement Agreement, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff shall deposit with the Clerk of this Court or pay to the Defendant, a sufficient sum, \$344,163, which equals the total amount of the agreed settlement.

3. It is FURTHER ORDERED, ADJUDGED and DECREED that the date of acquisition of the hereinafter described property by the Plaintiff is the date of filing this entry.

4. It is FURTHER ORDERED, ADJUDGED and DECREED that all right, title and interest in the appropriated easements, described in the Petition filed herein, be vested in the Plaintiff. The above listed easements are more completely described in attached Exhibit A.

5. It is further ORDERED, ADJUDGED and DECREED that the same are duly vested in the Plaintiff, as these interests may appear, free and clear of all claims of the owners of lands and any person or persons having or claiming an interest, subject to any claims or interests previously recorded.

6. It is FURTHER ORDERED, ADJUDGED and DECREED that upon the deposit of the amount due Defendant with the Clerk of Court, the Clerk shall distribute this amount to Defendant.

7. It is FURTHER ORDERED, ADJUDGED and DECREED that a certified copy of this entry be transmitted by the Clerk of Courts to the County Auditor for the purpose of making the proper notations relative to the transfer of title, if any, and changes of tax valuation and liability therefore, if any; that the County Auditor transmit entry to the County Recorder which shall be charged as part of the court costs, and that the Plaintiff pay all court costs here accrued, and that a record be made of these proceedings according to law.

8. It is FURTHER ORDERED, ADJUDGED and DECREED that the remaining terms and conditions of the Settlement Agreement are hereby made a part of this Judgment.

**IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO**

**DELAWARE COUNTY
BOARD OF COMMISSIONERS
Plaintiff**

vs

**PERRY ROAD, LLC,
Defendants**

**CASE NUMBER 08-CV-H-12-1643
JUDGE EVERETT H. KRUEGER**

SETTLEMENT AGREEMENT

Plaintiff filed the above-captioned action, via Complaint on December 15th 2008, seeking the appropriation of right of way in fee simple and a temporary easement on the property of the Defendant, Perry Road LLC, for the public purpose of road improvements. (The subject property and easement is more fully described in the attached Exhibit 1.) Since the filing of this action, the Plaintiff and Defendant (hereinafter collectively referred to as the "Parties") have compromised and agreed to settle this action. This Settlement Agreement

COMMISSIONERS JOURNAL NO. 53 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 29, 2009

embodies the agreement of the Parties, and is the full and final settlement of the above-captioned case. As settlement of this action, the Parties agree to a consent judgment on the following conditions:

1. The Defendant agrees to Plaintiff's right to make the appropriation, that the Parties were unable to agree prior to filing, and that the appropriation is necessary for the stated public purpose.
- 4.2. The Plaintiff shall make an additional payment of Fifty Thousand Dollars and No Cents (\$50,000.00). Plaintiff has previously deposited, and Defendant withdrawn Two-Hundred Ninety-Four Thousand One-Hundred Sixty-Three Dollars and No Cents (\$294, 163.00). The total settlement amount is Three-Hundred Forty-Four Thousand One-Hundred Sixty-Three Dollars and No Cents (\$344,163.00), which sum shall constitute the entire amount of compensation due Defendant for the fee and temporary easement appropriated from Defendant, any and all damages to any residual lands of Defendant, Defendant's covenants set forth herein, and any and all supplemental instruments reasonably necessary to grant or transfer the interests acquired.
3. The Plaintiff will install and maintain, at Plaintiff's expense, bollards or wood posts and/or signs to prevent parking. These will be installed at the appropriate intervals, on the east side of the Olentangy River, along both sides of Orange Road, from the end of the existing guardrails to the intersection of Perry Road. All of the foregoing is subject to the appropriate approval of the appropriate political subdivision or political subdivisions. (See attached Exhibit 2 for the proposed plan of such).
4. The Plaintiff will provide the Defendant with a legal description of the residue of Tract 9.
5. The Plaintiff will replant the portion of the right of way not needed for regular maintenance, both north and south of the newly constructed Orange Road. The landscaping plan includes flowering dogwood trees, red bud trees, native grasses, and wildflowers. (See attached Exhibit 3 for the proposed plan of such. Plan subject to reasonable planting location modifications for logistical or cosmetic reasons.)
6. The Defendant hereby agrees to forever release the Plaintiff, and its officers, officials, departments, agencies, employees, agents, representatives, volunteers, servants, and any and all of their heirs, assigns, personal representatives, and successors from all claims, rights of action, actions, or appeals of any type or nature as related to or resulting from the appropriation of the fee and easement in this action.

7. The Defendant shall not now or at anytime hereafter file in any court or tribunal in any state of the United States of America, be it local, county, state, or federal, any claims, rights of claims, actions, or appeals of any type, kind, or nature relating to the appropriation of the fee and easement in this action, including, but not limited to, claims for lack of just compensation, inverse condemnation, or diminution of property value.

8. The Plaintiff agrees to pay the costs of the above-captioned action. The Parties state that this Settlement Agreement shall be considered to have been jointly drafted by the Parties and it is agreed that it shall be governed by and construed in accordance with the laws of the State of Ohio regardless of conflicts of law rules.

The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision of this Agreement. Further, it is not any of the Parties' intent to violate, nor do they believe they are violating, any civil or criminal laws in the enforcement of this Agreement.

All Parties have had this Settlement Agreement reviewed and approved by counsel, or will have waived that right, prior to signing, and all Parties signing this Agreement are doing so of their own free will, and not upon any representations made by other Parties or their agents.

This Settlement Agreement shall be effective when the signatures of the Parties are affixed and thereupon it shall be binding upon the Parties and their respective successors and assigns. This writing contains the complete agreement of the Parties concerning the settlement and it shall only be modified by a further writing executed by all Parties. Except as provided herein, this Settlement Agreement shall be self-executing and shall not require further action on the part of the Parties to validate this document.

Vote on Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Aye

RESOLUTION NO. 09-1374

IN THE MATTER OF ADJOURNING THE MEETING:

It was moved by Mr. O'Brien, seconded by Mr. Hanks to adjourn the meeting.

Vote on Motion Mr. Hanks Aye Mr. Thompson Aye Mr. O'Brien Aye

Todd Hanks

Ken O'Brien

Tommy Thompson