

**COMMISSIONERS JOURNAL NO. 54 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD NOVEMBER 8, 2010**

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

**Present: Ken O'Brien, Tommy Thompson**

**Absent: Todd Hanks**

**RESOLUTION NO. 10-1469**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 4, 2010:**

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on November 4, 2010; 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. Hanks   Absent   Mr. O'Brien   Aye

**PUBLIC COMMENT**

**Commissioner Thompson Welcomes Tim Hansley The New County Administrator**

**RESOLUTION NO. 10-1470**

**IN THE MATTER OF PROCLAIMING THE MONTH OF NOVEMBER 2010 AS "HIRE A VETERAN MONTH":**

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

WHEREAS: Governor Ted Strickland has issued a proclamation declaring November 2010 as "HIRE A VETERAN MONTH" in Ohio, and

WHEREAS: We should reflect upon the sacrifices made by our Armed Forces personnel, and the dangers they continue to face in Afghanistan and Iraq; and

WHEREAS: Due to the increasing loss of jobs and the high unemployment rate in Delaware County, many of the men and women that served in the Armed Forces, from all campaigns and peace-time service, are facing adversity when they return home from hostile areas, both at home and abroad; and

WHEREAS: Veterans still suffer from disease or injury incurring during their military service, and many of our prior service members possess many skills and abilities to become an excellent labor force of Delaware County. Our Veterans are highly motivated, with self discipline, and now are returning to an uncertain job market; and

WHEREAS: We, as a nation, as well as the Great State of Ohio, county of Delaware; owe a great debt to all our Veterans, of all the wars, conflicts and even peacetime; many of whom have already paid the ultimate sacrifice to protect all our freedoms.

NOW THEREFORE, WE, the Delaware County Board of Commissioners, in the Great State of Ohio, do hereby proclaim this month of November 2010 as

"Hire A Veteran Month"

THROUGHOUT Delaware County, Ohio; and we encourage all employers and citizens to recognize the sacrifices our Veterans have endured so that we remain a free Country.

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

**RESOLUTION NO. 10-1471**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1105:**

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It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1105 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO' Increase</b>			
PNC	Procurement Card –Per Improvement Admin	40111402-5200	\$ 14,000.00
Office City	Insurance Fund	60111901-5201	\$ 14,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Desc</u>	<u>Line Account</u>	<u>Line Amount</u>	<u>Line Number</u>
R1006692	BOB	JAIL REMODEL	41411434-5250	\$8,000.00	0001-0011
	BARKER	MATTRESSES			
	CO INC	BLANKETS			
		SHEETS			
		LOCKER BOXES			

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

**RESOLUTION NO. 10-1472**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE RECORDER'S OFFICE:**

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

**Transfer of Appropriation**

<b>From</b>	<b>To</b>		
10013101-5201	10013101-5001		
Recorder/Supplies	Recorder/Compensation	\$	3,650.00
10013101-5308	10013101-5001		
Recorder/Memberships	Recorder/Compensation	\$	460.72
10013101-5310	10013101-5001		
Recorder/Travel	Recorder/Compensation	\$	210.21
10013101-5310	10013101-5120		
Recorder/Travel	Recorder/PERS	\$	254.01
10013101-5313	10013101-5120		
Recorder/Printing	Recorder/PERS	\$	350.92
10013101-5313	10013101-5102		
Recorder/Printing	Recorder/PERS	\$	86.42
10013101-5313	10013101-5131		
Recorder/Printing	Recorder/Medicare	\$	62.66

Vote On Motion Mr. Hanks Absent Mr. O'Brien Aye Mr. Thompson Aye

**RESOLUTION NO. 10-1473**

**IN THE MATTER OF APPROVING PLATS FOR NELSON FARMS SECTION 1, PHASE A, PART 2 AND ALUM CREEK CROSSING SECTION 2, PHASE A:**

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

Whereas, the plats for the following developments have been approved by the County Engineer, and

Whereas, the County Engineer recommends that the Commissioners approve the following plats;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following plats.

**Nelson Farms Section 1, Phase A, Part 2**

Situated In The State Of Ohio, County Of Delaware, Township Of Liberty And In Farm Lot 9, Quarter Township 1, Township 3, Range 19, United States Military District, Containing 11.666 Acres Of Land, More Or Less, Said 11.666 Acres Being Part Of That Tract Of Land Conveyed To Nelson Farms, Associates, Llc, By Deed Of Record In Official Record 220, Pate 1057, Recorder's Office, Delaware County, Ohio. Cost \$33.00

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**Alum Creek Crossing Section 2, Phase A**

Situated in the state of ohio, county of Delaware, township of orange, and being part of farm lot 21, section 2, township 3 range, 18, and being part of the 50.801 acre tract as conveyed to Rockford homes, inc. as described in official record 192, page 2088, county recorder’s office, Delaware, Ohio. Cost \$63.00.

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

**RESOLUTION NO. 10-1474**

**IN THE MATTER OF ACCEPTING MAINTENANCE BONDS FOR NELSON FARMS SECTION 1, PHASE A, PART 2 AND ALUM CROSSING SECTION 2, PHASE A:**

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

**Nelson Farms Section 1, Phase A, Part 2**

The roadway construction has been completed for the referenced subdivision and, as the results of our recent field review, we have determined that only minor remedial work remains which can be accomplished during the subsequent one year maintenance period. Therefore, in accordance with the Owner’s Agreement, we recommend that the maintenance bond be set at **\$19,600** (10% of the original construction estimate) and the project be placed on the required one year maintenance period. A bond in that amount is in place. Respectfully submitted, Chris Bauserman, P.E., P.S. Delaware County Engineer

**Alum Crossing Section 2, Phase A**

The roadway construction has been completed for the referenced subdivision and, as the results of our recent field review, we have determined that only minor remedial work remains which can be accomplished during the subsequent one year maintenance period. Therefore, in accordance with the Owner’s Agreement, we recommend that the maintenance bond be set at **\$61,500** (10% of the original construction estimate) and the project be placed on the required one year maintenance period. A bond in that amount is in place. Respectfully submitted, Chris Bauserman, P.E., P.S. Delaware County Engineer

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

**RESOLUTION NO. 10-1475**

**IN THE MATTER OF APPROVING RIGHT OF WAY WORK PERMIT SUMMARY SHEET:**

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following work permits:

Whereas the below requests to perform work within the right of way have been reviewed and approved by the Delaware County Engineer;

Now Therefore be it resolved that the following permits are hereby approved by the Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U10-095	CENTURY LINK	CARTERS CORNER ROAD	RELOCATE CABLE

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

**RESOLUTION NO. 10-1476**

**IN THE MATTER OF DECLARING THE NECESSITY FOR IMPROVEMENTS TO BLUE CHURCH ROAD, INCLUDING REPLACEMENT OF A SINGLE SPAN BRIDGE OVER LITTLE WALNUT CREEK, INCLUDING REALIGNMENT OF ROADWAY APPROACHES AND IMPROVEMENTS OF THE ROADWAY ALIGNMENT WITHIN THE “S” CURVE BETWEEN WILSON ROAD AND THE BRIDGE, AND APPROVING A PROFESSIONAL SERVICES CONTRACT FOR ENGINEERING AND DESIGN SERVICES WITH THE MANNIK & SMITH GROUP, INC. FOR THE PROJECT KNOWN AS DEL-TR67 BLUE CHURCH ROAD OVER LITTLE WALNUT CREEK:**

It was moved by Mr. O’Brien, seconded by Mr. Thompson to approve the following:

Whereas, Section 5555.02 of the Revised Code provides that a Board of County Commissioners may find by a majority vote that the public convenience and welfare require the improving of any part of any public road, may fix the route and termini of the Improvement and may authorize such Improvement, and;

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Whereas Section 305.15 of the Revised Code provides that a Board of Commissioners may enter into contracts with any person, firm, partnership, association or corporation qualified to perform engineering services in the state, and;

Whereas, the County Engineer has determined that there is a need for replacement of the bridge on Blue Church Road over Little Walnut Creek and recommends that the Board proceeds with Improvements thereof.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners that:

Section 1: The public convenience and welfare require the replacement of a single span bridge over Little Walnut Creek, including realignment of roadway approaches and improvements of the roadway alignment within the "S" curve between Wilson Road and the bridge, and that the Improvement known as DEL-TR67 BLUE CHURCH ROAD OVER LITTLE WALNUT CREEK be initiated for such purpose, and;

Section 2: The Board hereby approves a contract along with due compensation be paid to The Mannik & Smith Group, Inc. for required engineering and design services for the Improvement DEL-TR67 BLUE CHURCH ROAD OVER LITTLE WALNUT CREEK;

Section 3: The costs for said Improvement will be paid for from any funds appropriated for road and bridge construction and that no special levies or assessments shall be made to pay for the Improvement.

**PROFESSIONAL SERVICES CONTRACT**

**DEL-TR67 BLUE CHURCH ROAD OVER LITTLE WALNUT CREEK**

**Section 1 – Parties to the Agreement**

Agreement made and entered into this 8<sup>TH</sup> day of November, 2010 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 ("County"), and the firm of The Mannik & Smith Group, Inc. ("MSG"), 1800 Indian Wood Circle, Maumee, Ohio 43537 ("Consultant").

**Section 2 – Contract Administrator**

The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

**Section 3 – Scope of Services (Work)**

Consultant agrees to furnish, unto the County, professional services in accordance with the Scope of Services dated September 8, 2010, and Price Proposal dated October 13, 2010, by this reference hereby made part of this Agreement. Consultant further agrees to perform the Work promptly and in a skillfully competent manner under the direction of the Administrator and in accordance with accepted professional standards.

**Section 4 – Compensation**

Compensation for Work performed under this Agreement shall be in accordance with the Scope of Services and Price Proposal. The Base Fee shall be a Lump Sum not to exceed **One Hundred Twenty Six Thousand Eighty Three Dollars (\$126,083)**. Compensation shall constitute full payment for all labor, equipment and materials required to complete the required Work.

**Section 5 – Payment**

Compensation shall be paid periodically, but no more than once per month, and shall be based on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal. Invoices shall be submitted to the Administrator by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

**Section 6 – Authorization to Proceed, Completion of Work, Delays and Extensions**

The Consultant shall commence Work upon written authorization of the Administrator and shall complete the work no later than August 31, 2011. Consultant shall not proceed with Work on "If Authorized" tasks without written authorization from the Administrator. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

**Section 7 – Insurance**

7.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

7.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each

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accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.

- 7.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 7.6 Proof of Insurance: Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

**Section 8 – Indemnification**

The Consultant shall indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

**Section 9 – Suspension or Termination of Agreement**

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Consultant ordering termination of Work. The Consultant shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

**Section 10 – Change in Scope of Work**

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties.

**Section 11 – Ownership of Engineering Documents**

Upon completion or termination of the Agreement, the Consultant shall provide copies, if requested, to the County of all documents or electronic files produced under this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement. This section does not require unauthorized duplication of copyrighted materials.

**Section 12 – Change of Key Consultant Staff**

The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Work as contemplated at the time of executing this Agreement.

**Section 13 – Miscellaneous Terms & Conditions**

- 13.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 13.2 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, 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.

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- 13.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement 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.
- 13.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 13.7 Findings for Recovery: Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.8 Homeland Security: Consultant 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, Consultant agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Agreement 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 Agreement and by this reference made a part of this Agreement.
- 13.9 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 13.10 Campaign Finance – Compliance with R.C. 3517.13: 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.

Vote On Motion            Mr. Thompson    Aye    Mr. O'Brien    Aye    Mr. Hanks            Absent

**RESOLUTION NO. 10-1477**

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**IN THE MATTER OF APPROVING A MAINTENANCE SERVICE AGREEMENT BETWEEN THE  
DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND MORPHOTRAK,  
INC. FOR THE AUTOMATED FINGERPRINT INFORMATION SYSTEM:**

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

Whereas, the Sheriff's Office Staff recommends approval of the maintenance service agreement with MORPHOTRAK;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approves the maintenance service agreement with MORPHOTRAK;

**MORPHOTRAK, INC  
SAFRAN Group  
MAINTENANCE SERVICES AGREEMENT**

This Agreement is made and entered into by and between MORPHOTRAK, INC., ("MORPHO") and the customer identified below ("Customer"). This Agreement includes, and incorporates by this reference, the Basic Terms and Conditions set forth below, a Description of Supported Equipment and Software, MORPHO's Maintenance Services Agreement Terms and Conditions (the "Agreement"), and attached pricing spreadsheet(s), if relevant,

Customer (or a third party) entered into an Agreement for Purchase and Sale of Hardware and License of Software with MORPHO (the "Base Agreement") dated as of the date set forth below, pursuant to which Customer possesses the Equipment and Software (if the Base Agreement is between MORPHO and a third party, please write the name of such third party here: N/A.

Customer hereby orders, and MORPHO hereby agrees to provide, support services for the Equipment and Software during the Term in accordance with the terms of this Agreement. It is understood that if Customer submits a purchase order for the support services which are the subject of this Agreement, such order shall be subject to all terms and conditions of this Agreement with the same force and effect as if they were included on the Customer's purchase order.

MORPHO may revoke this offer at any time prior to receipt of Customer's signature. Unless otherwise agreed, this offer shall expire if not signed and returned to MORPHO by Customer within thirty (30) days after the date of MORPHO's signature,

**Basic Terms and Conditions**

Basic Agreement Date: September 1, 2009

Effective date: September 1, 2010

1. Customer's Site(s):

Delaware County Sheriff, 149 N. Sandusky Street, Delaware, OH 43015

2. Initial Annual Fee:

\$10,050.00 September 1, 2010 - August 31, 2011

Terms defined elsewhere in this Agreement will have the same meanings when used herein. Customer acknowledges that it has received, read, understands and agrees to all of the provisions contained in this Agreement and attachments hereto.

**Description Of Support Equipment And Software**

The Equipment shall consist of:

GPW/Cluster  
-Del Precision T3400 (32 bit) cluster  
-Epson Scanner Perfection V700 Photo Scanner 6400DP1 4.0 DMAZ  
-USB dongle civil-line  
UPS ACP Back UPS  
Dell 19IN LCD Monitor

The Software shall consist of:

-License Verdant Runtime Win XP PRO for MMWS Software  
-License ILOG View Runtime for WIN XP Software  
-License Sagem WSQ for Win 2000 Software

**Maintenance Services Agreement  
Terms and conditions**

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These Maintenance services Agreement Terms and Conditions are part of the Maintenance Services Agreement ("Agreement") between MORPHOTRAK INC. ("MORPHO") and the customer identified on cover sheet of this Agreement ("Customer"). MORPHO and Customer agree as follows:

**SECTION 1. DEFINITIONS**

"Annual Fee" means the annual fee payable for Basic Services, The Annual Fee payable during the Initial Support Year is specified on the cover sheet of this Agreement. MORPHO may change the Annual Fee for any subsequent Support Year by giving Customer written notice of the change at least thirty (30) days prior to the beginning of the applicable Support Year. In addition, as provided below, MORPHO may increase the Annual Fee in any given Support Year as provided in Section 2.7 below,

"Basic Service" means the services described as Basic Service in Section 2,

"Business Days" means Monday through Friday, exclusive of Customer's business holidays.

"Business Hours" means 8:00 a.m., to 5:00 p.m., Local Time on Business Days.

"Effective Date" means the Effective Date specified on the cover sheet of this Agreement.

"Confidential Information" means any trade secret, proprietary, or confidential information of MORPHO's disclosed to Customer that, upon or promptly after disclosure by MORPHO, is marked or otherwise identified as proprietary or confidential, or which Customer otherwise knows or has reason to know is proprietary or confidential. Without limiting the generality of the foregoing, the parties hereby specifically agree that the following items constitute Confidential Information: (i) the Software and any Enhancements or updates thereto; (ii) the CAXI, FCP, FIP and MORPHO processor boards and image compression boards (collectively, the "Boards"), if any, along with any Enhancements to the same; and (iii) any technical Information, data, or documents related to the Equipment, Software, or any Enhancements provided by MORPHO to Customer.

"Customer's Site" means Customer's place of business which is specified as Customer's Site on the cover sheet of this Agreement or such other location as may be agreed upon in writing by the parties.

"Enhancements" means any alterations, additions, improvements, or modifications of the Equipment or Software, maintenance of which would increase the cost to MORPHO of providing the Basic Service by more than 5% of the then-current Annual Fee.

"Equipment" means the equipment included in the Description of Supported Equipment and Software attached to the cover sheet of this Agreement, together with any repairs, replacements or corrections furnished by MORPHO (other than Enhancements) during the Term pursuant to this Agreement or any other agreement between the parties.

"Local Time" means local time at Customer's Site.

"MORPHO's Standard Charges" means MORPHO's then current standard rates and charges (including, without limitation, provisions for the reimbursement of travel, parts, and other expenses).

"MORPHO User Documentation" means any user manual, instructions, and/or other printed documentation furnished by MORPHO for Customers use replaced by MORPHO from time to time during the Term.

"Software" means the computer programs and other software included in the Description of Supported Equipment and Software attached to the cover sheet of this Agreement, together with any corrections or updates of such computer programs (other than Enhancements) as may be furnished by MORPHO during the Term pursuant to this Agreement or any other agreement between the parties.

"Supplemental Services" means any services performed by MORPHO under this Agreement other than the Basic Service.

"Support Year" means any period of one year beginning with the Effective Date or any anniversary of the Effective Date.

"Term" means the term of this Agreement as specified in Section 6.

"Time & Material" means support, technical, or other service provided by MORPHO to Customer that Is not included in the Basic Service and Agreement as described herein, Time & Material service shall only be charged to those Customers who elect the limited nine (9) Business Hours, five (5) Business Days service coverage, Time & Materials service shall be charged to Customer in addition to the costs and prices as stated in this Agreement. Time & Material service shall be charged at a premium rate of \$150.00 per hour, with a required minimum of four (4) hours for each Time & Material service call and/or request placed by Customer to MORPHO. Customer shall be liable for all Time & Material services charged to Customer's account with



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MORPHO.

"Third Party Provider" means that person, company, corporation, or organization that has provided Equipment, Software, and/or Enhancements to Customer. A Third Party Provider acts Independent of MORPHO, and maintains a separate and confidential relationship with Customer without regard to MORPHO's relationship, interaction, or business dealings with Customer.

**SECTION 2, BASIC SERVICE**

During the Term, MORPHO will make available the following as Basic Service under this Agreement:

2.1 Service Requests. MORPHO shall advise Customer of the name, telephone number, and location of MORPHO personnel authorized to receive Basic Service requests from Customer. MORPHO will use commercially reasonable efforts to ensure that such personnel will be available during Business Hours to provide Basic Service to Customer as set forth in this Agreement.

2.2 Preventive Maintenance. On a schedule mutually agreed upon by the parties, MORPHO will provide preventive maintenance services for the Equipment in accordance with MORPHO's maintenance manual for the Equipment or in accordance with alternative terms agreed upon by and between the parties. This preventative maintenance shall include the following:

(a) Livescan Identix 3800: monthly service to maintain livescan and printer; clean cpu with compressed air to remove any debris lodged in fan vents; check Operating system files to insure free space on hard drive; calibration of scanner block; check external devices, le, foot pedal, monitor and keyboard, network hub; adding/deleting users to system (this can also be done remotely); check monitor to insure it is working property and clear; and, install any new updates or patches to Windows Operating system or software

(b) Lexmark Printer remove any debris with compressed air; wipe down rollers to help prevent paper jams; check network connection from printer to livescan; check that paper size is set correctly to, eliminate half printed cards; and, check duplexer and if jamming is continuous replace duplexer

(c) Workstation (DCSO\_ AUX); remove debris with compressed air; check file systems to insure plenty of free space; check database sizes; check for any errors on operating system thru Event Viewer; clean and check keyboard and monitor; check connection between workstation and CO PD AFIS; clean scanner and check connection between workstation and scanner; and, install any new updates or patches to workstation as needed

2.3 Repair, Replacement, and Correction. Upon Customer's request, MORPHO will endeavor to promptly repair, replace, or otherwise correct any Equipment or Software that does not operate substantially in accordance with MORPHO or the designated Third Party Provider specifications. If on-site inspection or work is required to correct any Equipment or Software; (i) for requests received between 6:00 am, and 3:00 p.m. Local Time on any Business Day, MORPHO will use commercially reasonable efforts to have an authorized representative of MORPHO at Customer's Site within four (4) hours after receipt of Customer's request; and (ii) for requests received at any other time, MORPHO will use commercially reasonable efforts to have an authorized representative of MORPHO at Customer's Site by 10:00 am, Local Time on the next Business Day. The obligations set forth in this paragraph 2.3 do not apply to any exclusion under paragraph 2.6 or to expendable items such as lamps

(a) Customer has agreed to service coverage nine (9) Business Hours per day, five (5) Business Days per week. If on site inspection or work is required to correct any Equipment or Software; (i) for requests received between 8:00 a.m., and 5:00 p.m. Local Time on any Business Day, MORPHO will use commercially reasonable efforts to have an authorized representative of MORPHO at Customer's Site within four (4) Business Days after receipt of customer's request; and (ii) MORPHO will handle requests for expedited service during other than Business Hours; i.e., between 5:00 p.m. and 8:00a.m., and requests to schedule service prior to expiration of the four (4) Business Day service window, as stated above, on a Time & Materials basis. The obligations as set forth In this subsection 2.3 do not apply to any exclusion as stated under Section 2.6 or to expendable items such as lamps.

2.4 Documentation Updates. During the Agreement Term, MORPHO will make available to Customer any updates to the MORPHO User Documentation made generally available by MORPHO to its customers (e.g., excluding any version customized for particular Customers or produced by a Third Party Provider for the Equipment, Software, or Enhancements created, manufactured, and sold to Customer directly from the Third Party Provider)

2.5 Supplemental Services. Upon Customer's request, and in addition to the Basic Service, MORPHO will make available to Customer such additional consultation, technical assistance, training, and other services as the parties may agree upon in writing from time to time during the Term.

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2.6 Exclusions. Basic Service does not include any repair, replacement, correction, or other support required; (a) with respect to any Enhancements; or (b) as a result of any; (i) breach or default under this Agreement by Customer; (ii) neglect, misuse, or abuse of the Equipment or Software; (iii) operation of the Equipment or Software in any unsuitable environment or for any unintended purposes; (iv) loss, casualty, damage, or injury to person or property; (v) alteration, additions, improvements, modifications, relocation, or maintenance to the Equipment or Software not performed or authorized by MORPHO; (vi) use or combination of the Equipment or Software with any other products, goods, services, or other items furnished by anyone other than MORPHO; or (vii) failure by Customer to use the latest versions of the Equipment and Software provided to it by MORPHO. Further, Basic Service does not include any service which is provided, upon Customer's request, either; (a) on any day other than a Business Day, (b) at MORPHO's facility after Business Hours, or (c) at Customer's Site between 5:00 p.m. and 6:00 a.m. Local Time; provided, that Basic Service may include services provided between 5:00 p.m. and 7:00 p.m. Local Time if Customer has placed a service order between 1:00 p.m. and 3:00 p.m. Local Time pursuant to Section 2.3 above, if Customer makes Its equipment and personnel available to MORPHO's authorized representative during such hours.

2.7 Enhancements. Any maintenance services required with respect to any Enhancements shall be the subject of a separate written agreement between the parties.

### **Section 3. Performance of Services**

3.1 Maintenance Parts. MORPHO shall provide all Equipment maintenance parts required in connection with the Basic Service at no cost to Customer. Parts removed from the Equipment in the performance of the Basic Service shall become the property of MORPHO. Parts installed in the Equipment shall become the property of Customer.

3.2 Replacement or Repair. In performing the Basic Service, MORPHO shall determine in its reasonable discretion whether to repair or replace any defective Equipment parts.

3.3 Inventory. In order to facilitate the performance of the Basic Services, MORPHO shall use commercially reasonable efforts to maintain a reasonable inventory of Equipment spare parts at a location designated by MORPHO in its sole discretion.

### **SECTION 4. CUSTOMER RESPONSIBILITIES**

4.1 Use and Operation. Customer will use the Equipment and Software (as well as any Enhancements) only for the purposes specified in the MORPHO User Documentation, If "User Documentation" is not available because the original Equipment, Software, or Enhancements were provided and produced by a Third Party Provider, Customer shall use the Equipment, Software, and/or Enhancements in such a manner as stated and agreed upon as between Customer and the named Third Party Provider, Customer will not use or permit the use of the Equipment or Software or any Enhancements for any other purpose. Customer will operate the Equipment, Software, and any Enhancements in strict accordance with the MORPHO User Documentation for Equipment, Software, or Enhancements originally produced and provided by MORPHO. Throughout the Term, Customer will provide suitable space, air conditioning (e.g., heating, cooling, circulation and filtering), utilities (e.g., electric power), and other requirements for installation and operation of the Equipment, Software, and any Enhancements at Customer's Site in accordance with the MORPHO User Documentation, If Customer originally purchased and received its Equipment, Software, or Enhancements from a Third Party Provider, Customer must adhere to the restrictions as set forth in the Base Agreement as between Customer and the Third Party Provider and as stated In additional documentation or prior agreements between Customer and the Third Party Provider.

4.2 Location. MORPHO may immediately terminate this Agreement if Customer at any time during the Term does not keep the Equipment and Software in its sole possession and control at Customer's Site and in accordance with the MORPHO Equipment and Software License. Customer shall provide MORPHO with not less than ninety (90) days prior written notice of any relocation of the Equipment or Software to any location other than the location in which the Equipment and Software were originally installed by MORPHO or the location identified and listed In the MORPHO Equipment and Software License, MORPHO may immediately terminate this Agreement If the new location is determined by MORPHO in its sole discretion to be unsuitable for any reason (including, without limitation, environmental conditions, inaccessibility, legal issues, or any other reason).

4.3 Modifications. Customer will not make or permit any alterations, additions, improvements, or modifications to the Equipment or Software without the prior written consent of MORPHO. In the event MORPHO becomes aware of any such unauthorized alterations, additions, Improvements, or modifications to the Equipment or Software, MORPHO may, in its sole discretion, terminate this Agreement.

4.4 Risk of Loss. Customer will protect the Equipment, Software, and any Enhancements from loss, casualty, damage, and/or injury. Customer assumes all risk of loss, casualty, damage, and/or injury relating to the Equipment, Software, or Enhancements. Customer shall further assume all risk of loss, casualty, damage, or injury relating to the Equipment, Software, or Enhancements if Customer originally received said Equipment, Software, or Enhancements from a Third Party Provider, MORPHO shall not be held liable for any loss,

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casualty, damage, injury, or destruction of the Equipment, Software, or Enhancements that have been created and supplied to Customer by the Third Party Provider named herein. Customer, in its sole discretion, shall hold the Third Party Provider solely and primarily liable for all loss, casualty, damage, injury, and/or destruction to the Equipment, Software, or Enhancements developed, created, designed, and/or manufactured by the Third Party Provider that MORPHO may agree to service and maintain pursuant to Customer's request. MORPHO shall not be held liable for defects in the Third Party Provider's Equipment, Software, or Enhancements.

4.5 Customer Contact. Throughout the Term, Customer will provide at least one (1) contact in Customer's organization with whom MORPHO may discuss issues related to the maintenance and support of the Equipment and Software and the rights and obligations of the parties hereunder, and who will be authorized to make decisions relating to the same on behalf of Customer.

4.6 Diagnostic Software. Upon MORPHO's request, Customer will allow MORPHO to Install on Customer's system such diagnostic software as MORPHO reasonably deems necessary to perform its obligations hereunder.

4.7 Log Entries. Customer shall promptly notify MORPHO of any failures, malfunctions, problems, or defects in the Equipment or Software. Customer shall maintain detailed logs of all Equipment and Software failures, malfunctions, problems, and defects. Upon request, Customer will make such logs available to MORPHO for use in connection with performance of its obligations hereunder. In addition, pursuant to any request made by MORPHO, Customer shall notify the Third Party Provider and original supplier of the Equipment, Software, or Enhancements of any failures, malfunctions, problems, or defects in the Third Party Provider's Equipment, Software, or Enhancements. MORPHO reserves the right to share the log entries created, generated, and produced by Customer with any related or reasonably identifiable Third Party Provider, manufacturer, or supplier. MORPHO may utilize the information contained in the Customer's log entries to limit MORPHO's liability and to properly direct primary and sole liability upon an original Third Party Provider, manufacturer, or supplier.

4.8 Facilities. Customer will provide safe and sufficient access to the Equipment and Software at Customer's Site as reasonably required for MORPHO to perform its obligations and exercise its rights under this Agreement. Furthermore, Customer shall, at no charge to MORPHO: (i) provide access to such machines, communications facilities, and other equipment as are reasonably necessary to provide maintenance and support services; provided that, MORPHO shall be responsible for any toll calls made by MORPHO or its representatives from Customer's Site; and (ii) make available to MORPHO a storage space within reasonable proximity of Customer's Site which MORPHO may use for spare parts and other items required by MORPHO in performance of maintenance and support services. Such storage space shall include adequate heat, light, ventilation, electrical supply, and telephone access. Customer shall exercise reasonable care to ensure the physical security of all MORPHO property stored at such storage space, and shall provide adequate fireproof storage for all MORPHO documentation.

#### SECTION 5. COMPENSATION

5.1 Annual Fee. For each month during the Term, Customer shall pay MORPHO one-twelfth (1/12th) of the applicable Annual Fee (prorated for any partial months), as set forth in Exhibit A. Exhibit A by this reference is hereby incorporated into and made part of this Agreement. MORPHO will issue its invoice for the Annual Fee Installment for each month on or about the first day of such month, Customer may make an annual prepayment of the Annual Fee at the beginning of any Support Year. Pricing is as set forth in the Attachments.

5.2 Supplemental Services. Unless otherwise agreed by the parties, Customer will pay MORPHO for any Supplemental Services in accordance with MORPHO's Standard Charges. Unless otherwise agreed by the parties or provided for in MORPHO's Standard Charges, MORPHO will issue its invoices for any Supplemental Services on a periodic basis as such Supplemental Services are provided.

5.3 Payment. Customer shall pay each MORPHO invoice within thirty (30) days after the date of invoice. Any amount not paid when due will be subject to a finance charge equal to one and one-half percent (1.5%) per month or the highest rate allowable by applicable law, whichever is less, and said finance charge shall be determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure Customer's breach or default for late payment. Further, Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by MORPHO to collect any amount which is not paid when due. MORPHO may accept any payment in any amount without prejudice to MORPHO's right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any payment or in any letter accompanying said payment will be construed as an accord or satisfaction. Unless otherwise clearly specified or implied, all amounts payable under this Agreement are denominated in United States Dollars, and Customer shall pay all such amounts in lawful money of the United States.

5.4 Taxes. MORPHO shall bear the cost of all duties and similar fees payable on any replacement parts provided under this Agreement. However, if Customer has retained MORPHO for maintenance and service and Customer originally purchased any Equipment, Software, or Enhancements from a Third Party Provider as

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named herein, MORPHO reserves the right to forward on to Customer any and all costs, fees, duties, and similar fees payable on replacement parts required by Customer and not originally manufactured, produced, or supplied by MORPHO, or replacement parts that MORPHO must acquire from the Third Party Provider which MORPHO must pay a premium cost to acquire. MORPHO further reserves the right to forward all unforeseen costs for replacement parts from Third Party Providers onto Customer, where appropriate and when applicable. Unless otherwise clearly specified, the fees and other amounts specified in this Agreement do not include any sales, use, or similar taxes. Customer shall pay or reimburse MORPHO for all such taxes or shall provide MORPHO with an exemption certificate satisfactory to MORPHO.

#### SECTION 6. TERM

6.1 General. The Term will commence upon the Effective Date and will for one year.

6.2 Anniversary Date. Either party may terminate the Term effective as of the end of any Support Year by giving the other party written notice of such termination at least ninety (90) days prior to the end of such Support Year,

6.3 Termination by MORPHO. MORPHO may terminate the Term by giving Customer written notice of such termination if: (i) Customer fails to make any payment when due, MORPHO gives Customer written notice of such failure and such failure is not cured within ten (10) days (or such longer period as may be permitted by MORPHO) after Customer's receipt of MORPHO's notice of the failure; (ii) unless otherwise required by law, Customer makes or permits any unauthorized use or disclosure of any Confidential Information; (iii) Customer commits a material non-monetary breach or default as defined under this Agreement, MORPHO gives Customer written notice of such breach or default, and the breach or default is not cured within thirty (30) days (or such longer period as may be permitted by MORPHO) after Customer's receipt of MORPHO's notice of the breach or default; or (iv) Customer files or has filed against It a petition to have Customer adjudged bankrupt or for reorganization or arrangement of Customer under any bankruptcy, moratorium, insolvency, reorganization, liquidation, conservatorship, or other debtor relief law, Customer makes any general assignment for the benefit of its creditors under any debtor relief law, a trustee or receiver Is appointed to take possession of all or substantially all of Customer's assets under any debtor relief law, all or substantially all of Customer's assets are attached or seized, or Customer dissolves, liquidates, or adopts any plan or dissolution or liquidation,

6.4 Termination by Customer. Customer may terminate the Term by giving MORPHO written notice of such termination if: (i) MORPHO commits a material breach or default as defined under this Agreement, Customer gives MORPHO written notice of the breach or default, and the breach or default is not cured within thirty (30) days (or such longer period as may be permitted by Customer) after MORPHO's receipt of Customer's notice of the breach or default; or (Ii) MORPHO files or has filed against it a petition to have MORPHO adjudged bankrupt or for reorganization or arrangement of MORPHO under any bankruptcy, moratorium, insolvency, reorganization, liquidation, conservatorship, or other debtor relief law, MORPHO makes any general assignment for the benefit of its creditors under any debtor relief law, a trustee or receiver is appointed to take possession of all or substantially all of MORPHO's assets under any debtor relief law, all or substantially all of MORPHO's assets are attached or seized, or MORPHO dissolves, liquidates, or adopts any plan or dissolution or liquidation.

6.5 Effect of Termination. MORPHO will not be obligated to provide any service, repair, correction, updates, or other support as defined under this Agreement after the expiration or termination of the Term. If Customer terminates the Term pursuant to paragraph 6.4, MORPHO will refund to Customer that portion of the fees paid by Customer for the balance of the month of termination (or, If Customer has prepaid the fees for the then-current Support Year, for the balance of such Support Year as determined by the date of Customer's termination), prorated on a daily basis. Customer will not be entitled to any refund in the event of a termination pursuant to paragraph 6.2 or 6.3. Sections 5, 7, and 8 of this Agreement, together with all other provisions of this Agreement which may reasonably be interpreted or construed as surviving the termination of the Term, shall survive any termination of the Term.

#### SECTION 7. CONFIDENTIAL INFORMATION

7.1 Confidential Information. Except as otherwise authorized by MORPHO in writing or otherwise required by law, Customer will: (i) use the Confidential Information solely for the purposes for which it is disclosed by MORPHO; (ii) not make any copies of any Confidential Information without MORPHO's prior written approval; (iii) take all necessary steps to protect Confidential Information from any unauthorized use or disclosure (including, without limitation, any steps reasonably requested by MORPHO to protect any Confidential information); and (iv) not disclose or furnish any Confidential Information to any third party other than employees of Customer who have a need to know the information and a written obligation to maintain the confidentiality of such information.

7.2 Access Limitation. Customer shall not reverse engineer, modify, disassemble, or decompile all or any part of the Software or the Boards provided by MORPHO; or otherwise attempt to discover any source code or trade secrets related to the Software, the Boards, or any other Confidential Information supplied or created by MORPHO. If MORPHO terminates this Agreement but the Base Agreement continues In force, Customer shall

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be entitled to engage the named Third Party Provider to maintain the Software and Equipment; provided that such Third Party Provider: (i) is not a competitor of MORPHO, and (ii) enters into a Confidentiality Agreement satisfactory to MORPHO, as determined in MORPHO's sole discretion. MORPHO shall provide such Third Party Provider with information with respect to the Software and Boards as is necessary to maintain and support the Software and Equipment.

7.3 Equitable Relief. Customer acknowledges that unauthorized disclosure or use of the Confidential Information could cause irreparable harm to MORPHO for which monetary damages may be difficult to ascertain. Accordingly, Customer agrees that MORPHO shall have the right, in addition to any other rights or remedies available to MORPHO as defined under this Agreement or as defined by applicable law, to seek and obtain judicial injunctive and other equitable relief to prevent or stop any unauthorized disclosure or use of any Confidential Information.

7.4 Ownership. MORPHO reserves all rights, titles, and interests in and to all Confidential Information that may or may not be shared with Customer. MORPHO further reserves all rights, titles, and Interests in any and all patents, copyrights, trade secrets, trademarks, and other proprietary rights associated with any and all confidential Information that may be shared or communicated to Customer. No ownership or title to any Confidential Information or any other associated proprietary right(s) are or may be transferred to Customer under this Agreement.

7.5 Exceptions. The confidentiality obligations of Customer under this Section 7 shall not apply to any Confidential Information that Customer can conclusively prove that: (i) was in or entered the public domain through no fault of Customer; (ii) was known to Customer before the disclosure by MORPHO; (iii) was received by Customer from a third party legally entitled to make an unrestricted disclosure; or (iv) was required to be disclosed by applicable law, regulation, or order by a governmental authority having appropriate subject matter jurisdiction; provided, however, that in the event of any disclosure under this subparagraph (iv), Customer shall provide MORPHO with reasonable notice prior to any additional disclosure and provide such assistance as MORPHO may reasonably request to challenge or narrow the scope of such disclosure.

#### SECTION 8. MISCELLANEOUS

8.1 Disclaimer. THIS IS A SERVICES AGREEMENT. MORPHO DOES NOT MAKE, AND HERESY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY REPAIR, REPLACEMENT, CORRECTION, UPDATE, UPGRADE, SERVICE OR OTHER ITEM FURNISHED BY OR ON BEHALF OF MORPHO UNDER THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.)

8.2 LIMITATIONS OF LIABILITY. MORPHO'S LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY OF MORPHO) WITH REGARD TO ANY REPAIR, REPLACEMENT, CORRECTION, UPDATE, UPGRADE, SERVICE, OR OTHER ITEM FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO MORPHO FOR SUCH ITEM, FURTHER, MORPHO SHALL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, OR LOSS OF REVENUE, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS, ARISING OUT OF OR IN CONNECTION WITH OR AS CONSEQUENCE OF ANY REPAIR, REPLACEMENT, CORRECTION, UPDATE, UPGRADE, SERVICE, OR OTHER ITEM FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT.

8.3 Nonwaiver. Any failure by MORPHO to insist upon or enforce performance by Customer of any of the provisions contained herein or to exercise any right or remedy as defined under this Agreement or applicable law shall not be construed as a waiver or relinquishment of MORPHO's right to assert or rely upon any such provision, right, or remedy in that or any other Instance; rather the same shall be and shall remain in full force and effect until the termination of this Agreement.

8.4 Assignment. Customer shall not assign this Agreement or any of its rights hereunder, by operation of law or otherwise, without the prior written consent of MORPHO. No assignment by Customer, with or without MORPHO's consent, will relieve Customer from any of its obligations as defined under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the signatory parties and their respective successors, assigns, and legal representatives.

8.5 not utilized

8.6 Applicable Law and Venue. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Ohio, without reference to its choice of law principles. Customer shall not commence or prosecute any action, suit, proceeding, or claim arising under or by reason of this Agreement other than in the courts located in Delaware County, Ohio. Customer irrevocably consents to the jurisdiction of the courts Identified in the preceding sentence in connection with any action, suit, proceeding, or claim arising under or by reason of this Agreement.

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8.7 Independent Contractor. MORPHO shall act in performance of this Agreement as an independent contractor. As an independent contractor MORPHO and/or its boards, officers, officials, employees, representatives, agents, volunteers and/or servants shall at no time be considered employees of the Delaware County Sheriff, the Board of Delaware County Commissioners, or Delaware County and are not entitled to any of the benefits of employment enjoyed by employees of the Delaware County Sheriff, the Board of Delaware County Commissioners, or Delaware County.

8.8 Indemnification, MORPHO shall provide indemnification as follows: (a) To the fullest extent of the law and without limitation, the MORPHO agrees to indemnify and hold free and harmless the Delaware County Sheriff, the Board of Delaware County Commissioners, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives (collectively 'Indemnified Parties') from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or In part, to MORPHO's, any subcontractor's, or any sub-subcontractor's performance of this Contract, including, but not limited to the performance or actions of MORPHO's, any subcontractor's, or any sub-subcontractors officers, officials, boards, employees, agents, servants, volunteers, or representatives (collectively 'Contracted Parties".) MORPHO agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that MORPHO shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. MORPHO further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that MORPHO shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, (b) MORPHO shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from any acts or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.

8.9 Insurance, MORPHO shall carry and maintain throughout the life of the Contract such bodily injury and property damage liability insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Contract or from the use of any vehicle(s) In connection therewith, and shall include coverage for indemnification as described above.

8.10 Equal Opportunity Employment/Non-discrimination. In fulfilling the obligations and duties of this Agreement, MORPHO shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, creed, gender, sexual orientation, age, Vietnam-era Veteran status, or disability, as defined in the Americans with Disabilities Act.

MORPHO shall ensure that applicants are hired and that employees are treated during employment without regard to any of the listed factors. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

MORPHO agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that MORPHO complies with all applicable federal and state non-discrimination laws. MORPHO shall incorporate the foregoing requirements of this section in all of its Agreements for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

8.11 Drug Free Workplace. MORPHO agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. MORPHO shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

8.12 DMA Form Statement. MORPHO certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list, which list may be found on the Ohio Homeland Security web site at: <http://www.homelandsecurity.ohio.gov/>. Pursuant to R.C. § 2909.33, MORPHO agrees to make such certification by completing the declaration of material assistance/no assistance described in R.C. § 2909.33(A) and understands that this Agreement 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 Agreement and by this reference made a part of this Agreement.

8.13 Campaign Finance - Compliance with ORC § 3517.13. Ohio Revised Code Section 3517.13(3) and J(3)

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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 said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. MORPHO, 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 Agreement will prohibit the County from entering, proceeding with, and/or performing the Agreement. Such certification is attached to this Agreement and by this reference made a part thereof.

8.14 Findings for Recovery. MORPHO certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

8.15 Notices. All notices which may be required by this Agreement or by operation of any rule of law shall be hand delivered, sent via certified United States Mail, return receipt requested, sent via a nationally recognized and reputable overnight courier, return receipt requested, or via facsimile, to the following individuals at the following addresses and shall be effective on the date received:

Customer:  
 Sheriff Walter L. Davis, III  
 Delaware County Sheriffs Office  
 149 North Sandusky Street Delaware, Ohio 43015  
 Fax: (740) 833-2809

MORPHO:  
 MorphoTrak, Inc.  
 Attn: Legal Department  
 1145 Broadway Plaza, Suite 200  
 Tacoma, WA 98402  
 Fax: (253)272-2934

8.16 Severability. If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

8.17 Entire Agreement. This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between MORPHO and Customer with regard to MORPHO providing maintenance services for Equipment and Software. No amendment, modification, or waiver of this Agreement shall be valid unless set forth in a written instrument signed by the party to be bound and consented to and accepted by MORPHO.

Vote On Motion Mr. Hanks Absent Mr. O'Brien Aye Mr. Thompson Aye

**RESOLUTION NO. 10-1478**

**IN THE MATTER OF APPROVING THE SOFTWARE INSTALLATION AGREEMENT AND THE TRAIN THE INSTALLER AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND INSIGHT PUBLIC SECTOR, INC FOR CAR VIDEOS FOR THE CRUISERS:**

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

Whereas, the Sheriff's Office Staff recommends approval of the agreements with Insight Public Sector, Inc.;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approves the agreements with Insight Public Sector, Inc.

**360 SOFTWARE INSTALLATION**

**I. Introduction:**

"This Contract ("Contract") is entered into by and between Insight Public Sector, Inc. (an Illinois Corporation) ("Insight"), with its principal place of business located at 375 North Front Street, Suite 300, Columbus, Ohio 43215, and The Board of Commissioners of Delaware County, Ohio ("Board"), with its principal place of business located at 101 North Sandusky Street, Delaware, Ohio 43015 and The Delaware County Sheriff

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("Sheriff"), with his principal place of business located at 149 North Sandusky Street, 2nd Floor, Delaware, Ohio 43015 (Board and Sheriff collectively "Client") (Insight and Client individually "Party" and collectively "Parties").

II. SCOPE OF SERVICES: Insight shall provide the following services ("Services") to the Client under the terms and conditions of this Contract.

Service Description: Included in this 360 software installation package are the following Services:

Package Description (10+ Vehicles)

Up to Four days onsite to perform the following services:

- Project Management
- Installation Services
- Training
- Support

Implementation Services

- Installation of SQL 2008 server software on one (1) dedicated video server
- Installation and configuration of the 360 server software on one (1) designated server
- Customization of Arbitrator backend server software (360)
- Setup levels of authorization, groups, and permissions for end-users
- Installation and configuration of Arbitrator client software on 10+ vehicles
- Testing of internal/external viewing features
- Verify connectivity to the "Arbitrator" network and wireless upload functionality

Training

- "Train-the-Instructor" 360 software end-user training for two administrators
- Demonstrate how to use the system.
- Installation configuration demonstration with administrator oversight "Train-the Administrator"
- User setup demonstration with administrator oversight
- Insight will provide a network diagram that includes the Arbitrator system, and all related equipment.
- A system overview document will be created, outlining the key components of the system, passwords, IP addresses, etc.

Support

Insight will provide up to 30 days support after implementation of the project.

Note: There is also the option to purchase additional onsite and/or remote support if applicable.

B. Project Management: Insight will provide project management and technical direction for the projects.

Activities may include, but are not limited to, the following:

- Serve as the primary point of contact on all project issues, needs and concerns
- Facilitate kickoff meeting to review project expectations, discuss IT infrastructure design, discover any possible problems/risks and formulate an appropriate plan (including a firm engagement schedule and potential downtimes)
- Complete Change Request" documentation as required
- Manage client expectations and satisfaction throughout the life of the project • Schedule and coordinate the necessary resources to support the project
- Identify, escalate, and document project issues as necessary
- Provide team leadership and guidance
- Schedule and conduct team update/status meetings
- Prepare and deliver project completion documentation for sign-off

C. Insight's Responsibilities: Insight will provide the applicable and necessary labor, supervision, and consultation to perform the Services and provide the Deliverables described in this contract. For purposes of this contract, "Deliverables" means any materials produced in the course of performing Services listed or specifically required to be delivered to Client under this contract.

D. Client's Responsibilities: The estimated duration and associated fees presented in this contract are based on the following Client Responsibilities. Should any element(s) of these be tacking during execution of Services, additional time, associated fees, and expenses may be required.

Client is responsible for the following:

-Client will provide a project contact with decision-making authority to support the scope of services described in the above Services Description section. This individual shall also be responsible to sign acceptance forms submitted by Insight to verify service delivery completion.

-The Client will provide access to internal experts, location(s), systems, applications, workspace, hardware, and equipment as is necessary and required at each field location to complete the project.



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-Client will provide the necessary hardware, software, and tools required for the successful completion of the project prior to Insight's arrival. Further, Client is responsible for all licensing requirements to be compliant per their own agreements.

-Client will provide server configuration.

-Client will confirm delivery of all equipment and software ordered for this project prior to engineer's travel arrangements.

-Client will provide adequate internet connectivity.

-Client will provide software keys/licenses for SQL 2008 (R2 is NOT supported) and Windows Server 2008 (R2 is NOT supported).

E. Deliverables: Insight will provide the following Deliverables:

- Project management
- Software installation services
- Training services
- Up to 30 days of post installation support
- Documentation detailing the configuration of the newly configured devices
- Project acceptance and sign-off document

Post-implementation documents will be provided within 20 business days from completion of the project (if applicable).

F. Acceptance Criteria:

Upon completion of the Services listed above and Client receipt of the stated Deliverables, Insight will present Client a project acceptance and sign-off document. Client will notify Insight (in writing), within five (5) business days of receipt, of any project deliverable issues and shall specify in detail the nature and scope of such issues, Insight shall, upon receipt of such notice, act diligently to address and resolve such issues.

The project acceptance and sign-off document will be considered accepted when Client signs and returns the document or at the end of the five (5) business day period during which Client fails to give Insight written notice of non-conformances.

G. Resource Team:

Project Sponsor, Delaware County Sheriff's Office - Cleve Brown  
 Support Resource(s), Delaware County Sheriff's Office - TBD  
 Director of Services, Insight - Rich Rysiewicz  
 Sr. Services Delivery Manager, Insight - Robert De Roziere  
 Resource Manager, Insight - David O'Connor  
 Solutions Sales Executive, Insight - Theresa Jackson  
 Account Executive, Insight - Mike Stetson  
 Contract Prepared by, Insight - Nancy Biggard

H. Change of Scope Procedure: If an alteration to the scope of work in this contract, including Deliverables, milestones and related pricing, is identified by either party, it shall be brought to the attention of the other party's management by completing and submitting a Change Request Form, which is incorporated into this contract as Attachment 1. Each party's respective management will review the form to determine whether a modification to the scope is necessary and what effect the implementation of such change may have on the project. If any such change causes an increase or decrease in the cost or time required for performance of the work, the price and/or delivery schedule shall be equitably adjusted and identified within the Change Request Form. Estimated turnaround time for such determination is five (5) calendar days. If both parties mutually agree to implement the change in scope, the Change Request Form will be incorporated into the contract as an addendum when signed by authorized representatives of both parties. If either party rejects a request for a change in scope or if the parties cannot agree on an adjustment, Insight shall proceed to fulfill its obligations in accordance with this contract as previously agreed upon.

III. SCHEDULE: The project start date will be mutually determined upon receipt of this signed contract and, if applicable, a valid Purchase Order (PO). A minimum lead time of 10 business days from the date of contract signature may be required for scheduling purposes.

A. Estimated Duration: The Project's duration will be approximately 4 days onsite.

IV. PRICING/INVOICING:

Flat Project Price: As consideration to Insight for performance of the Services, Client shall pay Insight the flat project price of \$4,800.00. The total amount paid to Insight will not exceed the total fixed price without the prior

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written approval of Client. Price includes customary travel expenses.

Pricing Notes:

- A. Pricing is valid for 30 days from the date of this contract.
- B. Flat Project Price is based upon Client providing access to internal experts, location(s), systems, applications, workspace, hardware, and equipment as is necessary and required at each field location to complete the project.
- C. A minimum of 10 business days will be required to cancel/reschedule the project. If less notification is given, a cancellation/rescheduling fee equal to time expended and applicable travel expenses will be incurred, and Insight will have 10 business days to reschedule the project if required.
- D. If an Insight engineer arrives on site per an agreed upon schedule and is unable to start or complete the project due to any Client, site, and/or equipment issues, a fee equal to time expended and applicable travel expenses will be incurred, and Insight will have 10 business days to schedule the return visit if required.

Invoicing:

Insight will invoice Client upon the completion of the project:

Invoicing Procedures (to be completed upon execution):

Hard copy invoice will be mailed to:

Delaware County Sheriffs Office

Address: 149 N. Sandusky St, Delaware OH. 43015 Attention: Accounts Payable or

Accounts Payable Contact:

Phone:

Select one of the following below:

Client issues system-generated Purchase Orders for service engagements.

Please fill in the P0 Number below and attach a hard copy of the Purchase Order to this signed contract. Note: Services cannot be performed until a hard copy of the Purchase Order is received.

P.O. Number

\_\_\_ Client does NOT issue system-generated Purchase Orders for service engagements.

Accordingly, performance of and payment for any Services under this contract do not require, and are not contingent upon, the issuance of any Purchase Order or other similar document.

If Client requires Insight to include an internal reference number on invoices, please fill in the reference information below.

Internal Billing Reference Number/Name:

**V. SPECIAL TERMS, CONDITIONS AND ASSUMPTIONS:**

A. Project Kickoff: A project kickoff meeting will be held to review project expectations, discuss IT infrastructure design, discover any possible problems/risks, and formulate an appropriate plan (including a firm engagement schedule and downtimes).

B. Business Hours: Work will be performed during normal business hours unless otherwise mutually agreed upon. Normal business hours are defined as Monday through Friday, 8am-5pm, excluding designated Insight Holidays. Any work completed outside of normal hours will be billed at one and one-half the standard hourly rate.

C. Travel Expenses: Travel-related expenses will be included in the flat fee; customary expenses include, but are not limited to airfare, taxi, hotel, car rental, daily food allowance, and miscellaneous transportation costs (gasoline, parking, tolls, etc).

D. Project Specific Assumptions: The estimated duration and associated fees presented in this contract are based on the following assumptions. Should any element(s) of these be lacking during execution of the Services, additional time, associated fees, and expenses may be required.

- a. Equipment order lead times are known and can be expected to be met.
- b. Insight's on-site consultant/engineer will inventory software hardware for correct pieces/parts and immediately report any discrepancies to the Project Manager for correction action.
- C. All parties agree that personnel will not be asked to perform, nor volunteer to perform, engineering and/or consulting tasks that lie outside the skill sets and experience of personnel. Personnel have the right to decline a service request if the request falls outside their scope of experience and expertise.
- D. Insight will provide no electrical or cabling services.

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E. Project/Milestone Acceptance Form: If applicable upon completion and acceptance of the total project and/or a milestone under this contract, Client will execute a Project/Milestone Acceptance Form, Attachment 2

F. Constraints: Work that is not included in the Scope section is considered to be out of scope. Any out of scope work must be verified and pre-authorized by Insight prior to commencement through the Change Request process.

G. Reference: Upon successful completion of the engagement, Insight may use the Project as a reference for external purposes, This may include verbal endorsements, printed advertisements, and other marketing references to prospective customers and third parties. Any reference activity will be mutually agreed upon in writing by Insight and Client.

H. Case Study: Upon successful completion of the engagement, Insight may ask Client to serve as an account case study for Insight. If Client agrees, Client will execute a marketing release for publication of non-confidential aspects of the Project (to be reviewed in advanced by Client), in conjunction with Client's name.

I. Terms and Conditions. The General Terms and Conditions attached are incorporated and made part of this contract.

### **360 SOFTWARE INSTALLATION GENERAL TERMS AND CONDITIONS**

1. Entire Agreement. The scope of services, special terms associated with the Services and these General Terms and Conditions are together one agreement between Insight and Client, collectively referred to as the "contract". This contract, together with all attachments, exhibits and addenda, forms the entire agreement between the parties relating to the Services to be provided by Insight to Client and supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter. Any conflicting additional or different terms contained in any other agreement, invoice or statement of work, as the case may be, are expressly rejected. In the event of a conflict between these General Terms and Conditions, and Special Terms, Conditions and Assumptions under the Statement of Work, the Special Terms, Conditions and Assumptions will govern.

2. Term. The term of this contract will commence on the date last signed by the Authorized Representative of each party and will expire upon the completion of the Services or as otherwise provided under Section 3 below.

3. Termination. Insight or Client may terminate this contract with or without cause with 30 calendar days prior written notice to the other party. Termination does not relieve Client's duty to pay for Services performed, or expenses incurred, in accordance with this contract.

4. Invoicing/Payment. Services will be invoiced in accordance with this contract. Client must pay all invoices in full within 30 days of the invoice date, unless otherwise specified under the contract Special Terms, Conditions and Assumptions. All payments must reference the invoice number. Unless otherwise specified, all invoices shall be paid in the currency of the invoice.

(a) Credit/Late Payment. Insight retains the right to decline to extend credit and to require that the applicable purchase price be paid prior to performance of Services on the basis of changes in Client's financial condition and/or payment record. Insight also reserves the right to charge interest of 1.5% per month or the maximum allowable by applicable law, whichever is less, for any undisputed past due invoices. Client is responsible for all costs of collection, including reasonable attorneys' fees, for any payment default on undisputed invoices. In addition, Insight may terminate all further work if payment is not received in a timely manner.

(b) Taxes. Federal, state and local sales, use and excise taxes and all similar taxes and duties, (excluding taxes based on Insight's income, assets or net worth), are the sole responsibility of Client and will be separately itemized on the invoice. Client may provide Insight a tax exemption certificate, which will be subject to review and acceptance by Insight.

5. Services.

a. Licenses. Client is solely responsible for acquiring and maintaining valid software licenses for authorized and installed software products (whether installed on Client's machines by Insight as individual products or part of a software image, or by any other party or method).

b. Intellectual Property Rights. Insight retains all right, title and interest in any pre-existing intellectual property that is owned by Insight ("Insight IP"), and which may be used in carrying out the Services, including any modifications or improvements made to Insight IP during or as a result of the Services to be performed under this contract. Except for Insight IP and upon payment in full of all amounts due Insight, all documents, drawings, specifications, information, patents, patent applications, inventions, developments or processes or any copyrightable material originated and developed by Insight specifically for Client as part of the Services to be performed under this contract ("Work Product") shall be owned by Client. Insight hereby grants Client a worldwide, non-exclusive, royalty-free, perpetual, without the right of sublicense, license to use Insight IP in the course of Client's internal, business operations.

6. Limited Service Warranty. Insight represents and warrants that:

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- a. It has the full power and authority to enter into this contract;
- b. It has all other rights necessary for the performance of its obligations under this contract, without violating any rights of any other party;
- c. Services performed by Insight will: (i) be performed in a timely, competent, professional and workmanlike manner; (H) substantially conform to the written specifications under this contract for 30 calendar days from completion, or for such other warranty period as may be indicated under the Special Terms, Conditions and Assumptions of this contract; (Hi) be in compliance with all laws, rules and regulations applicable to Insight's performance under, this contract; and
- d. The use of Work Product shall not infringe on any U.S. patents, copyrights, trademarks, or trade secrets of any third party

7. Warranty Disclaimer. THE EXPRESS WARRANTIES IN SECTION 6 ARE IN LIEU OF, AND INSIGHT EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES IN RELATION TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, . OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD.

No agent or employee of Insight or any other party is authorized to make any warranty in addition to those made in Section 6. Insight will have no obligation with respect to any warranty claim if the claim is the result of damage caused by unauthorized modification, or any abuse or misuse by Client or any third party not performing under the direction of Insight, or damage caused by disaster such as fire, flood, wind or lightning.

8. Remedies. THE FOLLOWING ARE THE PARTIES' RESPECTIVE SOLE AND EXCLUSIVE OBLIGATIONS, AND SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY ACTION FOR BREACH OF LIMITED WARRANTY.

a. Services. Client's remedy for non-conforming Services discovered upon completion or during the warranty period shall be the re-performance of any deficient Services at Insight's expense. No re-performance shall extend any warranty period. If Insight is unable to remedy any deficient Services within 30 days of notice or such additional time as may be agreed upon by the Parties, Insight will, at its option, provide a credit or refund of any fees paid for the specific non-conforming Services..

b. IP Infringement. If Client's use of Work Product delivered under this contract is or is likely to be, enjoined due to a third party Claim of infringement or misappropriation, Insight will, at its expense, (i) procure for Client the right to continue using the Work Product, or (ii) replace or modify the Work Product to make it non-infringing. If neither of the foregoing alternatives is commercially reasonable, Insight shall refund any fees paid for the infringing Work Product,

c. Credits. Any credits issued to Client by Insight for any reason must be applied by Client within two years from the date the credit is issued. If not used within such period, credits will automatically expire.

9. Confidential Information. To the extent permitted by law, Insight and Client will maintain in confidence and safeguard all Confidential Information, as defined in this contract, of the other party, its affiliates, and its clients. To the extent permitted by law, confidential Information will include, but is not limited to trade secrets, know-how, inventions, techniques, data, client lists, financial information, and sales and marketing plans of the other party, its affiliates, or its clients. To the extent permitted by law, both Insight and Client recognize and acknowledge the confidential and proprietary nature of any Confidential Information as well as acknowledge the irreparable harm that could result to the other party, its affiliates, or its clients if such Confidential Information is disclosed to a third party or used for unauthorized purposes. To the extent permitted by law, Insight and Client agree to use any Confidential Information only for the purpose of conducting business with each other and their clients in the manner contemplated by this contract. To the extent permitted by law, Insight and Client will restrict disclosures of any Confidential Information to only those personnel who have a need to know and will bind such personnel to obligations of confidentiality to the same extent that each party is bound by this contract. Upon completion or termination of this contract or upon request of Insight or Client, the other party will promptly return all materials incorporating any such Confidential Information and any copies thereof to the owner of such Confidential Information. For purposes of this contract, the obligations will not apply to information that is required to be disclosed pursuant to law, has already entered the public domain other than by Insight's or Client's breach of this contract: was acquired by Insight or Client before receiving such information from the other party without restriction as to use or disclosure: is hereafter rightfully furnished to Insight or Client without restriction as to use or disclosure by a third party authorized to make such disclosure: or is information that was independently developed by Insight or Client without reference to Confidential Information.

10. Indemnification.

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**INDEMNIFICATION DEFINITIONS:**

1. "Contracted Parties" means Insight, any subcontractor, and any sub-subcontractor and includes, but is not limited to any of Insight's, any subcontractor's, or any sub-subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives.
2. "Indemnified Parties" means the Board, the Sheriff, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives.

Insight shall provide indemnification as follows:

A. To the fullest extent of the law and without limitation. Insight agrees to indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the Contracted Parties performance of this Contract or the Contracted Parties actions or omissions. Insight agrees that in the event of or should any such actions, claims, suits, or demands be brought against the indemnified Parties that Insight shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying all and all attorney's fees, costs, and expenses. Insight further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that Insight shall pay, settle compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorneys fees.

B. Insight shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss. regardless of type or nature, known or unknown, realized or unrealized, 10 any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment. vehicles, supplies, accessories and/or pans arising out of or resulting in whole or in part from any acts or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.

(C) Infringement, Insight will indemnify and defend Client, its officers, directors, employees, agents and affiliates from and against any third party Claims that any Work Product, as defined under this contract, infringes any U.S. patent, copyright, trademark, or trade secret. Insight will pay all damages, costs, and expenses finally awarded to third parties against Client in such action or agreed to in settlement. Insight will not be liable for any infringement claim if (i) the Work Product was created in accordance with Client's sole design or specifications, (ii) Client continues using the Work Product after receiving notice from Insight to discontinue use, (iii) Client altered the Work Product, or (iv) Client used the Work Product in combination with any other product, program or data not authorized by Insight or its agent, and such infringement claim would not have occurred absent such combination.

11. Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF INCOME, PROFITS, DATA, OPERATIONAL EFFICIENCY, USE OR INFORMATION,) ARISING UNDER THIS contract REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR CLAIMS OF NON-PAYMENT, THE AMOUNT OF DIRECT DAMAGES RECOVERABLE FROM A PARTY UNDER THIS contract IS LIMITED TO THE TOTAL AMOUNT PAID BY CLIENT UNDER THIS contract. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT.

12. Security and Backup. Client is responsible for the security of its network, including the backup and other protection of its system and data, against loss, damage or destruction by third parties. Insight will not be liable for any damages resulting from security breaches of Client's network or data, except to the extent caused by Insight's sole negligence or willful acts or omissions. This disclaimer is in addition to, and not instead of, any other disclaimers and limitation of liability in this contract.

13. Insurance. Insight will carry adequate insurance coverage to provide Workers Compensation insurance as required by applicable state law, including Employer's Liability insurance with limits of at least \$300,000 each accident: comprehensive Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit; and comprehensive General Liability insurance with limits of not less than \$1,000,000 each occurrence.

14. Notices. Any notice required or permitted to be given hereunder must be in writing and is considered received: (1) when personally delivered; (2) one (1) business day after having been sent by overnight mail via a professional carrier; or (3) when sent via facsimile or electronic mail, receipt confirmed, with an original document placed in the mail within 5 business days of the date of that facsimile or electronic mail. All business communication will be sent to the addresses set forth above or to other persons or addresses as either party designates in writing to the other. Legal notices must be sent with a copy for Insight addressed to: Insight, 6820 South Harl Avenue, Tempe, AZ 85283, Attn: Legal Department.

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15. **Governing Law.** This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Contract shall be filed in and heard before the courts of Delaware County, Ohio.

16. **Non-Solicitation & Non-Hire.** Both parties agree that during the time that Insight is rendering Services under the terms of this contract and for 1 year following the cessation of such Services, neither party will directly or indirectly solicit, offer employment or hire any current or former employee or consultant employed by or hired by the other party involved in the performance of this contract. This provision does not restrict the right of either party to solicit or recruit generally in the media and does not prohibit either party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

17. **General.** Services will be deemed accepted upon Completion unless otherwise specified. Any subsequent additions, deletions or modifications to this contract are not binding unless agreed upon in writing by authorized representatives of both Parties. If any part of this contract is for any reason found to be invalid, illegal or unenforceable, all other parts will still remain in effect. A delay or failure to exercise or partially exercise any right under this contract does not operate as a waiver, nor will it preclude future exercise of that right or permit, or sanction any subsequent breach of any term or condition. Neither party may assign its duties or rights under this contract, whether by operation of law or otherwise, except with the other party's prior written consent; provided that Insight will have the right to assign this contract to its affiliates. Insight may subcontract any or all of its obligations hereunder to one or more qualified parties with Client's prior consent. Insight is not responsible for default or delays caused by Clients failure to provide accurate instructions information, access to facilities or suitable product or application environment. Neither party will be liable for any delays in the performance of this contract due to circumstances beyond its control, including but not limited to acts of nature, acts of government, national emergencies, acts of terrorism, transportation delays, labor disturbances, work stoppages, or material shortages. Client represents and warrants that no technical data furnished under this contract will be exported from the United States except in compliance with all requirements of the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). The provisions of this contract, which by sense and content are intended to survive, including but not limited to the sections related to payment, warranties, remedies, confidentiality and limits of liability, will survive the expiration or termination of this contract. Insight is an independent contractor to Client. No personnel employed or engaged by Insight to perform the Services for Client will be considered Client's employees, agents, partners, joint venture partners, or franchisors. Insight has sole responsibility for the direction of its employees and has the right to fire, hire, suspend, layoff, transfer or reassign employees at will without the consent of Client.

**FINDINGS FOR RECOVERY**

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

**EQUAL OPPORTUNITY EMPLOYMENT**

In fulfilling the obligations and duties of this Contract, Insight shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, creed, gender, sexual orientation, age, Vietnam-era Veteran status, or disability, as defined in the Americans with Disabilities Act.

Insight shall ensure that applicants are hired and that employees are treated during employment without regard to any of the above listed factors. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Insight agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Insight complies with all applicable federal and state non-discrimination laws. Insight shall incorporate the foregoing requirements of this section in all of its contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

**DRUG FREE WORKPLACE**

Insight agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. Insight shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**DMA FORM STATEMENT**

Insight certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list, which list may be found on the Ohio Homeland Security web site at: <http://www.homelandsecurityohio.gov/>. Pursuant to R.C. § 2909.33, Insight agrees to make such certification by completing the declaration of material assistance/no assistance described in R.C. § 2909.33(A)

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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.

**CAMPAIGN FINANCE - COMPLIANCE WITH ORC 3517.13**

Ohio Revised Code Section 3517.13 (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 said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. Insight, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.11" Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the Client from entering, proceeding with, and/or performing the Contract. Such Certification is attached to this Contract and by this reference made a part of this Contract.

**ACCESS TO AND RETENTION OF RECORDS**

At any time, during regular business hours, with reasonable notice and as often as the Client, the Comptroller General of the United States, the State, or other agency or individual authorized by the Client may deem necessary, Insight shall make available to any or all the above named parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. The Client and the above named parties shall be permitted by Insight to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Contract. Insight, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract, agrees to retain and maintain, and assure that all of its subcontractors retain and maintain, all records, documents, writings and/or other information related to performance of this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract, Insight shall retain and maintain, and assure that all of its subcontractors retain and maintain, such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later,

**SIGNATURES**

Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

**TRAIN THE INSTALLER**

**I. Introduction:**

This Contract ("Contract") is entered into by and between Insight Public Sector, Inc. (an Illinois Corporation) ("Insight"), with its principal place of business located at 375 North Front Street, Suite 300, Columbus, Ohio 43215, and The Board of Commissioners of Delaware County, Ohio ("Board"), with its principal place of business located at 101 North Sandusky Street, Delaware, Ohio 43015 and The Delaware County Sheriff ("Sheriff"), with his principal place of business located at 149 North Sandusky Street, 2nd Floor, Delaware, Ohio 43015 (Board and Sheriff collectively "Client") (Insight and Client individually "Party" and collectively "Parties").

**II. SCOPE OF SERVICES:** Insight shall provide the following services ("Services") to the Client under the terms and conditions of this Contract.

**A. Service Description:**

Train the Installer (Panasonic Certified Installation Training)  
One day on-site arbitrator in-car training on up to three vehicles for designated technicians.

**B. Project Management:** Insight will provide project management and technical direction for the projects. Activities may include, but are not limited to, the following:

-Serve as the primary point of contact on all project issues, needs and concerns

-Facilitate kickoff meeting to review project expectations, discuss IT infrastructure design, discover any possible problems/risks, and formulate an appropriate plan (including a firm engagement schedule and potential downtimes)

-Complete "Change Request" documentation as required

-Manage client expectations and satisfaction throughout the life of the project m Schedule and coordinate the

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necessary resources to support the project

- Identify, escalate, and document project issues as necessary
- Provide team leadership and guidance
- Schedule and conduct team update/status meetings
- Prepare and deliver project completion documentation for sign-off

C. Insight's Responsibilities: Insight will provide the applicable and necessary labor, supervision, and consultation to perform the Services and provide the Deliverables described in this Contract. For purposes of this Contract "Deliverables" means any materials produced in the course of performing Services listed or specifically required to be delivered to Client under this contract.

D. Client's Responsibilities: The estimated duration and associated fees presented in this contract are based on the following Client Responsibilities. Should any element(s) of these be lacking during execution of Services, additional time, associated fees, and expenses may be required.

Client is responsible for the following:

- Client will provide a project contact with decision-making authority to support the scope of services described in the above Services Description section, This individual shall also be responsible to sign acceptance forms submitted by Insight to verify service delivery completion.
- The Client will provide access to internal experts, location(s), systems, applications, workspace, hardware, and equipment as is necessary and required at each field location to complete the project.
- Client will provide the necessary hardware, software, and tools required for the successful completion of the project prior to Insight's arrival. Further, Client is responsible for all licensing requirements to be compliant per their own agreements.
- Client will confirm delivery for all equipment and software ordered for this project prior to engineer's travel arrangements.
- Client will provide vehicles in sequential order.

E. Deliverables: Insight will provide the following Deliverables:

- Project management
- Train the installer services
- Documentation detailing the configuration of the newly configured devices if applicable
- Project acceptance and sign-off document

Post-implementation documents will be provided within 20 business days from completion of the project (if applicable).

F. Acceptance Criteria:

Upon completion of the Services listed above and Client receipt of the stated Deliverables, Insight will present Client a project acceptance and sign-off document. Client will notify Insight (in writing), within five (5) business days of receipt, of any project deliverable issues and shall specify in detail the nature and scope of such issues. Insight shall, upon receipt of such notice, act diligently to address and resolve such issues.

The project acceptance and sign-off document will be considered accepted when Client signs and returns the document or at the end of the five (5) business day period during which Client fails to give Insight written notice of non-conformances

G. Resource Team:

Project Sponsor, Delaware County Sheriff's Office - Cleve Brown  
 Support Resource(s), Delaware County Sheriff's Office - TBD  
 Director of Services, Insight - Rich Rysiewicz  
 Sr. Services Delivery Manager, Insight - Robert De Roziere  
 Resource Manager, Insight—David O'Connor  
 Solutions Sales Executive, Insight—Theresa Jackson  
 Account Executive, Insight - Mike Stetson  
 Contract Prepared by, Insight - Nancy Biggard



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H. Change of Scope Procedure: If an alteration to the scope of work in this contract, including Deliverables, milestones and related pricing, is identified by either party, it shall be brought to the attention of the other party's management by completing and submitting a Change Request Form, which is incorporated into this contract as Attachment 1. Each party's respective management will review the form to determine whether a modification to the scope is necessary and what effect the implementation of such change may have on the project. If any such change causes an increase or decrease in the cost or time required for performance of the work, the price and/or delivery schedule shall be equitably adjusted and identified within the Change Request Form. Estimated turnaround time for such determination is five (5) calendar days. If both parties mutually agree to implement the change in scope, the Change Request Form will be incorporated into the contract as an addendum when signed by authorized representatives of both parties. If either party rejects a request for a change in scope or if the parties cannot agree on an adjustment, Insight shall proceed to fulfill its obligations in accordance with this contract as previously agreed upon.

III. SCHEDULE: The project start date will be mutually determined upon receipt of this signed contract and, if applicable, a valid Purchase Order (PO). A minimum lead time of 10 business days from the date of contract signature may be required for scheduling purposes.

A. Estimated Duration: The Project's duration will be 1 day onsite.

IV. PRICING/INVOICING:

Flat Project Price: As consideration to Insight for performance of the Services, Client shall pay Insight the flat project price of \$3740.00. The total amount paid to Insight will not exceed the total fixed price without the prior written approval of Client. Price includes customary travel expenses.

Pricing Notes:

- a. Pricing is valid for 30 days from the date of this contract.
- b. Flat Project Price is based upon Client providing access to internal experts, location(s), systems, applications, workspace, hardware, and equipment as is necessary and required at each field location to complete the project.
- c. A minimum of 10 business days will be required to cancel/reschedule the project. If less notification is given, a cancellation/rescheduling fee equal to time expended and applicable travel expenses will be incurred, and Insight will have 10 business days to reschedule the project if required.
- d. If an Insight engineer arrives on site per an agreed upon schedule and is unable to start or complete the project due to any Client, site, and/or equipment issues, a fee equal to time expended and applicable travel expenses will be incurred, and Insight will have 10 business days to schedule the return visit if required.

Invoicing:

Insight will invoice Client upon the completion of the project:

Invoicing Procedures (to be completed upon execution):

Hard copy invoice will be mailed to:

Delaware County Sheriff's Office  
Address: 149 North Sandusky Street, Delaware, Ohio 43015  
Attention: Accounts Payable or  
Accounts Payable Contact:  
Phone:

Select one of the following below:

Client issues system-generated Purchase Orders for service engagements.

Please fill in the PO Number below and attach a hard copy of the Purchase Order to this signed contract. Note: Services cannot be performed until a hard copy of the Purchase Order is received.

P.O. Number:

Client does NOT issue system-generated Purchase Orders for service engagements.

Accordingly, performance of and payment for any Services under this contract do not require, and are not contingent upon, the issuance of any Purchase Order or other similar document.

If Client requires Insight to include an internal reference number on invoices, please fill in the reference information below.

V. SPECIAL TERMS, CONDITIONS AND ASSUMPTIONS:

A. Project Kickoff: A project kickoff meeting will be held to review project expectations, discuss IT infrastructure design, discover any possible problems/risks, and formulate an appropriate plan (including a firm engagement schedule and downtimes).

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B. Business Hours: Work will be performed during normal business hours unless otherwise mutually agreed upon. Normal business hours are defined as Monday through Friday, 8am-5pm, excluding designated Insight Holidays. Any work completed outside of normal hours will be billed at one and one-half the standard hourly rate.

C. Travel Expenses: Travel-related expenses will be included in the flat fee; customary expenses include, but are not limited to airfare, taxi, hotel, car rental, daily food allowance, and miscellaneous transportation costs (gasoline, parking, tolls, etc).

D. Project Specific Assumptions: The estimated duration and associated fees presented in this contract are based on the following assumptions. Should any element(s) of these be lacking during execution of the Services, additional time, associated fees, and expenses may be required.

- a. Equipment order lead times are known and can be expected to be met.
- b. Insight's on-site consultant/engineer will inventory software hardware for correct pieces/parts and immediately report any discrepancies to the Project Manager for correction action.
- c. All parties agree that personnel will not be asked to perform, nor volunteer to perform, engineering and/or consulting tasks that lie outside the skill sets and experience of personnel. Personnel have the right to decline a service request if the request falls outside their scope of experience and expertise.
- d. Insight will provide no electrical or cabling services.

E. Project/Milestone Acceptance Form: If applicable, upon completion and acceptance of the total project and/or a milestone under this contract, Client will execute a Project/Milestone Acceptance Form, Attachment 2.

F. Constraints: Work that is not included in the Scope section is considered to be out of scope. Any out of scope work must be verified and pre-authorized by Insight prior to commencement through the Change Request process.

G. Reference: Upon successful completion of the engagement, Insight may use the Project as a reference for external purposes. This may include verbal endorsements, printed advertisements, and other marketing references to prospective customers and third parties. Any reference activity will be mutually agreed upon in writing by Insight and Client.

H. Case Study: Upon successful completion of the engagement, Insight may ask Client to serve as an account case study for Insight. If Client agrees, Client will execute a marketing release for publication of non-confidential aspects of the Project (to be reviewed in advanced by Client), in conjunction with Client's name.

I. Terms and Conditions. The General Terms and Conditions attached are incorporated and made part of this contract.

**TRAIN THE INSTALLER**

**GENERAL TERMS AND CONDITIONS**

1. Entire Agreement. The scope of services, special terms associated with the Services and these General Terms and Conditions are together one agreement between Insight and Client, collectively referred to as the 'contract'. This contract, together with all attachments, exhibits and addenda, forms the entire agreement between the parties relating to the Services to be provided by Insight to Client and supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter. Any conflicting additional or different terms contained in any other agreement, invoice or statement of work, as the case may be, are expressly rejected. In the event of a conflict between these General Terms and Conditions, and Special Terms, Conditions and Assumptions under the Statement of Work, the Special Terms, Conditions and Assumptions will govern.

2. Term. The term of this contract will commence on the date last signed by the Authorized Representative of each party and will expire upon the completion of the Services or as otherwise provided under Section 3 below.

3. Termination. Insight or Client may terminate this contract with or without cause with 30 calendar days prior written notice to the other party. Termination does not relieve Client's duty to pay for Services performed, or expenses incurred, in accordance with this contract.

4. Invoicing/Payment. Services will be invoiced in accordance with this contract. Client must pay all invoices in full within 30 days of the invoice date, unless otherwise specified under the contract Special Terms, Conditions and Assumptions. All payments must reference the invoice number. Unless otherwise specified, all invoices shall be paid in the currency of the invoice.

(a) Credit/Late Payment. Insight retains the right to decline to extend credit and to require that the applicable purchase price be paid prior to performance of Services on the basis of changes in Client's financial condition and/or payment record. Insight also reserves the right to charge interest of 1.5% per month or the maximum allowable by applicable law, whichever is less, for any undisputed past due invoices. Client is responsible for all costs of collection, including reasonable attorneys' fees, for any payment default on undisputed invoices. In

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addition, Insight may terminate all further work if payment is not received in a timely manner.

(b) Taxes. Federal, state and local sales, use and excise taxes and all similar taxes and duties, (excluding taxes based on Insight's income, assets or net worth), are the sole responsibility of Client and will be separately itemized on the invoice. Client may provide Insight a tax exemption certificate, which will be subject to review and acceptance by Insight.

5. Services.

(a) Licenses. Client is solely responsible for acquiring and maintaining valid software licenses for authorized and installed software products (whether installed on Client's machines by Insight as individual products or part of a software image, or by any other party or method).

(b) Intellectual Property Rights. Insight retains all right, title and interest in any pre-existing intellectual property that is owned by Insight ("Insight P") and which may be used in carrying out the Services, including any modifications or improvements made to Insight IP during or as a result of the Services to be performed under this contract. Except for Insight IP and upon payment in full of all amounts due Insight, all documents, drawings, specifications, information, patents, patent applications, inventions, developments or processes or any copyrightable material originated and developed by Insight specifically for Client as part of the Services to be performed under this contract ("Work Product") shall be owned by Client. Insight hereby grants Client a worldwide, non-exclusive, royalty-free, perpetual, without the right of sublicense, license to use Insight IP in the course of Client's internal, business operations.

6. Limited Service Warranty. Insight represents and warrants that:

- (a) It has the full power and authority to enter into this contract:
- (b) It has all other rights necessary for the performance of its obligations under this contract, without violating any rights of any other party:
- (c) Services performed by Insight will: (i) be performed in a timely, competent, professional and workmanlike manner; (ii) substantially conform to the written specifications under this contract for 30 calendar days from completion, or for such other warranty period as may be indicated under the Special Terms, Conditions and Assumptions of this contract; (iii) be in compliance with all laws, rules and regulations applicable to Insight's performance under this contract; and
- (d) The use of Work Product shall not infringe on any U.S. patents, copyrights, trademarks, or trade secrets of any third party

7. Warranty Disclaimer, THE EXPRESS WARRANTIES IN SECTION 6 ARE IN LIEU OF, AND INSIGHT EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES IN RELATION TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, , OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD.

No agent or employee of Insight or any other party is authorized to make any warranty in addition to those made in Section 6. Insight will have no obligation with respect to any warranty claim if the claim is the result of damage caused by unauthorized modification, or any abuse or misuse by Client or any third party not performing under the direction of Insight, or damage caused by disaster such as fire, flood, wind or lightning,

8. Remedies. THE FOLLOWING ARE THE PARTIES RESPECTIVE SOLE AND EXCLUSIVE OBLIGATIONS, AND SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY ACTION FOR BREACH OF LIMITED WARRANTY.

- (a) Services. Clients remedy for non-conforming Services discovered upon completion or during the warranty period shall be the re-performance of any deficient Services at Insight's expense. No re-performance shall extend any warranty period. If Insight is unable to remedy any deficient Services within 30 days of notice or such additional time as may be agreed upon by the Parties, Insight will, at its option, provide a credit or refund of any fees paid for the specific non-conforming Services..
- (b) IP Infringement. If Client's use of Work Product delivered under this contract is, or is likely to be, enjoined due to a third party Claim of infringement or misappropriation, Insight will, at its expense, (i) procure for Client the right to continue using the Work Product, or (ii) replace or modify the Work Product to make it non-infringing. If neither of the foregoing alternatives is commercially reasonable, Insight shall refund any fees paid for the infringing Work Product.
- (c) Credits. Any credits issued to Client by Insight for any reason must be applied by Client within two years from the date the credit is issued. If not used within such period, credits will automatically expire.

9. Confidential Information. To the extent permitted by law, Insight and Client will maintain in confidence and safeguard all Confidential Information, as defined in this contract, of the other party, its affiliates, and its

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clients. To the extent permitted by law, confidential Information will include, but is not limited to trade secrets, know-how, inventions, techniques, data, client lists, financial information, and sales and marketing plans of the other party, its affiliates, or its clients. To the extent permitted by law, both Insight and Client recognize and acknowledge the confidential and proprietary nature of any Confidential Information as well as acknowledge the irreparable harm that could result to the other party, its affiliates, or its clients if such Confidential Information is disclosed to a third party or used for unauthorized purposes. To the extent permitted by law, Insight and Client agree to use any Confidential Information only for the purpose of conducting business with each other and their clients in the manner contemplated by this contract. To the extent permitted by law, Insight and Client will restrict disclosures of any Confidential Information to only those personnel who have a need to know and will bind such personnel to obligations of confidentiality to the same extent that each party is bound by this contract. Upon completion or termination of this contract or upon request of Insight or Client, the other party will promptly return all materials incorporating any such Confidential Information and any copies thereof to the owner of such Confidential Information. For purposes of this contract, the obligations will not apply to information that is required to be disclosed pursuant to law, has already entered the public domain other than by Insight's or Client's breach of this contract; was acquired by Insight or Client before receiving such information from the other party without restriction as to use or disclosure; is hereafter rightfully furnished to Insight or Client without restriction as to use or disclosure by a third party authorized to make such disclosure; or is information that was independently developed by Insight or Client without reference to Confidential Information.

10. Indemnification.

INDEMNIFICATION DEFINITIONS;

1. "Contracted Parties" means Insight, any subcontractor, and any sub-subcontractor and includes, but is not limited to any of Insight's, any subcontractor's, or any sub-subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives

"Indemnified Parties" means the Board, the Sheriff, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives

Insight shall provide indemnification as follows:

A. To the fullest extent of the law and without limitation, Insight agrees to indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the Contracted Parties performance of this Contract or the Contracted Parties actions or omissions. Insight agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that Insight shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorneys fees, costs, and expenses. Insight further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that Insight shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees.

B. Insight shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or pads arising out of or resulting in whole or in part from any acts or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.

(c) Infringement. Insight will indemnify and defend Client, its officers, directors, employees, agents and affiliates from and against any third party Claims that any Work Product, as defined under this contract, infringes any U.S. patent, copyright, trademark, or trade secret. Insight will pay all damages, costs, and expenses finally awarded to third parties against Client in such action or agreed to in settlement. Insight will not be liable for any infringement claim if (i) the Work Product was created in accordance with Client's sole design or specifications, (ii) Client continues using the Work Product after receiving notice from Insight to discontinue use, (iii) Client altered the Work Product, or (iv) Client used the Work Product in combination with any other product, program or data not authorized by Insight or its agent, and such infringement claim would not have occurred absent such combination.

11. Limitation of Liability, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF INCOME, PROFITS, DATA, OPERATIONAL EFFICIENCY, USE OR INFORMATION,) ARISING UNDER THIS contract REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.  
EXCEPT FOR CLAIMS OF NON-PAYMENT, THE AMOUNT OF DIRECT DAMAGES RECOVERABLE FROM

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A PARTY UNDER THIS contract IS LIMITED TO THE TOTAL AMOUNT PAID BY CLIENT UNDER THIS contract. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT.

12. Security and Backup. Client is responsible for the security of its network, including the backup and other protection of its system and data, against loss, damage or destruction by third parties. Insight will not be liable for any damages resulting from security breaches of Client's network or data, except to the extent caused by Insight's sole negligence or willful acts or omissions. This disclaimer is in addition to, and not instead of, any other disclaimers and limitation of liability in this contract.

13. Insurance- Insight will carry adequate insurance coverage to provide Workers Compensation insurance as required by applicable state law, including Employer's Liability insurance with limits of at least \$300,000 each accident; comprehensive Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit; and comprehensive General Liability insurance with limits of not less than \$1,000,000 each occurrence.

14. Notices. Any notice required or permitted to be given hereunder must be in writing and is considered received: (1) when personally delivered; (2) one (1) business day after having been sent by overnight mail via a professional carrier; or (3) when sent via facsimile or electronic mail, receipt confirmed, with an original document placed in the mail within 5 business days of the date of that facsimile or electronic mail. All business communication will be sent to the addresses set forth above or to other persons or addresses as either party designates in writing to the other. Legal notices must be sent with a copy for Insight addressed to: Insight, 6820 South Hart Avenue, Tempe, AZ 85283, Attn: Legal Department,

15. Governing Law. This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Contract shall be filed in and heard before the courts of Delaware County, Ohio.

16. Non-Solicitation & Non-Hire. Both parties agree that during the time that Insight is rendering Services under the terms of this contract and for 1 year following the cessation of such Services, neither party will directly or indirectly solicit, offer employment or hire any current or former employee or consultant employed by or hired by the other party involved in the performance of this contract. This provision does not restrict the right of either party to solicit or recruit generally in the media and does not prohibit either party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

17. General. Services will be deemed accepted upon completion unless otherwise specified. Any subsequent additions, deletions or modifications to this contract are not binding unless agreed upon in writing by authorized representatives of both Parties. If any part of this contract is for any reason found to be invalid, illegal or unenforceable, all other parts will still remain in effect. A delay or failure to exercise or partially exercise any right under this contract does not operate as a waiver, nor will it preclude future exercise of that right or permit, or sanction any subsequent breach of any term or condition. Neither party may assign its duties or rights under this contract, whether by operation of law or otherwise, except with the other party's prior written consent; provided that Insight will have the right to assign this contract to its affiliates. Insight may subcontract any or all of its obligations hereunder to one or more qualified parties with Client's prior consent. Insight is not responsible for default or delays caused by Client's failure to provide accurate instructions, information, access to facilities or suitable product or application environment. Neither party will be liable for any delays in the performance of this contract due to circumstances beyond its control, including but not limited to acts of nature, acts of government, national emergencies, acts of terrorism, transportation delays, labor disturbances, work stoppages, or material shortages. Client represents and warrants that no technical data furnished under this contract will be exported from the United States except in compliance with all requirements of the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). The provisions of this contract, which by sense and content are intended to survive, including but not limited to the sections related to payment, warranties, remedies, confidentiality and limits of liability, will survive the expiration or termination of this contract. Insight is an independent contractor to Client. No personnel employed or engaged by Insight to perform the Services for Client will be considered Client's employees, agents, partners, joint venture partners, or franchisors. Insight has sole responsibility for the direction of its employees and has the right to fire, hire, suspend, layoff, transfer or reassign employees at will without the consent of Client.

#### FINDINGS FOR RECOVERY

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

#### EQUAL OPPORTUNITY EMPLOYMENT

In fulfilling the obligations and duties of this Contract, Insight shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, color, creed, gender, sexual orientation, age, Vietnam-era Veteran status, or disability, as defined in the Americans with Disabilities Act.

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Insight shall ensure that applicants are hired and that employees are treated during employment without regard to any of the above listed factors. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Insight agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Insight complies with all applicable federal and state non-discrimination laws. Insight shall incorporate the foregoing requirements of this section in all of its contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

#### DRUG FREE WORKPLACE

Insight agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall have established and have in place a drug free workplace policy. Insight shall make a good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

#### DMA FORM STATEMENT

Insight certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list, which list may be found on the Ohio Homeland Security web site at: <http://www.homelandsecurity.ohio.gov/>. Pursuant to R.C. § 2909.33, Insight agrees to make such certification by completing the declaration of material assistance/no assistance 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.

#### CAMPAIGN FINANCE - COMPLIANCE WITH ORC 3517.13

Ohio Revised Code Section 3517.13 1(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 said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. Insight, 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 Client from entering, proceeding with, and/or performing the Contract, Such certification is attached to this Contract and by this reference made a part of this Contract.

#### ACCESS TO AND RETENTION OF RECORDS

At any time, during regular business hours, with reasonable notice and as often as the Client, the Comptroller General of the United States, the State, or other agency or individual authorized by the Client may deem necessary, Insight shall make available to any or all the above named parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. The Client and the above named parties shall be permitted by Insight to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Contract.

Insight, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract, agrees to retain and maintain, and assure that all of its subcontractors retain and maintain, all records, documents, writings and/or other information related to performance of this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract, Insight shall retain and maintain, and assure that all of its subcontractors retain and maintain, such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later.

#### SIGNATURES

Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

Vote On Motion            Mr. O'Brien    Aye    Mr. Thompson    Aye    Mr. Hanks            Absent

#### RESOLUTION NO. 10-1479

**COMMISSIONERS JOURNAL NO. 54 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD NOVEMBER 8, 2010**

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**IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN OHIO WESLEYAN UNIVERSITY AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR INTERN/EXTERN ASSISTANCE IN THE AREAS OF EMERGENCY MANAGEMENT AND HOMELAND SECURITY:**

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

Whereas, the Director of the Delaware County Office of Homeland Security and Emergency Management Agency recommends approval of the following agreement;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following agreement;

**INTERN/EXTERN SERVICES AGREEMENT**

This Agreement is entered into this 8<sup>th</sup> day of November, 2010, by and between Ohio Wesleyan University ("OWU"), an Ohio private institution of higher education, with its principal address as 61 South Sandusky Street and the Delaware County Board of Commissioners (the "County"), with its principal address as 101 N. Sandusky Street, Delaware, Ohio 43015.

WHEREAS, OWU has established an internship/externship program in order to provide a clinical/practicum educational experience for its students; and

WHEREAS, the County has a need for intern/extern assistance in the areas of emergency management and homeland security and can provide practical, educational experiences in these areas for OWU students;

NOW, therefore, the parties, in consideration of the terms and conditions set forth herein, agree as follows:

§ 1.0 Responsibilities of County

§ 1.1 County will provide suitable clinical/practicum learning environment.

§ 1.2 County will designate Brian Galligher, Director of the Delaware County Emergency Management Agency, to supervise the students and serve as liaison to OWU.

§ 1.3 County shall permit, upon reasonable request, the inspection of its facilities relevant to field experience and any program student records, by OWU faculty and administrators.

§ 1.4 County will compensate OWU at the rate of \$\*\_\*/hour for student time, up to a total amount not to exceed \$14,750.00.

*\*rate to be determined per each student intern*

§ 2.0 Responsibilities of OWU

§ 2.1 OWU shall, in consultation with the County, assign qualified interns/externs to provide services and assistance in the areas of emergency management and homeland security.

§ 2.2 OWU will provide and maintain the records and reports necessary for conducting the students' clinical/practicum learning experience, including records related to student compensation.

§ 3.0 Application of County's Rules & Procedures

§ 3.1 OWU acknowledges that students, during their experience at the County facilities, will be under the jurisdiction of County officials for educational purposes and that such persons will be subject to County's rules, policies, and procedures, which shall be provided to students.

§ 3.2 OWU acknowledges that the County may terminate the internship/externship of any OWU student found to be in violation of County rules, policies, or procedures.

§ 4.0 Student Status

§ 4.1 Students assigned to the County pursuant to this Agreement shall be OWU employees and serve only as contracted servants for the County. OWU agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto or between the County and students. OWU also agrees that, as an independent contractor, OWU assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services rendered hereunder.

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§ 5.0 Student Removal

§ 5.1 County reserves the right to regulate the number and frequency of participants in field experience, as well as the hours worked.

§ 5.2 County reserves the right to exclude any student from its premises in the event that such person's conduct or state of health is deemed objectionable or detrimental.

§ 6.0 Term and Termination

§ 6.1 This Agreement shall be effective as of the date stated above and remain effective until December 31, 2010, or until County funds as specified herein have been exhausted, whichever occurs first.

§ 6.2 This Agreement may be terminated at any time by either party by giving the other party 90 days advance written notice.

§ 7.0 Non-Discrimination

County and OWU agree that neither will discriminate against any individual on the basis of age, sex, race, creed, color, national origin, religion, disability, or veteran status, and that County agrees to comply with all non-discriminatory laws to which OWU is subject. General information, questions, concerns or complaints related to these matters may be directed to the OWU EEO Officer at 61 North Sandusky Street.

§ 8.0 Insurance

OWU and County shall maintain liability insurance policies insuring against liability arising from the acts and omissions of its agents and employees. The limits of such policies shall not be less than \$1,000,000 per occurrence and \$3,000,000 aggregate through umbrella coverage. OWU shall provide proof of such coverage to County upon request.

§ 9.0 Entire Agreement; Modification

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and may be modified only by a writing signed by both parties.

§ 10.0 Governing Law

This Agreement shall be governed by and construed under the laws of the State of Ohio. Any litigation arising out of or relating to this Agreement or the performance thereof shall be brought in the courts of Delaware County, Ohio.

§ 11.0 Representation of Authority

Each of the parties that have executed this Agreement through its undersigned authorized representative, and each representative so executing, hereby warrants and represents to the other parties that the undersigned representative has full authority to execute this Agreement on behalf of the party for whom said authorized representative purports to act.

§ 12.0 Notice

Any notice required hereunder shall be made in writing and shall be accomplished by personal delivery, facsimile, or by U.S. Mail, certified, return receipt requested, addressed to the following parties:

Eric Algoe, Vice President for Finance, Administration and Treasurer  
Ohio Wesleyan University  
61 South Sandusky Street  
Delaware, Ohio 43015  
(740)- 368-3352

Brian Galligher, Director of Delaware County EMA  
10 Court Street  
Delaware, Ohio 43015  
(740) 833-2100

§ 13.0 Severability

In the event one or more clauses of this Agreement are declared illegal, void or unenforceable, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in



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any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

§ 14.0 Liability

The Parties agree to be and shall be responsible for their own negligence, actions or inactions and/or the actions or inactions of their respective board members, officials, officers, employees, agents, representatives, volunteers, servants and/or students resulting from the performance of this Agreement. The Parties agree to be individually and solely responsible for, and shall hold harmless and release the other Party from, any and all claims, lawsuits, liability, losses, damages, illnesses, injuries (including death), and/or related expenses that each may incur as a result of their own negligence, actions or inactions and/or the actions or inactions of their respective board members, officials, officers, employees, agents, representatives, volunteers, servants and/or students, in the performance of this Agreement.

**SCOPE of Work for OWU Project with the FY2008 SHSG**

Update the Delaware County Resource Directory

- Verify numbers, contact persons, and equipment of response entities
- Verify numbers, contact persons, and equipment of other government entities
- Verify numbers, contact persons, and equipment of non-governmental organizations
- Verify numbers, contact persons, and equipment of private groups willing to assist in emergencies
- Attempt to find new resources
- Go through old resource components to either keep or disregard

Update the County Infrastructure Data

- Verify locations of items such as power lines, water plants, sewage plants, substations, gas lines, and other components necessary
- Find new infrastructure data for GIS
- Work with Delaware County GIS to incorporate into the public safety application
- Research contact information in times of emergencies for infrastructure
- Potentially compose infrastructure operability guide (i.e. value of components to the power grid and how power is restored via sections)

Work the above projects in a confidential manner in keeping with Homeland Security practices and to complete as much as possible.

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

**RESOLUTION NO. 10-1480**

**IN THE MATTER OF APPROVING AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN DELAWARE COUNTY AND OHIO WESLEYAN UNIVERSITY CONCERNING FIBER OPTIC NETWORKING:**

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

Whereas, the Data Center Director recommends approval of the following amendment with Ohio Wesleyan University;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following amendment with Ohio Wesleyan University concerning Fiber Optic Networking:

**AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN DELAWARE COUNTY  
AND OHIO WESLEYAN UNIVERSITY FOR FIBER OPTIC USE**

This Amendment No. 1 to the Agreement entered into on October 14, 2009, is made and entered into as of November 8, 2010, by and between Delaware County, Ohio, a political subdivision, ("County") and Ohio Wesleyan University, an Ohio not-for-profit corporation, ("OWU"). County and OWU are collectively referred to herein as the "Parties" and individually referred to herein as a "Party." Pursuant to Section 8.4 of the Agreement, the Parties hereby agree to amend the Agreement.

Amendment to Section 2.1:

Section 2.1 of the Agreement shall be amended to read as follows:

The Term of this Agreement shall begin on the Effective Date and shall extend for a period of two (2) years, terminating on October 13, 2011 (the "Term").

Addition of Section 8.9:

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The Agreement shall be amended to include the following as Section 8.9:

If, during the life of this Agreement, the County establishes a fiber optic network link to an additional Oarnet point of presence (POP), the Parties mutually agree to engage in good faith negotiations regarding a limited right to use a portion of such fiber in favor of OWU.

All Other Provisions Unaffected:

All remaining provisions of the Agreement not specifically amended herein shall not be affected by this Amendment No. 1 and shall continue in full force and effect.

IN WITNESS WHEREOF their consent and agreement to the terms and conditions contained in this Amendment No. 1 and intending to be legally bound hereby, the Parties have executed this Amendment No. 1 as of the date indicated above.

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

**RESOLUTION NO. 10-1481**

**IN THE MATTER OF APPROVING THE SANITARY SEWER CONSTRUCTION PLANS FOR VILLAS AT SELDOM SEEN, PHASE 2 – PART 1, 2 & 3:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the sanitary sewer construction plans for Villas at Seldom Seen, Phase 2 – Part 1, 2 & 3 for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer plans for Villas at Seldom Seen, Phase 2 – Part 1, 2 & 3 for submittal to the Ohio EPA for their approval.

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer plans for Villas at Seldom Seen, Phase 2 – Part 1, 2 & 3 for submittal to the Ohio EPA for their approval.

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

**RESOLUTION NO. 10-1482**

**IN THE MATTER OF ACCEPTING THE FACT FINDING REPORT FROM WILLIAM LEWIS :**

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

Whereas, the Delaware County Commissioners and Division of Environmental Services AND Local 2896 and American Federation of State, County and Municipal Employees, Ohio Council 8 AFL-CIO have been negotiating a collective bargaining agreement, and

Whereas, Fact Finding was required as part of the negotiating process, and

Whereas, a Fact Finding Report was received from William Lewis on November 5, 2010, and

Whereas, the Division of Environmental Services agrees with the report and recommends to the Board of Commissioners accepting the report.

Therefore, be it resolved that the Board of County Commissioners accepts the Fact Finding Report dated November 5, 2010 for the collective bargaining agreement with Local 2896, AFCSME.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Hanks Absent

**RESOLUTION NO. 10-1483**

**IN THE MATTER OF APPLYING FOR AUTHORIZATION TO EMPLOY BRICKER & ECKLER LLP AS LEGAL COUNSEL TO ASSIST THE BOARD:**

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

WHEREAS, the Board of Commissioners (the "Board") desires, in conjunction with the Prosecuting Attorney of the County, to retain the legal services of Bricker & Eckler LLP (the "Firm"), such legal services to be in the nature of advice, representation, and assistance in a matter of public business coming before the Board and in the prosecution of an action or proceeding in which the Board is a party or has an interest, in its official capacity;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

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**Section 1.** The Board, in conjunction with the Prosecuting Attorney, hereby makes the following application to the Court of Common Pleas for authorization to employ the Firm to assist the Board:

Now come the Delaware County Prosecuting Attorney (the "Prosecutor") and the Delaware County Board of Commissioners (the "Board") (collectively the "Applicants") and, pursuant to O.R.C. § 305.14(A), jointly move this Court to authorize the Board to employ Bricker & Eckler LLP (the "Firm") as legal counsel to assist the Board. Such employment would be for the purposes of providing advice, representation, and assistance related to claims arising from the construction and design of the Alum Creek Water Reclamation Facility. The length of such employment shall be until the Applicants jointly believe, for whatever reason, that such employment is no longer necessary. The Applicants believe such employment is necessary because the matters involve or concern issues that are complex and/or require a particular or specialized knowledge or expertise. Therefore, the Applicants respectfully request that this Court approve and authorize the Board to employ legal counsel to assist the Board.

**Section 2.** This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in those formal actions were in meetings open to the public in compliance with the law.

**Section 3.** This Resolution shall be in full force and effect immediately upon its passage.

Vote On Motion            Mr. Thompson    Aye    Mr. O'Brien    Aye    Mr. Hanks    Absent

**RESOLUTION NO. 10-1484**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE COMMON PLEAS COURT MEDIATION FORECLOSURES FUND:**

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

<b>Supplemental Appropriation</b>					
27929208-5301	Mediation Foreclosure/Prof Services				\$24,000.00

Vote On Motion    Mr. Hanks            Absent            Mr. O'Brien    Aye    Mr. Thompson    Aye

**COMMISSIONERS' COMMITTEES REPORTS**

**Commissioner Hanks**  
-Absent

**Commissioner O'Brien**  
-Nothing To Report;-No Scheduled Meetings Due To Budget Hearings

**Commissioner Thompson**  
Attend The Ribbon Cutting For The OSU Medical Center

**RESOLUTION NO. 10-1485**

**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:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn into Executive Session at 9:35AM.

Vote On Motion            Mr. O'Brien    Aye    Mr. Thompson    Aye    Mr. Hanks    Absent

**RESOLUTION NO. 10-1486**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 9:55AM.

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

**RESOLUTION NO. 10-1487**

**IN THE MATTER OF ADJOURNING THE MEETING:**

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

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

**BUDGET HEARINGS**

- November 8, 2010**
- November 9, 2010**
- November 10, 2010**
- November 12, 2010**

\_\_\_\_\_  
Absent  
Todd Hanks

\_\_\_\_\_  
Ken O'Brien

\_\_\_\_\_  
Tommy Thompson

\_\_\_\_\_  
Jennifer Walraven, Clerk to the Commissioners