

COMMISSIONERS JOURNAL NO. 57 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD OCTOBER 4, 2012

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

Present:  
Dennis Stapleton, President  
Ken O’Brien, Vice President  
Tommy Thompson, Commissioner

RESOLUTION NO. 12-991

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 27, 2012:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on September 27, 2012; 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   Absent   Mr. Stapleton   Aye   Mr. O'Brien   Aye

RESOLUTION NO. 12-992

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 1, 2012:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the “Board”) met in regular session on October 1, 2012; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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. Stapleton   Aye   Mr. Thompson   Absent   Mr. O'Brien   Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 12-993

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director Emergency Medical Services recommends the promotion of Timothy Davis to a Captain with the EMS Department; effective October 4, 2012;

Therefore Be It Resolved, that the Board of Commissioners promote Timothy Davis to a Captain with the EMS Department; effective October 4, 2012.

The Director of Environmental Services recommends approving Leave-Without-Pay for Peggy Roberts with the Code Compliance Department; effective date September 21, 2012-October 26, 2012;

Therefore Be It Resolved, the Board of Commissioners approve Leave-Without-Pay for Peggy Roberts with the Code Compliance Department; effective date September 21, 2012-October 26, 2012.

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

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RESOLUTION NO. 12-994

IN THE MATTER OF DECLARING OCTOBER 5, 2012, AS NATIONAL MANUFACTURING DAY  
IN DELAWARE COUNTY:

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

WHEREAS, eighty percent of Americans believe manufacturing is important to the country’s economic prosperity, standard of living and national security, while only thirty percent encourage their children to pursue a manufacturing career. For that reason, the Delaware County Board of Commissioners encourage middle and high school students to tour a manufacturing facility in their community to see the high tech opportunities of modern, advanced manufacturing and the well-paying careers available to them in manufacturing. Students may be surprised to learn that wages in manufacturing are nine percent higher than the state’s economy-wide average; and

WHEREAS, more than one million vehicles are produced in Ohio each year, more than one-sixth of total U.S. output. Ohio is also the undisputed leader in American aircraft engine production, with seventeen percent of the total U.S. employment in aviation and aerospace located in Ohio. Ohio’s food and beverage manufacturing industry shipped \$24 billion in products last year; and

WHEREAS, Ohio is the third largest state in manufacturing as a percent of Gross State Product, ranking only behind the much larger states of California and Texas. Some 600,000 Ohioans are employed in manufacturing, nearly 13% of Ohio’s total employment; and

WHEREAS, according to the 2011 Bureau of Labor Statistics, Quarterly Census of Employment and Wages, in Delaware County, 160 manufacturers employed 5,441 workers making an average of \$56,883; in the eleven county Columbus2020 region, 1,759 manufacturers employ 79,313 workers making an average of \$56,571; and

WHEREAS, regionally:

<u>County</u>	<u>Employees</u>	<u>Manufacturers</u>	<u>Average Salary</u>
Delaware	5,441	160	\$56,883
Fairfield	4,322	117	\$48,236
Franklin	34,404	950	\$56,074
Knox	4,321	77	\$58,318
Licking	5,932	147	\$46,471
Logan	4,910	53	\$64,640
Madision	2,480	53	\$45,456
Marion	5,950	74	\$43,518
Morrow	694	27	\$47,982
Pickaway	2,334	42	\$57,336
Union	8,525	59	\$76,931

All the activities and events related to *Manufacturing Month in Ohio* can be seen and searched at:  
[www.ohiomanufacturingmonth.com](http://www.ohiomanufacturingmonth.com).

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby declares October 5, 2012 as National Manufacturing Day in Delaware County and encourages community and school participation in all the activities and events related to October’s Manufacturing Month in Ohio.

Section 2: The Board hereby recognizes the significant contributions manufacturers and their employees make to Delaware County.

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

RESOLUTION NO. 12-995

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES,  
AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0928, CMAPR1003, MEMO  
TRANSFERS IN BATCH NUMBERS MTAPR1003:

It was moved by Mr. O’Brien, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0928, CMAPR1003 and Purchase Orders as listed below:

<b>PR Number</b>	<b>Vendor Name</b>	<b>Line Desc</b>	<b>Line Account</b>	<b>Amount</b>	<b>Line</b>
R1205724	LAWYERS TITLE	TITLE SEARCH FOR	22911716 - 5301	\$25,000.00	0001

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	AGENCY OF	DEMO				
R1205772	DELAWARE INC					
	XYLEM WATER	UP GRADE OF QUAIL	66611903	- 5450	\$29,500.86	0001
	SOLUTIONS USA INC	MEADOWS				
R1205786	JC TRIVETT	FORMULA 2011	23011704	- 5365	\$17,909.55	0001
	EXCAVATING	SUNBURY				
R1205825	PRIORITY DISPATCH	MAINTENANCE	21411306	- 5320	\$12,252.00	0001
	CORP	AGREEMENT FOR				
		2013				
R1205851	INTERHACK CORP	COURT PAID EXPERT	10011202	- 5301	\$8,191.88	0001
Vote on Motion	Mr. Stapleton	Aye	Mr. O'Brien	Aye	Mr. Thompson	Absent

RESOLUTION NO. 12-996

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Court of Common Pleas (Adult Court Services) is requesting that Scott Ritter and Scott Berry attend a ASP Instructor Certification Class in Newark, Ohio December 4-6, 2012; at the cost of \$100.00 (fund number 25622303).

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

RESOLUTION NO. 12-997

IN THE MATTER OF GRANTING THE ANNEXATION PETITION OF 7.181 ACRES OF LAND IN ORANGE TOWNSHIP TO THE CITY OF COLUMBUS:

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

Whereas, on September 5, 2012, the Clerk to the Board of the Delaware County Commissioners received an annexation petition filed by Jill Stemen Tangeman, Esq., agent for the petitioners, of 7.181 acres, more or less, in Orange Township to the City of Columbus.

Whereas, ORC Section 709.023-Expedited Type 2 Annexation Petition; Petitions By All Property Owners With Or Without Consent of Municipality & Township(s) – If the Municipality or Township does not file an objection within 25 days after filing of annexation, the Board at its next regular session shall enter upon its journal a resolution granting the proposed annexation.

Whereas, 25 days have passed and the Clerk of the Board has not received an objection from the City of Columbus or the Township of Orange.

Therefore, Be It Resolved, the Delaware County Board of Commissioners grants the annexation petition request to annex 7.181 acres, more or less, in Orange Township to the City of Columbus.

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

RESOLUTION NO. 12-998

IN THE MATTER OF APPROVING A MAINTENANCE AND SUPPORT AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND MORPHOTRAK, INC. FOR THE IDENTIX LIVESCAN SYSTEM AND SOFTWARE:

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

Whereas, the Sheriff and Sheriff's Office Staff recommends approval of a maintenance and support agreement between The Delaware County Commissioners; The Delaware County Sheriff and Morphotrak, Inc. for The Identix Livescan System and Software;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve a maintenance and support agreement between The Delaware County Commissioners; The Delaware County Sheriff and Morphotrak, Inc. for The Identix Livescan System And Software.

MorphoTrak  
Maintenance and Support Agreement

MorphoTrak, Inc., ("MorphoTrak" or "Seller") having a principal place of business at 113 South Columbus Street, 4th Floor, Alexandria, VA 22314, and Delaware County Sheriff's Office ("Customer"), having a place of business at 149 N. Sandusky St., Delaware, OH 43015, and Board of Delaware County Commissioner

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(Customer), having a place of business at 101 N. Sandusky St., Delaware, OH 43015, enter into this Maintenance and Support Agreement ('Agreement'), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as “party” and collectively as “parties.”

For good and valuable consideration, the parties agree as follows.

Section 1. EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	“Description of Covered Products”
Exhibit B	“Support Plan”
Exhibit C	"Support Plan Options and Pricing Worksheet"
Exhibit D	"Billable Rates"

Section 2. DEFINITIONS

"Equipment" means the physical hardware purchased by Customer from Seller pursuant to a separate System Agreement, Products Agreement, or other form of agreement.

"MorphoTrak" means MorphoTrak, Inc.

"MorphoTrak Software" means Software that MorphoTrak or Seller owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

"Non-MorphoTrak Software" means Software that a party other than MorphoTrak or Seller owns.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Technical Support Services,

"Patch" means a specific change to the Software that does not require a Release.

"Principal Period of Maintenance" or "PPM" means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement. The PPM selected by Customer is indicated in the Support Plan Options and Pricing Worksheet.

"Products" means the Equipment (if applicable as indicated in the Description of Covered Products) and Software provided by Seller.

"Releases" means an Update or Upgrade to the MorphoTrak Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases," A "Supplemental Release" is defined as a minor release of MorphoTrak Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the MorphoTrak Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are identified by the third digit of the three-digit release number, shown here as underlined; 1.2.3. A Standard Release is defined as a major release of MorphoTrak Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined; 1.2.3". A "Product Release" is defined as a major release of MorphoTrak Software considered to be the next generation of an existing product or a new product offering. Product Releases are identified by the first digit of the three-digit release number, shown here as underlined; 1.2.3". If a question arises as to whether a Product offering is a Standard Release or a Product Release, MorphoTrak's opinion will prevail, provided that MorphoTrak treats the Product offering as a new Product or feature for its end user customers generally.

"Residual Error" means a software malfunction or a programming, coding, or syntax error that causes the Software to fail to conform to the Specifications.

“Services" means those maintenance and support services described in the Support Plan and provided under this Agreement.

"Software" means the MorphoTrak Software and Non-MorphoTrak Software that is furnished with the System or Equipment.

"Specifications" means the design, form, functionality, or performance requirements described in published descriptions of the Software, and if also applicable, in any modifications to the published specifications as expressly agreed to in writing by the parties.

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"Standard Business Day" means Monday through Friday, 8:00 am. to 5:00 p.m. local time, excluding established MorphoTrak holidays.

"Standard Business Hour" means a sixty (60) minute period of time within a Standard Business Day(s).

"Start Date" means the date upon which this Agreement begins. The Start Date is specified in the Support Plan Options and Pricing Worksheet,

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or MorphoTrak).

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer, minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement,

"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

### Section 3. SCOPE AND TERM OF SERVICES

3.1. In accordance with the provisions of this Agreement and in consideration of the payment by Customer of the price for the Services, Setter will provide to Customer the Services in accordance with Customers selections as indicated in the Support Plan Options and Pricing Worksheet, and such Services will apply only to the Products described in the Description of Covered Products.

3.2. Unless the Support Plan Options and Pricing Worksheet expressly provides to the contrary, the term of this Agreement is one (1) year, beginning on the Start Date. This annual maintenance and support period will automatically renew upon the anniversary date for successive one (1) year periods unless either party notifies the other of its intention to not renew the Agreement (in whole or part) not less than thirty (30) days before the anniversary date or this Agreement is terminated for default by a party.

3.3. This Agreement covers all copies of the specified Software listed in the Description of Covered Products that are licensed by Seller to Customer. If the price for Services is based upon a per unit fee, such price will be calculated on the total number of units of the Software that are licensed to Customer as of the beginning of the annual maintenance and support period. If, during an annual maintenance and support period, Customer acquires additional units of the Software that is covered by this Agreement, the price for maintenance and support services for those additional units will be calculated and added to the total price either (1) if and when the annual maintenance and support period is renewed or (2) immediately when Customer acquires the additional units, as MorphoTrak determines. Seller may adjust the price of the maintenance and support services effective as of a renewal if it provides to Customer notice of the price adjustment at least forty-five (45) days before the expiration of the annual maintenance and support period. If Customer notifies Seller of its intention not to renew this Agreement as permitted by Section 3.2 and later wishes to reinstate this Agreement, it may do so with Seller's consent provided (a) Customer pays to Seller the amount that it would have paid if Customer had kept this Agreement current, (b) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (c) all copies of the specified Software listed in the Description of Covered Products are covered.

3.4. When Seller performs Services at the location of installed Products, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. Customer will provide all information pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.5. All Customer requests for covered Services will be made initially with the call intake center identified in the Support Plan Options and Pricing Worksheet.

3.6. Seller will provide to Customer Technical Support Services and Releases as follows:

3.6.1. Setter will provide unlimited Technical Support Services and correction of Residual Errors during the PPM in accordance with the exhibits. The level of Technical Support depends upon the Customer's selection as indicated in the Support Plan Options and Pricing Worksheet. Any Technical Support Services that are performed by Seller outside the contracted PPM and any Residual Error corrections that are outside the scope shall be billed at the then current hourly rates. Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product and will not be used in lieu of training on the covered Products.

3.6.2. Unless otherwise stated in paragraph 3.6.3 or if the Support Plan Options and Pricing Worksheet expressly provides to the contrary, Seller will provide to Customer without additional license fees an available Supplemental

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or Standard Release after receipt of a request from Customer, but Customer must pay for any installation or other services and any necessary Equipment or third party software provided by Seller in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.3 Seller will provide to Customer an available Product Release after receipt of a request from Customer, but Customer must pay for all additional license fees, any installation or other services, and any necessary Equipment provided by Seller in connection with such Product Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.4. Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If his technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

3.6.5. Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases,"). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 error concerning a Standard Release that precedes the Covered Standard Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software),

3.7. The maintenance and support Services described in this Agreement are the only covered services. Unless Optional Technical Support Services are purchased, these Services specifically exclude and Seller shall not be responsible for:

3.7.1. Any service work required due to incorrect or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.

3.7.2. The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal properly arid/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.7.3. The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.7.4. Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium,

3.7.5. Accessories, custom or Special Products; modified units; or modified Software,

3.7.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the System due to extraordinary uses.

3.3.7. Operation arid/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.7.8. Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.7.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.7.10. Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

3.7.11. Services to correct errors found to be caused by Customer-supplied data, machines, or operator failure.

3.7.12. Operational supplies, including but not limited to, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations,

3.7.13. Third-party software unless specifically listed on the Description of Covered Products.

3.7.14. Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because third party hardware, software or supplies fail to conform to the specifications concerning the Products.

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3.7.15. Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions.

3.7.16. Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades or Updates which are not directly related to a Residual Error report.

3.8. The Customer hereby agrees to:

3.8.1. Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.

3.8.2. Provide standard industry precautions (e.g. back-up files) ensuring database security, per Seller's recommended backup procedures.

3.8.3. Ensure System accessibility, which includes physical access to buildings as well as remote electronic access, Remote access can be stipulated and scheduled with customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available.

3.8.4. Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available). The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level according to definitions provided herein. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator must follow up with Seller's Customer Support as soon as practical thereafter.

3.9. In performing repairs under this Agreement, Seller may use parts that are not newly manufactured but which are warranted to be equivalent to new in performance. Parts replaced by Seller shall become Sellers properly.

3.10. Customer shall permit and cooperate with Seller so that Seller may periodically conduct audits of Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software. If the results of any such audit indicate that price has been understated, Seller may correct the price and immediately invoice Customer for the difference (as well as any unpaid but owing license fees). Seller will limit the number of audits to no more than one (1) per year except Seller may conduct quarterly audits if a prior audit indicated the price had been understated.

3.11. If Customer replaces, upgrades, or modifies equipment. or replaces, upgrades, or modifies hardware or software that interfaces with the covered Products, Seller will have the right to adjust the price for the Services to the appropriate current price for the new configuration.

3.12. Customer shall agree not to attempt or apply any update(s), alteration(s), or change(s) to the database software without the prior approval of the Seller.

**Section 4. RIGHT TO SUBCONTRACT AND ASSIGN**

Seller may assign its rights and obligations under this Agreement and may subcontract any portion of Seller's performance called for by this Agreement.

**Section 5. PRICING, PAYMENT AND TERMS**

5.1. Prices in United States dollars are shown in the Support Plan Options and Pricing Worksheet. Unless this exhibit expressly provides to the contrary, the price is payable annually in advance. Seller will provide to Customer an invoice, and Customer will make payments to Seller within twenty (20) days after the date of each invoice. During the term of this Agreement, Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a United States financial institution,

5.2. Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate.

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5.3. If Customer requests, Seller may provide services outside the scope of this Agreement or after the termination or expiration of this Agreement and Customer agrees to pay for those services. These terms and conditions and the prices in effect at the time such services are rendered will apply to those services.

5.4. Price(s) are exclusive of any taxes, duties, export or customs fees, including Value Added Tax or any other similar assessments imposed upon Seller. If such charges are imposed upon Seller, Customer shall reimburse Seller upon receipt of proper documentation of such assessments.

**Section 6. LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Seller's (Including any of its affiliated companies) total liability arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided for one (1) year under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE SYSTEM, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT.** This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

**Section 7. DEFAULT/TERMINATION**

7.1. If MorphoTrak breaches a material obligation under this Agreement (unless Customer or a Force Majeure causes such failure of performance), Customer may consider MorphoTrak to be in default. If Customer asserts a default, it will give MorphoTrak written and detailed notice of the default. MorphoTrak will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to Customer. If MorphoTrak provides a cure plan, it will begin implementing the cure plan immediately after receipt of Customer's approval of the plan.

7.2. If Customer breaches a material obligation under this Agreement (unless MorphoTrak or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement that governs the Software covered by this Agreement; or if Customer fails to pay any amount when due under this Agreement, indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law, MorphoTrak may consider Customer to be in default. If MorphoTrak asserts a default, it will give Customer written and detailed notice of the default and Customer will have thirty (30) days thereafter to (i) dispute the assertion, (ii) cure any monetary default (including interest) or (iii) provide a written plan to cure the default that is acceptable to MorphoTrak. If Customer provides a cure plan, it will begin implementing the cure plan immediately after receipt of MorphoTrak's approval of the plan.

7.3. If a defaulting party fails to cure the default as provided above in Sections 7.1 or 7.2. unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement and may pursue any legal or equitable remedies available to it subject to the provisions of Section 6 above.

7.4. Upon the expiration or earlier termination of this Agreement, Customer and Seller shall immediately deliver to the other Party, as the disclosing Party, all Confidential Information of the other, including all copies thereof, which the other Party previously provided to it in furtherance of this Agreement. Confidential Information shall include: (a) proprietary materials and information regarding technical plans; (b) any and all other information, of whatever type and in whatever medium including data, developments, trade secrets and improvements, that is disclosed by Seller to Customer in connection with this Agreement; (c) all geographic information system, address, telephone, or like records and data provided by Customer to Seller in connection with this Agreement that is required by law to be held confidential.

**Section 8. GENERAL TERMS AND CONDITIONS**

8.1. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service), or by facsimile with correct answerback received, and shall be effective upon receipt.

Customer: Delaware County Sheriff  
Attn: Sheriff Russell L. Martin  
149 N. Sandusky St.



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Delaware, OH 43015  
Phone: 740-833-2819

Seller: MorphoTrak, Inc.  
Attn: Law Department  
33405 8th Avenue South.  
Federal Way, WA 98003  
Phone: (253)383-3617 Fax: (253)591-8856

8.2. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond such party's reasonable control.

8.3. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

8.4. Customer may not assign any of its rights under this Agreement without MorphoTraks prior written consent,

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Delaware if Licensee is not a sovereign government entity.

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-subcontractor's 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

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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.

8.1 1. 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 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 351713 of the Revised Code. MORPHO, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 351713" 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 Russell L. Martin  
Delaware County Sheriff's Office  
149 North Sandusky Street  
Delaware, Ohio 43015  
Fax: (740) 833-2809

MorohoTrak:

MorphoTrak, Inc.  
Attn: Legal Department  
33405 8th Avenue South  
Federal Way, WA 98003 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

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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.

Section 9. CERTIFICATION DISCLAIMER

Seller specifically disclaims all certifications regarding the manner in which Seller conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by an authorized signatory of Seller.

Section 10. COMPLIANCE WITH APPLICABLE LAWS

The Parties shall at all times comply with all applicable regulations, licenses and orders of their respective countries relating to or in any way affecting this Agreement and the performance by the Parties of this Agreement. Each Party, at its own expense, shall obtain any approval or permit required in the performance of its obligations. Neither Seller nor any of its employees is an agent or representative of Customer.

Exhibit A DESCRIPTION OF COVERED PRODUCTS	
MAINTENANCE AND SUPPORT AGREEMENT SA 005075-000	
NO.	
CUSTOMER: Delaware County Sheriff's Office	

The following table lists the Products under maintenance coverage:

Product	Description	Node Name	Qty
Livescan	Identix TP3800XCH-ED LiveScan System	OhDELLSS001	1

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MAINTENANCE AND SUPPORT AGREEMENT NO. SA 005075-000  
Exhibit B SUPPORT PLAN

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1. Services Provided. The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Seller for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Because of the urgency involved, Response Times for Severity Levels 1 and 2 are based upon voice contact by Customer, as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

SEVERITY LEVEL	DEFINITION	RESPONSE TIME	TARGET RESOLUTION TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone conference within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems.	Telephone conference within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone conference within 6 Standard Business Hours of initial notification	Resolve within 180 days in a Seller-determined Patch or Release.
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone conference within 2 Standard Business Days of initial notification	At Seller's discretion, may be in a future Release.
5	Customer request for an enhancement to System functionality is the responsibility of Seller's Product Management.	Determined by Seller's Product Management.	If accepted by Seller's Product Management, a release date will be provided with a fee schedule, when appropriate.

1.1 Reporting a Problem. Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2 Seller Response. Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to the System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. If Seller is unable to correct the reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its Release, Seller will verify: (a) the Software operates in conformity to the System Specifications, (b) the Software is being used in a manner for which it was intended or designed, and (c) the Software is used only with approved

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hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3 Error Correction Status Report. Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2. Customer Responsibility.

2.1 Customer is responsible for running any installed anti-virus software.

2.2 Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3. Seller Responsibility.

3.1 Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2 Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released and if applicable.

3.3 Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4 Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5 Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases, if applicable; and (b) a list of Seller's Software Supplemental or Standard Releases

3.6 On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

4. Compliance to Local, County, State and/or Federal Mandated Changes. *(Applies to Software and interfaces to those Products)* Unless otherwise stated herein, compliance to local, county, state and/or federally mandated changes, including but not limited to IBR, UCR, ECARS, NCIC and state interfaces are not part of the covered Services.

*(The below listed terms are applicable only when the Maintenance and Support Agreement includes (a) Equipment which is shown on the Description of Covered Products, Exhibit A to the Maintenance.)*

5. On-site Product Technical Support Services. Seller shall furnish labor and parts required due to normal wear to restore the Equipment to good operating condition.

5.1 Seller Response. Seller will provide telephone and on-site response to Central Site, defined as the Customer's primary data processing facility, and Remote Site, defined as any site outside the Central Site, as shown in Support Plan Options and Pricing Worksheet.

5.2 At Customer's request, Seller shall provide continuous effort to repair a reported problem beyond the PPM. Provided Customer gives Seller access to the Equipment before the end of the PPM, Seller shall extend a two (2) hour grace period beyond PPM at no charge. Following this grace period, any additional on-site labor support shall be invoiced on a time and material basis at Seller's then current rates for professional services.

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Exhibit C  
SUPPORT PLAN OPTIONS AND PRICING WORKSHEET

Maintenance and Support Agreement # SA# 005075-000Date 09/06/2012 Rev1  
New Term Effective Start 09/01/2012End 08/31/2013

CUSTOMER:	Delaware CO Sheriff	BILLING AGENCY:	Delaware CO Sheriff
Address (1):	149 N. Sandusky St.	Address (1):	149 N. Sandusky St.
Address (2):		Address (2):	
CITY, STATE, ZIP CODE:	Delaware, OH 43015	CITY, STATE, ZIP CODE:	Delaware, OH 43015
CONTACT NAME:	Captain Scott Vance	CONTACT NAME:	
CONTACT TITLE:		CONTACT TITLE:	
TELEPHONE:	(740)833-2819	TELEPHONE:	
FAX:		FAX:	
Email:	svance@co.delaware.oh.us	Email:	

For support on products below, please contact Customer Support at (800) 734-6241 or email at cscenter@morphotrak.com.  
☐ AFIS System☒ LiveScan™ Station☐ Printtrak™ BiS System

STANDARD SUPPORT			ANNUAL FEE
<input checked="" type="checkbox"/> Advantage – Software Support			\$ 8,819.00
• 8 a.m. – 5 p.m. Monday to Friday PPM	• Supplemental Releases & Updates	• Software Customer Alert Bulletins	
• Unlimited Telephone Support	• Standard Releases & Updates	• Telephone Response: 2 Hour	
• Remote Dial-In Analysis	• Automatic Call Escalation		
STANDARD SUPPORT TOTAL			\$ 8,819.00
SUPPORT OPTIONS			ANNUAL FEE
<input checked="" type="checkbox"/> On-Site Hardware Support			\$ Included
• 8 a.m. – 5 p.m. Monday-Friday PPM	• Defective Parts Replacement	• Hardware Service Reporting	
• Next day PPM On-site Response	• Escalation Support	• Product Repair	
• Hardware Vendor Liaison	• Hardware Customer Alert Bulletins	• Equipment Inventory Detail Management	
<input checked="" type="checkbox"/> Parts Support “Best effort basis”			\$ Included
• Parts Ordered & Shipped Next Business Day	• Parts Customer Alert Bulletins		
If customer is providing their own on-site hardware support, the following applies:			
• Customer Orders & Replaces Parts	• Telephone Technical Support for Parts Replacement Available		
<input checked="" type="checkbox"/> UPLIFTS			\$ Included
• Increase PPM to 24x7 Software support			\$ Included
• Increase Response Time to 4 hour on-site and 1 hour telephone			
SUPPORT OPTIONS TOTAL			\$ Included as checked
THIRD PARTY SUPPORT			ANNUAL FEE
<input type="checkbox"/> THIRD PARTY VENDOR NAME:			\$ -N/A-
• TERM DATE:			
• COVERAGE:			
THIRD PARTY SUPPORT TOTAL			\$ -N/A-
USERS CONFERENCE – NORTH AMERICA			ANNUAL FEE
<input type="checkbox"/> Users Conference Attendance (\$2,950 per Attendee) Year	Number Attendees Requested		\$ -N/A-
• Registration fee	• Hotel accommodations		
• Roundtrip travel for event	• Daily meal allowance		
USERS CONFERENCE TOTAL			\$ -N/A-
OTHER AVAILABLE OPTIONS			ANNUAL FEE
<input type="checkbox"/> LiveScan 3000 Prism Protection \$1,500 unit/year – Covers labor and material fee for replacement of one (1) prism per year			\$ -N/A-
<input type="checkbox"/> Other:			\$ -N/A-
OTHER AVAILABLE OPTIONS TOTAL			\$ -N/A-

Prepared by: Andy Sandoval, (714)688-3192, andy.sandoval@morpho.com

SUPPORT TOTAL\* \$ 8,819.00  
USERS CONFERENCE TOTAL \$ -N/A-  
FULL TERM FEE GRAND TOTAL\* \$ 8,819.00  
\*Exclusive of taxes if applicable

PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (if applicable)

Exhibit D  
CURRENT BILLABLE RATES

Maintenance and Support Agreement NO. 005075-000

CUSTOMER: Delaware County Sheriff's Office

The following are Seller's current billable rates, subject to an annual change.

COVERAGE HOURS (PPM)	BILLABLE RATES (Outside the scope of a current Maintenance and Support Agreement)
8 a.m.-5 p.m. M-F (local time)	\$160 per hour, 2 hours minimum
After 5 p.m., Saturday, Sunday, Seller Holidays	\$240 per hour, 2 hours minimum

COVERAGE HOURS (PPM)	BILLABLE RATES (WITHOUT AN AGREEMENT)
8 a.m.-5 p.m. M-F (local time)	\$320 per hour, 2 hours minimum
After 5 p.m., Saturday, Sunday, Seller Holidays	\$480 per hour, 2 hours minimum

Vote on MotionMr. Thompson Absent Mr. O'Brien Aye Mr. Stapleton Aye

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RESOLUTION NO. 12-999

IN THE MATTER OF APPROVING A MAINTENANCE AND SUPPORT AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND MORPHOTRAK, INC. FOR THE AUTOMATED FINGERPRINT INFORMATION SYSTEM (AFIS):

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

Whereas, the Sheriff and Sheriff’s Office Staff recommends approval of a maintenance and support agreement between The Delaware County Board of Commissioners; The Delaware County Sheriff and MorphoTrak, Inc. for The Automated Fingerprint Information System (AFIS);

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve a maintenance and support agreement between The Delaware County Commissioners; The Delaware County Sheriff and MorphoTrak, Inc. for The Automated Fingerprint Information System (AFIS);

MorphoTrak  
Maintenance and Support Agreement

MorphoTrak, Inc., (“MorphoTrak” or Seller’) having a principal place of business at 113 South Columbus Street, 4th Floor, Alexandria, VA 22314, and Delaware County Sheriff’s Office (“Customer”), having a place of business at 149 N. Sandusky St., Delaware, OH 43015, and Board of Delaware County Commissioner (“Customer”), having a place of business at 101 N. Sandusky St., Delaware, OH 43015, enter into this Maintenance and Support Agreement (“Agreement”), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as “party” and collectively as “parties.”

For good and valuable consideration, the parties agree as follows.

Section 1. EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

- Exhibit A "Description of Covered Products"
- Exhibit B “Support Plan"
- Exhibit C “Support Plan Options and Pricing Worksheet"
- Exhibit D "Billable Rates"

Section 2. DEFINITIONS

"Equipment" means the physical hardware purchased by Customer from Seller pursuant to a separate System Agreement, Products Agreement, or other form of agreement.

"MorphoTrak" means MorphoTrak, Inc.

"MorphoTrak Software" means Software that MorphoTrak or Seller owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

"Non-MorphoTrak Software" means Software that a party other than MorphoTrak or Seller owns.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Technical Support Services.

"Patch" means a specific change to the Software that does not require a Release.

"Principal Period of Maintenance" or "PPM" means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement. The PPM selected by Customer is indicated in the Support Plan Options and Pricing Worksheet.

"Products" means the Equipment (if applicable as indicated in the Description of Covered Products) and Software provided by Seller,

"Releases" means an Update or Upgrade to the MorphoTrak Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases," A "Supplemental Release" is defined as a minor release of MorphoTrak Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the MorphoTrak Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are



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identified by the third digit of the three-digit release number, shown here as underlined: "1.2.3", A Standard Release" is defined as a major release of MorphoTrak Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined: "1.2.3", A "Product Release" is defined as a major release of MorphoTrak Software considered to be the next generation of an existing product or a new product offering, Product Releases are identified by the first digit of the three-digit release number, shown here as underlined: "1.2.3". If a question arises as to whether a Product offering is a Standard Release or a Product Release, MorphoTrak's opinion will prevail, provided that MorphoTrak treats the Product offering as a new Product or feature for its end user customers generally.

"Residual Error" means a software malfunction or a programming, coding, or syntax error that causes the Software to fail to conform to the Specifications.

"Services" means those maintenance and support services described in the Support Plan and provided under this Agreement.

"Software" means the MorphoTrak Software and Non-MorphoTrak Software that is furnished with the System or Equipment.

"Specifications" means the design, form, functionality, or performance requirements described in published descriptions of the Software, and if also applicable, in any modifications to the published specifications as expressly agreed to in writing by the parties.

"Standard Business Day" means Monday through Friday, 8:00 am, to 5:00 p.m. local time, excluding established MorphoTrak holidays.

"Standard Business Hour" means a sixty (60) minute period of time within a Standard Business Day(s).

"Start Date" means the date upon which this Agreement begins. The Start Date is specified in the Support Plan Options and Pricing Worksheet.

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or Morphotrak),

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer. minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement.

"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

### Section 3. SCOPE AND TERM OF SERVICES

3.1. In accordance with the provisions of this Agreement and in consideration of the payment by Customer of the price for the Services, Seller will provide to Customer the Services in accordance with Customers selections as indicated in the Support Plan Options and Pricing Worksheet, and such Services will apply only to the Products described in the Description of Covered Products.

3.2. Unless the Support Plan Options and Pricing Worksheet expressly provides to the contrary, the term of this Agreement is one (1) year, beginning on the Start Date. This annual maintenance and support period will automatically renew upon the anniversary date for successive one (1) year periods unless either party notifies the other of its intention to not renew the Agreement (in whole or part) not less than thirty (30) days before the anniversary date or this Agreement is terminated for default by a party.

3.3. This Agreement covers all copies of the specified Software listed in the Description of Covered Products that are licensed by Seller to Customer. If the price for Services is based upon a per unit fee, such price will be calculated on the total number of units of the Software that are licensed to Customer as of the beginning of the annual maintenance and support period. If, during an annual maintenance and support period, Customer acquires additional units of the Software that is covered by this Agreement, the price for maintenance and support services for those additional units will be calculated and added to the total price either (1) if and when the annual maintenance and support period is renewed or (2) immediately when Customer acquires the additional units, as MorphoTrak determines. Seller may adjust the price of the maintenance and support services effective as of a renewal if it provides to Customer notice of the price adjustment at least forty-five (45) days before the expiration of the annual maintenance and support period. If Customer notifies Seller of its intention not to renew this Agreement as permitted by Section 3.2 and later wishes to reinstate this Agreement, it may do so with Seller's



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consent provided (a) Customer pays to Seller the amount that it would have paid if Customer had kept this Agreement current, (b) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (c) all copies of the specified Software listed in the Description of Covered Products are covered,

3.4. When Seller performs Services at the location of installed Products, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. Customer will provide all information pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.5. All Customer requests for covered Services will be made initially with the call intake center identified in the Support Plan Options and Pricing Worksheet,

3.6. Seller will provide to Customer Technical Support Services and Releases as follows:

3.6.1. Seller will provide unlimited Technical Support Services and correction of Residual Errors during the PPM in accordance with the exhibits, The level of Technical Support depends upon the Customer's selection as indicated in the Support Plan Options and Pricing Worksheet, Any Technical Support Services that are performed by Seller outside the contracted PPM and any Residual Error corrections that are outside the scope shall be billed at the then current hourly rates. Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product and will not be used in lieu of training on the covered Products,

3.6.2. Unless otherwise stated in paragraph 3.6.3 or if the Support Plan Options and Pricing Worksheet expressly provides to the contrary, Seller will provide to Customer without additional license fees an available Supplemental or Standard Release after receipt of a request from Customer, but Customer must pay for any installation or other services and any necessary Equipment or third party software provided by Seller in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.3 Seller will provide to Customer an available Product Release after receipt of a request from Customer, but Customer must pay for all additional license fees, any installation or other services, and any necessary Equipment provided by Seller in connection with such Product Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.4. Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

3.6.5. Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases."). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 error concerning a Standard Release that precedes the Covered Standard Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software),

3.7. The maintenance and support Services described in this Agreement are the only covered services. Unless Optional Technical Support Services are purchased, these Services specifically exclude and Seller shall not be responsible for:

3.7.1. Any service work required due to incorrect or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.

3.7.2. The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal property and/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.7.3. The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.7.4. Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium.

3.7.5. Accessories, custom or Special Products; modified units; or modified Software.

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3.7.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the System due to extraordinary uses.

3.7.7. Operation and/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.7.8. Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.7.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.7.10 Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

3.7.11 Services to correct errors found to be caused by Customer-supplied data, machines, or operator failure.

3.7.12. Operational supplies, including but not limited to, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations,

3.7.13. Third-party software unless specifically listed on the Description of Covered Products.

3.7.14. Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because third party hardware, software or supplies fail to conform to the specifications concerning the Products,

3.7.15. Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions.

3.7.16. Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades or Updates which are not directly related to a Residual Error report.

3.8. The Customer hereby agrees to:

3.8.1. Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.

3.8.2. Provide standard industry precautions (e.g. back-up files) ensuring database security, per Seller's recommended backup procedures.

3.8.3. Ensure System accessibility, which includes physical access to buildings as well as remote electronic access. Remote access can be stipulated and scheduled with customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available,

3.8.4. Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available). The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level according to definitions provided herein. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator must follow up with Seller's Customer Support as soon as practical thereafter,

3.9. In performing repairs under this Agreement, Seller may use parts that are not newly manufactured but which are warranted to be equivalent to new in performance. Parts replaced by Seller shall become Seller's property.

3.10 Customer shall permit and cooperate with Seller so that Seller may periodically conduct audits of Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software. If the results of any such audit indicate that price has been understated, Seller may correct the price and immediately invoice Customer for the difference (as well as any unpaid but owing license

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fees). Seller will limit the number of audits to no more than one (1) per year except Seller may conduct quarterly audits if a prior audit indicated the price had been understated.

3.11. If Customer replaces, upgrades, or modifies equipment, or replaces, upgrades, or modifies hardware or software that interfaces with the covered Products, Seller will have the right to adjust the price for the Services to the appropriate current price for the new configuration.

3.12. Customer shall agree not to attempt or apply any update(s), alteration(s), or change(s) to the database software without the prior approval of the Seller.

**Section 4. RIGHT TO SUBCONTRACT AND ASSIGN**

Seller may assign its rights and obligations under this Agreement and may subcontract any portion of Seller's performance called for by this Agreement.

**Section 5. PRICING, PAYMENT AND TERMS**

5.1. Prices in United States dollars are shown in the Support Plan Options and Pricing Worksheet, Unless this exhibit expressly provides to the contrary, the price is payable annually in advance, Seller will provide to Customer an invoice, and Customer will make payments to Seller within twenty (20) days after the date of each invoice. During the term of this Agreement, Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a United States financial institution,

5.2. Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate.

5.3. If Customer requests, Seller may provide services outside the scope of this Agreement or after the termination or expiration of this Agreement and Customer agrees to pay for those services. These terms and conditions and the prices in effect at the time such services are rendered will apply to those services.

5.4. Price(s) are exclusive of any taxes, duties, export or customs fees, including Value Added Tax or any other similar assessments imposed upon Seller. If such charges are imposed upon Seller, Customer shall reimburse Seller upon receipt of proper documentation of such assessments.

**Section 6. LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Seller's (Including any of its affiliated companies) total liability arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided for one (1) year under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE SYSTEM, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT.** This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

**Section 7. DEFAULT/TERMINATION**

7.1. If MorphoTrak breaches a material obligation under this Agreement (unless Customer or a Force Majeure causes such failure of performance), Customer may consider MorphoTrak to be in default. If Customer asserts a default, it will give MorphoTrak written and detailed notice of the default. MorphoTrak will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to Customer. If MorphoTrak provides a cure plan, it will begin implementing the cure plan immediately after receipt of Customer's approval of the plan.

7.2. If Customer breaches a material obligation under this Agreement (unless MorphoTrak or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement that governs the Software covered by this Agreement; or if Customer fails to pay any amount when due under this Agreement. indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law, MorphoTrak may consider Customer to be in default. If MorphoTrak asserts a default, it will give Customer written and detailed notice of the default and Customer will have thirty (30) days thereafter to (i) dispute the assertion, (U) cure any monetary default (including interest), or (iii) provide a written plan to cure the default that is acceptable to MorphoTrak. If Customer provides a cure plan, it will begin implementing the cure plan immediately after receipt of

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MorphoTrak's approval of the plan.

7.3. If a defaulting party fails to cure the default as provided above in Sections 7.1 or 7.2, unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement and may pursue any legal or equitable remedies available to it subject to the provisions of Section 6 above.

7.4. Upon the expiration or earlier termination of this Agreement, Customer and Seller shall immediately deliver to the other Party, as the disclosing Party, all Confidential Information of the other, including all copies thereof, which the other Party previously provided to it in furtherance of this Agreement. Confidential Information shall include: (a) proprietary materials and information regarding technical plans; (b) any and all other information, of whatever type and in whatever medium including data, developments, trade secrets and improvements, that is disclosed by Seller to Customer in connection with this Agreement; (c) all geographic information system, address, telephone, or like records and data provided by Customer to Seller in connection with this Agreement that is required by law to be held confidential.

**Section 8. GENERAL TERMS AND CONDITIONS**

8.1. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service), or by facsimile with correct answerback received, and shall be effective upon receipt.

Customer: Delaware County Sheriff's Office  
Attn: Sheriff Russell L. Martin  
149 N. Sandusky St.  
Delaware, OH 43015  
Phone: (740)833-2819

Seller: MorphoTrak, Inc.  
Attn: Law Department  
33405 8th Avenue South  
Federal Way, WA 98003  
Phone: (253)383-3617/ Fax: (253-591-8556)

8.2. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond such party's reasonable control.

8.3. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

8.4. Customer may not assign any of its rights under this Agreement without MorphoTrak's prior written consent.

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Delaware if Licensee is not a sovereign government entity.

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

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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 MORPHOs, any subcontractor's, or any sub-subcontractor's 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 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. 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.

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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 Russell L. Martin  
Delaware County Sheriff's Office  
149 North Sandusky Street  
Delaware, Ohio 43015  
Fax: (740) 833-2809

MORPHO:  
MorphoTrak, Inc.  
Attn: Legal Department  
33405 8th Avenue South  
Federal Way, WA 98003  
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.

Section 9. CERTIFICATION DISCLAIMER

Seller specifically disclaims all certifications regarding the manner in which Seller conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by an authorized signatory of Seller.

Section 10. COMPLIANCE WITH APPLICABLE LAWS

The Parties shall at all times comply with all applicable regulations, licenses and orders of their respective countries relating to or in any way affecting this Agreement and the performance by the Parties of this Agreement. Each Party, at its own expense, shall obtain any approval or permit required in the performance of its obligations. Neither Seller nor any of its employees is an agent or representative of Customer.

Exhibit A DESCRIPTION OF COVERED PRODUCTS

MAINTENANCE AND SUPPORT AGREEMENT SA 005075-001  
NO.  
CUSTOMER: Delaware County Sheriff's Office

The following table lists the Products under maintenance coverage:

Product	Description	Node	Qty
Workstation	GPW/Cluster, scanner	OnDELAUX001	1

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MAINTENANCE AND SUPPORT AGREEMENT NO. SA 005075-001  
Exhibit B SUPPORT PLAN

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1. Services Provided. The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Seller for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Because of the urgency involved, Response Times for Severity Levels 1 and 2 are based upon voice contact by Customer, as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

SEVERITY LEVEL	DEFINITION	RESPONSE TIME	TARGET RESOLUTION TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone conference within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems.	Telephone conference within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone conference within 6 Standard Business Hours of initial notification	Resolve within 180 days in a Seller-determined Patch or Release.
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone conference within 2 Standard Business Days of initial notification	At Seller's discretion, may be in a future Release.
5	Customer request for an enhancement to System functionality is the responsibility of Seller's Product Management.	Determined by Seller's Product Management.	If accepted by Seller's Product Management, a release date will be provided with a fee schedule, when appropriate.

1.1 Reporting a Problem. Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2 Seller Response. Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to the System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. If Seller is unable to correct the reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its Release, Seller will verify: (a) the Software operates in conformity to the System Specifications, (b) the Software is being used in a manner for which it was intended or designed, and (c) the Software is used only with approved

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hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3 Error Correction Status Report. Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2. Customer Responsibility.

2.1 Customer is responsible for running any installed anti-virus software.

2.2 Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3. Seller Responsibility.

3.1 Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2 Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released and if applicable.

3.3 Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4 Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5 Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases, if applicable; and (b) a list of Seller's Software Supplemental or Standard Releases

3.6 On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

4. Compliance to Local, County, State and/or Federal Mandated Changes. *(Applies to Software and interfaces to those Products)* Unless otherwise stated herein, compliance to local, county, state and/or federally mandated changes, including but not limited to IBR, UCR, ECARS, NCIC and state interfaces are not part of the covered Services.

*(The below listed terms are applicable only when the Maintenance and Support Agreement includes (a) Equipment which is shown on the Description of Covered Products, Exhibit A to the Maintenance.)*

5. On-site Product Technical Support Services. Seller shall furnish labor and parts required due to normal wear to restore the Equipment to good operating condition.

5.1 Seller Response. Seller will provide telephone and on-site response to Central Site, defined as the Customer's primary data processing facility, and Remote Site, defined as any site outside the Central Site, as shown in Support Plan Options and Pricing Worksheet.

5.2 At Customer's request, Seller shall provide continuous effort to repair a reported problem beyond the PPM. Provided Customer gives Seller access to the Equipment before the end of the PPM, Seller shall extend a two (2) hour grace period beyond PPM at no charge. Following this grace period, any additional on-site labor support shall be invoiced on a time and material basis at Seller's then current rates for professional services.



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Exhibit C  
SUPPORT PLAN OPTIONS AND PRICING WORKSHEET

Maintenance and Support Agreement # SA # 005075-001

Date 09/06/2012 Rev1

New Term Effective Start 09/01/2012

End 08/31/2013

CUSTOMER:	Delaware CO Sheriff	BILLING AGENCY:	
Address (1):	149 N. Sandusky St.	Address (1):	
Address (2):		Address (2):	
CITY, STATE, ZIP CODE:	Delaware, OH 43015	CITY, STATE, ZIP CODE:	
CONTACT NAME:	Captain Scott Vance	CONTACT NAME:	
CONTACT TITLE		CONTACT TITLE	
TELEPHONE:	(740)833-2819	TELEPHONE:	
FAX:		FAX:	
Email:	svance@co.delaware.oh.us	Email:	

For support on products below, please contact Customer Support at (800) 734-6241 or email at cscenter@morphotrak.com.

☒ AFIS System

☐ LiveScan™ Station

☐ Printrak™ BIS System

STANDARD SUPPORT			ANNUAL FEE
<input checked="" type="checkbox"/> Advantage – Software Support			\$ 11,080
• 8 a.m. – 5 p.m. Monday to Friday PPM	• Supplemental Releases & Updates	• Software Customer Alert Bulletins	
• Unlimited Telephone Support	• Standard Releases & Updates	• Telephone Response: 2 Hour	
• Remote Dial-In Analysis	• Automatic Call Escalation		
STANDARD SUPPORT TOTAL			\$ 11,080

SUPPORT OPTIONS			ANNUAL FEE
<input checked="" type="checkbox"/> On-Site Hardware Support			\$ Included
• 8 a.m. – 5 p.m. Monday-Friday PPM	• Defective Parts Replacement	• Hardware Service Reporting	
• Next day PPM On-site Response	• Escalation Support	• Product Repair	
• Hardware Vendor Liaison	• Hardware Customer Alert Bulletins	• Equipment Inventory Detail Management	
<input checked="" type="checkbox"/> Parts Support			\$ Included
• Parts Ordered & Shipped Next Business Day	• Parts Customer Alert Bulletins		
• If customer is providing their own on-site hardware support, the following applies:			
• Customer Orders & Replaces Parts	• Telephone Technical Support for Parts Replacement Available		
<input checked="" type="checkbox"/> UPLIFTS			\$ Included
• Increase PPM to 24 x 7 software support			\$ Included
• Increase Response Time to 4 hour on-site and 1 hour telephone			
SUPPORT OPTIONS TOTAL			\$ Included as checked

THIRD PARTY SUPPORT			ANNUAL FEE
<input type="checkbox"/> THIRD PARTY VENDOR NAME:			\$ -N/A-
• TERM DATE:			
• COVERAGE:			
THIRD PARTY SUPPORT TOTAL			\$ -N/A-

USERS CONFERENCE – NORTH AMERICA			ANNUAL FEE
<input type="checkbox"/> Users Conference Attendance (\$2,950 per Attendee)	Year	Number Attendees Requested	\$ -N/A-
• Registration fee		• Hotel accommodations	
• Roundtrip travel for event		• Daily meal allowance	
• Ground transportation to/from the conference airport to the conference hotel			
USERS CONFERENCE TOTAL			\$ -N/A-

OTHER AVAILABLE OPTIONS			ANNUAL FEE
<input type="checkbox"/> LiveScan 3000 Prism Protection \$1,500 unit/year – Covers labor and material fee for replacement of one (1) prism per year			\$ -N/A-
<input type="checkbox"/> Other:			\$ -N/A-
OTHER AVAILABLE OPTIONS TOTAL			\$ -N/A-

Prepared by: Susan Noisseau, (518)724-5241, Susan.Noisseau@morpho.com

SUPPORT TOTAL\* \$ 11,080

USERS CONFERENCE TOTAL \$ -N/A-

FULL TERM FEE GRAND TOTAL\* \$ 11,080

\* Exclusive of taxes if applicable

PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (if applicable)

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

RESOLUTION NO. 12-1000

IN THE MATTER OF AMENDING THE CHILD PLACEMENT SERVICES CONTRACT BETWEEN  
THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE  
COUNTY BOARD OF COMMISSIONERS AND ROSEMONT CENTER, INC:

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

Whereas, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations, and

Whereas, the Director of Job & Family Services recommends approval of the following contract amendment;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract amendment for the Rosemont Center, Inc.

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Rosemont Center, Inc

AMENDMENT TO CONTRACT  
For  
Child Placement and Related Services

AMENDMENT NO.1

This Amendment is to amend the Contract for Child Placement and Related Services between the Delaware County Department of Job and Family Services, a department of the Delaware County Commissioners, and ROSEMONT CENTER, INC., entered into on the ninth day of March, 2012.

- I. Article III. Term of Contract. End date effective December 31, 2012.
- II. Article IV. Reimbursement for Placement and Related Services. Changes the amount reimbursable under the contract from \$10,000 to \$22,553.00.

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

RESOLUTION NO. 12-1001

RESOLUTION OF NECESSITY FOR PURCHASE OR LEASE OF AUTOMOBILES FOR THE USE OF THE COUNTY COMMISSIONERS; ANY COUNTY DEPARTMENT, BOARD, COMMISSION, OFFICE OR AGENCY; OR ANY ELECTED COUNTY OFFICIAL OR HIS OR HER EMPLOYEES:

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

WHEREAS, the Delaware County Board of Commissioners (the "Board") may find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the Board, by any county department, board, commission, office or agency, or by any elected county official or his or her employees, and

WHEREAS, the Board has before it a request from the Division of Environmental Services to expend county monies for the purchase of one new vehicle; and

WHEREAS, the Director of Environmental Services is recommending the purchase of one 2012 Ford F-250.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, as follows:

Section 1. The Board hereby declares that a necessity exists to purchase one new vehicle for use by the Regional Sewer District, it being required to accommodate additional employees of the Sewer District.

Section 2. The Board hereby declares that the make and model of such vehicle is a 2012 Ford F-250 4X4 S/C for a total price of \$28,978.00.

Section 3. The Board hereby approves a purchase order request for a total of \$28,978.00 to Germain Ford in Columbus, Ohio there being \$12,750.00 from 66611903-5450, \$14,200.00 from 66611904-5450, \$580.00 from 66611906-5450 and \$1,448.00 66611907-5450.

Section 4. This Resolution shall take immediate effect upon passage.

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

RESOLUTION NO. 12-1002

IN THE MATTER OF ACCEPTING SANITARY SEWERS FOR SHEFFIELD PARK SECTION 3, PHASE B, PART 2:

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

Whereas, the construction of new sanitary sewers at the Sheffield Park Section 3, Phase B, Part 2 have been completed to meet sewer district requirements; and

Whereas, the sewer district has received the necessary items required by the subdivider's agreement; and

Whereas, the Director of Environmental Services recommends accepting sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

Sheffield Park Section 3, Phase B, Part 2

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1,367’ feet of 8- inch sewer	\$72,575.00
6- manholes	\$9,600.00

Therefore be it resolved, that the Board of Commissioners approve and accept the above sanitary sewers for ownership, operation, and maintenance by the Delaware County Sewer District.

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

RESOLUTION NO. 12-1003

IN THE MATTER OF APPROVING A PRINT SERVICE RENTAL AGREEMENT BETWEEN  
MT TECHNOLOGIES, INC.; THE DELAWARE COUNTY PROSECUTING ATTORNEY'S OFFICE  
AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS FOR A RICH0 7500 S.P.  
COPIER:

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

Whereas, the Prosecutor and Prosecutor’s Office Staff recommends approval of a Print Service Rental Agreement with MT Technologies, Inc. for a Richo 7500 S.P. Copier;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve a Print Service Rental Agreement with MT Technologies, Inc. for a Richo 7500 S.P. Copier.

Exclusive Print Service Rental Agreement Between  
MT Technologies, Inc. and the Delaware County Prosecuting Attorney's Office

Parties to the Agreement

This Agreement is made and entered into this 4th day of October, 2012, by and between MT Business Technologies, Inc., whose address is 1150 National Parkway, Mansfield, Ohio (hereinafter, "MT"), the Delaware County Board of County Commissioners, and the Delaware County Prosecuting Attorney's Office, whose address is 140 N. Sandusky Street, 3rd Floor, Delaware, Ohio (hereinafter, "Customer") (hereinafter, collectively referred to as the "Parties").

Preliminary Statements

WHEREAS, the customer is in need of a Richo 7500 S.P. Copier (hereinafter, "Equipment") and attendant maintenance and services; and

WHEREAS, MT is willing to make available such Equipment and provide services attendant to the rental of such Equipment; and

WHEREAS, MT is qualified and willing to provide the Equipment and services, at an agreed-upon price and under the terms as set forth below.

Statement of the Agreement

NOW, THEREFORE, the Parties mutually agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to state the covenants and conditions under which MT will rent to Customer, and the Customer will rent from MT, a Richo 7500 S.P. Copier. Further, MT will provide attendant maintenance and services for the Equipment.

2. TERM

This Agreement shall be effective as of 16<sup>th</sup> day of October, 2012, and shall be for a term of 36 months.

3. RENEWAL

Upon written agreement of the Parties, this Agreement may be renewed for a successive 36 month term, subject to the same terms and conditions provided herein and upon any such terms and conditions as may be specifically agreed upon, added, and/or amended in writing by the Parties.

4. SCOPE OF SERVICES/DELIVERABLES

a. MT will deliver the Equipment to Customer at the address indicted above. MT will service and maintain the Equipment at its location in Customer's office.

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b. The equipment is the sole property of MT, together with additions, replacements, or substitutions therefore. Customer shall not make any alterations to the Equipment nor move the same to any location other than as set forth herein, nor assign the contract without the written consent of MT. Customer shall execute any documents required to perfect a security interest in MT with respect to the Equipment.

c. In the event of loss or damage of any kind to the Equipment herein leased, Customer, at the option of MT, shall (a) repair the unite to a condition of good repair, condition, and working order, or (b) replace the same with like equipment in good repair, condition, and working order, at no additional cost to the Customer. Repair or replacement will take place within a reasonable time upon MT's receipt of notice of the malfunction.

d. MT shall provide, without additional charge, all maintenance services which are required in order to maintain the Equipment in good working order, during the regular business hours of MT. Services required outside regular business hours will be charged to the Customer in accordance with MT's reasonable customary rates. Shipping and handling charges may be assessed to the Customer for supplies which are sent to the Customer and which are not contemplated by this Agreement.

e. Each Party agrees to be responsible for any damages or losses caused to the lease Equipment solely by its own negligence, actions, inactions, or omissions.

In the event of any loss, damage, injury, or harm to any person or any property, real or personal, regardless of owner, arising out of or resulting in whole or in part from any negligence, actions, inactions, or omissions of MT or otherwise related to the performance of this Agreement, MT shall assume full responsibility for, shall indemnify and hold free and harmless, the Customer, the Delaware County Board of Count Commissioners, and Delaware County from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses arising from such loss, damage, injury, or harm.

f. Payment for Equipment rental and services during the term shall be made by Customer in accordance with the schedule for prints made from the Equipment as follows:

- Monthly Rental: \$395.00
- Each Black and White Print: .01 (one cent)
- Black toner is included in the above stated price schedule
- Black and color developer is included in the above stated price schedule
- Software and data is excluded from the above stated price schedule.

g. Customer agrees to use only MT approved supplies with the Equipment and to provide MT with access to the Equipment, attachments, and records of Customer during reasonable times if verified computation of copies is deemed necessary by MT.

#### 5. INVOICING

MT invoices will be mailed to Customer monthly. Payment under this Agreement shall be paid based on invoices, and shall not be paid in the absence of an invoice compliant with the terms of this Agreement. Invoices shall be submitted to the Customer on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The Customer may request additional documentation to substantiate said invoices and MT shall promptly submit documentation as needed to substantiate said invoices.

The terms are net thirty (30) days. Carrying of 1 1/2 % per month shall be applied on any balance not paid within the 30-day period. Imposition of carrying charges shall not be deemed a waiver of any other remedy available to MT under this Agreement.

#### 6. OVERPAYMENTS

In case of overpayment, MT agrees to repay the Customer the amount of overpayment to which it is entitled.

#### 7. TAXES

The Customer is a political subdivision or a department thereof and is tax exempt. MT therefore agrees to be responsible for all tax liability that accrues as a result of this Agreement and the services that MT provides to the Customer pursuant to this Agreement.

#### 8. WARRANTY

MT warrants that the Equipment, when installed, will be in a satisfactory working condition fit for the purposes to which the Equipment is ordinarily used. MT warrants that it will provide all necessary and regular maintenance and servicing for the Equipment, in order to maintain the Equipment, during the term of this Agreement, in a satisfactory working condition fit for its ordinary purposes. MT warrants that the maintenance services it provides pursuant to this Agreement are warranted, performed properly and are free from defects. MT, without cost to the Customer, shall promptly correct any service that it provides pursuant to this Agreement that has not been properly performed or is defective.

MT further warrants that all of its officers, employees, volunteers, representatives, and/or servants that will be performing services under this Agreement are properly trained and/or licensed to be performing the tasks that they will be performing under this Agreement.

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MT disclaims liability for consequential damages in the event of the failure of MT to perform any obligation under this Agreement or for any liability to perform any obligation hereunder caused by reasons beyond the control of MT.

**9. TERMINATION**

**a. Breach or Default**

Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a specified reasonable period of time. If the breach or default is not satisfactorily remedied within the specified time period, this Agreement may, at the election of the aggrieved Party, be immediately terminated. The Parties may, without limitation, exercise any available administrative, contractual, equitable, or legal remedies. In the event of such a breach or default, MT shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date of termination.

If the contract is terminated by either party, MT may, at its option, enter the premises of Customer and recover the equipment, attachments and any supplies sold by MT to Customer and not then fully paid for.

**b. Waiver**

The waiver of any occurrence of breach or default is not and should not be interpreted as a waiver of any such subsequent occurrences. The Parties, without limitation, retain the right to exercise all available administrative, contractual, equitable, or legal remedies. If any Party fails to perform an obligation or obligations under this Agreement and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s). Waiver by any Party shall be authorized in writing and signed by an authorized Party representative.

**c. Liquidated Damages**

If the Customer terminates this Agreement prior to the end of the term, Customer shall, at the option of MT and in lieu of MT's alternative remedies for damages, pay MT as liquidated damages and not as a penalty that amount indicated as the Monthly Rental (above) multiplied by the number of months of unexpired rental time remaining under this Agreement, together with prior amounts in default, if any.

**10. ACCESS TO AND RETENTION OF RECORDS**

At any time, during regular business hours, with reasonable notice and as often as the Customer, the Comptroller General of the United States, the State, or other agency or individual authorized by the Customer may deem necessary, MT shall make available to any and/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 Agreement. The Customer and the above named parties shall be permitted by MT to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Agreement.

MT, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Agreement, 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 the performance of this Agreement. If an audit, litigation, or other action is initiated during the time period of this agreement, MT 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. Such records shall be subject at all reasonable times to inspection, review, or audit by duly authorized federal, state, local, and/or Customer personnel.

**11. INDEMNIFICATION** MT shall provide indemnification as follows:

a. To the fullest extent of the law and without limitation, MT agrees to indemnify and hold free and harmless the Customer, 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 MT's, any subcontractor's or any subcontractor's performance of this Agreement or the actions, inactions, or omissions of MT, any subcontractor, including, but not limited to the performance, actions, inactions or omissions of MT's, any subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives (collectively "Contracted Parties".) MT agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that MT 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. MT further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that MT 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.

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b. MT 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, inactions, or omissions negligent or accident, actual or threatened, intentional or unintentional of the Contracted Parties.

**12. INSURANCE**

**a. General Liability**

MT shall maintain commercial general liability insurance of \$1,000,000 for each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

**b. Automobile Liability Coverage**

MT shall maintain automobile liability insurance of \$1,000,000 for each 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.

**c. Worker's compensation Coverage**

MT shall maintain worker's 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.

**d. Additional Insureds**

The Customer and the Delaware County Board of County Commissioners shall be named as an additional insureds with respect to all activities under this Agreement in the policies required by subsections (a) and (b). MT shall require all of its subcontractors to provide like endorsements.

**e. Proof of Insurance**

Prior to the commencement of any work under this Agreement, MT, and all of its subcontractors, shall furnish the Customer with properly executed certificates of insurance for all insurance required by this Agreement and properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insureds as required in Subsection (d). Certificates of insures shall provide that such insurance shall not be cancelled without thirty (3) days prior written notice to the Customer. MT will replace certificates for any insurance expiring prior to the expiration of the term under this Agreement.

**13. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

**14. INDEPENDENT CONTRACTORS**

MT shall act in performance of this Contract as an Independent Contractor. As an independent contractor MT and/or its officers, employees, representatives, agents, volunteers and/or servants are not entitled to any of the benefits enjoyed by employees of the Delaware County Board of County Commissioners, the Delaware County Prosecuting Attorney, and Delaware County.

**15. SUBSEQUENT HIRING OF MT EMPLOYEES**

Customer shall not hire, solicit for hire, or aid any third party in hiring any current MT employee for a period of one (1) year following performance of any MT employee service.

**16. CAMPAIGN FINANCE- COMPLIANCE WITH ORC § 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 corporation, business trusty, 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. 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 with, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.

**17. EQUAL OPPORTUNITY**

In fulfilling the obligations and duties of this Agreement, MT shall not discriminate against any employee of 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. MT 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.

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

18. DRUG FREE ENVIRONMENT

MT agrees to comply with all applicable state and federal laws regarding drug-free environment and shall have established and have in place a drug-free workplace policy. MT 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.

19. FINDINGS FOR RECOVERY

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

20. 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, confirmation of receipt required, to the following individuals at the following addresses and shall be effective on the date received.

Customer:

Nicole Ford, Office Manager  
Delaware County Prosecuting Attorney's Office  
140 N. Sandusky Street, 3rd Floor,  
Delaware, Ohio 43015

Tim Hansley, County Administrator  
Delaware County Board of County Commissioners  
101 N. Sandusky Street,  
Delaware, Ohio 43015

MT

Joe Monastra  
MT Business Technologies, Inc.  
1150 National Parkway  
P.O. Box 37  
Mansfield, Ohio 44901

21. 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 and heard before the courts of Delaware County, Ohio.

22. SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of the Agreement. All provisions of this Agreement shall be deemed severable.

23. ENTIRE AGREEMENT

This Agreement shall constitute the entire understanding and agreement between the Parties, 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.

24. INTERPRETATION

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.

25. SIGNATURES

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

26. EFFECT OF SIGNATURE

The signatures of the Parties below indicate that the signers and the entities that they represent agree to be bound by all the terms and conditions of this Contract.

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

**RESOLUTION NO. 12-1004**

**IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR THE**

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PROSECUTOR’S OFFICE DELINQUENT TAX FUNDS:

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

<b>Supplemental Appropriations</b>		
23512102-5001	DTAC/Compensation	\$23,480.00
23512102-5101	DTAC/Health Insurance	\$11,200.00
23512102-5102	DTAC/Workers Compensation	\$445.00
23512102-5120	DTAC/OPERS	\$2,500.00
23512102-5131	DTAC/Medicare	\$665.00

Re-evaluated and made some changes to the organizational codes that some employees are paid out of, as well as added an additional civil prosecutor.

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

RESOLUTION NO. 12-1005

IN THE MATTER OF APPROVING THE ADVANCING OF FUNDS FOR GRANTS FOR THE  
SHERIFF’S OFFICE AND ADULT COURT SERVICES AND A TRANSFER OF APPROPRIATIONS  
FOR ADULT COURT SERVICES:

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

<b>Advance of Funds</b>			
10011102	24331334		
General Fund	FY11 2nd Chance Adult Offender	\$	17,000.00
10011102	25522309		
General Fund	Drug Court Docket	\$	20,000.00
<b>Transfer of Appropriations</b>			
<b>From</b>	<b>To</b>		
25422301-5201	25422301-5332		\$120.00
Corrections Grant/Supplies	Corrections/Cell Phones		

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

COMMISSIONERS’ COMMITTEES REPORTS

- Commissioner O’Brien**  
-Attended And Participated In A Regional Planning Meeting  
-Attended And Participated In A 911 Administrative Meeting; Budget Review  
-Attended And Participated In 911 Board Meeting; The 911 Cellular Fee; Code Red, Cad System, Sop’s

- Commissioner Stapleton**  
-Report On Information From Oil And Gas Seminar On Monday  
-Report On CCAO Tax Committee Meeting Discussions On Fracking Waste Water Drills, Make Recommendation To Full CCAO Board-May Be No More Wells. Note ODNR Is The Controlling Entity Of The Wells

- Tim Hansley, County Administrator**  
-Recap On Oil And Gas Seminar From Monday

RESOLUTION NO. 12-1006

IN THE MATTER OF ADJOURNING INTO EXECUTIVE FOR CONSIDERATION OF  
PROMOTION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

It was moved by Mr. O’Brien, seconded by Mr. Stapleton to adjourn into Executive Session at 10:45AM.

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

RESOLUTION NO. 12-1007

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O’Brien, seconded by Mr. Stapleton to adjourn out of Executive Session at 11:05AM.

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



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There being no further business, the meeting adjourned.

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Ken O'Brien

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Dennis Stapleton

---

Tommy Thompson

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Jennifer Walraven, Clerk to the Commissioners