

COMMISSIONERS JOURNAL NO. 61 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 26, 2014

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

Present:  
Gary Merrell, President  
Dennis Stapleton, Vice President  
Ken O'Brien, Commissioner

RESOLUTION NO. 14-732

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 23, 2014:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on June 23, 2014; 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. Merrell              Aye              Mr. Stapleton              Aye              Mr. O'Brien              Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 14-733

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0625, MEMO TRANSFERS IN BATCH NUMBERS:

It was moved by Mr. Stapleton, seconded by Mr. O'Brien to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0625, memo transfers in batch numbers MTAPR0625, and Purchase Orders as listed below:

<u>Vendor</u>		<u>Description</u>	<u>Account</u>	<u>Amount</u>
<b>PO' Increase</b>				
Little Sheeps		Child Care Program Job and Family	22511607-5348	\$ 10,400.00
Kemira		Chemical for Water Treatment	66211903-5290	\$ 7,500.00
<b>PR</b>				
Number	Vendor Name	Line Description	Line Account	Amount
<b>CAPITAL ACQUISITION FUND</b>				
R1404316	ADVIZEX TECHNOLOGIES LLC	ARCHIVE DEVICE, INTERFACE AND BACKUP DEVICE	41711436 - 5450	\$140,400.00

Vote on Motion                      Mr. Stapleton              Aye              Mr. Merrell              Aye              Mr. O'Brien              Aye

RESOLUTION NO. 14-734

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

Environmental Services is requesting that Mark Chandler attend the Leadership Delaware Program in Delaware, Ohio from August 2014 to May 2015 at a cost of \$840.00 from org key 66211901.

Vote on Motion                      Mr. O'Brien              Aye              Mr. Merrell              Aye              Mr. Stapleton              Aye

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RESOLUTION NO. 14-735

IN THE MATTER OF A TRANSFER LIQUOR LICENSE REQUEST FROM RAYMOND RADABAUGH EST TO PAMELA RADABAUGH AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

Whereas, the Ohio Division of Liquor Control has notified both the Delaware County Board of Commissioners and the Harlem Township Trustees that Raymond Radabaugh has requested a transfer C1 permit located at 13342 Center Village Road, 1<sup>st</sup> Floor only, Galena, OH 43021 and

Whereas, the Delaware County Board of Commissioners has found no reason to file an objection,

Therefore Be it Resolved, The Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

Vote on Motion                      Mr. Stapleton      Aye      Mr. Merrell              Aye      Mr. O'Brien              Aye

RESOLUTION NO. 14-736

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS AND TRANSFER OF FUNDS FOR DATA CENTER:

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

Supplemental Appropriations		
20315101-5001	Data Center Fund/Compensation	26,000.00
20315101-5101	Data Center Fund/Health Insurance	9,003.00
20315101-5102	Data Center Fund/Workers Comp	260.00
20315101-5120	Data Center Fund/County Share OPERS	3,640.00
20315101-5131	Data Center Fund/County Share Medicare	377.00
20315101-5320	Data Center Fund/Software and Computer Services	53,300.00

Transfer of Funds		
From	To	
10011102-5801	20315101-4601	83,853.64
Commissioners General/Transfer Out	Data Center Fund/Interfund Revenue	

Vote on Motion                      Mr. Merrell      Aye      Mr. O'Brien              Aye      Mr. Stapleton              Aye

RESOLUTION NO. 14-737

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES CONTRACT MODIFICATION #4 BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND BURGESS & NIPLE, INC. FOR THE SAWMILL PARKWAY EXTENSION:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve the following:

Whereas the County Engineer recommends approval of Contract Modification #4 with Burgess & Niple, Inc. for the Sawmill Parkway Extension.

Now, Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract with Burgess & Niple, Inc. for Contract Modification #4 for the Sawmill Parkway Extension.

PROFESSIONAL SERVICES CONTRACT  
SAWMILL PARKWAY EXTENSION  
CONTRACT MODIFICATION NUMBER #4

- Section 1 – Parties to the Agreement  
Original agreement dated August 22, 2005, and subsequent Modification #1 (dated 1-5-2006), Modification #2 (dated 10-2-2006) and Modification #3 (dated 11-13-2007) by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and the firm of Burgess & Niple, Inc., (“Consultant”), hereby Modified in its entirety this 26<sup>th</sup> day of June, 2014.
- Section 2 – Contract Administrator  
The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension

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of Work.

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

Consultant agrees to furnish, unto the County, professional engineering services for the project known as Sawmill Parkway Extension, (Additional Work Within Phases A - F), including those services listed in the Engineering Services Proposal dated 5-14-2014 and agreed upon by the County and Consultant, and Price Proposal of the same date, by this reference hereby made part of this Agreement. Consultant further agrees to perform the Work promptly and in a skillfully competent manner under the direction of the Administrator and in accordance with generally accepted professional engineering standards.

**Section 4 – Compensation**

The Parties hereby agree to increase the current contract amount of **\$3,643,934.00** [(\$2,012,992.00 basic engineering services, plus \$909,920.00 in “if authorized” items, **PLUS** Contract Modification #1 of \$286,874.00 for additional engineering work related as deemed necessary and agreed to by the Delaware County Engineer based on an Engineering Services proposal Sawmill Parkway Extension – Golf Village North to Hyatts Road dated December 6, 2005; based on a Proposal for Engineering Services for the project known as Sawmill Parkway Extension dated July 15, 2005; and Cost Proposal dated August 15.) **PLUS** (Contract Modification #2 of \$32,000 for Property Owner Access Management Coordination based on said Proposal dated September 14, 2006), **PLUS** (Contract Modification #3 of \$402,148.00 for additional services as detailed in “Additional Services Narrative Sawmill Parkway Extension” dated October 26, 2007), **BY** **\$410,043.00** for Additional Work Within Phases A through F based on Engineering Services Proposal submitted by Consultant 5-14-2014. **Thus, current total contract amount (Original plus 4 modifications) shall not exceed \$4,053,977.00**

**Section 5 – Payment**

Compensation shall be paid based no more than once monthly and shall be based on the estimated percentage of work completed for each unit of work, in accordance with the Consultant’s Price Proposal, as determined by the Consultant and approved by the Administrator. Invoices shall be submitted to the Administrator by the Consultant on company letterhead clearly listing the word “Invoice” with a sequential invoice number provided. Consultant shall not commence any “If Authorized” task until written authorization for such work is provided by the County. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices. Invoices are due and payable within 30 days of receipt.

**Section 6 – Completion of Work, Delays and Extensions**

All Work associated with this Agreement shall be completed by the Consultant in a timely manner. In the event that unforeseen and unavoidable delays prevent the timely completion of the Work provided under this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

**Section 7 – Insurance**

- 7.1 **General Liability Coverage:** Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 **Workers’ Compensation Coverage:** Consultant shall maintain workers’ compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 **Professional Liability Insurance:** Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 7.6 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured required by Subsection 7.5. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

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**Section 8 – Indemnification**

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

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

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

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

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

**Section 11 – Ownership of Engineering Documents**

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

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

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

**Section 13 – Miscellaneous Terms & Conditions**

- 13.1 **Prohibited Interests:** Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 13.2 **Independent Contractor:** The Parties acknowledge and agree that contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 13.3 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.4 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.5 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 13.6 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 13.7 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any

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

- 13.8 Findings for Recovery: Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.9 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

Vote on Motion                      Mr. Stapleton    Aye      Mr. O'Brien      Nay      Mr. Merrell      Aye

RESOLUTION NO. 14-738

IN THE MATTER OF AUTHORIZING THE COUNTY ENGINEER TO MAKE CERTAIN IMPROVEMENTS TO COUNTY PROPERTY AND THE DELAWARE COUNTY FAIRGROUNDS BY FORCE ACCOUNT:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve the following:

WHEREAS, the Delaware County Agricultural Society has submitted a request to connect certain facilities at the Delaware County Fairgrounds to the Delaware County fiber optic network (the “Project”); and

WHEREAS, the Project will require trenching for the installation of conduit; and

WHEREAS, the Delaware County Engineer, pursuant to sections 315.08 and 5543.19 of the Revised Code, has the resources available to perform this work by force account;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that the County Engineer is hereby authorized to perform the trenching necessary to complete the Project by force account, contingent upon this Board entering into an agreement with the Delaware County Agricultural Society for the Project.

Vote on Motion                      Mr. O'Brien    Nay      Mr. Merrell      Aye      Mr. Stapleton    Aye

RESOLUTION NO. 14-739

IN THE MATTER OF APPROVING A MENTAL HEALTH EMERGENCY SECURITY AND TRANSPORT SERVICE AGREEMENT EXTENSION BETWEEN THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY; THE SHERIFF OF DELAWARE COUNTY;

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**GRADY MEMORIAL HOSPITAL AND THE DELAWARE-MORROW MENTAL HEALTH & RECOVERY SERVICES BOARD:**

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

Whereas, The Delaware-Morrow Mental Health & Recovery Services Board and Staff recommend approval of the Mental Health Emergency Security And Transport Service Agreement Extension Between The Board Of Commissioners Of Delaware County; The Sheriff Of Delaware County; Grady Memorial Hospital And The Delaware-Morrow Mental Health & Recovery Services Board; and

Whereas, the Sheriff and Office Staff recommend approval of the Mental Health Emergency Security And Transport Service Agreement Extension Between The Board Of Commissioners Of Delaware County; The Sheriff Of Delaware County; Grady Memorial Hospital And The Delaware-Morrow Mental Health & Recovery Services Board;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Mental Health Emergency Security And Transport Service Agreement Extension Between The Board Of Commissioners Of Delaware County; The Sheriff Of Delaware County; Grady Memorial Hospital And The Delaware-Morrow Mental Health & Recovery Services Board.

**MENTAL HEALTH  
EMERGENCY SECURITY AND TRANSPORT  
SERVICE AGREEMENT  
EXTENSION  
(7/1/14 through 6/30/15)**

This Agreement is entered into by and between the Board of Commissioners of Delaware County, Ohio (hereinafter referred to as "County"), Sheriff of Delaware County, Ohio (hereinafter referred to as "Sheriff"), Grady Memorial Hospital, Delaware, Ohio (hereinafter referred to as "Hospital) and the Delaware-Morrow Mental Health & Recovery Services Board, (hereinafter referred to as "Board").

**Recitals**

WHEREAS, the parties hereto have previously entered into a mental health emergency security and transport service agreement extending through June 30, 2014 (hereinafter the "Agreement") and the parties desire to further extend the Agreement for an additional year; and

FURTHER WHEREAS, the collective bargaining agreement involving the Sheriff's Deputies will maintain the rates for services of the type contracted through June 30, 2015 at \$34.00 per hour;

NOW THEREFORE, the parties mutually agree that the Mental Health Emergency Security and Transport Service Agreement is hereby extended for an additional one (1) year term commencing July 1, 2014 and ending June 30, 2015 upon the same terms, conditions and considerations as in effect on June 30, 2014 and during the renewal term:

1. The Sheriff Deputies performing services under this Agreement shall be paid by the Hospital at the rate of \$34.00 per hour effective July 1, 2014 through June 30, 2015, for a minimum of three (3) hours per assignment;
2. With the \$1.00 per hour fee paid to the Special Duty Coordinator the effective combined rate billed to the Hospital shall be \$35.00 per hour effective July 1, 2014 through June 30, 2015 unless otherwise subsequently adjusted as a result of the Sheriff's Deputies collective bargaining agreement;
3. The Board agrees to fund the compensation paid by the Hospital for the services provided under this Agreement subject to the existing contract maximum;
4. All of the certifications and covenants set forth in the Agreement shall be recertified and reaffirmed as applicable and all other terms and conditions of the Agreement shall remain in full force and effect during the term of this Service Agreement Extension.

Vote on Motion                      Mr. Merrell              Aye              Mr. Stapleton              Aye              Mr. O'Brien              Aye

**RESOLUTION NO. 14-740**

**IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND SAFRAN MORPHOTRAK, INC. FOR THE LIVSCAN WORKSTATIONS AND SOFTWARE:**

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

Whereas, the Sheriff and Sheriff's Office Staff recommends approval of an agreement between The Delaware County Commissioners; The Delaware County Sheriff and Safran Morphotrak, Inc. for the LiveScan Workstations and software;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve an agreement between The Delaware County Commissioners; The Delaware County Sheriff and Safran Morphotrak, Inc. for LiveScan Workstations and software:

**Morpho Trak Short Form Sales Agreement**

1. Scope. MorphoTrak, LLC., ("MorphoTrak" or "Seller") having a place of business at 1250 North Tustin Avenue, Anaheim, California 92807 and Delaware County. ("Customer"), having a place of business at 149 North Sandusky Street Delaware, Ohio 43015 enter into this Sales Agreement ("Agreement") pursuant to which MorphoTrak, LLC will sell to Customer and Customer will purchase from Seller the equipment, parts, software, or services related to the equipment (e.g., installation) described in Seller's Proposal or Letter Quote dated May 27, 2014. These terms and conditions, together with the Proposal or Quote, comprise the "Agreement." Customer may indicate its acceptance of this Agreement by signing below or by issuing a purchase order that refers to either the Proposal/Quote or to a Customer solicitation to which the Proposal/Quote responds. Only these terms and conditions apply to the transaction, notwithstanding any inconsistent or additional terms and conditions contained in the purchase order or Customer solicitation.

2. Price and Payment Terms, The Contract Price is U.S. \$5,000.00, excluding applicable sales, use, or similar taxes and freight. Seller will submit invoices to Customer for products when they are shipped and, if applicable, for services when they are performed. Customer will make payments to Seller within twenty (20) days after the invoice date. Seller will pre-pay and add all freight charges to the invoices. Title and risk of loss to equipment or parts will pass to Customer upon shipment. Title to software will not pass to Customer at any time. Seller will pack and ship all equipment, parts or software in accordance with good commercial practices.

3. Software. If this transaction involves software, any software owned by Seller ("MorphoTrak Software") is licensed to Customer solely in accordance with Seller's Software License Agreement ("SLA") which is attached as Exhibit A and incorporated herein by this reference. Any software owned by a third party ("Non-MorphoTrak Software") is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner unless the owner has granted to Seller the right to sublicense its software pursuant to the SLA. In which case the SLA applies and the owner will have all rights and protections under the SLA as the Licensor. Seller makes no representations or warranties of any kind regarding Non-MorphoTrak Software.

4. Express Limited Warranty and Warranty Disclaimer. MorphoTrak Software is warranted in accordance with the SLA.

5. Delays and Disputes. 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 a party's reasonable control (a "Force Majeure"). Each party will notify the other if it becomes aware of a Force Majeure that will significantly delay performance. The parties will try to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality) through good faith negotiations. If necessary, the parties will escalate the dispute to their appropriate higher-level managers. If negotiations fail, the parties will jointly select a mediator to mediate the dispute and will share equally the mediation costs. Neither party will assert a breach of this Agreement without first giving the other party written notice and a thirty (30) day period to cure the alleged breach.

6. LIMITATION OF LIABILITY. Except for personal injury or death and as set forth in Section 9, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the purchase price of the products or services for which losses or damages are claimed. SELLER 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 PRODUCTS, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought outside the time allotted by the Ohio Revised Code. This limitation of liability survives the expiration or termination of this Agreement.

7. Confidential Information and preservation of Proprietary Rights. The SLA governs software confidentiality. As to any other information marked "Confidential" and provided by one party to the other, the receiving party will maintain the confidentiality of the information and not disclose it to any third party; take necessary and appropriate precautions to protect the information; and use the information only to further the performance of this Agreement. Confidential information is and will remain the property of the disclosing party, and no grant of proprietary rights in the confidential information is given or intended. Seller, any copyright owner of Non-MorphoTrak Software, and any third party manufacturer own and retain all of their proprietary rights in the

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equipment, parts and software, and nothing herein is intended to restrict their proprietary rights,. Except as explicitly provided in the SLA, this Agreement does not grant any right, title or interest in Seller's proprietary rights, or a license under any Seller patent or patent application. Seller acknowledges that Ohio Revised Code 149.43 applies to this agreement As such, nothing in this agreement prohibits Customer's compliance with a valid public records request under Ohio law.

8. Miscellaneous: Each party will comply with all applicable laws, regulations and rules concerning the performance of this Agreement or use of the products. Customer will obtain and comply with all FCC licenses and authorizations required for the installation, operation and use of the products. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the products are installed. This Agreement constitutes the entire agreement of the parties regarding this transaction, supersedes all previous agreements and proposals relating to this subject matter, and may be amended only by a written instrument executed by both parties. Seller is not making, and Customer is not relying upon, any representation or warranty except those expressed herein. There are no certifications or commitments binding Seller applicable to this transaction unless they are in writing and signed by an authorized signatory of Seller.

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

**EXHIBIT A — Software License Agreement**

In this Exhibit A, the term 'Licensor' means MorphoTrak, LLC, ("MorphoTrak"); "Licensee." means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (MorphoTrak Short Form Sales Agreement); and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The parties agree as follows:

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

**Section 1. DEFINITIONS**

1.1 "Designated Products" means products provided by MorphoTrak to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached (Biometrics Products and System Sales Agreement).

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by MorphoTrak; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

**Section 2. SCOPE**

MorphoTrak and Licensee enter into this Agreement in connection with MorphoTrak's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license MorphoTrak is providing to Licensee, and Licensee's use of the Software and Documentation.

**Section 3. GRANT OF LICENSE**

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, MorphoTrak grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive



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license under MorphoTrak's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, MorphoTrak will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

#### Section 4. LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of MorphoTrak's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; provided that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by MorphoTrak in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to MorphoTrak of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to MorphoTrak at the time temporary transfer is discontinued.

#### Section 5. OWNERSHIP AND TITLE

MorphoTrak, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de- compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by MorphoTrak or another party, or any improvements that result from MorphoTrak's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by MorphoTrak in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in MorphoTrak, and Licensee will not have any shared development or other intellectual property rights.

#### Section 6. LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. If Licensee is not in breach of any of its obligations under this Agreement, MorphoTrak warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by MorphoTrak solely with reference to the Documentation. MorphoTrak does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular

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requirements MorphoTrak makes no representations or warranties with respect to any third party software included in the Software.

6.2 MorphoTrak's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If MorphoTrak cannot correct the defect within a reasonable time, then at MorphoTrak's option, MorphoTrak will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and MorphoTrak disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non- infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not MorphoTrak knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, MorphoTrak disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7. TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without MorphoTrak's prior written consent. MorphoTrak's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement.

Section 8. TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by MorphoTrak, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by MorphoTrak.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to MorphoTrak that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to MorphoTrak or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that MorphoTrak made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to MorphoTrak for which monetary damages would be inadequate. If Licensee breaches this Agreement, MorphoTrak may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all nonembedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government). But in no event shall MorphoTrak be entitled to punitive, exemplary, special, treble, consequential, or any other type of damages except for its actual damages suffered as a direct result of Customer's breach.

Section 9. UNITED STATES GOVERNMENT LICENSING PROVISIONS RESTRICTED RIGHTS LEGEND

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under MorphoTrak's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10. CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain MorphoTrak's valuable proprietary and Confidential Information and are MorphoTrak's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11. GENERAL

11.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

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11.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of MorphoTrak and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

11.3. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State of Ohio to which the Software is shipped if Licensee is a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

11.4. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of MorphoTrak and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

11.5. **PREVAILING PARTY.** In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

11.6 **SURVIVAL** Sections 4, 5, 6.3, 7, 8, 9, 10, and 11 survive the termination of this Agreement.

11.7 **ACCESS TO RECORDS.** At any time, during regular business hours, with reasonable notice, and as often as the Court or other agency or individual authorized by the Court may deem necessary, MorphoTrak, LLC shall make available to the Court and/or individual authorized by law all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. The Court and/or individual authorized by law shall be permitted by MorphoTrak, LLC to inspect, audit, make excerpts, photo static copies, and/or transcripts of any and all such documents relating to all matters covered by this Contract.

11.8 **RETENTION OF RECORDS.** MorphoTrak, LLC shall retain and maintain and assure that all of its subcontractors retain and maintain for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract all books, records, documents, papers, subcontracts, invoice, receipts, payrolls, personnel records, employee, records, reports, documents and all other Information or data relating to all matters covered by this Contract. If an audit, litigation, or other action is indicted during the time period of this Contract or the retention period, Morphotrak, LLC 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.

Notwithstanding the above paragraph, youth case files and material filed or referenced under a youth's name shall be maintained according to the retentions

**11.9 ASSIGNMENT.**

This agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the express written consent of both parties.

**11.10 SIGNATURES.**

Any person executing this Contract in a representative capacity hereby warrants that he/she

Has authority to sign this this contract or has been duly authorized by his/her principal to execute this contract on such principal's behalf and is authorized to bind such principal.

**11.11 COUNTERPARTS**

This Contract may be executed in county counterparts.

11.13 **NON-DISCRIMINATION /EQUAL OPPORTUNITY.** MORPHOTRAK LLC hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

**11.14 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT/ NO CONTRIBUTION TO OPERS.**

The Court and Delaware County, Ohio (for purposes of this section collectively "County") are public employers as defined in RC145.01(D) The County has classified Morphotrak LLC; as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of Morphotrak LLC and/or any of his/her officers, officials, employees, representatives, agents, and/or volunteers for Services and/or deliverables rendered and/or received under or pursuant to, this Contract.

MorphoTtak, LLC acknowledges and agrees that the county, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If the MORPHO TRAK LLC is an individual or has less than five (5) employees, the Company, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor Acknowledgement Form ("Form"). The Form is attached hereto and by this reference is incorporated as a part of this Contract. The Sheriff shall retain the completed Form and immediately transmit a copy of it to OPERS. If the Company has (5) or more employees, MORPHO TRAK LLC. by its signature below hereby certifies such fact in lieu of completing the form.

**11.15 CERTIFICATION REGARDING FINDINGS FOR RECOVERY MORPHOTRAK LLC** hereby certifies that it not subject to any current unresolved findings for recovery pending or issued it by the State of Ohio.

**11.16 CERTIFICATION REGARDING PERSONNEL PROPERTY TAXES**

MORPHOTRAK LLC. Hereby certifies that it is not charged with delinquent personnel property taxes on the general list of personal property in Delaware County, Ohio or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio.

**11.17 CAMPAIGN CONTRIBUTIONS 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 a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled "Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County/Court from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract as exhibit B and by this reference made a part thereof.

**11.18 NOTICES.** All notices, consents, and/or other communications which may or are required to be given by this Contract or by operation of law, shall be in writing and shall be deemed duly given if personally (hand) delivered, sent by certified or registered United States Mail, return receipt requested, sent via nationally recognized and reputable overnight express courier, return receipt requested, via facsimile, confirmation of delivery or email, confirmation of delivery, to the following individuals at the following addressed or facsimile numbers and shall be effective when sent or transmitted:

Customer

Russell Martin  
Sheriff  
Delaware County Sheriff, Office  
149 N Sandusky St. 2<sup>nd</sup> Floor  
Delaware, Ohio 43015

Seller:

Morphotrack, LLC  
113 South Columbus Street Suite 400  
Alexandria, VA 22314

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Vote on Motion                      Mr. Stapleton      Aye      Mr. Merrell      Aye      Mr. O'Brien      Aye

**RESOLUTION NO. 14-741**

**IN THE MATTER OF APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY; THE SHERIFF OF DELAWARE COUNTY AND THE CENTRAL OHIO MENTAL HEALTH CENTER FOR SERVICES AT THE DELAWARE COUNTY JAIL:**

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

Whereas, the Sheriff and Office Staff recommend approval of the Memorandum of Understanding with the Central Ohio Mental Health Center for services at the Delaware County Jail;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Memorandum of Understanding with the Central Ohio Mental Health Center for services at the Delaware County Jail:

**MEMORANDUM OF UNDERSTANDING  
DELAWARE COUNTY JAIL AND CENTRAL OHIO MENTAL HEALTH CENTER**

This Memorandum of Understanding ("MOU") is made and entered into by and between the Delaware County Board of Commissioners for and on behalf of the Delaware County Jail, 844 US 42 North, Delaware, Ohio 43015, and Central Ohio Mental Health Center, 824 Bowtown Road, Delaware, Ohio 43015 ("COMHC") (hereinafter collectively referred to as the "Parties").

**RECITALS**

WHEREAS, Delaware County, the fastest growing county in Ohio, has experienced two decades of steady increases in the jail population, as well as a surge in drug crimes and arrests, has increased its capacity from 178 beds in 2010 to 286 beds in 2011 with many incarcerated individuals who can experience a mental health reaction that would be best addressed by an evaluation by a licensed mental health provider; and

WHEREAS, Individuals who were residents of Delaware or Morrow counties prior to their incarceration had their mental health services paid for by the Delaware/Morrow Mental Health and Recovery Services Board (DMMHRSB). DMMHRSB does not provide any reimbursement for mental health emergency services provided to inmates who lived outside Delaware/Morrow counties prior to their incarceration; and

WHEREAS, the Delaware County Jail has individuals who are incarcerated in county jail but lived outside of Delaware or Morrow counties prior to their incarceration and therefore are not covered by DMMHRSB; and

WHEREAS, the Delaware County Jail has invited Central Ohio Mental Health Center, with offices in Delaware and Morrow counties, Ohio, an OhioMHAS certified behavioral health care provider with expertise in the field of mental health evaluation, treatment and disposition, to provide emergency mental health assessment and disposition services, .e.g. suicide risk assessments; and

WHEREAS, Delaware County is responsible, fiscally and operationally, for the medical and mental care of the individuals incarcerated in the County Jail;

NOW, THEREFORE, the Parties hereby agree as follows: Section 1 - Scope of Services

- 1.1 COMHC will provide emergency mental health assessment and disposition services at the Delaware County Jail. COMHC will provide these services to all inmates referred for treatment by the Delaware County Jail. The Parties mutually acknowledge and agree these services are provided on a non-exclusive basis.
- 1.2 COMHC will obtain and maintain certification from OhioMHAS for this service. The Delaware County Jail will provide documents necessary for certification, including copies of Certificates of Use and Occupancy and current fire inspection reports. COMHC will obtain security orientation and annual criminal background checks provided by the Delaware County Jail at the cost of the Delaware County Jail.
- 1.3 COMHC will provide appropriately-licensed counselors and/or social workers to provide the mental health emergency services and will provide them with clinical supervision and direction, as needed and required.
- 1.4 The Delaware County Jail will provide safe, appropriate, and well-maintained office space for use by COMHC counselors for the provision of services. The Delaware County Jail will provide access to a telephone, fax machine, copier, and other general office equipment as necessary for COMHC's counselors to complete their duties at no cost to COMHC.
- 1.5 Mental health assessments and dispositions may include but not be limited to, inmates being recommended for return to the "general population", taking inmates off a "suicide watch" schedule. These assessment /disposition events will occur Monday - Friday from 0800- 1700. Exceptions to this time frame will be addressed by calling the COMHC Administrator-on-Call. Inmates who are transferred to Grady Memorial

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Hospital for this service will still be billed to the Delaware County Jail.

- 1.6 COMHC will maintain its own clinical record on each inmate served in accordance with OhioMHAS documentation standards.
- 1.7 COMHC will communicate with staff of the Delaware County Jail for relevant clinical information regarding the inmates served that might assist in the assessment and treatment of the inmates. COMHC will abide by all Federal, State and local laws regarding the release of information.
- 1.8 COMHC may participate in case staffing and conferences as invited and permitted by the Delaware County Jail.
- 1.9 The Delaware County Jail remains responsible for the behavioral management of the inmates in its care including those referred to COMHC for mental health services.

**Section 2 - Compensation**

Delaware County Jail will pay COMHC for the services of the mental health evaluation/disposition for "Out-of-County" inmates in the same manner the DMMHRSB pays for Delaware/Morrow county residents, which is at the rate set by Medicaid for face-to-face consultations of this nature. The current Medicaid rate is \$154.37 per hour. Upon change of the rate by Medicaid, the Parties agree to amend the contract and submit it for a new Auditor's certification. . . The billing will be submitted to the Sheriff's administrative office in the first week of the following month for the preceding month's services. The total compensation under this MOU shall not exceed \$24,000 (Twenty-four thousand Dollars).

**Section 3 - Term**

This MOU shall be effective from January 1, 2014 through December 31, 2014 with three (3) additional one (1) year renewable periods as approved by both Parties.

**Section 4 - Insurance**

- 4.1 General Liability Coverage: COMHC shall maintain general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000.
- 4.2 Workers' Compensation Coverage: COMHC shall maintain workers' compensation coverage as required by the laws of the State of Ohio.
- 4.3 Proof of Insurance: COMHC shall, upon request, furnish Delaware County with properly executed certificates of insurance for all insurance required by this MOU. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. COMHC will replace certificates for any insurance expiring prior to completion of this MOU.
- 4.4 Auto/Vehicle Liability Insurance covering all owned, leased, non-owned, and/or hired vehicles used in providing the Services, used in connection with the services provided under this agreement, and/or otherwise for the Delaware County Jail and/or Sheriff's Office with coverage in an amount equal to that required by law and covering all sums which COMHC may or shall become legally obligated to pay as damages, but in an amount providing for minimum coverage of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

**Section 5 - Termination**

Either party may terminate this MOU by providing written notice thirty (30) days prior to the effective date of the termination. The County is not liable for payment for work performed after the date of termination.

**Section 6 — Miscellaneous Terms & Conditions**

- 6.1 Prohibited Interests: COMHC agrees that no agent, officer, or employee of Delaware County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this MOU or the proceeds thereof.
- 6.2 Independent Contractor: The Parties acknowledge and agree that COMHC is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. COMHC also agrees that, as an independent contractor, COMHC assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

Sheriff's Office for Delaware County, Ohio ("Sheriff") is a public employer as defined in R.C. § 145.01(D). The Sheriff has classified COMHC as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of the Company for services and/or deliverables rendered and/or received under or pursuant to this Contract. The Company acknowledges and agrees that the Sheriff, in accordance with

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R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If the Company is an individual or has less than five (5) employees, the Company, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor Acknowledgement Form ("Form"). The Form is attached hereto and by this reference is incorporated as a part of this Contract. The Sheriff shall retain the completed Form and immediately transmit a copy of it to OPERS.

6.3 Entire Agreement: This MOU, and all documents incorporated by reference, shall constitute the entire understanding and agreement between the County and the COMHC, 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.

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

6.5 Headings: The subject headings of the Sections and Subsections in this MOU are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This MOU shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

6.7 Severability: If any item, condition, portion, or section of this MOU 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 MOU and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

6.8 Non-Discrimination/Equal Opportunity: COMHC hereby certifies that, in the hiring of employees for the performance of work under this MOU that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the MOU relates.

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

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

6.9 Access to Records: At any time, during regular business hours, with reasonable notice, and as often as the Court or other agency or individual authorized by the Court may deem necessary, the COMHC shall make available to the Court and/or individual authorized by law all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. The Court and/or individual authorized by law shall be permitted by the COMHC to inspect, audit, make excerpts, photo static copies, and/or transcripts of any and all such documents relating to all matters covered by this Contract.

6.10 Retention of Records: COMHC shall retain and maintain and assure that all of its subcontractors retain and maintain for a minimum of three (3) years after reimbursement/compensation for services rendered under this Contract all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Contract. If an audit, litigation, or other action is initiated during the time period of this Contract or the retention period, COMHC 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.

Notwithstanding the above paragraph, youth case files and material filed or referenced under a youth's name shall be maintained according to the retention schedule established by the Court.

6.11 Assignment: This Agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the express written consent of both Parties.

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- 6.12 Signatures. Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal's behalf and is authorized to bind such principal.
- 6.13 HIPAA Compliance. COMHC agrees that it will maintain confidentiality of all protected health information in accordance with all applicable patient confidentiality laws and shall not use or disclose any information concerning patients/clients referred to COMHC by the Sheriff, including protected health information, for any purpose unless necessary to the performance of this Contract or as may otherwise be required by law or court order.
- 6.14 Counterparts. This Contract may be executed in counterparts.
- 6.15 Drafting. This Contract shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 6.16 Drug Free Environment. COMHC 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. COMHC 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.
- 6.17 Warranty Against Any Unresolved Findings for Recovery. Ohio Revised Code (O.R.C.) §9.24 prohibits the Sheriff from awarding a contract to any party against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is "unresolved" at the time of the award. By signing this Agreement, the COMHC warrants that it is not now, and will not become the subject of an "unresolved" finding for recovery under O.R.C. §9.24.
- 6.18 Force Majeure. The Parties shall be temporarily excused from performance and shall not be entitled to impose any penalty as a result of any delay in performance caused by reason of war, insurrection, strike, automobile fuel shortage, weather, explosion, act of God, order of Court or other public authority, interruption of payments due under this Contract, or any other cause beyond the reasonable control of the Parties. Such excusal from performance shall continue until such *force majeure* ceases to exist or the Contract is terminated as provided herein.
- 6.19 Indemnification. COMHC shall provide indemnification as follows:
- A. To the fullest extent of the law and without limitation, COMHC agrees to and shall indemnify and hold free and harmless the Delaware County, Ohio ("Delaware"), 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, fines, penalties, fees, 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 COMHC's or any subcontractor's performance of this Contract or the actions, inactions, or omissions of COMHC or any subcontractor, including, but not limited to the performance, actions, inactions, or omissions of COMHC's or any subcontractor's boards, officers, officials, employees, volunteers, agents, servants, or representatives (collectively "Contracted Parties") COMHC agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that COMHC 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. COMHC further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that COMHC shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees.
  - B. COMHC 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 actions, inactions, or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.
- 7.20 Licenses. COMHC certifies and warrants that he/she and/or his/her employees have obtained and maintain current all approvals, licenses, including operator licenses, certifications, and/or other qualifications (collectively "Licenses") necessary to provide all of the Services and/or Testimony required pursuant to this Contract and to conduct business in the state of Ohio. COMHC further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason.
- At any time throughout the life of the Contract, the Sheriff may request copies of such Licenses. Copies of such Licenses shall be promptly provided upon request
- 7.21 Delinquent Property Taxes. The Contractor certifies that it is not charged with delinquent personal property



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taxes on the general list of personal property in Delaware County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio.

7.22 Notices. All notices, consents, and/or other communications which may or are required to be given by this Contract or by operation of law, shall be in writing and shall be deemed duly given if personally (hand) delivered, sent by certified or registered United States Mail, return receipt requested, sent via nationally recognized and reputable overnight express courier, return receipt requested, via facsimile, confirmation of delivery, or email, confirmation of delivery, to the following individuals at the following addresses or facsimile numbers and shall be effective when sent or transmitted:

**Sheriff:**  
Kassandra Otten  
Program Coordinator  
Delaware County Sheriff's Office, Jail Division  
844 U.S. 42 North  
Delaware, Ohio 43015

Contractor:  
Mark Travis  
Executive Director  
COMHC  
824 Bowtown Rd  
Delaware, Ohio 43015

Vote on Motion                      Mr. O'Brien              Aye              Mr. Merrell              Aye              Mr. Stapleton              Aye

RESOLUTION NO. 14-742

IN THE MATTER OF AMENDING THE CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ADVANTAGE ADOPTION FOSTER CARE NETWORK:

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

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 with Advantage Adoption Foster Care Network for Child Placement and Related Services

AMENDMENT TO CONTRACT  
For  
Child Placement and Related Services  
AMENDMENT NO. 2

This 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, Advantage Adoption Foster Care Network, entered into on the first day of July, 2013.

- I. Article IV. Reimbursement for Placement Services: Changes the amount reimbursable under the contract from \$100,000.00 to \$290,000.00.

Delaware County Department of Job and Family Services                      Advantage Adoption Foster Care Network

Vote on Motion                      Mr. Merrell              Aye              Mr. O'Brien              Aye              Mr. Stapleton              Aye

RESOLUTION NO. 14-743

IN THE MATTER OF AMENDING THE CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND THE CALLOS COMPANIES:

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

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 with The Callos Companies;

Second Amendment to  
Professional Services Agreement

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This ("Second Amendment") of the Professional Services Agreement is entered into this 26<sup>th</sup> day of June, 2014 by and between THE CALLOS COMPANIES, (hereinafter "CALLOS") with its local place of business located at 6547 E. Livingston Ave., Reynoldsburg, OH 43068, and the Delaware County Board of County Commissioners (hereinafter "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, and the Delaware County Department of Job and Family Services (hereinafter "DCDJFS"), whose address is 140 N. Sandusky Street, Delaware, OH 43015. (collectively the "Parties").

**WHEREAS**, the Parties entered into the Professional Services Agreement (hereinafter "Agreement") dated October 21, 2013; and,

**WHEREAS**, the parties agree to the addition of certain provisions to the Agreement (collectively" Provisions").

**NOW THEREFORE**, the Parties agree as follows:

- 1. The parties agree to amend the Agreement to add the following Provisions:
  - A. The term of the agreement shall be extended through July 31, 2014.
  - B. An additional \$ 4500 will be added to the agreement where the total amount of compensation under this agreement shall not exceed \$ 32,102.40.

2. Signatures

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

3. Conflicts

In the event of a conflict between the terms of the Agreement, the First Amendment, and this Second Amendment, the terms of this Second Amendment shall prevail.

4. Terms of Contract Unchanged

All terms and conditions of the Agreement and First Amendment not changed by this Second Amendment remain the same, unchanged, and in full force and effect.

Vote on Motion                      Mr. Stapleton      Aye      Mr. O'Brien      Aye      Mr. Merrell      Aye

**RESOLUTION NO. 14-744**

**IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND NEW HORIZONS COMPUTER LEARNING CENTER FOR COMPUTER TRAINING:**

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

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

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract with New Horizons Computer Learning Center for Computer Training;

**PURCHASE OF SERVICE CONTRACT  
BETWEEN THE DELAWARE COUNTY  
DEPARTMENT OF JOB AND FAMILY SERVICES  
AND  
NEW HORIZONS COMPUTER LEARNING CENTER**

This Contract is made and entered into on this 26<sup>th</sup> day of June, 2014 between Delaware County Department of Job and Family Services, a department of the Delaware County Board of Commissioners, hereinafter referred to as "DCDJFS," and the NEW HORIZONS Computer Learning Center hereinafter referred to as "NEW HORIZONS".

- 1. **PURPOSE OF CONTRACT:** The purpose of this Contract is to outline the relationships between the DCDJFS and NEW HORIZONS for Computer Training. The target group to receive the training will be Dislocated Workers. The universal client will be welcome as well.

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2. **AGREEMENT PERIOD:** This Contract will be effective from July 1, 2014 through June 30, 2015 inclusive, unless otherwise terminated.
3. **LIMITATION OF SOURCE OF FUNDS:** NEW HORIZONS warrants that any costs incurred pursuant to this Contract will not be allowable to, or included as a cost of any other federally financed program in either the current or a prior period.
4. **FINANCIAL AGREEMENT:** Subject to the terms and conditions set forth in this Contract, the DCDJFS agrees to reimburse NEW HORIZONS for actual costs for classes. Said reimbursement shall not exceed \$19,200.00.
5. **INDEPENDENT CONTRACTORS:** NEW HORIZONS, and agents and employees of NEW HORIZONS, will act in performance of this Contract in an independent capacity, and not as officers or employees or agents of the State of Ohio, the DCDJFS, or Delaware County Board of Commissioners or Delaware County.
6. **INFORMATION REQUIREMENTS:** NEW HORIZONS will provide information necessary to meet the specific program requirements contained in the contract. This would include an end-of-contract report of services provided and outcomes achieved.
7. **SERVICE DELIVERY RECORDS:** NEW HORIZONS shall maintain records of services provided under this contract. Such records shall be subject at all reasonable times for inspection, review or audit by duly authorized federal, state and DCDJFS personnel.
8. **DUPLICATE BILLING/OVERPAYMENT:** NEW HORIZONS warrants that claims made to DCDJFS for payment for purchased services shall be for actual services rendered to eligible individuals and do not duplicate claims made by NEW HORIZONS to other sources of funds for the same service. In the case of overpayments, NEW HORIZONS agrees to repay the DCDJFS the amount overpaid.
9. **FINANCIAL RECORDS:** NEW HORIZONS shall maintain independent books, records, payroll, documents, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Such records shall be subject at all reasonable times for inspection, review or audit by duly authorized federal, state and DCDJFS personnel.
10. **AVAILABILITY AND RETENTION OF RECORDS:** NEW HORIZONS shall maintain and preserve all financial, programs/services delivery and eligibility determination records related to this Contract, including any other documentation used in the administration of the programs, in its possession for a period of three (3) years from the date of the submission of DCDJFS's final expenditure report, and/or will assure the maintenance of such for a period of time in the possession of any third party performing work related to this Contract unless otherwise directed by the DCDJFS.

If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) year period, NEW HORIZONS shall retain the records until the completion of the action and all issues which arise from it or until the end of the three (3) year period, whichever is later.

11. **RESPONSIBILITY FOR INDEPENDENT AUDIT:** NEW HORIZONS agrees, if required by the director of DCDJFS on the basis of evidence of misuse or improper accounting of funds or service delivery records for which the provider is responsible, to have conducted an independent audit of expenditures and records of service delivery and make copies of the audit available to the DCDJFS. Any and all costs of such an independent audit shall be the sole responsibility of NEW HORIZONS.
12. **RESPONSIBILITY OF AUDIT EXCEPTIONS:** NEW HORIZONS agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate County, State or Federal Audit, and the Independent Audit described in Section 11, related to the provisions of services under this Contract.

NEW HORIZONS agrees to reimburse the DCDJFS and the County the amount of any Audit Exception designated by appropriate County, State, Federal and Independent Audit.

13. **SAFEGUARDING OF CLIENT:** NEW HORIZONS and DCDJFS agree that the use or disclosure by any party of any information concerning eligible individuals for any purpose not directly related with the administration of the DCDJFS or NEW HORIZONS responsibilities with respect to purchased services is prohibited except upon the written consent of the eligible individual or his responsible parent or guardian.
14. **CIVIL RIGHTS:** DCDJFS and NEW HORIZONS agree that as a condition of this contract, there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, handicap, or any other factor as specified in Title VI of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments. It is further agreed that the provider will

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comply with all appropriate federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this Contract. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

15. **INDEMNIFICATION:** NEW HORIZONS shall provide indemnification as follows:

- A. To the fullest extent of the law and without limitation, NEW HORIZONS agrees to and shall indemnify and hold free and harmless DCDJFS and Delaware County, Ohio, and all of their respective boards, officers, officials, employees, 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, 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 NEW HORIZONS' or any subcontractor's performance of this Contract. NEW HORIZONS agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that the Company shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, that NEW HORIZONS 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. NEW HORIZONS 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 actions, inactions, or omissions negligent or accidental, actual or threatened, intentional or unintentional of the Contracted Parties.

16. **TERMINATION:**

A. Termination for the Convenience:

Either Party may terminate this Contract at any time and for any reason by giving at least ten (10) days advance notice, in writing, to the other Party. NEW HORIZONS shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date specified on the notice as the effective date for such termination.

B. Breach or Default:

Upon breach or default of any of the provisions, obligations, or duties embodied in this Contract, 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 Contract 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, the DCTB shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date of termination.

C. Effect of Waiver of any Occurrence of Breach or Default:

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 either Party fails to perform an obligation or obligations under this Contract 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 DCDJFS shall be authorized in writing and signed by an authorized DCDJFS representative.

17. **AMENDMENT OF AGREEMENT:** This Agreement may be amended at any time by a written amendment signed by all parties.

18. **PARTIAL INVALIDITY:** A judicial or administrative finding, order or decision that any part of this Contract is illegal or invalid shall not invalidate the remainder of the Contract.

19. **PUBLICITY:** In any publicity release or other public reference, including media release, information pamphlets, etc. on the services provided under this Contract, it will be clearly stated that the project is partially funded by DCDJFS, through the Delaware County Commissioners and the DCDJFS.20. **ACCESSIBILITY OF Programs TO HANDICAPPED:** NEW HORIZONS

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agrees as a condition of the Contract to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), all requirements imposed by the applicable HHS regulations (45 CFR 8;4) and all guidelines and interpretations issued pursuant thereto. Any agency found to be out of compliance with this paragraph may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Contract.

21. **DRUG-FREE WORKPLACE:** NEW HORIZONS certifies and affirms that, as applicable to the DCDJFS, any staff, subcontractor and/or independent contractor, including all field staff, agree to comply with all applicable state and federal laws regarding a drug-free workplace.
22. **AVAILABILITY OF FUNDS:** The NEW HORIZONS understands and agrees that payments for all services provided in accordance with the provisions of this Contract are contingent upon the availability of federal, state, and local funding. In the event that federal, state, and/or local funding is no longer available to the DCDJFS, the NEW HORIZONS understands that changes and/or termination of this Contract will be required and/or necessary. Such changes and/or termination will be effective on the date that the federal, state and/or local funding is no longer available, or later as otherwise agreed by the Parties.
23. **NOTICES:** All notices which may be required by this Contract or by operation of any rule of law shall be hand delivered or sent via certified mail, return receipt requested, reputable nationally known overnight courier, return receipt requested, or facsimile to the following individuals and /or entities at the following addresses and shall be effective on the date received:

NEW HORIZONS:	DCDJFS:
New Horizons Computer Learning Center 460 Polaris Parkway Westerville, Ohio 43082	Delaware County Department of Job and Family Services 140 N. Sandusky Street Delaware, Ohio 43015

24. **GOVERNING LAW:** This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Contract shall be filed in and heard before the courts of Delaware County, Ohio.
25. **AUTHORITY TO SIGN:** Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal’s behalf.
26. **ENTIRE AGREEMENT:** This Contract shall constitute the entire understanding and agreement between the DCDJFS and the NEW HORIZONS, 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.

Vote on Motion                      Mr. O'Brien                      Aye                      Mr. Merrell                      Aye                      Mr. Stapleton                      Aye

RESOLUTION NO. 14-745

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLAN FOR NORTH FARMS OFF-SITE SEWER:

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

Whereas, the Director of Environmental Services recommends sanitary sewer Improvement Plans for North Farms Off-site Sewer for submittal to the Ohio EPA for their approval;

Therefore be it resolved, that the Board of Commissioners approves the Improvement Plan for North Farms Off-site Sewer for submittal to the Ohio EPA for their approval.

Vote on Motion                      Mr. Merrell                      Aye                      Mr. Stapleton                      Aye                      Mr. O'Brien                      Aye

RESOLUTION NO. 14-746

IN THE MATTER OF APPROVING THE STREET, STORM, SANITARY AND WATER PLANS FOR BEAUTIFUL SAVIOR LUTHERAN CHURCH:

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

Whereas, the Director of Environmental Services recommends the Street, Storm, Sanitary and Water Plans for Beautiful Savior Lutheran Church for submittal to the Ohio EPA for their approval:

Therefore be it resolved, that the Board of Commissioners approves the Street, Storm, Sanitary and Water Plans for Beautiful Savior Lutheran Church for submittal to the Ohio EPA for their approval.

Vote on Motion                      Mr. Stapleton      Aye      Mr. Merrell                      Aye      Mr. O'Brien                      Aye

**RESOLUTION NO. 14-747**

**IN THE MATTER OF APPROVING A SANITARY SEWER EXTENSION AGREEMENT FOR NORTH FARMS OFF-SITE SEWER:**

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

Whereas, the Director of Environmental Services recommends approval of a Sanitary Sewer Extension Agreement for North Farms Off-site Sewer;

Therefore, Be It Resolved the Board of Commissioners approve a Sanitary Sewer Extension Agreement for North Farms Off-site Sewer:

**SANITARY SEWER EXTENSION AGREEMENT**  
**DELAWARE COUNTY SANITARY ENGINEER**

THIS AGREEMENT executed on this 26th day of June 2014, by and between **Metro Development, LLC** herein after called "SUBDIVIDER", and the BOARD OF COUNTY COMMISSIONERS of Delaware County, Ohio, as evidenced by the Sanitary Sewer Improvement Plan for **North Farms Off-Site Sewer**, is governed by the following considerations and conditions, to wit:

There are **0** single family residential equivalent connections approved with this AGREEMENT. Capacity reservation is considered non-applicable to this agreement because the work for this project involves construction of an off-site sanitary sewer only.

Said SUBDIVIDER is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for the **North Farms Off-Site Sewer**, all of which are a part of this AGREEMENT. The SUBDIVIDER shall pay the entire cost and expense of said improvements.

SUBDIVIDER shall execute a bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$696,583.00**) which is acceptable to the COUNTY COMMISSIONERS to insure faithful performance of this AGREEMENT and the completion of all improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.

The SUBDIVIDER shall indemnify and save harmless the County, Townships and/or Villages and all of their officials, employees and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the SUBDIVIDER, and any of its contractors or sub-contractors, or from any material, method or explosive used in said work or by or on account of any accident caused by negligence or any other act or omission of SUBDIVIDER, and any of its contractors or the contractors' agents or employees.

All public improvement construction shall be performed within one (1) year from the date of the approval of this AGREEMENT by the COUNTY COMMISSIONERS, but extension of time may be granted if approved by the COUNTY COMMISSIONERS.

The SUBDIVIDER shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the COUNTY. The representative shall be replaced by the SUBDIVIDER, when in the opinion of the COUNTY, the representative's performance is deemed inadequate.

The SUBDIVIDER further agrees that any violations of or noncompliance with any of the provisions and stipulations of this AGREEMENT shall constitute a breach of contract, and the COUNTY shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this Subdivision.

Should the SUBDIVIDER become unable to carry out the provisions of this AGREEMENT, the SUBDIVIDER'S heirs, successors or assigns shall complete and comply with all applicable terms, conditions,

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provisions, and requirements of this AGREEMENT.

**SANITARY SEWER CONSTRUCTION**

It is further agreed that upon execution of this AGREEMENT, the SUBDIVIDER shall pay the DELAWARE COUNTY SANITARY ENGINEER three and one-half percent (3½%) of the estimated construction cost of the IMPROVEMENTS for plan review (\$24,380.41). The SUBDIVIDER shall also deposit with the DELAWARE COUNTY SANITARY ENGINEER the sum of \$59,250.00 estimated to be necessary to pay the cost of inspection for **North Farms Off-Site Sewer** by the DELAWARE COUNTY SANITARY ENGINEER. The DELAWARE COUNTY SANITARY ENGINEER shall in his or her sole discretion inspect, as necessary, the IMPROVEMENTS being installed or constructed by the SUBDIVIDER and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the SANITARY ENGINEER shall be reimbursed from charges against said deposit. At such time as said fund has been depleted to a level of \$1200.00 or less, as a result of charges against the same at the rate of:

INSPECTOR \$75.00 per hour  
CAMERA TRUCK \$150.00 per hour

for time spent by said SANITARY ENGINEER or his or her staff, the SUBDIVIDER shall make an additional deposit of \$1200.00 to said fund. On completion of all IMPROVEMENTS provided herein and acceptance of same by the COUNTY, any unused portions of the inspection fund shall be repaid to the SUBDIVIDER less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

The SUBDIVIDER, for a period of five (5) years after acceptance of the IMPROVEMENTS by the COUNTY, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the IMPROVEMENTS shall be the same as new equipment warranties and shall be assigned to the COUNTY upon acceptance of the IMPROVEMENTS.

The SUBDIVIDER shall provide to the COUNTY all necessary easements or rights-of-way required to complete the IMPROVEMENTS, all of which shall be obtained at the expense of the SUBDIVIDER. Unless otherwise approved by the DELAWARE COUNTY SANITARY ENGINEER, all public sanitary sewers and private laterals to offsite properties shall have a recorded permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be approved by the DELAWARE COUNTY SANITARY ENGINEER. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the DELAWARE COUNTY SANITARY ENGINEER before a preconstruction meeting will be permitted and before construction may begin on the improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted by the SANITARY ENGINEER.

If, due to unforeseen circumstances during construction activities, the SUBDIVIDER must install the proposed sanitary sewer mains or service laterals to a different location than shown on the approved and signed construction plans, the SUBDIVIDER shall request a revision to the construction plans and the SANITARY ENGINEER shall evaluate this request. If the request for a revision is approved in writing by the SANITARY ENGINEER, SUBDIVIDER shall provide and record revised permanent, exclusive sanitary sewer easements prior to the COUNTY'S acceptance of the sewer. The language and dimensions of the revised permanent exclusive sanitary sewer easements shall be acceptable to the SANITARY ENGINEER.

The COUNTY shall, upon certification in writing from the DELAWARE COUNTY SANITARY ENGINEER that all construction is complete according to the plans and specifications, by Resolution accept the IMPROVEMENTS described herein and accept and assume operations and maintenance of the same.

After said acceptance, the capacity charge and any surcharges shall be paid by the applicant upon request to the DELAWARE COUNTY SANITARY ENGINEER for a tap permit to connect to the sanitary sewer.

**ALL CONSTRUCTION UNDER COUNTY JURISDICTION:**

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to DELAWARE COUNTY as required:

- (1) "as built" drawings of the IMPROVEMENTS which plans shall become the property of the COUNTY and shall remain in the office of the DELAWARE COUNTY SANITARY ENGINEER and DELAWARE COUNTY ENGINEER. The drawings shall be on reproducible MYLAR (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in DWG format & PDF format.
- (2) An excel spreadsheet, from a template as provided by the DELAWARE COUNTY SANITARY ENGINEER, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) an itemized statement showing the cost of IMPROVEMENTS
- (4) an Affidavit or waiver of lien from all Contractors associated with the project that all material and labor costs have been paid. The SUBDIVIDER shall indemnify and hold harmless the

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COUNTY from expenses or claims for labor or materials incident to said construction of the IMPROVEMENTS.

- (5) documentation showing the required sanitary sewer easements

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the DELAWARE COUNTY SANITARY ENGINEER a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The SUBDIVIDER shall during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the COUNTY regarding submission of shop drawings, construction schedules, operation of facilities and other matters incident hereto.

The SUBDIVIDER shall obtain all other necessary utility services incident to the construction of said IMPROVEMENTS AND FOR THEIR CONTINUED OPERATION. The SUBDIVIDER shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the SUBDIVIDER and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the COUNTY.

IN CONSIDERATION WHEREOF, the DELAWARE COUNTY BOARD OF COMMISSIONERS hereby grants the SUBDIVIDER or its agent the right and privilege to make the IMPROVEMENTS stipulated herein and as shown on the approved plans.

Vote on Motion                      Mr. O'Brien                      Aye                      Mr. Merrell                      Aye                      Mr. Stapleton                      Aye

**RESOLUTION NO. 14-748**

**IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND URS CORPORATION FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER MOTOR CONTROL CENTER UPGRADE AND REPLACEMENT PROJECT:**

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

Whereas, the Director of Environmental Services recommends approval of the following Agreement;

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve the following Agreement with URS Corporation for the Olentangy Environmental Control Center Motor Control Center Upgrade and Replacement Project.

**PROFESSIONAL SERVICES CONTRACT**

**OLENTANGY ENVIRONMENTAL CONTROL CENTER MOTOR CONTROL CENTER UPGRADE AND REPLACEMENT PROJECT**

**Section 1 – Parties to the Agreement**

This Agreement is made and entered into this 26th day of June, 2014, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and URS Corporation, 277 West Nationwide Blvd. Columbus, Ohio 43215 (“Consultant”).

**Section 2 – Contract Administrator**

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

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

Consultant agrees to furnish, unto the County, professional services in accordance with the Scope of Services and Price Proposal dated 4/29/2014 by this reference hereby made part of this Agreement. Consultant further agrees to perform the Work promptly and in a skillful and competent manner under the direction of the Administrator and in accordance with accepted professional standards.

**Section 4 – Compensation**

The County will compensate Consultant for the work specified above as follows:

**SEE ATTACHMENT “A” FOR CONSULTANT SCOPE OF SERVICES, COMPENSATION AND PROJECT SCHEDULE**

The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

**Section 5 – Payment**



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

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

The Consultant shall commence Work upon written authorization of the Administrator and shall complete the work in a timely manner. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

**Section 7 – Insurance**

- 7.1 **General Liability Coverage:** Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.2 **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.3 **Workers' Compensation Coverage:** Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subconsultants and subcontractors, if any.
- 7.4 **Professional Liability Insurance:** Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 **Additional Insureds:** The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Consultant shall require all of its subconsultants and subcontractors to provide like endorsements.
- 7.6 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Consultant, and all of its subconsultants and subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured required by Subsection 7.5. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

**Section 8 – Indemnification**

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

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

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

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

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

**Section 11 – Ownership of Engineering Documents**

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

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Agreement. This section does not require unauthorized duplication of copyrighted materials.

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

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

**Section 13 – Miscellaneous Terms & Conditions**

13.1 **Prohibited Interests:** Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

13.2 **Independent Contractor:** The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder.

**Consultant, acting as an independent Contractor, hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

13.3 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

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

13.5 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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

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

13.8 **Findings for Recovery:** Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

13.9 **Non-Discrimination/Equal Opportunity:** Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

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

Furthermore, Be It Resolved that the Board of County Commissioners approve a purchase order with URS Corporation in the total amount of \$187,500.00 from org key 66711906-5301.

Vote on Motion                      Mr. Merrell                      Aye                      Mr. O'Brien                      Aye                      Mr. Stapleton                      Aye

**RESOLUTION NO. 14-749**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

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

The Director of Environmental Services recommends hiring Bruce Nowicki as a Staff Engineer I; effective June 30, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Bruce Nowicki as a Staff Engineer I; effective June 30, 2014.

The Director of Environmental Services recommends hiring Michael Jones as a Staff Engineer I; effective July 14, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Michael Jones as a Staff Engineer I; effective July 14, 2014.

The Assistant County Administrator/Director of Administrative Services and the Director of Job and Family services recommend withdrawing the offer of employment of Rachel Dienst as a Clerical Specialist with JFS;

Therefore Be it Resolved, the Board of Commissioners withdraw the offer of employment of Rachel Dienst as a Clerical Specialist with JFS.

The Director of Environmental Services recommends the transfer of Walter Pollock to a Wastewater Facility Operator; effective July 12, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the transfer of Walter Pollock to a Wastewater Facility Operator; effective July 12, 2014.

The Director of Environmental Services recommends the hiring of Elliot Cantwell as a Regional Wastewater Facility Operator; effective July 14, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Elliot Cantwell as a Regional Wastewater Facility Operator; effective July 14, 2014.

The Director of Environmental Services recommends the hiring of Jesse Stewart as a Collection Systems Technician; effective July 7, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Jesse Stewart as a Collection Systems Technician; effective July 7, 2014.

The Director of Environmental Services recommends the promotion of Daniel Farmer to a Maintenance Technician I; effective June 28, 2014.

Therefore Be it Resolved, the Board of Commissioners approve promotion of Daniel Farmer to a Maintenance Technician I; effective June 28, 2014.

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The Director of Environmental Services recommends the promotion of Scott Nichols to a Maintenance Technician II; effective June 28, 2014.

Therefore Be it Resolved, the Board of Commissioners approve promotion of Scott Nichols to a Maintenance Technician II; effective June 28, 2014.

The Director of Environmental Services recommends the promotion of Marc Counts to a Maintenance Technician II; effective June 28, 2014.

Therefore Be it Resolved, the Board of Commissioners approve promotion of Marc Counts to a Maintenance Technician II; effective June 28, 2014.

The Director of Environmental Services recommends the promotion of Kristopher Fluty to a Maintenance Technician II; effective June 28, 2014.

Therefore Be it Resolved, the Board of Commissioners approve promotion of Kristopher Fluty to a Maintenance Technician II; effective June 28, 2014.

The Director of Environmental Services recommends the promotion of Todd Ward to a Maintenance Technician II; effective June 28, 2014.

Therefore Be it Resolved, the Board of Commissioners approve promotion of Todd Ward to a Maintenance Technician II; effective June 28, 2014.

The Director of Environmental Services recommends the promotion of Kenneth Matlack to a Building and Grounds Technician; effective August 18, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the promotion of Kenneth Matlack to a Building and Grounds Technician; effective August 18, 2014.

The Director of Environmental Services recommends the transfer of Michael Jodrey as a Collection System Technician; effective August 18, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the transfer of Michael Jodrey as a Collection System Technician; effective August 18, 2014.

The Director of Environmental Services recommends the hiring of Corey Johnson as a Collection System Technician; effective July 14, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Corey Johnson as a Collection System Technician; effective July 14, 2014.

The Director of Environmental Services recommends the hiring of Sean Hines as an Inspector; effective July 7, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the hiring of Sean Hines as an Inspector; effective July 7, 2014.

The Director of Job and Family Services recommends the promotion of Andrea Del Col to a Case Manager II/Training Officer; effective July 7, 2014.

Therefore Be it Resolved, the Board of Commissioners approve the promotion of Andrea Del Col to a Case Manager II/Training Officer; effective July 7, 2014.

Vote on Motion                      Mr. Stapleton      Aye      Mr. O'Brien      Aye      Mr. Merrell      Aye

**RESOLUTION NO. 14-750**

**IN THE MATTER OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS APPROVING  
A LETTER OF OPPOSITION TO THE UNITED STATES EPA AND U.S. ARMY CORPS OF  
ENGINEERS PROPOSED RULE ON DEFINITIONS OF “WATERS OF THE UNITED STATES  
UNDER THE CLEAN WATER ACT”:**

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

June 26, 2014

Donna Downing  
Jurisdiction Team Leader, Wetlands Division  
U.S. Environmental Protection Agency

Stacey Jensen  
Regulatory Community of Practice  
U.S. Army Corps of Engineers

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Water Docket, Room 2822T  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

441 G Street NW  
Washington, DC 20314

**Re: U.S. EPA and U.S. Army Corps of Engineers Proposed Rule on “Definition of “Waters of the United States Under the Clean Water Act,” Docket No. EPA-HQ-OW-2011-0880**

Dear Ms. Downing:

The Delaware County Board of Commissioners is writing on the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed rule regarding *Definition of Waters of the U.S. Under the Clean Water Act*, Docket No. EPA-HQ-OW-2011-0880. This proposed rule was released on April 21, it would amend the definition of “waters of the U.S.” and expand the range of waters that fall under federal jurisdiction.

Counties are tasked with the heavy responsibility to protect the health, welfare, and safety of their citizens, as well as maintain and improve their quality of life. This includes protecting of valuable water resources, whether as a regulated entity or regulator, to ensure that the nation’s waters remain clean.

The Delaware County Board of Commissioners is very concerned that the proposed rule would modify existing regulations, which have been in place for over 25 years. **Because the proposed rule could expand the scope of CWA jurisdiction, counties could feel a major impact as more waters become federally protected and subject to new rules or standards.**

The proposed “waters of the U.S.” regulation from EPA and the Corps could have a significant impact on counties across the country, in the following ways:

- **Seeks to define waters under federal jurisdiction:** The proposed rule would modify existing regulations, which have been in place for over 25 years, regarding which waters fall under federal jurisdiction through the Clean Water Act (CWA). Because the proposed rule could expand the scope of CWA jurisdiction, counties could feel a major impact as more waters become federally regulated and subject to new rules or standards.
- **Potentially increases the number of county-owned ditches under federal regulation:** The proposed rule would define some ditches as “waters of the U.S.” if they meet certain conditions. This means that more county-owned ditches would likely fall under federal oversight. In recent years, Section 404 permits have been required for ditch maintenance activities such as cleaning out vegetation and debris. **Once a ditch is under federal jurisdiction, the Section 404 permit process can be extremely cumbersome, time-consuming and expensive, leaving counties vulnerable to citizen suits if the federal permit process is not streamlined.**
- **Applies to all Clean Water Act programs, not just Section 404 program:** The proposed rule would apply not just to Section 404 permits, but also to other Clean Water Act programs. These programs would subject county governments to increasingly complex and costly federal regulatory requirements under the proposed rule which impacts local storm water and pesticide application programs, state water quality standards designations, green infrastructure and water reuse.

Additionally, key terms used in the proposed regulation—tributary, adjacent waters, riparian areas, flood plains, and even ditch exemptions on uplands and flow—are unclear. It is uncertain how these definitions will be used to effectively implement various CWA programs.

More importantly, the agencies’ cost-benefits analysis—*Economic Analysis of Proposed Revised Definition of Waters of the U.S.* (March 2013), acknowledges the data used and assumptions made to craft the analysis may be flawed. This is of supreme concern to local governments who may serve as both the regulator and the regulated under CWA. If costs and implications of the changes are not recognized ahead of time, it will have a negative impact on local governments.

If you have any questions, please do not hesitate to contact the Board of Commissioners.

Sincerely,

Gary Merrell  
President of the Board

Dennis Stapleton  
Vice-President

Ken O’Brien  
Member

cc: Member of Congress  
NACo

Vote on Motion      Mr. O'Brien      Aye      Mr. Merrell      Aye      Mr. Stapleton      Aye

RESOLUTION NO. 14-751

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**IN THE MATTER OF THE DELAWARE COUNTY BOARD OF COMMISSIONERS APPROVING  
A RESOLUTION OF OPPOSITION TO THE UNITED STATES EPA AND U.S. ARMY CORPS OF  
ENGINEERS PROPOSED RULE ON DEFINITIONS OF “WATERS OF THE UNITED STATES  
UNDER THE CLEAN WATER ACT”:**

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

WHEREAS, The U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have released a 371 page draft regulation for Definition of Waters of the U. S. under the Clean Water Act; and

WHEREAS, Both agencies are seeking a rule change to give the federal government more authority by expanding the definition of "navigable waters" in the Clean Water Act; and

WHEREAS, The rule change proposed by the EPA and the Corps would subject almost all physical areas with a connection to downstream navigable waters, including features such as ditches, natural or man-made ponds, and flood plains, to the jurisdiction of the Clean Water Act; and

WHEREAS, The proposed rule change, if adopted, will cause significant harm to local farmers, stall the development of businesses, take control of land use for sustainable food production out of our local providers' hands, and negatively impact County-owned maintained infrastructure such as roadside ditches and flood-control channels; and

WHEREAS, The cost to our farms, municipalities and taxpayers will be enormous; and

WHEREAS, It is impractical for the federal government to regulate every ditch, pond and rain puddle that may have some tenuous connection, miles away, to a body of water currently defined as "navigable;"

NOW THEREFORE BE IT RESOLVED, the Delaware County Board of Commissioners hereby strongly oppose the EPA and Corps expansion of the Clean Water Act, as proposed; and

BE IT FURTHER RESOLVED, That the Clerk of this Board is hereby directed to forward a certified copy of this resolution to Governor Kasich, the Environmental Protection Agency, the Army Corps of Engineers, U.S. Senators Rob Portman and Sherrod Brown, and Congressman Pat Tiberi.

Vote on Motion                      Mr. Merrell              Aye              Mr. Stapleton              Aye              Mr. O'Brien              Aye

**ADMINISTRATOR REPORTS**

**Tim Hansley**  
**-No reports**

**COMMISSIONERS’ COMMITTEES REPORTS**

**Commissioner Stapleton**  
**-Attended a Community Action meeting yesterday. They will be moving out of the Delaware County Developmental Disabilities building on August 1<sup>st</sup> to an office in Sunbury Road**

**Commissioner O’Brien**  
**-Will be attending Regional Planning meeting this evening**

**Commissioner Merrell**  
**-Wanted to wish everyone a safe and relaxing holiday weekend next week as there will no Commissioner Sessions until July 10, 2014**

**RESOLUTION NO. 14-752**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF  
CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT AND FOR THE  
CONSIDERATION OF EMPLOYMENT, DISCIPLINE OR DISMISSAL OF A PUBLIC EMPLOYEE  
OR PUBLIC OFFICIAL:**

It was moved by Mr. Stapleton, seconded by Mr. O’Brien to adjourn into Executive Session at 10:12AM.

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that

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involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

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

Section 1. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Section 2. The Board hereby finds and determines that the information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

Section 3. The Board hereby finds and determines that the executive session is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

Vote on Motion                      Mr. Stapleton      Aye      Mr. Merrell      Aye      Mr. O'Brien      Aye

RESOLUTION NO. 14-753

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Stapleton, seconded by Mr. O'Brien to adjourn out of Executive Session at 11:28AM.

Vote on Motion                      Mr. O'Brien      Aye      Mr. Merrell      Aye      Mr. Stapleton      Aye

There being no further business, the meeting adjourned.

\_\_\_\_\_  
Gary Merrell

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

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Dennis Stapleton

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