

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 6, 2015**

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

Present:
Gary Merrell, President
Barb Lewis, Vice President

9:45 AM Public Hearing For Consideration Of The Drainage Improvement Petition Filed By Epcon Communities, Inc. To Vacate Portions Of The Existing Storm Water Easements In The Orange Centre Development Section 1 Project #0723 Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1, 2, And 3

RESOLUTION NO. 15-921

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD AUGUST 3, 2015:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on August 3, 2015; 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 Mrs. Lewis Aye -

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 15-922

IN THE MATTER OF DESIGNATING AUGUST 2015 AS CHILD SUPPORT AWARENESS MONTH IN DELAWARE COUNTY:

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

WHEREAS, Delaware County CSEA is dedicated to the care and well-being of its children, and understand that emotional and financial support are key factors in securing their future success; and

WHEREAS, through working with the Ohio's Child Support Program and county partners, Delaware County CSEA continually seeks innovative ways to provide effective services to strengthen families and to support the children of Delaware County; and

WHEREAS, through the leadership of Delaware County Child Support Enforcement Agency, many children's lives are brighter because of the following accomplishments in the past year:

Collected \$25,116,663.23 for 2014.

The Agency received awards from the State of Ohio for Best Overall Performance in the:

- *Best Performance Collections on Current Support in the Medium Caseload Division
- *Best Performance Collections on Cases with Arrears in the Medium Caseload Division
- *Best Overall Performance in the Medium Caseload Division

*Total Disbursement per Total FTE (cost effectiveness) in the Medium Caseload Division.
 The Agency collected \$17.96 for every dollar we spent.

WHEREAS, the theme for Child Support Awareness Month is "Support Is Key". We applaud parents who are committed to supporting their children; therefore, during Child Support Awareness Month, we acknowledge and celebrate parents who provide positive emotional and financial foundations for their children.

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NOW, THEREFORE, WE, The Delaware County Board of Commissioners of Delaware County, Ohio, do hereby designate, in conjunction with the State of Ohio,

**AUGUST 2015
CHILD SUPPORT
AWARENESS MONTH**

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye -

RESOLUTION NO. 15-923

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0805:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0805 and Purchase Orders as listed below:

PR	Vendor Name	Line Description	Line Account	Amount
R1504403	PRECISION MASONRY RESTORATION INC	149 N SANDUSKY - REPAIR MORTAR JOINTS	40111402-5328	\$6,000.00

Vote on Motion - Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-924

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The County Auditor is requesting that Jason Montgomery attend a Courtview: 2015 National Conferece in Cincinnati, OH from October 8-9, 2015 at the cost of \$765.60 (fund number 10010101).

The EMS Director is requesting that Jessica Carmes attend a 2015 Trauma Care Conference in Columbus, Ohio November 18-19, 2015 at the cost of \$40.00 (fund number 10011303).

The County Administrator is requesting that Teri Morgan attend a City-County Communications Meeting Annual Conference in Atlanta, Georgia September 9-11, 2015 at the cost of \$2,084.40 (fund number 10011139).

Vote on Motion Mr. Merrell Aye - Mrs. Lewis Aye

RESOLUTION NO. 15-925

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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 GPW 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 GPW Workstations and software:

MAINTENANCE AND SUPPORT AGREEMENT

MorphoTrak, LLC, ("MorphoTrak" or "Seller") having a principal place of business at 1250 North Tustin Avenue, Anaheim, CA 92807, and Delaware County Sheriff's Office ("Customer"), having a place of business at 149 N. Sandusky St., Delaware, OH 43015, and Board of Delaware County Commissioner (Customer"), having a place of business at 101 N.. Sandusky St., Delaware, OH 43015, enter into this Maintenance and Support Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

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

Section 1. EXHIBITS

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

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

Section 2. DEFINITIONS

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

"MorphoTrak" means MorphoTrak, LLC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and

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Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or MorphoTrak).

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

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

"Upgrade" means a Product Release.

Section 3. SCOPE AND TERM OF SERVICES

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

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

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

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

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

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

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

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

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

3.6.4. Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier

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versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8. The Customer hereby agrees to:

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

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

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

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

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

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

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

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

Section 4. RIGHT TO SUBCONTRACT AND ASSIGN

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

Section 5. PRICING, PAYMENT AND TERMS

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

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

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

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

Section 6. LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Sellers (including any of its affiliated companies) total liability arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided for one (1) year under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR**

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SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE SYSTEM, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 7. DEFAULT/TERMINATION

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

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

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

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

Section 8. GENERAL TERMS AND CONDITIONS

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

Customer: <u>Delaware County Sheriff's Office</u>	Seller: <u>MorphoTrak, LLC</u>
Attn: Sheriff Russell L. Martin	Attn: <u>Law Department</u>
<u>149 N. Sandusky St.</u>	<u>1250 North Tustin Avenue</u>
<u>Delaware, OH 43015</u>	<u>Anaheim, CA 92807</u>
<u>Phone: (740)833-2819</u>	<u>Phone: (714)238-2030 Fax: (714)632-2158</u>

8.2. 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.

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

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

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized

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representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Delaware if Licensee is not a sovereign government entity. All actions shall be commenced in the appropriate forum sitting in either Delaware County, Ohio or Franklin County, Ohio.

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

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

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

Prior to commencement of this Contract, Seller shall present to the Board of Commissioners and/or Sheriff current certificates of insurance, and shall maintain current such insurance during and throughout the entire term of this Contract and until the Services are complete. Said insurance shall, at a minimum, include the insurance specified below and the amount of coverage on said policies of insurance shall be at least that which is specified below:

- a. Commercial General Liability Insurance with coverage in an amount equal to and covering all sums which the Seller may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of or at least one million dollars (\$1,000,000.00) coverage per occurrence with an annual aggregate of at least two million dollars (\$2,000,000.00), including coverage for subcontractors, if any are used, covering any and all work performed under this Contract. This insurance shall include, but not be limited to, the following coverage:
 - 1.Premises-Operations
 - 2.Product and Completed Operation
 - 3.Broad Form Property Damage
 - 4.Contractual
 - 5.Personal Injury
- b. Umbrella or Excess Liability Insurance (over and above Commercial General Liability) with coverage in an amount equal to and covering all sums which Seller may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of at least two million dollars (\$2,000,000.00) of coverage.
- c. 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, and/or otherwise for the Board and/or the Sheriff with coverage in an amount equal to that required by law and covering all sums which the Seller may or shall become legally obligated to pay as damages, but in an amount

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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.

The Board and the Sheriff shall be names as "Additional Insured" on the policies listed in paragraphs a, b, and c above. The Seller shall be responsible for any and all premiums for all required policy (ies) of the insurance. The insurance Seller needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance Seller to bind coverage on its behalf. All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance. The above required insurance coverage shall be primary insurance as respect to the Indemnified Parties and any insurance maintained by the Indemnified Parties shall be excess to the above required insurance and shall not contribute to it.

The insurer shall provide thirty (30) days written notice to the Board and/or Sheriff before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place. If there is any change in insurance carrier or liability amounts, a new certificate of insurance must be provided to the Board within seven (7) calendar days of change.

During the life of the Contract, the Board and/or Sheriff may require the Seller to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default.

In addition to the rights and protections provided by the insurance policies as required above, the Board and the Sheriff shall retain any and all such other and further rights and remedies as are available at law or in equity.

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

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

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

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

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

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

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

Customer:

Sheriff Russell L. Martin

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

MORPHO:

MorphoTrak, LLC
Attn: Legal Department
1250 North Tustin Avenue
Anaheim, CA 92807 Fax:
(714)632-2158

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

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

8.17. 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 Contractor shall make available to the Court and/or all individuals(s) 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(s) authorized by law shall be permitted by the Contractor to inspect, audit, make excerpts, photo static copies, and/or transcripts of an and all such documents relating to all matters covered by this Contract.

8.18. Retention of Records. The Seller 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, the Contractor 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.

8.19. Counterparts. This Contract may be executed in counterparts.

8.20. Drafting. This Contract shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

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

8.22. 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 and is authorized to bind such principal.

Section 9. CERTIFICATION DISCLAIMER

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

Section 10. COMPLIANCE WITH APPLICABLE LAWS

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

(Copies of exhibits A, B, C, and D available in the Commissioners' office and Sheriff's Office until no longer of administrative value).

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Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-926

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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:

MAINTENANCE AND SUPPORT AGREEMENT

MorphoTrak, LLC, ("MorphoTrak" or "Seller") having a principal place of business at 1250 North Tustin Avenue, Anaheim, CA 92807, and Delaware County Sheriff's Office ("Customer"), having a place of business at 149 N. Sandusky St., Delaware, OH 43015, and Board of Delaware County Commissioner ("Customer"), having a place of business at 101 N. Sandusky St., Delaware, OH 43015, enter into this Maintenance and Support Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

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

Section 1. EXHIBITS

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

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

Section 2. DEFINITIONS

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

"MorphoTrak" means MorphoTrak, LLC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. SCOPE AND TERM OF SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the System or any System component.

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

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

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

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

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

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

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

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

3.8. The Customer hereby agrees to:

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

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

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

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

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

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

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

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

Section 4. RIGHT TO SUBCONTRACT AND ASSIGN

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

Section 5. PRICING, PAYMENT AND TERMS

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

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

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

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

Section 6. LIMITATION OF LIABILITY

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

Section 7. DEFAULT/TERMINATION

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

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

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

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

Section 8. GENERAL TERMS AND CONDITIONS

8.1. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt

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requested and postage prepaid (or by a recognized courier service), or by facsimile with correct answerback received, and shall be effective upon receipt.

Customer: <u>Delaware County Sheriff's Office</u>	Seller: <u>MorphoTrak, LLC</u>
Attn: Sheriff Russell L. Martin	Attn: <u>Law Department</u>
149 N. Sandusky St.	<u>1250 North Tustin Avenue</u>
Delaware, OH 43015	Anaheim, CA 92807
Phone: (740)833-2819	Phone: (714)238-2030 Fax: (714)632-2158

8.2. 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.

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

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

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

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Delaware if Licensee is not a sovereign government entity. All actions shall be commenced in the appropriate forum sitting in either Delaware County, Ohio or Franklin County, Ohio.

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

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

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

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Prior to commencement of this Contract, Seller shall present to the Board of Commissioners and/or Sheriff current certificates of insurance, and shall maintain current such insurance during and throughout the entire term of this Contract and until the Services are complete. Said insurance shall, at a minimum, include the insurance specified below and the amount of coverage on said policies of insurance shall be at least that which is specified below:

a. Commercial General Liability Insurance with coverage in an amount equal to and covering all sums which the Seller may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of or at least one million dollars (\$1,000,000.00) coverage per occurrence with an annual aggregate of at least two million dollars (\$2,000,000.00), including coverage for subcontractors, if any are used, covering any and all work performed under this Contract. This insurance shall include, but not be limited to, the following coverage:

1. Premises-Operations
2. Product and Completed Operation
3. Broad Form Property Damage
4. Contractual
5. Personal Injury

b. Umbrella or Excess Liability Insurance (over and above Commercial General Liability) with coverage in an amount equal to and covering all sums which Seller may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of at least two million dollars (\$2,000,000.00) of coverage.

c. 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, and/or otherwise for the Board and/or the Sheriff with coverage in an amount equal to that required by law and covering all sums which the Seller 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.

The Board and the Sheriff shall be named as "Additional Insured" on the policies listed in paragraphs a, b, and c above. The Seller shall be responsible for any and all premiums for all required policy (ies) of the insurance. The insurance Seller needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance Seller to bind coverage on its behalf. All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance. The above required insurance coverage shall be primary insurance as respect to the Indemnified Parties and any insurance maintained by the Indemnified Parties shall be excess to the above required insurance and shall not contribute to it.

The insurer shall provide thirty (30) days written notice to the Board and/or Sheriff before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place. If there is any change in insurance carrier or liability amounts, a new certificate of insurance must be provided to the Board within seven (7) calendar days of change.

During the life of the Contract, the Board and/or Sheriff may require the Seller to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default.

In addition to the rights and protections provided by the insurance policies as required above, the Board and the Sheriff shall retain any and all such other and further rights and remedies as are available at law or in equity.

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

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

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

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

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8.12. Campaign Finance - Compliance With ORC § 3517.13. Ohio Revised Code Section 3517.13 1(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. MORPHO, therefore, is required to complete the attached certificate/affidavit entitled

"Certification/Affidavit in Compliance With O.R.C. Section 3517.13." Failure to complete and submit the required aforementioned certificate/affidavit with the Agreement will prohibit the County from entering, proceeding with, and/or performing the Agreement. Such certification is attached to this Agreement and by this reference made a part thereof.

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

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

Customer:

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

MORPHO:

MorphoTrak, LLC
Attn: Legal Department 1250 North Tustin
Avenue Anaheim, CA 92807
Fax: (714)632-2158

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

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

8.17. 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 Contractor shall make available to the Court and/or all individuals(s) 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(s) authorized by law shall be permitted by the Contractor to inspect, audit, make excerpts, photo static copies, and/or transcripts of an and all such documents relating to all matters covered by this Contract.

8.18. Retention of Records. The Seller 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, the Contractor 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.

8.19. Counterparts. This Contract may be executed in counterparts.

8.20. Drafting. This Contract shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

8.21. Headings. The subject headings of the paragraphs in this Contract are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed

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to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

8.22. 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 and is authorized to bind such principal.

Section 9. CERTIFICATION DISCLAIMER

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

Section 10. COMPLIANCE WITH APPLICABLE LAWS

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

(Copies of exhibits A, B, C, and D available in the Commissioners' office and Sheriff's Office until no longer of administrative value)

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye -

RESOLUTION NO. 15-927

IN THE MATTER OF APPROVING A SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND AIR FORCE ONE, INC. FOR ENVIRONMENTAL SYSTEMS MAINTENANCE AT THE OLENTANGY ENVIRONMENTAL CONTROL CENTER (OECC) AND CENTRAL MAINTENANCE FACILITY (CMF):

It was moved by Mrs. Lewis, seconded by Mr. Merrell 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 Maintenance Agreement for Environmental Systems with Air Force One, Inc.

Section 1 – Parties to the Agreement

This Agreement is made and entered into this 6th day of August, 2015 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Air Force One, 5810 Shier Rings Road (“Contractor”) (hereinafter collectively referred to as the “Parties”).

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)

The Scope of Services shall be in accordance with the proposal titled “Maintenance Agreement for Environmental Systems, incorporated herein as “Exhibit A” & “Exhibit B”.

Section 4 – Compensation

The County shall pay the Contractor for the services provided in the total sum of twenty three thousand, one hundred eighteen dollars and zero cents (\$23,118.00).

Cost will be split between Olentangy Environmental Control Center and Central Maintenance Facility

Exhibit A: Olentangy Environmental Control Central 66211903: \$19,284.00

Exhibit B: Central Maintenance Facility 66211901: \$3,384.00

Section 5 – Payment

Compensation shall be paid based on invoices in accordance with the Proposal. Invoices shall be submitted to the Administrator by the Contractor 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 Contractor shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Term

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This Agreement shall be in effect for one year upon execution of this Agreement.

Section 7 – Insurance

- 7.1 **General Liability Coverage:** Contractor 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:** Contractor 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:** Contractor 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 **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. Contractor shall require all of its subcontractors to provide like endorsements.
- 7.5 **Proof of Insurance:** Prior to the commencement of any work under this Agreement, Contractor, 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 as required in Subsection 7.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Liability and Warranties

To the fullest extent permitted by law, neither party shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Work or this Agreement. This mutual waiver shall include, but not be limited to, loss of profit, loss of business or income, or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, the Contractor 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 Contractor, 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 Contractor ordering termination of Work. The Contractor shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Contractor 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 in writing.

Section 11 – Miscellaneous Terms & Conditions

- 11.1 **Prohibited Interests:** Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor 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.
- 11.2 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, 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.
- 11.3 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

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- 11.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 11.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 Findings for Recovery: Contractor certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 11.8 Non-Discrimination/Equal Opportunity: Contractor 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.

Contractor 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.

Contractor 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.

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

- 11.9 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.
- 11.10 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.

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Furthermore, Be It Resolved that the Board of County Commissioners approve a purchase order with Air Force One, Inc. in the total amount of \$22,668.00, being \$19,284.00 from org key 66211903 and \$3,384.00 from org key 66211901.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye -

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RESOLUTION NO. 15-928

IN THE MATTER OF ACCEPTING SANITARY AND TEMPORARY CONSTRUCTION & ACCESS EASEMENTS FROM NATIONWIDE CHILDREN’S HOSPITAL AS PART OF THE NCH/OH AMBULATORY BUILDING PROJECT:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to accept the following:

WHEREAS, Sanitary Easements and a Temporary Construction & Access Easement is required across portions of the property being developed for the NCH/OH Ambulatory Building project,

NOW, THEREFORE, BE IT RESOLVED that the Board hereby accepts the sanitary and temporary construction & access easements granted by Nationwide Children’s Hospital on the attached exhibits.

(Copy of exhibits available in the Commissioners’ Office and Environmental Services Department until no longer of administrative value).

Vote on Motion - Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-929

IN THE MATTER OF ACCEPTING A SANITARY EASEMENT FROM SCIOTO RESERVE, LLC AS PART OF THE HARVEST POINT SANITARY SEWER IMPROVEMENTS PROJECT:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to accept the following:

WHEREAS, a sanitary easement is required on the Scioto Reserve Golf Course as part of the Harvest Point Sanitary Sewer Improvements project,

NOW, THEREFORE, BE IT RESOLVED that the Board hereby accepts the sanitary easement granted by Scioto Reserve, LLC on the attached exhibit.

(Copy of exhibits available in the Commissioners’ Office and Environmental Services Department until no longer of administrative value).

Vote on Motion Mr. Merrell Aye - Mrs. Lewis Aye

RESOLUTION NO. 15-930

IN THE MATTER OF ACCEPTING A SANITARY EASEMENT FROM EDWARDS LAND DEVELOPMENT CO. LLC AS PART OF THE TRAIL’S END SECTION 1 DEVELOPMENT:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to accept the following:

WHEREAS, sanitary easements are required on property owned by Edwards Land Development Co. LLC, as part of the Trail’s End Section 1 development,

NOW, THEREFORE, BE IT RESOLVED that the Board hereby accepts the sanitary easement granted by Edwards Land Development Co., LLC on the attached exhibit.

(Copy of exhibits available in the Commissioners’ Office and Environmental Services Department until no longer of administrative value).

Vote on Motion Mrs. Lewis Aye - Mr. Merrell Aye

RESOLUTION NO. 15-931

IN THE MATTER OF APPROVING CONTRACT BETWEEN THE STATE OF OHIO DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO FOR ODOT PROJECT NO. 86149 (2016) SR 3 AND PLUMB ROAD:

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

Whereas, the County Engineer recommends approval of the Contract Between The State Of Ohio, Department Of Transportation And The Board Of Commissioners Of Delaware County, Ohio For ODOT Project No. 86149 (2016) SR 3 And Plumb Road;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Contract Between The State Of Ohio, Department Of Transportation And The Board Of Commissioners Of Delaware County, Ohio

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For ODOT Project No. 86149 (2016) SR 3 And Plumb Road:

**ODOT Project No. 86149 (2016)
CONTRACT
(Chapter 5521, Ohio Revised Code)**

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the Board of Commissioners of Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (hereinafter referred to as the "COUNTY");

WITNESSETH:

WHEREAS, Chapter 5521 of the Ohio Revised Code provides that the COUNTY may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

WHEREAS, through the enactment of preliminary legislation, the COUNTY and the STATE have agreed to cooperate in the highway project described below; and

WHEREAS, through the enactment of final legislation through resolution 15-889, the COUNTY has committed to pay a sum of \$100,000.00 as its share of the total cost and expense of the highway project described below; and

WHEREAS, the fiscal officer of the County has filed with the certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

WHEREAS, in accordance with the final legislation, the County hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project.

NOW, THEREFORE, in consideration of the promises and the performances of mutual covenants hereinafter set forth, it is agreed by the parties hereto as follows:

SECTION I: RECITALS

The foregoing recitals are hereby incorporated as a material part of this contract.

SECTION II: PURPOSE

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the COUNTY and the STATE.

SECTION III: LEGAL REFERENCES

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

SECTION IV: SCOPE OF WORK

The work to be performed under this contract shall consist of the following:

The project consists two lane resurfacing, replacement of two culverts and minor signal work at existing signals, installation of new signal and left turn lane at SR 3 and Plumb Rd and culvert replacement, lying within Delaware County.

SECTION V: FINANCIAL PARTICIPATION

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the COUNTY in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the amount of contribution by the COUNTY.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The County agrees to pay to the STATE its share of the total estimated cost expense for the above

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highway project in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00).

5. The County agrees to participate in this project in a lump sum amount of \$100,000.00.

SECTION VI: RIGHT-OF-WAY AND UTILITIES

1. The STATE and County agree that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The STATE agrees to assume and bear one hundred percent (100%) of the costs of right-of-way, which include all eligible utility costs. The County agrees to empower ODOT with the responsibility for all utility accommodation, relocation, and reimbursement, and agrees that all such accommodations, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual. In addition, the County agrees to give authority to ODOT to acquire all necessary right-of-way required for the described Project.

SECTION VII: ADDITIONAL PROJECT OBLIGATIONS

1. The STATE shall initiate the competitive bid letting process, award and administer construction of the PROJECT in accordance with ODOT's policies and procedures.

SECTION VIII: DISPUTES

In the event that any disputes arise between the STATE and COUNTY concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

SECTION IX: NOTICE

Notices under this contract shall be directed as follows:

<p>Board of County Commissioners 101 North Sandusky Street Delaware, Ohio 43015</p>	<p>Ohio Department of Transportation Office of Estimating 1980 West Broad Street Columbus, Ohio 43223</p>
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SECTION X: FEDERAL REQUIREMENTS

The STATE agrees to conform to the necessary provisions of Ohio and Federal Law in the administration of this PROJECT.

1. In carrying out this contract, the State and the County shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. The State and the County will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

2. To the extent necessary under Ohio law, the State and the County agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The State and the County will, in all solicitations or advertisements for employees placed on or behalf of the State and County, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. If applicable the State and County shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requires in all subcontracts for such work.

3. The State and the County agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. The State and the County shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

SECTION XI: GENERAL PROVISIONS

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.
2. Neither this contract nor any rights, duties, obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
3. Any change to the provisions of this contract must be made in a written amendment executed by both

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parties.

4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the parties hereby irrevocably consents to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

5. All financial obligations of the State of Ohio, as provided in the contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the COUNTY shall not be valid an enforceable unless funds are appropriated by the Board of Commissioners of Delaware County.

6. This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modifications thereof.

7. The COUNTY agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION XII: SIGNATURES

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

Vote on Motion Mrs. Lewis Aye - Mr. Merrell Aye

RESOLUTION NO. 15-932

**IN THE MATTER OF APPROVING A CONTRACT BETWEEN THE STATE OF OHIO
DEPARTMENT OF TRANSPORTATION AND THE BOARD OF COMMISSIONERS OF
DELAWARE COUNTY, OHIO FOR ODOT PROJECT NO. 87407 (2016) WIDENING SR 750:**

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

Whereas, the County Engineer recommends approval of the contract between the State of Ohio, Department of Transportation and the Board of Commissioners of Delaware County, Ohio for ODOT Project No. 87407 (2016) widening SR 750;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract between the State of Ohio, Department of Transportation and the Board of Commissioners of Delaware County, Ohio for ODOT Project No. 87407 (2016) widening SR 750:

**ODOT Project No. 87407 (2016)
CONTRACT
(Chapter 5521, Ohio Revised Code)**

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the Board of Commissioners of Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (hereinafter referred to as the "COUNTY");

WITNESSTH:

WHEREAS, Chapter 5521 of the Ohio Revised Code provides that the COUNTY may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

WHEREAS, through the enactment of preliminary legislation, the COUNTY and the STATE have agreed to cooperate in the highway project described below; and

WHEREAS, through the enactment of final legislation through resolution 15-910, the COUNTY has committed to pay a sum of \$773,776.98 as its share of the total cost and expense of the highway project described below; and

WHEREAS, the fiscal officer of the COUNTY has filed with the certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

WHEREAS, in accordance with the final legislation, the COUNTY hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project and any additional

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obligations for the highway project described below.

NOW, THEREFORE, in consideration of the promises and the performances of mutual covenants hereinafter set forth, it is agreed by parties hereto as follows:

SECTION I: RECITALS

The foregoing recitals are hereby incorporated as a material part of this contract.

SECTION II: PURPOSE

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the COUNTY and the STATE.

SECTION III: LEGAL REFERENCES

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

SECTION IV: SCOPE OF WORK

The work to be performed under this contract shall consist of the following:

The project consists of widening SR 750 to a five lane section including a separated multi-use path on the north side of SR-750, constructing NB dual left turn lanes on Sawmill Pkwy at SR-750, and incidental widening of SB Sawmill Pkwy at SR-750, lying within Delaware County.

SECTION V: FINANCIAL PARTICIPATION

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the COUNTY in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the amount of contribution by the COUNTY.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The COUNTY agrees to pay to the STATE its share of the total estimated cost expense for the above highway project in the amount Seven Hundred Seventy Three Thousand Seven Hundred Seventy Six and---98/100 Dollars (\$773,776.98).
5. The County agrees to participate in this project in a lump sum amount of \$773,776.98.

SECTION VI: RIGHT-OF-WAY AND UTILITIES

1. The STATE and County agree that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The STATE agrees to assume and bear one hundred percent (100%) of the costs of right-of-way, which include all eligible utility costs. The County agrees to empower ODOT with the responsibility for all utility accommodation, relocation, and reimbursement, and agrees that all such accommodations, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual. In addition, the County agrees to give authority to ODOT to acquire all necessary right-of-way required for the described Project.

SECTION VII: ADDITIONAL PROJECT OBLIGATIONS

1. The STATE shall initiate the competitive bid letting process and award and administer construction of the PROJECT in accordance with ODOT's policies and procedures.

SECTION VIII: DISPUTES

In the event that any disputes arise between the STATE and COUNTY concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

SECTION IX: NOTICE

Notice under this contract shall be directed as follows

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Board of County Commissioners
101 N. Sandusky St. Delaware, Ohio 43015

Ohio Department of Transportation Office of Estimating
1980 West Broad Street, 1st Floor Columbus, Ohio 43223

SECTION X: FEDERAL REQUIREMENTS

The STATE agrees to conform to the necessary provisions of Ohio and Federal Law in the administration of this PROJECT.

1. In carrying out this contract, the State and the County shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. The State and the County will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

2. To the extent necessary under Ohio law, the State and the County agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The State and the County will, in all solicitations or advertisements for employees placed on or behalf of the State and County, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. If applicable the State and County shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requires in all subcontracts for such work.

3. The State and the County agree to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. The State and the County shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

SECTION XI: GENERAL PROVISIONS

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.

2. Neither this contract nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

3. Any change to the provisions of this contract must be made in a written amendment executed by both parties.

4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the parties hereby irrevocably consent to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

5. All financial obligations of the State of Ohio, as provided in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the COUNTY shall not be valid and enforceable unless funds are appropriated by the Board of Commissioners of Delaware County.

6. This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

7. The COUNTY agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION XII: SIGNATURES

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

Vote on Motion - Mr. Merrell Aye Mrs. Lewis Aye

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RESOLUTION NO. 15-933

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

The Director of the Child Support Enforcement Agency recommends hiring Maren Aikey as a Compliance Officer with CSEA; effective August 24, 2015;

Therefore Be it Resolved, the Board of Commissioners approve hiring Maren Aikey as a Compliance Officer with CSEA; effective August 24, 2015.

The Director of the 911 Communications Department recommends hiring Alexa Cruse as a Telecommunicator with the 911 Department; effective August 24, 2015;

Therefore Be it Resolved, the Board of Commissioners approve hiring Alexa Cruse as a Telecommunicator with the 911 Department; effective August 24, 2015.

The Manager of Maintenance recommends accepting the retirement resignation of Dave Maggard with the Maintenance Department; effective August 7, 2015;

Therefore Be it Resolved, the Board of Commissioners accept the retirement resignation of Dave Maggard with the Maintenance Department; effective August 7, 2015.

The Director of the Job and Family Services recommends accepting the retirement resignation of Kathy Mason with JFS; effective August 28, 2015;

Therefore Be it Resolved, the Board of Commissioners accept the retirement resignation of Kathy Mason with JFS; effective August 28, 2015.

Vote on Motion - Mr. Merrell Aye Mrs. Lewis Aye

ADMINISTRATOR REPORTS

Tim Hansley

-Took a ride on the Safety Train yesterday. The biggest part of their message is making people aware of the laws concerning railroad crossings and railroad property.

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Lewis

-Also rode the train yesterday. The stats were very sobering in respects to fatalities in Delaware County with trains and railroad crossings.

Commissioner Merrell

-Attended the Genoa Business Association meeting yesterday. Pat Tiberi attended and spoke at that meeting.

-On Tuesday, attended an Orange Township first ever business appreciation day.

-Attended a 911 Board Meeting

-Would like the Board's opinion about attending the CCAO meeting on August 27th. There will be important information shared at that meeting but it is a session day. The consensus was to wait until the date comes closer to see what items would be on that day.

RESOLUTION NO. 15-934

9:45AM PUBLIC HEARING FOR CONSIDERATION OF THE DRAINAGE IMPROVEMENT PETITION TO VACATE PORTIONS OF THE EXISTING STORM WATER EASEMENTS, IN THE ORANGE CENTRE DEVELOPMENT SECTION 1 PROJECT #0723 (UPON APPROVAL OF CONSTRUCTION OF NEW ALIGNMENT AND EASEMENT WITHIN THE COURTYARDS AT HIDDEN RAVINES SECTION 1):

It was moved by Mrs. Lewis, seconded by Mr. Merrell to open the hearing at 9:50 AM.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye -

RESOLUTION NO. 15-935

IN THE MATTER OF APPROVING, FOR A SPECIFIC OCCURRENCE, A SUSPENSION OF RULE 3-SPEAKER REGISTRATION; RULE 4-LIMITATIONS AND RULE 7-PUBLIC COMMENT PROCEDURE FROM THE RULES GOVERNING PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:

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It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve, for a specific occurrence, a suspension of Rule 3-Speaker Registration; Rule 4-Limitations; Rule 7-Public Comment Procedure from the Rules Governing Public Comment Before The Board Of County Commissioners Of Delaware County, Ohio

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye -

RESOLUTION NO. 15-936

IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF THE DRAINAGE IMPROVEMENT PETITION TO VACATE PORTIONS OF THE EXISTING STORM WATER EASEMENTS, IN THE ORANGE CENTRE DEVELOPMENT SECTION 1 PROJECT #0723 (UPON APPROVAL OF CONSTRUCTION OF NEW ALIGNMENT AND EASEMENT WITHIN THE COURTYARDS AT HIDDEN RAVINES SECTION 1):

It was moved by Mrs. Lewis, seconded by Mr. Merrell to close the hearing at 10:01 AM.

Vote on Motion - Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-937

IN THE MATTER OF GRANTING THE PRAYER OF THE PETITION AND DIRECTING THE DELAWARE COUNTY ENGINEER TO PROCEED WITH PREPARATION OF PLANS, REPORTS, AND SCHEDULES FOR THE DRAINAGE IMPROVEMENT PETITION TO VACATE PORTIONS OF THE EXISTING STORM WATER EASEMENTS, IN THE ORANGE CENTRE DEVELOPMENT SECTION 1 PROJECT #0723 (UPON APPROVAL OF CONSTRUCTION OF NEW ALIGNMENT AND EASEMENT WITHIN THE COURTYARDS AT HIDDEN RAVINES SECTION 1):

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

Whereas, on April 24, 2015, a Drainage Improvement Petition To Vacate Portions Of The Existing Storm Water Easements, In The Orange Centre Development Section 1 Project #0723, (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1) was filed with the Board of Commissioners of Delaware County (the "Board"); and

Whereas, the Board on July 27, 2015, conducted a view of the proposed improvements (continued from July 20, 2015 due to lack of quorum of Board of Commissioners); and

Whereas, the Board on August 6, 2015, held a public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred To Vacate Portions Of The Existing Storm Water Easements, In The Orange Centre Development Section 1 Project #0723 (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1); and

Whereas, after hearing testimony from property owners and the preliminary report of County Engineer, Chris Bauserman, the Board is prepared to issue its findings on the proposed improvements.

Therefore, Be It Resolved, by the Board of Commissioners of Delaware County, Ohio as follows:

Section 1. The Board hereby finds that the proposed improvement is necessary and that it will be conducive to the public welfare. The Board also finds that it is reasonably certain that the cost of the proposed improvement will be less than the benefits. Accordingly, the Board hereby grants the prayer of the petition. The hearing on the Petition is hereby adjourned to the date fixed for the filing of the reports, plans, and schedules by the Delaware County Engineer.

Section 2. The Board hereby orders the Delaware County Auditor to transfer \$ Zero from the general revenue funds of the county to the general drainage improvement fund.

Section 3. Upon the transfer of funds ordered in Section 2, the Board hereby orders the Delaware County Engineer to proceed with the preparation of plans, reports and schedules as presented for the proposed Vacation Of Portions Of The Existing Storm Water Easements, In The Orange Centre Development Section 1 Project #0723 (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1). The Board hereby August 6, 2016 as the date for filing of the engineer's reports, plans, and schedules. Upon filing of this information a public hearing date will be set and proper notification given to property owners in the affected watershed.

Section 4. The Board Hereby Approves Establishing A New Organization Key For The Petition To Vacate Portions Of The Existing Storm Water Easements, In The Orange Centre Development Section 1 Project #0723, (Upon Approval Of Construction Of New Alignment And Easement Within The Courtyards At Hidden Ravines Section 1) Project 40311451.

Section 5. This Board finds and determines that all formal actions taken by this Board concerning and relating to

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the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

Section 6. Sections 1, 4, 5, and 6 of this Resolution shall take immediate effect upon passage. Sections 2 and 3 of this Resolution shall take effect upon the expiration of the twenty-one day appeal period, provided no appeal has been taken.

Vote on Motion Mr. Merrell Aye - Mrs. Lewis Aye

RESOLUTION NO. 15-938

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

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn into Executive Session at 10:02 AM.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye -

RESOLUTION NO. 15-939

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by _____, seconded by _____ to adjourn out of Executive Session at 10:18 AM.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye -

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jennifer Walraven, Clerk to the Commissioners