

COMMISSIONERS JOURNAL NO. 65 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD OCTOBER 6, 2016

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

Present:  
Barb Lewis, President  
Jeff Benton, Vice President  
Gary Merrell, Commissioner

**1**  
RESOLUTION NO. 16-995

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 3, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 3, 2016; 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                      Mr. Benton                      Aye

**2**  
PUBLIC COMMENT

**3**  
ELECTED OFFICIAL COMMENT

**4**  
RESOLUTION NO. 16-996

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1005:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1005 and Purchase Orders as listed below:

<u>PO #</u>	<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
R1605049	WHITAKER CONTRACTING LLC	WHITAKER CONTRACTING LLC	23111711- 5365	\$6,900.00
R1605050	WHITAKER CONTRACTING LLC	MCNAMARA HOME REPAIR CHIP GRANT	23111711- 5365	\$16,465.00
R1605051	CROUCH ENTERPRISES LLC	REA HOME REPAIR CHIP GRANT	23111711- 5365	\$9,300.00

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

**5**  
RESOLUTION NO. 16-997

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Child Support Enforcement Agency is requesting that Maren Aikey, Andrea DelCol and Lisa Cain attend an OCDA Fall Conference on October 17, 2016 in Dublin, Ohio at no cost.

The Child Support Enforcement Agency is requesting that Andrea DelCol, Jason Porter, Margaret Long, Sharon Cole, Deb Benjamin, Maren Aikey, Lisa Cain and Sandy Disantis attend an OCDA Fall Conference on October 18 2016 in Dublin, Ohio at the cost of \$350.00.

The Economic Development Department is requesting that Bob Lamb attend a Smart GIG Ohio Conference in Columbus, Ohio October 11-12, 2016; at the cost of \$149.00 (fund number 21011113)

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

**6**

**RESOLUTION NO. 16-998**

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

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following work permits:

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

Now Therefore Be It Resolved, that the following permits are hereby approved by The Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U16-167	Time Warner Cable	Peachblow Road	Place power supply in ROW
U16-168	Del-Co Water	Burnt Pond Road	Road Bore
U16-169	Del-Co Water	Burnt Pond Road	Install Waterline in ROW
U16-170	Del-Co Water	DeGood Road	Road Bore
U16-171	Del-Co Water	DeGood Road	Install Waterline in Row
U16-172	Del-Co Water	Shipleigh Road	Road Bore
U16-173	Del-Co Water	Brindle Road	Road Bore
U16-174	Del-Co Water	DeGood Road	Road Bore
U16-175	WOW	Bunty Station Road	Attach to existing pole
U16-176	WOW	Liberty Road	Attach to existing pole
U16-177	AT&T	Enclave Blvd.	Road Bore
U16-178	AT&T	Frost Road	Road Bore
U16-179	Consolidated Electric	Hollenback Road	Aerial Fiber Optic cable
U16-180	Consolidated Electric	Green Meadows Dr.	Install Fiber Optic cable
U16-181	Columbia Gas	Concord Road	Tie into existing gas main
U16-182	WOW	Bunty Station Road	Install power supply

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

**7**

**RESOLUTION NO. 16-999**

**IN THE MATTER OF TAKING FROM THE TABLE PROPOSED RESOLUTION 16-991 FROM OCTOBER 3, 2016 (APPROVING AN AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND TITLE FIRST AGENCY, INC. FOR TITLE SERVICES FOR THE AGRICULTURAL EASEMENT PURCHASE PROGRAM):**

It was moved by Mr. Benton, seconded by Mr. Merrell to take from the table proposed resolution 16-991 from October 3, 2016 (Approving An Agreement By And Between The Delaware County Board Of Commissioners And Title First Agency, Inc. For Title Services for the Agricultural Easement Purchase Program).

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

**8**

**RESOLUTION NO. 16-991**

**IN THE MATTER OF APPROVING AN AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND TITLE FIRST AGENCY, INC. FOR TITLE SERVICES FOR THE AGRICULTURAL EASEMENT PURCHASE PROGRAM:**

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

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**AGREEMENT FOR TITLE SERVICES**

This Agreement is made and entered into on this 29<sup>th</sup> day of September 2016 by and between the **Delaware County Board of Commissioners**, 101 North Sandusky Street, Delaware, Ohio 43015, ("**Commissioners**"), and **Title First Agency, Inc.**, 999 Polaris Parkway, Suite 101, Columbus, Ohio 43240 ("**Contractor**"), the **Ohio Department of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio 43068 ("ODA") shall be considered a third party beneficiary of this agreement who hereby agree as follows:

**WHEREAS**, the Commissioners desire to engage Contractor to perform title search, commitment, escrow and closing services; and

**WHEREAS**, Ohio Revised Code Section 901.21 empowers the Ohio Department of Agriculture (ODA) in Cooperative Agreement with the Commissioners to acquire agricultural easements and to do all things necessary to retain land acquired thereby predominantly in agricultural use; and

**WHEREAS**, the Commissioners and ODA are proposing to purchase agricultural easements using funds from the Clean Ohio Agricultural Easement Purchase Program; and

**WHEREAS**, the Commissioners are required by Cooperative Agreement and deems it necessary to conduct a title search, obtain title insurance and secure an escrow agent for closing for such purposes; and

**WHEREAS**, Contractor desires to perform such services for the Commissioners in accordance with the terms and conditions prescribed by the Commissioners;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

**ARTICLE I: NATURE OF CONTRACT**

1.1 Contractor shall be employed as an independent contractor, to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a nature that the Commissioners are the sole judge of the adequacy of such services.

1.2 The Commissioners enter into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.

1.3 Contractor shall perform the services to be rendered under this Agreement and the Commissioners shall not hire, supervise, or pay any assistants to Contractor in its performance under this Agreement. The Commissioners shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

1.4 The Commissioners may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this Agreement. Upon such notice and within a reasonable time, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of the Commissioners. It is expressly understood by the parties that the instructions and requests are for the sole purpose of performing the specific tasks requested and to ensure satisfactory completion of the work described in this Agreement.

**ARTICLE II. SCOPE OF WORK**

2.1 The Contractor shall perform the services set forth in Exhibit A, Scope of Work, for the property described in Exhibit B, both attached hereto and incorporated by reference as if fully rewritten herein.

2.2 The closing shall occur within ten (10) business days ("Closing Date") after the Commissioners via the **Delaware Soil and Water Conservation District** ("**District**") and ODA forwards the Escrow Agreement with Purchase Payment to Escrow Agent.

2.3 The Commissioners may, from time to time as it deems appropriate, communicate specific instructions and requests to the Contractor concerning the performance of the work described in this contract. Upon such notice, the Contractor shall comply with such instructions and fulfill such requests to the satisfaction of the Commissioners. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this contract. The Contractor shall retain responsibility for the management of the work, including the exclusive right to control or direct the manner or means by which the work described herein is performed. The Commissioners

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retains the right to ensure that the work of the Contractor is in conformity with the terms and conditions of the Agreement. Contractor is to accept direction from the District and ODA in the performance of work contained in this Agreement and set forth in Exhibit A, unless explicitly stated otherwise in writing by the Commissioners.

**ARTICLE III. TIME OF PERFORMANCE.**

3.1 The services as stated in Exhibit A, Scope of Work, shall be commenced on the date this agreement is entered into and concluded on or before the due date set forth in Exhibit B, excluding the recording of the easement. The recording of the easement shall occur on or before December 31, 2017.

3.2 This Agreement shall remain in effect until the work described in Exhibit A, Scope of Work, is completed to the satisfaction of the Commissioners and until Contractor is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Contractor's Services, whichever is sooner.

3.3 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code ("R.C.") 3517.13, R.C. 127.16, or R.C. Chapter 102.

**ARTICLE IV. COMPENSATION.**

4.1 Initial title examination fees shall be paid, upon completion of the initial services by the Landowners who the District issued Notices of Selection to proceed to Phase 3, in accordance with the Ohio Administrative Code (OAC) 901-2-06 in Exhibit C. The Contractor shall be paid for services rendered as outlined in Exhibit B. Contractor shall be paid at the closing out of the proceeds to be deducted from the ODA's purchase funds.

4.2 The total amount due was computed according to the cost schedule set forth in Exhibit B.

4.3 Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement.

4.4 Contractor shall submit an invoice for the services performed at least thirty (30) days prior to closing consistent with this Article IV, Compensation. The invoice shall contain a description of the services performed and the sum due at that time pursuant to this Agreement.

4.5 Payment for Contractor services shall be made after all documents are recorded as required by the closing of the agricultural easement.

4.6 If, after costs are incurred for services, Landowners become ineligible for any reason or withdraws from receiving funding, Landowners shall be held completely responsible and shall reimburse the Commissioners or Contractor for all such costs in Exhibit B.

4.7 All additional attorney fees accrued from additional services required to secure a title commitment shall be paid by the landowner under separate agreement, and under no circumstances shall the Commissioners be required to pay the cost, expense, or fees incurred for any services performed by Contractor by, through, or in connection with this Agreement.

**ARTICLE V: CERTIFICATION OF FUNDS**

5.1 It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, and the Commissioners shall receive written notice that such funds have been made available to the Commissioners by the Clean Ohio Agricultural Easement Purchase Program funding source.

**ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES**

6.1 The Commissioners may, at any time prior to the completion of services by the Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to the Contractor.

6.2 Upon notice of suspension or termination, Contractor shall cease all work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary steps to limit disbursements and minimize costs, and if requested by the Commissioners, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting therefrom, and

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any other matters the Commissioners require.

6.3 Contractor shall be paid for services rendered up to the date the Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the Commissioners for which Contractor has not rendered services shall be refunded.

6.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Commissioners all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of the Commissioners, to be used in such manner and for such purpose as the Commissioners may choose.

6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against the Commissioners by reason of such suspension or termination.

6.6 Contractor may terminate this Agreement upon thirty (30) days prior written notice provided to the Commissioners.

**ARTICLE VII: RELATIONSHIP OF PARTIES**

7.1 The Commissioners and Contractor agree that Contractor shall be engaged by the Commissioners solely on an independent contractor basis, and Contractor shall therefore be responsible for all of its own business expenses, including, but not limited to, computers, phone service and office space. Contractor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7.2 While Contractor shall be required to render services described hereunder for the Commissioners during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder as an independent contractor, that the Commissioners shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder,

7.3 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

7.4 It is fully understood and agreed that the Contractor is an independent contractor and is not an agent, servant or employee of the Commissioners or the State of Ohio.

**ARTICLE VIII: RECORD KEEPING**

8.1 During the performance of the services required by this Agreement and for a period of three years after its completion, the Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the Commissioners as the Commissioners may reasonably require.

**ARTICLE IX: RELATED AGREEMENTS**

9.1 The work contemplated in this Agreement is to be performed by Contractor, who may subcontract without the Commissioner's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Exhibit A, Scope of Work, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts related to the work described in this Agreement without prior written approval by the Commissioners. All work subcontracted shall be at Contractor's expense.

9.2 Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Commissioners to terms inconsistent with, or at variance from, this Agreement.

9.3 Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of the Commissioners, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

9.4 Contractor shall furnish to the Commissioners a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

**ARTICLE X: CONFLICTS OF INTEREST AND OFFSHORE LABOR PROHIBITION**

10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee

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of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

10.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Commissioners in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Commissioners shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

10.3 The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Agreement. Contractor shall perform no services required under this Agreement outside the United States and agrees to immediately notify the Commissioners of any Change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside the United States.

10.4 By signing this Agreement, Contractor certifies that it is in, and will remain in, compliance with Executive Order 2011-12K and will not assign or subcontract the work under this Agreement to an entity outside the United States. Contractor has completed and signed the Affirmation and Disclosure Form found in Exhibit D and will return it to the Commissioners along with this Agreement.

**ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT**

Pursuant to R.C. 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, sexual orientation, military status, ancestry, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.

11.2 Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, 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, national origin, sexual orientation, military status, ancestry, or disability.

11.3 Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Commissioners of Administrative Services.

**ARTICLE XII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

12.1 The Commissioners shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by the Commissioners shall be subject to copyright by Contractor in the United States or any other country.

12.2 Contractor agrees that all deliverables or original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the Commissioners. Any requests received by Contractor should be referred to the Commissioners.

**ARTICLE XIII: CONFIDENTIALITY**

13.1 Contractor shall not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Commissioners.

13.2 All provisions of this Agreement relating to "confidentiality" shall remain binding upon Contractor in the event of cancellation.

**ARTICLE XIV: LIABILITY**

14.1 Contractor agrees to indemnify and to hold the Commissioners and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by

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Contractor, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

14.2 Contractor shall bear all costs associated with defending the Commissioners and the State of Ohio against any claims as outlined in paragraph 14.1.

14.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

**ARTICLE XV: COMPLIANCE WITH LAWS**

15.1 Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

15.2 Contractor affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the contract period Contractor, for any reason, becomes disqualified from conducting business in the State of Ohio, Contractor will immediately notify the Commissioners in writing and will immediately cease performance of contract activities.

**ARTICLE XVI: DRUG FREE WORKPLACE**

16.1 Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way when they are engaged in the work being performed hereunder.

**ARTICLE XVII: CAMPAIGN CONTRIBUTIONS**

17.1 Contractor hereby certifies that neither Contractor nor any of Contractor's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. 3517.13.

**ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER**

18.1 This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

18.2 This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

18.3 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**ARTICLE XIX: NOTICES**

19.1 All notices, consents, requests and other communications hereunder shall be in writing and shall be deemed to be given upon receipt thereof, and shall be sent to the addresses set forth hereunder or to such other address as the other party hereto may designate by written notice transmitted in accordance with this provision.

1. In case of the Commissioners to:
2. In case of the Contractor, to:

**ARTICLE XX: HEADINGS**

20.1 The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

**ARTICLE XXI: SEVERABILITY**

21.1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless, be binding and enforceable.

**ARTICLE XXII: CONTROLLING LAW**

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22.1 This Agreement and the rights of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Contractor agrees that only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performances thereunder.

**ARTICLE XXIII: SUCCESSORS AND ASSIGNS**

23.1 Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Contractor, without the prior written consent of the Commissioners.

**ARTICLE XXIV: FINDINGS FOR RECOVERY**

24.1 Contractor warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is found to be false, this Agreement is void ab initio and the Contractor shall immediately repay to the Commissioners any funds paid under this Agreement.

**ARTICLE XXV: DEBARMENT**

25.1 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Commissioners of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Contractor shall immediately repay to the Commissioners any funds paid under this Agreement.

**ARTICLE XXVI: EXECUTION**

27.1 This Agreement is not binding upon the Commissioners unless executed in full.

**ARTICLE XXVII: ANTITRUST ASSIGNMENT**

28.1 Contractor agrees to assign to the Commissioners all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

**ARTICLE XXVIII: CONFLICT**

29.1 In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

**Exhibit A  
SCOPE OF WORK**

A. Title Search. The Contractor, under the direction and to the satisfaction of the Commissioners, shall search the public records concerning the titles to the parcels of such real estate as delineated in the Agricultural Easement Parcel Number List attached hereto as Exhibit B and incorporated herein by reference. The Contractor shall submit a written report, in a form acceptable to the Commissioners, as to each parcel, each of which shall include the factual information enumerated below, to the extent that such information can be ascertained from a search of the public records relating to the title of said real estate. The search shall cover a period sufficient to satisfy the State that all matters presently affecting the title have been found, but in no event for a period less than ninety (90) years with legible copies of the source documents. The search shall be documented in a Commitment for Title Insurance, which should include at a minimum the following:

1. The name, address, and marital status of record holder or holders of title.
2. The name, address of spouse, if any, a record holder or holders of title.
3. List of the combined actual total acreage for the entire interest in land being acquired in the Easement.
4. The names, and if it appears of record, the address, of the owners of any encumbrances upon or interest in the real estate. such as mortgages, land contract, leases, easements, rights-of-way, mineral rights or reservations, together with the recording references and dates thereof.
5. Unsatisfied executions and lien judgments, foreign or domestic, or pending suits of record in the courts of records and on file in the Sheriff's Office and the Clerk of Court's office of said county, which may affect the title to the real estate examination.
6. Any other tax liens, mechanics liens, recognizance liens, unemployment compensation liens, workers compensation liens or any other infirmity, encumbrances, liens, or cloud on title disclosed by the public records of the County where the real estate is located.
7. The tax duplicate description, auditor's parcel number, current agricultural recoupment or use valuation,



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if applicable, and current tax valuation, including statement of taxes, assessment liens, penalties, and interest which have not been paid and are a lien.

8. The gross acres of all parcels, minus highway rights-of-way and all other exclusions or transfers, in order to provide a net acreage of all parcels for the agricultural easement.
9. Attach a complete copy of recorded deed of the land or parcels of land which make up an owner's property which are used as a unit of land acquired for the Commissioners and the Ohio Department of Agriculture's (ODA) purposes, together with the recording reference and dates thereof, and a statement of the total acreage to be acquired by the agricultural easement.

**B. Title Insurance Commitment**

1. Contractor shall provide a title insurance commitment naming the Ohio Department of Agriculture as an insured party.

**C. Escrow Services**

1. Contractor shall provide escrow services and shall serve as escrow agent at closing specified by The Commissioners and the Ohio Department of Agriculture for the purchase of the agricultural easement.
2. Costs incurred for title services will be reimbursed to the Commissioners and ODA through the title insurance company, as escrow agent, at closing by the respective landowner noted in Exhibit B as documented in the ODA approved settlement statement (HUD- I).

**D. Closing**

1. Contractor shall provide recording services surrounding the agricultural easement acquisition in the most cost effective manner on behalf of the Commissioners and ODA subject to the pre-approval of the Commissioners and ODA.
2. Unless otherwise agreed to in advance by the Commissioners and ODA, Contractor shall schedule and conduct a "roundtable" closing for the agricultural easement at a mutually convenient place and time for all necessary parties.
3. The title agent will collect all required signatures for necessary documents and record the easement and any other necessary documents, in addition to any other items outlined in the Closing Letter.
4. The Commissioners and ODA shall tender a lump sum payment to title insurance company, as escrow agent, for distribution to the landowner and/or landowner's assignee(s) in the proportions directed by the landowner.
5. All recorded original documents as requested in the Closing Letter must be returned to the Commissioners and ODA as soon as possible.
6. Secure a policy of title insurance if the federal government is involved on A.L.T.A U.S. Policy Form 1991 for an amount specified by the Commissioners and ODA or an A.L.T.A. U.S. Policy Form 2006 to the local sponsor when requested.
7. Secure an Owners Policy of title insurance for ODA

**Exhibit B**

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: Gary L. Newhouse and Sharon N. Wade

Property Location: 1335 Ostrander Road Ostrander, Ohio 43061

County: Delaware  
Township: Scioto

**Parcel Number:**  
20040004020000

**Acres:**  
82.34

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**Title Search:** 300.00  
**Title Insurance**  
**Commitment: Title** 50.00  
**Insurance Premium:** 649.75  
**Settlement Fee:** 250.00

**TOTAL:** \$1,249.75

**Plus additional Costs as needed:**

**Title Update and Recording:** 75.00/update  
**Copy Costs:** 2.00/pg  
**Courier Fee:** 25.00

**Title Search Due Date:** TBD

**Exhibit B**

This property to be covered by easement in the Ohio Agricultural Easement Purchase Program is inclusive of the following parcels:

Owner: James G. Sherman and Susan L. Sherman

Property Location: 9436 Moody Road Centerburg, Ohio 43011

County: Delaware

Township: Porter

<b>Parcel Number:</b>	<b>Acres:</b>
51610001022000	85.26
51610001017000	78.70
51610001018000	13.44

**Title Search:** 300.00  
**Title Insurance**  
**Commitment: Title** 50.00  
**Insurance Premium:** 1168.50  
**Settlement Fee:** 250.00

**TOTAL:** \$1,768.50

**Plus additional Costs as needed:**

**Title Update and Recording:** 75.00/update  
**Copy Costs:** 2.00/pg  
**Courier Fee:** 25.00

**Title Search Due Date:** TBD

**Exhibit C**

(See full notices of selection to follow)

**Office of Farmland Preservation 8995 East Main Street, Reynoldsburg, OH 43068**

**Local Agricultural Easement Purchase Program (LAEPP)**

**Title Review Checklist**

Below is a list of documents commonly requested by the Ohio Department of Agriculture (ODA) for the review of title on a proposed agricultural easement property. While not an all-inclusive list, we strongly encourage Local Sponsors (LS) to share this checklist with their title agents to help communicate ODA's requirements.

Document/Description	Check when complete	
	Title Agent to LS	LS to ODA

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1. Provision of 90 year chain of title* - provide source documents for deeds showing chain for 90 years. a. Deeds must be provided which demonstrate conveyance of each tract and/or parcel of land.		
2. If the owner of the land is a corporation, limited liability company, or partnership**: a. Provide Articles of Incorporation or Organization, as applicable. b. By-laws or Code of Regulations, as applicable. c. Provide Corporate Resolution or Minutes of Meeting approving sale of easement to ODA. d. Unless all members of the organization will be signing the Deed of Agricultural Easement, an additional Resolution is required authorizing a member to sign on behalf of the corporation, company, or partnership.	N/A	
3. Provide a source document for each exception shown on the title commitment, and please ensure that all documents are legible. a. Assignments of leases should be provided.		
4. Ohio Department of Agriculture listed as the only insured on the title commitment (also applies to Closing Protection Coverage).		
5. If the owner of the land is a trust, provide a Memorandum of Trust in accordance with ORC 5301.255.	N/A	
6. Provide a legal description in the title commitment which matches the last deed that is in the chain of title; if parts of the legal description have been omitted, a corrective deed or survey should be requested.		
7. Provide county auditor tax card indicating payment of taxes up to current date.		
8. If mortgages are on the property, subordination of mortgages will be requested.	N/A	

Local Sponsors should refer to the Scope of Work in the ODA-Local Sponsor Cooperative Agreement for the complete requirements regarding title work and title agent responsibilities.

**\*Chain of Title Definition for Source Documents**

- All Deeds related to the Property for the last 90 years.
- All liens, easements, mortgages, and other encumbrances in the last 90 years (including assignments of same).
- All oil and gas leases associated with the Property in the last 90 years.
- All instruments marginally notated.

\*\*Corporate/Trust documentation is not always available through public records (or title agent). Local Sponsors should contact landowner directly for these documents and provide to ODA.

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

**9**

**RESOLUTION NO. 16-1000**

**IN THE MATTER OF AUTHORIZING THE SUBMITTAL OF A LOCAL SPONSOR APPLICATION TO THE OHIO DEPARTMENT OF AGRICULTURE OFFICE OF FARMLAND PRESERVATION:**

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

WHEREAS, the Ohio Department of Agriculture Office of Farmland Preservation offers matching grants for the acquisition of farmland preservation easements through local sponsors; and

WHEREAS, the Delaware County Board of Commissioners, in cooperation with the Delaware Soil and Water Conservation District, wishes to submit an application for Delaware County to serve as a local sponsor for the program; and

WHEREAS, the Delaware County Board of Commissioners, as a matter of policy, plans to request approval of a modified scoring system that reflects the need for Delaware County to establish a proper balance between farmland preservation and the obligation to obtain future easements for the County's sanitary sewer system.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby authorizes the County Administrator to complete a local sponsor application to the Ohio Department of Agriculture Office of Farmland Preservation and authorizes the President of the Board to sign and submit this application.

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

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**10****RESOLUTION NO. 16-1001**

**IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE DELAWARE COUNTY AUTOMATIC DATA PROCESSING BOARD; THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND THE BOARD OF TOWNSHIP TRUSTEES OF PERRY TOWNSHIP FOR INFORMATION TECHNOLOGY SERVICES:**

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

Whereas, the Sheriff, Sheriff's Office Staff and the Delaware County Automatic Data Processing Board recommend approval of the contract with The Board Of Township Trustees Of Perry Township for Information Technology Services;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approves the agreement with The Board Of Township Trustees Of Perry Township for Information Technology Services:

**INTERGOVERNMENTAL COOPERATION AGREEMENT**

**Section 1 - Parties to the Agreement**

This Agreement is made and entered into this 23rd day of August 2016 by and between the Delaware County Automatic Data Processing Board and the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 (collectively, the "County"), and the Board of Township Trustees of Perry Township, Franklin County, 7125 Sawmill Road, Dublin, Ohio 43016 (the "Township"), (hereinafter referred to individually as "Party" or collectively as the "Parties").

**Section 2— Purpose**

This Agreement is authorized by sections 9.482, 307.846, and 307.15, *et seq.*, of the Revised Code. The Township desires to enter into an agreement with the County that allows Delaware County Information Technology staff to provide Information Technology ("IT") services to the Township, and the County is willing and able to provide such services. This Agreement shall establish the terms and conditions for the support of Perry Township IT services.

**Section 3—Division of Responsibilities**

The Township shall install an agreed upon GPS tracking device in each of their vehicles that they wish to be monitored. The County will license to the Township its propriety software for real-time and historic tracking of vehicles with a GPS device installed. In addition, the County will host on its servers the data allowing for real-time, web-based monitoring. Further, the County will keep the data on its servers for up to 60 days and allow for historic tracking and reporting through its web-based application.

**Section 4— Compensation**

The County and Township acknowledge and agree that the service being provided is a proactive cooperative law enforcement inter-operative venture. As such Parties agree that in the spirit of mutual aid and furtherance of justice no fees relative to the services listed in Exhibit A, shall be incurred.

**Section 5— Records**

5.1 County and Township acknowledge and agree that Township data received by County in the course of providing the IT services under this Agreement is taken delivery of solely under the authority stated above and only to provide automatic or electronic data processing, data storage services and/or other IT services to Township.

5.2 County and Township acknowledge and agree that this data is not a public record [as defined in R.C. Section 149.011(G)] of the County or any of its offices, agencies, etc., that County is not the keeper or person responsible for any record contained in such data or otherwise responsible for providing inspection or copies of the same and that any records contained within the same shall at all times be considered Township records and not properly the subject of a public records request directed to the County under R.C. Section 149.43.

5.3 However, to assist Township in meeting its responsibilities:

- (a) County will maintain full access by Township to the Township's data stored in its system.
- (b) If County receives a public records request for Township records contained in such data, it will inform the requester that the information requested is not a public record of the County and that their request will be forwarded to the Township Fiscal Officer as the individual responsible for Township records. County will then immediately forward the request to the Township Fiscal Officer and advise them as to the circumstances of the request and its receipt.
- (c) County will provide technical assistance to the Township Fiscal Officer, as requested, in compiling and delivering Township data responsive to a public records request.

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5.4 If the County should ever determine that it is legally compelled by any means (including public records request under R.C. 149.43, deposition, interrogatory, request for documents, subpoena, civil investigative demand, etc.) to disclose Township data received or stored under this Agreement, it must make reasonable efforts to provide Township with prompt notice of such legal requirement prior to disclosure so that Township may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, County will: (i) furnish only that portion of the data that it is legally required to furnish; and (ii) cooperate with Township in reviewing such material for appropriate redaction prior to disclosure.

5.5 Upon termination or expiration of this Agreement, County will return all Township data to Township and shall not retain copies of all or any portion of it within its system.

5.6 The Parties agree that each shall maintain their respective public records concerning the services provided under this Agreement, pursuant to the laws of the State of Ohio pertaining to public records.

**Section 6— Term**

This Agreement shall take immediate effect upon approval by all Parties hereto and shall continue in full force and effect for one (1) year, whereupon the Parties mutually agree to review this Agreement for consideration of renewal. This Agreement may only be amended in writing with the mutual consent and agreement of the Parties. Either party may terminate this Contract at any time and for any reason by giving at least ninety (90) days advance notice, in writing, to the other.

**Section 7—Legal Contingencies**

In the event a change in law, whether by statute, judicial determination, or administrative action, affects this Agreement or the ability of the Parties to enter into, or continue to operate pursuant to, this Agreement, the Parties mutually agree to immediately institute a review of this Agreement. The Parties agree to negotiate in good faith to address any necessary modifications to this Agreement, to the extent permitted by applicable law.

**Section 8—Personnel**

The Parties each agree to maintain control over their respective personnel, and this Agreement shall not be construed to alter the employment relationship each Party has with its respective personnel. Each Party shall be responsible for the compensation, benefits, and liabilities of its respective personnel and hereby agrees to release the other Party from any responsibility therefore. In no event shall County's employees be considered employees of the Township within the meaning or application of any federal, state or local laws or regulations and vice versa.

**Section 9— Equipment and Facilities**

Each Party to this Agreement shall be responsible for providing its own equipment and facilities. In no way shall this Agreement be construed to require the sale or donation of equipment under the ownership and control of either Party of this Agreement.

**Section 10— Insurance and Liability**

Each Party shall, for the life of this Agreement, maintain comprehensive general liability insurance coverage, with minimum limits in the amount of \$1,000,000.00 each occurrence or equivalent and \$2,000,000.00 in the aggregate, and shall cause the other Party to be named as an additional insured on any applicable insurance policies.

The Township acknowledges that there is a risk of disruption of service to its IT equipment and service due to damage to the fiber optic cable and other equipment or system failures beyond the control of the County. As a condition of this Agreement, the Township agrees to release the County from any liability or costs due to such disruption of service.

**Section 11 - Miscellaneous Terms & Conditions**

11.1 Entire Agreement: This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.

11.2 Governing Law and Disputes: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio,

11.3 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.

11.4 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.

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11.5 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 in full force and effect.

**Exhibit A**

1. Provision by County of IT services required for GPS tracking of Perry Township police vehicles:
2. Provision of hosted GPS tracking for township police vehicles
3. Provision of 60 days worth of GPS tracking history
4. Provision of ability to review GPS tracking live or post tracking

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

**11**

**RESOLUTION NO. 16-1002**

**IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY SHERIFF AND SAFRAN MORPHOTRAK, INC. FOR THE GPW WORKSTATIONS, AFIS (AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM), AND SOFTWARE:**

It was moved by Mr. Merrell, seconded by Mr. Benton 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, AFIS (Automated Fingerprint Identification System), 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, AFIS (Automated Fingerprint Identification System), and software:

**SAFRAN  
MORPHOTRAK  
MAINTENANCE AND SUPPORT AGREEMENT**

MorphoTrak, LLC, ("MorphoTrak" or Seller") having a principal place of business at 5515 East La Palma Avenue, Suite 100, 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"

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.

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"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: 12.3". 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

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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. Either party may terminate the contract early with thirty (30) day written cancellation provided to the other 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 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 I 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:



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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 Customers personal property, equipment, and/or peripherals and any application software not provided by Seller.

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

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

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

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

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

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

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

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

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

3.8. The Customer hereby agrees to:

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

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

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

3.8.4. Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available) The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein

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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 I 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, 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

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(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 answer back received, and shall be effective upon receipt.

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

Seller: MorphoTrak, LLC  
Attn: Law Department  
5515 East La Palma Avenue, Suite 100  
Anaheim, CA 92807  
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.

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

8.8. Indemnification. MORPHO shall provide indemnification as follows: (a) To the fullest extent of the law and without limitation, the MORPHO agrees to indemnify and hold free and harmless the Delaware County Sheriff, the Board of Delaware County Commissioners, Delaware County, Ohio and all of their respective boards, officers, officials, employees, volunteers, agents, servants and representatives (collectively "Indemnified Parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to MORPHO's, any subcontractor's, or any sub-subcontractor's performance of this Contract, including, but not limited to the performance or actions of MORPHO's, any subcontractor's, or any sub-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 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

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

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MORPHO:  
Morphotrak, LLC  
Attn: Legal Department  
5515 East La Palma Avenue, Suite 100  
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 anytime, 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).

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

**12**  
**RESOLUTION NO. 16-1003**

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

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**FOR THE LIVESCAN WORKSTATIONS AND SOFTWARE:**

It was moved by Mr. Merrell, seconded by Mr. Benton 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:

**SAFRAN  
MORPHOTRAK  
MAINTENANCE AND SUPPORT AGREEMENT**

MorphoTrak, LLC, ("MorphoTrak" or "Seller") having a principal place of business at 5515 East La Palma Avenue, Suite 100, 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"

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

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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.

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



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free access to the covered Products. Customer will provide all information pertaining to the hardware and software with which the Products are interlacing 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 I 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

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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 interlace(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

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software without the prior approval of the Seller.

Section 4. RIGHT TO SUBCONTRACT AND ASSIGN

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

Section 5. PRICING, PAYMENT AND TERMS

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

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

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

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

Section 6. LIMITATION OF LIABILITY

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

Section 7. DEFAULT/TERMINATION

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

7.2. If Customer breaches a material obligation under this Agreement (unless MorphoTrak or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement that governs the Software covered by this Agreement; or if Customer fails to pay any amount when due under this Agreement, indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or falls 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

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

Section 8. GENERAL TERMS AND CONDITIONS

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

Customer: Delaware County Sheriff's Office  
Attn: Sheriff Russell L. Martin  
149 N. Sandusky St.  
Delaware, OH 43015  
Phone: (740)833-2819 Fax (740)833-2809

Seller: MorphoTrak. LLC  
Attn: Law Department  
5515 East La Palma Avenue, Suite 100  
Anaheim, CA 92807  
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

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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 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

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

MORPHO:  
MorphoTrak, LLC  
Attn: Legal Department  
5515 East La Palma Avenue, Suite 100  
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.

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8.17. Access to Records. At anytime, 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)

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

**13**

**RESOLUTION NO. 16-1004**

**IN THE MATTER OF APPROVING THE PROGRAM YEAR 2016 SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT B-F-16-1AT-1 WITH THE OHIO DEVELOPMENT SERVICES AGENCY:**

It was moved by Mr. Benton, seconded by Mr. Merrell to accept Grant Agreement B-F-16-1AT-1:

WHEREAS, Delaware County Board of Commissioners Resolution 16-557 authorized the Economic Development Coordinator to submit a Program Year 2016 Small Cities Community Development Block Grant application to the Ohio Development Services Agency for funding consideration; and

WHEREAS, the Ohio Development Services Agency approved the application and provided a Grant Agreement, which must be accepted before project funding can begin; and

WHEREAS, the Economic Development Coordinator has reviewed the Grant Agreement and recommends approval;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners, County of Delaware, State of Ohio, hereby approves Grant Agreement B-F-16-1AT-1 for the PY2016 Small Cities Community Development Block

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Grant and authorizes the President of the Board to execute the Grant Agreement and any administrative documents in support thereof.

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

**14**

**RESOLUTION NO. 16-1005**

**IN THE MATTER OF APPOINTING MEMBERS TO THE COUNTYWIDE MULTIPURPOSE TRAIL COMMITTEE:**

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

WHEREAS, the Board of County Commissioners formed a committee to create a plan to develop and fund a countywide multipurpose trail system per Resolution 16-755; and

WHEREAS, Economic Development Coordinator, Jenna Jackson, as Chair to the Countywide Multipurpose Trail Committee was asked to organize a group composed of the specific classifications.

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

- The members of the Countywide Multipurpose Trail Committee shall be:
- Scott Sanders, member from Delaware County Regional Planning Commission
- Tiffany Jenkins, member from Delaware County Engineer’s Office
- Susan Sutherland, member from Delaware General Health District
- Matt Simpson, member from Preservation Parks
- Kerstin Carr (Amanda McEldowney as alternate), member from the Mid-Ohio Regional Planning Commission (MORPC)
- Len Fisher, member appointed by the Board of Commissioners to represent county residents

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

**15**

**RESOLUTION NO. 16-1006**

**IN THE MATTER OF AMENDING THE CHILD PLACEMENT SERVICES CONTRACT BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND NEW BEGINNINGS RESIDENTIAL TREATMENT CENTER, LLC:**

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

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

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

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract amendment for Child Care Placement providers:

**Ohio Department of Job and Family Services  
AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION  
OF  
CHILD PLACEMENT  
ADDENDA TO AGREEMENT**

This Addenda sets forth the terms and conditions between the parties for placement services for children who are in the care and custody of the Agency named below.

This Agreement is between  
a Title IV-E Agency, hereinafter "Agency," whose address is:

IV-E Agency Name  
Delaware County Department of Job and Family Services  
Street/Mailing Address  
140 N Sandusky ST FL 2ND  
City        State        Zip Code  
Delaware        OH        43015

and



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hereinafter "Provider," whose address is:

Provider  
New Beginnings Residential Treatment Center, LLC  
Street/Mailing Address  
100 Broadway AVE  
City State Zip Code  
Youngstown OH 44505

Contract ID : 13096409

Originally Dated :09/02/2016 to 10/31/2016

Amendment Number 1 :	
Amendment Reason:	AMOUNT
Amendment Begin Date:	10/17/2016
Amendment End Date :	
Increased Amount:	\$42,300.00
Article Name:	
Amendment Reason Narrative:	<p>1. The Agency and the Provider agree to amend the Agreement as follows:                      A. The service period for this Agreement shall be extended through February 28, 2017.                      B. The maximum amount payable pursuant to this Agreement shall be increased to forty two thousand three hundred dollars and no cents (\$42,300.00).</p> <p>2. Signatures                      Any person executing this First Amendment in a representative capacity hereby warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal's behalf.</p> <p>3. Conflicts                      In the event of a conflict between the terms of the Agreement and this First Amendment,                      the terms of the First Amendment shall prevail.</p> <p>4. Terms of Agreement Unchanged                      All terms and conditions of the Agreement not changed by this First Amendment remain the same, unchanged, and in full force and effect.</p>

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

**16  
RESOLUTION NO. 16-1007**

**IN THE MATTER OF APPROVING AMENDMENT 1 TO THE SANITARY SEWER IMPROVEMENTS PLAN APPROVAL AND SUBDIVIDER'S AGREEMENT FOR LIBERTY TRACE SECTION 1:**

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

Whereas, the Board of County Commissioners approved the Sanitary Sewer Improvements Plan Approval and Subdivider's Agreement on September 10, 2015 per resolution 15-1071;

WHEREAS, the Sanitary Engineer recommends approval of Amendment 1;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approve Amendment 1 to the Sanitary Sewer Improvements Plan Approval and Subdivider's Agreement for Liberty Trace Section 1.

**AMENDMENT NO. 1 TO  
SANITARY SEWER IMPROVEMENTS  
PLAN APPROVAL AND SUBDIVIDER'S AGREEMENT  
LIBERTY TRACE SECTION 1**

This Amendment No. 1 to the Sanitary Sewer Improvements Plan Approval and Subdivider's Agreement for Liberty Trace Section 1, which was entered into on September 10, 2015, is made and entered into this 6<sup>th</sup> day of October, 2016, by and between Pulte Homes of Ohio LLC (the "Subdivider"), and the Delaware

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County Board of Commissioners (the "County"). The Subdivider and the County mutually agree to amend the Agreement as follows:

**AMENDMENT**

A new SECTION VIII-A shall be inserted as follows:

**SECTION VIII-A: MODEL HOME LOT**

Notwithstanding the Improvements not yet being accepted into public service, the County shall permit the Subdivider to connect the model home lot within Liberty Trace Section 1, consisting of lot number T-12 on the approved engineering drawings for Liberty Trace Section 1, dated July 2015, and approved by the County on September 17, 2015, subject to the following conditions:

1. The Subdivider shall cause the homes' sewage line to be plugged to ensure that wastewater is securely contained and does not unlawfully discharge.
2. The plug to be used shall be Rectorseal HubSett Test Coupling. Any alternate plugs may not be used without the express, written approval of the Delaware County Sanitary Engineer.
3. The plugs shall only be permitted in the model home identified herein and may not be used in other homes within Liberty Trace Section 1.
4. The Subdivider shall also install sewer plugs in the main line at manholes as directed by the Sanitary Engineer.
5. The Subdivider acknowledges that the use of a plug as approved herein is for experimental purposes only and shall not establish a precedent for future use.
6. The acceptance of Improvements shall remain as set forth in the original Agreement.
7. The installation of the plug and connection of the home approved in SECTION VIII-A are subject to inspection by the County. The full tap fee and inspection fee shall be paid prior to scheduling inspection. The County will not re-inspect the plug or connection after passing initial inspection, and the Subdivider shall be liable for any failures thereof and resulting damage until the Improvements have been accepted by the County and the maintenance period has expired.
8. Prior to final acceptance of the Improvements, the Subdivider shall cause the onsite sewers to be inspected by camera and submit the inspection video and accompanying reports to the County for review as part of the final inspection of the Improvements.
9. The Subdivider shall, at its sole expense, remove any discharge or debris and shall clean the sewers prior to final acceptance by the County.
10. Only upon final acceptance of downstream improvements shall the County permit the plug installed as specified herein to be removed.
11. In addition to the indemnification provided in the original Agreement, the Subdivider shall specifically indemnify the County against and hold the County harmless from any damages, claims, judgments, costs, or liabilities of any kind arising from the use of the plug as approved herein.

**REMAINING PROVISIONS**

All remaining provisions of the Agreement shall continue in full force and effect unless specifically amended herein.

IN WITNESS WHEREOF, the Subdivider and the County have executed this Amendment No. 1 as of the date first written above.

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

**17**

**RESOLUTION NO. 16-1008**

**IN THE MATTER OF APPROVING REVISION 1 TO THE SANITARY SUBDIVIDER'S AGREEMENT FOR THE COURTYARDS AT MAXTOWN:**

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

Whereas, the Board of County Commissioners approved the Sanitary Subdivider's Agreement on December 14, 2015 per resolution 15-1480;

WHEREAS, the Sanitary Engineer recommends approval of Revision Number 1 to the Sanitary Subdivider's Agreement for The Courtyards at Maxtown ;

THEREFORE, BE IT RESOLVED that the Board of Commissioners approve Revision 1 to the Sanitary Subdivider's Agreement for The Courtyards at Maxtown.

**REVISION NO. 1 TO SUBDIVIDER'S AGREEMENT**  
**COURTYARDS AT MAXTOWN**  
**DELAWARE COUNTY SANITARY ENGINEER**

THIS REVISION NO. 1 to the original Subdivider's Agreement approved by Resolution 15-1480 is made and entered into this 6th day of October, 2016, by and between **Epcon Communities** (the "Subdivider") and the

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Board of County Commissioners of Delaware County, Ohio (the "County").

**RECITALS**

WHEREAS, the Subdivider wishes to revise the Original Agreement by allowing sanitary service connections for 32 single family residential equivalent connections, and,

WHEREAS, the Original Agreement referenced downstream improvements required by a separate agreement for Maxtown Road Sanitary Pump Station (Pump Upgrade Plan), and,

WHEREAS, the Sanitary Engineer recommends editing the wording of portions of the Original Agreement in order to allow a portion of capacity to be reserved for the development prior to completion of downstream improvements, and

WHEREAS, all other terms and conditions of the Original Agreement not specifically amended herein shall remain in full force and effect.

NOW, THEREFORE, in light of the Recitals set forth herein, which are deemed to be an integral part of this Amendment, the SUBDIVIDER and the COUNTY mutually agree to the following revisions to the Original Agreement as presented in the underlined italic and stricken text below:

**SECTION I: INTRODUCTION**

This Agreement is entered into on this 14<sup>th</sup> day of December 2015, by and between **Epcon Communities**, hereinafter called "Subdivider", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the **The Courtyards at Maxtown Sanitary Improvements Plan and its corresponding** Subdivision Plat or condominium amendments on said development parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **The Courtyards at Maxtown**, dated **October 12, 2015**, and approved by the County on **December 3, 2015**, all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

**SECTION II: CAPACITY**

There are **39** single family residential equivalent connections approved with this Agreement. Capacity shall not be reserved for 7 single family residential equivalent connections until such time as the downstream improvements, required by a separate agreement, **MAXTOWN ROAD SANITARY PUMP STATION (Pump Upgrade Plan)**, are completed and accepted by the County, no later than six (6) months from the date of Revision No. 1 to this Agreement, at which time capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. Capacity for 32 single family residential equivalent connections are approved for The Courtyards at Maxtown with Revision No. 1 to this Agreement. Capacity shall be reserved for one year from the date of Revision No. 1 to this Agreement, unless the County Commissioners grant an extension in writing. Capacity is not guaranteed until the final Subdivision Plat or condominium amendments are recorded. If the final Subdivision Plat or condominium amendments are not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

**SECTION III: FINANCIAL WARRANTY**

No approved financial warranties are necessary for **The Courtyards at Maxtown** until such time as Subdivider completes construction.

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **The Courtyards at Maxtown**.

**SECTION IV: FEES**

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **The Courtyards at Maxtown (\$9,270.89)**. The Subdivider shall also deposit with the Delaware County Sanitary Engineer the sum of **\$22,500.00** estimated to be necessary to pay the cost of inspection for **The Courtyards at Maxtown** by the Delaware County Sanitary Engineer. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep accurate records of the time spent by his or her employees and agents in such

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inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$600.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour

CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer or his or her staff, the Subdivider shall make an additional deposit of \$600.00 to the fund. Upon completion of all Improvements provided herein and acceptance of Improvements by the County, any unused portions of the inspection fund shall be repaid to the Subdivider less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **The Courtyards at Maxtown** as required by the County.

**SECTION V: CONSTRUCTION**

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

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

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

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

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

The Subdivider shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Subdivider shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

**SECTION VI: EASEMENTS**

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

**SECTION VII: COMPLETION OF CONSTRUCTION**

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, ~~including the downstream improvements required by a separate agreement, MAXTOWN ROAD SANITARY PUMP STATION (Pump Upgrade Plan)~~, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

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- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

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

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer.

**SECTION VIII: SIGNATURES**

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

**18**

**RESOLUTION NO. 16-1009**

**IN THE MATTER OF ACKNOWLEDGING RECEIPT OF AN APPLICATION FOR DOMESTIC VIOLENCE FUNDS FOR 2017, ESTIMATING THE AMOUNT OF FUNDS ANTICIPATED, AND ALLOCATING THE SAME TO QUALIFIED APPLICANTS, ALL PURSUANT TO CHAPTER 3113 OHIO REVISED CODE:**

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

WHEREAS, pursuant to section 3113.35 of the Revised Code, a shelter for victims of domestic violence may apply to the board of county commissioners of the county in which it is located or of an adjoining county, the population of which is or will be served by the shelter, for the release of funds to be collected as fees for the issuance of marriage licenses pursuant to section 3113.34 or fees as additional costs in annulment, divorce, or dissolution of marriage actions and proceedings pursuant to division (D) of section 2303.201 of the Revised Code and that are to be used for the funding of the shelter; and

WHEREAS, Turning Point shelter located in Marion County, has submitted an application to the Delaware County Board of Commissioners (the "Board") for domestic violence funds for 2017, the application having been filed prior to the deadline of October 1, 2016; and

WHEREAS, on or before the fifteenth of November, the Board shall determine the applicant's eligibility, estimate the amount of funds to be collected, and make an allocation to the eligible shelter;

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

Section 1. The Board hereby acknowledges receipt of an application for 2017 domestic violence funds from Turning Point shelter in Marion, Ohio and determines that the application meets the requirements of section 3113.35 of the Revised Code.

Section 2. The Board hereby determines that Turning Point is eligible, pursuant to section 3113.36 of the Revised Code, to receive a funding allocation.

Section 3. The Board hereby estimates the total sum to be collected in 2017 at \$34,000.00.

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Section 4. The Board hereby allocates 100% of the funds actually received to Turning Point, with distributions to be in accordance with section 3113.35 of the Revised Code.

Section 5. The Clerk of the Board is hereby directed to certify a copy of this Resolution to Turning Point.

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

**19**

**RESOLUTION NO. 16-1010**

**IN THE MATTER OF SETTING DATE AND TIME FOR A PUBLIC HEARING BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELAWARE, OHIO WITH RESPECT TO THE PROPOSED ISSUANCE BY THE COUNTY OF ITS HEALTH CARE FACILITIES REFUNDING REVENUE BONDS, SERIES 2016 (SARAH MOORE COMMUNITY) IN ONE OR MORE SERIES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$8,000,000:**

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

Notice is hereby given that a public hearing will be held by the Board of County Commissioners of the County of Delaware, Ohio (the "County") on Monday, October 24, 2016 at 9:40 a.m. at the offices of the Board of County Commissioners, in the Commissioners Hearing Room on the 1st Floor at 101 N. Sandusky Street, Delaware, Ohio 43015, with respect to the proposed issuance by the County of its Health Care Facilities Refunding Revenue Bonds, Series 2016 (Sarah Moore Community) (the "Bonds") in one or more series in the maximum aggregate principal amount of \$8,000,000. The proceeds of the Bonds will be made available to Sarah Moore Health Care Center, Inc., an Ohio nonprofit corporation, or one or more of its affiliates (the "Corporation") and used by the Corporation to (i) current refund all of the County's outstanding \$8,905,000 Adjustable Rate Demand Health Care Facilities Revenue Refunding and Improvement Bonds (The Sarah Moore Home Project), Series 2007 (the "Prior Bonds") and (ii) pay costs of issuing the Bonds. The proceeds of the Prior Bonds were used to (i) finance and refinance the acquisition, construction, installation, equipping, furnishing and improvement of the Corporation's health care and senior living facilities currently known as Sarah Moore Community, located at 26 North Union Street, Delaware, Ohio 43015 (the "Project") and (ii) pay costs of issuing the Prior Bonds. The Corporation is the current owner, operator and principal user of the Project.

The Bonds will be special obligations of the COUNTY and will not constitute a debt or pledge of the faith and credit or the taxing power of the County.

Interested persons are invited to attend this public hearing and will be given an opportunity to express their views concerning the proposed issuance of the Bonds by the County and the Project to be refinanced thereby. Written comments may also be given by submitting them prior to the public hearing to the attention of the Clerk to the Board of County Commissioners of the County of Delaware, Ohio at 101 N. Sandusky Street, 1st Floor, Delaware, Ohio 43015, and clearly marked "Re: County of Delaware, Ohio Health Care Facilities Refunding Revenue Bonds, Series 2016 (Sarah Moore Community)." This notice is given pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended.

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

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**ADMINISTRATOR REPORTS**

Ferzan Ahmed, County Administrator

- Attended the Thompson Township Trustees meeting last night. Want to thank them for the warm welcome they provided.
- There is a tree dedication at EMS Station #9 for the late Chuck McNabb.
- Deb Shatzer has sent an email stating the Visitor and Convention Bureau was awarded 1<sup>st</sup> Place for an advertisement.
- Ohio EMA Team 5 was deployed to Florida to help with Hurricane Matthew. That team has several of Delaware County EMS employees on it.
- 1<sup>st</sup> Thursday features our very own Clerk and Assistant Clerk to the Board. Jennifer is an encyclopedia of knowledge for procedures and has been an excellent coach to me in the past several months. Sarah not only serves as our clerk but clerks and fills in on several other boards for the county. They are both very much appreciated for not only the quality of their work but for always having a smile on their faces.

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**COMMISSIONERS' COMMITTEES REPORTS**

Commissioner Merrell

- Attended the Delaware Foundation award ceremony last night. Jeff Robinson was the MC for the event.

Commissioner Benton

- Also attended the Delaware Foundation event last night. The MC brought up a piece of sod and told the crowd that that was the last piece of undeveloped piece of land left in Delaware County. He then had the commissioners do a "groundbreaking" on the piece of sod.

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-Orange Township's Bicentennial is this Sunday.

Commissioner Lewis

-The Delaware Foundation honored ToolMatics, Inc. for business; Tom Price for the Spirit of Philanthropy; Larry Cline for the Volunteer of the Year; and Olentangy High School's Service Club for their dedication to the community.

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**RESOLUTION NO. 16-1011**

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

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

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

**RESOLUTION NO. 16-1012**

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

It was moved by Mr. Merrell, seconded by Mrs. Lewis to adjourn out of Executive Session at 10:38 AM.

Vote on Motion            Mrs. Lewis        Aye       Mr. Merrell        Aye       Mr. Benton        Absent

There being no further business, the meeting adjourned.

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

\_\_\_\_\_  
Barb Lewis

\_\_\_\_\_  
Jeff Benton

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