

COMMISSIONERS JOURNAL NO. 55 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 21, 2011

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

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

RESOLUTION NO. 11-273

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 17, 2011:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 17, 2011; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

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

PUBLIC COMMENT

Commissioner Stapleton Asked Administrator Hansley For An Update On Lieutenant Brian Galligher (County EMA Director) His Military's Role In Japan Has Changed Focus. He Has Experience, Both In Emergency Management And Nuclear Energy And As A Result Of The Event, Brian's Deployment In Japan Is Being Extended.

ELECTED OFFICIAL COMMENT

Prosecutor Carol O'Brien introduced her new first assistant prosecutor, Don Collins. His primary focus will be Civil Cases.

RESOLUTION NO. 11-274

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0318, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0318:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0318, memo transfers in batch numbers MTAPR0318 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Delaware Cab	JFS Client Transportation Services	22411601-5355	\$ 10,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Desc</u>	<u>Line Account</u>	<u>Amount</u>	<u>Line Number</u>
R1103420	NEXGENACCESS INC	FROM NETWORK	66211903 - 5328	\$3,000.00	0001
R1103420	NEXGENACCESS INC	NETWORK	66211904 - 5328	\$3,000.00	0002
R1103448	2K GENERAL COMPANY INC	MOLD AND PARKING LOT	23111709 - 5365	\$56,000.00	0001

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

RESOLUTION NO. 11-275

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Administrative Services Department is requesting that Cindi Blair attend a Delaware General Health District

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Workshop Wellness Conference at Delaware County MRDD April 7, 2011, at the cost of \$30.00. (Fund Number 60211902).

The Administrative Services Department is requesting that Christine Shaw attend an Ohio County Archivists and Records Manager Association meeting in Columbus, Ohio April 8, 2011, at the cost of \$63.10 (Fund Number 10011103).

The EMS Department is requesting that Jeff Moore and Julie Jones attend a Crisis Intervention Team Training in Delaware County April 25-28, 2011, at no cost.

The Department of Job and Family Services is requesting that Larry Hager, Mona Reilly and Kelli Bolton attend the OJFSDA Work Participation Rate Training in Columbus, Ohio March 28, 2011, at the cost of \$50.00 (Fund Number 22311611).

Environmental Services is requesting that John Feightner, Kevin Brutchey and Martin Bell attend a Laboratory Training Workshop on April 27, 2011 in Marion, Ohio at no cost.

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

RESOLUTION NO. 11-276

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

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

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

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

**Morphotrak
Maintenance And Support Agreement**

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

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

Section 1. EXHIBITS

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

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

Section 2. DEFINITIONS

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

"MorphoTrak" means MorphoTrak, Inc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 the anniversary date for successive one (1) year periods unless either party notifies the other of its intention to not renew the Agreement (in whole or part) not less than thirty (30) days before the anniversary date or this Agreement is terminated for default by a party.

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

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

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

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

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

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

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

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

3.6.5. Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases."). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 error concerning a Standard Release that precedes the Covered Standard

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Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software).

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

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

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

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

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

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

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

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

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

3.7.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System. 3.7.10 Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

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

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

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

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

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

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

3.8. The Customer hereby agrees to:

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

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

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

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

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

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

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

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

Section 4. RIGHT TO SUBCONTRACT AND ASSIGN

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

Section 5. PRICING, PAYMENT AND TERMS

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

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

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

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

Section 6. LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, 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**

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AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 7. DEFAULT/TERMINATION

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

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

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

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

Section 8. GENERAL TERMS AND CONDITIONS

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

Customer: Delaware County Sheriff
Attn: Sheriff Walter L. Davis, III
 149 N. Sandusky St. Delaware, OH 43015
Phone: (740)833-2819

Seller: MorphoTrak. Inc.
Attn: Law Department
 1145 Broadway Plaza, Suite 200.
 Tacoma, WA 98402
Phone: (253)383-3617 Fax: (253)591-8856

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

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

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

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

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

8.7. Independent Contractor. Seller shall act in performance of this Agreement as an independent contractor. As an independent contractor Seller 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. Seller shall provide indemnification as follows: (a) To the fullest extent of the law and without limitation, the Seller 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 Seller's, any subcontractor's, or any sub-subcontractor's performance of this Contract, including, but not limited to the performance or actions of Seller's, any subcontractor's, or any sub-subcontractor's officers, officials, boards, employees, agents, servants, volunteers, or representatives (collectively "Contracted Parties".) Seller agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that Seller 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. Seller further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that Seller 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) Seller 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. Seller shall carry and maintain throughout the life of the Contract such bodily injury and property damage liability insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Contract or from the use of any vehicle(s) in connection therewith, and shall include coverage for indemnification as described above.

8.10. Equal Opportunity Employment/Non-discrimination. In fulfilling the obligations and duties of this Agreement, Seller 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.

Seller 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.

Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Seller complies with all applicable federal and state non-discrimination laws. Seller 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. Seller 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. SELLER shall make a

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good faith effort to ensure that all of its employees will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

8.12. DMA Form Statement. Seller certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list, which list may be found on the Ohio Homeland Security web site at: <http://www.homelandsecurity.ohio.aov/>. Pursuant to R.C. § 2909.33, Seller agrees to make such certification by completing the declaration of material assistance/no assistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.

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

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

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.

Section 9. CERTIFICATION DISCLAIMER

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

Section 10. COMPLIANCE WITH APPLICABLE LAWS

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

Exhibit A DESCRIPTION OF COVERED PRODUCTS

MAINTENANCE AND SUPPORT AGREEMENT SA 005075-000
 NO. _____
 CUSTOMER: Delaware County Sheriff's Office

The following table lists the Products under maintenance coverage:

Product	Description	Node	Qty
Livescan	Identix Livescan	OhDELLSS001	1

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

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

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

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

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

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

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

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

2. Customer Responsibility.

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

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

3. Seller Responsibility.

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

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

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

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

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

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

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

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

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

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

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

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Exhibit C
SUPPORT PLAN OPTIONS AND PRICING WORKSHEET

Maintenance and Support Agreement # SA # 005075-000 Date 1/6/11
 New Term Effective Start 9/1/10 End 8/31/11

CUSTOMER: Address (1): Address (2): CITY, STATE, ZIP CODE: CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	<u>Delaware CO Sheriff</u> <u>149 N. Sandusky St.</u> <u>Delaware, OH 43015</u> <u>Captain Scott Vance</u> <u></u> <u>(740)833-2619</u> <u></u> <u>svance@co.delaware.oh.us</u>	BILLING AGENCY: Address (1): Address (2): CITY, STATE, ZIP CODE: CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	<u></u> <u></u> <u></u> <u></u> <u></u> <u></u> <u></u> <u></u>
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For support on products below, please contact Customer Support at (800) 734-6241 or email at cscenter@morphotrak.com.
 AFIS System LiveScan™ Station Printrak™ BIS System

STANDARD SUPPORT	ANNUAL FEE
<input checked="" type="checkbox"/> Advantage – Software Support • 8 a.m. – 5 p.m. Monday to Friday PPM • Unlimited Telephone Support • Remote Dial-In Analysis • Supplemental Releases & Updates • Standard Releases & Updates • Automatic Call Escalation • Software Customer Alert Bulletins • Telephone Response: 2 Hour	\$ <u>7,998.84</u>
STANDARD SUPPORT TOTAL	\$ 7,998.84
SUPPORT OPTIONS	ANNUAL FEE
<input checked="" type="checkbox"/> On-Site Hardware Support • 8 a.m. – 5 p.m. Monday-Friday PPM • Next day PPM On-site Response • Hardware Vendor Liaison • Defective Parts Replacement • Escalation Support • Hardware Customer Alert Bulletins • Hardware Service Reporting • Product Repair • Equipment Inventory Detail Management	\$ <u>Included</u>
<input checked="" type="checkbox"/> Parts Support • Parts Ordered & Shipped Next Business Day • If customer is providing their own on-site hardware support, the following applies: • Customer Orders & Replaces Parts • Parts Customer Alert Bulletins • Telephone Technical Support for Parts Replacement Available	\$ <u>Included</u>
<input type="checkbox"/> UPLIFTS • Increase PPM to _____ • Increase Response Time to _____	\$ <u>-N/A-</u> \$ <u>-N/A-</u>
SUPPORT OPTIONS TOTAL	\$ Included as checked
THIRD PARTY SUPPORT	ANNUAL FEE
<input type="checkbox"/> THIRD PARTY VENDOR NAME: • TERM DATE: • COVERAGE:	\$ <u>-N/A-</u>
THIRD PARTY SUPPORT TOTAL	\$ -N/A-
USERS CONFERENCE – NORTH AMERICA	ANNUAL FEE
<input type="checkbox"/> Users Conference Attendance (\$2,950 per Attendee) Year _____ Number Attendees Requested _____ • Registration fee • Roundtrip travel for event • Hotel accommodations • Daily meal allowance	\$ <u>-N/A-</u>
USERS CONFERENCE TOTAL	\$ -N/A-
OTHER AVAILABLE OPTIONS	ANNUAL FEE
<input type="checkbox"/> LiveScan 3000 Prism Protection \$1,500 unit/year – Covers labor and material fee for replacement of one (1) prism per year <input type="checkbox"/> Other:	\$ <u>-N/A-</u> \$ <u>-N/A-</u>
OTHER AVAILABLE OPTIONS TOTAL	\$ -N/A-

Prepared by: Susan Noisseau, (518)724-5241, susan.noisseau@morphotrak.com

SUPPORT TOTAL* \$ 7,998.84
USERS CONFERENCE TOTAL \$ -N/A-
FULL TERM FEE GRAND TOTAL* \$ 7,998.84
*Exclusive of taxes if applicable

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

Exhibit D
CURRENT BILLABLE RATES

MAINTENANCE AND SUPPORT AGREEMENT NO. 005075-000
 CUSTOMER: Delaware County Sheriff's Office

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

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

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

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Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-277

IN THE MATTER OF DECLARING PERSONAL PROPERTY OBSOLETE, UNFIT, OR NOT NEEDED FOR PUBLIC USE AND THE INTENT OF SELLING SUCH PROPERTY VIA INTERNET AUCTION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve and execute Resolution No. 11-277 declaring Personal Property obsolete, unfit, or not needed for public use and the intent of selling such property via internet auction.

WHEREAS, Delaware County has personal property not needed for public use, obsolete, or unfit for the use for which it was acquired; and

WHEREAS, Ohio Revised Code Section 307.12 (E) allows, by resolution adopted each calendar year, the sale of such property by internet auction; and

WHEREAS, the Delaware County Board of Commissioners passed Resolution 10-37 on January 11, 2010, declaring its intent to sell such property by internet auction; and

WHEREAS, Delaware County has personal property not needed for public use, obsolete, or unfit for the use for which it was acquired, currently in the possession of the Delaware County Sheriff's Office;

WHEREAS, certain of such property may require a signature to transfer such property from the county to a buyer;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners, Delaware County, State of Ohio, that the property listed in "Addendum A" be sold in the manner prescribed in Resolution 10-37. The President of the Board of Commissioners is hereby authorized to sign any documents needed to transfer such property on behalf of the Board.

ADDENDUM "A"

This document identifies the property referred to in the above Resolution.

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2011 Auction Items (Sale 3 & 4)	
	Description
1	19" widescreen LCD tv
2	19" widescreen LCD tv
3	Samsung camcorder 8mm w/btty & power cord
4	Portable heater - oscillates
5	Honeywell Heat Giant - Air Heater
6	Laptop cmprtr w/o hard drive or cords 13" screen
7	2 propane heaters & 2 propane lines, variable 100,000-200,000 btu
8	Dehumidifier - 30 pints/24hr
9	Range Doubler Multi Tester - 43 Ranges
10	Kenmore Air Conditioner
11	Air Lazer Ozone Generator, 115v.60hz.70a
12	small space heater, accutemp plus digital control
13	2 oscilating floor fans
14	portable heater, 1500w, 120v, 60hz
15	Piston Pump Paint Sprayer, 1/2hp,.25gpm
16	Industrial Flooring Stapler & flooring staples
17	Hardwood Floor Stapler
18	Industrial Coil Roofing Nailer
19	1/2 hp garbage disposal
20	1/2 hp garbage disposal
21	1/2 hp garbage disposal
22	car stereo
23	powered subwoofer
24	MVC-FD75 & MVC-FD83 digital still camera, 320 zoom (38-120mm) w/date & panorama
25	gold clock
26	dvd/cd player
27	tool bag
28	12 piece professional screwdriver set
29	cd player w/stereo backstrap & headphones
30	digital camera w/18-70mm lens, 2gb Lexar compact Flash
31	40pc 3/8 in metric socket & ratchet set
32	10" compound miter saw
33	screw gun w/case, battery & charger
34	12v dc pump, heavy duty, 20GPM/auto reinverter, travelers power, continous usage 5000 watt, peak surge power 10000 watt with cables
35	dehumidifier - 40 pint
36	dehumidifier - 70 pints/day
37	dehumidifier - 75 pints/day
38	dehumidifier - 25 pints/day
39	dehumidifier - 70 pints/day
40	dehumidifier - 30 pints
41	oscillating fan w/timer
42	oscillating fan w/timer
43	oscillating fan
44	box fan
45	box fan
46	box fan
47	ultra box fan
48	air conditioner, 6000btu/h, 600w, 115v, 5.8a
49	air conditioner
50	small fan
51	clip-on fan
52	mini fan

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2011 Auction Items (Sale 3 & 4)	
	Description
53	mini fan
54	boys swimwear - Trunks xs (4), med (7/8), lg (12/12) ; Shirts - 5T, sm (5/6), lg youth
55	girls shorts - 4-T, dress - 4-T, Shirts - xs (4), sm (5/6)
56	girls t-shirt - med, skirt - med, 3 dresses - med, slippers - lg
57	girls 2 skirts - med (7/8), 3 tops - med (7/8), shorts - tween 10
58	girls 8 tops - lg, 1 dress - lg, 3 skirts - lg
59	womens 2 bathing suit cover-up - one size, sweat pants (pink v.s.) - lg, 3 pr flip flops - med
60	womens shirts - 2 - xl, 2 - 2x, 3 - 3x
61	mens - russell shorts - 3x, craft vented shirt - xl, pearl isumi jersey - xl
62	mens - 2 cycling jersy - lg
63	mens - 2 cycling jersy - med
64	ladies - 6 shirts - sm, 1 pajama pants - sm, 4 flip flops - med
65	1 ladies bag, 2 totes, 1 scarf, 1 wall hanging
66	boys 2 t-shirts - 5T, 1 hooded jacket - xs (4)
67	fan
68	media center/powerd speaker system
69	Office Jet 7410 printer/fax/copier
70	sump pump/sump pump line, 115v, 0.3hp
71	17" monitor
72	garden hose
73	Fruehauf Semi Trailer 1986, Unit # 8683196RU
74	Monon Semi Trailer 1988, Unit # 888213RU
75	Chevy S-10 Pickup 1994, Maroon/Silver, have Keys
76	Ford Taurus 2001, Silver, have Keys
77	Chevy Tahoe 1995, Green, have Keys
78	Dodge Ram 150 Pickup 1993, Green, No Keys
79	Lexus ES330 2005, White, have Keys
80	Honda Super Hawk 1999, Yellow, Motorcycle, have Keys
81	Kawasaki Concoursi 2002, Pewter, motorcycle, have Keys
82	Doge Ram Charager 1987, Red, have Keys

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11- 278

IN THE MATTER OF AUTHORIZING THE JUVENILE COURT MOMS PROGRAM TO SUBMIT A PROPOSAL APPLICATION IN RESPONSE TO THE DELAWARE COUNTY FAMILY AND CHILDREN'S FIRST COUNCIL'S REQUEST FOR PROPOSALS FOR FUNDING OF PROGRAMS THAT PREVENT CHILD ABUSE AND NEGLECT:

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

Funding/Grant: Delaware County Family and Children's First Council Request For Proposals for funding of programs that prevent child abuse and neglect

Source: Ohio Children's Trust fund

Funds: \$21,881.20

Match: None

Applicant:

The MOMS program Mothers Offering Mentoring Services has been at the court for approx 5 years. The program is a diversion program focused on preventing abuse, and or neglect of pregnant teenagers. Mentors are assigned to each teen that is in the program to assist them thru the all the phases of child birth. Many times the children that are involved are not married, and have little to no home support. So the mentor can help with taking them to prenatal visits, and being a support and confident during this point in time.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Abstain Mr. Thompson Aye

RESOLUTION NO. 11-279

**COMMISSIONERS JOURNAL NO. 55 - DELAWARE COUNTY
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IN THE MATTER OF AUTHORIZING THE SUBMITTING OF AN APPLICATION FOR THE 2012 ODADAS TREATMENT GRANT FOR JUVENILE COURT:

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

Grant #	99-2192-DCRT-0011-0005
Source:	ODADAS (The Ohio Department Of Alcohol And Drug Addiction Services)
Grant Period:	7-1-11 thru 6-30-2012
Grant Amount:	\$ 82,687.00
Local Match:	<u>0.00</u>
Total Grant Amount:	\$ 82,687.00

The Grant funds support the Drug court coordinator, and consulting services for Juvenile Court.

Vote On Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-280

IN THE MATTER OF APPROVING THE CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS; THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AND ATRIUM PERSONNEL & CONSULTING SERVICES FOR TEMPORARY STAFFING:

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

Whereas, the Director of Jobs & Family Services recommends approval of the following contract with ATRIUM Personnel & Consulting Services for temporary staffing;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following contract with ATRIUM Personnel & Consulting Services for temporary staffing:

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement"), is made and entered into this *1st day of January, 2011*, by and between Atrium Personnel & Consulting Services., an Ohio LLC, (hereinafter "ATRIUM") with its local place of business located at 120 East High Street, Mount Vernon, Ohio 43050, and the Delaware County Board of County Commissioners (hereinafter "Board"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, and the Delaware County Department of Job and Family Services (hereinafter "DCDJFS"), whose address is 140 N. Sandusky Street, Delaware, OH 43015. (collectively the "Parties").

Background

ATRIUM is in the business of providing temporary staffing temp to permanent, right to hire, direct placement and professional/business consultants (the "ATRIUM consultants"). DCDJFS is in need of the services of ATRIUM. Accordingly, in consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

Terms

1. Scope of Services. This agreement shall be in effect from January 1, 2011 through December 31, 2011 unless terminated in writing by either party pursuant to Article 4 or Article 24. ATRIUM shall provide the services of the ATRIUM employees to DCDJFS. DCDJFS shall authorize specific assignments for the ATRIUM employees by placing a Job Order with ATRIUM in the form set forth on Exhibits A ("Job Order") which is attached hereto and by this reference fully incorporated as if fully re-written here. Unless the parties agree otherwise in writing, no obligation shall be incurred by either party unless a Job Order has been executed by both parties. Before placing an ATRIUM employee on an assignment, DCDJFS may interview and accept or reject a particular person based on the specific skills needed for the assignment. DCDJFS may hire an ATRIUM employee with no additional hiring, or other, fees after 480 working hours. If DCDJFS desires to hire the Atrium employee prior to the completion of the 480 working hours, a fee of 18% of the base salary offered by DCDJFS will be incurred by DCDJFS. The base salary is calculated as 2000 hours times the hourly pay rate offered by DCDJFS. This fee would not apply should the employee be hired by DCDJFS in a position other than the position they were placed in by ATRIUM.

2. Fees. DCDJFS shall review and approve time and expense reports, unless provided otherwise in the Job Order of each ATRIUM employee promptly at the end of each week. DCDJFS will pay ATRIUM for all time expended and expenses incurred by ATRIUM employees as set forth in the approved time and expense reports, at the rate specified on the applicable Job Order.

3. Payment of Fees. ATRIUM shall submit invoices detailing charges to DCDJFS weekly, as described in the

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relevant Job Order. These invoices will list the name of each ATRIUM employee assigned to DCDJFS and all charges and expenses applicable to each ATRIUM employee. Unless otherwise specified in a validly executed Job Order, DCDJFS shall pay to ATRIUM the total amount set forth on each invoice within thirty (30) days of the invoice date (the "Due Date"). DCDJFS will pay ATRIUM for all work performed by ATRIUM employees up to and including the effective date of any such termination. The total amount of compensation under this contract shall not exceed \$20,000.00.

4. **Termination of Work Orders.** All work performed by ATRIUM consultants under the Job Order shall be subject to DCDJFS's reasonable satisfaction and approval. Any individual Job Order may be terminated by either party by providing written notice to the other party. If DCDJFS determines that any work performed by ATRIUM employees under the Job Order is unsatisfactory, DCDJFS may request ATRIUM to correct such performance by giving written notice (a "Deficiency Notice") specifying the particular Job Order and the nature of the deficient performance to ATRIUM appropriate representative. ATRIUM shall promptly take steps to correct the deficient performance to the reasonable satisfaction of DCDJFS. DCDJFS will pay ATRIUM for all work performed under any terminated Job Orders up to and including the effective date of DCDJFS's written notice of termination.

5. **Replacement.** If an ATRIUM employee leaves the employ of ATRIUM or becomes sick, disabled, or otherwise incapacitated or unable to perform the services assigned in the Job Order, ATRIUM shall use reasonable efforts to replace such person with another of similar qualifications.

6. **Advertising.** ATRIUM shall have the right to include DCDJFS's name in a general listing of users of its services, however, neither party shall use any trademark owned by the other without advance written consent from the owner.

7. **Severability.** If one or more of the provisions contained in this Agreement for any reason is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such provisions shall not affect any other provision in the Agreement.

8. **Entire Agreement; Amendment.** This Agreement together with the Job Order, and all validly executed supplemental Job Orders, constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written proposals, negotiations, and agreements concerning such subject matter. This Agreement may not be amended or modified except by a further written agreement, attached as an addendum and signed by the parties hereto specifically referencing this Agreement.

9. **Assignment.** Neither DCDJFS nor ATRIUM will assign, transfer, or subcontract any of its rights, obligations, or duties hereunder without the prior written consent of the other party.

10. **Waiver.** No failure or delay on the part of any party hereto in exercising any right or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or of any other right or remedy. No provision of this Agreement may be waived except in a writing signed by the party granting such waiver.

11. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors, legal representatives, and permitted assigns.

12. **Force Majeure.** Neither party shall be liable for failure or delay in performance of its obligations hereunder when such failure or delay is caused by acts of God, flood, hurricane, extreme weather, fire or other natural calamity, acts of governmental agencies, or similar causes beyond the control of such party. If for any of the reasons set forth above either party shall be unable to perform any obligation when due, such party shall immediately notify the other party of such inability and of the period over which such inability is expected to continue. Affected obligations of the parties shall be temporarily suspended during the period of Force Majeure and the time for performance under this Agreement shall, as applicable, be extended by the duration of any such period. If the delay continues for a period of 15 days or more, however, either party may terminate this Agreement by written notice to the other.

13. **Relationship of Parties.** ATRIUM is an independent contractor. Neither ATRIUM nor any of its employees or representatives shall be considered employees of DCDJFS, the Board, or Delaware County. Further, neither party shall represent itself to be the agent, employee, partner, or joint venture partner of the other party and may not obligate the other party or otherwise cause the other party to be liable under any contract or otherwise. ATRIUM shall be solely responsible for payment of its taxes and payment of its employees, including payment of applicable federal income tax, social security, worker's compensation, unemployment insurance, and other legal requirements.

DCDJFS understands assigned resources are the sole product of ATRIUM and is thus prohibited from converting or transferring the employment of any ATRIUM employee to DCDJFS or another Agency/Service for any reason without written approval of a qualified ATRIUM representative.

ATRIUM employees are not entitled to benefits enjoyed by employees of DCDJFS, the Board, or Delaware County.

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14. Duly Authorized Signatures. ATRIUM states and agrees that the individual(s) who, on behalf of ATRIUM, have reviewed this Agreement and effectuate this Agreement attaching their signatures below are officers of ATRIUM and are authorized to and have authority to enter this Agreement on behalf of ATRIUM and by so signing have authority to bind and does bind ATRIUM to any and all terms of this Agreement

15. DMA Form Statement. ATRIUM certifies that it does not provide material assistance to any organization on the United States department of state terrorist exclusion list. Pursuant to R.C. § 2909.33, ATRIUM agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and “No” being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement

16. Campaign Finance – Compliance with ORC § 3517.13. Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to 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. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” **Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract.** Such certification is attached to this Contract and by this reference made a part thereof.

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

18. Non-Discrimination. ATRIUM shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, sexual orientation, or disability. ATRIUM shall take affirmative action to ensure that applicants and employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, sexual orientation, or disability. The implementation of this Agreement will be carried out in strict compliance with all federal, state, or local laws regarding discrimination in employment.

In the event ATRIUM is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or any provision of Section 20 of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part by DCDJFS and ATRIUM may be declared ineligible for future Contracts with DCDJFS.

19. DCDJFS Indemnification. To the fullest extent permitted by law, ATRIUM agrees to indemnify and save and hold DCDJFS, Delaware County, the Delaware County Board of Commissioners and/or their respective officers, employees, agents, servants, representatives and volunteers (“Indemnified Parties”) free and harmless of all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney’s fees, arising from any incident, damages, injury, accident or occurrence related in any manner to ATRIUM’s performance of or the performance of ATRIUM’s employees pursuant to this Agreement. ATRIUM shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the Indemnified Parties by reason of ATRIUM’s performance of or the performance of ATRIUM’s employees pursuant this Agreement, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney’s fees.

ATRIUM 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 atrium or its employees.

20. Insurance: ATRIUM shall carry and maintain throughout the life of the Agreement 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 Agreement 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 Agreement, the ATRIUM shall present to the DCDJFS current certificates of insurance, and shall maintain current such insurance during and throughout the entire term of this Agreement.

21. Access to and Retention of Records: At any time, during regular business hours, with reasonable notice and as often as DCDJFS, the Board, the Comptroller General of the United States, the State, or other agency or individual

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authorized by DCDJFS or the Board may deem necessary, ATRIUM shall make available to any or all the above named parties or their authorized representatives, all subcontracts, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other information or data relating to all matters covered by this Agreement. The Department and the above named parties shall be permitted by ATRIUM to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Agreement.

ATRIUM, for a minimum of three (3) years after reimbursement/compensation for services rendered under this Agreement, agrees to retain and maintain, and assure that all of its subcontractors retain and maintain, all records, documents, writings and/or other information related to performance of this Agreement. If an audit, litigation, or other action is initiated during the time period of this Agreement, ATRIUM 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.

Prior to the destruction of any records related to performance of this Agreement, regardless of who holds such records, ATRIUM shall contact the Department in writing to obtain written notification that such records may be destroyed. Such request for destruction of records must specifically identify the records to be destroyed.

22. Termination:

A. Termination for the Convenience

Either Party may terminate this Agreement at any time and for any reason by giving at least thirty (30) days advance notice, in writing, to the other Party. ATRIUM shall be entitled to receive compensation for any services satisfactorily performed hereunder through the date specified on the notice as the effective date for such termination.

B. Breach or Default:

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

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

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

23. 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 :

County:

Mona Reilly
Director
Delaware County Department of Job and Family Services
140 North Sandusky Street, 2nd Floor
Delaware, Ohio 43015

Fax: (740) 833-2299

ATRIUM:

Norm Heitmeyer
President
ATRIUM
120 East High Street
Mount Vernon, Ohio 43050

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Fax: (740) 393-2790

24. Drug-Free Workplace: ATRIUM 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. ATRIUM 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.

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

Exhibit A
JOB ORDER

1. DCDJFS Company and Address: Delaware County Job and Family Services
2. DCDJFS Contact Name: Angela Thomas
3. Services to be Provided:

Per Agreed Work Order
4. Atrium Employee Name: To be provided
5. Start Date: Continuation
6. Hourly Bill Rate: Per Agreed Work Order

This Job Order constitutes the Job Order referred to in the Master Contract Agreement dated January 1, 2010, between ATRIUM and DCDJFS. IN WITNESS WHEREOF, the parties have executed these Job Orders on the date set forth above:

All communication should be directed to ATRIUM at the address as follows:

ATRIUM
120 East High Street, Mount Vernon, OH 43050
Ph: 740-393-2771
Fax: 740-393-2790

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

RESOLUTION NO. 11-281

IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR JOB AND FAMILY SERVICES:

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

Appropriation Transfer			
FROM	TO		
22511613/5215 Children Services Local Funds/ Program Supplies	22511613/5348 Children Services Local Funds/Client Services	\$	1,000.00

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

RESOLUTION NO. 11 -282

IN THE MATTER OF AUTHORIZING THE USE OF DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES FUNDS TO ASSIST IN FUNDING THE PURCHASE OF COFFEE, MEALS, REFRESHMENTS AND OTHER AMENITIES FOR THE DKMM MEETING:

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

WHEREAS, The Ohio Attorney General Opinion No. 82-006 addresses the issue Expenditure Of Public Funds For Proper "Public Purpose", and

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WHEREAS, The October 20, 2003, State Auditor's ruling on payment of Expenditures Of Public Funds For Proper "Public Purpose" states that for persons who are employees or non-employees of the County, the Commissioners must pre-approve expenditures for the purchase of coffee, meals, refreshments and other amenities.

WHEREAS, the Delaware County Department of Job and Family Services has responsibility for workforce development activities and is party to the DKMM ; and

WHEREAS, such meeting has been scheduled in Delaware County for June 15, 2011; and

WHEREAS, agreement has been made that meetings will rotate among each of the four counties with the hosting county being responsible for food arrangement; and

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED, by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. That the Delaware County Board of Commissioners hereby authorizes the use of Department of Job and Family Services funds in an amount not to exceed \$388.50, to assist in funding the purchase of coffee, meals, refreshments and other amenities for The DKMM board meeting to be held June 15, 2011.

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

RESOLUTION NO. 11-283

IN THE MATTER OF APPROVING AN AGREEMENT BY AND AMONG THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY EMA EXECUTIVE BOARD AND THE TRI TOWNSHIP FIRE BOARD TO HOUSE THE DELAWARE COUNTY EMA EMERGENCY RESPONSE VEHICLE AT THE TRI TOWNSHIP FIRE DEPARTMENT STATION 332:

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

Whereas, EMA Director and Staff recommend approval of a an agreement by and among the Delaware County Board Of Commissioners, The Delaware County EMA Executive Board And The Tri Township Fire Board To House The Delaware County EMA Emergency Response Vehicle At The Tri Township Fire Department Station 332;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve an agreement by and among The Delaware County Board Of Commissioners, The Delaware County EMA Executive Board And The Tri Township Fire Board to house The Delaware County EMA Emergency Response Vehicle At The Tri Township Fire Department Station 332.

**AGREEMENT TO HOUSE DELAWARE COUNTY EMA EMERGENCY RESPONSE VEHICLE
AT THE TRI TOWNSHIP FIRE DEPARTMENT STATION 332**

ARTICLE 1 – PREAMBLE

This Agreement is entered into this 21st day of March, 2011, by and among the Delaware County Board of Commissioners ("County"), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, the Delaware County EMA Executive Board ("EMA"), whose address is 10 Court Street, Delaware, Ohio 43015, and the Tri Township Fire Board ("Fire Board"), whose address is 495 Sunbury Road, Delaware, Ohio 43015 (hereinafter collectively the "Parties").

ARTICLE 2 – PURPOSE

The purpose of this Agreement is to provide for the conditions on which the Fire Board shall house the EMA Emergency Response Vehicle within the Fire Board's Station 332, located at 660 Coover Road, Delaware, Ohio 43015 (the "Facility").

ARTICLE 3 – TERM

This Agreement shall take effect immediately upon the ratification of all of the Parties hereto and shall continue in effect until December 31, 2012, whereupon it shall automatically renew for successive two year terms, unless terminated in accordance with this Agreement.

ARTICLE 4 – CONSIDERATION

The Parties mutually acknowledge and agree that the purpose of this Agreement furthers the interests of public safety and general welfare by providing for the safe and secure storage of the EMA Emergency Response Vehicle (the "Vehicle"), an integral component of disaster coordination for all emergency responders in Delaware County,

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including the Tri Township Fire Department. Therefore, the Parties agree that no monetary compensation shall be provided under this Agreement.

ARTICLE 5 – FACILITY USE

The Parties understand and agree that this Agreement is for use of the Facility by the EMA as follows:

Apparatus Bay – One bay of the Facility, as designated by the Facility’s Officer in Charge, will be designated as the EMA bay for purposes of storing the Vehicle.

Facility Access – The Fire Board shall provide EMA personnel with unrestricted access to the Vehicle, subject to the Fire Board’s Facility security procedures.

ARTICLE 6 – EQUIPMENT USE

Subject to the remaining provisions of this Article, the EMA shall provide designated Fire Board personnel with keys to the Vehicle and authorizes operation of the Vehicle for the sole purpose of repositioning or moving the Vehicle in and out of the apparatus bay. At no time shall Fire Board personnel operate the Vehicle offsite without approval of the EMA Director or Deputy Director. On or before March 31st of each year in which this Agreement is in effect, the Fire Board shall provide driver abstracts from the State of Ohio Bureau of Motor Vehicles for all personnel authorized to operate the Vehicle. Only those personnel specifically designated in writing by the EMA may operate the Vehicle for purposes of this Article. Unless specifically authorized by the Facility Officer in Charge, EMA personnel shall not utilize or borrow any Fire Board equipment.

ARTICLE 7 – PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS

The County, the EMA, and the Fire Board agree to be and shall be responsible for their own respective actions, and the actions of their respective officers, employees, agents, representatives, volunteers, servants, etc., arising from this Agreement. Therefore, each Party agrees to be individually and solely responsible for any and all accidents, liability, losses, damage, injury, including death, and/or related expenses that each may incur as a result of their own actions in the performance of this Agreement.

ARTICLE 8 – INSURANCE

The Parties certify that, for the full term of this Agreement, they each shall be covered by self-insurance and/or general liability insurance with a combined minimum limit of One Million Dollars (\$1,000,000.00). The Parties shall be provided proof of such insurance upon a request made in writing. Except in the case of self-insurance, any such general liability insurance coverage shall be issued by companies authorized to issue such policies within the State of Ohio.

ARTICLE 9 – TERMINATION

Any Party may terminate this Agreement for cause upon the occurrence of breach or default by providing written notice of termination to the other Parties. Termination for cause shall be effective immediately upon provision of the written notice. Any Party may terminate this Agreement for convenience upon providing 180 days written notice of termination to the other Parties.

ARTICLE 10 – DISPUTE RESOLUTION

The Parties agree to submit any disputes arising under this Agreement to informal direct negotiations between the EMA Director and the Tri Township Fire Chief. If a resolution cannot be reached by direct negotiations, any Party may take any action authorized by law to resolve the dispute, but the Parties agree to engage in good faith negotiations prior to any formal legal or administrative action.

ARTICLE 11 – MISCELLANEOUS

A. 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.

B. ENTIRE AGREEMENT

This Agreement shall constitute the entire understanding and agreement among the Parties, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

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Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-284

IN THE MATTER OF APPROVING THE SECOND ONE YEAR RENEWAL OPTION OF THE AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND CENTRAL OHIO CONTRACTORS, INC.:

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

Whereas, Central Ohio Contractors, Inc. entered into a service agreement with the Delaware County Board of Commissioners on May 7, 2007 per Resolution 07-536 to provide for the operation of the Solid Waste Transfer Station, and hauling and disposal of waste services, and

Whereas, the Agreement covered the period June 1, 2007 through May 31, 2010, and

Whereas, the terms of the Agreement allow for the contract to be renewed for one year periods up to three additional years total, and

Whereas, the first one year extension was approved by Resolution 10-661, and

Whereas, Central Ohio Contractors has provided excellent service to the County at the Transfer Station during this contract, and

Whereas, the County wishes to approve the second one year renewal option for June 1, 2011 to May 31, 2012 using the terms and prices as set forth in the Agreement.

THEREFORE BE IT RESOLVED that the Board of County Commissioners approve the second one year renewal option of the Agreement with Central Ohio Contractors, Inc. for the operation of the Solid Waste Transfer Station, and hauling and disposal of waste services.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

RESOLUTION NO. 11-285

IN THE MATTER OF APPROVING AMENDMENT #2 TO THE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS AND CENTRAL OHIO CONTRACTOR FOR THE OPERATION OF THE SOLID WASTE TRANSFER STATION AND THE DISPOSAL OF SOLID WASTE:

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

Whereas, Commissioner's resolution 07-536 executed an agreement with Central Ohio Contractors, Inc. (COC) to operate the Solid Waste Transfer Station, and

Whereas, COC has performed well in the execution of the operation agreement, and

Whereas, diesel fuel prices have increased since the time of bid for the operations of the transfer station, and

Whereas, the Commissioners previously approved a fuel surcharge in late 2008 to help offset rising fuel costs at that time, and

Whereas, the ability to assess the previous fuel surcharge expired on May 31, 2009, and

Whereas, COC has requested another fuel surcharge to combat the drastic rise in diesel fuel costs over the last few months, and

Whereas, the County has determined the request to be reasonable and justifiable.

Therefore be it resolved that the Board of County Commissioners execute Amendment #2 to the Agreement for Operation of the Solid Waste Transfer Station and Disposal of Solid Waste.

**CONTRACT AMENDMENT #2
Operation of Solid Waste Transfer Station and Disposal of Waste
Between Central Ohio Contractors, Inc. (CONTRACTOR) and
The Delaware County Board of County Commissioners (COUNTY)**

This amendment pertains to a Diesel Fuel Surcharge to be added to the original Service Agreement between the CONTRACTOR and the COUNTY for the Operation of the Solid Waste Transfer Station and Disposal of Waste as approved on May 7, 2007 by Resolution 07-536.

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The CONTRACTOR and the COUNTY have mutually agreed to the following contract amendment.

Diesel Fuel Surcharge:

1. The CONTRACTOR is permitted to apply a fuel surcharge to help offset rising fuel costs beginning March 22, 2011 for the duration of the contract, including any approved renewal periods per the terms of the Agreement.
2. The fuel surcharge will be determined by first calculating the average diesel fuel cost for the Midwest Region for the previous month. Data for this calculation will be taken from the US Energy Information Administration website.
3. The previous month's average diesel fuel cost will then be used in conjunction with Table 1 of this amendment to determine the fuel surcharge.
4. The fuel surcharge will be changed on the first day of each month.
5. The fuel surcharge will be on a per ton basis.
6. The fuel surcharge will be applied to the total tip fee (after all base and "pass through" fees) based on the applicable tip rates as established by the COUNTY.
7. The fuel surcharge calculation will be performed by the Director of Environmental Services, or his/her designee.

Vote On Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-286

IN THE MATTER OF APPROVING THE SANITARY SEWER CONSTRUCTION PLANS FOR MEADOWS AT LEWIS CENTER SECTION 1, PHASE A AND MEADOWS AT LEWIS CENTER SECTION 1, PHASE B:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the sanitary sewer construction plans for Meadows at Lewis Center Section 1, Phase A and Meadows at Lewis Center Section 1, Phase B for submittal to the Ohio EPA for their approval.

Whereas, the Director of Environmental Services recommends sanitary sewer plans for Meadows at Lewis Center Section 1, Phase A and Meadows at Lewis Center Section 1, Phase B for submittal to the Ohio EPA for their approval;

Therefore be it resolved, that the Board of Commissioners approve sanitary sewer plans for Meadows at Lewis Center Section 1, Phase A and Meadows at Lewis Center Section 1, Phase B for submittal to the Ohio EPA for their approval.

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

RESOLUTION NO. 11-287

IN THE MATTER OF AUTHORIZING COUNTY EMPLOYEE PARTICIPATION IN THE SERVICES FAIR OFFERED IN CONJUNCTION WITH THE CITY OF DELAWARE:

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

WHEREAS, The City of Delaware offers to its employees an annual "Services Fair" allowing employees the opportunity to learn about and visit with local business / area vendors offering a wide range of information and services to aide employees in securing a healthy balance between their work-life and family-life.

WHEREAS, Participation in the Services Fair will offer no-cost screenings, demonstrations and information that will be beneficial to County employees and their immediate family members.

WHEREAS, The City of Delaware has invited Delaware County to participate in this combined Employee Services Fair on Friday, April 29, 2011 from 10:00 a.m. until 3:00 p.m. in the gymnasium at Mingo Park.

WHEREAS, Employees are encouraged to attend this event during their lunch hour, before or after their scheduled shift or by scheduling an appropriate time through their supervisors.

NOW THEREFORE BE IT RESOLVED THAT, the Board of Commissioners authorize Delaware County employees participating in the Services Fair.

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

RESOLUTION NO. 11-288

IN THE MATTER OF TAKING FROM THE TABLE THE PROPOSED RESOLUTION FROM MARCH 17, 2011 (APPROVING THE LEASE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS, DELAWARE COUNTY, OHIO AND RRH, LTD FOR SUITE A, LOCATED ON 7177 NORTHGATE WAY, WESTERVILLE, OHIO, KNOWN AS NORTHGATE COMMERCIAL CENTER, BUILDING A, FOR GENOA TOWNSHIP EMERGENCY MEDICAL SERVICES):

It was moved Mr. O'Brien, seconded by Mr. Thompson to take from the table the proposed resolution from March 17, 2011 (approving the lease agreement between The Board Of County Commissioners, Delaware County, Ohio And RRH, Ltd For Suite A, Located On 7177 Northgate Way, Westerville, Ohio, Known As Northgate Commercial Center, Building A, For Genoa Township Emergency Medical Services).

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

RESOLUTION NO. 11-289

IN THE MATTER OF APPROVING THE LEASE AGREEMENT (tabled from March 17, 2011) BETWEEN THE BOARD OF COUNTY COMMISSIONERS, DELAWARE COUNTY, OHIO AND RRH, LTD FOR SUITE A, LOCATED ON 7177 NORTHGATE WAY, WESTERVILLE, OHIO, KNOWN AS NORTHGATE COMMERCIAL CENTER, BUILDING A, FOR GENOA TOWNSHIP EMERGENCY MEDICAL SERVICES:

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

The Director Emergency Medical Services recommends the lease for a Genoa Township Emergency Medical Services:

Therefore Be It Resolved, That The Commissioners approve the lease for a Genoa Township Emergency Medical Services:

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated March 21, 2011, is made and entered into by and between the **Board of County Commissioners, Delaware County, Ohio**, hereinafter referred to as "Lessee" and **RRH, LTD**, an Ohio LLC, hereinafter referred to as "Lessor":

WITNESSETH:

1. **LEASED PREMISES:** In consideration of the rents to be paid and the agreements hereinafter set forth, including compliance with any rules and regulations relating to the Leased Premises, as hereinafter defined, which have been or may be promulgated by Lessor and which are hereby made a part of this Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor a certain suite known as Suite A with approximately 4000 square feet of leasable space within the building to be located on 7177 Northgate Way, Westerville, Ohio, known as Northgate Commercial Center, Building A (hereinafter referred to as the "Building"). Such Suite is depicted on the site plan attached hereto as Exhibit A (hereinafter referred to as the "Leased Premises"). The Building and the land upon which it is situated are hereinafter referred to as the "Project".

All the outside walls of the Leased Premises, any terraces or roofs adjacent to the Leased Premises, and any space in the Leased Premises used for shafts, stacks, pipes, conduits, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Leased Premises for the purposes of operation, maintenance, decoration and repair, are expressly reserved to Lessor. Lessor agrees that any entry into the Leased Premises for purposes of access shall be done in such a way as to minimize disturbance to Lessee.

2. **TERM:** Subject to and upon the conditions set forth below, the term of this Lease shall commence as of March 17, 2011, (the "Commencement Date") and shall terminate ten (10) years after the first day of the calendar month following the Commencement Date. Lessee shall have the right to extend the term of this Lease for two (2) additional terms of five (5) years, upon Lessee giving Lessor written notice of each such extension not less than ninety (90) days prior to the then current expiration date of the Lease and provided that at the time of such notice and on the date of such extension there shall be no event of default hereunder (or circumstance that with notice or lapse of time would result in an event of default hereunder). In the event Lessee does not exercise any extension option, all future extension options are null and void. Upon Lessee's exercise of an extension option, the terms and conditions of this Lease shall continue in full force and effect, except with regard to base rent, which the Parties agree to renegotiate in good faith prior to the commencement of any extension term. If Lessee remains in possession of the Leased Premises after the expiration of the term of this Lease, Lessee shall be deemed to be a tenant from month-to-month only, subject to all of the terms and provisions of this Lease, except that base rent

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shall be 150% of the base rent for the next preceding Lease Year, as hereinafter defined, until Lessor or Lessee shall have given to the other thirty (30) calendar days' notice of termination of such tenancy from month-to-month.

3. **INTERFERENCE:** At no time shall Lessor unreasonably interfere with or in any way disrupt the provision of Emergency Medical Services from the Leased Premises.

4. **RENT.** Lessee agrees to pay Lessor during the term of this Lease annual base rent as set forth below; provided that the annual base rent for each Lease Year, as hereinafter defined, shall be due and payable in twelve (12) equal installments for each Lease Year during the term of this Lease, as set forth below:

<u>Lease Year</u>	<u>Annual Base Rent</u>	<u>Monthly Installment</u>
1 – 10	\$48,000.00	\$4,000.00

For purposes of this Lease, the first "Lease Year" shall commence on the first day of the calendar month which immediately follows the date on which rent commences hereunder, or the first day of a month if rent commences hereunder on the first day of such month, and shall terminate on the last day of the preceding calendar month, one year hence (i.e., if a Lease Year commences on a June 1, it terminates on the following May 31). Each succeeding Lease Year will commence and terminate on corresponding days of successive years.

All rent required by this Lease shall be due and payable on the Commencement Date and thereafter on or before the first day of each and every calendar month, in advance, and shall be paid to Lessor at 2646 Reynoldsburg New Albany Road, Blacklick, OH 43004, or at such other place as Lessor may designate in writing from time to time.

If rent commences on any day other than the first day of a calendar month, Lessee agrees to pay rent for the month in which rent commences computed as if such month were included in the first Lease Year. Such rent payment shall be due and payable on the date rent commences and shall be prorated, based upon the number of days remaining in the subject month, commencing the day rent commences.

5. **SIGNS:** Lessee may place and maintain a sign on the exterior of the Leased Premises subject to compliance with Lessor's sign policy and all applicable governmental sign ordinances, and subject to the conditions of this Agreement, including but not limited to, the obligation to remove all such signs and to repair any damage caused by such signs or their removal. In the event that Lessee fails to remove such signs and/or repair such damage, Lessor may do so, at its option, and Lessee shall pay the cost thereof to Lessor on demand. Lessee shall be allowed a percentage of sign space on the Building as allowed by Genoa Township in an amount equal to Lessee's space divided by total building square footage rounded down to the largest whole number (4000 sq ft / 12,000 sq ft = 33% of allowable signage in front of the Building). Lessee is to be in compliance with Genoa Township signage codes at all times.

6. **USE:** Lessee warrants and represents to Lessor that Lessee shall use and occupy the Leased Premises solely for the provision of Emergency Medical Services within the areas served by Delaware County Emergency Medical Services.

7. **JANITORIAL SERVICE; TRASH; GROUNDS AND PARKING AREAS:** Lessee, or its subtenants, shall furnish their own janitorial services and shall provide for proper and lawful disposal of the trash generated. Lessor shall be responsible for the care and maintenance of the grounds, including but not limited to all grassed areas and parking areas, except that Lessee shall be responsible for snow and ice removal from the Leased Premises.

8. **UTILITIES, INSURANCE, TAXES, AND ASSESSMENTS:** Lessee shall pay for all separately metered utilities for the Leased Premises. Lessee agrees to pay for the installation of a sub-meter for water to the Leased Premises. Lessee shall pay its Prorata Share, as that term is hereinafter defined, for all of the following:

- (a) real estate taxes or assessments, if any, relating to its use and occupancy of the Leased Premises as they become due and payable;
- (b) insurance premiums;
- (c) servicing, maintenance, and repair costs; and
- (d) utilities that are not separately metered, provided that adjustments are made to avoid any tenant paying more than its fair share of the costs of such utilities.

"Prorata Share" as used in this Lease shall mean the percentage arrived at when the square footage of the Leased Premises is divided by the total leasable square feet in the Building. Notwithstanding this definition of "Prorata Share," the Lessee agrees to bear the cost of any increase to Lessor's insurance premiums based on Lessee's use of the Leased Premises to house vehicles and to provide sleeping quarters for Lessee's personnel.

From the date of commencement of the term of this Lease through the remainder of the calendar year in which such commencement occurs, Lessee shall pay to Lessor, as an estimate of additional rent, an amount equal

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to \$2.75 multiplied by the square feet contained in the Leased Premises, divided by 12, in equal monthly installments in advance, due with the base rent payments. Thereafter, thirty (30) days prior to the beginning of each calendar year during the term of this Lease, Lessor shall prepare for the next ensuing calendar year an estimate of the annual Operating Expenses for the Project (the "Budget"). Lessee shall and does hereby agree to pay to Lessor as additional rent Lessee's Prorata Share of such Budget on a monthly basis, payable one twelfth (1/12th) each month, in advance, at the same time as the base rent is due.

Following the end of each calendar year during the term of this Lease, Lessor shall provide Lessee with a statement showing, in reasonable detail, the actual Operating Expenses incurred and the calculation of the actual additional rent pertaining to the preceding calendar year. In the event said statement reveals an overpayment by Lessee of its Prorata Share of Operating Expenses, Lessor shall credit Lessee with an amount which represents Lessee's overpayment to Lessee's obligations for the payment of rental for the next calendar month and thereafter, if applicable. In the event such statement shows an underpayment by Lessee of its Prorata Share of Operating Expenses, Lessee shall pay to Lessor an amount equal to Lessee's underpayment within thirty (30) days after Lessor delivers such statement.

Lessee or its accountants shall have the right to inspect, at reasonable times and in a reasonable manner, during the thirty (30) day period following the delivery of Lessor's statement of the actual amount of additional rent, such of Lessor's books of account and records as pertain to and contain information concerning the Operating Expenses, in order to verify the amounts thereof. If Lessee shall dispute any item or items included in the determination of additional rent for a particular calendar year, and such dispute is not resolved by the parties hereto within thirty (30) days after the statement for such year is delivered to Lessee, then either party may, within thirty (30) days thereafter, request that a firm of independent certified public accountants selected by Lessor and Lessee render an opinion as to whether or not the disputed item or items may properly be included in the determination of additional rent for such year, and the opinion of such firm on the matter shall be conclusive and binding upon the parties hereto. The fees and expenses incurred in obtaining such an opinion shall be borne by the party adversely affected thereby, and if more than one item is disputed and the opinion adversely affects both parties, the fees and expenses shall be accordingly apportioned. If Lessee shall not dispute any item or items included in the determination of additional rent for a particular calendar year within thirty (30) days after the statement for such year is delivered to it, Lessee shall be deemed to have approved such statement.

9. REPAIRS AND MAINTENANCE:

(a) Lessor shall promptly provide all maintenance and repair of the Building and the Project, except Lessee shall be solely responsible for all equipment and facilities within and serving solely the Leased Premises, including but not limited to HVAC and plumbing systems. Lessee covenants and agrees to keep such equipment and facilities in good condition and repair. Any maintenance and repair of such systems shall be at the sole cost and expense of Lessee. To the extent Lessee fails to undertake the maintenance and repair of any such facilities and equipment, Lessee shall pay to Lessor all costs of such maintenance and repairs. Lessee agrees to promptly notify Lessor, or its agent, of any matters requiring maintenance or repair which come to Lessee's attention.

(b) Lessee shall not allow any damage to be committed on any portion of the Leased Premises. At the termination of this Lease, by lapse of time or otherwise, Lessee shall deliver the Leased Premises to Lessor in as good condition as existed at the commencement date or completion date of this Lease, ordinary wear and tear excepted.

10. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS: Lessee, at Lessee's expense, shall comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having jurisdiction relating to the use, condition, and occupancy of the Leased Premises.

11. LESSOR IMPROVEMENTS: Lessor does not anticipate making any improvements to the Leased Premises.

12. ALTERATIONS AND IMPROVEMENTS: Lessee may make, at Lessee's cost, any non-structural alterations, physical additions, or improvements to the Leased Premises that Lessee deems appropriate. Lessee shall consult with Lessor regarding any proposed structural alteration to the Building. Lessee may make a major structural alteration only with the written consent of Lessor, which shall not be withheld unreasonably. Lessee shall be responsible for all costs of any such major structural alteration to the Building. Any alterations, physical additions, or improvements to the Leased Premises shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease, to the extent that the alterations, physical additions, or improvements cannot be removed without causing damage to the Leased Premises. Lessor, at its option, may require Lessee to remove any physical additions and/or repair any alterations in order to restore the Leased Premises to the condition existing at the time Lessee took possession, all costs of removal and/or alterations to be borne by Lessee.

13. CONDEMNATION:

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(a) If, during the term (or any extension or renewal) of this Lease, all or a substantial part of the Leased Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which they are then being used, this Lease shall terminate. Lessee shall be entitled to an award of its damages, including the value of its lease and any improvements to the Leased Premises Lessee has made at its expense. Lessor shall be entitled to an award for the physical taking of the property.

(b) In the event a portion of the Leased Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and this Lease is not terminated as provided in subparagraph (a) above, Lessor shall, at Lessor's sole risk and expense, restore and reconstruct the building and other improvements on the Leased Premises to the extent necessary to make it reasonably tenable.

14. **LIABILITY INSURANCE:** Lessee agrees that, at its own cost and expense, it shall procure and continue in force general liability insurance against any and all claims for injuries to persons or damage to property occurring in, about, or upon the Leased Premises, including all damage from signs, fixtures or other appurtenances, now or hereafter erected upon the Leased Premises, during the term of this Lease. Such insurance shall at all times be in an amount not less than One Million Dollars (\$1,000,000) per claim on account of bodily injury to or death of one (1) person and Three Million Dollars (\$3,000,000) annual aggregate claims on account of bodily injuries or death of persons, and One Hundred Thousand Dollars (\$100,000) for property damage in any one (1) accident. Such insurance shall be written by a company or companies reasonably acceptable to Lessor and authorized to engage in the business of general liability insurance in the State of Ohio, and a certificate of all such policies procured by Lessee in compliance herewith shall be delivered to Lessor at least fifteen (15) days prior to the time such insurance is required to be carried by Lessee, and thereafter at least fifteen (15) days prior to the expiration of any such policy.

15. **FIRE AND CASUALTY:** Payments, if any, due from Lessee to Lessor shall be automatically abated due to any fire or other casualty that results in the Leased Premises being untenable.

16. **PROPERTY INSURANCE:** Lessor shall at all times during the term of this Lease maintain a policy or policies of insurance with the premiums paid in advance, issued by and binding upon some solvent insurance company, insuring the building against all risk or direct physical loss in an amount equal to one hundred percent (100%) of the full replacement cost of the building structure and its improvements as of the date of the loss. Such insurance shall be written by a company authorized to engage in the business of general liability insurance in the State of Ohio.

17. **HOLD HARMLESS:** Lessor shall not be liable to Lessee's or any subtenant's employees, agents, invitees, licensees or visitors, or to any other person, for any injury to person or damage to property on or about the Leased Premises caused by any person or entity other than Lessor, or caused by the building and improvements located on the Leased Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Leased Premises, except to the extent caused by Lessor's acts or omissions. Lessor agrees to indemnify and hold harmless Lessee, its elected officials, agents and employees of and from any and all losses, damages, lawsuits, costs, judgments, attorney's fees, expenses, claims, or any other liabilities they may incur as a result of bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, caused in whole or part by the negligent act or omission of the Lessor, any person directly or indirectly employed thereby, or any person for whose acts any of them may be liable. Lessor further agrees to defend Lessee, its elected officials, agents, and employees in any lawsuit, arbitration, or other legal proceeding seeking recovery as a result of any accident or incident arising out of or in any way related to Lessor's negligent acts or omissions on or arising from the Leased Premises.

18. **QUIET ENJOYMENT:** Lessor warrants that it has full right to execute and to perform this Lease and to grant the estate demised and that Lessee, performing the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease as well as any extension or renewal thereof. Lessor shall not be responsible for the acts or omissions of any third party that may interfere with Lessee's use and enjoyment of the Leased Premises.

19. **LESSOR'S RIGHT OF ENTRY:** Lessor shall have the right, at all reasonable hours, to enter the Leased Premises for the following reasons: emergency, inspection, determining Lessee's or any subtenant's use of the Leased Premises, or determining if an act of default under this Lease has occurred. Except in the case of an emergency, twenty-four (24) hours' notice of Landlord's intent to enter shall be presumed reasonable.

20. **SUBLEASE:** Lessee may sublet or assign all or any part of the Leased Premises with the Lessor's prior written consent, which shall not be withheld unreasonably. In the event of any subletting, Lessee, nevertheless, shall remain fully responsible and liable for compliance with all of its obligations under the terms, provisions, and covenants of this Lease.

Any subtenants that occupy parts of the Leased Premises shall conduct their business and control their agents, employees, invitees and visitors in such a manner as is lawful, reputable and will not create any nuisance, and shall

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comply with the terms and conditions stated herein. Neither Lessee nor its subtenants shall commit, or suffer to be committed, any waste on the Leased Premises, nor shall Lessee or its subtenants permit the Leased Premises to be used in any way which would be extra hazardous on account of fire or otherwise

21. **DEFAULT:** The following shall be deemed to be events of default under this Lease:

(a) Lessee shall fail to pay when due any payment required pursuant to this Lease, and the failure is not cured within thirty (30) days after written notice to Lessee;

(b) Either Party shall fail to comply with any term, provision or covenant of this Lease, other than the payment of money, and the failure is not cured or the Party in default has not begun taking action to cure within forty-five (45) days after written notice;

(c) Either Party shall file a petition or be adjudged bankrupt or insolvent under the National Bankruptcy Act, as amended, or any similar law or statute of the United States or any state; or a receiver or trustee shall be appointed for all or substantially all of the assets of said Party; or said Party shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or

Upon the occurrence of any event of default set forth in this Lease, either Party shall have the option to pursue any one or more remedies available under law, but Lessor shall not, through any action or inaction, disrupt the provision of Emergency Services from the Leased Premises for at least forty-five (45) days after notice of the default to Lessee, if said default shall remain uncured.

22. **WAIVER OF DEFAULT OR REMEDY:** Failure of either Party to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but each Party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth in paragraph 21 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to either Party by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by either Party to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions, and covenants contained in this Lease.

23. **ACTS OF GOD:** Lessor shall not be required to perform any covenant or obligation in this Lease, or be liable in damages to Lessee, so long as the performance or non-performance of the covenant or obligation is delayed, caused by, or prevented by an act of God or force majeure.

24. **EARLY TERMINATION:** Lessee, on one-hundred eighty (180) days written notice to Lessor, may terminate this Lease.

25. **SUCCESSORS:** This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. It is hereby covenanted and agreed that should Lessor's interest in the Leased Premises cease to exist for any reason during the term of this Lease, then notwithstanding the happening of such event this Lease nevertheless shall remain unimpaired and in full force and effect and Lessee hereunder agrees to attorn to the then owner of the Leased Premises.

26. **DEFINITIONS:** The following definitions apply to the terms set forth below as used in this Lease:

(a) "Abandon" means the vacating of all or a substantial portion of the Leased Premises by Lessee, whether or not Lessee is in default of the rental payments due under this Lease.

(b) An "act of God" or "force majeure" is defined for purposes of this Lease as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections and any other cause not reasonably within the control of Lessor and which by the exercise of due diligence Lessor is unable, wholly or in part, to prevent or overcome.

(c) The "commencement date" shall be the date set forth in paragraph 2. The "commencement date" shall constitute the commencement of this Lease for all purposes, whether or not Lessee has actually taken possession.

(d) "Real property tax" means all school, city, state and county taxes and assessments including special district taxes or assessments.

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27. **SEVERABILITY; MEMORANDUM OF LEASE** If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Lease, and such other provisions shall continue in full force and effect. This Lease shall not be recorded, but upon the request of either party, the parties will prepare, execute, and record a memorandum of lease.

28. **NOTICE:** All payments required to be made by Lessee shall be payable to Lessor at the address set forth below, and any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set out below:

<p>LESSEE: Board of County Commissioners Delaware County, Ohio 101 North Sandusky Street Delaware, OH 43015</p>	<p>LESSOR: RRH, LTD., an Ohio LLC 2646 Reynoldsburg New Albany Rd. Blacklick, OH 43004</p>
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29. **ADDITIONAL USE RESTRICTIONS:**

(a) Lessee shall not occupy or use, or suffer or permit the Leased Premises or any part thereof to be used in any manner or occupied for any purpose other than the purpose stated herein, or for any purpose contrary to law, or contrary to the rules and regulations of Lessor or of any public or quasi-public authority which are currently existing or promulgated hereafter or in such a manner as to increase the risk of fire or other casualty, increase the Lessor's cost of insurance or make it more difficult to obtain such insurance. Lessee shall use, occupy and maintain the Leased Premises in a careful, safe, lawful, clean, neat and proper manner, and shall not commit any waste or create any public nuisance upon the Leased Premises or in or around the Building or the Project, Upon termination of this Lease by lapse of time or otherwise, Lessee shall deliver up and surrender to Lessor physical possession of the Leased Premises in as good condition and repair as at the commencement of the term of this Lease, ordinary wear and tear and casualty loss excepted. On the occasion of the expiration of the Lease term by lapse of time, or in the event of any termination of said term due to a cancellation of this Lease, Lessee shall immediately deliver all keys to the Leased Premises to Lessor, or its agent. Lessee shall permit Lessor or its agents: with prior notice, to enter upon the Leased Premises during the last SIX (6) months of the term of this Lease, or at any time that this Lease is being terminated for any reason, for the purpose of exhibiting the Leased Premises to prospective tenants or purchasers.

(b) Attached hereto as Exhibit B are the presently existing Rules and Regulations for the Project. Lessee covenants and agrees to conform to such Rules and Regulations and to all additional rules and regulations as may be adopted by Lessor, from time to time for the safety, care, reputation and cleanliness of the Leased Premises, the Building and the Project, and for preservation of good order therein; provided such additional rules and regulations are not inconsistent with this Lease and do not unreasonably interfere with Lessee's use and occupancy of the Leased Premises. Any such additional rules and regulations shall be provided to Lessee in writing not less than thirty (30) days in advance of their effective date. In consideration of this covenant and agreement by Lessee, Lessor agrees to conform to and enforce all rules and regulations promulgated hereunder for the mutual benefit of all tenants and occupants of the Project.

(c) Lessee shall not cause or permit any "Hazardous Substance" (as hereinafter defined) to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee without first obtaining Lessor's written consent. As used herein, "Hazardous Substance" means any substance that is toxic, infectious, ignitable, reactive, or corrosive, and that is regulated by any local government, the State of Ohio, or the United States Government. "Hazardous Substance" includes, without limitation, asbestos, PCP's, radioactive materials and waste, petroleum, and any materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local government law.

30. **LIMITATION OF LIABILITY:** In consideration of the benefits accruing hereunder, Lessee and all successors and assigns, covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Lessor, the sole and exclusive remedy shall be against the Lessor's interest in the Project, including, without limitation, the right to receive the rents and profits from the Project. In the event of a sale or transfer of Lessor's interest in the Project, the "Lessor" named herein, or, in the case of a subsequent transfer, the transferor, shall, after the date of such transfer, be automatically released from all liability for the performance or observance of any term, condition, covenant or obligation required to be performed or observed by Lessor hereunder after the date of such transfer; and the transferee shall be deemed to have assumed all of such terms, conditions, covenants and obligations, it being intended hereby that such terms, conditions, covenants, and obligations shall be binding upon Lessor, its successors and assigns, only during and in respect of their successive periods of ownership during the term of this Lease. It is expressly understood by the parties hereto that any sale or transfer of Lessor's interest in the Project shall be subject to this Lease.

31. **MORTGAGE:** This Lease, shall, at all times, be subordinate and subject to the lien of any and all mortgages or other encumbrances now or hereafter placed on the Project, the Building, the Leased Premises, or any part thereof by Lessor without the necessity of any further instrument to effectuate such subordination; provided any mortgagee agrees not to disturb Lessee under this Lease so long as Lessee is not in default hereunder. Lessee

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hereby agrees to execute and deliver, upon reasonable demand, such further instruments evidencing such subordination as may be requested by Lessor or any mortgagee.

32. **SECURITY DEPOSIT:** Upon the execution and delivery hereof, Lessee shall deposit the sum of \$ 4,000.00 with Lessor as a security deposit (the "Deposit"). The Deposit shall be held by Lessor without the payment of interest thereon to Lessee. The Deposit may be commingled with Lessor's other funds. The Deposit shall be used by Lessor to satisfy defaults by Lessee hereunder. In the event Lessor shall apply the Deposit to satisfy Lessee's defaults hereunder, Lessee shall immediately pay to Lessor the amount necessary to cause such Deposit to at all times equal \$4,000.00. Upon completion of the term of this Lease and compliance by Lessee with all terms and conditions hereof, any portion of the Deposit remaining shall be repaid to Lessee. The Deposit shall not be used by Lessee to satisfy or offset any rent obligations of Lessee.

33. **ESTOPPEL CERTIFICATE:** Lessee agrees, at any time, and from time to time, upon not less than twenty (20) calendar days prior written notice by Lessor, to execute, acknowledge and deliver to Lessor a written statement as follows: (i) certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating such modifications); (ii) stating the dates to which the rent and any other charges hereunder have been paid by Lessee; (iii) stating whether or not to the best knowledge of Lessee, Lessor is in default in the performance of any covenant, agreement or condition contained in this Lease, and if so, specifying each such default of which Lessee may have knowledge; and (iv) stating the address to which notices to Lessee should be sent. Any such statement delivered pursuant hereto may be relied upon by any owner of the Building or the Project, any mortgagee or prospective mortgagee of the Building or the Project or of Lessor's interest in either, or any prospective assignee of any such mortgagee.

34. **MISCELLANEOUS PROVISIONS:**

- (a) **Paragraph Headings.** The heading to each paragraph hereof is inserted only as a matter of convenience, and in no way defines, limits or otherwise describes the scope or intent of this Lease or any part hereof.
- (b) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Ohio. Any and all disputes shall be filed in and heard before the courts of Delaware County, Ohio.
- (c) **Late Fees.** A late fee of 5% of the monthly rent shall be charged if the rent is not received by the Lessor before the 5th of the month in which rent is due.
- (d) **Benefits.** Subject to the provisions set forth hereinbefore to the contrary, this Lease shall inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, administrators, successors and assigns.
- (e) **Findings for Recovery.** Lessor hereby certifies that it is not subject to any unresolved finding for recovery issued by the Ohio Auditor of State.
- (f) **Non-Discrimination.** Lessor certifies that it is, and shall for the life of this Lease Agreement remain, in full compliance with all applicable Federal, State, and Local laws, rules, regulations, and orders related to non-discrimination and equal opportunity employment.

35. **ENTIRE AGREEMENT AND LIMITATION OF WARRANTIES:** IT IS EXPRESSLY AGREED, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THAT THIS LEASE, WITH THE SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS LEASE OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS NOT INCORPORATED IN WRITING IN THIS LEASE. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE. IT IS LIKEWISE AGREED THAT THIS LEASE MAY NOT BE ALTERED, WAIVED, AMENDED, OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BOTH LESSOR AND LESSEE.

**EXHIBIT "A"
SITE PLAN FOR LEASED PREMISES**

(Copy available in the Commissioners' Office EMS Department until no longer of administrative value).

EXHIBIT "B"

PROJECT RULES AND REGULATIONS

Lessee agrees that it, its agents, employees, patients, invitees and visitors will observe and comply with the following Project Rules and Regulations:

1. Lessor agrees to furnish Lessee with One (1) set of Suite keys. No additional locks or bolts of any kind will be placed on doors or windows by Lessee nor will any changes be made in existing locks or mechanisms

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thereof without Lessor's permission. Lessee will, upon termination of its tenancy, return all keys to Lessor. If a lock is to be changed at Lessee's request, Lessee shall contact Lessor and Lessor shall make said change at Lessee's expense.

2. Lessee will refer all contractors, contractor's representatives and installation technicians rendering any service on or to the Leased Premises for Lessee, to Lessor for Lessor's approval before performance of any contractual service. This provision shall apply to allow work performed in the Building, including installation of telephone equipment, electrical devices, and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, and equipment of any physical portion of the Building.

3. No Lessee shall at any time occupy any part of the Building as sleeping or lodging quarters.

4. Lessee shall not place or use in or about the Leased Premises any explosives, gasoline, kerosene, oil, acids, caustics, or any inflammable, explosive, or hazardous material without the prior written consent of Lessor.

5. Lessor will not be responsible for lost or stolen personal property, equipment, money or jewelry from Lessee's areas or public restrooms regardless of whether such loss occurs when area is locked against entry or not, unless such loss or theft occurs as a proximate result of Lessor's negligence or intentional wrongful acts.

6. Lessee shall not contract with Lessor's employees to render services of any kind.

7. None of the entries, passages or doors, shall be blocked or obstructed, or any rubbish, litter, trash or material of any nature placed, emptied or thrown into these areas, or such areas be used at any time except for access or egress by Lessee, Lessee's agents, employees, or invitees.

8. No person shall disturb the occupants of the Building by the use of any musical instruments, the making of unseemly noise, the creation of any noxious odors, or any unreasonable use.

9. Nothing shall be thrown out of the windows of the Building.

10. No awnings or other projections shall be attached to the outside of the Building and no curtains, blinds, shades or screens will be used in connection with any window of the Leased Premises without the written consent of Lessor.

11. Canvassing, soliciting and peddling in the Building are prohibited and the Lessee shall reasonably cooperate to prevent the same.

It is the Lessor's desire to maintain the highest standard of dignity and good asset consistent with comfort and convenience for Building tenants. Any action or condition not meeting this high standard should be reported directly to the Lessor. The Lessor reserves the right to modify or alter these rules and regulations and to make such other and further reasonable rules and regulations as in its judgment may from time to time be needful, for the safety, care and cleanliness of the Project, and for the preservation of good order therein; provided that any such additional rules and regulations will not be inconsistent with this Lease and will not unreasonably interfere with Lessee's use and occupancy of the Leased Premises.

Vote On Motion Mr. O'Brien Nay Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-290

IN THE MATTER OF APPROVING AN ADDENDUM TO THE LEASE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS, DELAWARE COUNTY, OHIO AND RRH, LTD FOR SUITE A, LOCATED ON 7177 NORTHGATE WAY, WESTERVILLE, OHIO, KNOWN AS NORTHGATE COMMERCIAL CENTER, BUILDING A, FOR GENOA TOWNSHIP EMERGENCY MEDICAL SERVICES:

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

The Director Emergency Medical Services recommends the addendum to the lease agreement between The Board Of County Commissioners, Delaware County, Ohio And RRH, Ltd. for Genoa Township Emergency Medical Services;

Therefore Be It Resolved, That The Commissioners approve the addendum to the lease agreement between The Board Of County Commissioners, Delaware County, Ohio And RRH, Ltd. for Genoa Township Emergency Medical Services.

LEASE ADDENDUM

This Addendum to the Lease Agreement dated March 21, 2011, is made and entered into on this 21 day of March, 2011, by and between the **Board of County Commissioners, Delaware County, Ohio**, hereinafter referred to as "Lessee" and **RRH, LTD**, an Ohio LLC, hereinafter referred to as "Lessor."

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Pursuant to Paragraph 34 of the Lease Agreement, the Lessee and Lessor hereby amend the Lease Agreement for the purpose of permitting Lessee to locate a mobile office unit on the Project site, in an area of Lessor's selection, until such time as the Lessee has completed improvements to and may occupy the Leased Premises, provided Lessee's location of the mobile office unit complies with all federal, state, and local laws, ordinances, and regulations.

Lessee shall bear all costs associated with the mobile office unit. All other provisions of the Lease Agreement shall remain in full force and effect as related to the mobile office unit.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

COMMISSIONERS' COMMITTEES REPORTS

Commissioner O'Brien
-Extended A Thank-You To Brian Galligher

Commissioner Thompson
-At The Next DKMM Meeting Will Have Yearly Review Of Director Larry Cooper

Commissioner Stapleton
-Attended The CCAO Board Meeting; A Governors Representative Was Present; Stressed Shared Services And Less Local Government Money

RESOLUTION NO. 11-291

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT LITIGATION AND TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES :

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn into Executive Session at 10:40AM.

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

RESOLUTION NO. 11-292

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 11:17AM.

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

There being no further business, the meeting adjourned.

Ken O'Brien

Dennis Stapleton

Tommy Thompson

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Jennifer Walraven, Clerk to the Commissioners