



**Technical Advisory Committee  
Cuyahoga County  
TAC Meeting Agenda**

**Voice Bridge (216) 698-2663  
Meeting ID: 112255**

**Thursday, April 14, 2016 9:00 AM**

1. Call to Order
2. Roll Call
3. Tabled Items
4. New Items

a. TAC2016-00004 - DEPARTMENT OF INFORMATION TECHNOLOGY - DIVISION OF HHS  
OPEX CORPORATION

Department of Information Technology - Division of HHS requesting the approval of a contract with OPEX Corporation. The renewal and support of this hardware and software from OPEX Corporation is used to open, sort and image incoming mail.

The amount will not exceed \$\$39,374.73

5. Other Business
6. Public Comment
7. Adjournment

# Certified Search for Unresolved Findings for Recovery

*Chris Kalit*



**Dave Yost**  
 Ohio Auditor of State

Office of Auditor of State  
 88 East Broad Street  
 Post Office Box 1140  
 Columbus, OH 43216-1140  
 (614) 466-4514  
 (800) 282-0370

## Auditor of State - Unresolved Findings for Recovery Certified Search

I have searched The Auditor of State's unresolved findings for recovery database using the following criteria:

**Contractor's Information:**

**Organization:** Opex Corporation  
**Date:** 04/01/2016

This search produced the following list of possible matches:

8 Possible matches were found

Name/Organization	Address
Estate of Hope Okuly	997 North Locust Street Ottawa, OH 45875
Harmony Community School, c/o Buckeye Community Hope Foundation	3021 East Dubli Granville Road Columbus, OH 43231
Harmony Community School, c/o Buckeye Community Hope Foundation	3021 East Dublin Granville Rd. Columbus, OH 43231
Harmony Community School, c/o Buckeye Community Hope Foundation	3021 East Dublin Granville Road Columbus, OH 43231
Harmony Community School, c/o Buckeye Community Hope Foundation	3021 East Dublin-Granville Rd. Columbus, OH 43231
Harmony Community School, c/o Buckeye Community Hope Foundation	3021 East Dubln Granville Rd. Columbus, OH 43231

McPherson Property Group, Inc.	, OH
Pope, Michael	3992 Vandemark Road Litchfield, OH 44253

The above list represents possible matches for the search criteria you entered. Please note that pursuant to ORC 9.24, only the person (which includes an organization) actually named in the finding for recovery is prohibited from being awarded a contract.

If the person you are searching for appears on this list, it means that the person has one or more findings for recovery and is prohibited from being awarded a contract described in ORC 9.24, unless one of the exceptions in that section apply.

If the person you are searching for does not appear on this list, an initialed copy of this page can serve as documentation of your compliance with ORC 9.24(E).

Please note that pursuant to ORC 9.24, it is the responsibility of the public office to verify that a person to whom it plans to award a contract does not appear in the Auditor of State's database. The Auditor of State's office is not responsible for inaccurate search results caused by user error or other circumstances beyond the Auditor of State's control.

**CONTRACT  
BETWEEN  
CUYAHOGA COUNTY, OHIO  
AND  
OPEX CORPORATION**

THIS CONTRACT is made and entered into April 6, 2015 ("Effective Date"), by and between Cuyahoga County, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof, on behalf of the Cuyahoga Job and Family Services (the "County"), and Opex Corporation, a corporation with offices located at 305 Commerce Drive, Moorestown, New Jersey 08057-4234 ("Provider"), through their dully authorized representatives. As used herein, each of the County and Provider are individually a "Party" and are collectively, the "Parties."

**RECITALS:**

WHEREAS, the County desires to contract for software and hardware maintenance and technical support for the OPEX equipment located at Cuyahoga Job and Family Services at Virgil E. Brown Building; and

WHEREAS, Provider is the sole source for providing such maintenance and technical support services; and

WHEREAS, Provider has submitted a Renewal Notice #4615 for such services; and

WHEREAS, the County desires to purchase such services from Provider and Provider is willing to provide such service to the County upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Provider and the County agree as follows:

**ARTICLE I – TERM**

1.1 Term. The term of this Contract shall commence as of the Effective Date, and shall continue, unless earlier terminated or canceled in accordance with the provisions of this Contract, for a term of 12 months.

## ARTICLE II - SCOPE OF WORK

2.1 General. Provider shall provide the maintenance and support services pursuant to the Renewal Notice #4615 ("Exhibit A") and the Master Maintenance Agreement ("Exhibit B"), all attached and incorporated in this Contract as fully rewritten herein.

2.2 Order of Precedence. In the event that a discrepancy exists between the terms of Exhibits and this Contract, the documents shall have precedence in the following order: 1) this Contract; 2); Renewal Notice #4615 and Master Maintenance Agreement.

## ARTICLE III – CONTRACT AMOUNT AND INVOICING

3.1 Amount. During the term of this contract, the County shall pay Provider an amount not to exceed **\$12,315.00**.

3.2 Invoicing. Provider shall invoice the County upon commencement of maintenance and support period described in Exhibit A. Each invoice shall include a detailed description of the services to be completed and the applicable rate or charge according to Exhibit A. Provider shall submit original invoice(s) to the following address:

Cuyahoga Job and Family Services Management Information  
Services Division Attn: Nada Moyak  
1641 Payne Ave., RM 570  
Cleveland, Ohio 44114  
(216) 987- 8958

3.3 The County will use best efforts to process invoices within 10 days of receipt, and to issue payment to Provider within 45 business days of approval of an invoice. Provider agrees that County will not pay interest on any past-due invoices.

3.4 The contract amount shall include all costs related to the scope of work, including Provider's fees and expenses related to the services, travel, shipping and handling, and subconsultant fees and expenses.

## ARTICLE IV – INDEMNIFICATION AND LIMITATION OF LIABILITY

4.1 Indemnification. Provider hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Provider, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Provider under any terms or provisions of this Contract.

4.2 County's Indemnification. Provider acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. Provider agrees that no

provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify or defend Provider or any other party.

4.3 Limitation of Liability. For all claims, Provider's liability under this Contract shall be limited to the value of available insurance proceeds, but in no event less than \$1,000,000.00. This Limitation of Liability clause shall only be effective if Provider continuously complies with and maintains in place the required insurance coverage under this Contract.

#### ARTICLE V – TERMINATION

5.1 Termination for Default. Either Party may terminate this Contract, in whole or in part, whenever such Party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating Party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either Party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the Party seeking termination shall notify the defaulting Party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting Party is unable to cure the failure within the specified time period, the Party seeking to terminate may, by giving written notice thereof to the defaulting Party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Provider, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.2 Termination for Financial Instability. In the event that Provider becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Provider of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

5.3 Termination for Convenience. The County may terminate this contract or any order under this contract for its convenience and without cause. Any notice of termination will be effective 30 days after the Provider receives it. If the termination is for the convenience of the County, the Provider will be entitled to compensation for any deliverable that the Provider has delivered before termination.

#### ARTICLE VI – CONFIDENTIALITY

6.3 County's Data. County's materials, information, data, files, software, transactions of all forms, financial information, documentation, designs and methods that Provider obtains from the County in connection with the Scope of Work provided under this Contract shall remain the sole property of the County. Provider shall not, without County's written consent, copy or use County's Data except to carry out its obligations under this Contract, and will not transfer or disclose County's Data to any party not involved in the performance of this Contract.

6.2 Confidential Information.

- a) Provider acknowledges that the County's Data includes information, data, files, or other materials that are confidential and proprietary. Provider shall hold the County's Data in strict confidence, and Provider will not permit any third party, or any employee, consultant, subcontractor or agent to access the County's Data except in connection with the Scope of Work to be provided under this Contract (including, without limitation, help desk support). Provider shall take all commercially reasonable measures to protect the confidentiality of the County's Data.
- b) All other County-provided employee information, financial information, and personally identifiable information for individuals or entities interacting with County (including, without limitation, social security numbers, birth dates, and banking and financial information and other information deemed exempt or confidential under state or federal law) also constitute Confidential Information.

6.3 Survival. The obligations under this Article 8 shall survive the termination of this Agreement or of any license granted under this Agreement

ARTICLE VII – INSURANCE

7.1 The Provider shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

- a. **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For providers with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

- \$1,000,000 each accident for bodily injury by accident;
- \$1,000,000 each employee for bodily injury by disease;
- \$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- b. **Commercial General Liability Insurance** with limits of liability not less than:

- \$1,000,000 each occurrence bodily injury & property damage;
- \$1,000,000 personal & advertising injury;
- \$2,000,000 general aggregate;
- \$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- c. **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

## 7.2 Insurance Coverage Terms and Conditions

1. The insurance policies of the Provider required for this contract, with the exception of Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:
  - (i) Thirty (30) days prior notice of cancellation or material change;
  - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
2. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
3. These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.
4. The Provider shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
5. The Provider shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the Parties under this Contract.

## ARTICLE VIII – MISCELLANEOUS

8.1 Notices. Wherever one Party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:



In the case of the County:  
Cuyahoga Job and Family Services  
MIS Department  
1641 Payne Avenue  
Cleveland, Ohio 44113

In the case of Provider:  
Opex Corporation  
305 Commerce Drive  
Moorestown, New Jersey 08057-4234

Either Party may from time to time change its designated recipient or address for notification purposes by giving the other Party written notice of the new designated recipient or address and the date upon which it will become effective.

8.2 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either Party from any liabilities or obligations set forth in this Contract which (i) the Parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

8.3 Record Audit Retention. Provider agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Provider be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

8.4 Governing Law. This Contract shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The Parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each Party consents to the exclusive jurisdiction of such courts. Provider hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

8.5 Social Security Act. Provider shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Provider for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective

laws by and duly authorized State or Federal officials; and said Provider also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

8.6 Assignment. Provider shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive.

8.7 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated herein:

Exhibit A – Renewal Notice #4615

Exhibit B – Master Maintenance Agreement

8.8 County's Tax Status. Provider understands that the County is exempt from Federal excise tax and from all state and local taxes. The County is a tax exempt No. 29 political subdivision of the State of Ohio. Upon request, State sales and use tax certificates of exemption and any other relevant exemption certificates will be furnished to the Provider when the Contract becomes effective.

8.9 Entire Agreement. This Contract, including any exhibits, schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the Parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The Parties agree that any other terms or conditions included in any quotes, acknowledgments, purchase orders, invoices, bills of lading or other forms utilized or exchanged by the Parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the Parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the Party against which such modification, change or amendment is sought to be enforced.

8.10 Applicable County Ordinances. All contracts with the County, including this Contract, are subject to Cuyahoga County Code and all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Title 4: Ethics Ordinance and Tile 5: Contracts and Purchasing. Copies of the Cuyahoga County Code and all County ordinances are available on the County's website at <http://code.cuyahogacounty.us/> and <http://council.cuyahogacounty.us/>

8.11 Good Standing. Provider has been duly organized and is a validly existing corporation under the laws of the State of Delaware, is in good standing and qualified to do business in the State of Ohio as a foreign corporation, has the full legal authority to enter into this Contract and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as presently conducted and will remain so qualified and in good standing during the term of this Contract.

8.12 Counterparts and Facsimile/Electronic Execution. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.

8.13 Public Records. All Parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

8.14 Findings for Recovery. Provider represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

8.15 No Apparent Authority/Proper Approvals. The Provider recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County Code.

8.16 Commencement of Contract Performance. In order to protect the interest of the County, this Contract must be duly executed by the County Executive before compensation for the services or products set forth in this Contract can be provided. In the event that services are provided by Provider prior to the execution of this Contract by the County Executive, the same will be provided at Provider's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the County. Upon approval by the County of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed to be included in this Contract. Payment(s) for said prior performance shall not increase the amount of the Contract limit.

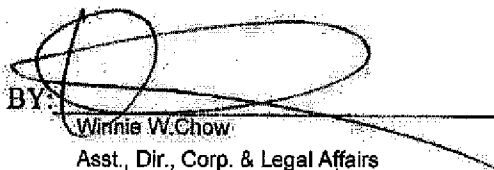
#### ARTICLE IX- ELECTRONIC SIGNATURE

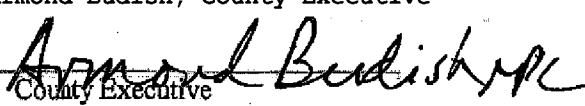
9.1. By entering into this Contract, Provider, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. Provider further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the County and Provider have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

**OPEX CORPORATION**

**CUYAHOGA COUNTY, OHIO**

BY:   
Winnie W. Chow  
Asst., Dir., Corp. & Legal Affairs

Armond Budish, County Executive  
BY:   
County Executive  
2015-06-25 09:41:48

**Schedule A**

**MASTER MAINTENANCE AGREEMENT ("Agreement")**  
 By and between OPEX CORPORATION ("Vendor") and  
 County of Cuyahoga, Ohio ("Customer")

04 / 06 / 2015 ("Effective Date")

**1. BASIC TERMS.**

**1.1 Equipment Covered.** The machines specifically identified by serial number on Exhibit "A" shall be covered by this Agreement (collectively "Equipment"). Vendor shall furnish "Maintenance Service" (as defined in Paragraph 2.1 below) on Equipment at Customer's various Equipment "Sites" (as defined in Paragraph 2.2 below). Upon mutual agreement between the parties, and pursuant to the terms herein, Equipment may be added or deleted from the Exhibit "A" from time to time. All Maintenance Service shall be provided in consideration for the payment of Vendor's maintenance charges set forth herein, plus all sales and use taxes and such other governmental charges as may be imposed on the provision of goods and services hereunder. Service rates for the first year of this Agreement are detailed within Exhibit "B."

**1.2 Effective Date; Renewals.** Maintenance Service shall begin on the Effective Date listed above and shall continue for one year ("Initial Term"). This Agreement may be renewed from year-to-year upon the mutual agreement of both parties ("Renewal Term"). Payment by Customer of Vendor's invoicing for any Renewal Term shall be deemed as mutual agreement by the parties to renew this Agreement. Rates during any Renewal Term are subject to Vendors then current pricing.

**1.3 Equipment Not Previously Covered.** Any machine which Customer seeks to add to this Agreement that has not been continuously covered by a maintenance agreement with Vendor since the expiration of its warranty period, shall be subject to inspection by Vendor. After such inspection, if Vendor, in its sole discretion, determines that the machine is not operating in conformity with the "Published Specifications" (as defined in Paragraph 1.4 below), the machine shall be restored to good operating condition at Customer's expense, subject to Vendor's then current rates, as a condition of adding the machine to Exhibit "A."

**1.4 Routine Cleaning.** The day-to-day routine cleaning and minor adjustments on the Equipment, as described in both Vendor's equipment operating manuals and other supplementary material ("Published Specifications") which may be furnished by Vendor to Customer from time to time, shall be performed by Customer. Vendor will notify Customer in writing if the Customer fails to perform routine cleaning on the Equipment.

**2. MAINTENANCE SERVICE.**

**2.1 Maintenance Service, Generally.** Maintenance Service is defined as all labor and replacement parts necessitated by normal wear and tear from operation of the Equipment in accordance with Vendor's Published Specifications, in order to maintain the Equipment in good operating condition ("Maintenance Service").

**2.2 Definition of Customer's Equipment Site(s).** "Site" is defined as the one (1) floor within Customer's premises specified in Exhibit "A." Equipment moved to a different Site is subject to the limitations described in Paragraph 7(j) below.

**2.3 Service Calls.** Preventive Maintenance Service calls are those periodic calls initiated by Vendor to keep the Equipment operating in accordance with Vendor's Published Specifications ("PM's"). Demand Maintenance Service calls are those calls initiated by Customer to request that Vendor repair Equipment that is malfunctioning or not operating in accordance with the Published Specifications ("Demand Calls"). (A PM may be performed in conjunction with a Demand Call placed by Customer, depending upon, and at the discretion of, Vendor's service technician.) The minimum number of PM's and maximum number of Demand Calls for each piece of Equipment are outlined in the chart below.

Machine Type	Model 72	AS7200i
Demand	unltd	unltd
Preventive Maintenance	12	6

Demand Calls in excess of the maximum may be billed at Vendor's then current rates. Additionally, if Vendor, in its sole discretion, determines that the number of "unlimited" calls becomes unreasonable, Vendor reserves the right to charge for excessive Demand Calls after providing written notice to Customer.

**2.4 Field Service Reports.** Vendor shall furnish a summary of the Maintenance Service provided to the Customer upon completion of each Maintenance Service call ("Field Service Report"). The Field Service Report shall contain the following information: (1) date and time of arrival; (2) specific identification of Equipment serviced; (3) time of Maintenance Service; (4) description of the malfunction (if any); and (5) list of parts replaced.

**2.5 Response Times.** For all Equipment, Vendor shall exert all reasonable efforts to respond to Demand Call requests within four (4) hours after such call is received by Vendor, during the designated Coverage Hours.

**2.6 Parts.** Only new standard parts or parts of equal quality shall be used in providing Maintenance Service. Title to all replacement parts provided during the course of providing Maintenance Service pursuant to this Agreement will pass to Customer upon installation.

**3. GENERAL TERMS.**

**3.1 Standard Maintenance Charge.** Vendor's standard maintenance charge provides for Maintenance Service to Equipment covered during any mutually agreed upon Coverage Hours, subject to the terms and conditions set forth in Paragraph 4 below ("Standard Maintenance Charge").

**3.2 Equipment Usage Charge.** Actual Equipment usage shall be measured by Vendor every three (3) months or thirteen (13) weeks ("Quarterly Basis"). Any particular piece of Equipment which processes envelopes in excess of the volumes specified below shall be subject to an additional charge ("Additional Usage Charge"). Additional Usage Charges shall be calculated on half-shift increments; and shall be invoiced based upon 25% of Vendor's Standard Maintenance Charge.

To the extent that the number of envelopes processed by a particular piece of Equipment exceeds the numbers set forth below on a Quarterly Basis, an Additional Usage Charge shall apply:

<u>Equipment</u>	<u>Envelopes per quarter</u>
AS7200	N/A*
Model 72	N/A*

\*NOTE: In the event that Equipment usage is extraordinary, Vendor, in its sole discretion, reserves the right to establish an Additional Usage Charge for this Equipment after providing Customer written notice.

**3.3 Maintenance Service Coverage Hours, Generally.** All Equipment located at a particular Site must be maintained during the same Maintenance Service schedule ("Coverage Hours"). Coverage Hours shall be governed by the terms and conditions set forth below.

**3.3.1 Coverage Hours for a Site with an Eagle or System 150.** For a Site, Coverage Hours shall be 7:00 am to 3:00 pm (Site local time), Monday through Friday, excluding Vendor Holidays.

**3.4 Altering Coverage Hours.** Customer shall be able to increase, decrease or shift, the Coverage Hours for a Site. However, in no event, may the Coverage Hours be decreased to less than forty (40) hours per week.

**3.4.1 Increasing Coverage Hours.** Upon thirty (30) days written notice, Customer may increase the Coverage Hours for a particular Site. Any increase in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates based upon half shift increments.

**3.4.2 Decreasing Coverage Hours.** Upon sixty (60) days written notice, Customer may decrease the Coverage Hours for a particular Site. This 60-day notice period applies to any decrease in Maintenance Service, including removing Equipment or Equipment options, reducing the number of covered shifts, or total termination of Maintenance Service for a Site. The notice period shall begin to run from the

date on which Vendor receives the written notification. Upon receipt of the 60-day notice, Customer will be provided a credit for any unused Maintenance Service towards future Equipment or Maintenance Service, calculated from the date of the expiration of the sixty (60) day period.

**3.4.3 Shifting Coverage Hours.** Upon thirty (30) days written notice, Customer may shift the Coverage Hours for a particular Site. Any shift in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.5 Vendor Holidays.** Vendor observes the following holidays: New Year's Day; President's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; and Christmas Day. Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on Vendor Holidays. Vendor Holiday coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.6 "Weekend" Coverage.** Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on the two days per week not covered pursuant to either Paragraph 3.3.1 or Paragraph 3.3.2 above, whichever is applicable ("Weekend Coverage"). Weekend coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.7 Invoicing.** Vendor shall invoice Customer annually in advance for the Standard Maintenance Charge. Any additional service charges (eg machine restoration pursuant to Paragraph 1.3, Weekend Coverage, etc.) shall be invoiced quarterly in arrears. Terms of payment are net thirty (30) days from date the invoice is issued. Late payments shall bear interest at the lesser of (i) 2% per month or (ii) the highest permissible rate by law, payable monthly.

#### **4. PROPRIETARY TECHNOLOGY AND DIAGNOSTICS; CONFIDENTIALITY.**

**4.1 Technology.** Vendor holds intellectual property rights in the Equipment, which includes the Equipment's computer operating system, software components and mechanical components (collectively "Technology"). No licenses, either express or implied, under any patents are granted by Vendor to Customer hereunder, except as expressly stated herein. Customer agrees that it shall not copy, remove, use (except for operation of the Equipment in accordance with the Published Specifications), or disclose Technology to any third party.

**4.2 Diagnostics.** In providing Maintenance Service, Vendor utilizes certain software diagnostics ("Diagnostics"). Vendor holds intellectual property rights in the Diagnostics, and the Diagnostics are for Vendor's exclusive use. Except with the express written consent of Vendor, Customer shall not use, copy, remove, or alter the Diagnostics. It is understood and agreed by Customer that upon termination of this Agreement, Customer shall either: (i) Return the Diagnostics to Vendor at Vendor's expense; or (ii) Purchase, according to Vendor's then current rates, a non-exclusive, non-transferable and personal limited license to use the Diagnostics.

**4.3 Confidential Information.** During the term of this Agreement, either party may have access to, or be given, certain technical information or data, customer information or data, manuals, drawings, sketches, models, samples, tools, or the like, of the other Party, which are of a confidential and/or proprietary nature (collectively "Information"). All Information furnished to the receiving party, whether written, oral or otherwise, shall remain the sole and exclusive property of the disclosing party. Upon request, all Information shall be returned to the disclosing party. Unless such Information: (i) was previously known to the receiving party free of any obligation to keep it confidential; (ii) is subsequently made public by the disclosing party or by a third party, other than by breach of agreement; or (iii) is required to be disclosed to any governmental agency or court of competent jurisdiction by written order or decree (in which case the disclosing party shall be given prompt notice by the receiving party of such order or decree, and shall be given an opportunity to contest or direct such disclosure); the Information shall be kept confidential by the Receiving Party and shall be used solely for the purposes of fulfilling the terms of this Agreement.

#### **5. WARRANTY; WARRANTY LIMITATIONS.**

Vendor warrants that all work required to be performed hereunder shall conform to the descriptions contained in this Agreement and will be performed in a professional manner according to generally accepted industry standards. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND THERE ARE NO WARRANTIES WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

**6. INFRINGEMENT AND GENERAL INDEMNIFICATION.**

**6.1 Patent, Copyright and Trademark Infringement Indemnification.** Vendor will (i) indemnify, hold harmless and defend Customer, at Vendor's expense, from and against any claim brought against Customer alleging that any portion of the Equipment infringes a European Union, Canadian or United States patent, copyright, trademark, or other intellectual property right, of any third party; and (ii) hold Customer harmless from and against all costs and damages finally awarded, provided that Vendor is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.

**6.1.1 Infringement Defense.** In the defense or settlement of a claim pursuant to Paragraph 6.1 above, Vendor may: (i) obtain for Customer the right to continue using the Equipment; (ii) replace or modify the Equipment so that it becomes non-infringing; or (iii) if remedies (i) and (ii) are not reasonably available, grant Customer a depreciated refund pro-rata based upon a sixty (60) month life, measured from the original installation date of the Equipment.

**6.1.2. Infringement Indemnification Limitations.** Vendor shall not have any liability if the alleged infringement is based upon the use or sale of the Equipment in combination with other products or devices not furnished or approved by Vendor. VENDOR DISCLAIMS ALL OTHER LIABILITY FOR PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, INCLUDING ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THE RIGHTS STATED HEREIN ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

**6.2 General Indemnity.** Vendor shall indemnify and hold harmless Customer, its affiliates, and its and their directors, officers, employees and agents from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including legal fees and expenses) to or in favor of others, as well as all claims, causes of action and suits by others; including without limitation employees, subcontractors or agents of the Customer and its affiliates for personal injury (including death) or real and/or tangible property damage, arising out of acts or omission to act under this Agreement.

**6.3 Defense of Claim.** In the event of any such claim set forth in Paragraph 6.2 above, at the request of the Customer, Vendor shall at its sole expense defend all claims, suits or proceedings arising out of the foregoing. Vendor shall be notified promptly of any such claims, suits or proceedings in writing, and shall have full and complete authority, information and assistance for the defense of such claim; provided, however, Vendor shall have no authority to enter into any settlement or compromise on behalf of the Customer without the prior written consent of the Customer, which consent shall not be unreasonably withheld. In all events, the Customer shall have the right to participate in the defense of any proceedings with counsel of its own choosing, at its expense.

**7. LIMITATIONS.**

**7.1 Maintenance Service Limitations.** Notwithstanding anything herein to the contrary, Vendor shall have no obligation hereunder to provide Maintenance Service to Equipment which has deteriorated to such an extent that it cannot, in the reasonable discretion of Vendor, be maintained and needs to be replaced. Vendor shall provide written notice of any such deterioration. Vendor's obligations to provide Maintenance Service shall also terminate if Customer:

(a) fails to provide Vendor with sufficient access to the Equipment, subject to Customer's reasonable Site policies and procedures;

(b) negligently stores, handles operates or alters the Equipment, or uses the Equipment for purposes other than those set forth in the Published Specifications;

(c) continues to fail to provide routine cleaning after being provided notice by Vendor pursuant to Paragraph 1.3 above;

(d) fails to continually provide a suitable environment with all facilities and power as prescribed in the Published Specifications;



- (e) uses or operates the Equipment beyond its intended design parameters;
- (f) damages the Equipment through its use in conjunction with machinery or software not covered by this Agreement;
- (g) performs work, or allows a third party to work, on the Equipment, which is not authorized by Vendor;
- (h) alters or modifies in any way, the safety mechanisms, without the written consent of Vendor;
- (i) operates the Equipment with envelopes or enclosures other than those specified in the Published Specifications; or
- (j) Customer's relocating Equipment to a Site other than that defined in this Agreement; provided, however, that should Vendor and Customer agree to continue Maintenance Service on Equipment moved to another Site, Customer's Equipment shall be subject to inspection by Vendor, at Vendor's published rates and terms then in effect for such service, prior to Vendor resuming Maintenance Service on Customer's Equipment.

**7.2 General Limitations.** In no event shall either party be liable to the other, whether in an action in negligence, contract or tort or based on a warranty or otherwise, for loss of profits, revenue, or loss or inaccuracy of data, or any indirect, incidental, punitive, special or consequential damages incurred by the other party or any third party, even if the party has been advised of the possibility of such damages. Further, except to the extent that liability arises from: (i) a breach by either party of its confidentiality obligations in Section 4.3; or (ii) instances of either Party's gross negligence or willful misconduct; each party's liability for damages under this Agreement, whether in an action in negligence, contract or tort or based on a warranty, shall not exceed the annual fees payable for the Maintenance Service.

**8. GENERAL PROVISIONS.**


**8.1 Fees Due For Breach.** In the event that one of the parties hereto breaches or defaults on any of its obligations or responsibilities under this Agreement (the "Breaching Party"), then on behalf of the party not in default (the "Non-Breaching Party"), the Breaching Party shall indemnify, and be responsible for, the reasonable attorneys' fees, costs, and expenses incurred by the Non-Breaching Party in enforcing or remedying any breach hereunder by the Breaching Party.


**8.2 Rights Cumulative; Non-Waiver.** All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure or delay by either party to enforce any contract term herein shall not be deemed a waiver of future enforcement of that or any other term.

**8.3 Order of Precedence.** Unless otherwise provided herein or agreed to in a signed writing, documents will apply in the following descending order of precedence: (i) main body of this Agreement; (ii) Exhibits "A" and "B;" and (ii) all other transaction documents.

**8.4 Entire Agreement.** This Agreement, the Exhibits and documents incorporated herein, are the final, full and exclusive expression of the understandings of the parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral and written, of either party.

By signing below, the Parties agree to be bound by the terms of this Agreement and any attached Exhibits.

**OPEX CORPORATION ("Vendor")**  
  
 Winnie W. Chow  
 By: \_\_\_\_\_  
 Title: Asst. Dir., Corp. & Legal Affairs  
 Date: March 16, 2015

**Armond Budish, County Executive  
 County of Cuyahoga, Ohio ("Customer")**  
  
 By: \_\_\_\_\_  
 Title: 2015-06-25 09:41:50  
 Date: \_\_\_\_\_

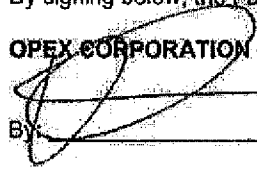
**EXHIBIT "A" EQUIPMENT SCHEDULE**

- 1) Customer's Name: County of Cuyahoga, Ohio
- 2) The Equipment covered by this Agreement is located at the following Site(s):  
 Cuyahoga County Employment & Family Services  
 1641 Payne Avenue  
 Cleveland, OH 44114
- 3) The Equipment covered by this Agreement includes the machines described below:
  - (a) Machine Description: Model 72  
 Serial Number(s): 17135
  - (b) Machine Description: AS7200i  
 Serial Number(s): A02109

By signing below, the Parties agree to be bound by the terms of the Agreement and this Exhibit "A."

**OPEX CORPORATION ("Vendor")**

**County of Cuyahoga, Ohio ("Customer")**  
Armond Budish, County Executive

BY:  Winnie W. Ghow

By:  Armond Budish

Title: Asst. Dir., Corp. & Legal Affairs

Title: 2015-06-25 09:41:52

Date: March 16, 2015

Date: \_\_\_\_\_

**EXHIBIT "B" SERVICE PRICING**

Pricing for the Initial Term of the Agreement is based on the current rates set forth herein, prepaid annually in advance, per shift, per site. Pricing for any Renewal Term is subject to change, based upon Vendor's published rates then in effect.

<u>Product Description</u>	<u>Price Each</u>	<u>QTY</u>	<u>Extended Price</u>
Model 72	2,570.00	1	2,570.00
AS7200i	8,765.00	1	8,765.00
1D Barcode Annual License Fee	200.00	1	200.00
Data Matrix Barcode Annual License Fee	225.00	1	225.00
Image Edge Annual License Fee	555.00	1	555.00
Total Service Costs (pre-tax)			<b><u>\$12,315.00</u></b>

NOTE: THIS AGREEMENT SPECIFICALLY EXCLUDES VENDOR'S NETWORKING SOLUTION PRODUCT AND ANY OPEN SCAN PRODUCT(S). Any Maintenance Service provided by Vendor to Customer on Vendor's Networking Solution Product will be provided on a time and materials basis only, according to Vendor's published terms and rates then in effect for such service.



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
02/17/2011	201104700643	FOREIGN/DESIGNATED APPOINTMENT OF AGENT (FGS)	25.00	.00		.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

NRA | CORPORATE SERVICES LLC  
2731 EXECUTIVE PARK DR  
STE 4  
WESTON, FL 33331

# STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted

1076745

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**OPEX CORPORATION (OPEX BUSINESS MACHINES)**

and, that said business records show the filing and recording of:

Document(s):

**FOREIGN/DESIGNATED APPOINTMENT OF AGENT**

Document No(s):

**201104700643**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus,  
Ohio this 14th day of February, A.D.  
2011.

Ohio Secretary of State



**s: evaluation**

16-HS-007  
16-HS-006



**CUYAHOGA COUNTY INFORMATION SERVICES CENTER**  
**CUSTOMER SERVICE REQUEST (CSR)**  
**TECHNICAL ADVISORY COMMITTEE RECOMMENDATION REQUEST**

Shipping Number (for internal use only)  
**CF160064**

ISC PROCESS ORDER TO COMPLETION     NEEDS TAC APPROVAL ONLY

ISC INTERNAL USE ONLY (NO TAC APPROVAL REQUIRED)

[Reset Form](#)

[Print Form](#)

Request Date (MM/DD/YYYY)  
**CMK 2/3/16**

1. REQUESTOR NAME: **Nada Moyak**    2. REQUESTOR PHONE: **216-987-8958**    3. REQUESTOR DEPARTMENT: **MIS**

4. AUTHORIZED BY (Type or Print Name): **Mathew Bender**    5. AUTHORIZED SIGNATURE: *Mathew Bender*    6. DATE SIGNED: **02/01/16**

7. INDEX CODE: **HS157396**    **HO6100**    8. FUNDING SOURCE FOR THIS REQUEST:  
 AGENCY FUND     GRANT FUND     GENERAL FUND     HOMELAND SECURITY     OTHER FUNDING

9. IF BOX 8 IS OTHER, PROVIDE REFERENCE OR DESCRIPTION OF FUNDING SOURCE:    9. TOTAL ESTIMATED COST: **\$12,490.00 39,374.73**

10. TYPE OF REQUEST:  
 HARDWARE PURCHASE     SOFTWARE PURCHASE     REQUEST FOR PROPOSAL     CONTRACT NEW     CONTRACT RENEW/AMEND     SECURITY REQUEST  
 EQUIPMENT DISPOSAL     WEB OR VIDEO DEVELOPMENT     DESKTOP OR SERVER     DATABASE OR GIS SERVICES     PHONE, VOIP OR NETWORK     OTHER

11. STATEMENT OF REQUEST (INCLUDE NUMBER OF UNITS TO BE PURCHASED, IF APPLICABLE)  
Please make arrangements to enter into contract with OPEX Corporation. The contract is for software licenses and hardware maintenance for our OPEX equipment. The time frame is for April 6, 2016 through April 5, 2017 and the total price of the contract is not to exceed \$12,490.00.  
*3yrs - 4/6/16 - 4/5/19*  
*Not to exceed \$39,374.73*

12. HOW DOES THIS PROCUREMENT BENEFIT THE COUNTY? (ATTACH ADDITIONAL DOCUMENTATION AS NECESSARY)

13. COMPLETE THIS SECTION FOR SOFTWARE/CONTRACT RENEWALS/AMENDMENTS/MAINTENANCE REQUESTS ONLY

13a. VENDOR NAME: **Opex Corporation**  
13b. HOW OFTEN IS THE VENDOR CONTACTED FOR MAINTENANCE?  
13c. IS THIS THE LATEST VERSION OF THE SOFTWARE?  YES     NO  
13d. IS THIS A COST INCREASE OR DECREASE FROM PREVIOUS YEARS?  INCREASE     DECREASE  
13e. WHAT WAS THE ORIGINAL PURCHASE PRICE OF THE SOFTWARE? \$ **12,075.00**  
13f. NUMBER OF LICENSES: **1.00**    13g. COUNTY TERMS AND CONDITIONS?  YES     NO  
13h. SERVICE QUALITY RATING: (1 IS LOWEST, 10 IS HIGHEST)     1     2     3     4     5     6     7     8     9     10  
13i. HAS THE VENDOR COMPLETED ETHICS TRAINING WITH THE INSPECTOR GENERAL?  YES     NO

THIS SECTION TO BE COMPLETED BY BUSINESS GROUP ONLY:  
METHOD OF PROCUREMENT:  STATE TERM     FIELD BUY     SOLE SOURCE     COMPETITIVE BID/RFP    Date: \_\_\_\_\_

THIS SECTION TO BE COMPLETED BY TECHNICAL ADVISORY COMMITTEE ONLY:  
Recommended for Approval by TAC Chair or Designee (Signature): *Michael Bender*    Date: **2/9/16**

THIS SECTION TO BE COMPLETED UPON FINAL ACCEPTANCE OF COMPLETED REQUEST:  
ACCEPTED BY (signature): \_\_\_\_\_    Date: \_\_\_\_\_

HISTORY FOR CONTRACT/AGREEMENTS					
CECPNO	CE1500126				
AGRMTNO					
Vendor Name	Opex Corporation				
Start Date	4/6/2015				
End Date	4/5/2016				
Resolution No.					
				Extend time to	Amend Resolution No. ***
Original Amount	12,315.00				
Amendment Amounts	0.00				
Total Contract Amount	12,315.00				
***Additional Comments:					