

CONTRACT

by and between

The County of Cuyahoga, Ohio

and

WingSwept Communications, Inc.

THIS CONTRACT (the "Contract"), is made and entered into this April 30, 2012 (the "Effective Date") by and between the County of Cuyahoga, Ohio (the "County"), on behalf of the Agency of the Inspector General (the "AIG"), and WingSwept Communications, Inc., a Texas corporation with principal offices at 645 Poole Drive, Garner, NC 27529 (the "Contractor"; the County and the Contractor may each be referred to herein as a "Party" and together as the "Parties").

WITNESSETH

WHEREAS, the County issued request for proposals number 21555 on November 14, 2011 for an electronic case management system for the County Agency of the Inspector General (the "RFP," a copy of which is attached hereto as Exhibit "A"); and

WHEREAS, Contractor submitted a proposal in response to the RFP dated December 22, 2011 (the "Proposal," a copy of which is attached hereto as Exhibit "B") and the County determined that the Proposal offered a solution for the problem described in the RFP that was most advantageous to the County; and

WHEREAS, the County announced its intent to negotiate with Contractor for the purpose of entering into this Contract for the scope of work and deliverables described in the RFP (the "Project"); and

WHEREAS, the County desires to acquire the Project components from Contractor as set forth herein.

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

ARTICLE I – DEFINITIONS

1.1 Definitions. Capitalized terms used in this Contract shall have the meanings as set forth in this Article I unless a different meaning is specifically provided or the context requires otherwise:

- (a) “Business Day” means a day of the year on which the County’s offices are open and providing services to the public. Any reference to “day” herein rather than “Business Day” shall mean a calendar day.
- (b) “Contract” means this Contract and all Exhibits and other documents attached hereto, including the RFP and the Proposal referenced herein.
- (c) “Confidential Information” means information belonging to or in the possession or control of a Party which is of a confidential, proprietary or trade secret nature that is furnished or disclosed to the other party under this Contract or during the scope of performance thereunder: (i) in tangible form and marked or designated in writing in a manner to indicate its confidential, proprietary or trade secret nature, or (ii) in intangible form and subsequently identified as confidential, proprietary or trade secret in a writing provided to the receiving party within thirty (30) business days after disclosure. Confidential Information also includes information which is considered privileged under Ohio or Federal law; or information which is considered personal or otherwise excluded from the definition of public records contained in Ohio Revised Code Section 149.43 or corresponding Federal law.
- (d) “Deliverables” means the products and services described in Exhibit C, the cloud services described in Exhibit G, and the annual maintenance and support services described in Exhibit H.
- (e) “Licensed Software,” as used in this Agreement and in the License Agreement attached hereto as Exhibit F, means the CMTS (as defined below).
- (f) “Project” means delivery, customization, implementation, and training related to WingSwept’s Case Management & Tracking System (the “CMTS”) in accordance with the RFP and Proposal.
- (g) “Project Manager” means those individuals so designated in Section 2.6.
- (h) “Project Plan” means the project plan developed by Contractor and accepted by County, substantially in the form attached hereto as Exhibit “D.”
- (i) “Scope of Work” means the scope of work as described in the Project.

1.2 Context. As the context of this Contract may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation,” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or.” The words

“herein,” “hereof,” “hereunder,” “hereby,” “this Contract” and other similar references shall be construed to mean and include this Contract and all amendments hereof and supplements hereto unless the context clearly indicates or requires otherwise.

End of Article I.

ARTICLE II – TERM, STATEMENT OF WORK, AGREEMENT

2.1 Term.

- (a) The term of this Contract shall commence on the Effective Date and, unless extended or earlier terminated in accordance with the provisions of this Contract, shall terminate on April 29, 2013 (the “Initial Term” or “Term”). The parties reserve the right to extend the Initial Term by up to two additional 12-month periods, in accordance with the terms of this Contract. Upon such extension, “Term” shall include such additional periods.
- (b) Upon completion of the Term, or upon termination in accordance with Article V hereof, Contractor agrees to reasonably cooperate with and not hinder the County and any future Contractors who provide the County with hardware or software related to the copying or desk-top printing of documents, including the transfer or conversion of related data to other systems or formats.

2.2 Statement of Work. By execution of this Contract, Contractor accepts and agrees to the terms and conditions set forth in the RFP, unless otherwise stated herein. During the Term, Contractor shall provide the products, services, and maintenance described in the RFP and the Proposal, in accordance with this Contract and the Project Plan. In the event of a conflict between any provision of this Contract and any provision in the Proposal, the terms and conditions of this Contract, shall control; in the event of a conflict between any provision of the RFP and any provision of the Proposal, the provisions of the RFP shall control.

2.3 Products, Service, Maintenance

2.3.1 Contractor shall provide all products, service, and maintenance required to deliver the Project in accordance with this Contract and the pricing schedule attached hereto as Exhibit “E” (the “Pricing Schedule”). Services to be provided by Contractor include, without limitation, the following:

- (a) Software and Perpetual License, substantially in the form attached as Exhibit “F,” including electronic CD and license key;
- (b) Functional Analysis and Design – on-line sessions and proposed functional screenshots and related documentation;
- (c) Professional Services for Configuration – on-line sessions;
- (d) Professional Services and method for importing existing data – migrate existing Inspector General case data into the new CMTS;
- (e) Documentation – online and PDF system administrator and user’s manual;

- (f) Technical and User Training – onsite presentation and hands-on training;
- (g) Monthly Cloud Services, as described on Exhibit “G”;
- (h) Annual Maintenance and Support, in accordance with the maintenance plan attached as Exhibit “H” (the “Maintenance Plan”)
- (i) The Deliverables.

2.3.2 Service Level.

- (a) Unless Contractor otherwise notifies County of a scheduled outage, which notice shall be provided not less than one Business Day prior to such outage, Contractor warrants 99% “uptime” between the hours of 7:00 am and 6:00 pm on a Business Day.
- (b) All products, services and maintenance provided by Contractor under this Contract shall be provided in a professional manner consistent with the skills customary in the industry, and in accordance with the standards of the County Information Services Center and the AIG.

2.3.3 Software.

2.3.3.1 Contractor Proprietary Software

- (a) Definition: Contractor Proprietary Software is defined as all computer programs, written prior to the term of this Contract, which are used by Contractor in execution of the terms and conditions of the Contract (and the documentation used to describe, maintain and use the programs) and which is not defined herein as either Third Party Software or Custom Software.
- (b) Title: Contractor shall retain title at all times to all Contractor Proprietary Software, which includes all future improvements, upgrades, versions, releases, updates, enhancements, derivative works or technical modifications thereto; and related copyrightable materials pertaining to such software programs and any copies of any part of the foregoing. The County understands and agrees that Contractor Proprietary Software is the sole and property of Contractor and that the County shall have no ownership rights therein, other than a perpetual license to use said software.
- (c) License. Contractor does hereby grant and the County accepts a perpetual, royalty-free, non-exclusive right and license to use the Contractor Proprietary Software for an unlimited number of users.
- (d) Confidentiality of Contractor Intellectual Property Interests. County acknowledges that the Contractor Proprietary Software incorporates copyright protected code and documentation, and County shall hold said code in trust and shall not disclose, publish, release, transfer, assign or otherwise make available the Contractor Proprietary Software, in any form,

to any person other than an employee of the County or Contractor, without the prior written consent of Contractor.

- (e) Contractor's Proprietary Software was developed in a component-based framework using Microsoft's object-oriented development standards. This structure, as well as the intended use of the County's relational database management system, affords the County the ability to access said software components and/or the relational database with software programs written by others. Such access to either the software component objects of the Contractor Proprietary Software or the database shall not be construed as a violation of the licensing or confidentiality provisions of this Contract. Contractor shall not be liable for any damage to the database resulting from County's negligence when accessing the database.

2.3.3.2 Third-Party Software.

- (a) Definition: Third-Party Software is defined as all computer programs and software owned parties other than the Parties hereto that may be utilized by Contractor in execution of the terms and conditions of the Contract and the documentation used to describe, maintain and use such programs and software. Third Party Software anticipated to be necessary for the Project include the County's existing database software.
- (b) Title: All Third-Party Software is and shall remain the property of such third-party owner. The County shall be responsible for maintaining the licensing on the existing database software. All remaining Third-Party Software necessary for performance hereunder shall be provided by Contractor pursuant to this Contract, and Contractor will warrant that it has received all proper authorizations from the owner to license to the County, as applicable, any Third-Party Software provided hereunder. The County agrees to hold and use the Third-Party Software products in the same manner as it would deal with its own Confidential Information. The County shall not divulge, nor permit any of its employees, agents, or representatives to divulge any proprietary information with respect to Third-Party Software, the technology embodied therein, or any documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as may be specifically authorized by Contractor or such third-party owner, as applicable, or as may be required by law. Contractor shall provide perpetual license, or such other license as otherwise obtained by Contractor, for the County to use any Third-Party Software and shall submit copies of all licenses for Third-Party Software to the County prior to obtaining such software. The County shall be entitled to all Floppy Disks, Compact Disks, Digital Video Disks, Flash Drives or other medium upon which the software is contained, all manuals, all update privileges, and all other benefits associated with the purchase of the software from the third party. Said Third-Party Software shall be registered to the County so that future patches, and updates can be delivered to the Cuyahoga County Information Service Center.

2.3.3.3 Custom Software.

- (a) Definition: Custom Software is defined as made-for-hire, custom written and customer specific computer programs developed and used by Contractor in execution of the terms and conditions of the Contract and the documentation used to describe, maintain and use the programs. Custom Software does not include modifications or amendments to Contractor Proprietary Software developed pursuant to this Contract.
- (b) Title: Any and all Custom Software or documentation developed by Contractor pursuant to this Contract is and shall remain the property of the County. The County hereby grants Contractor a royalty free perpetual license to copy, use and modify the Customized Software. A copy of the Source Code for all Custom Software shall, upon demand, be provided to the County in a decrypted, open and modifiable format.

2.3.4 Warranty.

2.3.4.1 Contractor warrants that all software provided under this Contract shall be free from defects in material and workmanship for one year after the County accepts the Project. At the option of the County, and in the County's sole discretion, Contractor shall repair, replace, or exchange any defective software that the County reasonably determines to be defective. Contractor shall bear all costs and risks associated with the return of any defective software.

2.3.4.2 Contractor warrants that it has clear and marketable title to any software provided by Contractor under this Contract.

2.4 Security Standards. Contractor agrees to maintain security standards consistent with the security of the County Information Services Center, which include strict control of access to data and maintaining confidentiality gained while Contractor carries out its duties. Contractor agrees to keep all County information it is exposed to in the course of performing the Services hereunder confidential and to comply with all federal and state laws relating to the confidentiality of such information.

2.4.1 Contractor agrees to consider all knowledge gained from access to the County Information Services Center applications, systems and programs as proprietary information supplied in the strictest confidence and shall release it only to authorized employees/agents requiring such information, shall not release or disclose it to any other party or use it for manufacture or any other purposes except as required under this Contract, without the expressed written approval of the County and any other holder of an ownership right in such information. All data and other records, including data and records of the State of Ohio ("State") clients entered into any database, files, and data stores of the County or other agencies of the State or supplied to Contractor by the County or the State are and shall remain the sole property of the County and the State. Contractor shall not, without the County's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract. The County shall have access to all

data dictionaries and entity/table relationships, provided that same shall be treated as proprietary information for purposes of this agreement and the License Agreement attached as Exhibit F. County encryption keys and passwords shall belong to the County and shall be treated as a trade secret of the County. The term "proprietary information" as used in this clause shall include any device, process, method or technique originated by or peculiarly within the knowledge of Cuyahoga County, Ohio and its contractors, Contractors, representatives, employees, and those in privity with it, which is not available to the public and is subject to protection as property under recognized principles.

2.4.2 Contractor understands that the systems contemplated under this Contract will be used to electronically store (or interface with) data previously stored on paper, and Contractor agrees to exercise its best efforts to assure that the final configuration of the system will be secure, and will comply with all digital imaging and electronic records standards so that the admissibility of such records in judicial, administrative and auditing proceedings will be preserved.

2.4.3 Contractor agrees to use its best efforts to assure that the proposed system will be in compliance with all Federal and State laws and regulations, including but not limited to, Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Electronic Signatures in Global and National Commerce Act of 2000 (S.761); the U.S. Department of Health and Human Services Regulations contained in 21 CFR Part 11; the Ohio Electronic Records and Signatures Act of 2000 (Sub. H.B. 488) O.R.C. §1306.01 et seq.; Ohio Supt. Rules 26 and 27, and the relevant digital record requirements of the Ohio Rule of Evidence.

2.5 Approval Process. Contractor's Project Manager shall submit each Deliverable to the County Project Manager on or before the specified delivery date contained in the Project Plan.

2.5.1 Within 15 days of receipt of a Deliverable, the County shall approve or disapprove the Deliverable by providing written notice to Contractor describing in reasonable detail the ways in which the deliverable fails to conform to the established requirements or industry standards, and may suggest corrections or improvements which may cause the deliverable to meet such requirements or standards.

2.5.2 Contractor shall resubmit the deliverable to the County for approval within 30 days of any such disapproval (which time period may be extended at the sole discretion of the County).

2.5.3 The County shall give written notice to Contractor of its approval or disapproval of any Deliverable (including any resubmitted Deliverable). If the County fails to provide such notice, Contractor may: (i) notify the County in writing that it intends to proceed with subsequent work unless a response is received by a date specified in such notice, and if the response of the County in writing is not received by the date specified in the notice, the deliverable shall be deemed to have been rejected by the close of business on that day; or (ii) notify the County that a response is required and that Contractor intends to delay subsequent work unless the response is received by a date specified in such notice, and if the response from the County is not received by the date specified in the notice, the dates for all events in the applicable project phase scheduled to occur after the original due date of the response shall be extended accordingly.

2.6 Project Managers, Team Members. The following named individuals shall serve as Project Managers for their respective Parties:

For the Contractor: JC Strickland, Jr.
919.600.5114 (office phone)
<mailto:Strickland@wingswept.com>
For the County: Stan Kozlowski, PMP
216.443.8111 (office phone)

2.6.1 The Project Managers shall serve as a single point of contact between the Parties and shall work to facilitate communication between the Parties and to achieve order and accountability in the performance of the Party's respective obligations under this Contract. Contractor shall not remove its Project Manager without the County's written approval. In the case of death, illness, retirement, disability, resignation or termination of the Contractor Project Manager, the replacement Contractor Project Manager shall be subject to the reasonable approval of the County Project Manager prior to commencement of work under this Contract.

2.6.2 In addition, Contractor shall submit resumes of all proposed team members to the County Project Manager prior to any such individual commencing work under this Contract; at the request of the County Project Manager, any such proposed team members shall submit to an interview with the County Project Manager. All Contractor team members shall be subject to the reasonable approval of the County Project Manager prior to commencement of work under this Contract.

2.7 Subcontractors. Contractor shall not engage any subcontractor in performing the work required under this Contract absent the written approval of the County.

End of Article II.

ARTICLE III – COMPENSATION, PAYMENT AND INVOICING

3.1 Compensation.

3.1.1 Compensation paid by the County to the Contractor under this Contract, including the Maintenance Plan, shall not exceed \$40,750.00 during the Initial Term.

3.1.2 Provided the Term is extended in accordance with Section 2.1, additional compensation paid by the County to the Contractor shall not exceed \$9,500.00 per year for each year of Optional Services, as shown on the Pricing Schedule, subject to appropriation by the County. Contractor acknowledges that County shall not be liable for the cost of any Optional Services performed by Contractor during any extensions of the Term prior to such appropriation, unless specifically agreed to by the County in writing.

3.2 Payment. In consideration of Contractor providing products, services, and maintenance in accordance with this Contract, and except as otherwise noted herein, the County, during the Term, agrees to pay Contractor in accordance with the Pricing Schedule and this Article III.

3.3 Invoicing. Contractor shall invoice County on the form attached hereto as Exhibit "I" (the "Invoice"). Any Invoice that does not include all information required may be rejected by County, in its sole discretion.

Contractor shall submit original Invoice(s) to the following address:

Cuyahoga County Information Services Center
c/o Accounts Payables
1255 Euclid Ave. 4th Floor
Cleveland, Ohio 44115-1807
Attn: Stan Kozlowski

3.3.2. County will endeavor to pay an Invoice within 30 days of approval of same by the County Project manager.

3.4. All-Inclusive Price. The prices set forth in on the Pricing Schedule are inclusive of all charges for delivery of products, services, and maintenance described in the Proposal, including any and all travel, packaging, shipment, and delivery charges. Contractor understands that the County is exempt from Federal excise tax and from all state and local taxes.

3.5. Commencement of Contract Performance. This Contract must be executed by the County Executive before compensation hereunder can be provided. The County may not pay for any products, services, or maintenance provided by Contractor prior to the execution of this Contract. In the event that Contractor provides products, services, or maintenance prior to execution of this Contract by the County, such products, services, or maintenance shall be deemed to be included in this Contract and payment(s) for same shall be in accordance with this Article III.

3.6. Audit, Records Retention. Contractor 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 Contractor be notified that an audit has been commenced pursuant to Ohio Revised Code §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.

End of Article III.

ARTICLE IV – INDEMNITIES, LIABILITIES, INSURANCE

4.1. Indemnification.

4.1.1. Contractor shall indemnify and hold harmless and, at County's option, defend or pay for an attorney selected by County to defend, County, its employees, officers, servants, and agents, from and against any and all damage, liability, claims, losses, actions, judgments, expenditures and expenses, based upon or arising out of injuries, to include death resulting therefrom, or damages to persons or property (including loss of data) caused by or sustained in connection with the performance of this Contract arising from the acts, errors or omissions of Contractor, its employees, agents, servants, or officers. The provisions of this Section shall survive the termination or expiration of this Contract. To the extent considered necessary by the County, any sums due Contractor under this Contract may be retained by County until all of County's claims for indemnification pursuant to this Contract have been settled or otherwise resolved.

4.1.2. County shall notify Contractor as soon as reasonably possible if it becomes aware of any claim for which it may be entitled to indemnification under this Article IV, and if County chooses to have Contractor defend, County hereby gives Contractor the necessary authority, and shall provide such information and assistance as is reasonably necessary (at Contractor's expense with respect to reasonable out-of-pocket costs and reasonable attorney's fees) to enable Contractor to defend, compromise or settle such claim; provided that, Contractor will consult and share all relevant information with County in connection with all stages of such defense, compromise or settlement.

4.1.3. Contractor will indemnify, defend, and hold County, its employees, officers, servants, and agents, harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys' fees) (collectively "Adverse Consequences") arising out of or relating to a claim that any part of Contractor's products, services, or maintenance provided under this Contract infringes upon any third party's copyright, trademark, service mark, trade secret, patent, or other claimed third party proprietary rights, existing as of the date hereof (a "Third Party Infringement Claim"). Contractor represents that no Third Party Infringement Claims are outstanding or have been threatened as of the Effective Date of this Contract. County shall notify Contractor promptly if it becomes aware of any Third Party Infringement Claim. County hereby gives Contractor the necessary authority, and shall provide such information and assistance as is necessary (at Contractor's expense with respect to reasonable out-of-pocket costs), to enable Contractor to defend, compromise or settle a Third Party Infringement Claim; provided that, Contractor will consult and share all relevant information with County in connection with all stages of such defense, compromise or settlement. In addition, if County is prevented by a Third Party Infringement Claim from using any part of the Contractor System or Contractor Documentation in substantially the manner contemplated by this Contract, Contractor, at County's sole option and Contractor's sole expense, shall procure for County the right to continue such use or shall replace or modify the infringing item.

4.2. Certificate of Insurance. Contractor shall have in effect during the term this Contract comprehensive auto, products, and general liability insurance wherein the County and its employees are named as co-insured or additional insured. This insurance shall protect Contractor, the County, and its employees, and any subcontractor performing work covered by

this Contract against claims for damage for personal injury including accidental death, as well as for property damages which may arise from operations under the contractual agreement whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them.

4.2.1. An exact copy of such insurance policy or policies shall be made available to the County upon request. Certificates of Insurance with the following minimum levels shall be submitted as follows:

Automobile Liability in an amount no less than \$1,000,000.

4.2.2. The policy or policies shall contain the following, special provisions:

“Contractor agrees that ten (10) days prior to cancellation or reduction of the insurance afforded by the policy with respect to the contract involved, written notice shall be mailed to the office of the Cuyahoga County Information Services Center.”

4.2.3. Any and all expense incident to the furnishing of all insurance required of Contractor, as well as the legally required performance bond, shall be borne solely by Contractor.

End of Article IV.

ARTICLE V – DEFAULT and TERMINATION

5.1. Termination for Default. The County may declare Contractor in default under this Contract, in whole or in part, if Contractor materially fails to fulfill any of its obligations and responsibilities hereunder, and Contractor is unable to cure such failure within one Business Day, or such longer period of time as may be specified in writing by the County.

5.1.1. In the event Contractor materially fails to perform its obligations and responsibilities hereunder, the County shall so notify Contractor in writing of the failure and of the time period that has been established to cure such failure (the “Default Notice”).

5.1.2. If Contractor is unable to cure the failure within the specified time period specified in the Default Notice, the County may, by giving written notice thereof to Contractor (the “Termination Notice”), terminate this Contract, in whole or in part, as of the date specified in the Termination Notice. Termination by the County will not result in any penalty or additional costs to the County; provided, however, that Contractor shall be paid for all Products provided on or prior to the date of the Termination Notice.

5.2. Termination for Financial Instability. In the event that Contractor 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 Contractor of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract in accordance with this Article VIII.

End of Article V.

ARTICLE VI - MISCELLANEOUS

6.1. Relationship of Parties. Contractor is performing pursuant to this Contract only as an independent contractor. Contractor has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between Contractor and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

6.2. Force Majeure. Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of a Force Majeure Event. For purposes of this Contract, "Force Majeure Event" shall mean the occurrence of any of the following: acts of God; the confiscation or seizure by any Government Authority; insurrections; wars or war-like action (whether actual or threatened); national strikes; landslides, lightning, earthquakes, fires, hurricanes, storms, floods or other severe weather; explosions; civil disturbance or disobedience; riot, sabotage, terrorism or threats of sabotage or terrorism; change in law that prohibits or materially interferes with development or construction of the Project; or other cause that is not within the reasonable control of the Party claiming the right to delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure Event" shall not include an inability to pay debts or other monetary obligations in a timely manner.

6.3. Notices. Wherever a Party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed delivered when delivered personally or, if delivered via certified mail with return receipt requested or via overnight courier with signature required, when the return receipt is either signed or refused, and addressed as follows:

In the case of the County: Stan Kozlowski, PMP
Cuyahoga County Information Services Center
1255 Euclid Ave., Fourth Floor
Cleveland, Ohio 44115-1807
216.443.8111 (office phone)

With a copy to: Cuyahoga County Executive
Attn: Law Director
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

In the case of Contractor: WingSwept Communications, Inc.
Attn: JC Strickland, Jr.
645 Poole Drive
Garner, NC 27529
(919) 600-5114 (office)

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.

6.4. Severability. If any section, provision in this Contract or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the extent an interpretation of a section, provision or a portion thereof can be made which will make it valid or enforceable, the Parties agree that the interpretation making it valid or enforceable should be chosen.

6.5. Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

6.6. 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.

6.7. Counterparts. This Contract may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

6.8. Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

6.9. Incorporation by Reference. All Exhibits or other attachments referenced in this Contract are hereby incorporated into this Contract by such reference and shall be considered a part of this Contract as if fully rewritten or set forth herein.

6.10. Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean a Business Day. If any time period set forth in this Contract expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

6.11. Language. The language used in this Contract shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Contract has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Contract shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Contract.

6.12. Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio. Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the Parties agree to the exclusive jurisdiction and venue of such court to resolve same.

6.13. Personal Property Taxes. The County of Cuyahoga shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County of Cuyahoga, nor shall the County of Cuyahoga pay any insurance premiums for any coverage of any property not owned by the County of Cuyahoga, Ohio. No conditions shall alter this statement.

6.14. Tax Exempt Status. The County of Cuyahoga is a tax exempt No. 29 political subdivision of the State of Ohio ([REDACTED]) Necessary tax exemption blanks will be furnished to Contractor when the Contract is signed.

6.15. Acceptance of Performance. It shall be understood and agreed that the County Project Manager shall determine finally the satisfactory quality of the Project. Failure to meet performance requirements is a reason for termination of the Contract, and Contractor shall be liable to the County for any excess cost and/or expenses incurred by the County thereafter.

6.16. Social Security Act. Contractor 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 Contractor 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 Contractor also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.17. Labor and Material. Contractor shall well, truly and promptly pay or satisfy the just and equitable claims of all persons who have performed labor or furnished materials or equipment for Contractor in the execution of this Contract, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon said work.

6.18. Assignment. Contractor 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, except to a related entity or successor in interest who acquires all or substantially all of Contractor's assets, without approval of the County; provided, however, that Contractor may subcontract any work or obligations to be performed by it pursuant to this Contract as provided for herein.

6.19. Required Contract Documents. Contractor shall provide the following documents within five (5) days of the Effective Date, and failure to do so may constitute an event of default for purposes of Article V.

6.19.1. Signature Authorization. Contractor shall provide a notarized certificate of power of attorney authorizing the individual's signature to bind the corporation or a notarized certificate of corporate resolution authorizing the signature of the document.

6.19.2. Worker's Compensation Certificate. Upon request by the County, Contractor shall provide a Certificate of Premium Payment for State Worker's Compensation Insurance, or equivalent Worker's Compensation Insurance in lieu thereof, for the state of North Carolina. This document shall be current for the period beginning on the Effective Date and continuing through the date of such request.

6.20. Certification of Personal Property Tax. By execution hereof, Contractor certifies that it is in compliance with the person property tax laws and regulations of the state of North Carolina including, without limitation, as same may apply to Contractor contracting with political subdivisions of the state of North Carolina.

6.21. Contract Processing. Contractor shall submit 1 digital and four original Contracts with original signatures, and with the documents specified in Sections 4.2 and 6.19 to the County's notice address as set forth in Section 6.3.

6.22. Electronic Signature. The Parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Contract shall have the same legal effect as if that signature was manually affixed to a paper version of this Contract. The Parties also agree, to be bound by the provisions of Chapters 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.

6.23. Amendment. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Contract.

6.24. Compliance with Laws. This Contract is subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Contractor shall comply with all County Ordinances as an integral part of this Contract. Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us>.

6.25. Discrimination Prohibited. Contractor shall not discriminate against any person or group of persons based upon race, creed, sex, religion, color, age, national origin or ancestry in its performance under this Contract.

6.26. Non-solicitation. The parties agree that they will not hire or attempt to hire, either directly or indirectly, any employee of the other during the term of this Contract and for a period of twenty-four (24) months after the expiration or termination of this Contract, without the other party's written consent. The written consent of the Appointing Authority for a County employee shall constitute consent for Contractor's hiring of a County employee; and, the written consent of Contractor's CEO shall constitute consent for the County's hiring of a Contractor employee.

6.27. Entire Agreement and Modification. This Contract, including any Exhibits and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the Contract 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, 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. In the event of a conflict between this document and any Exhibit attached hereto, or hereinafter agreed to by the Parties, the terms of this document shall control.

End of Article VI.

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

COUNTY:
THE COUNTY OF CUYAHOGA

By: Edward FitzGerald
Edward FitzGerald, County Executive

The legal form and correctness of the within document is hereby approved.

By: Gregory A. Hurd
Legal Counsel to the County

Date: 4/27/12

CONTRACTOR:
WINGSWEPT COMMUNICATIONS, INC.
(a Texas corporation)

By: JC Strickland, Jr.
JC Strickland, Jr., President

