

CONTRACT
BETWEEN COUNTY OF CUYAHOGA, OHIO
AND
TYCO INTEGRATED SECURITY, LLC
FOR DIGITAL RECORDING EQUIPMENT AND SERVICE MAINTENANCE

THIS CONTRACT ("Contract") is entered into this 21st day of Sept., 2013 ("Effective Date"), by and between the County of Cuyahoga, Ohio, on behalf of the Department of Public Safety & Justice Services, Cuyahoga Emergency Communications System (the "County"), and Tyco Integrated Security, LLC, a corporation with principal offices located at 9100 Market Place, Broadview Heights, Ohio 44147 (the "Provider"), through its duly authorized agent:

WITNESSETH THAT:

WHEREAS, the County desires to purchase digital recording equipment and a service maintenance plan for existing and upgraded equipment; and

WHEREAS, the Provider has submitted a price quote to provide such services and equipment on February 12, 2013; and

WHEREAS, the County has decided to engage Provider and Provider has agreed to provide such equipment and maintenance services upon all the terms and conditions set forth herein,

NOW THEREFORE, the parties hereby agree as follows:

I. SCOPE OF SERVICES

A. General

The Provider agrees to provide, and the County agrees to pay for Video and/or Access Equipment, warranty, and service plan for existing and upgraded equipment pursuant to the terms of this Contract and as further described in the Scope of Work ("SOW"), attached and incorporated in this Contract as fully rewritten herein as Exhibit A.

B. Specific Services

1. The Provider shall provide equipment and warranty services as outlined below:
 - Upgrade the existing Digital Video Recorder (DVR) equipment to a New Matrix 4TB DVR
 - Programming for remote viewing for authorized individuals on or off site
 - Larger storage capacity for recording space on DVR
 - Warranty on upgraded DVR equipment (parts and labor)
 - Training on DVR operation
 - Installation/Programming/Training/Warranty all included

2. Quality Service Plan (QSP) for existing and upgraded equipment
- Labor and parts for existing and upgraded equipment
- Service and Maintenance of the Video Surveillance System; the Access Control System; and the Intercom System as Installed

II. TERM

The term of this Contract shall begin on November 1, 2013 and shall continue, unless extended by the County or sooner canceled or terminated under the provisions of this Contract, until October 31, 2015.

III. COMPENSATION; METHOD OF PAYMENT

- A. The County shall pay the Provider an amount not to exceed \$7,219.18 for the Term of the Contract.

The County shall pay Provider the following:

- A. First Contract year: \$4,653.57
 - \$2,057.96 for DVR, Installation, Programming, Training
 - \$270.97 for Warranty on Parts/Labor for the upgraded equipment
 - \$2,294.64 for Annual QSP Service Maintenance Plan for the upgraded and the existing equipment
- B. Second Contract year:
 - \$2,565.61 for Annual QSP Service Maintenance Plan for the upgraded and the existing equipment

Provider shall submit to the County a quarterly invoice for the services provided and County shall remit payment within forty-five (45) days following the date of the invoice.

- B. Annual Appropriations. All of the County's obligations under this Contract are contingent upon the County Council's appropriating the funds on an annual basis necessary for the continuation of this Contract in any contract year. In the event the funds necessary for the continuation of this Contract are not appropriated or approved, the County will notify the Provider of such occurrence in writing. This Contract shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Contract and shall not be considered to be a breach or default on the part of the County, and shall not result in the County having liability to the Provider or any third party for any penalty, liability or any other expense.

IV. TERMINATION

- A. For Cause. If either party breaches any terms of this Contract, the non-breaching party shall have the right to immediately terminate this Contract by giving written notice of termination to Provider. The breaching party shall have 30 days from receipt of the notice of termination to cure or submit a plan for

cure acceptable to the non-breaching party.

- B. For Convenience. The County shall have the right to terminate this Contract at any time during the term with fifteen (15) days advance written notice to Provider. The County shall compensate the Provider for the work completed up to the date of termination.

Provider may terminate this Contract with 30 days written notice if: a) if Provider's Central Monitoring Center (CMC) is substantially damaged by fire or catastrophe or if Provider is unable to obtain any connections or privilege required to transmit signals between the County's premises, Provider's CMC or the Municipal Fire or Police Department or other first responder; and b) Provider is unable to obtain or provide technologies, TeleCom Services, Communication Facilities, Equipment or component parts thereof are discontinued, become obsolete or otherwise not commercially available.

- C. 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 (iv) 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 paragraph (B) above, by giving written notice thereof.

V. INSURANCE

- A. The Provider shall procure, maintain, and pay premiums for the following forms of insurance:

- (i) 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).

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

- (ii) 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.

- (iii) 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.

B. Mandatory Requirements for All Insurance Coverage

- (a) The insurance policies of the Provider required above shall each name the "County of Cuyahoga, Ohio" as an Additional Insured and shall contain the following provisions:
 - (i) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
 - (ii) The insurance required above 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.
- (c) These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.
- (d) 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.
- (e) The Provider shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverage(s) required herein is 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.

VI. INDEMNIFICATION AND LIABILITY

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 directly from the negligent acts or omissions of Provider, including all of its officers, owners, principals, subcontractors, employees, and agents.

VII. LIMITATION OF LIABILITY

To the fullest extent permitted by law, and notwithstanding any other provision of this Contract, the total liability of Provider to the County and anyone claiming by or through the County, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the services provided under this Contract from any cause or causes shall not exceed an aggregate amount of \$1M (one million dollars) under this Contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising. In no event shall Provider be liable for loss of profits, indirect, incidental, special, consequential or similar damages whether or not Provider has been advised of the possibility of such damages arising out of any breach of this Contract. This Limitation on Liability does not apply to any infringement claims that may arise under this Contract.

VIII. WARRANTY

Notwithstanding anything to the contrary, Provider's warranty for the equipment and services described in the Scope of Work is in lieu of all other warranties, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.

IX. INTEREST

The County grants Provider a security interest in the Equipment until such date the equipment has been paid in full.

X. NOTICES

Any reports, notices, invoices or communications required in this Contract shall be sufficient if sent by the parties in the United States Mail, postage paid, to the addresses noted below:

COUNTY:

Brandy Carney, Manager
Cuyahoga County Department of Public Safety & Justice Services
330 W. Lakeside Avenue, Suite 795-A
Cleveland, Ohio 44113

Telephone: (216) 443-5691

PROVIDER:

Tyco Integrated Security, LLC
9100 Market Place
Broadview Heights, Ohio 44147
Telephone: (440) 717-5650

or at such other addresses as may be designated by written notice.

XI. ASSIGNMENT

Provider may not assign, transfer, convey, sell or pledge its rights or interest in this Contract or any part thereof, or any right or privilege created hereunder without the County's written consent, except that Provider may assign its rights and obligations under this Contract without the approval of County to any of its affiliates, subsidiaries or parent companies. Provider may assign its rights hereunder to an entity other than an affiliate, subsidiary or parent company if the entity (a) acquires all or substantially all of the assets or stock of, merges or consolidates with or into, or acquires a controlling interest in the Provider, (b) the entity is duly organized and validly existing under the laws of the State or duly qualified to do business therein; (c) expressly assumes in writing Provider's obligations and responsibilities hereunder, and (d) the written consent of the County is obtained, which consent should not be unreasonably withheld.

XII. MISCELLANEOUS

- A. **Governing Law and Jurisdiction.** This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. 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 any provision in this contract, including this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.
- B. **No Indemnification by County.** Provider acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and 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.

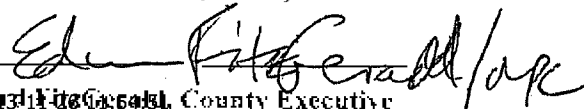
- C. Entire Agreement. This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- D. No Apparent Authority/Proper Approvals. 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's Contracting and Purchasing Procedures Ordinance.
- E. Parties Bound and Benefited. This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- F. Non-Waiver. The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- G. Contract Interpretation and Construction. In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract. In the event of any conflict between the provisions of this Contract and the exhibits to this Contract, the provisions of the document shall govern in the following order: (1) this Contract; (2) the SOW.
11. 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.

- I. Severability. If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provision and the remainder of this Contract shall be and remain valid and binding as though such provision was not included.
- J. Applicable County Ordinances. All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.
- K. 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.
- L. Electronic Signature. By entering into this Contract, Provider agrees on behalf of its respective officers, employees, subcontractors, subgrantees, 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 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 also agrees 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 County.

IN WITNESS WHEREOF, the County and the Provider have executed and delivered this Contract as of the date first written above.

COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive

BY: 
Edward FitzGerald, County Executive

TYCO INTEGRATED SECURITY, LLC

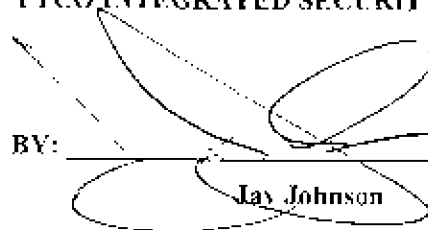
BY: 
Jay Johnson 9.27.13

EXHIBIT A

SCOPE OF WORK (SOW)

A. Equipment and Services to be provided

Provider (or "Tyco") agrees to install or cause to be installed the following Equipment and furnish the Service(s), collectively, the Covered System:

1. Closed Circuit Television ("CCTV") Video System
 - a) System operation: All video equipment, including, but not limited to, monitors, digital video recorders, power supplies, dome cameras, intercom, door stations, power supplies, relays, cables
 - b) Service: QSP Protection plan (parts & labor) to cover existing equipment (purchased with Purchase Orders dated 5/5/2008 and 9/8/2010) and upgraded equipment
 - c) Ownership of System and/or Equipment: Tyco Owned - Tyco may remove or upon written notice to the County, abandon in whole or in part, all devices, instruments, appliances, cabinets, and other materials associated with the system, upon termination of this agreement, and the removal or abandonment of such materials shall not be held to constitute a waiver of the right of Tyco to collect any charges which have been accrued or may be accrued hereunder.
2. ADT VR-LT, 16 Channel DVR, Looping Video, H.264, 480ips/CIF, 192ips/2CIF, 96ips/4CIF, DVD-RW, 4TB; and Regular Labor (4)
 - a) System Operation: conversion to new DVR equipment, all other equipment the same
 - b) Programming Info: install tech to program for remote viewing
 - c) Training: install tech to train County on operation of DVR equipment
 - d) Ownership of System and/or Equipment: Direct Sale - equipment to become property of the County upon payment of Installation Charges and Fees in full.
 - e) County's responsibilities: provide static IP address and internet connection for remote viewing programming

B. Equipment Installation ("Equipment")

Tyco will install, or cause to be installed, the Equipment as set forth in Section 1 above in the County's designated facility(ies). As used herein, "installation" means: (i) affixing all Equipment and materials provided by Tyco at such locations within the facility(ies) as are designated by County; (ii) providing and pulling cables/wires required to connect the Equipment to County's Communications Facilities and making such connections; (iii), in the case of a Digital Communicator installation, mount Equipment and plug into RJ45X phone jack previously installed by County; (iv) in the case of radio installation, mount radio Equipment and program Equipment with number furnished by County; (v) providing and installing software/firmware required by the Equipment; (vi) performing testing as required to establish that the Tyco Equipment is connected, is functioning according to its specifications, and is communicating over County's Communications Facilities; and (vii) providing user-level training to County's designated representative in the use of such Equipment.

C. Quality Service Plan ("QSP")/Maintenance

1. Tyco will, upon County's request, provide and bear the expense of ordinary maintenance and repair of the Covered System(s) for issues arising out of normal wear and tear. The expense of all extraordinary maintenance and repair necessitated by or due to changes or alterations in the County's premises, alterations to a Covered System made by County, or made necessary by damage to the premises or to a Covered System, or to any cause beyond the control of Tyco, will be borne by the County. County will furnish, at County's expense, any necessary electric current and will furnish an outlet within 10 feet of an alarm control panel.

2. The following are not covered under QSP and any requested service will be provided on a time and materials basis: (1) window foil, (2) security screens, (3) any exterior mounted devices, (4) Programmable Read Only Memory "PROM", (5) batteries, and (6) "Conditions" not covered by warranty shown below.

3. Tyco's obligation to perform QSP Service relates solely to the Covered System(s) and Tyco shall not be obligated to maintain, repair, service, replace, operate or assure the operation of any device or devices not covered under QSP. Tyco is not liable for any loss due to water intrusion, mold, fungi, bacteria, or wet or dry rot.

4. QSP Service will be furnished between 8:00 A.M. and 4:30 P.M. Monday through Friday, except holidays. Tyco's obligation to provide QSP Service is conditioned upon the continued availability of system component(s) and parts from the original equipment manufacturer ("OEM").

D. Training Services.

Tyco provides initial training to County on use of the Equipment installed at the time of installation. Thereafter, County may purchase additional training in one-hour increments at Tyco's then current rate.

E. Additional Services

County may request and Tyco may provide to the County the following additional services pursuant to a written amendment to the Contract signed by both parties: (a) Select Link - Immediate Response Information System (CRIS) (b) Managed Access Control (c) Electronic Article Surveillance ("EAS") (d) Guard Response Service (e) Radio Frequency Identification ("RFID") (f) Training Services (g) Watchman's Reporting Service.

F. Warranty

For Equipment purchased through "Direct Sale," any original part of the Equipment (as distinguished from the Software) installed under this Contract, including the wiring, which proves to be defective in material or workmanship within ninety (90) days of the date of completion of the installation ("Warranty Period"), will be repaired or replaced, in Tyco's sole discretion, with a new or functionally operative part. Labor and materials required to repair or replace such defective components will be furnished at no charge during the Warranty Period. Warranty Services will be furnished between 8:00 A.M. and 4:30 P.M. Monday through Friday, except holidays. The Warranty Period shall continue for the entire term of the QSP.

The following "Conditions" are not covered by Warranty: (a) Damage or extra service time needed resulting from accidents, acts of God, lightning, strikes, riots, floods, terrorism, acts of War, alteration, misuse, tampering or abuse, adjustments, repairs or maintenance not done by Tyco or from parts, accessories, attachments or other devices not furnished by Tyco; (b) County's failure to properly follow operating instructions provided by Tyco; (c) Adjustments necessitated by misalignment of video cameras, improper adjustment of monitor brightness and contrast tuning dials or insufficient light on the area viewed by the camera(s); (d) Trouble due to interruption of Telecom Service; (e) Battery failure; (f) Devices designed to fail in protecting the System, such as, but not limited to, fuses and circuit breakers; or (g) System changes requested by County. If repairs are required due to one of the above "Conditions," Tyco will charge County for such work on a time and materials basis at Tyco's then applicable rates for labor and materials.

G. Closed Circuit Television ("CCTV")/Video Equipment

1. System Requirements. County will provide: (i) adequate illumination under all operational conditions for the proper operation of any video camera(s); (ii) any required 110 AC power supply; and (iii) appropriate space for monitors.

2. Audio Monitoring/Recording. County's decision to install video equipment with audio recording and/or monitoring capability ("Video with Audio") is based solely on County's own independent business judgment, without any involvement or approval of Tyco. Certain laws may limit or preclude the use of Video with Audio. By installing Video with Audio in County's premises, County accepts the responsibility of knowing and fully complying with all applicable laws, including but not limited to all requirements that clear and conspicuous notice be posted in County's premises warning of County's use of audio recording and/or monitoring equipment on its premises.

II. System Software; Network Connections

1. Any software provided with the System or in connection with the Services is proprietary to Tyco and/or Tyco's supplier(s) and is licensed or sublicensed to County on a non-exclusive basis. County may not (a) disclose the Software or source code to any third parties, (b) duplicate, reproduce, or copy all or any part of the Software, or (c) use the Software on equipment other than with the designated System with which it was furnished. A separate Software License Agreement or End User License Agreement between Tyco and County and/or the software publisher may be required to use the software and/or obtain updates/upgrades. If the installed Equipment is to be connected to County's computer network ("Network"), Tyco will furnish and install the software needed to run the Equipment and will connect the Equipment to the Network according to the Network settings supplied by County. Installation shall not include modifications to the Network, security, or firewall settings. County will supply a TCP/IP Ethernet network address and central processing unit per Tyco specifications for access control system operation. Tyco shall not be responsible for the setup, operation, or maintenance of the Network or Network performance or compatibility issues. Tyco may assess additional charges, if Tyco is unable to connect to the Network or if any additional Equipment is required to facilitate connectivity between the Network and the Equipment. 2. Open Source Software. Tyco represents and warrants to the end user of the System that, to the extent the System includes any Open Source Software, the internal use and operation of the System by the end user will not create any obligation on the part of the end user under the terms of any Open Source License (i) to make any source code or object code available to third parties, or (ii) to license, disclose or otherwise make available to third parties any proprietary software, data or other information, or any associated intellectual property. As used herein, the term "Open Source Software" means any software, program, module, code, library, database, driver or similar component (or portion thereof) that is royalty free, proprietary software, the use of which requires any contractual obligations by the user such as, without limitation, that software that is subject to, distributed, transmitted, licensed or otherwise made available under any of the following licenses: GNU General Public License, GNU Library or "Lesser" Public License, Berkeley Software Distribution (BSD) license (including Free BSD and BSD-style licenses), MIT license, Mozilla Public License, IBM Public License, Apache Software License, Artistic license (e.g., PERL), Sun Industry Standards Source License, Sun Community Source License (SCSL), Intel Open Source License, Apple Public Source License, or any substantially similar license, or any license that has been approved by the Open Source Initiative, Free Software Foundation or similar group (collectively, "Open Source Licenses").

I. License Information

OTI 16782; 50-18-1052; 50-57-1034; 53-89-1329; 53-31-1582; 50-50-1019; 50-48-1032; 50-25-1050; 50-76-1025; 11824 N Creek Pkwy. #105, Bothell, WA 98011; WV 014142, MS 15005633. Additional information is available at www.tycois.com or by calling 1-800-2TYCOIS, FL: EF0001121.

J. Limitations on Liability

If County uses the Equipment and/or Services to aid in monitoring or controlling the location or activities of persons on or about its property and premises, County acknowledges that the Equipment and/or Services are not intended to be the sole means for doing so. Tyco's Equipment and Services do not cause and cannot eliminate occurrences of the events they are intended to deter, detect, avert or record. Tyco is not an insurer of the safety or security of any person, entity or property, or against the risks attendant to a person's presence in, or ingress to or egress from any building, property or area that may be monitored by the Equipment and/or Services. The amounts Tyco charges County are not insurance premiums. Such charges are based upon the value of the Equipment and Services provided and are unrelated to any such risk of loss. Tyco does not undertake and assumes no liability for such risk by providing the Equipment and/or Services. Tyco is not responsible for the preservation of any computer programs or data and County is responsible for maintaining adequate back-ups.