

CONTRACT

SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

VBrick Systems, Inc.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2012, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Council and **VBrick Systems, Inc.** ("VBrick"), a Delaware corporation with offices located at 12 Beaumont Road, Wallingford, CT 06492, (the "Provider")

WHEREAS, the County has a present need for Gold Support Service of VBrick's Video Encoder Appliance; and

WHEREAS, VBrick, is the lowest of three vendors, that can provide maintenance service for the VBrick's Video Encoder Appliance; and

WHEREAS, the County desires to avail itself of maintenance of VBrick's Video Encoder Appliance located at the Cuyahoga County Council Office and VBrick is willing to provide such service to the County ail 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, VBrick and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, VBrick shall provide the County with Gold Support Service of VBrick's Video Encoder Appliance, as listed on Schedule A (there is no Schedule A attached will need to review this Schedule) Invoice # 038033. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.

1.2 Term. The term of this Contract shall commence as of November 24, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of two years from commencement date. **(11/24/11 – 11/23/13)**. The cost of this Contact shall not exceed, **Two Thousand Three Hundred Thirty Nine Dollars and Ten Cents (\$2,339.10). (per year or in total, should be set forth in Quote.)**

ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. VBrick hereby agrees to render the services as quoted on Schedule A attached hereto and incorporated by reference herein at a total price which shall in no event exceed the amount of **Two Thousand Three Hundred Thirty Nine Dollars and Ten Cents (\$2,339.10).**

ARTICLE III - PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay VBrick for maintenance services yearly upon receipt of said invoice.

3.2 Invoicing. VBrick shall invoice the County for Maintenance Service. VBrick shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
1255 Euclid Avenue, Fourth Floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Subcontracting. This Contract was awarded to VBrick based upon VBrick's unique qualifications and skills, and no task required to be performed under this contract by VBrick shall be subcontracted to third parties without the express written consent of Cuyahoga County.

4.2 Indemnification. VBrick shall agree to release, indemnify and to hold harmless Cuyahoga County, any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for VBrick's gross negligence or willful misconduct under this contract.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between VBrick and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by VBrick or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that

each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 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. VBrick, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that VBrick 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 VBrick 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.

5.4 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 Contractor receives it. If the termination is for the convenience of the County, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before termination.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1. By entering into this Contract, VBrick, 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.

6.2 VBrick 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.

ARTICLE VII – MISCELLANEOUS

7.1 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 County Information Services Center
ATTN: Jeff Mowry
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of the VBrick:

VBrick Systems, Inc.
Holly Povinelli
12 Beaumont Road
Wallingford, CT 06492

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.

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

7.3 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio..

7.4 Assignment. VBrick 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 Cuyahoga County Executive.

7.5 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the County Executive before compensation for the

services or products set forth in this contract can be provided. Upon approval by the County Executive 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.

7.6 Entire Agreement and Modification. This Contract, including any 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, 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.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

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

VBrick Systems, Inc.

Edward FitzGerald, County Executive
Cuyahoga County, Ohio

2012-08-14 17:08:35

BY: _____

BY: _____
Edward FitzGerald, County Executive

Fed. TIN#