

CONTRACT
MAINTENANCE and SUPPORT AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

TOTAL ID SOLUTIONS, INC.

THIS AGREEMENT (the "Contract") is made and entered into this 8th day of August, 2012, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Sheriff's Office and Total ID Solutions, Inc. ("Total ID Solutions"), an Ohio corporation, having principal place of business at 6555 Wilson Mills Road, Ste 102, Mayfield Village, Ohio 44143.

WHEREAS, the County has a present need for maintenance and technical support of its Carry Concealed Weapon ID System; and

WHEREAS, Total ID Solutions, is a sole supplier and thus sole source of maintenance and support services for the Total ID Solutions Carry Concealed Weapon ID System; and

WHEREAS, the County desires to avail itself of the maintenance and support services for the County's Total ID Solutions Carry Concealed Weapon ID System and Total ID Solutions is willing to provide such maintenance and support to the County all 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, Total ID Solutions and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Total ID Solutions shall provide to the County under this maintenance and support agreement the following services as detailed in Total ID Solutions Proposal A attached hereto and incorporated by reference herein as Schedule A. 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 October 1, 2012; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for three years from the date of commencement. **(10/1/12 – 9/30/15)** This contract shall be in an amount not to exceed Six Thousand Nine Hundred Twenty Dollars and Zero Cents **(\$6,920.00)**.

ARTICLE II -- SCOPE OF WORK

- 2.1 At the request of the County, and with the consent of Total ID Solutions, Total ID Solutions may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Maintenance and Support Services Agreement between the County and Total ID Solutions under a separate and existing contract.
- 2.2 Compliance with Digital Imaging and Electronic Standards. Total ID Solutions is aware that the system designed and maintained under this Agreement is intended to replace an existing paper system with a digital records system; and Total ID Solutions represents and warrants that the proposed system will comply with all digital imaging and electronic records standards so that the admissibility of such records in all judicial, administrative and auditing proceedings will be preserved. Total ID Solutions further expressly warrants that the audit trails and security configuration of the databases and servers will be in compliance with all Federal and State laws and regulations, including but not limited to, the Health Insurance Portability and Accountability Act 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. Section 1306.01 et seq.; the final Ohio Department of Administrative Services "111" rules; and, the Ohio Rules of Evidence.
- 2.3 Record Audit Retention. Total ID Solutions 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 Total ID Solutions 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.

ARTICLE III -- PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay the costs associated with the maintenance and support agreement upon receipt of said invoice from Total ID Solutions.
- 3.2 Invoicing. Total ID Solutions shall invoice the County for 2012 maintenance and support agreement upon execution of this agreement and yearly thereafter for 2013 and 2014. Total ID Solutions shall submit original invoice(s) to the following address:

Cuyahoga County Sheriff's Office
Fiscal Department
1215 West 3rd Street, 2nd floor
Cleveland, Ohio 44113

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to Total ID Solutions based upon Total ID Solutions' unique qualifications and skills, and no task required to be performed under this contract by Total ID Solutions shall be subcontracted to third parties without the express written consent of Cuyahoga County.
- 4.2 Indemnification. Total ID Solutions shall agree to indemnify and save the County of Cuyahoga, Ohio harmless from suits or actions of every nature and description brought against the County, for or on account of any injuries (including death) to persons or damages to real or tangible property to the extent caused by an act of Total ID Solutions, its' servants or agents that arises out of the performance of the service rendered by Total ID Solutions.
- 4.3 Condition Precedent to Indemnification. The indemnities in Article IV are conditioned upon the County providing Total ID Solutions prompt written notice of the claim, allegation or action for which indemnification is sought, together with full information and reasonable cooperation and full opportunity to control the response thereto and the defense thereof.
- 4.4 Indemnification for Infringement. Total ID Solutions warrants that the County will have the full right to use the work product delivered to County and that it will not infringe upon the rights of any third party. In the event a claim is made against County for infringement, Total ID Solutions will defend the claim on County's behalf and indemnify and hold County harmless from all financial liability (including legal fees) provided:

- (a) Total ID Solutions is promptly notified in writing,
- (b) Total ID Solutions is given control of the defense and settlement of the matter,
- (c) County cooperates with Total ID Solutions, and
- (d) the claims shall not have arisen due to County's negligent or improper acts.

In addition, if, due to Total ID Solutions fault, County cannot use the software system as a result of the infringement, Total ID Solutions, at its option and expense, will either:

- (a) obtain a license for County
- (b) provide a non-infringing work-around, or
- (c) refund to client the fee relating to the infringing item.

Once Total ID Solutions has done one of the above, it shall have no further liability.

- 4.5 Warranties. All of Total ID Solutions services will be performed by qualified personnel and will be of a professional quality conforming to best practices of the industry.

The end system shall be fit for the intended use previously identified herein, and shall be capable of processing data without error, and without causing system lock-ups.

If any services do not meet this warranty, Total ID Solutions will do everything necessary, without charge, to bring its services to the specified level. In order to obtain warranty

service, the problem must be reported to Total ID Solutions within 90 days of delivery of the system in question.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Total ID Solutions and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Total ID Solutions 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. Total ID Solutions, 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 Total ID Solutions 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 Total ID Solutions 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.

ARTICLE VI – MISCELLANEOUS

- 6.1 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 Department of Information Technology
ATTN: Jeff Mowry
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of Total ID Solutions:

Michael Sloe
Total ID Solutions, Inc.
6555 Wilson Mills Road, Ste 102
Cleveland, Ohio 44143

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.

- 6.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 6.3 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.

- 6.4 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.
- 6.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 6.7 Social Security Act. Total ID Solutions shall be and remain an independent Total ID Solutions 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 the Total ID Solutions 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 Total ID Solutions also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 6.8 Assignment. Total ID Solutions 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 by resolution.
- 6.9 Contract Processing. Total ID Solutions shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Sheriff's Office
ATTN: Fiscal Department
1215 West 3rd Street, 2nd Floor
Cleveland, Ohio 44113

- 6.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Total ID Solutions prior to the execution of this agreement by the Cuyahoga County, the same will be provided at Total ID Solutions' risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the

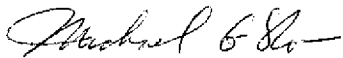
Cuyahoga County. Upon approval by the Cuyahoga County of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

- 6.11 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.
- 6.12 By entering into this Contract I agree on behalf of the Total ID Solutions, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring County signature may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the Document. I also agree on behalf of the aforementioned entities and persons, 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.

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.

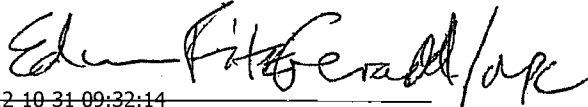
IN WITNESS WHEREOF, THE County and Total ID Solutions have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Total ID Solutions, Inc.


BY: MICHAEL G. SWEET 5/8/12



CUYAHOGA COUNTY, OHIO
Edward FitzGerald, County Executive


BY: 2012-10-31 09:32:14