

CONTRACT

by and between

CUYAHOGA COUNTY, OHIO

and

ELECTRON OPTICS SERVICE, INC.

THIS AGREEMENT (the "Contract") is made and entered into this 28 day of September, 2012, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Medical Examiner's Office and Electron Optics Service, Inc. (hereinafter the "Provider"), a New Jersey corporation with offices located at 88 Mount Pleasant Avenue, West Orange, NJ 07052.

WHEREAS, the County has a present need for maintenance service of an Amray Electron Microscope, at the Cuyahoga County Medical Examiner's Office; and

WHEREAS, Electron Optics Service, Inc. is awarded this contract, and agrees to provide service as required; and

WHEREAS, the County desires to avail itself of maintenance from Provider for maintenance service for an Amray Electron Microscope, located at the Cuyahoga County Medical Examiner's Office and Provider is willing to provide such service 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, Provider and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Provider shall provide the County with all maintenance on the Amray Electron Microscope as set forth in Schedule A – Electron Optics Service, Inc. Maintenance Contract attached herein and incorporated by reference herein. In the event that the terms and conditions of Schedule A and this Contract are not in agreement, the County and Electron Optics Service, Inc. hereby expressly agree that the terms and conditions of this Contract will be controlling and will take precedence over Schedule A.
- 1.2 Term. The term of this Contract shall commence as of January 31st, 2013 and, unless earlier terminated, in accordance with the provisions of this Contract, shall continue in effect for a period of three years from commencement date. (1/31/13 - 01/30/16). The cost of this Contract shall not exceed **Twenty-Two Thousand Five Hundred Dollars and Zero Cents**

(\$22,500.00). In the event of such unforeseen circumstances the contract shall be amended by written agreement and approved by the County prior to the expiration of the original term of the contract to cover the additional time period and funds that may be required.

ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Provider hereby agrees to render the services identified in Article 1.1 and incorporated by reference herein at a total price which, except as provided in Section 1.2, shall not exceed the amount of, **Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00).**

ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay Provider annually, for all services performed under this Contract, upon receipt of said invoice and the approval of the Cuyahoga County Executive. In no event shall total compensation under this Contract, including expenses, exceed **Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00).**
- 3.2 Invoicing. The Provider shall submit an original itemized invoice, submitted annually to the County Medical Examiner's Office, at the address noted below, for all maintenance service provided, and will include the following information:
- A. Invoice Total.
 - B. Invoice Number.
 - C. County Contract Number.

Cuyahoga County Medical Examiner's Office
Attention: Toni Wlosowicz
11001 Cedar Avenue
Cleveland, Ohio 44106

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to Provider based upon Provider's unique qualifications and skills, and no task required to be performed under this contract by Provider shall be subcontracted to third parties without the express written consent of Cuyahoga County
- 4.2 Indemnification. Provider shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for Provider's gross negligence or willful misconduct under this contract. Provider acknowledges that as a political subdivision, the County is prohibited by

law from entering into an indemnification agreement and 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 Provider or any other party.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

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

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1 By entering into this Contract, Provider, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

6.2 Provider further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County

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 Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

In the case of the Provider:

Electronic Optics Service, Inc.
88 Mount Pleasant Avenue
West Orange, New Jersey 07052

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 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.

7.3 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.

7.4 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.

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

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

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

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

7.9 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.

7.10 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.

7.11 Confidentiality. The parties acknowledge and agree that during the term of this Agreement, Electron Optics Service, Inc. shall act exclusively in the best interest of the Cuyahoga County Medical Examiner's Office. Electron Optics Service, Inc. acknowledges that they may have access to information which is confidential and proprietary in nature. Electron Optics Service, Inc. expressly agrees not to use or disclose such information in any manner or for any purpose at any time during or after the effective term of this Agreement except as required by law or as required during the course of Electron Optics Service, Inc. work for the Cuyahoga County Medical Examiner's Office, unless authorized in writing by the Medical Examiner.

7.12 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/>.

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

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

Electron Optics Service, Inc.

BY: 

Printed Name: James Fotinopoulos

Title: Senior Engineer

9/28/12

Cuyahoga County, Ohio

Edward FitzGerald, County Executive

BY: 

2012-12-03 14:50:25

Edward FitzGerald

County Executive

E.O.S.

Schedule A

ELECTRON OPTICS SERVICE

88 Mount Pleasant Ave.
West Orange, NJ 07052
Phone: (973) 669-3134
Fax: (973) 669-3700

CONTRACT NUMBER: amr32119202

DATED: 10/1/12

Chuck Fagan
Cell: 440-725-9780
e-mail: yzfrjim@ix.netcom.com

ELECTRON MICROSCOPE MAINTENANCE CONTRACT

Curt Jones
Cuyahoga County Coroners Office
216-721-5610
email: curtissjones@netscape.net

COVERAGE BEGINS: 1/31/2013 thru 1/30/2016

THE OFFER TO CONCLUDE THIS CONTRACT WILL EXPIRE IF NOT ACCEPTED BY _____

Electron Optics Service agrees, during the term of this Contract, to inspect, repair, and maintain the items of equipment according to the terms of this Contract. Additionally, we will repair or replace any component part of the equipment covered, free of any cost to the Subscriber, except as herein described under 'Exclusions', if said repair or replacement is deemed necessary in the judgment of the Electron Optics Service Engineer. Labor required to perform such service will be rendered during normal business hours, 8:00AM to 5:00PM (local time), Monday through Friday excluding E.O.S. holidays. Labor required after normal business hours will be charged at our standard overtime rates. We will make every effort to provide service response promptly, but assume no responsibility for delays caused by commercial carriers, weather conditions, or other causes beyond our control.

1.0 CONTRACT OPTIONS

OPTION 3 PROVIDES:

- *Unlimited emergency service calls
- *NO PARTS COVERAGE
- *Two (2) comprehensive preventative maintenance visit per contract period

2.0 GENERAL SERVICE PROVISIONS

2.1 EMERGENCY SERVICE

Emergency service is defined as that service required where a breakdown has occurred through normal usage of the equipment. The replacement of a consumable item does not constitute Emergency Service. All customers are instructed in the replacement of consumables and will be expected to undertake such minor repairs on their own. Emergency Service repairs will be performed free of charge to contract subscribers except as herein provided under 'Exclusions', Monday through Friday 8:00AM to 5:00PM local time, excluding E.O.S. holidays. Labor requested after hours called for in this contract will be charged at our standard overtime rates in effect at the time such labor is rendered. Request for service should be directed the E.O.S. office.

2.2 PREVENTATIVE MAINTENANCE VISITS

E.O.S. agrees to provide two comprehensive maintenance inspections for Option 1 coverage and one comprehensive preventative maintenance inspection for Option 2 or 3 which will include:

- *Cleaning of instrument (if judged necessary by E.O.S. representative)
- *Replacement of parts as herein provided
- *Replacement of vacuum pump oil (if judged necessary by E.O.S. representative)
- *Replacement of vacuum hoses, water hoses, and oil seals (if judged necessary by E.O.S. representative)
- *Inspection of all systems for proper operation
- *Alignment and image check

This preventative maintenance plan is free of charge to contract subscribers except as herein provided under 'Exclusions'. Customer must contact local service office to schedule visits.

2.3 PARTS

All non-expendable parts will be provided and replaced free of charge except as herein provided under 'Exclusions'. All other parts will be replaced or repaired if, in the determination of the E.O.S. service engineer, such replacement is desirable to ensure proper operation of the equipment.

2.4 EXCLUSIONS

1. All services are to be performed in good faith, but E.O.S. assumes no liability under this contract for the replacement of components altered by the user, nor is E.O.S. liable under this contract for repairs resulting from abuse, misuse, or any external cause including, but not limited to, fire, water, power failure, explosion, building collapse, acts of god, civil disorders, or similar causes.
 2. Replacement of pole pieces, filaments, apertures, fluorescent screens, specimen holders, cassettes, glass windows, cover panels, CRT's, FE and Lab6 tips is not covered by this contract.
 3. Energy Dispersive X-ray systems (including EDX detectors), water recirculators and ion coaters are not covered by this contract. Unless specified.
 4. Relocation of instruments is not covered by this contract and will be charged at our standard billable rates.
 5. Repair of accessories will be charged at our standard billable rates (unless specifically covered by this contract)
 6. Training on new operators is not included under this contract and will be charged at our standard billable rates
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- 3.0 BILLING OPTIONS:
1. ANNUAL BILLING (In Advance)
 2. QUARTERLY BILLING (In Advance)
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4.0 GENERAL CONTRACT PROVISIONS

4.1 PAYMENT TERMS

The total price of this contract will be invoiced upon execution of this contract and is due net 30 days from date of invoice. If subscriber fails to pay any amount hereunder when due, that amount shall thereafter bear a late charge until paid in full, which late charge shall be computed at the rate of ten percent (10%) per annum; provided however, that the late charge shall no time exceed the maximum amount permitted under applicable law. If subscriber pays any amount hereunder when a late charge has accrued, that amount shall be applied first against that late charge. A 2% prompt payment discount will apply to the annual billing amount if paid within 10 days of contract starting date.

4.2 DISCLAIMER

The service contract contains the sole agreement and understanding between E.O.S. and the contract subscriber concerning the subject matter hereof and supersedes all prior agreements or understandings whether written or verbal. No representation, promise or condition not expressly provided in writing, and executed by a duly authorized officer of each of the parties shall be binding on either party.

4.3 CANCELLATION

The service contract may be canceled by either party thirty days after written notice. Upon cancellation, E.O.S., shall refund to the contract subscriber a pro rata portion of any charge paid hereunder for the balance of the contract term.

4.4 NO WARRANTY

E.O.S. WARRANTS THAT IT SHALL PROVIDE SERVICE DURING THE TERM HEREOF IN ACCORDANCE WITH ITS GENERAL SERVICE PROVISIONS AS DEFINED ABOVE. E.O.S. MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, BY STATUTE, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THIS CONTRACT OR THE SERVICE OR PARTS PROVIDED HEREUNDER OR IN CONNECTION HERWITH, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PARTS INSTALLED OR FURNISHED BY E.O.S. OR OTHERWISE PURCHASED BY SUBSCRIBER FOR E.O.S. SHALL BE SUBJECT TO E.O.S. TERMS AND CONDITIONS OF SALES, AVAILABLE UPON REQUEST WHICH ARE INCORPORATED HEREIN.

4.5 LIMIT OF LIABILITY

E.O.S. liability under this contract shall not exceed the total price paid or to be paid for the service rendered or to be rendered under this service contract, as the case may be, which is the subject of claim or dispute. In no event shall either party be liable for any incidental or consequential damages arising out of, or in any way connected with, this service contract.

4.6 EQUIPMENT ELIGIBILITY

Each item of equipment to be covered by this contract must be in good operating condition as determined by E.O.S. prior to the beginning of coverage, equipment which is currently covered by a E.O.S. contract shall be deemed to be in good operating condition. Equipment that has not been covered by E.O.S. contract for a period of thirty days or longer must pass a pre-service contract inspection by E.O.S. charged at our current standard billable rates prior to issuance. This pre-service contract inspection shall be effective for thirty days from completion date of inspection and this contract must be accepted during the effective period.

CONTRACT PRICING AND DURATION FOR:
CONTRACT #AMR 3200 DATED 10/1/12

Contract Period: 1/31/2013 thru 1/30/2016

<u>Model</u>	<u>Serial Number</u>	<u>Description</u>	<u>OPTION 1</u>	<u>OPTION2</u>	<u>OPTION3</u>
AMRAY	32119202	SEM			7,500.00

Billing Options:

Total Due: 3 Year Contract \$22,500.00

STANDARD PER DIEM RATES:

\$180.00 PER HOUR .50 PER MILE
ALL EXPENSES INCURRED

PLEASE SELECT YOUR CHOICES AND SIGN BELOW:

Subscriber

Signature/ Date: _____

Option3: X

Title/Phone: _____

Purchase Order Number: _____

Billing Address

(if different from first page) _____

APPROVED BY:

TITLE: