

## CONTRACT

by and between

**CUYAHOGA COUNTY, OHIO**

and

**MAIN SAIL, LLC**

THIS AGREEMENT (the "Contract") is made and entered into this 19th day of April 2013, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Department of Information Technology and Main Sail, LLC, ("Main Sail") an Ohio LLC, with principal place of business located at, 20820 Chagrin Blvd., Suite 201, Cleveland, OH 44122 (the "Provider")

WHEREAS, the County has a present need for a technical writer who has the ability to create, assimilate and convey technical material in a concise and effective manner, at the Department of Information Technology; and

WHEREAS, Main Sail is a State of Ohio Term Vendor #533981-1 and was the lowest of three bidders for this service; and

WHEREAS, the County desires to avail itself of the professional assistance of Main Sail and Main Sail is willing to provide such assistance 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, Main Sail and the County agree as follows:

### **ARTICLE I -- AGREEMENT AND TERM**

- 1.1 Scope of Agreement. During the term of this Contract, Main Sail shall provide a technical writer and documentation, as listed on Schedule A (SOW#032920131006) attached, to be contracted under the State of Ohio - Term Schedule Number 533981-1. In the event that a discrepancy exists between the terms of Schedule A (SOW#032920131006) 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 May 17, 2013 and unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for six weeks from the date of commencement (5/17/13 - 6/28/13). This contract shall be in an amount not to exceed Eleven Thousand Two Hundred Eighty and Zero Cents (\$11,280.00).

## **ARTICLE II – SCOPE OF WORK**

- 2.1 Rendering of Services. Main Sail hereby agrees to render the services of a technical writer as outlined in Schedule A (SOW#032920131006), at a total price which shall in no event exceed the amount of not to exceed Eleven Thousand Two Hundred Eighty and Zero Cents (\$11,280.00).

## **ARTICLE III – PAYMENT AND INVOICING**

- 3.1 Payment. During the term of this contract, the County shall pay Main Sail at an hourly rate as listed in Schedule A(SOW#032920131006). Hours will be billable in incremental units of one-tenth (1/10th) of an hour and subject to the ‘not to exceed’ limitation of this agreement.
- 3.2 Invoicing. During the term of this agreement, the County shall pay Main Sail on a Net 30 basis for services rendered to the County on the listed hourly rate in Schedule A (SOW#032920131006) in incremental units of one-tenth (1/10th) of an hour. Main Sail will issue an invoice to the County upon completion. Main Sail shall submit invoice to the following address:

Cuyahoga County Department of Information Technology  
Business Department  
1255 Euclid Avenue, 4<sup>th</sup> floor  
Cleveland, Ohio 44115

## **ARTICLE IV - INDEMNITIES AND LIABILITIES**

- 4.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Term Agreement # 533981-1 shall inure to the benefit of Cuyahoga County.

## **ARTICLE V - DISPUTE RESOLUTION AND TERMINATION**

- 5.1 Dispute Resolution.

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

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## 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 Main Sail :

Main Sail, LLC  
Atten: Joyce DiNardo  
20820 Chagrin Blvd., Suite 201  
Cleveland, Ohio 44122

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. Main Sail shall be and remain an independent Main Sail 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 Main sail 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 Main Sail also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.8 Assignment. Neither party shall 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 other party.

6.9 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Main Sail prior to the execution of this agreement by the Cuyahoga County, the same will be provided at Main sail's 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 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.

6.10 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.

6.11 Force Majeure Main Sail shall not be liable for any failure to perform, or delay in performing Service for County to the extent that such failure or delay results from causes beyond its reasonable control including, without any limitation, any act of God, war, revolution, riot, civil commotion, labor strike or any applicable governmental or judicial law or regulation, order or decree.

## **ARTICLE VII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY**

7.1. Electronic Signature. By entering into this Contract, Mail Sail, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic 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 original document.

7.2 Compliance with O.R.C Main Sail 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.

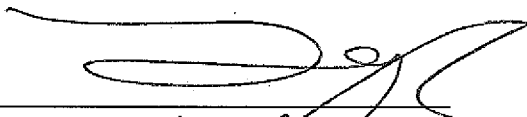
THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

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

**Main Sail, LLC**

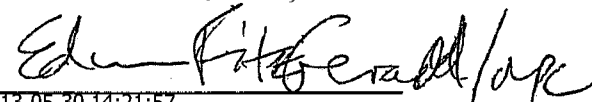
**Cuyahoga County, Ohio**

BY: \_\_\_\_\_

  
Thelma Phillips, Contract mgr

Edward FitzGerald, County Executive

BY: \_\_\_\_\_

  
2013-05-30 14:21:52  
Edward FitzGerald, County Executive