

CONTRACT

by and between

CUYAHOGA COUNTY, OHIO

and

SHI INTERNATIONAL CORP.

THIS AGREEMENT is made and entered into this ____ day of ____, 2013, by and between Cuyahoga County, Ohio (the "County"), the Department of Information Technology and SHI International Corp. (SHI), a New Jersey corporation, having principal place of business at 290 Davidson Avenue, Somerset, NJ 08873 .

WHEREAS, the County has a present need for a software maintenance renewal of Visual Click Products - Countywide, at the Department of Information Technology, and

WHEREAS, SHI International Corp. as a reseller of Visual Click Software Maintenance and was the lowest bidder, and

WHEREAS, the County desires to avail itself of these services and SHI , as a reseller of these services , 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, SHI and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 **Scope of Agreement.** During the term of this Contract, SHI, as a reseller, and as the lowest bidder, awarded under ORC125.04 (C) shall provide Visual Click Product Maintenance Service to the County as listed on the attached quote #7304810 hereto 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 December 11, 2013; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from commencement date. (12/11/13 through 12/11/14). The cost of this Contract shall not exceed Eight Thousand Six Hundred Ninety One Dollars and Zero Cents (**\$8,691.00**).

ARTICLE II - SCOPE OF WORK

2.1 Rendering of Services. SHI hereby agrees to resell Visual Click Maintenance Services outlined in Schedule A at a total price, not to exceed, Eight Thousand Six Hundred Ninety One Dollars and Zero Cents **(\$8,691.00)**.

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay SHI for the services outlined in Schedule A upon receipt of said invoice and approval of the County Executive.

3.2 Invoicing. SHI shall invoice the County for the services outlined in Schedule upon execution of this Contract. SHI shall submit original invoice(s) to the following address:

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

ARTICLE IV - INDEMNITIES

4.1 Contractor 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 from (a) the negligent acts or omissions of Contractor, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Contractor under any terms or provisions of this Contract.

4.2 Contractor acknowledges that, as an political subdivision of the State of Ohio, the County does not indemnify any person or entity. Contractor agrees that no provision of this Contract or any other contract or agreement between Contractor and the County may be interpreted to obligate the County to indemnify or defend Contractor or any other party.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 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. SHI, however, shall be paid for all services and/or materials provided on or prior to the date of termination. Termination under this section will not terminate the services provided by the applicable service provider, which may only be terminated under the service provider's terms and conditions.

5.2 Termination for Financial Instability. In the event that SHI 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 SHI 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.

5.3 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. Termination under this section will not terminate the services provided by the applicable service provider, which may only be terminated under the service provider's terms and conditions.

5.4 Dispute Resolution.

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

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1. THE CONTRACTOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES 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. THE CONTRACTOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY 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.

ARTICLE VII – Contract Administration

7.1 Insurance.

SHI shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

1. Mandatory Insurance Requirements

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **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).

For contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

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

(b) **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.

(c) **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.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garagekeepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

2. Additional Insurance Coverage

Each of the following eight items may be required “in addition to” the mandatory County insurance requirements set forth above. Although these coverages may not be listed as mandatory County insurance requirements, it is at the County’s discretion to mandate these coverages where deemed necessary based on the nature of the contracted services/products.

(d) **Umbrella/Excess Liability Insurance** with limits of liability not less than:

\$5,000,000 each occurrence
\$5,000,000 general aggregate
\$5,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in the preceding items (a)-(c).

(e) **All Risk Equipment Insurance** covering all risk of physical damage to equipment provided for use by Contractor.

(f) **Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

(g) **Pollution Legal Liability Insurance** (including Contractors Pollution Liability Insurance, if applicable) with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall be prior to the commencement of any work related to this Contract.

(h) **Liquor Liability Insurance** with a limit of liability not less than:

\$1,000,000 per occurrence;
\$1,000,000 aggregate.

(i) **Aviation Liability Insurance** covering the use and maintenance of all owned and non-owned aircraft of any type with a limit of liability not less than:

\$10,000,000 per occurrence;
\$10,000,000 aggregate.

(j) **Marine Liability Insurance** covering the use and maintenance of all owned and non-owned watercraft with a limit of liability not less than:

\$5,000,000 per occurrence;
\$5,000,000 aggregate.

(k) **Builders Risk Insurance** on an All Risks Property Coverage Form covering damage to buildings or other structures while under construction or renovation including materials and fixtures whether or not yet incorporated into the buildings or other structures.

Insurance Coverage Terms and Conditions

1. The insurance policies of the Contractor required for this contract, with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

(i) Thirty (30) days prior notice of cancellation or material change;

(ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

2. The insurance required for this contract 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.

3. These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.

4. SHI 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.

5. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

6. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.

7. SHI shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are 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.

ARTICLE VIII – MISCELLANEOUS

8.1 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
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of SHI:

SHI INTERNATIONAL CORP.
290 Davidson Avenue
Somerset, NJ 08873
Steve Burnside

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.

8.2 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.

8.3 Record Audit Retention. SHI 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 SHI 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.

8.4 Governing Law/ Jurisdiction. This Contract shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. 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. Contractor hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

8.5 Social Security Act. SHI shall be and remain an independent supplier 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 SHI 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 SHI also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

8.6 Assignment. SHI 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.

8.7 Contract Processing. SHI shall submit one (1) original contractual agreement with original signature to the following:

Cuyahoga County Department of Information Technology
ATTN: Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

8.8 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. In the event that services are provided by SHI prior to the execution of this agreement by the County Executive, the same will be provided at SHI's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the County Executive. 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.

8.9 Schedules Incorporated by Reference. The following Schedule is attached hereto and is incorporated herein:

Schedule A

8.10 Applicable County Ordinances. All contracts with the County, including this Contract, are subject to all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and the Cuyahoga County Debarment Law, Procedures and Review Board Ordinance. Copies of all County ordinances are available on the County Council website at <http://council.cuyahogacounty.us/>.

8.11 Ethics Requirements. The Provider agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Contractor. The Contractor shall consult the Cuyahoga County Office of Inspector General to ensure it is

in full compliance with all County Ethics requirements. The Inspect General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.

ARTICLE IX – LIMITATION OF LIABILITY

SHI shall not be liable for any special, punitive, indirect, incidental or consequential damages, including, but not limited to, loss of or damage to data, loss of anticipated revenue or profits, work stoppage or impairment of other assets, whether or not foreseeable and whether or not SHI has been advised of the possibility of such damages. SHI's total cumulative liability to the County in connection with this Contract, whether in contract, tort or other theory, will not exceed the total amount of fees actually paid or payable by the County to SHI under this Contract.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the Cuyahoga County Department of Law as to legal form and correctness.

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

SHI INTERNATIONAL CORP.

CUYAHOGA COUNTY, OHIO

BY: Natalie Slowik
Natalie Slowik, Contract Specialist

Edward FitzGerald, County Executive
BY: Ed FitzGerald / or
Edward FitzGerald, County Executive
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