

CONTRACT

by and between

CUYAHOGA COUNTY, OHIO

and

DWR Consulting

THIS AGREEMENT (the "Contract") is made and entered into this 26th day of December, 2013, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Fiscal Office and DWR Consulting, ("DWR"), with its principal place of business at, 19336 Frazier Drive, Rocky River, Ohio 44116 (the "Provider")

WHEREAS, the County has an need for Professional Services – to consult, assist and advise in the maintenance and upgrade the County Payroll and FAMIS System, as outlined on the attached Proposal, attached hereto and incorporated by reference herein as Schedule A; and

WHEREAS, DWR has unique education, training and/or experience to consult, assist and advise in the maintenance and upgrade of the County's Payroll and FAMIS Systems; and

WHEREAS, the County desires to avail itself of DWR services and DWR is willing to provide such services 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, DWR and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, DWR shall provide to the County under this agreement with Professional Services – to consult, assist and advise in the maintenance and upgrading of the County's Payroll and FAMIS Systems, as detailed in DWR's Proposal, attached hereto and incorporated by reference herein as Schedule A, insofar as the terms of Schedule A concur with this agreement. 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 February 1, 2014; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for two years from the date of commencement. **(2/1/14 – 1/31/16)**, the cost of this contract shall be in an amount not to exceed Two Hundred Sixty Thousand Dollars and Zero Cents **(\$260,000.00)**.

ARTICLE II – ADDITIONAL SERVICES

2.1 Additional Services. At the request of the County, and with the consent of DWR, DWR may also provide further technical, operational or other assistance on a consulting basis to the County.

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

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay, the costs associated with custom services upon receipt of invoice from DWR and after the initial contract approval of the County Executive.

3.2 Invoicing. DWR shall invoice the County upon completion of services and upon execution of this agreement. DWR 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 AND LIABILITIES

4.2 Indemnification.

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.

Contractor acknowledges that, as a 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 Dispute Resolution.

a) In the event of any dispute or disagreement between DWR and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by DWR 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. DWR, 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 DWR 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 DWR 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 at its option, and DWR at its option, 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 County or DWR 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, DWR, 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 DWR 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 Department of Information Technology
ATTN: Jeff Mowry, CIO
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of DWR:

Dave Rauske
DWR Consulting
19336 Frazier Dr.
Rocky River, OH 44116

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 Record Audit Retention. DWR 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 DWR 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.

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

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

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

7.9 Assignment. DWR 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.

7.10 Contract Processing. DWR shall submit one (1) original contractual agreement with original signatures to the following:

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

7.11 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 DWR prior to the execution of this agreement by the County Executive, the same will be provided at DWR's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by 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.

7.12 Insurance. The contractor 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.

NOT REQUIRED

(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.

2. **Additional Insurance Coverage**

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

(a) **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:

\$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 design, architectural, engineering or other professional activity related to this Contract.

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. The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverage’s 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 coverage's 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. The Contractor shall furnish a Certificate of Insurance evidencing the insurance coverage's required herein is 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.

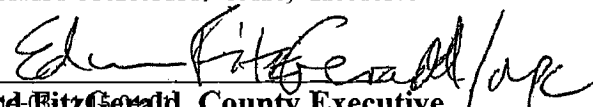
THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

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

DWR CONSULTING

CUYAHOGA COUNTY, OHIO

BY: 
David W. Rauske

Edward FitzGerald, County Executive
BY: 
Edward FitzGerald, County Executive

SCHEDULE A

DWR Consulting

19336 Frazier Dr.
Rocky River, OH 44116

December 26, 2013

Mr. Michael Young
Chief Technology Officer
Dept of Information Technology
1255 Euclid Ave, 4th Floor
Cleveland, OH 44115

PROPOSAL

SCOPE:

DWR Consulting will provide information technology consulting services to the Cuyahoga County Department of Information Technology (DoIT) to maintain, upgrade and support the payroll and/or FAMIS accounting and supporting systems. Work will be performed using existing County tools and facilities.

SCHEDULE:

Work will be performed at the rate of 20 to 35 hours per week as needed. Work will be performed on-site at County facilities or remotely as required. Work will commence on February 1, 2014.

FEES:

Fees will be billed on a bi-weekly basis at the rate of \$85.00 per hour.

BACKGROUND:

Cuyahoga County Auditor: Performed as consultant responsible for maintenance and upgrade of County payroll and accounting systems from Sept 1, 2009 through Jan. 31, 2013.

Cuyahoga County Treasurer: Performed as consultant responsible for data conversion of Real Property Tax System from legacy based mainframe system to 'Manatron' Real Property Tax System.

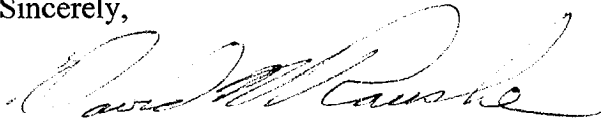
Cuyahoga County Data Center: sub-contractor to Keane, Inc. for Y2K Remediation Project; Performed as Technical Project Manager responsible for data and file conversions, establishing development, test and quality assurance environments, and planning of system software and hardware testing.

Major local bank: Performed version upgrades of Dun & Bradstreet Payroll System and McCormack & Dodge General Ledger System.

CLOSING:

I appreciate the opportunity to provide consulting services for the Cuyahoga County Dept of Information Technology. I am confident that with my strong analytical and technical background I can assist your department in providing continued timely and efficient accounting and technical services.

Sincerely,

A handwritten signature in black ink, appearing to read 'David W. Rauske', written in a cursive style.

David W. Rauske