

PERSONAL/PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is by and between Yamhill County, a political subdivision of the State of Oregon (COUNTY) and **InfoSENTRY Services Inc.**, a North Carolina corporation located at _____ (CONTRACTOR). Whereas COUNTY has need of the services which CONTRACTOR has agreed to provide; now therefore, in consideration of the sum not to exceed **\$23,960.00** to be paid to CONTRACTOR by COUNTY, CONTRACTOR agrees to perform between acceptance of the AGREEMENT and September 15, 2015, and, inclusive, the following specific personal and/or professional services:

Scope of work:

The CONTRACTOR shall provide the following information system consulting assistance and deliverables to COUNTY.

1. The CONTRACTOR shall design and moderate an After Action Review (AAR) and conduct individual interviews with participants in the AAR that will result in a Lessons Learned Report on the recent outage and recovery of email services to COUNTY stakeholders. The AAR will last approximately three hours and cover, but not necessarily be limited to, the following items:
 - a. What were the root causes of the email outage and what steps should the COUNTY have taken prior to the event in order to prevent the outage or control its impact? What was the COUNTY IT Division trying to achieve during management of email outage and return to operation of the COUNTY's email system?
 - b. Did the COUNTY IT Division achieve these goals and objectives thoroughly and effectively?
 - c. What activities, processes, and procedures does the COUNTY need to improve during management of future, similar incidents? What did not work well and what improvement does the COUNTY need to make to avoid and manage future incidents?
 - d. What activities, processes, and procedures does the COUNTY need to maintain during management of future, similar incidents? What worked and what does the COUNTY need to preserve in order to avoid and manage future incidents?
 - e. Were there any unexpected successes or failures during management of the email outage?
 - f. What realistic lessons learned could the COUNTY put in action in the next three months to improve COUNTY and IT management ability to avoid and manage future such outages?

The CONTRACTOR shall deliver these services and the Lessons Learned Report not later than August 24, 2015.

2. The CONTRACTOR shall prepare an Information Technology Management and General Control Review for the COUNTY that covers the following topics:
 - a. Verification that the COUNTY IT managers have established appropriate, efficient, and effective controls over COUNTY systems and applications to ensure valid, available, reliable, and secure input, processing, and output to meet COUNTY stakeholders' requirements.

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- b. Verification that the COUNTY's IT processing facilities are controlled to ensure timely, accurate, and efficient processing of applications under normal and potentially disruptive conditions.
- c. Verification that the COUNTY IT Division generally develops or otherwise acquires systems that meet the objectives of the COUNTY and generally develops or acquires systems in accordance with generally accepted standards for systems development and acquisition.
- d. Verification that the COUNTY's IT management has developed organizational structure, enterprise architecture, and procedures to ensure a controlled, efficient, and effective environment for its information technology.

The CONTRACTOR shall deliver these services and its final report not later than September 15, 2015.

The order of services shall be initiated by the COUNTY.

Payment Terms:

CONTRACTOR will invoice the amount of **\$23,960.00**. The total AGREEMENT would be for no more than **\$23,960.00** if fully executed. This amount shall also be the maximum not-to-exceed amount to be paid under this AGREEMENT unless this AGREEMENT is amended in a writing signed by both parties. Rates and planned hours expended for all services rendered under this AGREEMENT are in Attachment A, which is incorporated herein by this reference, and have been provided by CONTRACTOR. The rates are inclusive of all expenses for travel, lodging, food, and other incidentals, which will not be billed separately. The only compensation due CONTRACTOR is as specifically stated in this AGREEMENT. CONTRACTOR will provide written documentation of completed and ongoing tasks, hours and deliverables. CONTRACTOR shall submit written invoices and, following receipt, review and approval of such written invoices, COUNTY shall make payment on all undisputed invoices within thirty (30) days,

Assumptions

1. All services and deliverables provided through this AGREEMENT shall be prepared solely under the terms, conditions, and requirements of the AGREEMENT.
2. The CONTRACTOR will provide the information processing and other equipment it requires in preparation of its deliverables.
3. The CONTRACTOR will not require direct access to or have any user account(s) on the COUNTY's systems or network.
4. The COUNTY and its staff or agents will make available all requested managers and staff members for interviews and meetings with the CONTRACTOR in a sufficiently timely manner to allow completion of the deliverables according to the schedule stated in this AGREEMENT.
5. The CONTRACTOR will conduct interviews, either in person or by telephone, with approximately 15-18 COUNTY managers, staff members, or agents designated by Laura Tschabold, the County Administrator.
6. The COUNTY and its staff or agents will make available all requested documentation—or will notify the CONTRACTOR of the lack of such documentation—in a sufficiently timely manner to allow completion of the deliverables according to the schedule stated in this AGREEMENT.

Constraints

1. The schedule for completion of the deliverables is an aggressive one and will require assistance by the COUNTY to the CONTRACTOR in establishing meetings and interviews during the AGREEMENT's time schedule.

2. The CONTRACTOR shall make no substitutes of personnel for those identified in Attachment A to this AGREEMENT without prior written approval of Laura Tschabold, the County Administrator.
3. The COUNTY will provide the CONTRACTOR will suitable space for conducting the After Action Review and other meetings associated with interviews and documentation reviews.
4. The CONTRACTOR shall abide by all applicable COUNTY information security policies and procedures made known to CONTRACTOR at the beginning of the AGREEMENT's term.

Terms & Conditions:

1. **WHOLE AGREEMENT.** This AGREEMENT is the complete and exclusive statement of the AGREEMENT between the Parties relevant to the purpose described and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of the AGREEMENT.

2. **WRITTEN NOTICE.** Any notice of termination or other communication having a material effect on this AGREEMENT shall be served by U.S. Mail on the signatories listed.

3. **GOVERNING LAW/VENUE.** This AGREEMENT shall be governed by the laws of the State of Oregon. Any action commenced in connection with this AGREEMENT shall be in the Circuit Court of Yamhill County. All rights and remedies of the COUNTY shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the COUNTY according to law. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.**

4. **COMPLIANCE.** The CONTRACTOR shall comply with all applicable Federal, State and local laws, rules and regulations. All provisions of ORS 279B (Public Contracts and Purchasing) are incorporated herein to the extent applicable to personal/professional service agreements.

5. **JUDICIAL RULINGS.** If any provision of this AGREEMENT as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this AGREEMENT or the validity or enforceability of the AGREEMENT.

6. **INDEPENDENT CONTRACTOR.** The CONTRACTOR, in carrying out the services to be provided under this AGREEMENT, is acting as an "independent contractor" and is not an employee of COUNTY, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this AGREEMENT. As an "independent contractor", CONTRACTOR will not receive any benefits normally accruing to COUNTY employees unless required by applicable law. Furthermore, CONTRACTOR is free to contract with other parties for the duration of the AGREEMENT.

7. **INDEMNIFICATION.** The CONTRACTOR shall save harmless, indemnify, and defend the COUNTY for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from CONTRACTOR's performance of or failure to perform the obligations of this AGREEMENT.

8. INSURANCE. CONTRACTOR, at Contractor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this AGREEMENT (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this AGREEMENT plus two years):

1. Workers' Compensation Insurance in compliance with statutory requirements;
2. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
3. Professional Liability Insurance, including errors and omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
4. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At COUNTY's request, CONTRACTOR shall furnish COUNTY with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to COUNTY.

The Commercial General Liability and Commercial Automobile Liability shall (i) name COUNTY, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of COUNTY and that any insurance maintained by COUNTY is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

9. WORKERS' COMPENSATION. The CONTRACTOR shall comply with ORS 656 for all employees who work in the State of Oregon. The CONTRACTOR shall obtain and maintain at all times during the term of this AGREEMENT, workers' compensation insurance with statutory limits and employers' liability insurance. CONTRACTOR shall provide the COUNTY with evidence that it is a carrier-insured or self-insured employer in full compliance with the requirements of ORS Chapter 656, or that it employees no persons subject to the requirements of ORS 656, Workers' Compensation Insurance,

10. NONDISCRIMINATION. The Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, no qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

11. TERMINATION OF AGREEMENT. The AGREEMENT may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.

- c. If the CONTRACTOR fails to provide services, or fails to meet the performance standards as specified in this AGREEMENT (or subsequent modifications of this AGREEMENT), within the time specified herein or any extension thereof. Termination under this provision may be immediate.
- d. If the CONTRACTOR fails to start services on the date specified by the COUNTY in this AGREEMENT or subsequent modifications to this AGREEMENT. Termination under this provision may be immediate.
- e. Failure of the CONTRACTOR or COUNTY to comply with the provisions of this AGREEMENT and all applicable federal, state, and local laws and rules may be cause for termination of this AGREEMENT.

Such termination shall be without prejudice to any obligations or liabilities of either party accrued to such termination.

If this AGREEMENT is terminated by either party, for reasons other than breach of contract, the COUNTY agrees to pay to the consultant all costs and expenses associated with services satisfactorily provided to the effective date of termination.

12. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the AGREEMENT may be contracted or assigned to any other individual, firm, or entity without the express and prior approval of the COUNTY.

13. **SURVIVAL.** The terms, conditions, representations and all warranties contained in this AGREEMENT shall survive the termination or expiration of this AGREEMENT.

14. **FUNDING.** In the event the Board of Commissioners of the COUNTY reduces, changes, eliminates, or other wise modifies the funding for any of the services identified, the CONTRACTOR agrees to abide by any such decision including termination of service.

15. **STANDARD OF SERVICES AND WARRANTY.** The CONTRACTOR agrees to perform its services with that standard of care, skill, and diligence normally provided by professional individuals in the performance of similar services. It is understood that the CONTRACTOR must perform the services based in part on information furnished by the COUNTY and that the CONTRACTOR shall be entitled to rely on such information. However, the CONTRACTOR is given notice that the COUNTY will be relying on the accuracy, competence, and completeness of the CONTRACTOR'S services in utilizing the results of such services. The CONTRACTOR warrants that the recommendations, guidance, and performance of any person assigned under the AGREEMENT shall be in accordance with professional standards and the requirements of the AGREEMENT.

16. **COUNTY PRIORITIES.** The CONTRACTOR shall comply promptly with any requests by the COUNTY relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

17. **OWNERSHIP AND USE OF DOCUMENTS.** All documents, or other material submitted to the COUNTY by CONTRACTOR shall become the sole and exclusive Property of the COUNTY. All material prepared by CONTRACTOR under this AGREEMENT may be subject to Oregon's Public Records Laws. CONTRACTOR interview notes are not considered deliverable materials under this AGREEMENT and are working documents only for CONTRACTOR's purpose of preparing deliverable materials.

18. **TAX COMPLIANCE CERTIFICATION.** CONTRACTOR hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of CONTRACTOR'S knowledge, CONTRACTOR is not in violation of any of the tax laws described in ORS 305.380(4).

19. **CONFIDENTIALITY.** CONTRACTOR acknowledges that CONTRACTOR may, in the course of its performance under this AGREEMENT, be exposed to or acquire information that is the confidential information of COUNTY or COUNTY's clients. Any and all (i) COUNTY or COUNTY client information, (ii) information provided by COUNTY and marked confidential, or (iii) information identified as confidential in a separate writing, that becomes available to CONTRACTOR in the performance of this AGREEMENT shall be deemed to be confidential information of COUNTY ("Confidential Information"). Any reports or other documents or items, including software, that result from CONTRACTOR's use of the Confidential Information are also deemed Confidential Information. CONTRACTOR agrees to hold Confidential Information in strict confidence, using at least the same degree of care that CONTRACTOR uses in maintaining the confidentiality of CONTRACTOR's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this AGREEMENT or in conformance with Exhibit A. CONTRACTOR agrees that, upon termination of this AGREEMENT or at COUNTY's request, CONTRACTOR will turn over to COUNTY all documents, papers and other matter in CONTRACTOR's possession that embody Confidential Information.

20. **ATTORNEY FEES.** In the event of legal suit or action, including any appeals therefrom, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions under this Agreement, each party shall pay their own attorney's fees and costs incurred in the suit or action, including investigation costs, expert witness fees and all costs of depositions.

21. **COUNTERPARTS.** This AGREEMENT may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

22. **EXHIBITS AND RECITALS.** All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this AGREEMENT as a material and substantive part of this AGREEMENT.

(Signature page follows)

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates set forth adjacent to their signatures below.

YAMHILL COUNTY

Recommended by:

Allen Springer 8-13-15
Department Director date

Approved as to Form:

Chris Baul 8/13/15
Yamhill County Legal Counsel date

CONTRACTOR

M. Glenn Newkirk

Digitally signed by M. Glenn Newkirk
DN: cn=M. Glenn Newkirk, o=InfoSENTRY
Services, Inc., ou=President,
email=glenn_newkirk@infoentry.com,
c=US
Date: 2015.08.12 12:37:19 -04'00'

Signature **date**

M. Glenn Newkirk
Printed Name

President
Title

56-1963479

Tax ID #
Corporation X Partnership ___
Sole Proprietor ___
Other _____

Accepted by Yamhill County
Board of Commissioners on

8.13.15 by Board Order
15-338

ATTACHMENT A
Rates and planned hours

Resource	Hours	Billable Rate	Total
Newkirk, M. G.	88	\$195.00	\$17,160.00
Pearson, E.	40	\$170.00	\$6,800.00
			\$23,960.00