

AGREEMENT FOR INFORMATION TECHNOLOGY SUPPORT OF IBM AS/400 SOFTWARE WITH MARTIN FRANUSICH

This Agreement is made and entered into by and between the County of Lake, hereinafter referred to as "County", and Martin Franusich hereinafter referred to as "Contractor", collectively referred to as the "parties".

1. TERM

This Agreement shall commence on March 1, 2017, and shall terminate on December 31, 2017, unless earlier terminated as hereinafter provided. In the event County desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

2. COMPENSATION

Contractor has been selected by County to provide the services described hereunder in Exhibit "A" (Scope of Work), attached hereto. Compensation to Contractor shall be at the rate of \$120.00 per hour on-site and \$95.00 per hour off-site (i.e. Remote system access or telephone support) not to exceed sixty thousand dollars. (\$60,000.00)

The County shall compensate Contractor for services rendered, in accordance with the provisions set forth in Exhibit "B" (Fiscal Provisions), attached hereto, provided that Contractor is not in default under any provisions of this agreement. Compensation to Contractor is contingent upon appropriation of federal, state and county funds.

3. TERMINATION

This Agreement may be terminated by mutual consent of the parties or by County upon thirty (30) days written notice to Contractor.

In the event of non-appropriation of funds for the services provided under this Agreement, County may terminate this Agreement, without termination charge or other liability.

Upon termination, Contractor shall be paid a prorated amount for the services provided up to the date of termination.

4. MODIFICATION

This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of Contractor and County executed by Shane French.

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5. NOTICES

All notices between the parties shall be in writing addressed as follows:

County of Lake
Information Technology
255 North Forbes Street
Lakeport, California 95453
Attn: Shane French

Martin Franusich
PO BOX
Lakeport, CA 95453-1004

Attn: Martin Franusich

6. EXHIBITS

The Agreement Exhibits, as listed below, are incorporated herein by reference:

- Exhibit A – Scope of Services
- Exhibit B – Fiscal Provisions
- Exhibit C – Compliance Provisions

7. TERMS AND CONDITIONS

Contractor warrants that it will comply with all terms and conditions of this Agreement and Exhibits, and all other applicable federal, state and local laws, regulations and policies.

This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

Executed at _____, California on _____.

COUNTY OF LAKE

CONTRACTOR

CHAIR, Board of Supervisors

Martin Franusich

ATTEST:
CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____

By: _____

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EXHIBIT "A" – SCOPE OF SERVICES

1. CONTRACTOR RESPONSIBILITIES

- A. IBM AS/400 application server system maintenance and operating system updates.
1. A minimum of 1 (one) hour per week to check system logs; confirm successful system backups and normal system functions. Any anomalies uncovered will require additional time as required to resolve.
 2. Approximately 10 hours per required IBM supplied system software upgrade. Normally once per year, however unanticipated required patches may occur based on emergency released by IBM or requisite updates needed for third party application software (i.e. Naviline financials or Human Resources applications).
- B. On call emergency services if user departments encounter problems with an AS/400 software application. The contractor will work with the user department to determine what caused the problem, and create steps to resolve the issue in order to resume standard daily operations. Documentation of both the problem and resolution will be required and when possible recommendations will be presented for long term solutions to avoid future occurrences.
- C. Periodic IBM AS/400 support functions:
1. County of Lake Budget schedules - Up to 40 hour per year assisting the Auditors department in the creation of budget book forms.
 2. State Compensation report – Up to 30 hours per year assisting the Auditors department in the creation of state required reports.
 3. Naviline year-end updates – Up to 40 hours per year to coordinate with the Auditors department and SunGard to obtain and install year end software updates.
- D. Assist in the conversion of the following three (3) legacy COBOL applications and associated data running on the same AS/400 server to the existing modules of the third party SunGard/Naviline financials application. If conversion is not possible, assist in the research into potential new third party software which is supportable.
1. Warrant Reconciliation System
 2. Treasurers G/L System
 3. Treasurers Interest Apportionment System
- E. Service requests will have a Four (4) hour response time unless previously approved.
- F. Contractor extended unavailability will be coordinated in advance with the County.

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2. RECORDS RETENTION

Contractor shall prepare, maintain and/or make available to County upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Contractor shall retain the records until resolution of litigation or audit. After the retention period has expired, Contractor assures that confidential records shall be shredded and disposed of appropriately.

3. COUNTY RESPONSIBILITIES

A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.

B. Make available all pertinent data and records for review.

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EXHIBIT "B" – FISCAL PROVISIONS

1. CONTRACTOR'S FINANCIAL RECORDS

Contractor shall keep financial records for funds received hereunder, separate from any other funds administered by Contractor, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

2. INVOICES

A. Contractor's invoices shall be submitted in arrears, and shall be itemized and formatted to the satisfaction of the County.

1. On-site support will have a one (1) hour minimum charge to the department requiring service. Issues involving multiple departments shall be divided appropriately in one quarter hour increments.
2. Additional time over the one (1) hour minimum shall be charged in one quarter (1/4) hour increments.
3. Unallowable Expenses
 - a. Mileage for travel by private, leased or hired vehicle
 - b. Travel costs, including but not limited to, meals and lodging

B. County shall make payment within 20 business days of an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the Contractor and approved by the Assistant Purchasing Agent.

3. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS

A. County may conduct periodic audits of Contractor's financial records, notifying Contractor no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Contractor shall allow County, or other appropriate entities designated by County, access to all financial records pertinent to this Agreement.

B. Contractor shall reimburse County for audit exceptions within 30 days of written demand or shall make other repayment arrangements subject to the approval of County.

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EXHIBIT "C" – COMPLIANCE PROVISIONS

1. INFORMATION INTEGRITY AND SECURITY

Contractor shall immediately notify County of any known or suspected breach of personal, sensitive and confidential information related to Contractor's work under this Agreement.

2. NON-DISCRIMINATION

Contractor shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

A. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and
4. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for cause or default.

B. Contractor shall report immediately to County, in writing, any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.

4. INDEMNIFICATION AND HOLD HARMLESS

Contractor shall indemnify and defend County and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, whether for damage to

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or loss of property, or injury to or death of person, including properties of County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's operations hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County.

Contractor's obligations under this Section shall survive the termination of the Agreement.

5. STANDARD OF CARE

Contractor represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

6. INTEREST OF CONTRACTOR

Contractor assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

7. DUE PERFORMANCE – DEFAULT

Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within thirty (30) days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

8. INSURANCE

A. Contractor shall procure and maintain Workers' Compensation Insurance for all of its employees.

B. Contractor shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to

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endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.

C. Contractor shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

D. In case of any subcontract, Contractor shall require each subcontractor to provide all of the same coverage as detailed hereinabove. Subcontractors shall provide certificates of insurance naming the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Contractor shall not allow any subcontractor to commence work until the required insurances have been obtained.

E. For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

F. Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

G. Any failure of Contractor to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

9. ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such part may be entitled.

10. ASSIGNMENT

Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County except that claims for money due or to become due Contractor from County under this Agreement may be assigned by Contractor to a bank, trust company, or other financial institution without such approval. Written notice of any

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such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

11. PAYROLL TAXES AND DEDUCTIONS

Contractor shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

12. INDEPENDENT CONTRACTOR

It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result Agreed for herein.

Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

13. OWNERSHIP OF DOCUMENTS

All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Contractor hereunder are the property of County.

14. SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

15. ADHERENCE TO APPLICABLE DISABILITY LAW

Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

16. HIPAA COMPLIANCE

Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

17. SAFETY RESPONSIBILITIES

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Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

18. JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.

19. RESIDENCY

All independent contractors providing services to County for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

20. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.