

State of Alabama)

County of Baldwin)

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for **Professional Services** is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission, and David Pimperl (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas, the COUNTY, through its Communications and Information Systems Department (CIS), maintains and supports multiple IBM i Servers (also known as iSeries or AS400 systems) along with various software applications on those Servers; and

Whereas, the COUNTY finds that it requires additional resources to assist with the system administration and support of those Servers and desires to procure such services; and

Whereas, the PROVIDER has expressed his willingness and is capable of providing such services; and

Whereas, the COUNTY and PROVIDER now wish to and do hereby enter into this Contract for the provisions of said services subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

- | | |
|----------------|--|
| A. COUNTY: | Baldwin County, Alabama |
| B. COMMISSION: | Baldwin County Commission |
| C. PROVIDER: | David Pimperl |
| D. CIS | Communications and Information Systems |
- Department

II. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those professional services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be

commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that he possesses the professional, technical and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain and otherwise ensure that all such certifications, licenses and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that he is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing his own means and methods, as he deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits or any other benefits provided to County employees, and PROVIDER shall not be subject to or have any rights under the County's merit system for employees. PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express, nor the implied intent, of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the PROVIDER does not in any

manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

Notwithstanding anything to the contrary in this Section or elsewhere within this Contract, the PROVIDER shall equally retain all rights, title and interest in and to all scripts, programs, database schema, methods, processes, source code, and other intellectual properties that are developed under this Contract. PROVIDER will retain rights to utilize these as he sees fit without any notice to the COUNTY. This will not include any proprietary or confidential data that remains the sole property of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: David Pimperl
48702 Ralph Johnson Rd. S.
Bay Minette, AL 36507

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified **contractor**. The general scope of work for the services is set forth in Exhibit A and shall include and be subject to all the terms and conditions in **Exhibit A**, the same being expressly incorporated herein by reference, and without limitation will encompass:

- A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.
- B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.
- C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

- A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.
- B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set forth below.

XVIII. Termination of Services. The COUNTY or PROVIDER may terminate

this Contract, with or without cause or reason, by giving ten (10) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XX. Direct Expenses. Compensation to PROVIDER for work shall be **\$1275.00 per month which will provide for up to 15 hours of services per month.** Additional services can be provided on a per project basis at a rate of \$85.00 per hour. Each project will require definition and pre-approval from the CIS Director prior to any services being provided or expense being incurred. **Total compensation for monthly services and project services shall not exceed \$30,000 in any single calendar year.** Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective for twelve (12) months and commence immediately upon the same date as its full execution, with an option to issue two (2) twelve (12) month contracts, or extend the first contract until such time that a new contract can be bid and awarded. Any additional contract or extension will be at the same prices, terms and conditions. Any successive contract(s) must have the written approval of both the County and the Vendor no later than thirty (30) days prior to the expiration of the original contract. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Warranty Disclaimer. THE SERVICES ARE PROVIDED "AS-IS", "AS AVAILABLE," EXCLUSIVE OF ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

XXV. Limitation of Liability. PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT PAID BY COUNTY HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY COUNTY HEREUNDER. THE FOREGOING SHALL NOT LIMIT COUNTY'S PAYMENT OBLIGATIONS UNDER THE "DIRECT EXPENSES" SECTION ABOVE.

XXVI. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL PROVIDER HAVE ANY LIABILITY TO THE COUNTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

XXVII. Number of Originals. This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

XXVIII: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the last day of execution by the COUNTY as written below.

COUNTY

ATTEST:

Joe Davis, III , Chairman /Date

Wayne Dyess, /Date
County Administrator

NOTARY AND SIGNATURE PAGE TO FOLLOW

State of Alabama)

County of Baldwin)

I, _____, a Notary Public in and for said County, in said State, hereby certify that, Joe Davis III, whose name as Chairman of Baldwin County Commission, and Wayne Dyess, whose name as County Administrator, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

Notary Public
My Commission Expires

PROVIDER:

By David Pimperl /Date
Its _____

State of Alabama)

County of _____)

I, _____, Notary Public in and for said County and State, hereby certify that _____ as _____ of _____, whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date for and as an act of said _____.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

Notary Public
My Commission Expires

EXHIBIT “A”

Scope of Services

The PROVIDER will provide general Systems Administration, Technical Support, and Technical Consulting Services for the COUNTY’S IBM i Servers as further outlined below.

Domains of Service

- A. Provide assistance to the COUNTY CIS Department for ordering and applying IBM Program Fixes (PTF). Ensure IBM i Servers are up to date on all PTF levels, including any specific PTF(s) required by the current software vendor Delta Computer Systems (DELTA).
- B. Work as a liaison to DELTA as necessary. DELTA will be responsible for ongoing software support, but PROVIDER will assist as necessary.
- C. Work as a liaison to Vision Solutions to support their MIMIX solution that the COUNTY uses. Coordinate and work with COUNTY CIS staff to optimize and administer the MIMIX solution.as necessary
- D. Work with legacy software products installed on the IBM i Servers and assist COUNTY CIS staff with those products as needed.
- E. PROVIDER will perform the work remotely or on-site as required for the specific task.
 - 1. PROVIDER will furnish and utilize his Computer Laptop with Microsoft Windows 10 or later to access the IBM i Servers whether working remotely or on-site.
 - 2. COUNTY will setup appropriate levels of VPN access and network access that will allow PROVIDER remote and on-site access to the IBM i Servers. This will include as necessary, but is not limited to, VPN, Domain, and IBM i User accounts with appropriate access levels to perform the required services.
 - 3. COUNTY will furnish the PROVIDER with certain System Level Passwords as required from time to time for performance of certain system tasks. COUNTY will always retain full control of those accounts and will have the ability/responsibility to change passwords from time to time as their security protocol requires.
 - 4. COUNTY will furnish the PROVIDER with any specialized client software, license(s) to use, and authority to use as required to perform the services defined above.