

ORIGINAL

AGREEMENT FOR SERVICES #030-S0211

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Professional Consultancy International, Inc., a Florida Corporation duly qualified to conduct business in the State of California, whose principal place of business is 4893 West waters Avenue, Suite E, Tampa, FL 33634, and whose local place of business is 1095 North Van Ness Avenue, Suite 200, Fresno, CA 93728, (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Consultant to provide software license and support for the Revenue Collection System (hereinafter referred to as "RCS") cashiering system for the Treasurer/Tax Collector's Office; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of such services provided by Consultant are in the public's best interest, are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Services: Consultant agrees to provide software license, support and upgrades, for the RCS cashiering system for the Treasurer/Tax Collector's Office. Consultant offers to County and County hereby accepts the following provisions for the maintenance and improvement of the software program identified as RCS:

1. Consultant must be responsible for and will administer all additions, changes or deletions to the software. Additions, changes and deletions due to updated Pervasive SQL Server software will be made by Consultant. All charges for third party pervasive SQL software and any travel expenses will be paid by the County. Consultant's time to provide these upgrades are included in the monthly license fee. The County is to assist in the physical loading of the software update. Modifications requested by the County will be charged at \$100.00 per hour, with a fixed quotation provided prior to initiation of any work. Minor modifications, defined as any modifications requiring less than 30 minutes labor, will be provided at no charge. Once the County approves the change, the modification will be made and tested. Consultant can dial into the system to make the necessary updates;
2. Consultant must provide to the County, system upgrades, when offered at no charge, for the life of the system, providing the license agreement is current. The cost of the software upgrade is included in the software license fee. If the County approves an upgrade, a fixed cost for installation expenses, hardware and third party software would be given; if any charges are applicable;
3. Consultant must maintain backup copies of the current and prior versions, if any, of the system. Consultant shall provide updates of individual pages of documentation affected by any changes, and updates or enhancements to the system. If entire new documents are prepared as part of such changes, updates or enhancements, Consultant shall supply the copies. Consultant shall replace the software that has been lost or damaged and County shall pay any then current media and reproduction costs, unless such loss or damage is caused solely by the negligence of Consultant, in which case there will be no charge to County;
4. If any system malfunction is determined to have been caused by the Consultant's programming, or by incorrect instructions from Consultant personnel or documentation provided by Consultant, Consultant must correct the malfunction at no additional charge;
5. Consultant must provide a toll free number for reporting unlimited support calls. A cell phone or pager is to be provided for the hours that the Consultant's support desk is closed and County is open, due to the time difference. Maintenance and support provided by Consultant is based on remote diagnostics via modem for software and hardware. Consultant must perform remote diagnostics and provide technical assistance within four (4) hours of receiving a request by County;

6. Technical support services are provided by Consultant during County's normal business hours (8:00 AM – 5:00 PM), Monday through Friday, excluding holidays. Technical support services must include answering questions, providing technical guidance with regard to the system, receiving trouble reports, troubleshooting system problems and other investigative services relative to the Program;
7. County agrees to pay Consultant a monthly software license fee. This fee includes 800 phone and diagnostic support, on-site support (excluding expenses) and PCI initiated system program enhancements for the life of the system. The monthly license for 10 users is \$780.00 (\$9,360.00 per year), plus sales tax with a 4% increase annually for subsequent years.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall automatically renew on an annual basis unless otherwise terminated pursuant to the provisions of Article X, Section D.

ARTICLE III

Compensation for Services: For services provided herein pursuant to the software license fee, County agrees to pay Consultant annually in advance. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the first year annual fee shall be \$10,038.60, inclusive of sales tax. Subsequent years shall reflect an annual increase of 4% for the software license fee. The billing rate for modifications as requested by the County shall be \$100.00 per hour. Travel expenses are authorized and will be billed in accordance with Exhibit "A", marked "Board of Supervisors Policy D-1", incorporated herein and made by reference a part hereof.

Payments for services and travel provided in addition to the annual license and maintenance fee pursuant to Article I Scope of Services, paragraph 1., will be invoiced separately and subject to prior authorization of the County pursuant to a County Purchase Order. Payment for these services and expenses shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered and based on actual expenses incurred. The total amount of travel authorized pursuant to this Agreement shall not exceed \$5,000.00 annually.

The total amount of the first annual fee in accordance with this Agreement shall not exceed \$10,038.60, including sales tax for the first year.

ARTICLE IV

Warranty: Consultant warrants that the software provided pursuant to his Agreement will meet or exceed the performance standards specified in the original Agreement #064-S0011 and as Consultant has represented to County which Agreement is dated September 14, 2000, and which is hereby incorporated herein as though fully set forth for all intents and purposes.

Should the software fail to meet any of the specifications as detailed in this Agreement, the original Agreement #064-S0011 or any related documentation, County may exercise whatever options are set forth in this Agreement, at County's sole option.

Consultant warrants that the software shall be free from defects in material and workmanship and shall function according to the specifications for the life of the system as long as the software license agreement is in good standing.

Consultant warrants that it is the owner of the software programs covered by license agreement and has full power and authority to grant the rights herein.

Consultant shall escrow the source code for the County. For the purposes of this Agreement, source code is defined as the language in which the software program is written.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section 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 period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO
TREASURER/TAX COLLECTOR
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: SYLVIA EARL

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

PROFESSIONAL CONSULTANCY INTERNATIONAL, INC.
4893 WEST WATERS AVENUE, SUITE E
TAMPA, FL 33634
ATTN: THOMAS SPENCER

Or to:

John P. Brekhus
The Rose Garden
1095 N. Van Ness Avenue
Suite 200
Fresno, CA 93728

or to such other location in California as the Consultant directs.

ARTICLE XII

Indemnity: The Consultant shall defend, indemnify and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees and the public, or damage to property or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, subcontractor(s) and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is not required.

- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XVI

California Residency (Form 590): All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Consultants or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

Year 2000 Compliance: Consultant agrees that hardware and software developed, distributed, installed, programmed or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four digit year.

Upon written notification by the County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to the County.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Sylvia Earl, Assistant Treasurer/Tax Collector, Treasurer/Tax Collector's Office, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Department Concurrence:

By: C.L. Raffety by Seal Dated: 10/19/2001
C.L. Raffety, Treasurer/Tax Collector
Treasurer/Tax Collector's Office

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Date: 11-20-2001

By: Penny Humphreys
Penny Humphreys, Chair
Board of Supervisors
"County"

**ATTEST: Dixie L. Foote, Clerk
of the Board of Supervisors**

By: Margaret E. Moody Date: 11-20-2001
Deputy Clerk

-- CONSULTANT --

Date: 10/24/01

PROFESSIONAL CONSULTANCY INTERNATIONAL, INC.,
A FLORIDA CORPORATION

By: David J. Perttunen
David J. Perttunen, President
"Consultant"

ATTEST:

By: F.V. Perttunen Date: 10.24.01
Corporate Secretary