

PERSONAL SERVICES CONTRACT FOR COMPUTER SERVICES

This agreement is made and entered into by and between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Yamhill County Sheriff's Office, hereinafter referred to as "Yamhill County" and Helion Software, Inc., computer consulting firm, an Oregon corporation, hereinafter referred to as "Contractor".

RECITALS

- A. Yamhill County requires the services of a computer programming consulting firm with the particular training, abilities, knowledge, qualifications, and experience to serve as the firm to provide certain computer services for Yamhill County.
- B. Contractor possesses such training, abilities, knowledge, qualifications, and experience and is willing to perform the certain services for Yamhill County as set forth herein;

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

1. Contractor shall provide to Yamhill County comprehensive computer services as specified in Exhibit A, attached hereto and by reference incorporated herein (the "Services"). Contractor represents to Yamhill County that Contractor has made a reasonable inspection of the site where services are to be performed and is reasonably familiar with the site(s) conditions that might affect Contractor's performance of Services pursuant to this agreement
2. The term of this agreement shall be for a period of twelve (12) months, beginning February 24, 2020, and ending upon completion of contracted Services, but no later than April 15, 2020 (the "Completion Date") unless earlier terminated as provided herein. The Services will have been deemed completed following final acceptance and testing by Yamhill County, in its sole reasonable discretion. The parties may, by mutual agreement in writing, extend the term of this agreement beyond April 15, 2020, but not to exceed September 1, 2020.
3. As compensation for the Services described in Exhibit A, Yamhill County shall pay to Contractor the following amounts:
 - a. \$2,500.00 for Software Installation, configuration, and training, due upon completion of training.
 - b. A maximum of \$2,500.00 for data conversion, due upon completion of data conversion. Actual cost will be on a time and materials basis at \$145 per hour.
 - c. Any other consulting services relating to the Services as requested, \$145 per hour, not to exceed \$2,500.

Yamhill County shall make payment upon receipt and acceptance of Services as invoiced by Contractor. Yamhill County shall pay invoices within thirty (30) days after an invoice has been

received and approved by the authorized Yamhill County representative. Maintenance and support shall be provided in accordance with the Client Software Support Services Contract. All Licenses shall carry full manufacturer warranties. Where the warranty period is not otherwise provided in the Contractor's SOW, the License agreement or the Client Software Support Services Contract, the warranty period is 365 days commencing upon the completion date

4. The parties agree that Yamhill County has a substantial interest in the timely completion of all the work and the Services to be performed under this agreement in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of Contractor to complete this agreement by the Completion Date are uncertain and difficult to establish. The parties therefore desire to liquidate Yamhill County's damages for Contractor's failure to complete the work and Services by the Completion Date. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to Yamhill County the sum of \$100.00 per day for each calendar day until the work and Services are satisfactorily completed and accepted by Yamhill County as specified in this agreement. The parties can mutually agree to an extension of the Completion Date. Unless otherwise directed by motion or resolution of the Yamhill County Board of Commissioners, the Yamhill County Sheriff's Office shall be the primary liaison between Contractor and Yamhill County. In this capacity, the Yamhill County Sheriff's Office shall have responsibility for administering this agreement and shall conduct such reviews and evaluations as deemed appropriate to encourage the provision of prompt, professional, and cost-effective Services.
5. The compensation provided herein shall be exclusive and Yamhill County shall neither pay nor provide Contractor with any fringe benefits, including, but not limited to, retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by Yamhill County to Contractor for any purpose whatsoever unless otherwise agreed in writing. Contractor shall be responsible for paying all income taxes, Social Security, or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of Yamhill County's payment of compensation hereunder to Contractor.
6. This agreement is personal as to Contractor, and Contractor may not subcontract any portion of the Services to be performed hereunder without the prior written approval of Yamhill County; provided, nothing herein shall prohibit any other computer consultants employed by Contractor or in a firm of which he shall be a member to assist Contractor in carrying out the responsibilities herein.
7. Contractor may, during the term of this agreement, work for or be employed by any other person or entity, subject to paragraph 8, below; provided, that such employment or work shall not impair performance of Contractor's Services to Yamhill County hereunder. The parties acknowledge that in the course of performing its responsibilities under this agreement, that Contractor may be exposed to or acquire information which is proprietary and confidential to Yamhill County or its agents. Any and all information of Yamhill County in any form obtained by Contractor or its employees, agents, or representatives in the course of performing this agreement shall be deemed proprietary and confidential information of

Yamhill County, subject to the Oregon public records laws, ORS Chapter 192. Contractor agrees to hold such information in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer, give, or otherwise disclose such information to third-parties or to use confidential information for any purposes whatsoever, without the express written consent of Yamhill County. Contractor shall advise Yamhill County immediately in the event that Contractor learns or has reason to believe that any person who has access to Confidential Information has violated or intends to violate the terms of this agreement and will reasonably cooperate in seeking injunctive relief.

8. Contractor shall not, at any time during the term of this agreement, be employed by or perform computer consulting for another party or client when to do so would conflict in any manner or degree with the performance of Services to Yamhill County hereunder. This prohibition on conflicts of interest shall extend to Contractor and to any employee of Contractor and or sub-contractor.
9. This agreement is not a contract of employment. Yamhill County does not seek to hire Contractor as an employee(s) of Yamhill County nor does Contractor desire to be an employee(s) of Yamhill County for performance of the Services described herein. The parties intend that Contractor, in performing the Services specified herein, shall be and act as an independent contractor and shall have professional control of the work and the manner in which it is performed. Contractor shall have the sole authority to determine the manner and means of performing the Services described herein and Yamhill County shall not interfere with, control, or direct the manner or method in which such Services are performed; provided, Yamhill County shall direct Contractor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of Contractor's Services. Contractor shall not be considered an agent of Yamhill County. The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the performance of the Services as described herein.
10. Contractor shall be responsible for and has obtained or shall obtain and maintain all necessary professional licenses and professional liability insurance, as required by law.
11. In the event Contractor's labor or Services shall be performed by its employees, such employees shall be and at all times remain the employees of Contractor, under the Contractor's sole and exclusive control, and shall not be deemed employees of the Yamhill County for any purpose. Contractor shall assign a project manager satisfactory to Yamhill County to perform Services under this Agreement ("Project Manager"). Beginning at project kick-off, and continuing through project completion and signoff, designated representatives of Yamhill County shall meet with the Project Manager not less than once per week for project status update meetings. Yamhill County reserves the right to reject or request removal of any employee of Contractor identified as a key resource for the project for performance of the Services provided under this Agreement, including but not limited to the Project Manager. Any change or replacement of a key resource, including but not limited to the Project Manager, must have the prior approval of Yamhill County and the key resource replacement must have substantially similar experience and knowledge of the System and project as the individual being replaced. Yamhill County's approval of any such replacement

of key personnel, including but not limited to the Project Manager, shall not be unreasonably withheld.

12. If Contractor is a subject employer for workers' compensation or unemployment insurance purposes, Contractor shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at Yamhill County's request.
13. Contractor represents that they have filed federal and state income tax returns (a) in their business name; or (b) on a business Schedule C as part of personal income tax returns, if Contractor provided computer consulting services as any independent contractor during the previous calendar year.
14. Contractor represents that the Services to be provided under this agreement are held out to the public as provided by an independent established business. To that end, Contractor represents that at least four of the following apply to Contractor's business (*indicate those that apply*):
 - (a) The services are primarily carried out at a location that is separate from the residence of the individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, set aside as the location of the business;
 - (b) Commercial advertising or business cards, as customary in operating similar businesses, are purchased for Contractor's business or Contractor has a trade association membership;
 - (c) Contractor maintains telephone listing and service that is separate from his personal residence listing and service used by an individual who performs Contractor's labor or services;
 - (d) Contractor performs labor or services only pursuant to written contract;
 - (e) Contractor performs labor or services for two or more different persons annually;
 - (f) Contractor assumes financial responsibility for defective workmanship or general liability insurance relating to the Services to be provided.
15. Yamhill County has relied upon the professional ability, qualifications, and training of Contractor as a material inducement to enter into this agreement. Contractor warrants that all of its Services will be performed in accordance with generally accepted professional practices and standards and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions, as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by Yamhill County shall not operate as a waiver or release of any claim. **Contractor shall defend, indemnify, and hold harmless Yamhill County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceeding arising from or relating to the negligence, wrongful acts, or omissions of Contractor in connection with the performance of any Services hereunder. Contractor shall not be responsible for claims caused by the negligence or other wrongful**

acts of omissions of Yamhill County or its officers, employees, or agents. Contractor shall not be deemed an agent of Yamhill County under Oregon Tort Claims Act, ORS 30.265.

16. This agreement sets forth the entire agreement between the parties and may not be modified or altered except in writing, signed by both parties.
17. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

YAMHILL COUNTY: Yamhill County Sheriff's Office
ATTN: Emily Williams
535 NE 5th Street, Rm 143
McMinnville, Oregon 97128

CONTRACTOR: Helion Software, Inc.
Attn. Murray Giesbrecht
P.O. Box 3506
Salem, OR 97302

18. At any time and without cause, Yamhill County shall have the right in its sole discretion, to terminate this agreement by giving 45-day prior written notice to Contractor. If Yamhill County terminates this agreement pursuant to this paragraph, it shall pay Contractor for Services rendered and accepted up to the date of termination.

At any time and without cause, Contractor shall have the right in its sole discretion, to terminate this agreement by giving 45-day prior written notice to Yamhill County.

19. This agreement may be terminated by Yamhill County upon 15 days advance notice if Contractor willfully and repeatedly fails or refuses to comply with the policies, rules, regulations, and standards established by Yamhill County which are communicated to Contractor.
20. The Contractor certifies, under penalty of perjury, that Contractor is not in violation of any federal, state, or local tax laws, rules, or regulations or any federal, state, or local laws, rules, codes, or regulations applicable to the Services and that Contractor shall remain in compliance with all such laws, codes, rules, and regulations during the entire term of this agreement. In addition, Contractor agrees that it has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318. Any violation by Contractor of applicable law shall constitute an event of default under this agreement and Contractor shall be liable for and hold Yamhill County harmless and defend Yamhill County from and against any and all liability arising out of, connected with, or as a result of the violation
21. Contractor shall not enter into any subcontracts for any of the work or Services under this agreement, nor assign or transfer any of its interest in this agreement, without the prior written consent of Yamhill County. If Yamhill County provides its consent, Contractor

covenants and agrees to bind any and all subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all subcontractors. In hiring employees for performance of Services under this agreement neither Contractor, any subcontractor, or any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap, or sex discriminate against a person who is qualified and available to perform work or services to which employment relates.

22. The Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated herein by this reference.
23. Yamhill County shall not be liable for any expenditure without statutory appropriation pursuant to ORS 294.305 et seq. (local budget law).
24. Yamhill County shall not be indebted or liable for any obligation created by the Agreement in violation of the debt limitation of Article XI, Section 10 of the Oregon Constitution.
25. Neither Yamhill County nor Contractor shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of Yamhill County or Contractor. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The risk of loss or damage to the subject matter of this agreement shall be upon the Contractor until such time as Yamhill County has accepted the Services as provided in this agreement.
26. If any term of provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
27. The failure of Yamhill County to enforce any provision of this Agreement shall not constitute a waiver by Yamhill County of that or any other provision. The failure of the Contractor to enforce any provision of this Agreement shall not constitute a waiver by the Contractor of that or any other provision.
28. In the event that either party to this agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.
29. All questions concerning the validity, interpretation, and performance of this agreement will be governed by and decided in accordance with the laws of the State of Oregon. The parties hereby submit and consent to the exclusive jurisdiction of the Yamhill County Circuit Court

and irrevocably agree that all actions or proceedings relating to this agreement will be litigated in this court and each of the parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in this court.

30. Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this agreement:
- (a) Workers Compensation Insurance in compliance with statutory requirements;
 - (b) Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;
 - (c) 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 Yamhill County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the work or Services provided under the agreement.
 - (d) 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 provided under the agreement;

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 Yamhill County. Evidence of such insurance will be furnished to Yamhill County before commencing work or Services. 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 Yamhill County.

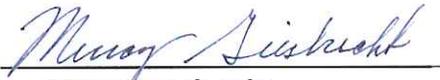
The Commercial General Liability and Commercial Automobile Liability shall (i) name Yamhill County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of Yamhill County and that any insurance maintained by Yamhill County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

31. Contractor, by entering into this agreement, represents that its bid for these Services is made without connection with any person, firm, or corporation making or refraining from making a bid for the same or similar services and was in all respects fair and without collusion or fraud.
32. This agreement may be executed by facsimile or electronically and in counterparts which together form one legal instrument.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY, UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

DATED: 2/13/2020

CONTRACTOR 
Murray Giesbrecht
CEO
Helion Software, Inc.

DATED: 2/13/2020

YAMHILL COUNTY 
Tim Svenson
Sheriff
Yamhill County Sheriff's Office

APPROVED AS TO FORM
By: 
CHRISTIAN BOENISCH
County Counsel

Date: 2/24/20

Accepted by Yamhill County
Board of Commissioners on
2/20/20 by Board Order
20-57

EXHIBIT A

Data Conversion and Importing

1. Helion will perform the final import of digital data provided by Yamhill County in the format specified by Helion.
2. Helion will establish source codes for Animal Control module in escrow account with Yamhill County as beneficiary.

Animal Control System Training

1. Helion will provide two days of training for the Animal Control System.
2. Training will on dates agreed upon by both parties at a site provided by Yamhill County.
3. Yamhill County will also provide all necessary computer equipment.
4. Helion will establish a remote service procedure whereby a personal computer or similar equipment may be employed for service assistance.

Installation Project Plan / Timeline

| # | Task | Responsible Party | Task Start Date | Typical Time |
|---|---------------------------------------|--------------------|-------------------|--------------|
| 1 | Purchase or designate servers | County IT | <i>Completed</i> | Unknown |
| 2 | Install databases | County IT / Helion | February 24, 2020 | 1 to 5 days |
| 3 | Configure system | Helion | March 2, 2020 | 5 days |
| | • Machines | | | |
| | • Users | | | |
| | • Other settings | | | |
| 4 | Install Helion StartMenu | County IT / Helion | March 6, 2020 | 1 day |
| 5 | Data conversion | County IT / Helion | March 9, 2020 | 1 to 2 weeks |
| 6 | Data validation | Helion | March 23, 2020 | 1 to 2 weeks |
| 7 | Training (Day 1) | Helion / County | April 6, 2020 | 1 day |
| 8 | Refinement / Complete Data validation | Helion / County | April 7, 2020 | 1 week |
| 9 | Training (Day 2) / Go-live | Helion / County | April 13, 2020 | |