

PERSONAL SERVICES AGREEMENT
TILLAMOOK COUNTY AND CRAYON SOFTWARE EXPERTS, LLC
VDI SOLUTION SUPPORT SERVICES

This personal services agreement, hereafter “agreement” is entered into by and between CRAYON SOFTWARE EXPERTS, LLC, hereafter “contractor” and TILLAMOOK COUNTY, a political subdivision of the State of Oregon, hereafter “county”, pursuant to ORS 203.010. County and contractor intend to contract for VDI SOLUTION SUPPORT SERVICES. The mutual promises of each are given in exchange and as consideration for, the promises of the other.

COUNTY AND CONTRACTOR MUTUALLY COVENANT AND AGREE AS FOLLOWS:

1. AGREEMENT

Contractor promises to provide, and county promises to pay for, the services described below according to the provisions of this agreement.

2. AGREEMENT PRICE AND AMOUNT

The price for the services provided by contractor shall not exceed Twenty-Eight Thousand Nine Hundred Sixty-Two and 00/100 Dollars (\$28,962.00) and paid in three installments in accordance with Exhibit A.

3. AGREEMENT TERM

The term or period of this agreement shall end July 30, 2024.

4. AGREEMENT DOCUMENTS

The following documents comprise the agreement and are incorporated herein by reference in their entirety.

- 4.1. This Agreement;
- 4.2. Public Contract Provisions;
- 4.3. Quote Dated 5/17/2022 (Exhibit A); and
- 4.4. Microsoft Products and Services Agreement as referenced.

5. TERMINATION

5.1. WITHOUT NOTICE

This agreement shall terminate without any requirement of notice to either party when the first of the following events occurs:

- 5.1.1. The parties mutually consent to termination in writing.
- 5.1.2. The agreement term ends.
- 5.1.3. The moment prior to the contractor filing for the settlement of debts or any debt restructuring in any state, federal or other court of competent jurisdiction.

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5.1.4. When contractor's proposed agreement price adjustments exceed agreement specifications.

5.2. WITH NOTICE

This agreement may also end and notice shall be served as required when:

5.2.1. Any party breaches any duty, term or condition of this agreement.

5.2.2. Either party commits a fraud or misrepresentation upon the other party.

5.2.3. Public funds are no longer available to support this agreement.

5.2.4. Either party gives thirty (30) days written notice.

GENERAL PROVISIONS

6. STATUS OF CONTRACTOR

The parties intend that contractor, in performing the services specified in this agreement, shall act as an independent contractor.

- 6.1. The compensation provided herein shall be exclusive and 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 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, or any other taxes or assessments imposed by any governmental body incurred by reason of county's payment of compensation hereunder to contractor. County will report the total amount of all payments to contractor, including any expense, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 6.2. 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 county; provided nothing herein shall prohibit any other consultants employed by contractor or in a firm of which he shall be a member to assist contractor in carrying out the responsibilities herein.
- 6.3. This agreement is not a contract of employment. 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 county shall not interfere with, control or direct the manner or method in which such services are performed; provided, county shall direct contractor as to the work to be assigned and shall have the

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right to direct the required results to the extent such direction may be consistent with the nature of contractor's services. Except as otherwise expressly provided herein and except for the purposes of the Oregon Tort Claims Act, ORS 30.265, contractor shall not be considered an agent of county.

- 6.4. 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.
- 6.5. In the event contractor's labor or services shall be performed by contractor's 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 county for any purpose.
- 6.6. Contractor is an independent contractor for purposes of the Workers' Compensation Law (ORS Chapter 656) and unemployment insurance.
 - 6.6.1. Contractor is solely liable for any Workers' Compensation coverage under this agreement. If contractor has the assistance of other persons in the performance of this agreement, contractor shall qualify and remain qualified for the term of the agreement as an insured employer under ORS 656.407. If contractor performs this agreement without the assistance of any other persons, contractor shall execute a Joint Declaration with county's Workers' Compensation carrier absolving county of any and all liability as provided in ORS 656.029.
 - 6.6.2. If contractor is a subject employee for Workers' Compensation or unemployment insurance purposes, contractor shall provide such Workers' Compensation and unemployment coverage benefits at contractor's sole cost and expense and shall provide proof of such insurance and benefits at county's request.
- 6.7. Contractor represents that contractor has filed federal and state income tax returns (a) in contractor's business name or (b) on a business Schedule C as part of contractor's personal income tax returns, if contractor provided consulting services as an independent contractor during the previous calendar year.
- 6.8. Contractor represents that contractor is customarily engaged in an independently established business. To that end, contractor represents that at least three (3) of the following apply to contractor's business (initial those that apply):
 - 6.8.1. _____ Contractor maintains a business location that is separate from the business or work location of the person for whom the services are provided or that is

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- in a portion of contractor's residence and that portion is used primarily for the business.
- 6.8.2. _____ Contractor bears the risk of loss related to the business or the provision of services as shown by factors such as: Contractor enters into fixed price contracts; contractor is required to correct defective work; contractor warrants the services provided; or contractor negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
- 6.8.3. _____ Contractor provides contracted services for two (2) or more different persons within a twelve (12) month period, or contractor routinely engages in business advertising solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- 6.8.4. _____ Contractor makes a significant investment in the business, through means such as: purchasing tools or equipment necessary to provide the services; paying for the premises or facilities where the services are provided; or paying for licenses, certificates or specialized training required to provide the services.
- 6.8.5. _____ Contractor has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

7. NON-DISCRIMINATION

Contractor shall comply with all applicable federal, state and local laws, rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability.

8. NOTICES

Any notice required or permitted under this agreement shall be in writing.

- 8.1. Notices shall be deemed given when:
- 8.1.1. Personally delivered, or
 - 8.1.2. Three (3) days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.
- 8.2. Notices, bills and payments sent by mail should be addressed as follows:

COUNTY: Tillamook County
Information Services Department
Attn: Jeff Underwood
201 Laurel Avenue
Tillamook, Oregon 97141

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CONTRACTOR: CRAYON SOFTWARE EXPERTS, LLC.
Glenn Orcutt
12221 Merit Drive, Suite 800
Dallas, Texas 75271
469-329-0290
glen.orcutt@crayon.com

9. STATUTORY PUBLIC CONTRACT PROVISIONS

Contractor shall comply with the statutory public contract provisions as more particularly set forth herein.

10. CONFLICT OF INTEREST

Contractor covenants that contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of contractor's services. Contractor further covenants that in the performance of this agreement no person having any such interest shall be employed.

11. RECORDS

Contractor shall create and maintain records in accordance with generally accepted standards of contractor's practice and the records requirements of county. The records shall remain the property of county and be made available to county upon request. Contractor shall exercise due care to maintain the confidentiality of client records in accordance with law.

12. CONSTRAINTS

This agreement is expressly subject to the debt limitations of the Oregon Constitution set forth in Article XI, Section 10 and is contingent upon funds being available and appropriated therefore. Any provisions of this agreement which would conflict with law are deemed inoperative to that extent.

13. INTEGRATION

This agreement supersedes all prior oral or written agreements between contractor and county regarding this project. It represents the entire agreement between the parties. Time is of the essence in all terms, provisions, covenants and conditions in this agreement.

14. SAVINGS

Should any clause or section of this agreement be declared by a court to be void or voidable, the remainder of this agreement shall remain in full force and effect.

15. WAIVER; MODIFICATION

Failure by county to enforce any provision of this agreement does not constitute county's continuing waiver of that provision, any other provision or of the entire agreement. The rights and duties under this agreement shall not be modified, delegated, transferred or assigned, except upon the written, signed consent of both parties.

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16. LIABILITY; INDEMNIFICATION

County has relied upon the ability, qualifications and training of contractor as a material inducement to enter into this agreement. Contractor warrants that all of contractor's services will be performed in accordance with generally accepted practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of contractor's work by county shall not operate as a waiver or release of any claim. Contractor shall defend, indemnify and hold harmless county, its officers, agents and employees from any claims, liabilities, demands, damages, actions or proceedings, arising from or relating to the negligence of contractor in connection with the performance of any services hereunder. Notwithstanding the foregoing, where applicable, contractor shall be deemed an agent of county, for the sole purposes of a tort liability pursuant to the Oregon Tort Claims Act, ORS 30.265.

Contractor shall provide a certificate of coverage at the time of execution of this agreement, indicating proof of insurance coverage with limits not less than the following:

Property Damage:	\$1,000,000 (one claimant)
	\$2,000,000 (all claimants)
Personal Injury or Death:	\$2,000,000 (one claimant)
	\$2,000,000 (all claimants)

Such insurance shall be on an occurrence basis only and be evidenced by a Certificate of Insurance provided to the county, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon. An endorsement shall be issued by the company showing the county as an additional insured on all coverages. The endorsement shall also contain a notice of cancellation provision.

17. JURISDICTION; LAW

This agreement is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the parties.

18. LEGAL REPRESENTATION

In entering into this agreement, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel. Each party represents and warrants to the other that they are fully satisfied with the representation received from their respective attorneys.

19. ATTORNEYS' FEES

Attorneys' fees, costs and disbursements necessary to enforce this agreement through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

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20. LANGUAGE

The headings of the agreement paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

21. SUBCONTRACTING

Any subcontract ad infinitum of this agreement shall express the GENERAL PROVISIONS section of this agreement or incorporate it by reference.

ACKNOWLEDGEMENT:

EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY REPRESENTS TO THE OTHER TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE LEGAL PERSONS, CORPORATE OR OTHERWISE, IN CONTRACT.

Approved as to form and content this 27th day of May, 2022.


Contract Officer

Dated this ____ day of _____, 2022.

CONTRACTOR: CRAYON SOFTWARE EXPERTS, LLC

Glen Orcutt
12221 Merit Drive, Suite 800
Dallas, Texas 75271
469-329-0290
glenn.orcutt@crayon.com

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Dated this ____ day of _____, 2022.

THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

	Aye	Nay	Abstain/Absent
_____ David Yamamoto, Chair	___	___	___/___
_____ Erin D. Skaar, Vice-Chair	___	___	___/___
_____ Mary Faith Bell, Commissioner	___	___	___/___

ATTEST: Tassi O'Neil,
County Clerk

APPROVED AS TO FORM:

By: _____
Special Deputy

William K. Sargent,
County Counsel

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PUBLIC CONTRACT PROVISIONS

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any sub-contractor. If contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the contractor or a sub-contractor by any person in connection with the contract as such claim becomes due, the owner may pay such claim to the persons furnishing the labor or materials and charge the amount of payment against funds due or to become due contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or contractor's surety from contractor's or surety's obligation with respect to any unpaid claim. If the owner is unable to determine the validity of any claim for labor or materials furnished, the owner may withhold from any current payment due contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such contractor or sub-contractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from contractor or any sub-contractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or materials furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any sub-contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If this contract involves lawn and landscape maintenance, contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.
6. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
7. Contractor shall employ no person for more than ten (10) hours in any one (1) day, or forty (40) in any one (1) week, except in cases of necessity, emergency or where public policy absolutely requires it.

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Contractor's employees shall be paid at least time and one-half (1 and 1/2) for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under Personal Services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

Persons employed by contractor shall receive at least time and one-half (1 and 1/2) pay for work performed on legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one (1) day or in excess of forty (40) hours in any one (1) week, whichever is greater.

8. The contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
9. Contractor must give notice to employees, in writing, that they cannot be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a federal contract or grant.
10. All employers working under the contract are either subject employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
11. The contract may be cancelled at the election of owner for any willful failure on the part of contractor to faithfully perform the contract according to its terms.
12. Contractor's Compliance with Tax Laws
 - A. Contractor must, throughout the duration of this contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 13.3.1 through 13.3.4 of this contract.
 - B. Any violation of subsection A of this section shall constitute a material breach of this contract. Further, any violation of contractor's warranty, in subsection 13.3 of this contract, that contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this contract. Any violation shall entitle county to terminate this contract, to pursue and recover any and all damages that arise from the breach and the termination of this contract, and to pursue any or all of the remedies available under this contract, at law, or in equity, including but not limited to:

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1. Termination of this contract, in whole or in part;
 2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to contractor, in an amount equal to county's setoff right, without penalty; and
 3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of contractor's breach of this contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement services.
- C. These remedies are cumulative to the extent the remedies are not inconsistent, and county may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

13. Contractor's Representations and Warranties

Contractor represents and warrants to county that:

- A. Contractor has the power and authority to enter into and perform this contract.
- B. This contract, when executed and delivered, is a valid and binding obligation of contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this contract, faithfully has complied with:
 1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 2. Any tax provisions imposed by a political subdivision of this state that applied to contractor, to contractor's property, operations, receipts, or income, or to contractor's performance of or compensation for any work performed by contractor;
 3. Any tax provisions imposed by a political subdivision of this state that applied to contractor, or to goods, services, or property, whether tangible or intangible, provided by contractor; and
 4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any goods or equipment delivered to county under this contract, and contractor's services rendered in the performance of contractor's obligations under this contract, shall be provided to county free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

END OF PUBLIC CONTRACT PROVISIONS



EXHIBIT A

This quote is billable for years 1 and 2 upfront in June of 2022. Year 3, will be billed to the customer in July of 2024.

Approved by Leslie Strickland 5/17/22

Quote Date: 04/22/2022 **Customer**
Tillamook County

Quoted by:
Crayon Software Experts LLC
12221 Merit Drive, Suite 1400
Dallas, TX 75251
Mistye DuBose
sled.us@crayon.com

Part Number	Description	# of Months	Qty	Monthly Net Unit Price	Annual Net Unit Price	Extended Amount
MPSA Pricing and Usage Year 1						
AAA-11035	VrtIDtpACC E3 User Subsc Virtual Desktop AccessE3 Per User Subscriptions	12	50	\$ 10.48	\$ 125.76	\$ 6,288.00
AAA-11029	Windows E3Usr User Subsc WindowsE3 Per User Per User Subscriptions	12	50	\$ 5.61	\$ 67.32	\$ 3,366.00
Total Year 1 Payment						\$ 9,654.00
Part Number	Description	# of Months	Qty	Monthly Net Unit Price	Annual Net Unit Price	Extended Amount
MPSA Pricing and Usage Year 2						
AAA-11035	VrtIDtpACC E3 User Subsc Virtual Desktop AccessE3 Per User Subscriptions	12	50	\$ 10.48	\$ 125.76	\$ 6,288.00
AAA-11029	Windows E3Usr User Subsc WindowsE3 Per User Per User Subscriptions	12	50	\$ 5.61	\$ 67.32	\$ 3,366.00
Total Year 2 Payment						\$ 9,654.00
Part Number	Description	# of Months	Qty	Monthly Net Unit Price	Annual Net Unit Price	Extended Amount
MPSA Pricing and Usage Year 3						
AAA-11035	VrtIDtpACC E3 User Subsc Virtual Desktop AccessE3 Per User Subscriptions	12	50	\$ 10.48	\$ 125.76	\$ 6,288.00
AAA-11029	Windows E3Usr User Subsc WindowsE3 Per User Per User Subscriptions	12	50	\$ 5.61	\$ 67.32	\$ 3,366.00
Total Year 3 Payment						\$ 9,654.00
Total Years 1-3						\$ 28,962.00

\$19,308.00 Due upon contact signing

\$9,654.00 Due July 2024

** Pricing Expires in 30 days from date of quote**

All items included in this RFQ are new, unused, not refurbished, with original manufacturer warranty.

Remit to Address:

Crayon Software Experts, LLC
Attn: Finance Manager
12221 Merit Drive, Suite 1400
Dallas, TX 75251
Phone: 469-329-0290
finance.us@crayon.com

Send PO:

sled.us@crayon.com