

RESOLUTION NO. 2011-15

RESOLUTION BY THE FINANCE AND HUMAN RESOURCES COMMITTEE AUTHORIZING THE EXECUTION OF A THREE-YEAR CONTRACT WITH SYSTEMS & PROGRAMMING SOLUTIONS, INC. (SPSI) TO PROVIDE RACINE COUNTY WITH OFF-SITE DISASTER RECOVERY SERVICES FOR ITS I-SERIES (AS/400) INFRASTRUCTURE

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED by the Racine County Board of Supervisors that a three year agreement with Systems & Programming Solutions, Inc. (SPSI) to provide off-site disaster recovery services for its i-Series (AS/400) infrastructure is authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that said contract that is attached hereto as "Exhibit "A" and shall provide services as set out in the contract that will be on file at the Racine County Clerk's office.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that said contract shall incorporate such terms and conditions as the Corporation Counsel and the Information Systems Director deem necessary and appropriate.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Clerk, the County Executive and/or the County Board Chairman are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

1st Reading _____

FINANCE AND HUMAN RESOURCES COMMITTEE

2nd Reading _____

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

Robert N. Miller, Chairman

Mark M. Gleason, Vice-Chairman

VOTE REQUIRED: Majority

Thomas Pringle, Secretary

Prepared by: Corporation Counsel

Gilbert Bakke

3
4
5 _____
6 Q. A. Shakoor, II

7
8 _____
9 John A. Wisch

10
11 **The foregoing legislation adopted by the County Board of Supervisors of**
12 **Racine County, Wisconsin, is hereby:**

13 **Approved:** _____

14 **Vetoed:** _____

15
16 **Date:** _____,

17
18 _____
19 **James A. Ladwig, County Executive**

20
21
22
23
24 **INFORMATION ONLY**

25
26 **WHEREAS**, Systems & Programming Solutions, Inc. (SPSI) will provide off-site
27 disaster recovery services for Racine County's iSeries(AS/400) infrastructure; and

28
29 **WHEREAS**, with the annual agreement that started on the July 1st, 2011 and is
30 renewed for three year period; and

31
32 **WHEREAS**, the agreement will allow us to recover our critical core applications
33 (Payroll, HR, Finance, Treasury, and Register of Deeds) in the unfortunate case we are
34 unable to access the current iSeries(AS/400) infrastructure; and

35
36 **WHEREAS**, the service was put out using a letterhead quote purchasing bid
37 process accordance to County ordinance section 7.260(4) and the lowest bid will be
38 accepted.

EMERGENCY BACK UP SERVICE AGREEMENT

This Agreement made this 1st day of July, 2011, by and between Systems & Programming Solutions, Inc. ("SPSI"), a Wisconsin corporation and Racine County, ("Racine County"), a Wisconsin corporation.

RECITALS

WHEREAS, Racine County wishes to protect itself in case of an emergency by utilizing SPSI as an off site facility to allow Racine County to develop and maintain proper county records; and

WHEREAS, SPSI desires to provide an emergency back up facility for Racine County for purposes of maintaining proper county records as set forth herein.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS

1.01. Back Up Facility. Back Up Facility shall refer to the computer equipment configuration at the SPSI computer facility located at SPSI's principal place of business as specified in Schedule A attached hereto and incorporated herein by reference.

1.02. Back Up Facility Test. Back Up Facility Test shall refer to the procedure undertaken by Racine County to test the usability of the Back Up Facility.

1.03. Back Up Facility Usage. Back Up Facility Usage shall refer to the period of time during which Racine County makes use of the Back Up Facility.

1.04. User Computer Facility. User Computer Facility shall refer to the computer equipment located at Racine County's computer facility dedicated to maintain proper county records as set forth in Schedule B attached hereto and incorporated herein by reference.

1.05. Disaster. Disaster shall refer to an unplanned interruption of the operation of, or the inaccessibility to the User Computer Facility which prevents Racine County from maintaining the minimum proper county records. Any interruption of the User Computer Facility resulting from peripheral upgrades, maintenance, a peripheral device malfunction, software malfunction or the utilization of the User Computer Facility for other than maintaining proper county records shall not be deemed a Disaster.

1.06. Transfer Software. Transfer Software shall refer to the standard, unmodified, current version of the computer software utilized by Racine County for maintaining proper county records.

1.07. Multiple Disasters. Multiple Disasters shall refer to simultaneous disasters being experienced by more than one Subscription Holder.

1.08. Retainer Fee. Retainer Fee shall refer to the \$3,500.00 annual charge imposed by SPSI and payable by Racine County on the first business day of each contract year.

1.09. Subscription Holder. Subscription Holder shall refer to a client under an Emergency Back Up Services Agreement with SPSI.

2. **EMERGENCY BACK UP SERVICE**

2.01. Back Up Service. In the event of a Disaster at the User Computer Facility, SPSI, upon 2 hour (120) minutes prior notice, shall provide Racine County with access to the Back Up Facility for 2 weeks (more time to be negotiated if needed) to be used for maintaining the minimum proper county records using the Transfer Software.

2.02. Configuration Change. In the event of any Back Up Facility computer equipment changes, SPSI shall give Racine County at least thirty (30) days prior written notice of the change of the computer equipment configuration, and no such change shall be made unless the resulting equipment configuration provides at least the same level of functionality as originally provided.

2.03. Back Up Facility Testing. SPSI shall provide Racine County access to the Back Up Facility during each contract year hereunder for one (1) day of eight (8) hours duration to complete a Back Up Facility Test. Racine County shall notify SPSI at least five (5) business days in advance, in writing, of such Back Up Facility Test. Any expenses incurred by SPSI as a result of such Back Up Facility Test shall be charged on a time and materials basis to Racine County as based on SPSI's rate schedule then in effect. Racine County shall be responsible for all expenses of its personnel and transportation costs, as well as the expenses incurred by SPSI and its personnel due to assistance or building security issues.

2.04. Multiple Disasters. In the event of Multiple Disasters, SPSI shall use its best efforts to provide a coordinated and scheduled shared utilization of the Back Up Facility. SPSI shall use its best efforts to partition the Back Up Facility equally among the Subscription Holders experiencing a Disaster and to assure the confidentiality of the information of each Subscription Holder. If the Back Up Facility is unable to accommodate all Subscription Holders experiencing a Disaster, the Back Up Facility shall be allocated to the Subscription Holders in the order SPSI was notified of the Disaster by each Subscription Holder.

2.05. Optional Services. SPSI may, for an additional fee, based on the fee schedule then in effect for SPSI, provide additional services, including, but not limited to, additional Back Up Facility Testing, consulting services, computer tapes and other supplies.

3. **USER RESPONSIBILITIES**

3.01. Supplies. Racine County shall provide any and all needed supplies including, but not limited to computer tapes, paper, printed notices or advices, and the Transfer Software.

3.02. Back Up Facility Testing. Racine County shall schedule a Back Up Facility Test at least five (5) business days in advance of the date on which the test is to occur. SPSI reserves the right to reschedule the Back Up Facility Test in the event that SPSI is experiencing equipment problems or if another Subscription Holder is utilizing the Back Up Facility. Racine County shall provide SPSI with a written contingency plan for its use of the Back Up Facility.

3.03. Paying and Providing Personnel. Racine County is responsible to provide any personnel necessary for data entry, printing, and any other personnel necessary for Racine County's maintenance of proper county records.

3.04. License of Transfer Software. Racine County hereby agrees to maintain in full force and effect a license for the Transfer Software for the term of this Agreement, allowing the Transfer Software to be used at the Back Up Facility.

3.05. Multiple Disasters. In the event of a Multiple Disaster, Racine County shall use its best efforts to cooperate with the coordination and scheduling of Subscription Holders for the use of the Back Up Facility.

3.06. Confidentiality of Data. Racine County agrees not to seek or obtain access to files, programs or data which may be considered proprietary to SPSI or other Subscription Holders, or other users of the Back Up Facility. If such access is accidentally or otherwise obtained, Racine County agrees to inform SPSI and comply with any reasonable instructions that SPSI gives with respect thereto.

3.07. Insurance. Racine County shall maintain insurance in full force and effect with respect to itself and each and any of its personnel, agents, or subcontractors who may be on any premises or property of SPSI in connection with this Agreement, including without limitation: **Racine County is self-insured for its workers' compensation claims. As part of this self-insured plan, resources are being accumulated in the Racine County General Fund to meet potential losses. Third-party coverage is maintained for individual workers' compensation claims in excess of \$300,000 for regular claims and \$750,000 for claims that involved federal benefits (USL & H and Jones Act). The excess policy provides coverage up to \$1 million in additional available payments per occurrence after the \$300,000 retention has been met. This policy has a \$1 million cap and is administered through Cannon Cochran Management Services, Inc. (CCMSI). Racine County also self funds for public liability and automobile coverage through AIG. There is an excess liability policy in place that provides coverage for claims over \$1 million and up to \$5 million after the \$1 million retention has been met by the county.**

(a) Insurance to cover worker's compensation in the statutory amount required under the laws of the State of Wisconsin;

(b) Blanket fidelity bond coverage in an amount equal to that amount which Racine County normally carries for its paying and receiving funds transfer employees;

(c) Computer crime coverage including funds transfer activities, to the extent that Racine County normally carries such coverage; and

(d) Property and Broad Form Comprehensive General Liability Insurance and such other insurance as is customarily maintained with respect to its general business activities.

3.08. Supervision. Racine County acknowledges that it does not have any authority or power to supervise or otherwise regulate the employees or operations of SPSI.

4. NOTICE

4.01. Notice of Disaster. Notification of a Disaster may be provided to SPSI orally, but such notification must be followed by written notification delivered to SPSI by messenger within two (2) hours of oral notification. Both types of notification require specification of a time period within which access to the Back Up Facility is desired by Racine County.

4.02. Notice of Back Up Facility Service Discontinuation. Racine County shall provide SPSI with two (2) hours advance written notification of its desire to discontinue Back Up Facility usage.

4.03. Delivery of Notice. Any notice under this Agreement is required to be in writing, unless specified otherwise, except ordinary operational notices, and shall be sent by registered or certified mail to the parties at the following addresses:

Racine County
730 Wisconsin Avenue
Racine, Wisconsin 53403

Systems & Programming Solutions, Inc.
530 N. 108th Place
Suite 100
Wauwatosa, WI 53226-0367

All notices shall be deemed delivered within three (3) days of their post mark date.

5. **PAYMENT**

5.01. Retainer Fee. The Retainer Fee is due and payable the first business day of each subsequent year. The Retainer Fee is nonrefundable.

5.02. Other Fees. Service Fees and other fees pursuant to Section 2.05 are due and payable within ten (10) days of the date of the invoice.

5.03. Fee Changes. Upon thirty (30) days prior written notice to Racine County, SPSI may change its fees or alter its fee structure.

5.04. Taxes. Racine County shall, in addition to the other amounts payable under this agreement, pay all sales and other taxes, federal, state, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.

6. **WARRANTY LIMITATION AND LIABILITY**

6.01. Warranty. SPSI warrants that the Back Up Facility services provided herein shall conform in all material respect to those services set forth in Section 2 herein.

6.02. No Other Warranty. **THE WARRANTY STATED ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY SPSI, SPSI DOES NOT MAKE AND RACINE COUNTY SPECIFICALLY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SPECIFICALLY EXCLUDED ARE ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO APPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SPSI BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNATIVE OR SIMILAR DAMAGES OR FOR THE CLAIMS OF DAMAGES MADE BY ANY THIRD PARTY EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SPSI ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. SPSI SHALL NOT BE LIABLE TO RACINE COUNTY FOR FAILURE OF ANY EQUIPMENT, HARDWARE, OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, THE TRANSFER SOFTWARE TO OPERATE PROPERLY FOR WHATEVER REASON.**

6.03. Limitation of Liability. In no event shall SPSI's aggregate liability for damages to Racine County or any third party for any cause whatsoever, regardless of the form of action, whether in contract or in tort including negligence, exceed the current year's Retainer Fee. In no event shall SPSI be liable for damages caused by:

- (a) Delay in setup or use of tailored or customer versions of the Transfer Software;
- (b) Delay in setup of Racine County's data;
- (c) Failure of the Back Up Facility; or
- (d) Insufficient set up time.

6.04. Indemnification. Racine County agrees to indemnify and hold harmless SPSI and its subsidiaries or affiliates under its control, and their directors, officers, employees and agents, against any and all losses, liabilities, awards and costs (including actual legal fees and expenses) arising out of or related to any third party claim resulting from Racine County's use of the Back Up Facility or of Racine County's use of the services provided hereunder. Racine County shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that SPSI gives Racine County proper notice of any such claim of which it learns. In all events, SPSI shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing.

6.05. Force Majeure. The parties hereto shall not be responsible for any failure or delay in the performance of any obligation hereunder caused by acts of God, flood, fire, war or the public enemy.

6.06. Confidentiality. The parties agree that this Agreement is a confidential agreement between them. This Agreement or a copy thereof may not be furnished to any third party by either of the parties hereto without the prior written consent of the other party except as may be necessary by reason of legal, accounting or regulatory requirements beyond a reasonable control of the parties, in which event the parties agree to exercise diligence in limiting such disclosures to the minimum necessary under the particular circumstances.

6.07. Employees and Agents. Racine County shall be solely responsible for all physical injuries or deaths to its agents, servants or employees or to any other person or damage to any property sustained during its operation and work at the Back Up Facility, resulting from any negligent or willful tort of any of its employees, agents or independent contractors. Racine County shall hold harmless and indemnify SPSI from liability upon any and all damages on the account of such injuries or deaths to any such person or any damage to property on account of negligence or willful tort of its employees, agents or independent contractors. Racine County shall be solely responsible for the safety and protection of all of its employees.

7.

TERM AND TERMINATION

7.01.

Term. The term of this Agreement shall begin as of the date first above written and shall end June 30, 2014.

7.02. Termination. This agreement may be null and void if both parties mutually agree that the disaster recovery test does not work. This Agreement may be terminated by SPSI, without notice, should Racine County be in default of any of its payment obligations hereunder. Additionally, SPSI may terminate this Agreement, upon ten (10) days advance written notice should Racine County propose changes to hardware and software, including the Transfer Software during the term of this Agreement. Racine County shall provide SPSI with ninety (90) days advance written notice of any such contemplated change. The agreement may be cancelled without penalty by Racine County upon written notice if sufficient funds have not been budgeted by the County Board of Supervisors to pay for the obligations of this agreement for the next budget year.

8. **MISCELLANEOUS**

8.01. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

8.02. Entire Agreement. Each party acknowledges that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that this Agreement is the complete and exclusive statement of agreement between the parties, and supersedes and merges all prior proposals, understandings and all other agreements, whether oral or written, between the parties relating to the subject matter hereof. This Agreement may not be modified or altered except by a written instrument duly executed by all of the parties hereto.

8.03. Enforceability. If any provision of this Agreement shall be held to be invalid, illegal, or otherwise unenforceable under applicable statute or rule of law, it is to that extent to be deemed omitted and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

8.04. No Waiver. The failure of any party to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder.

8.05. Assignment. This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon the prior written consent of the other.

8.06. Relationship. The relationship between SPSI and Racine County created by this Agreement shall be that of independent contractors. Nothing contained in this Agreement shall be construed as constituting a partnership or agency between SPSI and Racine County.

Special Addendum:

SPSI will move the backup system to a Racine County Facility if required at a time & materials cost to Racine County.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date first above written.

SYSTEMS & PROGRAMMING SOLUTIONS, INC.

By: _____
Alan Nosbusch, Executive Vice President

RACINE COUNTY

By: _____

By: _____

By: _____

By: _____

By: _____

Attachment A

SPSI Wauwatosa Office AS/400 Configuration:

9407-515 – V5R4 or V6.1

- 4 Gig of Memory
- 423 GB DASD
- (1) Communication Line EIA 232/V. 24
- (1) internal modem
- TWINAX WSC (40 Devices)
- QIC 30/60 Tape Drive and LTO3 Tape Drive
- (1) 7852 Modem
- (2) 1000/100/10 Ethernet
- Twinax console

Attachment B

Racine County:

9406-525-V5R4

- 12 Gig of Memory
- 988 GB DASD
- LTO3 tape library
- (1) TWINX WSC (40 Devices)
- (2) 10/100/1000 Ethernet
- (1) Communication Lines EIA 232/V.24
- (1) internal modem
- (1) 7852 Modem
- Twinax console

Attachment C

Rate Schedule for Linda Stamm is \$185.00/Hour

Any change must be provided to the County within 7 days of enactment