



# ROSS TOWNSHIP RESOLUTION NUMBER 2016-051

## RESOLUTION ENTERING INTO A PROFESSIONAL SERVICES AGREEMENT WITH MARK SMITH FOR MONITORING AND TROUBLESHOOTING THE TOWNSHIP'S COMPUTER NETWORK AND AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO EXECUTE THE AGREEMENT

WHEREAS, Ross Township has purchased the hardware and software necessary for the building of a networked computer system for its departmental use; and

WHEREAS, Ross Township desires to protect the integrity of its networked computer system by entering into a Professional Services Agreement with Zachary Morris for monitoring and troubleshooting the township's computer network and website management.

BE IT RESOLVED, by the Trustees of Ross Township, Butler County, Ohio, as follows:

### SECTION 1-A:

That the Board hereby enters into a Professional Services Agreement with Mark Smith, substantially in the form of the Agreement attached hereto as Exhibit "A", subject to modifications approved by the Township Legal Council on terms not adverse to the Township.

### SECTION 1-B:

That the Township Administrator be and hereby is authorized to execute the Professional Services Agreement with Mark Smith as authorized herein.

### SECTION 2:

This resolution shall take effect on October 19, 2016, upon the filing of this resolution with the Ross Township Fiscal Officer.

### SECTION 3:

It is hereby determined that all formal actions of the Board of Trustees relating to the adoption of this Resolution were taken in an open meeting of the Board of Trustees and that all deliberations of such Board of Trustees were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

### INTRODUCTION AND VOTE RECORD:

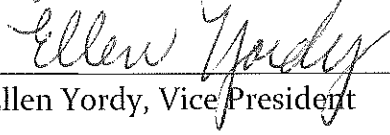
Trustee RW introduced the foregoing Resolution and moved its adoption, Trustee EV seconded the Motion. The roll being called upon the question of adoption of the Resolution by the Township Fiscal Officer, the vote resulted as follows:

Trustees: Willsey ✓ Wurzelbacher ✓ Yordy ✓

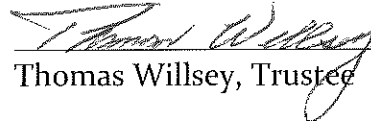
Adopted at the meeting of the Ross Township Board of Trustees this 16<sup>th</sup> day of August, 2012.



Raymond Wuzelbacher, President



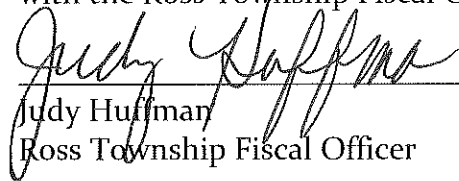
Ellen Yordy, Vice President



Thomas Willsey, Trustee

**AUTHENTICATION**

This is to certify that this resolution was duly adopted by the Board of Trustees, and filed with the Ross Township Fiscal Officer, this 19<sup>th</sup> day of October, 2016.



Judy Huffman  
Ross Township Fiscal Officer

# PROFESSIONAL SERVICES AGREEMENT

**Township:**

Ross Township  
3133 Hamilton-Cleves Road  
Hamilton, Ohio 45233

**Independent Contractor:**

Mark Smith

This Agreement, effective this 19<sup>th</sup> day of October, 2016, agreed to by the Independent Contractor, Zachary Morris, (hereinafter referred to as "Contractor") and Ross Township (hereinafter referred to as "Township") governs the Professional Services required to maintain the computer system (hereinafter referred to as "System") for Township, as described herein.

For the purposes of this agreement, the term computer system consists of a network of servers, workstations, battery back-ups, printers, fax machines, associated cabling, connectors and software used by Township in the operations of its Administration, Fire, Police and Road Maintenance Departments and connection to its Elected Officials.

Contractor agrees to provide and Township agrees to purchase the described Professional Services of the Contractor, for the sums listed on the Service Schedule below.

**Service Schedule**

1. Monitoring and basic maintenance of items listed below including overall network health, routine updates, and basic necessary configurations and adjustments at a rate of \$250/month.
  - a. All Microsoft Updates installations
  - b. Servers and workstations
  - c. Astaro Gateway
  - d. Backup system
  - e. Anti-virus programs
  - f. Any other hardware or software added by Contractor to improve, enhance or validate the existing system
2. Monitoring, managing and maintenance of the Ross Township website at the rates as follows:
  - a. Transfer files from the current host to a new hosting site - \$50.00 per transfer
  - b. Design changes - Hourly rate as established in Items 3 & 4 below
  - c. Website Updates - Hourly rate as established in Items 3 & 4 below (minimum fee of \$20.00 per request)
  - d. In addition to the above, the Township agrees to pay the hosting sites annual fee for hosting and domain name renewal when applicable
3. Any non-emergency work performed to diagnose, correct and restore the computer system of Ross Township, will be invoiced separately at a standard rate of \$60.00 per hour.
4. Any emergency work (work requiring the on-site services of Contractor during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday) performed to diagnose, correct and restore the computer system of Ross Township, will be invoiced separately at a standard rate of \$75.00 per hour.

Contractor requires of Township:

- Any due balance remaining after thirty (30) days of invoice submission shall be subject to an additional fee of fifteen percent (15%) of that balance due.

Township requires of Contractor:

- Service of a request for same, issued from an Elected Official, Administrator or Department Head of the Township within a reasonable amount of time, to be determined by the severity of the issue and agreed upon by both parties on a case-by-case basis.

This Agreement shall be governed by the terms and conditions found hereupon, those found within the preceding Proposal and Equipment List, and those on the ensuing terms and conditions.

The duration of this Agreement shall continue on a month to month basis in perpetuity. The Agreement may be cancelled by either party, with or without cause, after a sixty day written notice is received by one party from the other.

IN WITNESSES WHEREOF, intending to be legally bound each party for good and valuable consideration enters into this Agreement effective on the date stated above.

Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Township: \_\_\_\_\_ Date: \_\_\_\_\_

**TERMS & CONDITIONS**

The following Terms and Conditions apply to all orders placed with Contractor by Township regardless if said Terms and Conditions are attached to subsequent orders. Both Parties acknowledge that the knowledge and information of the other Party as related to that Party's business and proprietary interests is highly confidential. Thus, each Party and its employees and agents agree not to disclose, during or after the terms of this Agreement, any information relative or pertinent to the other Party's financial condition, operating conditions, business operations and plans, or other information identified as proprietary. This obligation of confidentiality does not apply to information that: (a) is or becomes publicly available; (b) is already in the recipient's possession prior to receipt; (c) is independently created by the recipient without resort to the information provided by the opposite Party; or (d) is received from a third party without an obligation of confidence. Also, all files and records related to Township's business shall be the property of Township, and Contractor shall not remove these files or records from Township's facilities without the express consent of Township.

Contractor shall warrant the labor provided for a period of ninety days from the date of installation. The warranty is void, however, for damages or defects due to negligence, abuse, modifications not executed by Contractor, improper operation, natural disasters or other events beyond Contractor's control. Contractor shall also assign all manufacturers' warranties to Township. No oral or written representation, inducement, statement or promise made by or on behalf of a party not contained herein shall be relied upon or binding. Contractor does not warrant any product merchantability or fitness for particular purpose.

Contractor shall in no event be liable to Township, or to any other person or company using any product or service supplied under this Agreement, or to any person or company to whom Township furnishes a product or service, for loss of time, loss of profits, inconvenience, loss of use of any products or services or their failure to work, or for any other indirect, special, reliance, incidental or consequential loss or damage whether in an action for or arising out of breach of warranty, breach of contract, delay, negligence, strict tort liability or otherwise. Township's exclusive remedy for any claim shall be limited to the amount paid by Township to Contractor hereunder.

If conditions are encountered at the site which are: (1) subsurface or otherwise concealed, or (2) unknown and of an unusual nature, and which differ materially from those ordinarily found to exist, Contractor shall give notice to the Township. The Township will promptly investigate such conditions and, if they differ materially and cause an increase in Contractor's cost of, or time required for, performance of any part of the work, Township will make an equitable adjustment in the Agreement sum, Agreement time or both. If, for any reason, Township or agent of Township hinders the performance of Contractor, or there occurs any delay beyond Contractor's control, Contractor shall not be responsible for complying with any completion date stipulated or requested by Township. Should Township require services on a legacy system not installed by Contractor, Contractor shall make every effort to perform these services without outside assistance. Should, however, support be required by the OEM, Contractor shall contact the OEM and Township agrees to reimburse Contractor for any charges assessed by said OEM. Title to all equipment purchased for Township by Contractor shall remain with Contractor until Township fulfills agreed upon payment terms. While title is in the possession of Contractor, Township agrees to protect and maintain all equipment and insure it against theft, loss, and/or damage. If for any reason, Township is in default, Contractor shall have full rights to completely remove any or all equipment until balance owed is brought current. NOTE: There may be a re-installation fee charged at Contractor's regular hourly rate. Contractor has the option to liquidate any and all equipment in order to recuperate moneys due, and Township shall be responsible for the amount not collected due to the sale of said equipment.

As stated above, overdue invoices shall bear interest of fifteen percent (15%) for every thirty (30) days the balance remains overdue and Township agrees to pay all attorney fees and court costs incurred by Contractor in enforcing any balance due for collection.

Township shall: (a) designate one point of contact for all purchase/installation matters; (b) follow all of Contractor's and manufacturer's instructions with respect to the use or operation of the products; (c) recognize that Contractor and its authorized agents or vendors shall have the exclusive rights to test, change, modify, move, connect, relocate, replace, repair or otherwise maintain the products in order to persevere the warranty; (d) provide the appropriate electrical and/or other necessary connections as specified by Contractor and as required by applicable laws, codes, ordinances and regulations; (e) provide the proper product environment (with reference, in part, to the manufacturer's specifications, requirements or suggestions); (f) provide reasonable access to the products and reasonable work space on the premises to enable Contractor to perform its functions; (g) take such other measures as are reasonable and appropriate to allow Contractor to perform its functions under this Agreement; and (h) otherwise comply with all Agreement terms and conditions, applicable laws, codes, ordinances and regulations. Unless otherwise agreed in writing, upon final completion of the services set forth in this

Agreement, Township shall have fifteen (15) business days in which to notify Contractor in writing of any problems with the services provided during the term of this Agreement. If Contractor is not notified within this time period, the services performed shall be deemed accepted.

If for any reason, Township refuses to abide by or cancels this Agreement, a twenty percent (20%) restock charge plus all shipping and labor charges may, at the discretion of Contractor, be imposed. Any notice in connection with this Agreement shall be in writing and shall be delivered in person or deposited postage prepaid in the registered or certified mails of the United States. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Venue for any actions arising under this Agreement shall vest exclusively in the courts of general jurisdiction of the State of Ohio.

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted successors. Township may request Contractor perform additional Professional Services beyond that agreed upon at the time of the Agreement's execution. Should Contractor be capable of rendering such additional Professional Services or provisioning of additional products, Contractor shall provide Township with a quotation and upon acceptance the terms and conditions herein shall apply.

Unless otherwise specified, installation is based on reuse of existing wiring at Township premises. If the wire or jacks are found to be in unsatisfactory conditions, Contractor will inform Township of the required rectification procedures which will be invoiced to Township at Contractor's then current time and material rate. In the event Contractor determines that the project requires the addition or replacement of any existing equipment, Contractor reserves the right, upon acknowledgement by Township, to add the time and material costs of these changes to final invoice for installation. Re-programming requests or equipment change requests made by Township following Township sign-off on the programming and system design, will be charged on a time and materials basis and will appear on Township's final installation invoice.

In addition to the aforementioned Township responsibilities, Township shall also ensure the necessary numbers of lines from the local exchange carrier are present and operational within the Township premises prior to Contractor installation.

The Contractor shall implement appropriate safeguards to prevent accidents or injuries to persons or properties. To the fullest extent that is permitted by law the Contractor agrees to indemnify, defend and hold harmless the Township, its officials, agents, employees and volunteers and all others connected with the Township, from any and all actions, claims, demands, suits, liabilities (statutory and worker's compensation law), losses, damages, or expenses including attorney's fees, as well as all costs from death of, injuries to, theft of or damage to properties or persons, including third parties; growing out of directly or indirectly caused by any service, operation or associated incidents from the actions or omissions undertaken by the Contractor or any of its agents, employees or subcontractors.