

WAKE COUNTY BOARD OF ELECTIONS

337 S. SALISBURY ST.
RALEIGH, NC 27601

FACSIMILE TRANSMITTAL SHEET

TO: <i>Joyce McCloy</i>	FROM: <i>Cherie Toucher</i>
COMPANY:	DATE: <i>1/23/06</i>
FAX NUMBER: <i>1-866-500-8910</i>	TOTAL NO. OF PAGES INCLUDING COVER: <i>10</i>
PHONE NUMBER:	SENDER'S PHONE NUMBER: <i>856-6245</i>

FAX:

NOTES/COMMENTS:

Per your request



WAKE COUNTY CONTRACT CONTROL FORM

Contract Control = "CC"
Contract Amendment = "CH"

CC/CH 610018
Contract Beginning Date 7/01/05 Contract Ending Date 06/30/06

Contractor INFOENTRY

Contract Description _____

Contract Period _____

Deadline For Processing _____

Initiator: CHERIE R. POUCHER, DIRECTOR Ext. 6-6245

Department BOARD OF ELECTIONS

DEPARTMENT HEAD REVIEW

Funds are available in the following Index Code(s) to meet contract funding requirements.

I am or my designee N/A is responsible for monitoring contract performance requirements therein.

Cherie R. Poucher 6-20-05
Department Head Signature Date

INDEX	SUBOJ.	AMOUNT	LINE
00210000	06100	\$ 10,000.00	01
		\$	02
		\$	03
		\$	04
		\$	05

CONTRACT TYPE

- Construction
- Services
 - Vendor Agreement
 - Grant
 - County as Grantee
 - County as Grantor
 - Subrecipient
 - Lease Agreement
 - County as Lessee
 - County as Lessor
 - Real Estate Transaction
 - Intergovernmental Agreement
 - Special Payment Instructions
 - Initial Contract
 - Amendment/Change Order
 - Change in Amount
 - Change in Scope Only
 - Initial CC# 5-0017
 - Amendment/Change Order # _____
 - Different Account Code
 - Contract Line Being Amended

1. **FINANCE DEPARTMENT** Vendor Code 221652-01

Pre-Audit Certification
 Encumbrance Required
 Reviewed by Grants Manager

Contract Meets County's Insurance Requirements
 Insurance Certificates Update and Online
 Reviewed by Purchasing Section

Melinda Canary 6/29/05
Signature Date

Comments _____

2. **GSA REVIEW**

Signature _____ Date _____

N/A

Comments _____

3. **PROPERTY OFFICER REVIEW**

Signature _____ Date _____

N/A

Comments _____

4. **COUNTY ATTORNEY**

Board Action: Required Not Required
 Approved as to Form
 Reviewed For Employee vs. Independent Contractor Status

Signature _____ Date _____

N/A

Comments _____

5. **COUNTY MANAGER**

Board Action: Meeting of _____
 Approved Disapproved
 Manager Action: Approved Disapproved

Signature _____ Date _____

N/A

Comments _____

**NORTH CAROLINA
WAKE COUNTY**

This Contract for delivery of information systems services (this "**Agreement**") is made this 10th day of JUNE 2005 (the "**Effective Date**") between InfoSENTRY Services, Inc. ("**InfoSENTRY**"), having its principal place of business at Two Hannover Square, Suite 1740, Raleigh, NC, 27601, and Wake County, having its principal place of business for the purpose of this agreement in the offices of the Wake County Board of Elections ("**BOE**") at the Wake County Office Building – 339 S. Salisbury Street, Raleigh, NC 27602.

WITNESSETH

WHEREAS, InfoSENTRY provides a broad range of computer-related services to its customers;

WHEREAS, BOE desires InfoSENTRY to continue providing information systems consulting services relating to (1) its election management information system, (2) systems relating to provision of voter registration data on the Internet's World Wide Web, (3) project management, quality assurance, and testing related to potential conversion from Wake County's election management information system to the State Board of Elections statewide voter registration system, and (4) selection, testing, and deployment of voting systems as required by the Help America Vote Act of 2002; and

WHEREAS, InfoSENTRY is willing to provide such services on terms and conditions contained in this Agreement.

For the purpose and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the services of InfoSENTRY, and InfoSENTRY agrees to provide the services to the County in accordance with the terms of this Agreement.

I. SERVICES TO BE PROVIDED

1. Deliverables.

InfoSENTRY agrees to deliver consulting services by M. Glenn Newkirk on an as requested basis to the Wake County Board of Elections. InfoSENTRY shall seek and acquire prior written approval from the Wake County Board of Elections prior to using any subcontractors or personnel other than M. Glenn Newkirk, President of InfoSENTRY Services, Inc.

2. Progress Reports.

InfoSENTRY shall proceed diligently and continuously to complete all work required by this Agreement and shall deliver itemized statements of hours spent on the tasks required in the work order when they submit invoices for work on the project.

InfoSENTRY will submit a weekly written report detailing their work on the project and workplans for the coming week if requested to do by the Wake County Board of Elections.

3. Shipment.

Shipment of tapes, diskettes, documentation, and other materials shall be via the methods mutually agreed up by the Wake County Board of Elections and InfoSENTRY.

4. Acceptance Criteria.

Acceptance criteria for services provided by InfoSENTRY will be defined by BOE personnel according to BOE's business requirements and functions. Payment of invoices will indicate BOE's acceptance of the services provided.

5. Termination for Breach.

If any party commits a material breach of this Agreement, the non-breaching parties may provide to the breaching party notice of such breach that describes such material breach in sufficient detail to permit the breaching party to remedy such breach. If the breaching party fails to remedy such breach within thirty (30) days after receipt of such notice, the non-breaching parties may terminate this Agreement upon ten (10) days' notice to the party in breach.

6. Mutual Agreement.

This Agreement may be terminated by mutual written agreement of both BOE and InfoSENTRY.

7. Limitation on Actions.

No action, whether in contract or tort (including negligence), arising out of or in connection with this Agreement may be brought by either party more than two (2) years after the cause of action has accrued, except that an action for nonpayment may be brought within twelve (12) months of the date of the last payment.

8. UCC.

The Agreement provides that the proposed transaction is covered by the Uniform Commercial Code (UCC). To the extent that this Agreement is silent, the parties agree that the Uniform Commercial Code (UCC) shall apply.

9. Compliance with Federal and State Laws Pertaining to Civil Rights.

InfoSENTRY agrees to comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.) which makes it an unlawful practice to discriminate on the basis of race, color, religion, sex or natural origin.

10. Non-Solicitation.

Neither InfoSENTRY nor BOE will actively solicit for employment any personnel of the other assigned to work on any Proposal during the term of, and for a period of one year after, completion of the Proposal and then only after written notification hereof to the other party. Any party violating this provision shall pay to the other party an amount equal to thirty-five percent of the then current gross annual compensation of said personnel as and for liquidated damages.

11. Confidentiality.

All documents and correspondence relating to this project and its components shall be subject to confidentiality and disclosure requirements of North Carolina law. Nothing in this contract shall be construed to require or authorize the Board of Elections to disclose any information which: (1) constitutes a "trade secret" as defined in N.C.G.S. 66-152(3); (2) is the property of a private "person" as defined in G.S. 66-152(2); (3) is disclosed or furnished to the Board of Elections in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and (4) is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

12. Ownership of Software and Data.

All software and documentation prepared by InfoSENTRY pursuant to this Agreement shall be the property of Wake County. All data entered and stored on computers using the software and services provided according to this Agreement are and shall remain the sole property of Wake County. InfoSENTRY agrees that no provision of this Agreement nor any feature of the software provided under the terms of this Agreement restrict or hinder Wake County's access to these data.

13. Publicity.

Any party may publicize information relating to the installation and benefits of the information system being implemented pursuant to this Agreement. InfoSENTRY must have prior approval from BOE for use of information relating to the information system in advertisements and brochures, which approval will not be unreasonably withheld.

14. Notices. Any notices provided for in this Agreement shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth above, or to such other address as may be specified from time to time by notice in writing.

15. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

16. Duly Authorized Representatives. The parties hereto represent that the execution and performance of the terms and conditions of this Agreement have been duly authorized by their respective governing authorities and that this Agreement is a valid and legally binding obligation enforceable in accordance with its terms.

II. TERM

The services provided by InfoSENTRY shall begin on July 1, 2005 and unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until June 30, 2006; provided that the County shall have the right to terminate this Agreement upon ten (10) days' notice in writing to InfoSENTRY. This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable. In the event of a termination not due to default on InfoSENTRY's behalf, the BOE shall pay InfoSENTRY an amount equal to all non-recoverable costs for goods and services necessarily incurred by InfoSENTRY or expended by InfoSENTRY prior to notice of termination.

III. PAYMENT

As full compensation for services and licenses provided by InfoSENTRY, the County agrees to pay a sum not to exceed \$10,000.

InfoSENTRY shall submit an invoice not later than the end of each calendar month for work performed and services provided to Wake County pursuant to this Agreement. The hourly fee for service shall be \$100.00 per hour, unless otherwise agreed in writing by the Wake County Board of Elections prior to the beginning of work on any task that might involve labor rates in excess of this amount. Each invoice shall be accompanied by a listing of the hours of work, by task, performed pursuant to this Agreement by InfoSENTRY and any of its subcontractors.

Administration. All invoices to BOE shall be provided by InfoSENTRY. All payments by BOE under this contract shall be made to InfoSENTRY.

IV. RELATIONSHIP OF PARTIES

InfoSENTRY shall operate as an independent contractor, and the County shall not be responsible for any of InfoSENTRY's act or omissions. InfoSENTRY shall

not be treated as employees with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. InfoSENTRY agrees that neither federal, nor state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of InfoSENTRY or its employees. InfoSENTRY further agrees that it is fully responsible for the payment of any and all taxes rising from the payment of monies under this Agreement. InfoSENTRY shall not be treated as employees with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The County shall not be liable to InfoSENTRY for any expenses paid or incurred by InfoSENTRY unless otherwise agreed in writing. InfoSENTRY shall supply, at its sole expense, all equipment, tools, materials, and supplies required to provide the contracted services unless otherwise agreed in writing. InfoSENTRY shall comply with all federal, state, and local laws regarding business permits, certificates and licenses that may be required to carry out the services to be performed under this Agreement. InfoSENTRY shall insure that all personnel engaged in work under this Agreement shall be fully qualified and shall be authorized under state and local law to perform the services under this Agreement.

V. INSURANCE

InfoSENTRY shall obtain, at its sole expense, all insurance required in the following paragraphs and shall not commence work until such insurance is in effect and certification thereof has been received by Wake County's Risk Manager. Workers' Compensation Insurance, which limits for Coverage A Statutory-State of North Carolina and Coverage B Employers Liability \$500,000 each accident, disease policy limit and disease Each Employee.

Commercial General Liability, Combined single limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This insurance shall include Comprehensive Broad Form Coverage including contractual liability. Commercial Automobile Liability, with limits of no less than \$500,000 Combined Single Limit for bodily injury and property damage. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought on a Wake County site.

All insurance companies must be licensed in North Carolina and be acceptable to the County's Risk Manager. Insurance Policies, except Workers' Compensation, shall be endorsed (1) to show Wake County as additional insured, as their interests may appear and (2) to amend cancellation notice to 20 days, pursuant to North Carolina law. Certificates of insurance shall be signed by a licenses North Carolina agent and be amended to show "thirty (30) days' notice or change or cancellation will be given to the Wake County Risk Manager by certified mail."

If an "ACCORD" Insurance Certificate is used, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "cancellation" paragraph of the form shall be deleted.

Copies of correspondence, certificates, endorsements, or other items pertaining to insurance shall be sent to:

Wake County Risk Manager
Room 900 - WCOB
P.O. Box 550
Raleigh, NC 27602

If InfoSENTRY does not meet the insurance requirements of the specifications, alternate insurance coverage satisfactory to Wake County may be considered.

VI. INDEMNIFICATION

InfoSENTRY agrees to defend, indemnify, and hold harmless Wake County from all loss, liability, claims, or expense (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or property damage caused in whole or in part by the negligence or misconduct of InfoSENTRY or its subcontractors, agents, and employees, except to the extent same are caused by the negligence or willful misconduct of Wake County. It is the intent of this section to require InfoSENTRY to indemnify Wake County to the extent permitted under North Carolina law.

InfoSENTRY will indemnify and hold harmless BOE against any claim alleging that any software developed by InfoSENTRY pursuant to this Agreement infringes upon or misappropriates any valid and existing United States copyright, trademark, mask work, patent or trade secret owned by any third party to the extent that any such infringement is not attributable to specifications for such software provided to InfoSENTRY by BOE; provided, however, that if any such software is found to so infringe or misappropriate any such copyright, trademark, mask work, patent or trade secret, or if InfoSENTRY reasonably believes that any such software may be found to so infringe or misappropriate the same, InfoSENTRY may, at its option, attempt to obtain for BOE a license to use such software or, if such a license is not available upon commercially reasonable terms, modify the software to avoid such infringement or misappropriation. This Section VI states the sole and exclusive remedy of BOE for any such claim of infringement or misappropriation.

InfoSENTRY shall not have any obligation with respect to a claim of infringement or misappropriation unless: (a) BOE provides to InfoSENTRY notice of such claim immediately upon receipt of knowledge of the same; and (b) BOE cooperates fully and completely with InfoSENTRY in the defense or settlement of such claim.

VII. NON-ASSIGNMENT

InfoSENTRY shall not assign the Agreement, including rights to payments, to any other party without the prior written consent of the County.

VIII. ENTIRE AGREEMENT

InfoSENTRY and the County agree that this document and its attachments constitutes the entire agreement between the two parties and may only be modified by a written mutual agreement signed by the parties.

IX. GOVERNING LAW

InfoSENTRY and the County agree that the Agreement shall be governed by the laws of the State of North Carolina.

X. BENEFIT

This Agreement is intended for the exclusive benefit of the parties hereto and shall not be construed to confer a benefit of any third persons or parties. Special, indirect, or consequential damages are excluded.

XI. WAIVER

Failure of the County to enforce, at any time, any of the provisions of this Agreement, or to request at any time performance by InfoSENTRY of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way effect the validity of this Agreement or any part thereof, or the right of the county to enforce each and every provision.

IN WITNESS WHEREOF, the County and InfoSENTRY have set their hands and seals as of the day and year first above written.

WAKE COUNTY, NORTH CAROLINA

By: *Cherie Poucher*
Cherie Poucher, Director

InfoSENTRY Systems, Inc.
By: *M. New Newshuk*
Title: *PRESIDENT*

P.O. Box 28048
(Mailing Address)
RALEIGH, NC 27611

56-1963479
Federal Tax ID#

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Melinda Canady
Finance Officer