

INTERGOVERNMENTAL AGREEMENT
between
The City of Hermiston
and
The City of Pendleton
For Ongoing Information Technology Services

This Intergovernmental Agreement (Agreement) is made by and between the City of Hermiston, hereinafter "COH" and the City of Pendleton, hereinafter "Pendleton" (and collectively the "Parties") pursuant to ORS Chapter 190.

The Parties mutually agree as follows:

Term of Agreement. This Agreement shall be for a term of one year commencing on November 1, 2022 and expiring on October 31, 2023 with two optional three-year renewal options, unless terminated earlier as set forth herein. Renewal of the agreement shall be in writing and subject to the mutual agreement of the parties.

Scope of Work. COH shall perform the work described in Attachment A, Statement of Work, which is attached to this Agreement and incorporated into this Agreement by this reference.

Consideration.

1. Basic Services. Pendleton agrees to pay COH \$12,500 per month for basic services. Pendleton will pay for devices and any other materials required to perform the services under this Agreement. In the event that there is a future change in the need for basic services by Pendleton, then the parties may mutually agree to increase or reduce basic services with a commensurate increase or reduction in basic services compensation.

2. Materials. The cost of materials purchased by COH for Pendleton shall be reimbursed by Pendleton within 45 days of receipt of invoice. COH agrees to notify Pendleton prior to purchasing anything over \$500 and to provide adequate documentation and invoice Pendleton for the cost.

Payment for Work. No payments shall be made until this Agreement is fully executed by both Parties. Invoices shall be issued on a monthly basis beginning November 30, 2022. Unless otherwise specified in Attachment A, COH will submit invoices monthly for services rendered and Pendleton shall remit payment within 45 calendar days of receipt of invoice.

STANDARD TERMS AND CONDITIONS

1. **Legal Relationship.** The Parties intend the legal relationship between the parties to be at all times and for all purposes under this Agreement that of independent contracting agencies.
2. **Subcontracts and Assignment.** Neither party shall subcontract or assign any part of the Agreement without the prior written approval of the other party. Any attempted assignment of this Agreement without the prior written approval of the other party shall be void. If consent to a subcontract is properly given, then in addition to any other provisions of this Agreement, the subcontracting party shall hold it subcontractor to all the terms and conditions of this Agreement that would otherwise bind the party to whom consent was given. The Parties agree that any such subcontracts shall have no binding effect on the consenting party to this Agreement.
3. **Termination.** This Agreement may be terminated as follows unless otherwise specified herein:
 - a. Mutual: The Parties may mutually terminate this Agreement at any time by written Agreement. Pendleton shall pay COH for all materials purchased and work performed prior to the termination date.
 - b. Either party may terminate the Agreement upon 90 days' notice to the other. If either party gives termination notice due to the occurrence of impracticability or impossibility of performance, including unavailability of labor or unanticipated budgetary shortfall, and the terminating party has made a reasonable and diligent effort to resolve the impracticability or impossibility of performance, then shorter notice may be negotiated between the parties.
 - c. Breach: Either party may terminate this Agreement in the event of a breach by the other party. To be effective, the party seeking termination must give the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within five (5) calendar days of the date of the notice, then the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination. Pendleton shall pay COH for all materials purchased and work performed prior to the termination date.
 - d. Termination by either party shall not constitute a waiver of any claim either party may assert against the other party.
4. **Access to Records.** Upon reasonable advance notice, each party shall have access to the books, documents and other records of the other party (electronic or otherwise) which are necessary for completion of this Agreement for the purpose of examination, copying and audit unless otherwise limited by law.

5. Confidentiality.

- a. Maintenance of Confidentiality. COH shall treat as confidential any Pendleton Confidential Information that has been made known or available to COH or that COH has received, learned, heard or observed; or to which COH has had access. COH shall use Pendleton's Confidential Information exclusively for Pendleton's benefit and in furtherance of the Products and/or Services provided by COH. Except as may be expressly authorized in writing by Pendleton, in no event shall COH publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information. COH shall (1) limit disclosure of the Pendleton's Confidential Information to only those directors, officers, employees and agents of COH who need to know the Confidential Information in connection with providing ongoing IT services, (2) exercise reasonable care with respect to the Pendleton's Confidential Information, at least to the same degree of care as COH employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to Pendleton, upon its request, all materials containing Pendleton's Confidential Information, in whatever form, that are in COH possession or custody or under its control and (4) will be titled or marked :CONFIDENTIAL." COH is expressly restricted from and shall not use Confidential intellectual property of Pendleton without Pendleton's prior written consent.

Public Records. Both parties are public agencies and subject to the Oregon Public Records Act and Federal law. Both parties agree that proprietary and confidentially labeled information are assumed to be exempt from public records disclosure by ORS 192.355 (4) and/or (10) or other exemption. Each party will communicate the receipt of a relevant public records request and provide the opportunity for input from the other prior to making a response.

- b. Scope. This Contract shall apply to all Pendleton Confidential Information previously received, learned, observed, known by or made available to COH. This Contract shall not apply to Pendleton's Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of COH; (2) COH lawfully receives from a third party; (3) was developed independently by and was reduced to writing by COH prior to the earlier of the date of this Contract or the date of any access or exposure to any Pendleton Confidential Information, or (4) is required to be disclosed under operation of law. COH's confidentiality obligations under this Contract shall survive termination.
- c. Equitable Remedies. COH acknowledges that unauthorized disclosure of Pendleton's Confidential Information or misuse of a Pendleton computer system or network will result in irreparable harm to Pendleton. In the event of a breach or threatened breach of this Contract, Pendleton may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

- 6. Compliance with Applicable Laws.** Parties shall comply with all federal, state, county and local laws, ordinances and regulations applicable to the work to be done under this Agreement, including all applicable State and local public contracting provisions.
- 7. Insurance.** The Parties represent that they are insured according to the statutory limits set in the State of Oregon for any liability, property, or auto claims. The Parties represent that they will maintain insurance to cover any claim that may result from or arise out of this Agreement. COH is insured for workers' compensation as required by law and shall provide benefits as prescribed by the State of Oregon.
- 8. Indemnity and Hold Harmless.** The Parties individually accept responsibility for liability arising out of their individual performance of this Agreement. Pendleton shall hold harmless, and indemnify COH from any and all liability, settlements, loss, costs and expenses in connection with any action, suit or claim resulting or allegedly resulting from Pendleton's negligent acts, omissions, activities or services provided pursuant to this Agreement. COH shall hold harmless, and indemnify Pendleton from any and all liability, settlements, loss, costs and expenses in connection with any action, suit or claim resulting or allegedly resulting from COH's negligent acts, omissions, activities or services provided pursuant to this Agreement.
- 9. Waiver, Severability.** Waiver of any default or breach under this Agreement by either party does not constitute a waiver of any subsequent default or a modification of any other provision(s) of this Agreement. If any term or 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 provision 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 invalid.
- 10. Remedies.** In case of Pendleton's breach, COH shall be entitled to receipt of payments for work performed and to any other available legal and equitable remedies. In case of COH's breach, Pendleton shall be entitled to a refund of any prepayments of any work not performed and to any other available legal and equitable remedies.
- 11. Dispute Resolution.** The Parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the Parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually agreeable mediator for mediation. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This mediation procedure shall be followed to its conclusion prior to either party seeking relief

from the court, except in the case of an emergency.

12. Attorney Fees. If any action is instituted in connection with any claim or controversy arising out of this agreement, attorney fees may not be awarded by the court of competent jurisdiction and each party shall bear its own expenses of such action.

13. Notices/Point of Contact. All notice or demands of any kind required or desired to be given by the Parties must be in writing and shall be deemed delivered upon in-person delivery or depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at its address listed below:

City of Hermiston, Attn: City Manager
180 NE 2nd Street; Hermiston, OR 97838
Email: bsmith@hermiston.or.us PH: (541) 667-5002

City of Pendleton, Attn: City Manager
500 SW Dorion Ave.; Pendleton, OR 97801
Email: Robb.Corbett@ci.pendleton.or.us PH: 541.966-0201

14. Governing Law. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any legal action involving any question arising under this Agreement must be brought in Umatilla County Circuit Court. If the claim must be brought in a federal forum then it shall be brought and conducted in the United States District Court for the State of Oregon. PARTIES AGREE TO THE JURISDICTION OF THESE COURTS.

15. Force Majeure. Neither COH nor Pendleton shall be responsible for delay or default caused by any contingency beyond their control, including, but not limited to war or insurrection, strikes or lockouts by the Parties' own employees, walkouts by the Parties' own employees, fires, natural calamities, riots or demands or requirements of governmental agencies other than COH or Pendleton.

16. Ownership of Work Product. Any and all goods and services developed for Pendleton pursuant to this Agreement are intended as works made for hire. Works made for hire are the exclusive property of Pendleton.

17. Modification. No waiver, consent, modification or change in the terms of this Agreement shall bind either party unless in writing signed by both Parties. A written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

18. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement and its attached exhibit(s) is their final and entire Agreement. This Agreement supersedes all prior and contemporaneous oral or written communications between the Parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

19. Execution in Counterparts; Electronic Transmittal. This document may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Said counterparts may be transmitted by one party to the other by facsimile or electronic mail, including pdf format, with the same force and effect as delivery of original signature. The parties may use electronic or signatures as evidence of the execution and delivery of this document to the same extent as an original signature.

I HAVE READ THIS AGREEMENT INCLUDING THE ATTACHMENT(S). I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT. I UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.

CITY OF PENDLETON

Signature: _____

Title: _____

Name (print): _____

Date: _____

CITY OF HERMISTON

Signature: _____

Title: _____

Name (print): _____

Date: _____

Attachment A: Statement of Work

24 assumed hours per week/month of service.

Current hourly billing rate: \$120 per hour.

Current monthly billing rate: \$12,500

Hours worked at Pendleton's request have been tracked since Tuesday, October 11, 2022 and will be billed to Pendleton on their first monthly billing.

Managed Help Desk

- Monitor, triage and remediate IT issues submitted by Pendleton staff
- Provide SLA agreement
- Ensure Help Desk solution is updated/patched and configured, adhering to best practices
- Train Pendleton staff on process for submitting help requests

Managed Server and Network Infrastructure Support

- Monitor servers and network infrastructure
- Configure for optimal performance
- Maintain updates/patches for hardware and software
- Ensure compliancy for licensing/usage
- Remote management/support
- Installation and configuration of any new hardware such as servers, firewalls, switches, etc

Active Directory

- Audit current AD environment
- Remediate issues
- Configure for best practices
- Review group policy

Expectations:

To ensure COH's ability to provide satisfaction to Pendleton, the following provisions apply as appropriate to services contracted with COH. COH is pleased to offer an IT support package of services for Pendleton. The IT support package is designed to handle Pendleton's server and network technology-related needs. All servers and other network devices are considered covered items that will be maintained or serviced.

What this service covers and includes:

Vendor Liaison: COH will act as Pendleton's duly appointed representative and advocate.

COH IT Team will diagnose problems and dispatch or contact third parties such as Internet service providers, hardware manufacturers, IT contractors, etc. when deemed necessary. The COH IT Team is not intended to replace third party/line-of-business applications support. Pendleton non-IT staff agrees to refrain from interacting with the third parties (except line-of-business application support) because it may result in misdirected activity and/or delay of resolution.

Best Interest: In the event of a failure or problem, remedial activities may commence prior to notifying Pendleton of the problem. This will allow the COH IT Team the ability to begin problem resolution, open trouble tickets with other vendors, or dispatch personnel with replacement parts when deemed necessary. In doing so, COH is acting in Pendleton's best interest to resolve the issue as quickly as possible. All efforts will be made to communicate any technology-related issues that arise to Pendleton as soon as possible.

Administrative Access: It is imperative that COH IT Team maintain and control administrative access to the Pendleton's network and be responsible for providing all other third parties with needed or requested access.

Approval of Hardware and Software: The COH IT Team will collaborate with Pendleton's appointed staff to procure hardware and software. COH's role will be to research, evaluate and recommend with final approval coming from Pendleton's designated IT liaison.

Advisory Role: To assist with proper planning and third-party services involving the network, telecommunications, data access, future growth or down-sizing, Pendleton will involve the COH IT Team in such discussions as an advisor.

IT Policy and Procedure: The COH IT Team will work with Pendleton's designated liaison to establish relevant IT policies and procedures based on best practices.

Support Tiers: The Help Desk will be the first point of contact for IT support requests and is considered Tier 1. Almost all support incidents begin in Tier 1, where the initial trouble ticket is created, the issue is identified and clearly documented, and basic hardware/software troubleshooting is initiated. Support incidents that cannot be resolved in Tier 1 immediately move to Tier 2 support. Generally, these are more complex support techniques on hardware/software issues that can be provided by more experienced support staff. Support incidents that cannot be resolved by Tier 2 support are escalated to Tier 3, where support is provided by the most qualified and experienced support staff who can collaborate with third party (vendor) support engineers to resolve the most complex issues.

Service Level Agreements (SLAs):

SLA 1: Service not available (not able to work, network down, workstation not turning on, etc.) This is an instant contact scenario. Submitting Help Desk Ticket is not required and may

not be available. Contact information will be provided to Pendleton staff. Response time is immediate as possible.

SLA 2: Significant degradation in services (obvious slow network, internet, etc., but still functional). Submitting Help Desk Ticket required if possible. Depending on resources, impacted Pendleton staff will be provided with contact information for COH IT Team and instructed on appropriate time for direct contact. COH IT Team response time is within two hours during normal business hours.

SLA 3: Limited degradation of service. This is impacting resources, but business process can continue. Submitting Help Desk Ticket required. COH IT Team response time is within four hours during normal business hours.

SLA 4: Slight service degradation. This is when an issue needs to be researched or resolved but is not having a significant impact on business process. Submitting Help Desk Ticket required. COH IT Team will respond within one business day.

SLA 5: After hours support will be available for critical widespread outages as needed by Pendleton staff.