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AGENDA
WORK SESSION
OF THE PERRY CITY COUNCIL
May 6, 2019
5:00 P.M.

1. Call to Order: Mayor James E. Faircloth, Jr., Presiding Officer.
2. Roll:
3. Items of Review/Discussion: Mayor James E. Faircloth, Jr.
 - 3a. Appearance(s):
 1. Chamber/DMC's Wine Tasting event – Ms. D. McLendon.
 - 3b. FY 2020 Operating Budget
 1. Department of Public Works – Mr. R. Smith.
 2. Department of Leisure Services – Mr. R. Smith.
 3. Municipal Court – Ms. M. Arrington.
 4. Department of Administration – Ms. B. King.
 - 3c. Police Department
 1. Update relative to traffic on Glenwood Avenue – Chief S. Lynn.
 2. Update relative to traffic on W.F. Ragin Drive – Chief S. Lynn
 - 3d. Office of the City Manager
 1. City Technology Services – Mr. R. Smith.
 2. Incentive program – Mr. L. Gilmour.
 3. Disposal of inventory – Mr. L. Gilmour.
 4. Transfer of items – Mr. L. Gilmour.
 5. Temporary assignment – Mr. L. Gilmour.

6. Amending City billing collection process – Mr. L. Gilmour.
7. Implementation of excise tax – Mr. L. Gilmour.
8. Approval of plaque for Sinclair Station – Mr. L. Gilmour.

4. Council Member Items:

5. Department Head/Staff Items:

6. Adjourn.



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Office of the Assistant City Manager

To: Mayor and Council
From: Robert Smith, Assistant City Manager
CC: Lee Gilmour, City Manager
Date: April 24, 2019
Re: City Technology – Managed Services

As the City grows so do our technological needs. More and more our operations rely on reliable and efficient technologies and technological capabilities that are becoming more and more difficult to manage. This past winter staff started on an assessment of current City technological capacities/capabilities (mostly related to hardware/software/IT) and cross-analyzed our results with the direction the City is heading and how we get to where we want to be, technologically speaking. Some of our goals include transition to software as a service (SAAS), comprehensive and proactive security/backups, hardware replacement program, etc. After working with the various City departments it was determined that the best course of action was to explore our options as they relate to comprehensive managed services.

Essentially, managed services is when the City contracts with a company that remotely manages our IT infrastructure and/or end-user systems, typically on a proactive basis and under a subscription model. So, an outside vendor would come in for the City and support our 76 unique workstations, nine (9) unique servers, various wifi devices, general City software (e.g. Windows, Office, etc.), software specific to departments (e.g. Energov, etc.) while ensuring our network is secure and data is backed up. This is not unlike our current arrangement with ComSouth, however, a few points on the current arrangement that prompted change:

- Ongoing issues with the level of service provided by ComSouth.
 - Service that was reactive in nature as opposed to proactive and constantly looking ahead at where the City needs to be technology-wise.
 - Security and backup issues detrimental to operations.
 - Delays in service.
- Disparate hardware/software platforms across departments.
- Increasing service demands from various City departments.
- ComSouth being absorbed by Hargray.

In moving forward, the City wanted to address the issues above in an encompassing, almost “turnkey” type of solution that would streamline City IT services while better positioning the City for the future. It was determined that two (2) providers offered the desired level of managed services in our area, Hargray and Milner. Both essentially offer the same level of service at the same price, however, after thorough review, staff is recommending moving forward with Hargray (proposed Agreement with service details attached). The below table outlines the proposed costs associated with each:



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Office of the Assistant City Manager

Perry Managed IT Services		
<u>Vendor</u>	<u>Monthly Cost</u>	<u>Annual Cost</u>
Milner	\$8,576.00	\$102,912.00
Hargray	\$8,878.00	\$106,536.00

The cost difference of \$3,624 per year should you choose Hargray is justified in Hargray proposing to provide scheduled on-site labor, as opposed to as-needed on-site assistance only, as well as Hargray having a physical location here in Perry. Hargray is committed to addressing aforementioned issues that kept coming up with ComSouth. Further, Hargray is our internet service provider and there are inherent advantages to having our managed services contractor as the same company that provides our internet access.

The proposed service arrangement represents an increase in annual service costs to the City of \$23,336.04 (currently the City pays ComSouth \$83,199.96 annually for IT services) with an overall much higher level of service (managed 24/7 support, robust security, redundant regularly-scheduled backup, etc). Further, cost savings will be realized from services that can be discontinued (e.g. antivirus, disaster recovery, etc.) in the amount of \$9,906.00 per year. Thus, the estimated total impact to the City budget is \$13,430.04 per year.

Staff is confident that the proposed service agreement will provide the City of Perry with the IT support it has long needed. Please do not hesitate to reach out should you have any questions or require any further information.



Prepared for:
City of Perry

Prepared by:
Logan Sevier

Managed Services Agreement

Quote # 1000284 | Version 2

Thursday, April 04, 2019

City of Perry
Robert Smith
500 Ball Street
Perry, GA 31069
robert.smith@perry-ga.gov

Dear Robert ,

This proposal represents an agreement between Hargray DCMS and The City of Perry for Managed Services Information Technology Support.

Please make sure to read our **New Customer Assessment** located at the end of this document.

This proposal contains the following:

- Managed Services Support that encompasses all devices currently in production on the customer network
- Cisco Umbrella OpenDNS cloud based security
- Managed Anti-Virus
- Auvik Network Management
- Local and Offsite Backups for 9 Servers
- Dedicated / Rotational Onsite Support
 - 12 Hours Total Per Month

Logan Sevier

Hargray Data Center & Managed Services

Executive Summary

Fully Managed Agreement Services

End User Support – included

Helpdesk w/ central contact point (phone and/or email)

Access to Customer Service Portal

Help Desk Hours of Operation are Monday - Friday from 8 AM - 5 PM

After hours emergency support is available from 7 AM - 8 AM and from 5 PM - 11 PM Monday - Friday and Weekends from 8 AM - 11 PM

On Site Services – included

If DCMS determines the incident requires onsite assistance, a technician will be sent onsite at no additional charge to remedy the issue. If it is deemed that the problem is due to hardware failure, Hargray DCMS is not responsible for hardware costs, but will provide the labor to replace under this agreement.

Managed Core – included

Server Availability and Performance Monitoring

Server Troubleshooting and Remediation

Server Windows O/S Patching

Server Patch Level Monitoring

Security – included

Firewall Monitoring – availability

Firewall Monitoring – performance and Security events

Firewall updates to OS and firmware

Firewall troubleshooting and remediation

Antivirus updates and monitors on servers with Managed AV

Managed Antivirus – included

Webroot antivirus deployed on all covered devices

Proactive virus detection and ticket creation

OpenDNS Cloud Based Security – included

OpenDNS service deployed on all covered devices

Backup – included

Minimum upload bandwidth requirements and gigabit switching must be in place

Backup assessment

Onsite backup management and solution monitoring

Remote backup management and solution monitoring

Network Support - included

Router, Switch & VPN monitoring

Router & Switch & VPN maintenance – updates

Remote maintenance, reactive and emergency support on Routers & Switches

Vendor Relationship – included

Escalation to vendor of issues not resolvable by Hargray DCMS

A current support contract with each 3rd Party Vendor must be in place

All vendors must be identified at time of quote acceptance

Procurement Assistance – included

Assistance with qualification, selection, and procurement of hardware and applications

Monthly Reporting – included

Detailed ticket analysis report generated monthly

Firewall report generated monthly if applicable



www.hargray.com

P: 912.239.9909
F: 912.447.6402

Prepared For:		Quote Information:	
Name: Robert Smith	Quote #: 1000284	Created: 03/25/2019	
Company: City of Perry	Expires: 05/24/2019	Rep: Logan Sevier	
Address: 500 Ball Street Perry, GA 31069	Email: logan.sevier@htc.hargray.com	Phone: 912.239.9909	
Phone: (478) 988-2757			
Email: robert.smith@perry-ga.gov			

Managed Services	Item	Recurring	Price	Qty	Ext. Rec.	Ext. Price
Managed Server Server Management Support Plan		\$190.00	\$0.00	9	\$1,710.00	\$0.00
Managed Computer - In Spec Managed Computer - Meets current managed specifications		\$33.00	\$0.00	86	\$2,838.00	\$0.00
Managed Anti-virus Managed Anti-virus - per device		\$2.50	\$0.00	95	\$237.50	\$0.00
OpenDNS - per device OpenDNS - Cloud delivered Network Security and Global Threat Intelligence for any device		\$2.50	\$0.00	95	\$237.50	\$0.00
Managed Firewall Managed Firewall		\$55.00	\$0.00	11	\$605.00	\$0.00
Managed Switch Managed Switch		\$25.00	\$0.00	23	\$575.00	\$0.00
Wireless Access Point Support Wireless Access Point Support		\$5.00	\$0.00	16	\$80.00	\$0.00
Managed BRS Server Managed BRS Server - Backup and Recovery Service licensed per Server		\$55.00	\$0.00	9	\$495.00	\$0.00
BRS Offsite Storage BRS Offsite Storage - Backup and Recovery Offsite Storage, priced per GB of data transmitted offsite		\$0.10	\$0.00	9000	\$900.00	\$0.00
Scheduled or Rotational Onsite Labor Scheduled or Rotational Onsite Labor		\$100.00	\$0.00	12	\$1,200.00	\$0.00

Managed Services Recurring Subtotal \$8,878.00
Managed Services Subtotal \$0.00



www.hargray.com

P: 912.239.9909
F: 912.447.6402

Recurring Expenses	Amount
Managed Services	\$8,878.00
Recurring Total	\$8,878.00

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Signature _____

Date _____



IT & Managed Services Master Services Agreement

Between: **Hargray Data Center Services, Inc.**
870-C William Hilton Parkway
Hilton Head Island, SC 29938

("Vendor")

And: **City of Perry**
500 Ball St
Perry, GA 31069

("Client")

This Master Services Agreement is entered into as of _____, 2019 ("Effective Date") by and between Vendor and Client (also referred to as "Party" in the singular and "Parties" in the plural). The Parties hereto agree that Vendor shall render professional technology-related services and products (collectively "Services") to Client in an ongoing fashion. This Master Service Agreement includes attached exhibits that further define the terms and conditions for Services (collectively, "Agreement"). The Parties further agree that the scope and payment terms of such Services will be provided in separate documents that are hereby incorporated into this Agreement by reference and therefore subject to this Agreement's terms. Such separate documents may be referred to as a Proposal, Price Sheet, Quote, Offer, Work Order, Service Order or Statement of Work; collectively within this Agreement, such documents are referred to as an "SOW".

The Parties agree as follows:

1. **NATURE OF SERVICES:** All Services will be rendered as specified in the applicable SOW. Any changes to the Services provided in an SOW are subject to mutual written agreement of the Parties and may become the subject of a separate SOW at the sole discretion of Vendor. In the event of any conflict between the terms of this Agreement and the terms of an SOW, the terms of such SOW control with respect to the Services described therein; otherwise, this Agreement controls. All Services last for a term of twelve (12) months ("Initial Services Term"), unless otherwise agreed by the Parties within the applicable SOW. Services will automatically renew, unless otherwise terminated by either Party at least thirty (30) days prior to end of the current term, for additional twelve (12) months terms (each an "Additional Services Term"), unless otherwise agreed by the Parties within the applicable SOW.
2. **NATURE OF RELATIONSHIP:** In performance of this Agreement, Vendor's personnel are acting as independent contractors. Personnel supplied by Vendor hereunder are not Client's employees, agents, personnel, joint ventures, partners and/or subcontractors. All Vendor personnel are Vendor's employees, agents and personnel furnished, hired, used and/or retained by or on behalf of Vendor, are and shall be considered employees or agents of Vendor ("Employees"). Vendor shall at all times during the term of this Agreement maintain supervision, direction and control over its Employees, as is consistent with and necessary to preserve its independent contractor status. Vendor shall be solely responsible for the payment of compensation of Vendor Employees, assigned to perform Services hereunder. The Parties acknowledge and agree that the procurement of Services under this Agreement and SOW will be on a non-exclusive basis and that Vendor is not required to provide services that are not accounted for in the SOW. The Services provided to Client under this Agreement shall be for Client's use and the use of Client's subsidiary and affiliated companies only.
3. **CONFIDENTIALITY:** During the course of this Agreement, each Party, its employees, subcontractors, officers and agents may receive or have access to Confidential Information of the other Party. In the event the receiving Party obtains Confidential Information from the disclosing Party, the Receiving Party agrees to keep such Confidential Information in the strictest confidence and safeguard such information using the same degree of care as it uses to safeguard its own Confidential Information, which in no case shall be less than a reasonable degree of care. Each Party's Confidential Information consists of its business plans and customer lists, any information the disclosing Party identifies as confidential at the time of disclosure (or if in writing the disclosing Party marks as Confidential), and any information a reasonable person would consider confidential under the circumstances.
 - a. **Mutual Obligations:** The Receiving Party shall (i) not use the disclosing Party's Confidential Information for any purpose other than the exclusive purpose of fulfilling its obligations under this Agreement and SOW; (ii) not use, disclose or otherwise make available to any person or entity (except as permitted herein) any of the disclosing Party's Confidential Information during the term of this Agreement or thereafter without the prior written consent of the disclosing Party; (iii) limit access to Confidential Information to those employees, officers, subcontractors and agents on a need to know basis who has first executed a general written agreement committing such person to conduct that would not violate Client's obligations pursuant to this Agreement; (iv) be responsible for any breach of this Agreement by employees, subcontractors, officers and agents.
 - b. **Exceptions:** Confidential Information will not include information to the extent that: (a) such information is or becomes publicly available other than through any act or omission of either Party in breach of this Agreement; (b) such information was received by the receiving Party from a third Party, which third Party had no obligation of confidentiality to the disclosing Party; or (c) such information was in the possession of the receiving Party at the time of the disclosure, or (d) was independently developed by the receiving Party without reference to the disclosing Party's Confidential Information; (e) such information is/are required to be disclosed pursuant law, judicial order, or government regulation, provided that, in the event the receiving Party becomes legally compelled to disclose any of the information, the receiving Party shall provide to disclosing Party prompt notice thereof so that disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

- c. Injunctive Relief: The receiving Party acknowledges and agrees that it would be difficult to fully compensate the disclosing Party for damages resulting from the breach or threatened breach of the foregoing provisions and, accordingly, that the disclosing Party will be entitled to seek injunctive relief, including without limitation, temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce such provisions. This provision with respect to injunctive relief will not, however, diminish the disclosing Party's right to claim and recover damages.
- d. The obligations under this section shall survive the termination of this Agreement or any provision thereof.

BILLING AND PAYMENT: Client shall pay the rates and charges detailed in the Vendor SOW including all applicable taxes and surcharges that may be required under laws, regulations, or tariffs in connection with the SOW. The following shall apply to the payment of Vendor's invoices:

- a. Vendor will bill Client with all invoices due and payable within thirty (30) days after the invoice date ("Due Date")
- b. Vendor, in addition to any other remedies available to it, may impose a late fee of one and one-half percent (1.5%) per month on any charges not paid by Client by the Due Date.
- c. Vendor may suspend services or partial service to accounts that are past due. CLIENT ACKNOWLEDGES THAT SUSPENSION OF SERVICE MAY RESTRICT OR PREVENT ACCESS TO, BUT NOT BE LIMITED TO, TELEPHONE, E-MAIL, APPLICATIONS, SPAM PROTECTION, ANTI-VIRUS SERVICES, FILES, DATA, TECHNICAL SUPPORT SERVICES AND BACKUPS.
- d. In the event that Client's preferred payment method is ACH debit, Customer authorizes Vendor to debit Client's bank account each month for the amount of any and all monthly recurring fees and all other amounts owed by Client to Vendor. Client shall sign any additional authorizations that Vendor requests in order to comply with the NACHA Rules or the rules and procedures of Vendor ACH service SOW.
- e. In the event that Client's preferred payment method is credit or debit card, Client authorizes Vendor to debit Client's credit or debit account number as provided to Vendor for the amount due and any and all monthly recurring fees and all other amounts owed by Client to Vendor.

BILLING DISPUTES:

- a. Upon disputing any charges, Client shall (i) pay all undisputed charges by the Due Date; (ii) present by the Due Date a written statement of the amounts disputed in good faith and in reasonable detail with supporting documentation; and (iii) negotiate in good faith to resolve any bona fide dispute within 60 (sixty) calendar days of the Due Date.
- b. Disputed charges resolved in favor of Vendor, with applicable late payment charges, shall be due and payable. Disputed charges resolved in favor of Client shall be credited to Client and no late payment charges shall apply.
- c. Charges not disputed by the Due Date shall be deemed to have been accepted by Client as accurate charges and shall be ineligible for dispute.

7. SECURITY DEPOSIT / PERFORMANCE ASSURANCE. Prior to or at any time after commencement of provision of the Services to Client, Vendor may require Client to (i) make a cash security deposit, (ii) provide a letter of credit from a commercial bank approved in writing by Vendor, or (iii) provide such other form of credit (including a pledge of collateral) as may be acceptable to Vendor, or as Vendor may otherwise require (the "*Deposit*"). The Deposit shall be held by Vendor as a guarantee or security for the payment of charges incurred by Client and may be drawn upon by Vendor for any and all past due amounts. Subject to the terms hereof, Vendor shall return the Deposit without interest to Client within 30 (thirty) days of the termination of the Services net of any outstanding amounts due by Client hereunder. Vendor's obligation to provide the Services is contingent upon an initial and continuing credit approval by Vendor. Client authorizes Vendor to perform credit checks and investigate financial references.

8. TAXES: Client shall be liable for all applicable sales, use, and service taxes and fees associated with Services. Client shall reimburse Vendor any such taxes that Vendor pays on Client's behalf.

9. SHIPPING AND HANDLING: Client understands and agrees that Client is solely responsible for all shipping and handling for any products that must be ordered from third parties. Client shall reimburse Vendor any such shipping and handling fees that Vendor pays on Client's behalf.

10. RETURNS/EXCHANGES/REFUNDS: Due to the nature of the products involved in Services, Client understands and agrees that Vendor may not be able to honor Client's request for a return or exchange of any such products, or any corresponding refund. As such, Client understands and agrees that Client waives any legal actions against Vendor under this Agreement and any applicable SOW for Client's inability to return or exchange such products as well as to receive any corresponding refund.

11. TRANSFER OF TITLE AND RISK OF LOSS: Client understands and agrees that title to product does not legally pass to Client until such time as Client has paid for such product. However, Client solely bears the responsibility for risk of loss once a product has been delivered to Client, even if Client has not yet paid for such product.

12. INTELLECTUAL PROPERTY RIGHTS: The parties agree as follows with regards to limitations on liability:

Rights of Parties and Restrictions on Use: The Parties shall not violate each other's respective intellectual property rights, including, but not limited to, copyrights, trademarks, and patents. The Parties shall not use each other's respective intellectual property except as is

necessary to carry out the objectives of this Agreement or applicable SOW, unless prior written permission is obtained from the Party authorizing such use.

Rights of 3rd Parties: Client understands that in providing Services, Vendor may use the licensed intellectual property of third parties. As such, Client will respect and not interfere with the intellectual property of such third parties.

Rights in Services: Any Services performed by Vendor pursuant to this Agreement and applicable SOWs are NOT considered "work made for hire" as defined in 17 USC Section 101 (the Copyright Act) of the United States Code (including subsequent renumbering and successor statutes) and all intellectual property rights in all materials provided by Vendor for Services rendered shall remain with Vendor, unless otherwise agreed in an SOW.

13. REPRESENTATIONS AND WARRANTIES:

Mutual Warranties: Both Parties hereto warrant, represent and covenant to each other, as an essential part of this Agreement that: (i) each is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (ii) each is fully able to perform the obligations hereunder; and (iii) the person signing this Agreement is authorized to do so and that each has obtained all internal and external approvals and resolutions necessary to enter into this Agreement.

Vendor Warranties: Vendor warrants, represents and covenants that each of its Employees, assigned to perform Services under an SOW shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all Services will be performed in accordance with the terms of such SOW.

Product Warranties: Where Vendor provides products, including, but not limited to, off-the-shelf or configured computers, servers, software, workstations, servers, routers and switches, Client understands and agrees that Vendor offers no additional warranties with regard to such products and that as such, Client's sole remedy for issues with such products is against the corresponding manufacturer and any warranty that such manufacturer offers, if any.

14. **WARRANTY DISCLAIMER:** ALL SERVICES ARE PROVIDED "AS IS", WITH NO WARRANTIES WHATSOEVER; VENDOR DOES NOT, EITHER EXPRESSED, IMPLIED OR STATUTORY, MAKE ANY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR USE OR A PARTICULAR PURPOSE. VENDOR FURTHER DOES NOT REPRESENT OR WARRANT THAT SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE. CLIENT ASSUMES ALL RISKS ARISING OUT OF CLIENT'S USE OF THE SERVICES, TO THE MAXIMUM EXTENT PERMITTED BY LAW. SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSIONS AND LIMITATIONS AS SPECIFIED HERE AND TO THE LEAST EXTENT AS ALLOWED BY LAW, SUCH EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO CLIENT.
15. **PUBLICITY:** Client agrees that Vendor may make mention that Vendor provides Services to Client in Vendor's website, brochures, and other promotional materials. In such mention of Vendor Services, Vendor will honor and protect the Confidential Information of Client.
16. **NON-SOLICITATION:** Client agrees that during the term of any Services as provided by Vendor under this Agreement and for a period of one (1) year after the termination of this Agreement, Client will not solicit or induce, directly or by use of a third party, any employee of Vendor to leave his/her employ with Vendor. If Client violates this provision, Client shall pay Vendor a fee equal to fifty (50%) of such employee's then-current annual salary at Vendor.
17. **MUTUAL INDEMNIFICATION:** Vendor agrees to indemnify and hold Client and their respective directors, officers, employees and agents and its or their subsidiaries and/or affiliates, harmless from and against any damages directly arising out of the negligence or willful misconduct of Vendor, its Employees, or of any subcontractor retained by Vendor in connection with the performance of the Services under this Agreement. Client agrees to indemnify and hold Vendor and its respective directors, officers, employees and agents and its or their subsidiaries and/or affiliates, harmless from and against any damages directly arising out of the violation of this Agreement and Services and the negligence or willful misconduct of Client, including Client's employee's and any subcontractors retained by Client.
18. **LIMITATION OF LIABILITY:** The parties agree as follows with regards to limitations on liability:
- a. **Risk Assumption:** Client agrees that the rates and fees charged under any SOW do not include any assumption of risk by Vendor for Client's incidental, consequential, punitive, special, exemplary or indirect damages and that Vendor's rates and fees charged to Client would be substantially higher where Vendor were also required to include such assumption of risk.
 - b. **Maximum Liability:** Other than amounts due to Vendor from Client for Services or with regard to a Party's breach of confidentiality under this Agreement, the maximum liability of either Party to the other, including any related parties, as arising out of or in connection with the fulfillment of or use of the Services, regardless of the basis of claim, shall not exceed the value of the applicable SOW. For breaches of confidentiality, the Parties agree that the maximum liability of either Party shall not exceed an amount equal to two (2) times the value of the applicable SOW.
 - c. **Exclusion of Liability:** IN NO EVENT SHALL EITHER PARTY BE LIABLE, ONE TO THE OTHER, FOR LOSS OF REVENUE OR PROFITS OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, INCLUDING LOSS OF PROFITS, LOSS OF DATA, EQUIPMENT DOWNTIME, OR SPECIAL DAMAGES, WHETHER FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL CAUSE OF ACTION AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW EXCEPT TO THE EXTENT SUCH DAMAGES: (A) ARISE FROM AN UNAUTHORIZED DISCLOSURE OR MISUSE OF THE OTHER PARTY'S CONFIDENTIAL INFORMATION OR INTELLECTUAL PROPERTY OR (B) ARE RELATED TO OR ARISE FROM GROSS NEGLIGENCE OR WILLFUL OR INTENTIONAL MISCONDUCT.

19. **TERMINATION:** Notwithstanding anything to the contrary, either Party may terminate this Agreement if the other Party commits a breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice from the non-breaching Party.

- a. **Effect on SOWs:** The Parties agree that the termination of this Agreement also terminates all current SOWs as open between the Parties, unless the Parties agree to the contrary in a separate written agreement.
- b. **Obligations:**
 - i. In the event Customer (i) cancels the Services prior to the completion of installation of the Equipment and/or activation of the Services Customer shall be liable to Vendor for termination charges equal to the monthly recurring charges for such discontinued Services (excluding taxes and surcharges), multiplied by the number of months remaining in the Initial Services Term or Additional Service Term as applicable.
 - ii. Client shall still be obligated to make payments to Vendor for Services on all open SOWs, as rendered up to and including the date of termination. To the extent as defined by such applicable SOWs, Vendor will release any work product or products related to Services for which Client has made payment or upon receipt of Client's payment. To the extent allowed by such applicable SOWs, Vendor is not required to release any work product or products related to Services unless Client has made payment in full for such work product or products.
- c. **Survival:** Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- d. **No Waiver:** The right of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will not be construed to be a waiver of such provisions, or in any way affect the right of either Party to enforce such provisions thereafter.

20. INSURANCE:

- a. Vendor shall maintain, and shall ensure that all subcontractors performing work under this Agreement maintain, with an insurer that has an A.M. Best rating of A-minus or better, the following insurance coverage:
 - i. Comprehensive general liability, including premises/operations in progress products/completed operations, and blanket contractual and independent contractor's liability, bodily injury and property damage with limits not less than the equivalent of one million dollars (\$1,000,000) per occurrence;
 - ii. Auto liability for owned, hire and non-owned vehicles with limits not less than the equivalent of one million dollars (\$1,000,000) per occurrence for bodily injury/property damage; and
 - iii. Applicable governmental or other workers' compensation/protection (including employer's liability) which must, at minimum, comply with all statutory regulations in the governmental jurisdiction where Vendor's work is being performed;
 - iv. Property insurance to cover "all risks" to materials, supplies, tools and other property of Vendor and/or its personnel retained at Client's facilities, as well as such items belonging to Client and under the custody, care and control of Vendor and/or its personnel.
- b. Client shall maintain, and shall ensure that all subcontractors performing work under this Agreement maintain, with an insurer that has an A.M. Best rating of A-minus or better, the following insurance coverage:
 - v. Comprehensive general liability, including premises/operations in progress products/completed operations, and blanket contractual and independent contractor's liability, bodily injury and property damage with limits not less than the equivalent of one million dollars (\$1,000,000) per occurrence;
 - vi. Auto liability for owned, hire and non-owned vehicles with limits not less than the equivalent of one million dollars (\$1,000,000) per occurrence for bodily injury/property damage; and
 - vii. Applicable governmental or other workers' compensation/protection (including employer's liability) which must, at minimum, comply with all statutory regulations in the governmental jurisdiction where Vendor's work is being performed;
 - viii. Property insurance to cover "all risks" to materials, supplies, tools and other property of Client at Client's facilities, as well as such items belonging to Client and under the custody, care and control of Vendor and/or its personnel.

21. GENERAL:

- a. **Modification:** No alteration or modification of this Agreement shall be valid unless made in writing and signed by the Parties. Client may add additional Services with notice to and acceptance by Vendor.
- b. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect in such jurisdiction to the fullest extent permitted by law and the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

- c. **Assignment:** This Agreement is not assignable or transferable in whole or in part by Client without the prior written consent of Vendor; such consent will not be unreasonably withheld. Any such attempted assignment shall be void. Vendor may assign this Agreement without Client's consent, to any person or entity that acquires substantially all of the stock of Vendor or the assets of Vendor or any applicable major division, unit or subsidiary of Vendor. Vendor may subcontract portions of its obligations under this Agreement provided that Vendor shall remain ultimately liable for the performance of subcontractor.
- d. **Notices:** Any notice or other communication required or permitted hereunder shall be given in writing to the other Party at the address listed above, or at such other address as shall be given by either Party to the other in writing.
- e. **Headings:** The Parties acknowledge that the headings used in this Agreement are for convenience purposes only and shall not be construed to define or limit the Parties' rights and remedies hereunder.
- f. **Governing Law:** The validity, construction and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia. The exclusive forum and venue for all legal and equitable actions or proceedings arising out of or related to this Agreement shall be in an appropriate federal or state court located in Savannah, Georgia, and each party hereby irrevocably consents to the personal jurisdiction of such courts and waives any claim that such courts do not constitute a convenient and appropriate venue for such actions or proceedings.
- g. **No Third Party Rights:** This Agreement does not create, confer, or otherwise grant rights for the benefit of any third party, creditor, and supplier or incidental beneficiary of Client with regard to Vendor.
- h. **Force Majeure:** Neither Party shall be liable for any delays in performance/breaches of this Agreement due to causes beyond its control, including acts of God, government intervention, public enemy, war, insurrection, national emergency, terrorism, fire, strikes, labor disputes, loss of electrical power, loss of internet access or any other cause beyond the reasonable control of the Parties.
- i. **Entire Agreement:** This Master Services Agreement and SOW, and any supplement attached thereto, constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the Parties.
- j. **Section headings in this Agreement are for the purpose of reference only and do not limit or affect their meaning.**
- k. **This Agreement may be executed in two counterparts, each of which when so executed and delivered shall be deemed an original and both of which shall constitute one and the same instrument. The Parties shall accept executed counterparts delivered by facsimile or other electronic transmission as of equal effect as original signatures**

IN WITNESS WHEREOF, the Parties have affixed their signatures below, acknowledging that this Agreement will be effective when signed by both Parties as of the Effective Date, regardless of the date of signatures below.

ACCEPTED BY Client:	ACCEPTED BY Vendor:
<i>Signature</i>	<i>Signature</i>
<i>Name</i>	<i>Name</i>
<i>Title</i>	<i>Title</i>
<i>Date</i>	<i>Date</i>

Exhibit A – Support Services

This Exhibit A is included with and subject to the Agreement. Its terms and conditions govern support services as provide by Vendor to Client.

Definitions

“Covered Equipment” means any device included in Services, whether owned by Client or provided by Vendor for Client’s use, including, but not limited to computers, printers, servers, routers, and mobile devices as well as the software necessary to operate such devices.

“Data” means any form of information in electronic form. Data may refer to any electronic file, no matter what the format, to include but is not limited to databases, text, images, audio, video, charts, electronic mail documents and drawings.

Necessity to Cooperate: Client understands and agrees that Vendor’s ability to provide Services is limited to Client’s complete cooperation with requests from Vendor. Client understands and agrees that Client’s failure to provide items and information in a timely fashion as requested by Vendor may result in Vendor’s delay or inability to provide related Services. In Vendor’s sole discretion, Client’s repeated failure to provide necessary items and information may result in Vendor removing affected Covered Equipment from this Agreement or in the termination of the Agreement.

Assignment of Client Primary Contact: Client will provide to Vendor a primary contact with regard to contractual matters and technical matters. This primary contact shall be authorized to make decisions with regard to the addition of Services, users, access, etc. Client shall provide all required contact information for the primary contact to allow Vendor to reach them as the need arises. Additionally, to facilitate Services Client will provide Vendor with all necessary contacts from other service providers, such as telephone and Internet service providers. Client will assist Vendor in obtaining any necessary information from such service providers as necessary for Vendor to provide Services.

Internet Access: Client will acquire and maintain reliable Internet access to facilitate Services to Covered Equipment. Client understands that all expenses relating to the acquisition, installation and maintenance of Internet access shall be borne exclusively by Client unless specifically stated otherwise in an SOW.

Monitoring and Remote Access: Where remote monitoring of and remote access to Covered Equipment is provided, Client will allow Vendor to install necessary software to provide such monitoring and access. Client will not modify or remove such software without the permission of Vendor.

Internet Transmission of Data: Client acknowledges and understands that provision of Services will involve the transmission of Client-owned Data over the Internet, and over various networks, only part of which may be owned or operated by Vendor. Client further acknowledges and understands that while Vendor will utilize industry-standard encryption technologies, client-owned Data may be accessed by unauthorized parties when communicated across the Internet, Client’s local area network, network communications facilities, telephone or other electronic means. Client agrees that Vendor is not liable for any Client-owned Data which is delayed, lost, altered, intercepted or stored during the transmission across networks including, but not limited to, the Internet, Client’s local area network, network communications facilities, telephone or other electronic means.

Physical Access to Covered Equipment: Client will provide Vendor with physical access to Covered Equipment as required perform onsite Services as necessary.

Administrator Rights: To facilitate Services, Client will provide Vendor with all necessary administrator usernames and passwords for Covered Equipment. Vendor will administer such usemames and passwords and may change such usernames and passwords as necessary to protect Covered Equipment. In the event that Vendor changes such usernames or passwords, Vendor will provide Client with notice of the new usernames and passwords. Client acknowledges and understands that, upon the issuance of administrator usernames and passwords from Client to Vendor, Vendor will perform Services in the capacity of administrator and will therefore have access to, but not be limited to, all servers, workstations, applications, software Client owned Data, firewalls, switches and routers. Vendor will only utilize this access on an as-needed basis for the purposes of monitoring, maintenance, setup, debugging and other user and device support as required in the fulfillment of the Agreement.

User Administration: Where provided as part of Services, Vendor will administer the creation, modification, and deletion of users. Client’s primary contact shall give Vendor permission to provide such services as required.

Scheduled Maintenance: Scheduled maintenance of Vendor-owned systems will not normally result in the interruption or outage of Services. However, in the event scheduled maintenance should require an interruption or outage of Services, Vendor will make every effort to (i) provide client with seven (7) days’ prior written notice of such scheduled maintenance, (ii) coordinate with Client in good faith to attempt to minimize any disruption in Client’s services that may be caused by such scheduled maintenance, and (iii) to perform such scheduled maintenance during the non-peak hours of 5:00 PM until 6:00 AM local time. Client understands that certain maintenance tasks must be performed on an emergency basis. In the case where emergency maintenance is required, Vendor will make every effort to contact Client in advance of an interruption or outage of Services.

Automatic Updates: Client acknowledges that Vendor shall not be liable for an interruption or outage of Services, undesired performance or unexpected results following the automatic update of software applications, operating systems, virus definitions or other.

Pre-Existing Conditions and Faulty Hardware: Client understands and agrees that Vendor makes no warranties or guarantees with regard to pre-existing conditions or future functionality with regard to Covered Equipment. While Vendor will use best efforts to do so, Vendor may not be able to detect or resolve such pre-existing or future conditions and is not liable for failure to do so. If Vendor determines that any Covered Equipment is beyond repair, Vendor, at its sole discretion, may propose replacement hardware or may terminate Services with regard to such Covered Equipment.

Viruses, Malware, and Malicious Code: Client understands and agrees that Vendor makes no warranties or guarantees with regard to the prevention of or removal of viruses, malware, and malicious code from Covered Equipment. While Vendor will use best efforts to do so, Vendor

may not be able to prevent the introduction of or be able to resolve such viruses, malware, and malicious code and is not liable for failure to do so.

Ownership:

Equipment Ownership: Client understands and agrees that all Covered Equipment is the property of Client and therefore Client agrees to be solely liable for risk of loss.

Software Ownership: Client understands and agrees that all software installed on Covered Equipment is the property of Client and therefore Client agrees to be solely liable for risk of loss, licensing fees, update fees and software maintenance agreements as required. Client further agrees that Vendor will not be held liable for the continued usage or future usage of software that has been acquired or activated illegally. Client shall own and maintain a license for each software title installed.

Data Ownership: Vendor understands and agrees that any and all Data on any Covered Equipment, whether such equipment is leased or owned by Client, belongs solely to Client. Client agrees that Client is solely responsible for their own Data and any loss, alteration or corruption of such Data.

Data Backup Ownership: Client understands and agrees that the creation of and storage of copies of Client Owned Data for backup purposes will be the sole responsibility of Client and that Vendor will, at no time, possess a copy of Client owned Data unless specifically stated in an SOW.

Leased Equipment: If Client leases equipment from Vendor to be placed at Client's site, Client understands and agrees that such leased equipment, as well as any software upon such equipment, is the sole property of Vendor. Client will make any modifications or deletions to leased equipment, including, but not limited to the removal of software, changing of hardware, or modification to any access permissions. Client agrees to provide necessary business insurance to insure against risk of loss while such leased equipment is at Client's site.

Service Hours: Standard Office Hours (i.e. "business hours") are Monday through Friday, 8:00am until 6:00pm EST, excluding all weekends and six (6) annual major federal holidays. Extended Hours are those hours outside of Vendor's Standard Office Hours. During extended hours, Vendor provides 24 hour access to support provided by the Network Operations Center.

Expenses: Vendor reserves the right to bill all travel and out-of-pocket expenses to Client (i.e. parts, software, materials, mileage, parking, tolls, incidentals, etc.). Vendor shall not be required to provide receipts for single expense items of \$25.00 or less. Mileage is billed at the standard published IRS mileage reimbursement rate.



Where Georgia comes together.

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor/Council
FROM: Lee Gilmour, City Manager
DATE: April 24, 2019
REFERENCE: Incentive program

There is a need, per your strategic plan, for a number of restaurants in the downtown district. One way to encourage this business location is to provide incentives.

The Administration recommends Council authorize incentives to restaurants locating in the downtown district to receive upon completion and opening, a gas usage incentive. The incentive would reimburse the tenant/owner for one half the documented cost for the installation or upgrade of natural gas fueled appliances and the cost of installation. The funding for this incentive would be the Gas System Revenue Fund.

Please be ready to discuss at your May 6, 2019 work session.

cc: Mr. R. Smith
Ms. A. Hardin



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OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor/Council
FROM: Lee Gilmour, City Manager
DATE: April 30, 2019
REFERENCE: Disposal of inventory

The City has accumulated over many years, a collection of old computer hardware, chairs, cabinets, etc., all of which have no value. The Administration recommends Council conduct a flea market that would allow the public the opportunity to examine and remove at no cost these items. It would be a very good public awareness event, remove a number of the items and be cost effective for the City.

cc: Mr. R. Smith
Ms. B. King



Where Georgia comes together.

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor/Council
FROM: Lee Gilmour, City Manager
DATE: April 30, 2019
REFERENCE: Transfer of items

Reviewing the future options for the Perry Arts Center, the Administration recommends Council approve:

1. Relocation of the Girl in the Tree sculpture work to Crossroads Park when the park is ready for its installation.
2. Since the Farmer's Market is not planning to return to the Center, relocate the gazebo to Andrew Heights Park.

If you have any questions or comments, please contact me.

cc: Mr. R. Smith



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OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor/Council
FROM: Lee Gilmour, City Manager
DATE: April 30, 2019
REFERENCE: Temporary assignment

With the departure of Mr. Kevin Dye and the upcoming spring recreation and leisure service programs, the Administration recommends Ms. Nancy Graham be designated, on a temporary basis, the acting director of the Department of Leisure Services.

cc: Mr. R. Smith



Where Georgia comes together.

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: Mayor/Council
FROM: Lee Gilmour, City Manager
DATE: April 30, 2019
REFERENCE: Amending City billing collection process

Recently you authorized the institution of a deposit for customers who failed to keep their City services account paid timely. The deposit has helped but it has not eliminated the issue with a small group of customers.

The Administration recommends Council approve an amendment to the delinquent account process to cover loss of revenue, damage of City property and theft.

If a customer fails to pay timely according to the deposit requirement schedule:

1. The customer is required to pay in advance for services based on current rates and prior season use.
2. If the customer fails to keep current with paying in advance he/she/it is determined an unacceptable credit risk and the account is closed. The account holder cannot regain the right to be a customer for five (5) years and must show a successful credit history.
3. Any person/entity requesting service at one of the above accounts must have an acceptable credit history before services will be provided.

cc: Mr. R. Smith
Ms. V. Sanders

Historic Sinclair Station
700 Carroll Street
Old Dixie Highway



c1931