

**ORDINANCE NO. 1529**

**AN ORDINANCE AUTHORIZING THE MAYOR AND INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH KINTECHNOLOGY, INC. TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY, NOT TO EXCEED \$110,000.00; AND REPEALING ORDINANCE 1506**

**WHEREAS**, the City of Canby desires to continue its contract between the City and KinTechnology, Inc. to provide computer technical services for the City; and

**WHEREAS**, the current contract with KinTechnology, Inc. needs to be renewed;

**NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:**

**Section 1.** The City Administrator is hereby authorized on behalf of the City to enter into an amended Personal Services Agreement with KinTechnology, Inc. to continue to provide computer technical services for the City. A copy of the Personal Services Agreement is attached hereto as Exhibit "A."

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 3, 2020, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, June 17, 2020, commencing at the hour of 7:00 p.m. in the Council Meeting Chambers located at 222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Canby, Oregon.



Melissa Bisset, CMC

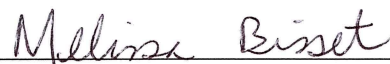
City Recorder

**PASSED** on the second and final reading by the Canby City Council at a regular meeting thereof on the 17<sup>th</sup> day of June, 2020 by the following vote:

YEAS 4 NAYS 0  
Councilor Varwig abstained

  
\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Melissa Bisset, CMC  
City Recorder

**AFFIDAVIT OF POSTING**

**STATE OF OREGON**        )  
  )  
**County of Clackamas**    )        ss:  
  )  
**CITY OF CANBY**            )

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 3<sup>rd</sup> day of June, 2020 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1529 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 3<sup>rd</sup> day of June, 2020, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

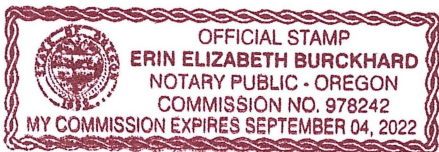
- 1.     Canby Civic Building – Front Doors
- 2.     Canby Post Office
- 3.     City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 17<sup>th</sup> day of June, 2020.

Melissa Bisset  
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 8<sup>th</sup> day of June, 2020.

Erin Elizabeth Burckhard  
Notary Public For Oregon  
My Commission Expires: 9/4/2022



## PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and KINTECHNOLOGY, INC. (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.**
- 3. Compensation:
  - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$110,000 is the not to exceed price for general managed services of this contract, without prior written approval from the City. Out of contract fees are per the hourly service rates schedule listed in Exhibit "A".
  - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
  - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
  - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.

- B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.
- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.
5. **Subcontractors and Assignment.** Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.
6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
7. Term.
- A. This Agreement may be terminated by:
1. Mutual written consent of the parties.
  2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
  3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
    - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
    - b. If Contractor fails to abide by the terms of this Agreement.
    - c. If services are no longer required.
8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

By entering into this agreement, contractor represents and warranties that they

have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate termination of this agreement and/or other sought damages or other such relief under applicable law.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:
  - A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.
  - B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.
  - C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.)**. For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.
  - D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.
10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.

12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, electronically, faxed, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Amanda Zeiber, Interim City Administrator  
 City of Canby  
 PO Box 930  
 Canby, OR 97013

CONTRACTOR: Tim Kimble  
 KinTechnology, Inc.  
 PO Box 305  
 Canby, OR 97013

**Please submit invoices to: Attn: Accounts Payable  
 City of Canby  
 PO Box 930  
 Canby, OR 97013  
 ap@canbyoregon.gov**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR:

CITY OF CANBY

By: 

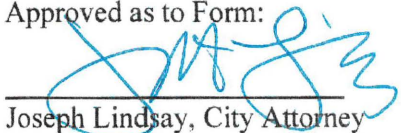
By: 

Date: 6/25/2020

Date: 06/22/2020

Subcontractors will be used  Yes  No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:

  
 Joseph Lindsay, City Attorney

11/6/15









## Managed Services Agreement – Terms and Conditions

This IT Managed Services Agreement (“Agreement”) dated \_\_\_\_\_, is between KinTechnology “KinTech”, and the City of Canby (“Client”). KinTech and Client agree as follows:

**Term** – The “Term” of this Agreement will begin on the Effective Date and shall continue for a term of twelve (12) months. Unless communicated in writing otherwise, contract will automatically renew. This agreement may be terminated:

- 1) by mutual consent of the parties.
- 2) Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
- 3) The Client, effective upon delivery of written notice to KinTech by certified mail or in person, under any of the following:
  - a) If KinTech fails to provide services called for by this Agreement within the time specified or any extension thereof
  - b) If KinTech fails to abide by the terms of this Agreement
  - c) If services are no longer required

KinTech is permitted to enter Client's premises, during normal business hours, and repossess all supplies, spare parts and other items supplied by KinTech for which payment has not been received by KinTech.

**Minimum Standards Required for Service** – In order to provide effective services under this Agreement, the Client environment must conform to the following:

- All servers with Microsoft Windows Operating Systems must be running Windows 2012 Server or more recent version and have all service packs and critical updates installed.
- All workstations (desktop or laptop) PCs with Window Operating systems must be running Windows 8 Pro or more recent version, and all service packs and critical updates installed.
- All server and workstation software must be genuine, licensed, and vendor supported.
- The environment must have a currently licensed, vendor supported, server based, KinTech approved backup solution that can be monitored, and be able to issue notice of failures and successes.
- The environment must have a currently licensed, vendor supported, KinTech approved hardware firewall between the internal network and the internet.
- All wireless data traffic in the environment must be securely encrypted.
- There must be an outside static IP address assigned to a network device allowing RDP and VPN access.
- Client must ensure that environment has sufficient power to meet manufacturer's specifications on all hardware devices.

*Costs required to bring Client's environment into compliance with minimum standards is not included in this Agreement. All work associated with bringing Client's environment within minimum standards must be contracted through and completed by KinTech.*

**Excluded Products and Services** – Products and Services NOT covered by this Agreement:

- Services on parts, equipment, or software not covered by vendor/manufacturer warranty or support.
- The cost of any parts, equipment, or shipping charges of any kind.
- The cost of any software, licensing, or software renewal or upgrade fees of any kind.
- The cost of any third-party vendor or manufacturer support or incident fees of any kind.
- The cost to bring Client's environment into compliance with minimum standards for service.
- Failure due to acts of God, building modifications, power failures, or other adverse environmental conditions or factors.
- Service or repair made necessary by the alteration or modification of equipment other than as authorized by KinTech, including alterations, software installations or modifications or equipment made by Client employees or anyone other than KinTech.
- Maintenance of applications software packages, whether acquired from KinTech or any other source unless specified on this Agreement.
- Programming (modification of software code) and program (software) maintenance.
- Any product or service not specifically provided by this Agreement.
- Training services of any kind.

**Billing and Payment** – Services, expenses, and travel time are billed on a regular billing cycle; Payment due NET 20 of invoice date. Interest will accrue on past due accounts at a rate of 2% per month (24% APR) from the date Services were provided until all overdue amounts (and interest) are paid in full. Dishonored checks will incur a service charge of \$30.00. If payment on an invoice is not received within 30 days of invoice date, KinTech reserves the right to suspend the Services – without liability of any kind to Client – until all overdue amounts (and interest) are paid in full. No suspension of Services will extend the Term of this Agreement, or obviate Client's obligation to pay the monthly Support Services rates for the Term. Fees may be adjusted on a monthly basis to reflect an increase or decrease of hardware. *Any and all services request by Client that fall outside of the terms of this Agreement will be considered “Projects” and will be quoted and billed as separate, individual services.*

**Security and Cooperation** – Client shall provide KinTech with sufficient workspace to perform the Services. Client will provide KinTech, and authorizes KinTech to possess and use for the performance of the Services, both on or off Client premises, authentication and access keys, codes, means, and devices including, without limitation passwords, keys, codes, and electronic imprints for user logins, device access, and facility access. Additionally, Client agrees to provide KinTech with all other information and access necessary for or incidental to the performance of the Services. Client authorizes KinTech to perform Services in any manner, means, and location that KinTech deems necessary or advisable, and further authorizes KinTech to contact third-parties, including without limitation Client's vendors and service providers, and, for the proper performance of the Services and the resolution of job related problems.

**Confidentiality** – KinTech will undertake reasonable efforts to assure that no Client Confidential Information is disclosed or released to anyone outside KinTech (and its counsel) without the consent of Client. Notwithstanding the foregoing, KinTech may disclose Confidential Information in accordance with a judicial or other governmental order (or the like) requiring such disclosure. In such an event, KinTech will notify Client of the order with a view to allow Client to seek a protective order or other appropriate remedy to prevent

such disclosure. "Confidential Information" means non-public confidential or proprietary information of Client that is marked or designated in writing as confidential or proprietary by Client.

**Records, Reports, and Intellectual Property** – All records generated by KinTech, including without limitation hand notes, prints, computations, software, charts, reports, and other documentation whether or not related to the Services, are and will remain the sole and exclusive property of KinTech. Nothing in this Agreement is intended to transfer any intellectual property or proprietary right; all rights and title to any ideas, works of authorship, or inventions created, developed, conceived, or reduced to practice by a party, or its agents, employees, whether or not related to the Services, are and will remain the property of such party.

**Expenses** – Client will be billed for all expenses reasonably incurred by KinTech in performance of the Consulting Services.

**Technical Services:** Technician services will be billed according to the "Service Rates" below for all onsite and remote work performed. Minimum billing will be 0.25 hours.

**Hardware, Software, Supplies, and Parts Purchases** – Additionally, Client may request that KinTech purchase additional hardware, software, supplies, or parts for the benefit of Client. If KinTech makes such purchase, Client will be billed for such items on a cost plus basis, as determined by KinTech.

**Travel Time** – Client will not be billed for point-to-point onsite fees.

**General Conditions** – KinTech's standard hours of operations are 8am to 5pm, Monday through Friday. Service performed outside this time may be subject to additional charges, as defined by the "Service Rates" below. This Agreement may be terminated at any time with or without cause, effective upon the date set in a written notice. The Client will not be liable for the remaining for the payment obligations for the remainder of the contract past the effective date of termination. The terms of this Agreement may be amended, changed, or modified by KinTech and shall be effective upon written notice by KinTech, unless a later effective date is stated in such notice. Client will be deemed to have consented to any amendment, change or modification so noticed, if Client does not make written objections within 3 days of receipt of such notice. Except with respect to payment obligations, a party shall not be responsible for a delay or default in the performance of its obligations under this Agreement if and to the extent such default or delay is cause, directly or indirectly, by events beyond such party's reasonable control, including without limitation, fire, flood, or other act of nature, or the nonperformance of any other party. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement shall not be impaired. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. This Agreement may not be assigned in whole or in part by either party without prior written consent of the other party. This Agreement shall be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and shall inure to their benefit. This Agreement is governed by, and is to be enforced and interpreted according to, the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement shall be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon. If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim shall be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court, as applicable. Additionally, in the event of a failure by Client to make any payment due under this Agreement, Client will pay to KinTech, and KinTech will be entitled to recover, upon demand, all reasonable costs and expenses, including but not limited to attorney's fees and collection fees, incurred by Client in attempting to collect any payment due under this Agreement, whether or not a suit is filed.

**Disclaimer Of Warranties** – EXCEPT FOR ANY WARRANTY OR REMEDY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, AND EXCEPT FOR THE EXPRESS WARRANTIES MADE BY KINTECH IN THIS AGREEMENT, THE SERVICES ARE AND HAVE BEEN PROVIDED WITHOUT WARRANTY OF ANY KIND, AND KINTECH DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND TERMS, WITH RESPECT TO THE SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR EXISTING OR CREATED BY OR UNDER COMMON LAW, CUSTOM, USAGE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY THAT CLIENT'S IT SYSTEMS WILL OPERATE UNINTERRUPTED, ERROR FREE, OR WITHOUT DELAY . FURTHER, KINTECH DOES NOT WARRANT THE EFFECTIVENESS OF ANY HARDWARE, SOFTWARE, SYSTEM, OR SERVICE.

**Loss Limitation** – TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KINTECH WILL NOT BE LIABLE FOR ANY, AND CLIENT RELEASES KINTECH, AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, OF AND FROM ANY AND ALL, INDIRECT, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, UNDER ANY LEGAL THEORY, INCLUDING WITHOUT LIMITATION, LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUE, OR OTHER PROCEEDS, LOSS OF BUSINESS OR OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF USE OF PROGRAMS OR COMPUTERS, AND DATA LOSS OR CORRUPTION, ANY FAILURE OF ANY HARDWARE, SOFTWARE, SYSTEM, OR SERVICE, INCLUDING WITHOUT LIMITATION FIREWALL OR EMAIL SECURITY BREACHES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICES PROVIDED TO CLIENT BY KINTECH. KINTECH'S TOTAL CUMULATIVE LIABILITY TO CLIENT OR TO ANY OTHER PERSON, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICES PREVIOUSLY PROVIDED TO CLIENT BY KINTECH, REGARDLESS OF THE LEGAL THEORIES, IS LIMITED TO THE AMOUNT PAID BY CLIENT TO KINTECH FOR THE SERVICES PROVIDED SUBJECT TO SUCH CLAIM(S). MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

| SERVICE RATES   |                      |
|---|----------------------|
| Rate for Standard Hours - (8:00am to 5:00pm, Monday through Friday)                                 | Included in Contract |
| Rate for After Hour Service - (5:00pm-11:00pm, Monday through Friday)                               | \$150.00 per hour    |
| Rate for overnight service - (11:00pm - 8:00am, Monday through Friday; all day Saturday and Sunday) | \$250.00 per hour    |
| Rate for Holiday Service – all day  | \$250.00 per hour    |

## **Exhibit A**

KinTech agrees to manage and maintain the City of Canby computer network system using the following services:

- One to two technicians for an average of 44-56 hours per week of onsite and/or remote support.
- Maintain network level web filtration system.
- Maintain inventory documentation.
- Coordinate and consolidate all requests for support using KinTech ticketing system.
- Monitor network system status and performance.
- Create and manage users and groups.
- Manage data organization and security.
- Manage data backup and data restore systems.
- Planning, installation, and maintenance of physical network backbone.
- Manage internal and external network security.
- Planning and maintenance of email systems.
- Research and implement technology advancements.
- Plan, research, and assist with acquisitions of new hardware and software.
- Setup, configure, and maintain new and current workstations.
- Troubleshoot software and hardware issues.
- Relocate user workstation environments.
- Removal of malware and viruses from network systems.
- Troubleshoot and maintain network printing.
- Assess user requirements and propose solutions to meet them.
- Manage hardware recycling and/or secure disposal.

### **Exhibit A does not include the following:**

- All hardware needs - costs will be discussed as needed.
- Anti-Virus licensing renewals - City will be responsible for renewal fees.
- Web Filtration (KinTech Firewall Subscription) – Four systems available for \$600 per month.
- Anti-Spam filtration subscription - Service available at a cost of \$5.90 per user per month.