


DATE SUBMITTED 11/24/2020
 SUBMITTED BY R. Alejandro Estrada
 DATE ACTION REQUIRED 12/02/2020

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS *alb*

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: INTERGOVERNMENTAL AGREEMENT WITH HEBER PUBLIC UTILITY DISTRICT FOR CYBERSECURITY SERVICES. 1. APPROVE INTERGOVERNMENTAL AGREEMENT	
DEPARTMENT INVOLVED: DEPARTMENT OF INFORMATION TECHNOLOGY	
BACKGROUND/SUMMARY: The HPUD General Manager approached Staff regarding the possibility of share Cybersecurity resources. Staff examined the full cost of sharing those resources to HPUD, including personnel cost. The cost of those services will be billed quarterly to HPUD at 1,336.52 (total: 5,346.08).	
FISCAL IMPACT:	FINANCE INITIALS <hr style="width: 100%;"/>
STAFF RECOMMENDATION: Staff recommends approval of the attached Intergovernmental Agreement.	DEPT. INITIALS 
MANAGER'S RECOMMENDATION: The City Manager agrees with staffs recommendation.	CITY MANAGER'S INITIALS 
MOTION:	
SECONDED: AYES: NAYES: ABSENT:	APPROVED () REJECTED () DISAPPROVED () DEFERRED () REFERRED TO:

INTERGOVERNMENTAL AGREEMENT

Between

CITY OF IMPERIAL

And

HEBER PUBLIC UTILITY DISTRICT

For

CYBERSECURITY SERVICES

This Agreement is made and entered into as of this ____ day of _____ 2020, by and between the City of Imperial, a California Municipal Corporation (“IMPERIAL”) and the Heber Public Utility District, a California Municipal Corporation (“HPUD”).

NOW, THEREFORE, IMPERIAL and HPUD agree as follows:

1.0 SCOPE OF SERVICES.

During the time that this Agreement is in effect and subject to all terms and conditions herein, IMPERIAL will provide Cloud-Based Cyber Security Training, Cloud-Based Cyber Security Network Monitoring and Prevention Services, and Cloud-Based Backup Hosting Services to HPUD encompassing the following:

1.1. CLOUD-BASED CYBERSECURITY TRAINING:

IMPERIAL shall provide

- Monthly Web-based Cyber Security Training (the training will be sent to no more than ten (10) e-mail accounts);
- Monthly progress and report of training completion.

1.2. CLOUD-BASED CYBERSECURITY NETWORK MONITOR AND PREVENTION SERVICES:

IMPERIAL shall

- Provide a Public IP Address based Internet Content Filter;

- Allow and Disallow access control;
- Provide Traffic Monitoring and Reports as need (monthly);
- Provide Notification of suspicions traffic activities;
- Provide Services to no more than ten (10) sites.

1.3. CLOUD-BASED BACKUP HOSTING SERVICES:

IMPERIAL shall provide a

- Shared cloud-base storage space for online Server(s) Backup;

HPUD shall purchase backup software compatible with the cloud backup provide by Imperial.

3.0 RELATIONSHIP OF PARTIES

IMPERIAL shall, for all purposes, be an independent contractor to HPUD and under no circumstances shall the relationship of employer and employee arise between the agents or employees of IMPERIAL and HPUD.

4.0 AMOUNT AND MANNER OF COMPENSATION

The fee for completion of all work outlined by this Agreement shall be based on the following rates:

4.1. CYBER SECURITY FEE: HPUD shall compensate IMPERIAL a total annual amount of \$5,346.08 (Five Thousand Three Hundred Forty-Six Dollars and Eight Cents). IMPERIAL will submit a Quarterly Invoice of \$1,336.52 (One Thousand Three Hundred Thirty-Six Dollars and Fifty-Two Cents) to HPUD. Fees shall be paid to IMPERIAL for Time Management of Cyber-Based Security System, Network Monitoring and Prevention, Back-up Hosting Services, and regardless of training completion(s).

4.2. PAYMENT AND INVOICES: HPUD shall pay IMPERIAL within 30 days after receipt of the invoice.

4.3. The parties may agree for Imperial to provide service in addition to the services described in paragraph 1.0. Payment for such services shall be at the fully burdened rate of Imperial's IT Director.

5.0 TERM.

The term of this Agreement shall commence on the Effective Date and extend to the date when this Agreement is terminated. The Agreement may be terminated by either party, as evidenced by thirty (30) days written notice. Upon notice of termination by either party, IMPERIAL shall cease performing services on the date specified in the written notice. The compensation payable to IMPERIAL shall cover only the period for which IMPERIAL performed services.

6.0 INDEMNIFICATION.

IMPERIAL and HPUD shall both indemnify each other in proportion to their comparative fault as established under California law.

7.0 CONSEQUENTIAL DAMAGE LIMITATION

IMPERIAL shall not be liable for consequential damages, defined as breach of contract damages not recoverable under California law. Consultant shall not be liable for lost profits or business interruption damages under any cause of action.

8.0 FORCE MAJEURE

In the event either party by reason of a Force Majeure is rendered unable to perform its duties under this Agreement then upon the party giving written notice of the particulars and estimated duration of Force Majeure to the other party within 5 calendar days after knowledge of the occurrence of the Force Majeure, the party may have the time for performance of its duties extended for the period equal to the time performance is delayed by the Force Majeure. The effects of the Force Majeure shall be remedied with all reasonable dispatch, and the party **giving** notice shall use Best Efforts to eliminate and mitigate all consequences. A Force Majeure for which notice has not been given shall be an un-excused delay.

9.0 ATTORNEYS' FEES

If either party to this Agreement shall bring any action, claim, appeal, or alternative dispute resolution proceedings, for any relief against the other, declaratory or otherwise, to enforce the terms of or to declare rights under this Agreement

(collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a Decision) granted therein. Any Decision entered in such Action shall provide for the recovery of attorneys' fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and costs on the request of either party. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) post-judgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third-party examinations; (4) discovery; and (5) bankruptcy litigation. "Prevailing party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief it seeks.

10.0 GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of California. All actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in State court located in the County of Imperial, State of California and Federal court located in the County of San Diego, State of California. The aforementioned choice of venue is mandatory, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non convenience or a similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the Counties of Imperial and San Diego, respectively, California, shall have in personal jurisdiction and venue over each of them for the purpose of litigating any dispute or proceeding arising out of or related to this Agreement. Each party hereby authorizes service of process sufficient for personal jurisdiction in any action against it at the address and in the manner for the giving of notice as set forth in this Agreement.

11.0 INTEGRATION

This Agreement and any exhibits hereto, as well as other documents referred to in this Agreement, constitute the entire Agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous Agreements between or among the parties. There are no Agreements, representations, or warranties between or among the parties other than those set forth in this Agreement.

12.0 AUTHORIZED REPRESENTATIVES AND NOTICES

12.1 REPRESENTATIVES: Prior to commencement of the work under the Agreement, IMPERIAL and HPUD shall agree on the designation of a representative authorized to act in behalf of each party.

12.2. NOTICE AND COMMUNICATIONS: All communications relating to the day-to-day activities under this Agreement shall be exchanged between the representatives of IMPERIAL and HPUD. All legal notices and communications required under or related to this Agreement shall be in writing, and shall be delivered personally or mailed by certified mail, postage prepaid, return receipt requested, to the representatives of IMPERIAL and HPUD identified below. Notice shall be effective on the date of delivery.

To
IMPERIAL: Mr. Dennis H. Morita, City Manager
420 South Imperial Avenue
Imperial, CA 92251

To
HPUD: Laura Fischer, General Manager
1078 Dogwood Rd., Ste 103
Heber, CA 92250

13.0 EFFECTIVE DATE:

The Effective Date of this Agreement shall be day that both the City of Imperial City Council and HPUD Board of Directors approve this Agreement.

CITY OF IPERIAL

Date: _____

By: _____

Dennis H. Morita, City Manager

Approved as to form the City of Imperial

Date: _____

By: _____

Dennis H. Morita, City Manager

HEBER PUBLIC UTILITY DISTRICT

Date: _____

By: _____

Laura Fischer, General Manager

Approved as to form the HPUD

Date: _____

By: _____

XXXXXXXXXX, District Attorney