ORDINANCE NO. 24-086

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A MANAGED SERVICES AGREEMENT WITH DATASERV INTEGRATIONS, LLC OF WESTLAKE, OHIO, FOR PROFESSIONAL SERVICES FOR THE REDESIGN AND IMPLEMENTATION OF UPGRADED NETWORK INFRASTRUCTURE; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City's network infrastructure is comprised of Cisco 3750G switches and these switches were announced end of life in 2012 and end of support date in 2018 and it is recommended to redesign and upgrade the City's network infrastructure; and

WHEREAS, the Redesign and Implementation of Upgraded Network Infrastructure Project involves the redesign of the City's network infrastructure, installation of physical Cisco Switches and implementation of various switch configurations and includes 24/7 proactive monitoring of the network switching infrastructure; and

WHEREAS, DataServ Integrations, LLC, will be providing professional services exempt from the requirement of competitive bidding as they have developed the necessary knowledge, professional expertise and technical ability necessary to complete the required tasks for the Redesign and Implementation of Net Network Infrastructure Project and is more fully described in the Scope of Services, which is attached to this Ordinance and marked Exhibit "A" and specifically incorporated herein; and

WHEREAS, the initial term of the agreement is for sixty (60) months for an annual cost of $72,391.83 and total cost of $361,959.15 for five (5) years of which $50,671.29 will be paid with funds from the Information Technology Department's operating budget, $6,002.10 will be paid with Water Funds, and the remaining balance of $15,718.44 will be paid with Sewer Funds; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the agreement so the upgrades can be completed at the earliest opportunity; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Information Technology, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a

Managed Services Agreement with DataServ Integrations, LLC of Westlake, Ohio, for

Professional Services for the Redesign and Implementation of Upgraded Network Infrastructure Project, substantially in the same form as attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as not being substantially adverse to the City and consistent with carrying out the terms of this Ordinance, at an amount not to exceed $72,391.83 annually and a total amount **not to exceed** Three Hundred Sixty-One Thousand Nine Hundred Fifty-Nine and 15/100 Dollars ($361,959.15).

Section 2.   If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3.   This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

_____
RICHARD R. BRADY
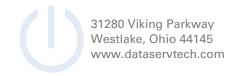PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: April 22, 2024

MANAGED SERVICES AGREEMENT TERMS AND CONDITIONS
AGREEMENT NUMBER.NAME.CoS.032024

The following terms and conditions are incorporated into the Managed Services Agreement ("Agreement") made between DataServ Integrations, LLC ("DataServ") and City of Sandusky ("Customer"). DataServ and Customer are hereinafter referred to in this Agreement collectively as "Parties" and individually as a "Party". By reference, all additional terms and conditions contained in any appendices to this Agreement are incorporated and made part of this Agreement.

1. Scope of Services

   DataServ agrees to provide the service and/or solutions ("Service") stated in the appendices of this Agreement for the Customer. Service under this Agreement includes remote, online and telephone support services and on-site support, if deemed necessary by DataServ. DataServ does not warrant that the operation of any Service shall be uninterrupted.

2. Assumptions
   a. Customer to:
      i. Provide and maintain a dedicated Internet connection capable of allowing DataServ local and/or remote access to the Customer's network;
      ii. Allow DataServ employees and/or subcontractors access to its facilities and equipment as required to perform the Services under this Agreement;
      iii. Allow DataServ to load any necessary management software on their systems as required to perform the Services under this Agreement;
      iv. Provide main points of contact at each Customer location; and
      v. Provide Customer signed Letter of Authorizations (LOA) to any carrier that provides WAN/MAN, Internet or other services where DataServ will act as third party liaison.
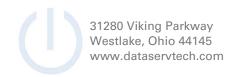
3. Excusable Delays

   DataServ shall not be liable for delays in performance due to fire, flood, acts of terrorism, acts of civil or military authority, inability to obtain or delays in obtaining suitable material or facilities required for performance, or temporary unavailability of qualified personnel, or other causes beyond its reasonable control or failure by Customer to provide full and appropriate access to the covered equipment

4. Exclusions
   a. This Agreement is subject to the following exclusions below and the exclusions identified in each Service Appendix:
      i. This Agreement does not include the replacement of any Customer owned hardware or software product.
      ii. This Agreement does not include the replacement of any DataServ owned hardware or software product, end user training, electrical work, or repair of damage resulting from operator error, accident, vandalism, electrical or environmental problems, excessive heat or humidity, or maintenance provided by other than authorized DataServ representatives. Charge for the above will be at the Time and Material rates identified in this Agreement.
      iii. Service under this Agreement does not cover support due to configuration changes made by Customer or anyone other than authorized DataServ representatives. Any service calls placed for a problem caused by such configuration changes will be charged at the Time and Material rates identified in this Agreement.
      iv. Service under this Agreement does not cover the configuration or installation of new equipment, including but not limited to computers, printers, firewalls, switches, other networking equipment,

other computer equipment, or any other new equipment, unless specifically stated in a Service Appendix.

5. Software License

    Customer retains use of software deployed at Customer site that Customer has directly purchased. DataServ retains ownership of all licenses of software deployed at Customer site that is inherent in providing services under this Agreement, including server operating systems. For testing and development purposes, DataServ may utilize Customer's software licenses for the purposes of providing services to the Customer. At termination of this Agreement and/or Service Appendix(ces), all software owned by Customer and utilized by DataServ will be surrendered to Customer, and any and all use of that software by DataServ discontinued. No license for use of the software by DataServ is granted under this Agreement.

6. Equipment Ownership
    a. The Customer agrees that DataServ may be providing equipment as part of the execution of this Agreement and/or Service Appendix(ces). If so, said equipment shall remain the property of DataServ and must be returned upon the termination of the Agreement and/or Service Appendix(ces), whether by term or Customer default. Customer will not be provided with administrative access to provided equipment unless agreed upon by both Parties
    b. Customer retains ownership of all equipment deployed at Customer site that Customer has directly purchased.
    c. The location of equipment provided as part of this Agreement and/or Service Appendix(ces) will be agreed upon by both Parties prior to installation. If during the term of this Agreement, it becomes necessary to move the equipment, both Parties will approve of the new location prior to installation.
    d. Customer further agrees to cease the use of any the technology that remains the property of DataServ upon the termination of this Agreement and/or Service Appendix(ces). If any of the equipment provided by DataServ is stolen, damaged or destroyed, the Customer must pay current market prices at the time of the loss for replacement equipment and the associated professional services on a Time and Material basis to make the replacement equipment operational.
    e. DataServ shall not be obligated to restore the premises to their original condition, if Customer does not return the equipment or make it available for removal by DataServ, then in addition to all other remedies at law or equity available to DataServ all obligations of Customer under this Agreement and/or Service Appendix(ces) shall remain in force and effect until all equipment is returned to DataServ.
    f. DataServ maintains the right and ability to modify the equipment provided as part of this Agreement and/or Service Appendix(ces) at its discretion. Any potential downtime will be agreed upon in advance by both Parties

7. Data Ownership

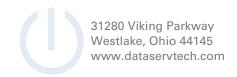   All Customer data maintained on the equipment is the sole property of the Customer.

8. Facility Condition

    Customer shall provide a clean operating environment that does not exceed the manufacturer's rated temperature and humidity specifications for the equipment. Customer shall notify DataServ promptly when the listed equipment requires support service. If Customer changes the configuration of any listed equipment, DataServ may adjust the charge under this Agreement and/or Service Appendix(ces), or at DataServ's option, exclude that equipment from the scope of this Agreement and/or Service Appendix(ces) and prorate the charges accordingly

9. Payment Terms

    Payment is to be made according to the terms stated in this Agreement and/or Service Appendix(ces). Customer agrees that this Agreement and/or Service Appendix(ces) shall remain in effect for the full period stated in the

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Agreement and/or Service Appendix(ces) and may not be terminated by Customer prior to that time, except in accordance with the Early Termination clause. If any amount owed under this Agreement and/or Service Appendix(ces) is not paid when due, DataServ may add a service charge of 1-1/2% per month on unpaid amounts. Work may be suspended if your account becomes 30 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination. Customer will be obligated to compensate DataServ for all services provided, to reimburse DataServ for all out-of-pocket expenditures through the date of termination and Customer will return to DataServ any equipment or products provided under this Agreement and/or Service Appendix(ces). If Customer disputes any charges they shall first be addressed by the DataServ Account Executive. If no agreement is made, the dispute shall be to the DataServ President and CEO as necessary for resolution.

10. Time and Material Billing

Please visit www.dataservtech.com/tandmrates for then current Time and Material Rates for all Service(s) not covered as part of this Agreement.

11. Software and Operating System Errors

In no way is DataServ liable for defects or "bugs" in software, or for correcting errors introduced into the data, programs, or any other software due to hardware failure, or for any cost of reconstructing software or lost data.

12. Limitation of Liability

If DataServ does not fulfill any obligations under this Agreement and/or Service Appendix(ces) after reasonable attempt(s); Customer's sole and exclusive remedy is to recover an equitable amount not to exceed charges paid to DataServ for the services in question. DataServ shall in no event have any liability for any special, incidental, or consequential damages including but not limited to, loss of profits or revenue, loss of use of equipment, lost data, cost of substitute equipment, services, down-time, or claims of Customer for such damages, whether the claims be in contract, tort, strict liability, negligence, indemnification or otherwise, even if DataServ had been advised of such potential damages.
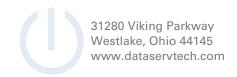
In all events not provided for in this Agreement and where permitted by law, DataServ's liability (regardless of the form of action) will be limited to Customer's direct damages in an amount up to the annual amount of charges paid to DataServ for a specific Service Appendix(ces) hereunder. DataServ's entire liability and Customer's exclusive remedies for DataServ's liability of any kind (including liability for negligence) for performance, nonperformance or delays in performance by DataServ under this Agreement and/or Service Appendix(ces) are limited to those contained in this Agreement where permitted by law.

WARRANTY DISCLAIMER: THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY FOR A PARTICULAR PURPOSE, RESPECTING SERVICES PERFORMED OR EQUIPMENT AND MATERIALS FURNISHED UNDER THIS AGREEMENT.

Notwithstanding anything to the contrary herein, upon the occurrence of: (1) a data breach or breach in security proven to have been caused by intentional act or by negligence of DataServ, including instances where Confidential Information as defined in Section 19(a) below is disclosed or compromised or (2) damages suffered by Customer due to the gross negligence, recklessness, or intentional act or acts of DataServ, in each case as determined by an arbitrator in accordance with this Agreement, DataServ shall be liable for aggregate out-of-pocket losses of Customer resulting from (1) or (2) above up to a maximum amount of $1,000,000.

13. INTENTIONALLY LEFT BLANK

14. Applicable Law
    a. This Agreement shall be governed by and construed according to the laws of the State of Ohio

15. Modification or Amendment

    No modification or addition to any provision of this Agreement shall be binding on either Party unless in writing and signed by a duly authorized representative of each Party.

16. Assignability

    This Agreement is not assignable by Customer except upon the written consent of DataServ, which shall be at DataServ's sole option.   This Agreement or any portion thereof is assignable by DataServ at its sole option.
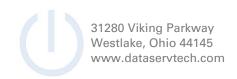
17. Entire Agreement; Severability

    If any one or more of the provisions of this Agreement are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative. This Agreement constitutes the entire agreement of DataServ and Customer. No representations, inducements, promises, negotiations, or agreements, oral or otherwise, which are not contained herein, shall be of any force or effect

18. INTENTIONALLY LEFT BLANK

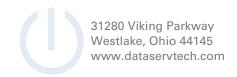19. Confidentiality, Publication and Non-Solicitation
    a. DataServ and the Customer agree that, to the extent permitted by law, any and all information identified and clearly marked by the other as "Confidential" and/or "Proprietary", or which, under all of the circumstances, ought reasonably to be treated as Confidential and/or Proprietary, will not be disclosed to any third person without the express written consent of the other party.   Confidential Information includes, but is not limited to, information about the respective entities' products and services, information relating to purchasing, accounting, pricing, marketing and customers not generally known in the business in which the entity has been, is or may become engaged and which is developed by, disclosed to, or becomes known as a consequence of or through each party's relationship with the other.   Confidential Information does not include any information or development: (i) which is or subsequently becomes available to the general public other than through a breach by the receiving party; (ii) which is already known to the receiving party before disclosure by the disclosing party; (iii) which is developed through the independent efforts of the receiving party; (iv) which the receiving party rightfully receives from third parties without restriction as to use; or (v) which is required to be made public pursuant to the Ohio Public Records law.
    b. Upon the expiration of the term of this Agreement, DataServ shall instruct its agents to whom Confidential Information was disclosed pursuant hereto, continue to treat as confidential and preserve the confidentiality of all Confidential Information received from the Customer.
    c. Neither DataServ nor Customer, shall, directly or indirectly, solicit, recruit or hire any Customer or DataServ personnel, whether or not such personnel performed work for the Customer, during the term of this Agreement and for a period of two (2) years after the termination or end date of the last Service Appendix included as part of this Agreement.
    d. In addition, the Customer agrees to not allow any former DataServ employees to provide services, of any kind, to the Customer outside of this Agreement and for a period of two (2) years after the termination or end date of the last Service Appendix included as part of this Agreement.
    e. The provision of this Section shall survive the termination or expiration of this Agreement.

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Accepted and Approved for:

City of Sandusky
Street Address
City, State Zip Code

_____
Signature

John Orzech
City Manager

_____
Date

Accepted and Approved for:

DataServ Integrations, LLC
31280 Viking Parkway
Westlake, Ohio 44145

_____
Signature

Tim Heikkila
President

_____
Date
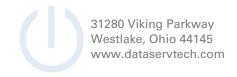
EXHIBIT "1"

APPENDIX A

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EXHIBIT "1"

APPENDIX B
SERVICE: GENERAL SERVICE DETAILS

Services covered under DataServ's Service offerings include:

1. Maintenance
   a. This Agreement anticipates that all hardware and system software directly managed by DataServ be supported by an active Customer Care Maintenance Agreement. If said agreement is not in place then all work will be subject to the Time and Material rates identified in this Agreement.

2. Network and Firewall Management (if covered by a DataServ Customer Care Agreement)
   a. Layer 2 and Layer 3 switch Firewall (including Virtual Private Networks, if so licensed)
   b. Wide Area Network router

3. Third Party Hardware, Software, Services and Applications Not Supplied or Supported by DataServ
   a. Not supplied and supported is defined as DataServ not being certified by the manufacturer to design, sell or support.
   b. All third party components are covered by manufacturer warranty and/or support agreements.
   c. Any DataServ provided support is best effort.
   d. Customer is responsible for initiating TAC requests
   e. DataServ will act as a liaison between third party vendor and Customer for problem resolution.
   f. Customer will provide a single point of contact/subject matter expert for any third party engagement.
   g. Customer will provide advance notice to TAC for any third party updates, upgrades or scheduled support events.

4. Administrative Access
   a. Customer agrees to grant DataServ full control of administrative access to Customer's network.
   b. DataServ will grant access to third parties and/or a Customer designee as needed upon receipt of Customer approval. Customer assumes all liability and responsibility while access is granted.

5. Service Exclusions
   a. All items listed in the "Exclusions" section of the Terms and Conditions.
   b. All items not listed in a specific Appendix under Service Details.
   c. Service expansion, such as:
      i. Operating system/system software version level upgrades
      ii. Introduction of new or upgrading of line of business (LoB) applications
      iii. Expansion of facilities
      iv. Professional services relating to the normal lifecycle replacement of system level components such as servers, network components, etc.
      v. Expansion of services, such as wireless or phone systems
   d. Requests outside the scope of any Service Appendix will be handled as a new project(s) and will be engineered and quoted by DataServ for prior approval by the Customer before commencement.

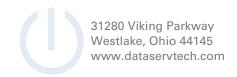6. Network Documentation
   a. Updated documentation will be made available to the Customer upon their written request.

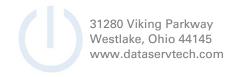7. Approval of Hardware and Software
   a. To ensure compatibility and integration requirements, DataServ recommends, at a minimum, to be included and/or advised prior to any information systems and technology related purchases.

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8. Annual Strategic Planning Meeting
    a. Work closely with management to budget for yearly technology expenses
    b. Allocate timelines for retiring and acquiring of hardware
    c. Anticipate future needs for planning purposes

9. Support Requests
    a. Support requests can be submitted to DataServ Technical Assistance Center (TAC) in one of the following ways:
        i. Website:
            1. Requests can be submitted via the DataServ website at http://www.dataservtech.com/support.
        ii. myDashboard:
            1. Requests can be submitted via the DataServ myDashboard application once users have established an account
        iii. Phone Call:
            1. Contact (440) 835-7089 or (800) 977-3282 during standard business hours and a DataServ team member will take the request. If the request is outside normal business hours, a voicemail system will be available to leave detailed information about the request. DataServ will open the request the next business day.
    b. In the event of a failure or problem, remedial activities (up to the contracted specified level) may commence prior to notifying Customer of the problem. This will allow the DataServ TAC the ability to begin problem resolution, open trouble tickets with other vendors, or dispatch engineers when deemed necessary. In doing so, DataServ is acting in Customer's best interest to resolve the issue as quickly as possible.
    c. Customer's end users will make every effort to resolve problems with the DataServ TAC via remote access, telephone, or email, prior to DataServ dispatching on-site support
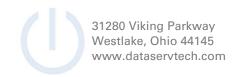
EXHIBIT "1"

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APPENDIX C
SERVICE: NETWORK AS A SERVICE (NAAS)

Services covered under this specific Appendix are (unless otherwise stipulated):

1. Service Details
    a. DataServ to provide hardware as identified in proposal PRO-16290-M7H7R4
    b. DataServ will be providing managed services for network devices and/or UPS devices
        i. Monitoring of network environment
            1. Network devices
                a. Coverage includes up to 8 sensors per device
                b. Monitoring
                    i. WAN Bandwidth/Traffic for an interface
                    ii. LAN Bandwidth/Traffic for an interface (if applicable)
                    iii. Availability/Uptime > Ping
                    iv. CPU (if applicable)
                    v. Memory (if applicable)
                    vi. Fans (if applicable)
                    vii. Power supplies (if applicable)
                    viii. Temperatures (if applicable)
            2. UPS devices (management card required)
                a. Coverage includes up to 1 sensor per device
                b. Monitoring
                    i. Ping
                    ii. Running on battery
                    iii. Replace battery
                    iv. Faults
                    v. Input power outage (goes into battery backup mode)
                    vi. Exit from backup battery mode
                    vii. Self-test fails
        ii. Change management associated to network environment
            1. Configuration
            2. Switch port assignment changes
                a. Speed
                b. Duplex
                c. Quality of Service (QoS)
                d. Access/trunk
        iii. Alerting and notification on network and UPS devices per DataServ and Customer mutually agreed upon notification schedule
            1. 8x5 management
            2. 24x7 monitoring
        iv. Maintain hardware support agreements
            1. Patch and update firmware/software
            2. Deploy vendor issued patches
            3. Update vendor issued firmware/software
    c. Customer will:
        i. Provide remote, secure VPN access and multi-level administrative access
        ii. Centrally diagnose all local issues
        iii. Report all Service-related incidents to DataServ (TAC)
        iv. Report any scheduled and/or routine maintenance to DataServ TAC that may affect the Service

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2. Term
   a. The Initial term of this Service shall be a period of sixty (60) months. DataServ will provide a renewal quote sixty (60) days prior to expiration.

3. Service Pricing
   a. If a change to the Customer environment occurs that increases the quoted usage amounts, DataServ will provide a new quote for the additional services.

Service	Annual Payment
PRO-16290-M7H7R4: Network as a Service (NaaS) – R3	$72,391.83
Note: If applicable, the prices do not include sales tax or travel expenses.	
Payment Method:	Check
Payment Terms:	Prepaid
Billing Cycle:	Annual

4. Early Termination
   a. If the Customer chooses to terminate this Service Appendix prior to the end of the Term, the Customer agrees to pay DataServ an early termination charge equal to the amounts below, unless specifically stated in a Service Appendix:
      i. the sum of 100% of the charges for the balance of the term of this Service Appendix for termination occurring during months 1 to 60; and
      ii. any outstanding invoices still owed.
   b. Such payment shall be due within thirty (30) days of termination

5. Service Level Agreement Definitions and Response Time and Level Definition

Severity Level	Response Times	
	Standard Hours (Monday through Friday, 8:00am to 5:00pm EST):	After Hours:
Critical	One hour response	Four hour response
High	Two hour response	N/A*
Normal	Six hour response	N/A*
Low	One business day response	N/A*

* 24 x 7 x 365 support is available and will be billed at the Time and Material rates identified in this Agreement.

Legend:
Critical: Multiple systems or sites affected; production halted
High: Single system or site affected; work stoppage at a single site
Normal: Single system affected; performance issue or other non-critical request
Low: Minor performance-affecting issue, limited scope or affect

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