

**RESOLUTION NO. 2023-02-1035R**

**CITY OF TONTITOWN, WASHINGTON COUNTY**

**A RESOLUTION AUTHORIZING THE MAYOR TO APPROVE AND ENTER INTO A MANAGED SERVICES AGREEMENT WITH IRIGHT TECHNOLOGY SERVICES FOR USE BY THE ELM SPRINGS DISTRICT COURT.**

**WHEREAS**, the Elm Springs District Court desires to enter into a Managed Services Agreement with iRight Technology Services; and

**WHEREAS**, the Managed Services Agreement provides IT services including, but not limited to remote support, network management, and email administration, as set forth and more particularly described in the attached Exhibit "A"; and

**WHEREAS**, after thorough review, the City Council has determined it is in the best interest and benefit to the citizens of Tontitown to authorize the Mayor to approve and enter into a Managed Services Agreement with iRight Technology Services for use by the Elm Springs District Court.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Tontitown, Arkansas:

**Section 1.** The City Council hereby authorizes the Mayor to approve and enter into a Managed Services Agreement with iRight Technology Services for use by the Elm Springs District Court, as set forth in the attached Exhibit "A".


**Section 2.** The Mayor and her designee are hereby authorized to take any and all further action which may be necessary in connection therewith.

**PASSED AND APPROVED** this 21 day of February 2023.

APPROVED:

  
Angela Russell, Mayor

ATTEST:

  
Rhonda Ardemagni, City Clerk-Treasurer





## **MANAGED SERVICES AGREEMENT**

**THIS MANAGED SERVICES AGREEMENT (the "Agreement") dated this 10th day of February, 2023**

**BETWEEN**

Elm Springs District Court of 289 Jayroe Ave Elm Springs, AR 72728  
(the "Client")

**- AND -**

iRight Technology Services of 3333 South Pinnacle Hills Parkway Rogers, Arkansas, 72758  
(the "iRight").

### **BACKGROUND:**

- A. Client is of the opinion that iRight has the necessary qualifications, experience, and abilities to provide services to the Client.
- B. iRight is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and iRight (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

### **Services Provided**

1. The Client hereby agrees to engage iRight to provide the Client with services (the "Services") consisting of:
  - a. Services for all offices:
    - Server management and maintenance
    - Workstation management and maintenance
    - Antivirus protection management
    - OS and update management - all systems
    - Replacement and support warranty management
    - 4 hours remote technical support per month



- User account management
- Data management including capacity monitoring and backup
- Email administration
- Network management
- Scheduled technology evaluations

iRight hereby agrees to provide such Services to the Client.

#### **Term of Agreement**

2. This Agreement between the Client and iRight, is effective on the February 10<sup>th</sup>, 2023, and shall remain in force for a period of 12 months. The Service Agreement shall automatically renew for a subsequent 12 months beginning on the day immediately following the end of the Initial Term or a Renewal Term unless either party gives the other sixty days' prior written notice of its intent not to renew this Agreement.
  - a) This Agreement may be terminated by either Party upon thirty (30) days' written notice if the other Party:
    - a. Fails to fulfill in any material respect its obligations under this agreement and does not cure such failure within thirty (30) days' of receipt of such written notice.
    - b. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days' of receipt of such written notice.
    - c. Terminates or suspends its business operations unless it is succeeded by a permitted assignee under this Agreement.
  - b) In the event Client terminates this Agreement without cause, Client shall pay all remaining amounts that would be due over the remaining life of the Agreement. To constitute "cause," iRight must fail to remedy a breach of any material term or condition under the Agreement within thirty (30) days after written notice of said breach by Client.
  - c) If either party terminates this Agreement, iRight will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay iRight the actual costs of rendering such assistance. iRight may require an advance deposit for the estimated amount of its fees to assist in the transition as a condition to its duties under this sub-paragraph.

#### **Performance**

5. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.



### **Currency**

6. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

### **Compensation**

7. For the services rendered by iRight as required by this Agreement, the Client will provide compensation (the "Compensation") to iRight of **\$550.00** per month. Because pricing of this agreement is based on the number of one or all the quantity of devices, non-disabled users and/or data, it is understood that as devices, users and data are added or removed to the network infrastructure, the price of services will also be increased or decreased without the renegotiation of this agreement. Furthermore, a device may exist in a physical or virtual configuration but will be charged based on the number of systems that require maintenance and/or support where applicable, regardless of the configuration.
8. The Compensation will be payable, while this Agreement is in force, according to the following payment terms:
  - a. Payments for any services provided are due within 15 days of the date of each invoice.
9. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.

### **Additional Compensation**

10. iRight understands that the Compensation as provided in this Agreement will constitute the full and exclusive monetary consideration and compensation for all services performed by iRight and for the performance of all iRight's promises and obligations under this Agreement.

### **No Hire Agreement; Exceptions**

11. In consideration of the other agreements herein contained, Client agrees that it will not, at any time during the term of this Agreement as it may be extended by mutual agreement or for a period of six (6) months after the termination hereof, hire or attempt to hire any employee of iRight with whom Client has had personal, telephone or technology contact or who has provided services to Client pursuant to the terms of this Agreement even if Client has not had direct contact with such employee. This limitation shall not apply to general, indirect or public solicitations for employees to which an employee of iRight responds without specific or direct solicitation by Client or as a result of actions on the part of Client to make one or more iRight employees aware of such solicitations for employees that are unique to such iRight employees or that are different than the solicitations made to other qualified persons. This Agreement shall be specifically enforceable by injunction or other equitable remedy. In lieu of equitable relief, iRight may elect and Client agrees to pay iRight liquidated damages equal to one (1) year's annual gross salary of each employee hired by Client in violation of the terms and provisions of this Paragraph, it being understood and agreed that this amount is the estimated cost to iRight of hiring, training and making productive a new employee.

### **Reimbursement of Expenses**

12. iRight will be reimbursed from time to time for all reasonable and necessary expenses incurred by iRight in connection with providing the Services hereunder.
13. iRight will furnish statements and vouchers to the Client for all such expenses.

#### **Confidentiality**

14. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
15. iRight agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which iRight has obtained, except as authorized by the Client. This obligation will survive for a period of six (6) months from the termination of this Agreement.
16. All written and oral information and materials disclosed or provided by the Client to iRight under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to iRight.

#### **Ownership of Materials and Intellectual Property**

17. All intellectual property and related materials (the "Intellectual Property") including any related work in progress that is developed or produced under this Agreement, will be the property of iRight. The Client is granted a non-exclusive limited-use license of this Intellectual Property. Any software produced during this Agreement may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
18. Title, copyright, intellectual property rights and distribution rights of the Intellectual Property remain exclusively with iRight. Intellectual property rights include the look and feel of any software produced.

#### **Capacity/Independent Contractor**

19. In providing the Services under this Agreement it is expressly agreed that iRight is acting as an independent contractor and not as an employee. iRight and the Client acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.

#### **Notice**

20. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:
  - a. Elm Springs District Court  
289 Jayroe Ave  
Elm Springs, AR 72728  
Fax: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_





b. iRight Technology Services  
3333 South Pinnacle Hills Parkway  
Rogers, Arkansas, 72758  
Fax: (\_\_\_\_) \_\_\_\_\_  
Email: iright@iright.net

or to such other address as any Party may from time to time notify the other.

#### **Limitation of Liability**

21. It is understood and agreed that iRight will not be liable to the Client, or any agent or associate of the Client, for any mistake or error in judgment or for any act or omission done in good faith and believed to be within the scope of authority conferred or implied by this Agreement.

#### **Additional Clauses**

22. Services that are available but not considered part of this agreement:

Hardware and software/licensing and the cost of those items outside of any normal warranty agreements.

Installation of new hardware or software that is not stated in the services provided section of this agreement.

Assistance required because of changes or modifications made by another person or company not specifically authorized by iRight Technology Services.

#### **Hours of operation and rates:**

23. Standard operating hours are M-F 8am-5pm - rate is \$105 per hour, remote or onsite. Anything outside of standard operating hours is considered premium and billed at time and half or \$157.50 per hour. Items listed in the services provided section of this agreement are included and not billable during standard operating hours. Items not listed in the services provided section of this agreement will be handled under an hourly break/fix model. The standard and premium rates will apply.

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#### **Excluded Services**

Services rendered under this Agreement does not include:

1. Parts, equipment, or software not covered by vendor/manufacturer warranty or support.
2. The cost of any parts, equipment, or shipping charges of any kind.
3. The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
4. The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
5. The cost to bring Client's environment up to minimum standards required for Services.
6. Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.

7. Full version upgrade of the operating system(s) of workstations. Example: Upgrading from Windows 8 to Windows 10 Pro, Home to Pro, etc.
8. Service and repair made necessary by the alteration or modification of equipment other than that authorized by iRight, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than iRight.
9. Maintenance of Applications software packages, whether acquired from iRight or any other source unless otherwise specified.
10. Travel costs to remote locations (more than 100 miles of Rogers, AR) is not included and will be billed at appropriate mileage rates or on a reimbursement basis if other means of travel is deemed necessary by both parties. iRight's normal hourly rate may apply.
11. Programming (modification of software code) and program (software) maintenance unless otherwise as specified.
12. Classroom based training services of any kind.
13. Installation of new server(s), workstation(s) or network equipment (firewall, Managed Switch, etc).
14. Migrating from a local server to a Cloud based or Remote based server.
15. Migration of core system providers or major software replacement may be excluded. Discussions need to occur between iRight and Client prior to projects inception. (Examples: When financial institution is migrating from one core provider to another or when an inventory management system is replaced with a new system).

#### **Modification of Agreement**

24. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

#### **Time of the Essence**

25. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

#### **Assignment**

26. iRight will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

#### **Entire Agreement**

27. It is agreed that there is no representation, warranty, collateral agreement, or condition affecting this Agreement except as expressly provided in this Agreement.

#### **Enurement**

28. This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

#### **Titles/Headings**

29. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.



**Gender**

30. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

**Governing Law**

31. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Arkansas, without regard to the jurisdiction in which any action or special proceeding may be instituted.

**Severability**

32. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

**Waiver**

33. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

**IN WITNESS WHEREOF** the Parties have duly affixed their signatures under hand on this 7<sup>th</sup> day of February, 2023.

Elm Springs District Court (Client)
Signed: <u>[Signature]</u> Date: <u>2/7/23</u>
iRight Technology Services (Managed Services Provider)
Signed: _____ Date: _____

by 