



AGENDA ITEM #10.3

REPORT TO CITY COUNCIL

Report Prepared by: Nancy Malecha

Date: June 7, 2016

Subject: Technology Solutions Agreement

Report: The City's I.T. Committee (consisting of myself, Chad Turcotte, and Deb Marty) is requesting to terminate the Pre-Purchased Service Agreement with Cascade Computers effective July 1st and enter into the attached Technology Solutions Agreement with the National Joint Powers Alliance (NJPA) effective June 8th for the City's technology needs. There would be approximately one month of overlap in services with both providers to aid in the transitional period.

Please know that the I.T. Committee does not take this recommendation lightly as the City has utilized Cascade Computers' technology services for several years. However, we feel that the City is outgrowing our current technology services and the specialty required in the

government sector, whereas NJPA specializes in government technology for cities, counties, and schools.

I met with Mike Fynboh from Cascade Computers and informed him of our recommendation. He was very kind and understanding and graciously offered to help make the transition as smooth as possible.

Council Action Requested: Council motion approving the NJPA Technology Solutions Agreement effective June 8, 2016 and the termination of the Pre-Purchased Service Agreement with Cascade Computers effective July 1, 2016.

NJPA TECHNOLOGY SOLUTIONS AGREEMENT

This NJPA TECHNOLOGY SOLUTIONS AGREEMENT (“Agreement”) is entered into as of the 8 day of June, by National Joint Powers Alliance, a public corporation (“NJPA”) with physical address of 202 12th Street NE, Staples, Minnesota 56479 and U.S. Mail address of P.O. Box 219, Staples, Minnesota 56479 and Pequot Lakes City office located at 4638 County Road 11, Pequot Lakes MN 56472 (referred to as “Member”).

WHEREAS, the NJPA is interested in providing NJPA Technology Solutions to the Member and the Member is interested in receiving the services provided for in this Agreement.

NOW, THEREFORE, in consideration of their mutual undertakings, and other good and valuable consideration, the parties hereby agree as follows:

- I. STANDARD TERMS AND CONDITIONS:** The Member agrees to all provisions of NJPA’s Standard Terms and Conditions which are herein incorporated into this Agreement.
- II. PRICING:** NJPA shall provide Technology Solutions at a rate of \$60.00 per hour for four (4) hours each month. NJPA will provide four (4) hours of remote support at no charge each month.
- III. PAYMENT:** The Member will be invoiced monthly; payment shall be made to NJPA at the above mailing address within thirty (30) days of the date of the invoice.
- IV. SERVICES PROVIDED:** Technology Solutions provided by NJPA under the terms and conditions of this agreement will include _____
 - 1. Cooperation of the Member.** The Member agrees to comply with all requests of the NJPA and to provide access to all documents and files necessary to the performance of the NJPA’s duties under this Agreement.
 - 2. Specific Services.** NJPA shall provide, at no cost, support for the initial one month, which shall include one (1) four (4) hour day onsite and four (4) hours with remote support for purposes of mapping out the network and environment. After the initial one month period, NJPA shall provide one (1) four (4) hour day per month of onsite support and four (4) hours per month in remote support. At NJPA’s discretion, additional remote support may be offered at no charge, provided that the additional support does not extend past four (4) weeks. NJPA reserves the right to re-evaluate the contracted support hours in the event additional support would extend beyond four (4) weeks.
 - 3. Method of Performing Services.** NJPA will determine the method, details, and means of performing the above-described services.

- V. CONTRACT TERM:** This agreement will remain in force for a term of thirty (30) days. The agreement will automatically renew at the end of each thirty (30) day period at the then prevailing support contract rates, unless terminated by either party in writing fourteen (14) days prior to the renewal date.
- VI. ASSIGNMENT:** The Member may not assign any rights hereunder without the prior written approval of the NJPA, and any attempt to assign any rights, duties, or obligations hereunder without the NJPA's written consent will be void. The NJPA may assign all or any part of its rights or obligations without the Member's consent.
- VII. LIMITATION OF LIABILITY:** IN NO EVENT WILL NJPA BE LIABLE TO THE MEMBER OR ANY OTHER INDIVIDUAL OR ENTITY CONNECTED WITH THE MEMBER FOR ANY CLAIM, LOSS, OR DAMAGE OF ANY KIND OR NATURE; WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. ANY INTERRUPTION OR LOSS OF SERVICE OR USE OF THE SOFTWARE, OR ANY FILES, DATA, OR OTHER COMPUTER SYSTEMS SHALL IN NO WAY CAUSE LIABILITY TO THE MEMBER. ANY SOFTWARE FAILURE OR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR LOSS OR DAMAGE OF ANY KIND OR NATURE RESULTING FROM THE FOREGOING, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SHOULD NOT BE ASSUMED BY NJPA.
- VIII. PARTIAL INVALIDITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- IX. ARBITRATION:** Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other be submitted to arbitration. The arbitration will comply with and be governed by the provisions of the State of Minnesota Code of Civil Procedure. The parties will each appoint one person to hear and determine the dispute and if they are unable to agree, then the two persons so chosen will select a third impartial arbitrator whose decision will be final and conclusive on both parties. The cost of arbitration will be borne in such proportions as the arbitrators decide.
- X. ATTORNEYS' FEES:** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

XI. GOVERNING LAW: The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, these standard terms and conditions for sale, or relating to the support hereunder shall be subject to the exclusive jurisdiction of the courts, and governed by the laws of, the State of Minnesota without regard to that body of law controlling conflicts of law.

XII. TERMINATION OF AGREEMENT:

1. Termination upon Notice. Notwithstanding any other provisions of this Agreement, either party hereto may terminate this Agreement at any time by giving fourteen (14) days written notice to the other party.
2. Termination on Occurrence of Stated Events. This Agreement shall terminate automatically on the occurrence of assignment of this Agreement by either party without the express written consent of the other party.
3. Termination by the Member for Default of NJPA. Should NJPA default in the performance of this Agreement or materially breach any of its provisions, the Member, at the Member's option, may terminate this Agreement by giving written notification to NJPA.
4. Termination for Failure to Make Agreed-Upon Payments. Should the Member fail to pay the NJPA all or any part of the fees set forth in this Agreement on the due date, NJPA, at NJPA's option, may terminate this Agreement if the failure is not remedied by the Member within thirty (30) days from the date payment is due.

XIII. NOTICES: All notices and demands of any kind which the Member or NJPA may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth above (or at such different addresses as may be designated by either party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, and shall be deemed complete three days after mailing. Notices sent to NJPA shall be addressed to the attention of "Legal Services."

XIV. UNENFORCEABLE PROVISIONS: In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions which most nearly effect the parties' intent in entering into this Agreement.

XV. WAIVER: The failure of either party to enforce at any time, or for any period of time, the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such party to enforce each and every such provision.

XVI. ENTIRE AGREEMENT: This Agreement, including any attachments hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all written or oral agreements heretofore existing between the parties hereto are expressly canceled. Each party acknowledges that it is not entering into this Agreement on the basis of, and has not relied on, any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by both parties hereto.

The parties have executed this Agreement as of the date set out below.

City of Pequot Lakes

NJPA

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

Date

Date