

ADAIR COUNTY COMMISSION MINUTES

TUESDAY, FEBRUARY 17, 2015

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IN REF. ORDER NO 12 Sprocket Service Level Agreement for Adair County Sheriff Department IT Services

Comprehensive IT Labor Services Agreement – 1 Year
(CITLS)

1. **Purposes and Applicability**
The terms and conditions of this Managed IT Maintenance Labor Contract Agreement ("Agreement") apply to the services provided by: Sprocket Technologies, a National Limited Liability Company (hereafter referred to as "SPROCKET"), to Adair County Sheriff's Office (hereafter referred to as "CLIENT") with a principal place of business located at 215 North Franklin St, Keokuk, MO, 55001.

2. **Term / Automatic Renewal**
This Agreement shall commence as of 12/04/2014 and shall become effective as of the date set forth below ("Effective Date"), and continue for a period of twelve (12) months from the Effective Date (the "Term") and shall automatically renew for like term, unless either SPROCKET or CLIENT provide sixty (60) days written notice to the other prior to the end of the initial Term or any renewal term.

3. **Responsibilities of SPROCKET**
SPROCKET reserves the right to inspect the CLIENT's Network on or after the Effective Date of this Agreement for the purpose of conducting an assessment of the Network. Unless stated otherwise, said inspection shall be charged to the CLIENT. SPROCKET's standard hourly billing rates. SPROCKET shall not be responsible to CLIENT for loss of use of the Network or for any other liabilities arising from alterations, additions, improvements or repairs which have been made to the Network other than by authorized representatives of SPROCKET. SPROCKET reserves the right to suspend the Services or terminate this Agreement if in its sole discretion, conditions at CLIENT's site or the services pose a health or safety threat to any SPROCKET representative.

4. **Responsibilities of CLIENT**
CLIENT shall follow and adhere to any professional recommendations made in writing by SPROCKET. In addition, CLIENT shall be responsible for protecting data stored on the System and any necessary data backup. SPROCKET disclaims responsibility for any lost, damaged, or destroyed software program, data or other information stored or residing on any media or any part of the System covered by the Agreement, including without limitation, deletion or alteration of the contents of any data storage media which may occur during services or repair of the System. In the event that restoration of lost or damaged data is required, this service will be billed on a time and materials basis at prevailing rates and may also include associated hardware costs. In the event a catastrophic software/hardware failure, replaced hardware and/or software will be provisioned and billed at prevailing rates. Actual time will be billed at prevailing rates to reformat the base operating system, software applications and restore applicable client data to the replacement hardware.

CLIENT is responsible for providing a monthly updated list of project and technical priorities to SPROCKET staff. CLIENT is to designate one employee to function as the central clearinghouse for all projects, tickets, and support cases. SPROCKET staff will coordinate with this designated employee.

CLIENT is responsible for transportation, meals and expenses toll-free any CLIENT site outside of the contracted CLIENT address.

6. **Hours of Service**

A. Normal Hours: 8:00 AM to 5:00 PM Monday – Friday, excluding holidays.
B. Overtime Hours: Prior to 8:00 AM and After 5:00 PM, Weekends and Holidays.
C. Escalation Policy – Unless it is completely clear that a service call requires on-site service, SPROCKET will treat each service call as a remote service call. Should SPROCKET be unable to resolve the issue remotely within a reasonable period of time, an engineer will be scheduled and dispatched based upon the severity of the problem and CLIENT position in service queue of other contracted clients.
D. Scheduled or requested services outside of the hours of 8:00am – 5:00pm Monday through Friday, excluding Holidays, shall be billed at 1.5 times Normal Hours rates. Scheduled or requested services performed during Holidays and Sundays, shall be billed at 2 times the Normal Hourly Rate.

8. **SERVICES**
SPROCKET will provide IT labor and project services to CLIENT during regular (8:00 AM to 5:00 PM) business hours on an on-call, as needed basis, with remote support being preferred when possible.

7. **Services Fee: CLIENT agrees to the following pre-billed monthly fees for labor charges as indicated in the chart below:**

Rate of Service Category	Total Prepaid Monthly
Comprehensive IT Labor Services Agreement (CITLS)	\$98,000

All Services mentioned herein are strictly governed by our SPROCKET CITLS Service Level Agreement (SLA) (provided upon request). Monthly Prepaid Service charge is based per covered device and may increase or decrease on a monthly basis on the number of Services covered devices on CLIENT Network.

SPROCKET has the right to review / increase the above rates or hours no more than one time per TERM with 30 days notice to CLIENT.

8. **Failure to pay**
In the event CLIENT fails to pay SPROCKET for the Services within ten (10) days from the due date of SPROCKET's invoice, SPROCKET may, at its discretion, suspend the Services until such invoice is paid by CLIENT. Any fees for Services which are not paid when due are subject to a finance charge equal to the greater of nine percent (9%) per annum or the highest judgment rate allowed under Missouri law for this type of Agreement. CLIENT agrees that such finance charge shall be paid with any less past due prior to SPROCKET resuming Services under this Agreement. Payments for monthly prepaid services must be made prior to work commencing.

9. **Termination of Agreement**
SPROCKET and/or CLIENT shall have the right to terminate this Agreement under any of the following conditions:

- If one of the parties shall become insolvent, abandon, or close its business.
- If a petition is filed in any court and not dismissed in ninety (90) days to declare one of the parties bankrupt and/or for a reorganization under the Bankruptcy Law or any similar statute.
- If a Trustee in Bankruptcy or a Receiver or similar entity is appointed for one of the parties.
- Breach of a term of this Agreement.

Should either SPROCKET or CLIENT breach the terms of the Agreement, SPROCKET or CLIENT will provide the other with written notice of its failure to comply. If after 30 days, the other has not complied with the terms of the Agreement, SPROCKET or CLIENT may terminate this Agreement. At that time, any unearned portion of the term shall be returned to the other party.

See by SPROCKET will be refunded, or any fees owed by CLIENT will be paid, within the ten (10) day period after termination. In the event that CLIENT breaches the terms of this Agreement, SPROCKET shall be entitled to reimbursement from CLIENT for its reasonable attorneys' fees and costs associated with the breach. CLIENT shall be entitled to a return of any unearned fees by SPROCKET.

In the event of the Agreement is terminated, any property, including hardware and/or software, needed to deliver the Services to CLIENT which is the sole property of SPROCKET may be removed from the CLIENT'S premises, and CLIENT grants SPROCKET the right of access to the Authorized Location or any location where such property is being stored.

10. **WARRANTIES**
SPROCKET MAKES NO WARRANTIES OF ANY KIND, EXCEPT AS SET FORTH IN THIS AGREEMENT. SPROCKET SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. Except as set forth in these terms and conditions, SPROCKET makes no representation, warranty or covenant concerning the capabilities or performance of the Service or goods that SPROCKET might provide to the CLIENT in connection with this Agreement.

Limitation of Liability: SPROCKET, its directors, officers, employees, and agents shall not be liable for any damages suffered by the CLIENT other than actual damages directly and proximately resulting from the failure, delay, or non-performance of the Services to be provided by SPROCKET under this Agreement. The liability of SPROCKET whether arising out of contract, tort, breach of warranty, infringement or otherwise, shall not include liability for loss of profits, loss of income, or consequential damages. In any event, the total liability of SPROCKET to CLIENT for such direct damages will be limited and will not exceed the total fees paid to SPROCKET under this Agreement in the prior twelve month period.

Client Warrants With Consent to Software Licenses:
Client warrants that all software it provides to SPROCKET for installation, configuration or use in any way, has been legally obtained and is properly licensed.

A) Client further warrants that it has legally purchased sufficient number of copies of such software and it has not violated any licensing laws.
B) SPROCKET has no knowledge regarding licensing of software provided to it by Client and Client indemnifies SPROCKET for any installation, configuration or use of such software.
C) Client understands and acknowledges that it shall be solely responsible and liable for all licensing and purchasing of software.

Non-Solicitation: During the term of this Agreement, and for twenty-four (24) months thereafter, Client and SPROCKET shall refrain from directly or indirectly soliciting for employment any of the employees, agents, or contractors of the other.

Mediation: Client and SPROCKET expressly agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to court action, subject to the section that immediately follows. Mediation first, if any shall be divided equally among the parties involved, if any party commences an action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through Mediation, then that party shall not be allowed to recover attorney's fees, even if they would otherwise be available to that party in any such action.

Exclusion from Mediation: The following matters are excluded from Mediation hereunder: (a) Any matter, which is within the jurisdiction of a probate, small claims, or bankruptcy court, and (b) An action for bodily injury or wrongful death. The filing of a court action to annul the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of this Mediation provision.

Relationship: SPROCKET will furnish services as an independent contractor with sole authority to control and direct the performance of the details of the services. Client being interested only in the results obtained so long as they are obtained within copyright laws and legal permission to provide services. CLIENT shall not solicit or make offers of employment, in any capacity, either directly or indirectly, or enter into any consulting relationships or agreements with the employees or agents of SPROCKET during the term of this Agreement and for a one year period thereafter without SPROCKET's prior written consent.

Severability: In the event any one or more of the provisions of this Agreement or of any Attachment is held to be void, invalid or otherwise unenforceable, the enforceability of the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Governing Law: The parties expressly agree and acknowledge that this agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Release Beyond Control of Either Party (Force Majeure): No party shall be liable for any loss or damage due to failure or delay in rendering any services called for under this Agreement resulting from any causes, including but not limited to acts of God, flood, hurricane, extreme weather, fire, or other natural calamity, acts of governmental agencies, or similar causes beyond either party's reasonable control.

Entire Agreement (Integration Clause): This Agreement, including the Attachment, constitutes the entire agreement between the parties and supersedes all prior agreements between the parties, whether written or oral, relating to this same subject matter. No modifications, amendments or supplements to this Agreement shall be effective for any purpose unless in writing and signed by both parties. If the terms of the Attachment and the main body of this Agreement are in conflict, the main body of this Agreement shall control.

Equal Interpretation: The parties expressly agree and acknowledge that this contract has been negotiated at arms length and that both Client and SPROCKET have had the right and opportunity to consult with legal counsel before entering into this contract. In construing this contract, all portions and terms, including any ambiguities, shall be interpreted equally among the parties and without reference to the party who prepared or who caused to be prepared this contract.

Effective Date: The effective date of this Agreement is the date upon which SPROCKET signs the Agreement. This Agreement may be executed in one or more counterparts, including a photocopy or facsimile thereof, each of which shall be deemed to be an original, including the signature thereon, but all of which together shall constitute one and the same agreement.

CLIENT: Authorized signature: <i>[Signature]</i> Date: 2-17-2015 Print Name: <i>[Name]</i> Title: <i>[Title]</i>	Sprocket Technologies: Authorized signature: <i>[Signature]</i> Date: <i>[Date]</i> Print Name: Bradley Ray Title: Owner
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Contract version 1.0 - Revised 03/2010

ATTEST: *[Signature]*
County Clerk

[Signature]
Presiding Commissioner