

RESOLUTION 1125

RESOLUTION APPROVING A BLOCK TIME COMPUTER SUPPORT AGREEMENT
WITH F&B COMMUNICATIONS IN THE AMOUNT OF \$3,125.

WHEREAS, the City of West Branch is in need of contracting services with a company to provide telephone, remote and on-site technical support services for the City's information technology; and

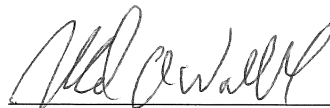
WHEREAS, F&B Communications, Inc. has provided an agreement for City Council review that would provide a block time of fifty hours; and

WHEREAS, the agreement requires the approval of the West Branch City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the aforementioned agreement with F&B Communications be and the same are hereby approved. Further, the Mayor and City Clerk are directed to execute said agreement on behalf of the City.

* * * * *

Passed and approved this 24th day of June, 2013.



Mark Worrell, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk



TECHNOLOGY SOLUTIONS: AN F&B COMMUNICATIONS SERVICE
BLOCK-TIME COMPUTER SUPPORT AGREEMENT

This Block-Time Computer Support Agreement (hereinafter "Agreement") is made and entered into this 17th day of June, 2013, by and between Technology Solutions: An F&B Communications Service (hereinafter "F&B") and City of West Branch (hereinafter "Client").

WITNESSETH: WHEREAS, Client desires to engage F&B to provide Computer Support services as defined herein. NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. SUPPORT OF CLIENT SERVICES

1.1. Responsibility for Support. In consideration of the compensation payable to F&B pursuant to Section 2 hereof, F&B shall provide a predetermined number of telephone, remote and on-site technical support hours for computer and peripheral hardware and software related issues for the equipment installed and in operation as listed in Appendix A. During the Term of this Agreement, F&B shall:

- a. Initial Callback. Provide an initial callback to Client from a qualified technician within thirty (30) minutes of request for support during normal business hours of 8:00 am to 5:00 pm, Monday through Friday, excluding holidays.
- b. Service Level. Provide Client with technical assistance via telephone or remote support, when applicable, or on-site for support issues within four (4) business hours (excluding travel time) from time of dispatch during normal business hours of 8:00 am to 5:00 pm, Monday through Friday, excluding holidays.
- c. Accrual of Time. Telephone or remote support accrues in fifteen (15) minute increments. On-site support accrues with a one (1) hour minimum per visit and then in thirty (30) minute increments. An additional allowance up to one (1) hour per visit shall accrue for travel time when on-site support services are utilized.

1.2. Services Covered. Specific responsibilities of F&B and the Client are detailed herein. F&B offers computer service, maintenance and repair service (hereinafter "Service") in a "best effort" approach. The installation, use, inspection, maintenance, repair or removal of the Service(s) could result in service outage or potential damage to Client's hardware, software, files, data, peripherals, commercial building, home or other property. Client is solely responsible for backing up all computer files. The following services, while not an exhaustive list, are covered under the general scope of this Agreement.

- a. Computers and Servers. Provide Microsoft Windows server and desktop operating system installation, maintenance and troubleshooting.
- b. Peripherals. Provide peripheral installation, maintenance and troubleshooting.

- c. Software. Provide software installation and troubleshooting. In order to offer the most efficient troubleshooting, F&B shall rely upon Client's vendor-specific software support agreements for business-critical or line-of-business applications.
 - d. Networking. Provide network equipment and cabling installation, maintenance and troubleshooting.
 - e. Security. Provide firewall and security hardware and software installation, maintenance and troubleshooting.
 - f. Proactive Maintenance. Provide proactive maintenance services to identify and address potential issues that can lead to downtime or data loss.
- 1.3. Exclusions.** Specific responsibilities of F&B and the Client are detailed herein. The following exclusions are outside F&B's service liability under this Agreement.
- a. Hardware, Equipment or Consumables. This agreement does not cover the purchase of new or replacement hardware, equipment or consumables. Equipment lost, stolen, or damaged due to negligence, tampering, misuse, accident, or resulting from any act of nature, or resulting from electrical storms, lightning from violent weather, power outages, failure to maintain proper equipment environment or other Acts of God is not covered under this Agreement.
 - b. Software. This Agreement does not include the actual cost of software or software upgrades for new features and enhancements. Software upgrades may be installed through the course of maintenance provisions in order to rectify software related problems that may arise. If a software upgrade is installed, Client will have to purchase rights to use new enhancements and features if they wish to benefit from these. Client is also responsible for the on-going costs of any recommended vendor-specific software support agreements or extended warranties.
 - c. Physical Exclusion. F&B is not responsible for adjusting or moving any equipment in any way or the failure of any equipment that has been moved with or without F&B guidance and will not be liable for injury, damage, or claim to person and or properties that may arise through the maintenance of the system and or failure thereof.

2. COMPENSATION

- 2.1. Compensation.** In consideration for the Service provided to Client pursuant to Section 1 hereof, Client agrees to pay F&B a predetermined amount as outlined in Appendix A.
- 2.2. Medium of Payment.** All compensation is payable in U.S. Dollars.
- 2.3. Payment of Compensation.** Payment will be due in full upon execution of this agreement.
- 2.4. Refund of Payment.** Unless there is a breach of this Agreement, payment is non-refundable.

3. TERM AND TERMINATION

- 3.1. Term.** The term of this Agreement is for twelve (12) calendar months or until the predetermined number of hours has been depleted.
- 3.2. Termination.** In the event of a breach or failure to perform obligation under the Agreement, written notice shall be provided and the party responsible for the failure shall be given 30 days to cure the default. Failure to cure would provide the other party the right to terminate. In any case either party has the right to terminate with thirty (30) days advance notification.

NOTICES

3.3. Notices shall be in writing and except where the context otherwise requires, shall be mailed by prepaid U.S. Certified Mail, Return Receipt Requested, addresses to:

TECHNOLOGY SOLUTIONS:
An F&B Communications Service
108 Jefferson St. E.
P.O. Box 309
Wheatland, IA 52777

CITY OF WEST BRANCH
110 N. Poplar St.
P.O. Box 218
West Branch, IA 52358

Or at such other addresses as the respective parties may from time to time in writing designate. Except where the context otherwise requires, all such notices shall be deemed to have been given on the day received.

4. MISCELLANEOUS

- 4.1. Software.** It is the Client's responsibility to provide valid, licensed copies of the operating system or other software application installed on the Client's system(s). F&B shall have no liability for the violation of any copyright, trademark or other proprietary rights of any third party. If licensed software is not provided, F&B may be unable to thoroughly troubleshoot or repair the system(s).
- 4.2. Limitation of Liability.** F&B and its officers, directors, employees, contractors and representatives shall have no liability whatsoever for any damage to or loss or destruction of any of Client's hardware, software, files, data, peripherals, commercial building, home or other property. Client assumes all responsibility for impacts to or loss of any warranty associated with the opening of Client's computer for installation, maintenance, repair or removal of the Service. F&B shall not be liable for failure to perform due to circumstances beyond such party's control. Such circumstances shall include, but not limited to, civil disturbances, rules or regulations, changes in law, or Acts of God beyond F&B's control.
- 4.3. Representations.** F&B will make its best effort to provide the Service(s) but due to the complex nature of certain Service(s), it may not be possible to provide Service(s) to Client in all instances. In its sole discretion, F&B may cancel the Service process and refund any money that Client has paid. F&B shall have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or maintenance or provide the Service. F&B does not represent, warrant, or covenant that installation or maintenance will enable Client to successfully access, operate or use the Service(s). F&B MAKES NO EXPRESS WARRANTIES AND WAIVES ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES ARE F&B AND ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND REPRESENTATIVES LIABLE FOR THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY: 1) THIRD-PARTY CLAIMS AGAINST CLIENT FOR DAMAGES; 2) LOSS OF, OR DAMAGE TO, CLIENT'S HARDWARE, SOFTWARE, FILES, DATA, COMMERCIAL BUILDING, HOME OR OTHER PROPERTY; 3) ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; 4) LOST PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS; 5)

4.4. Indemnification. Client agrees to indemnify, defend and hold harmless, F&B and its officers, directors, employees and contractors from any and all claims, demands, lawsuits or actions, which may arise as a result of a breach of this agreement, including reasonable attorneys' fees.

4.5. Agreement. It is agreed to and understood that this agreement constitutes the entire agreement between the parties, and supersedes and replaces all other prior understanding or agreements relating the equipment and services covered by this agreement. This agreement may not be changed, modified or varied except by the specific written and signed approval by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties here to have entered into this Agreement in Wheatland, Iowa, upon the date first written above.

Technology Solutions:

An F&B Communications Service:

Client:

By: _____

Date: _____

By: Mal A. Smith

Date: June 26 2013

Appendix A
SYSTEM DESCRIPTIONS

Location 1: 110 N. Poplar St., West Branch, IA 52358

Block-Time: 50 hours

Rate: \$3,125.00 (tax exempt)