WASILLA CITY COUNCIL ACTION MEMORANDUM **CM No. 99-42**

SUBJECT: Award Of Contract For Network And PC Maintenance And Support For Fiscal Year 2000.

PREPARED BY: Finance DATE: July 11, 1999

FOR AGENDA OF: July 26, 1999

SUMMARY:

The contract with Network Business Systems (NBS) for Network and PC maintenance and support ended on June 30,1999. The Finance Department recommends that the City of Wasilla continue to use Network Business Systems for Network and PC maintenance and support for the new Fiscal Year.

Because Network Business Systems is providing support to the City of Wasilla with its Year 2000 audit and remediation of its computers systems, the Finance Department believes that the continuity of network and computer services provided by Network Business Systems is essential for completing the project on time. Therefore, the Finance Department believes that it is in the City of Wasilla's best interest to renew the NBS contract for another year.

FISCAL IMPACT: __No _X_Yes, amount requested: $ 40,040 Fund: 01-420-2917

RECOMMENDED ACTION: Council award contract to Network Business Systems for network services for July 1, 1999 through June 30, 2000.

Sarah Palin

Reviewed by: SARAH PALIN, Mayor

Presented to council on 7/26/99
Action taken: ☑ Approved ☐ Denied
other:
Verified by

Attachments: Network Business System Contract.

NETWORK BUSINESS SYSTEMS

THIS NETWORK OUTSOURCE AGREEMENT (the "Agreement") is entered into on this _ JULY 8, 1999, between The City of Wasilla, a municipal corporation organized and existing under the laws of the State of Alaska and having a principal place of business at 290 E. Herning Avenue Wasilla Alaska 99654, (hereinafter "CLIENT") and Compueaze, Inc. dba Network Business Systems, an Alaska corporation with offices at 1577 C Street, Suite 205, Anchorage, AK 99501 (hereinafter "NBS").

RECITALS:

WHEREAS, CLIENT desires to engage a network technician from NBS on a regular weekly schedule; and

WHEREAS, NBS is in the business of furnishing such services;

NOW, THEREFORE, CLIENT and NBS agree as follows:

AGREEMENT AND TERM:

1. **Services.** During the term of this Agreement, NBS will provide and CLIENT will engage a network technician to provide network and PC maintenance and support and to provide general computer technical assistance all on the terms and conditions specified in this Agreement.

2. **Term.** The term of this Agreement shall commence July 1, 1999 (the "Commencement Date"), and shall expire June 30, 2000 (the "Expiration Date").

PAYMENT AND PRICES:

1. **Payment.** Starting on the Commencement Date of this Agreement, CLIENT shall pay NBS an hourly rate of $70.00 per hour for twelve hours of regularly scheduled work each week through December 31, 1999. Beginning on January 1, 2000 and continuing through the Expiration Date of this agreement, CLIENT shall pay NBS an hourly rate of $70.00 per hour, but the hours of regularly scheduled work will alternate between twelve hours and eight hours each week. (example: week one of January, 2000 will be a 12 hour week, week two will be an 8 hour week, week three will be a 12 hour week, week four will be an 8 hour week, etc.). In the event the CLIENT requests fewer hours than those scheduled in any one-calendar week, the full, scheduled hours will be invoiced. Should NBS be unable to provide the full, scheduled hours of service in any week, the amount charged will be the actual service hours times the hourly rate.

2. **Time of Payment.** All undisputed charges accruing under this Agreement shall be paid within 10 working days of CLIENT's receipt of an invoice for such charges. Interest of 1.5% monthly is charged after 30 days.

NBS OBLIGATIONS:

During the term of this Agreement, NBS will provide to CLIENT the following personnel and services:

1. **Technician**. The technician will be a trained and experienced network and PC technician who can provide maintenance, support and general computer technical assistance.

2. **Scheduled Service Hours.** 12 scheduled hours each week, divided into three four hour blocks on each of three days, on and between the Commencement Date and December 31, 1999. Alternating twelve and eight hour weeks divided into four hour blocks on each of three and two day from January 1, 2000 to the Expiration Date of this Agreement. NBS will notify CLIENT 24 hours prior to any change in the scheduled service hours on a best effort basis.

3. **Scope**: Maintain all CLIENT owned systems, except as otherwise set forth in this Agreement, and provide and maintain all information technology equipment used by CLIENT under this Agreement

4. **Range of Services:** Perform such major modifications, developments, conversions or operations of CLIENT network systems, as CLIENT shall authorize.

ADDITIONAL SERVICES:

In addition to the services to be provided by NBS under this Agreement, NBS will provide such additional services to CLIENT as CLIENT may reasonably request, provided such additional service requests do not create scheduling conflicts for NBS. For any additional services performed by NBS over the regularly scheduled hours each week, CLIENT shall pay NBS based upon the following rates: (A) $95.00 per hour between the hours of 8 a.m. and 5 p.m., Monday through Friday; and (B) $145.00 per hour for any work on weekends or before 8 a.m. or after 5 p.m.

PROPRIETARY RIGHT:

1. **CLIENT-Owned Systems.** CLIENT-Owned Systems will be and remain CLIENT's property, except that NBS shall have the right to use such CLIENT-Owned Systems in order to provide services to CLIENT without charge to NBS.

2. **Rights to NBS Systems.** NBS Systems will be and remain its property, and CLIENT shall have no ownership rights or other interests in NBS Systems.

ONGOING TECHNICAL TRAINING SERVICES:

NBS agrees to provide technical training to CLIENT personnel at no additional charge provided such technical training is delivered by the technician assigned to support CLIENT under the schedule defined above. The technician assigned by NBS may not be a certified instructor.

SAFEGUARDING OF CLIENT DATA:

1. **Data Files.** CLIENT's data files and the data contained therein shall be and remain CLIENT's property. CLIENT's data shall not be utilized by NBS for any purpose other than that of rendering services to CLIENT under this Agreement, nor shall CLIENT's data or any part thereof be disclosed, sold, assigned, leased or otherwise disposed of to third parties by NBS or commercially exploited by or on behalf of NBS, its employees or agents.

2. **Safeguarding CLIENT Data.** Client is wholly responsible for the integrity and security of its data and programs. CLIENT will perform back up of all data and programs on a schedule that CLIENT believes is adequate. NBS will provide advice to client for frequency of back up and adequacy of restore procedures.

YEAR 2000 COMPLIANCE DISCLAIMER:
The issue of year 2000 compliance is complex and involves nearly every manufacturer and provider of computer related hardware, software, systems and services. NBS recommends that CLIENT fully research the impact of year 2000 non-compliance and the problems specific to CLIENT's organization. NBS expressly disclaims any responsibility to research; notify CLIENT of potential year 2000 problems; or for non-compliance of CLIENT's hardware, software or systems and including any resulting adverse impact. CLIENT agrees that it has not relied on any representations outside this contract when deciding to enter this contract. CLIENT further agrees that this disclaimer cannot be waived, deleted, changed or made unenforceable due to any oral agreements or advice received from any NBS employee unless a written waiver is made by the President of NBS.

CLIENT acknowledges that NBS has no duty or obligation with respect to year 2000 issues and as such in the event that NBS is found liable to CLIENT for a year 2000 issue, CLIENT agrees it would be difficult to calculate and ascertain accurately and definitely the cost, damage, or injury that CLIENT would sustain on a year 2000 issue either through some act or omission by NBS. As a result, the measure of liquidated damages (not a penalty) for any such breach shall be $500. CLIENT and NBS expressly acknowledge and agree that this provision on computation of damages constitutes a reasonable and good faith effort to establish a fair and equitable method of providing CLIENT with a remedy for any such act or omission by NBS.

PERFORMANCE:
NBS will insure that its activities under this Agreement achieve and are maintained in accordance with the performance levels as are common for the computer system support industry.

TERMINATION:
In the event that NBS or CLIENT materially or repeatedly defaults in the performance of any of its duties and obligations under this Agreement, then the party not in default may terminate this Agreement as of a date specified in writing to the defaulting party. Provided, however, that in no event may either party terminate this agreement for default without first providing the defaulting party written notice of specific deficiencies in its performance and a reasonable opportunity after such notice to substantially cure such deficiencies within thirty (30) days for a default in the payment or money, or within 30 days for any other default. The parties shall agree on such longer cure periods as may be appropriate under the circumstances.

Either party may terminate this contract with 90 days written notice.

INDEMNITIES AND DAMAGES:
NBS and CLIENT will indemnify and hold harmless the other from any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorney fees and expenses for any injuries to persons or damage to property arising from acts or omissions of the indemnitor under this Agreement.

CONFIDENTIALITY:
Except as otherwise provided in this Agreement, NBS and CLIENT each agree that all proprietary information communicated to it by the other, whether before the Effective Date or during the term of this Agreement, shall be received in strict confidence, shall be used only for purposes of this Agreement, and that no such information shall be disclosed by the recipient party, its agents or employees without the prior written consent of the other party. Each party agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information, including without limitations, the terms of this agreement except as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of NBS or CLIENT, as the case may be.

CLIENT RESTRICTION ON HIRING COVENANT:
Client acknowledges the considerable cost and expense incurred by NBS for recruiting, evaluating, training and retaining its employees, the cost to NBS due to the dissemination of proprietary information by former employees, and the substantial revenue lost by NBS when Client or a Client subsidiary hires a current or recent employee of NBS. Accordingly, in consideration of the service provided by NBS, Client agrees that Client and all Client subsidiary companies will not employ, in any capacity, any employee or former employee of NBS whose separation of employment from NBS has been less than one (1) year.

Client agrees it would be difficult to calculate and ascertain accurately and definitively the cost, damage, or injury that NBS would sustain from a breach by Client or Client subsidiary company of the foregoing provision. As a result, the measure of liquidated damages (not a penalty) for any such breach shall be seventy-five thousand dollars ($75,000) and will be due and payable by Client to NBS at the time of the breech of this provision. Client and NBS expressly acknowledge and agree that this provision on computation of damages constitutes a reasonable and good faith effort to establish a fair and equitable method of providing NBS with a remedy for any such breach of this provision.

Client and NBS agree the above provision does not apply to any employee discharged by NBS, provided said employee was not discharged for working or consulting for a client or competing business of NBS while employed by NBS.

Client agrees that in the event of a breach of this provision by Client or Client subsidiary company, all attorneys fees incurred by NBS in the process of enforcing this provision and collecting the $75,000 liquidated damages will be fully reimbursed by Client to NBS.

MISCELLANEOUS:

Binding Nature and Assignment. This Agreement shall be binding on the parties hereto and their successors and assigns, but neither party may assign this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

Notices. Any notice required to be given under this Agreement shall be in writing and shall be sent by certified mail or by overnight courier to the addresses specified above. Either party may at any time change its address for notification purposes by giving notice of that change in accordance with this section.

Headings. The article and section headings used are for reference and convenience only, and shall not enter into the interpretation of this Agreement.

Relationship of Parties. NBS, in furnishing services to CLIENT, is providing technical services only as an independent contractor and shall be treated as such for all purposes. Including but not limited to, federal and state taxation, withholding, unemployment insurance and worker's compensation.

Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void then both parties shall be relieved of all obligations arising under such provision, but if such provision does not relate to the payments to be made to NBS by CLIENT and if the remainder of this agreement shall not be affected by such declaration or finding, then each provision not so affected shall be enforced to the extent permitted by law.

Attorney's Fees. Except as otherwise specified in this agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall bear their own legal expenses and other costs incurred in that action or proceeding.

Right to Supervise. NBS has the sole right and obligation to supervise, manage, contact, direct, procure, perform or cause to be performed, all work to be performed by NBS under this Agreement unless otherwise provided in this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements relative to this Agreement which are not fully expressed in this Agreement and no change waiver or discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the party against whom such charge, waiver or discharge is sought to be enforced.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any action arising out of this Agreement must be brought in the courts of the 3rd Judicial District sitting in Anchorage, Alaska.

IN WITNESS WHEREOF, NBS and CLIENT have caused this Agreement to be signed and executed by their duly authorized representatives, all as of the date first set forth above.

THE CITY OF WASILLA

By:_____
Name: Sara H Palin
Title: Mayor

COMPUEAZE, INC:
D.b.a. Network Business Systems

By:_____
Name: Scott L. Thorson
Title: President