

**EAGLE MOUNTAIN CITY  
CITY COUNCIL  
MARCH 15, 2016**

<b>TITLE:</b>	AGREEMENT – Consideration of an Agreement for Professional Services between Eagle Mountain City, Utah, and NetWize, Inc., for IT Services.		
<b>FISCAL IMPACT:</b>	\$4,287/month (\$51,444/year)		
<b>APPLICANT:</b>	Eagle Mountain City – IT Department		
<b>GENERAL PLAN DESIGNATION</b>	<b>CURRENT ZONE</b>	<b>ACREAGE</b>	<b>COMMUNITY</b>
N/A	N/A	N/A	N/A

**NOTICES:**

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**REQUIRED FINDINGS:**

<b>Planning Commission Action / Recommendation</b>
Vote: N/A

<b>Prepared By:</b> IKANI TAUMOEPEAU, ECONOMIC DEVELOPMENT, SR. PROJECT MANAGER
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**NOTES/COMMENTS:**

**RECOMMENDATION:**

Staff recommends that City Council approve the NetWize IT Service contract.

**BACKGROUND:**

Staff prepared and sent out an RFP for the IT Service Contract and heard back from three companies:

<b>IT Service Contract Bids</b>			
<b>Company</b>	<b>Monthly</b>	<b>Yearly</b>	<b>Annual Diff</b>
Executech	\$3,600	\$43,200	+ \$8,244
NetWize	\$4,287	\$51,444	--
VLCM	\$7,150	\$85,800	- \$34,356

Netwize/Canon IT Services has been handling the City's IT services since March 2009. The company intimately understands our IT needs and infrastructure (i.e. servers, workstations, and network backbone). Netwize would be renewing their service charge at the current contracted rate.

There are other IT companies that may be a bit more affordable, but it is difficult to know if the City will continue to receive a high level of the quality service. In terms of fiscal impact, the Executech proposal would save the City \$8,244/annual and the VLCM proposal would increase expenses by \$34,356/annual. The unknowns would be their level of service. If the IT infrastructure and network backbone happens to fail, then City Hall essentially shuts down.

In these last seven years, Netwize/Canon has proven their long-term quality IT support and have demonstrated the capacity and resiliency to support our IT infrastructure well into the future.

**AGREEMENT**  
**between**  
**EAGLE MOUNTAIN CITY, UTAH**  
**and**  
**NETWIZE IT SERVICE, INC**

**This AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, by and between **EAGLE MOUNTAIN CITY, UTAH (“CITY”)**, a Utah municipality, whose address is 1650 E Stagecoach Run, Eagle Mountain, UT 84005 (“**CITY**”) and **NETWIZE IT SERVICES**, a Utah corporation, whose address is 702 W. Confluence Ave., Salt Lake City, Utah 84123 (“**COMPANY**”).

**RECITALS**

1. CITY has established the need for outsourcing products and services consistent with and in compliance with the requirements specified in a Request for Proposal No. IT012016.
2. After careful evaluation, CITY has determined that, due to its background and expertise, COMPANY is highly qualified to provide the aforesaid products and services, and CITY is desirous of entering into a contract with COMPANY for this purpose.
3. COMPANY stands ready, willing and able to provide said products and services, and in accordance with the terms, conditions and provisions of this AGREEMENT.
4. CITY desires to enter into an independent contractor agreement with COMPANY to provide the services specified below.
5. The products and services contemplated by this AGREEMENT constitute an inextricable integration of sophisticated technical skills that are uniquely related to the physical components of the system.
6. The parties have determined that it is mutually advantageous to enter into this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENTS TO BE MADE AND SERVICES TO BE RECEIVED BY THE PARTIES AND THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**DEFINITIONS**

As used in this AGREEMENT, the following definitions shall apply unless the context clearly indicates a different meaning. Some of the defined terms are more fully defined and explained elsewhere in this AGREEMENT, and the meaning of any term should be derived from reading the AGREEMENT as a whole:

CITY: shall mean Eagle Mountain City, Utah.

SERVICES OR SERVICE OR WORKS OR WORK: shall mean the Information Technology Services for the CITY.

COMPANY: shall mean NetWize IT Service, Inc. assigned by the CITY to carry out the WORK.

CONTRACT or AGREEMENT: shall mean this Agreement or other eventual Agreement to be signed between the CITY and COMPANY for the performance of the WORK.

SERVICE CALL: shall mean the communications and tracking procedure whereby an authorized CITY employee can initiate performance by the COMPANY under this agreement.

ESCALATION PROCESS: shall mean the process whereby the COMPANY responds to a service call and attempts to accomplish the task that is the subject of the service call in a timely manner, and if unable to do so, then makes progressively more intense responses in order to complete the task. The initial response by the COMPANY to a service call is considered Level One of the escalation process. If the COMPANY is unable to complete the task at Level One, the response shall progress to Level Two, and then, if the Level Two response was insufficient to complete the task, to Level Three.

NETWORK: shall mean the total information technology infrastructure and its related units, including network operating system, firewall, antivirus, spyware, and archival and battery backup utilities, file servers and/or network workstations, switches and hubs, firewalls, wiring and wiring systems, communications lines, uninterruptible power supplies, network monitors and peripherals comprising CITY's local or wide area computer network monitors, and desktop and laptop computers, monitors and peripherals, in place or acquired during the term of this Agreement.

SINGLE POINT OF ENTRY: refers to the communications conduit and system through which service calls are made, that will allow the COMPANY to assign a Work Order number and track all service calls, and that will allow authorized CITY employees to have a single telephone number, single email address, single fax number, single physical location, and single mailing address through which service calls may be placed. The single telephone number, single email address, single fax number, single physical location, and single mailing address shall all be coordinated by the COMPANY into one system of issuing unique, sequential Work Order numbers.

WORK ORDER NUMBER: shall mean a unique, sequential number that is assigned to each service call for the purpose of allowing both the CITY and COMPANY to identify and track progress and completion of tasks. Each Work Order number shall be recorded with the time and date it is issued, and each time the COMPANY issues the Work Order number related to a task, it shall also communicate the date and time it is being issued.

ASSIGNMENT OF TASK PRIORITY: The city's representative may, when issuing a service call or making a service call, assign the task to which it is related a priority of high, medium, or low. If no such priority assignment is expressly made, then the task shall be deemed medium priority.

ESCALATION PENALTIES: shall mean those monetary penalties imposed on the COMPANY for failure to meet the level three deadlines set out in the escalation process.

## **SCOPE OF SERVICES**

CITY agrees to engage COMPANY and COMPANY agrees to furnish the services described in **Exhibit A** related to CITY's Network but excluding those services identified as "Excluded Services" in **Exhibit A**. The COMPANY will provide professional computer hardware technical support to the CITY based on SERVICE CALLS from or by AUTHORIZED CITY EMPLOYEES, the procedure for which is more specifically set out below in **Exhibit C**. Without limiting the generality of the foregoing, the COMPANY shall perform the services for the CITY at the direction of the CITY'S REPRESENTATIVE or other AUTHORIZED CITY EMPLOYEES.

## **SERVICE PROCEDURES AND SERVICE LEVEL AGREEMENT**

The Procedures and processes to be followed, and the Service Level Agreement regulating the performance of services by COMPANY to CITY, are identified in **Exhibit C**. COMPANY will regularly report monthly on its performance in regard to the stated service performance metrics, and CITY will be entitled to a discount on the monthly invoice if COMPANY fails to achieve the stated service performance metrics as indicated in **Exhibit C**.

## **FEEES FOR SERVICES, COSTS AND EXPENSES**

CITY agrees to pay COMPANY pursuant to the fee schedule described in **Exhibit B**. CITY is exempt from sales taxes and fees.

## **INVOICING AND PAYMENT**

Payment by the CITY shall be made on a monthly basis after services have been rendered. COMPANY will provide written invoices detailing all Services rendered and parts provided or installed within fifteen (15) days after the end of each calendar month. CITY shall pay all invoices within thirty (30) days of CITY's receipt of COMPANY's invoice. Payments are deemed made by CITY upon receipt by COMPANY.

Where there is a charge not covered by the fixed-price contract for Information Technology Services, the COMPANY shall submit invoices, in triplicate, upon completion of each billable task, such statement to include a detailed breakdown of all charges for that monthly period and the CITY Purchase Order Number. No invoice will be paid which does not reference the CITY Purchase Order.

Invoices shall be based upon actual services rendered and actual hours of performance. Invoices for services based on the Scope of Services will be paid monthly in arrears. All such invoices will be paid promptly by the CITY unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The COMPANY shall provide complete cooperation during any such investigation. All invoices shall be forwarded to the following address:

Eagle Mountain City  
1650 E. Stagecoach Run  
Eagle Mountain, Utah 84005  
Attention: Accounts Payable

## **EXAMINATION OF RECORDS**

- a. The COMPANY agrees that the CITY Office of the Purchasing Agent, or his/her duly authorized representative, shall, until the expiration of five years following the final payment on the contract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the COMPANY involving transactions related to the contract in question.
- b. The COMPANY further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the CITY or any duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such COMPANY involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts of purchase orders for public utility services at rates established for uniform applicability to the general public.

- c. The periods of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

## **COMPANY RESPONSIBILITIES**

- A. COMPANY shall perform services for the CITY as stated in this AGREEMENT.
- B. The COMPANY must meet and maintain throughout the life of this AGREEMENT each of the following requirements:
  - The COMPANY must be able to perform the scope of services in a timely and efficient manner as regulated by Exhibit B.
  - The individual(s) who will be on-site delivering services must be, at a minimum A+ Certified, and have immediate access to a Microsoft Certified Systems Engineer (MCSE) or equivalent. Individuals on site must be certified in MS Windows XP, MS Windows Servers, Microsoft desktop applications and have six (6) years experience in the computer and network repair field.
  - The individuals who will be ON-SITE delivering services and/or who will have off-site access to computer equipment, hard drives, and other media owned by the CITY, must consent to a criminal background check. Such individuals must not have any convictions or pending cases for any felony, or for any offense that involves theft, dishonesty, criminal mischief, or is computer related. The company shall provide the CITY'S REPRESENTATIVE with a list of such persons, and the COMPANY must pay any fees associated with criminal background checks not to exceed \$25.00 per person, which fees may be deducted from any payments made by the CITY to the COMPANY.
  - Be able to provide services at any place where a CITY computer or system is located.

## **CUSTOMER RESPONSIBILITIES.**

- a. In order that COMPANY may provide its Services under this Agreement, CITY shall establish and continuously provide, at CITY's cost and expense, appropriate telecommunication access lines through which COMPANY can remotely access CITY's computer system and servers. All such telecommunication access lines shall be established and maintained by CITY in accordance with the technical requirements and specifications of COMPANY. CITY shall provide COMPANY with all necessary usernames and passwords required to access network resources for COMPANY to conduct work related to the Services. (e.g., administrator usernames and passwords as appropriate).
- b. CITY shall provide access to the premises and facilities where CITY's computer equipment is located, and provide an adjacent work area that includes adequate lighting, power outlets, a telephone line and at least one data transmission line, if applicable, for troubleshooting and testing communications, and allow COMPANY technical personnel reasonable access to its premises and facilities for performance of Services.
- c. CITY shall identify one member of its technical staff and one alternate to act as the primary ("**CITY Representative**") responsible for all communications with COMPANY's technical support representatives. CITY's CITY Representative shall have sufficient technical expertise, training and/or experience for CITY to perform its obligations hereunder.

d. CITY shall develop, implement, perform and monitor appropriate data backup and disaster recovery operations. CITY is solely responsible for and shall at all times maintain adequate backup copies of its electronic and other data. Notwithstanding anything to the contrary in this Agreement, COMPANY shall not be responsible for CITY's failure to do so, nor for the cost of reconstructing data stored on disk files, tapes, memories, etc. which is lost or destroyed during the performance of Services performed hereunder.

e. CITY acknowledges and agrees that COMPANY's performance of its Services is dependent in part on CITY's cooperation. Any dates or time periods relevant to COMPANY's performance will be extended appropriately and equitably to reflect any delays due to CITY's failure to provide the cooperation and assistance necessary or expedient for the performance of Services by COMPANY.

f. CITY acknowledges that it is solely responsible for all aspects of providing applicable network security software licenses and necessary vendor subscription services (maintenance) and for network security and protection of its data and trade secret information, including limiting access of third parties (such as employees, agents or unauthorized persons) by way of user names and strong passwords, user-level security, data encryption, virus detection software, etc. While some of the Services rendered by COMPANY under this Agreement may enable COMPANY to alert or manage CITY of any network security breaches, or the presence of software or operating system viruses, if detected, COMPANY disclaims any and all responsibility or liability arising from or related to any Network security breaches, viruses, lost data, theft of trade secrets or other incidental or consequential damages arising therefrom unless introduced to the City system by the Company.

## **NON-DISCRIMINATION**

During the performance of the contract, the COMPANY shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, national origin except when religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operations of the COMPANY. The COMPANY shall post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

The COMPANY, in all solicitations or advertisements for employment placed by or on behalf of the COMPANY, will state that the COMPANY is an equal opportunity employer.

The COMPANY shall include the provisions of this nondiscrimination clause in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon the subcontractor or vendor.

## **ETHICS IN PUBLIC CONTRACTING**

A. The CITY and COMPANY will follow the ethics in public contracting requirements of the State of Utah as well as all local, State and Federal law concerning contractual service procurement.

B. Any Contract which violates the contracting ethics in the Utah Code may be voided and rescinded immediately by the CITY.

## **CRIMINAL SANCTIONS**

The provisions referenced in item above supplement, but do not supersede, other provisions of local, State and Federal law. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Municipal Officers and Employees Ethics Act

10-3-1301 et seq Utah Code (as amended). To the extent that violations of the ethical standards of conduct constitute violations of the Utah Code, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth.

### **LICENSE REQUIREMENT**

COMPANY is required to be licensed in accordance with the CITY's Business Licenses and Business and Occupational Tax rules.

### **PROPRIETARY INFORMATION**

The COMPANY agrees that Proprietary/Confidential information submitted in its Proposal in response to the CITY's Request for Proposal is part of the public documentation.

### **ASSIGNMENT AND DELEGATION**

COMPANY will not assign or delegate the performance of its duties under this Agreement without the prior written approval of CITY, which approval shall not be unreasonably withheld. No assignment shall relieve either party of the performance of any accrued obligation which such party may then have under this Agreement.

### **SUBSTITUTIONS**

No Substitutions including key personnel (i.e., Project Manager) or cancellations permitted after award without written approval by the CITY Manager or CITY Representative, which will not be unreasonably withheld.

### **PROHIBITION AS SUBCONTRACTORS**

No Proposer who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the firm to who the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

### **SAFETY**

All contractors and subcontractors performing services for the CITY are required to comply with OSHA standards and accepted safety rules and regulations.

### **HOLD HARMLESS CLAUSE**

The COMPANY shall provide that during the term of the contract, including any warranty period, the firm shall indemnify, defend, and hold harmless the CITY, its officials, employees, agents, and representatives thereof from all suits, actions, or claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights, sustained by any person or property in consequence of any neglect or misconduct in contract work, or on account of any act or omission by the COMPANY or his employees, or from any claims or amounts arising from violations of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include all claims and damages involving infringement of patent or copyrights.

### **INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

All control work, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the CITY.

COMPANY understands that it has been hired by CITY for the purpose of performing the Services. Consequently, CITY shall own all rights, titles, interest in and to all Intellectual Property Rights first produced by COMPANY in the performance of the Services and delivered to CITY as required by or in connection with the Services, and COMPANY hereby assigns and transfers to CITY full and complete ownership of all such Intellectual Property Rights. As used herein, "Intellectual Property Rights" means, in its broadest terms, ideas, inventions, works of authorship, trade secrets, enhancements, improvements, suggestions, error corrections, modifications, trade secrets, patents, copyrights, and the like and any other proprietary or property right under the laws of any nation in the world. CITY shall have the right to obtain and hold, in its own name, all registrations, applications or any such other similar protection for any and all of the foregoing. CITY shall have the sole right to make, have made, sell, license, lease, copy, execute, display, modify, distribute (internally or externally), perform, prepare, derivative works based upon or otherwise dispose of the foregoing and authorize others and make any necessary assignment or transfer to do any or all of the foregoing, whether in connection with any marketing and licensing of the foregoing and/or otherwise.

## **COPYRIGHT**

The COMPANY hereby irrevocably transfers, assigns, sets over and conveys to the CITY all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Agreement. The COMPANY further agrees to execute such documents as the CITY may request to effect such transfer or assignment.

Further, the COMPANY agrees that the rights granted to the CITY by this paragraph are irrevocable. Notwithstanding anything else in this Agreement, the COMPANY's remedy in the event of termination of or dispute over the terms of this Agreement shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Agreement is prohibited unless the CITY approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the COMPANY for work related to work pursuant to this Agreement.

## **CONFIDENTIALITY**

COMPANY agrees (a) to hold Confidential Information in strict confidence; (b) not to disclose Confidential Information to any third party except upon CITY's prior written consent; (c) to use reasonable precautions and processes to prevent the unauthorized disclosure of CITY's Confidential Information. As used in this Agreement, "Confidential Information" means all information or material that has or could have commercial value or other utility or that has or could be considered a private record, protected record or exempt from disclosure, as referred to in UTAH CODE ANN. § 63-2-101, et seq. Provided, however, CITY and COMPANY may communicate to each other certain information to enable their respective personnel to render Services. CITY and COMPANY agree (a) to obligate their employees to treat as secret and confidential all such information whether or not identified as confidential, and (b) to not disclose such information or make available any reports, recommendations, and/or work product which either party produces for the other to any person, firm or corporation, or use it in any manner whatsoever. The obligations of this Section 6 shall not apply, however, to any information which (a) already is in the public domain or becomes available to the public through no breach of this Agreement by the receiving party; (b) was lawfully in the receiving party's possession prior to receipt from the disclosing party; (c) is received independently from a third party free to lawfully

disclose such information to the receiving party; or (d) is subsequently independently developed by the receiving party.

## **INJUNCTIVE RELIEF**

COMPANY acknowledges that the unauthorized use or disclosure of Confidential Information would cause irreparable harm to CITY. Accordingly, COMPANY agrees that CITY will have the right to obtain an immediate injunction against any breach or threatened breach of Section 6 of this Agreement as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

## **INSURANCE REQUIREMENTS**

The COMPANY shall provide to the CITY Purchasing Agent a Certificate of Insurance indicating that the COMPANY has in force the coverage below prior to the start of any Work under this Contract. The COMPANY agrees to maintain such insurance until the completion of this Contract. All required insurance coverages must be acquired from insurers authorized to do business in the State of Utah and acceptable to the CITY with a Bests Rating of AAA or better. The minimum insurance coverage shall be:

Workers Compensation - Utah Statutory Workers Compensation (W/C) coverage including Utah benefits and employers liability with limits of \$100,000/100,000/500,000.

Commercial General Liability - \$1,000,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

Additional Insured - CITY, its officers, elected and appointed officials, and employees shall be named as an additional insured in the COMPANY's Commercial General Liability policy; evidence of the Additional Insured endorsement shall be typed on the certificate.

Cancellation - All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to the Purchasing Agent, Eagle Mountain City, Utah." Therefore, the words "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the COMPANY, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

Contract Identification - The insurance certificate shall state this Contract's number and title.

Business Automobile Liability - \$500,000 Combined Single Limit (Owned, non-owned and hired).

The COMPANY shall carry Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render professional services or perform Work under the contract, in the amount of \$1,000,000.

The COMPANY assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted Work.

No acceptance or approval of any insurance by the CITY shall be construed as relieving or excusing the COMPANY from any liability or obligation imposed upon the COMPANY by the provisions of the Contract Documents.

The COMPANY shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work.

The COMPANY shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the COMPANY may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the alternative coverages are submitted to and acceptable to the CITY.

### **AUTHORIZATION TO PROCEED**

The extent and character of the services to be performed by the firm shall be subject to the general control and approval of the CITY Administrator of the CITY of Eagle Mountain or his authorized representative(s). The firm shall not comply with request and/or orders issued by other than the CITY Administrator or his authorized representative(s) acting within their authority for the CITY of Eagle Mountain. The CITY of Eagle Mountain will issue a Purchase Order for this contract. No work shall be done which is not covered by a CITY of Eagle Mountain Purchase Order and without an Authorization to Proceed.

### **CONTRACT PERIOD AND RENEWAL**

The contract shall cover a one-year period beginning with the commencement of services date in the contract award. This contract may be renewed upon the same pricing, terms, and conditions at the expiration of its term for successive one (1) year renewal periods by mutual agreement between the parties. Hourly rates for overages may be adjusted by mutual agreement at the beginning of the second contract year and all subsequent years by an amount not to exceed the most current Consumer Price Index for the Utah area as published by the Bureau of Labor Statistics, U.S. Department of Labor.

Notice of intent to renew will be given to the COMPANY in writing by the CITY of Eagle Mountain, normally ninety (90) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the CITY of Eagle Mountain to a contract renewal.

### **TERMINATION**

Subject to the provisions below, the contract may be terminated by the CITY of Eagle Mountain upon thirty (30) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then this contract may be extended upon written approval of the CITY of Eagle Mountain until said work or services are completed and accepted.

#### **a. Termination for Convenience**

In the event that this contract is terminated or canceled upon request and for the convenience of the CITY of Eagle Mountain, without the required thirty (30) days advance written notice, then the CITY of Eagle Mountain shall negotiate reasonable termination costs, if applicable.

b. Termination for Cause

The CITY shall have sole discretionary power to terminate this contract for cause, default, or negligence on the part of the COMPANY at any time. Termination by the CITY of Eagle Mountain for cause, default or negligence on the part of the COMPANY shall be excluded from the foregoing provision (a) hereinabove; termination cost, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

If funds are not appropriated or otherwise made available to support continuation of the performance of this contract in a subsequent fiscal year, then the contract shall be canceled and the COMPANY shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

## **PERFORMANCE OF SERVICES**

The Services shall be provided by COMPANY in accordance with the limited warranty set forth in Section "Warranties" below. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with COMPANY.

## **WARRANTIES**

a. COMPANY will perform the Services in a good and workmanlike manner consistent with the generally prevailing standards of practice for similar services in Utah County, Utah by qualified, competent, industry certified technicians and engineers. If CITY notifies COMPANY in writing of any defects in Services provided or furnished by COMPANY within ten (10) calendar days after the date COMPANY performs the Services, COMPANY shall, as CITY's sole and exclusive remedy, reperform the Services, free of charge to CITY. If COMPANY is not notified of problems within such warranty period, the Services shall be deemed accepted by CITY. This limited warranty relates solely to Services and excludes parts or materials and problems arising from or related to Excluded Services, misuse, abuse, neglect, accident or improper maintenance (other than Services performed by COMPANY). This limited warranty shall be null and void if CITY or any third party alters or modifies the Network or any relevant component thereof in any manner after COMPANY performs the Services. THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, RELATED TO THE SERVICES.

b. With respect to all parts or materials furnished by COMPANY hereunder, COMPANY shall, and hereby does, sell, assign, transfer and pass-through to CITY all applicable manufacturer's or distributor's warranties covering such parts or materials, to the extent assignable. If CITY notifies COMPANY in writing of any defects in parts or materials provided or furnished by COMPANY within the applicable manufacturer's warranty period, COMPANY shall, as CITY's sole and exclusive remedy as between CITY and COMPANY, replace any part or parts found to be defective in material or workmanship as provided under the applicable manufacturer's warranty. If COMPANY is not notified of problems within such warranty periods, the parts and materials shall be deemed accepted by CITY. This limited warranty excludes normal wear and tear on parts or components thereof and equipment problems arising from or related to misuse, abuse, neglect, accident or improper maintenance (other than Services performed by COMPANY). This limited warranty shall be null and void if CITY or any third party alters or modifies the equipment or parts in any manner after COMPANY delivers and installs the parts or materials. THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER

WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, RELATED TO THE PARTS OR MATERIALS FURNISHED UNDER THIS AGREEMENT.

c. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO CITY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST REVENUES, LOST PROFITS OR LOST DATA.

d. CONTRACTOR'S LIABILITY TO CITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF: (i) THE AMOUNT OF THE COMPENSATION DUE TO CONTRACTOR ATTRIBUTABLE TO THE MONTH IN WHICH THE ACT OR OMISSION OF CONTRACTOR COMPLAINED OF OCCURRED OR (ii) THE REASONABLE VALUE OF THE PARTICULAR SERVICES IN WHICH THE ACT OR OMISSION OF CONTRACTOR COMPLAINED OF OCCURRED.

### **APPLICABLE LAW**

The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah.

### **CONTRACT ORDER OF PRECEDENCE**

The contents of the Proposal submitted by the successful COMPANY and terms, conditions, particular requirements, and specifications contained in Request for Proposal for RFP IT012009 issued by the CITY and the Purchasing Regulations shall be incorporated into the terms and conditions of this contract to the same extent as if they had been set out fully. To the extent that any conflict arises between the provisions of this Contract and those of the Request for Proposals and the Purchasing Regulations, they shall be resolved by giving first preference to the Purchasing Regulations, then to this Contract, then to the Proposal Response from the COMPANY, and then the Request for Proposals.

### **CONFLICT OF INTEREST**

In the event that a conflict of interest arises with the COMPANY acting as the CITY's authorized consultant on a specific job, the CITY reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

### **DISPUTE RESOLUTION**

Arbitration shall not be applicable for the resolution of disputes between CITY and COMPANY. Should any disputes arise with respect to this contract, COMPANY and the CITY agree to act immediately in good faith to resolve any such disputes. COMPANY agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement in the accomplishment of all non-disputed work; any additional costs incurred by COMPANY as a result of such failure to proceed shall be borne by COMPANY, and COMPANY shall make no claim against the CITY for such costs. CITY can withhold in an escrow account fees associated with the dispute due COMPANY as a guarantee to resolve said disputes. During this period COMPANY cannot withhold support, maintenance or hot line support.

Disputes by the COMPANY with respect to this Contract shall be decided in the first instance by the CITY Administrator, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the COMPANY. This decision shall be final and binding unless within twenty (20) days from the date of such decision the COMPANY mails or otherwise furnishes the CITY

Administrator a written appeal addressed to the CITY Administrator. Decision by the CITY Administrator shall be final and binding unless a timely appeal is made within thirty (30) days to the District Court of Utah County, Utah. The decision of the CITY Administrator shall be final and binding unless set aside by a Court of competent jurisdiction in Utah County, Utah as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision, the COMPANY shall proceed diligently with the performance of the Contract in accordance with that decision.

## **RIGHTS AND REMEDIES**

The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

## **NOTICE**

Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, certified mail and addressed to the parties as set forth below:

CITY: Eagle Mountain City  
Fionnuala B. Kofoed  
Eagle Mountain City Recorder  
1650 E Stagecoach Run  
Eagle Mountain, UT 84005

COMPANY: NetWize IT Service  
Todd Winzenried, Owner  
702 W. Confluence Ave  
Salt Lake City, UT 84123

## **TIME IS OF THE ESSENCE**

Time is the essence hereof; provided that this provision shall not impose additional duties or performance completion deadlines on COMPANY other than as set forth in Exhibit C. Time is of the essence in the COMPANY'S PERFORMANCE under this AGREEMENT. The COMPANY recognizes that the CITY is a local government that provides important services to the general public, and that public policy demands timely performance under this AGREEMENT. The COMPANY shall be able to and shall receive SERVICE CALLS 24 hours per day, seven days per week. All time limits and deadlines stated in this AGREEMENT shall apply 24 hours per day, seven days per week, unless otherwise specifically provided.

## **FORCE MAJEURE**

Neither party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, strikes or other labor disturbances, shortages of material, supplies or utilities. In the event of such event, the time for performance will be extended for a reasonable period.

## **NO IMPLIED LICENSES**

Nothing in this Agreement will be construed, either expressly or by implication, as granting to either party any rights, title or interest in or to the confidential or proprietary information of the other party or any intellectual property rights or interests of the other party.

## **EMPLOYMENT STATUS.**

- a. Official Status. COMPANY shall have complete control and discretion over all personnel providing Services hereunder. All such personnel shall be and remain employees of COMPANY and shall be considered to be independent contractors.
- b. Salary and Wages. CITY shall not have any obligation or liability for the payment of any salary or other compensation to personnel providing Services hereunder.
- c. Employment Benefits. All personnel providing Services hereunder are and shall remain employees of COMPANY. All personnel providing Services shall have no right to any CITY pension, civil service or any other CITY benefits pursuant to this Agreement or otherwise.

## **ALCOHOL AND DRUG-FREE WORK PLACE**

All personnel during such time that they provide Services shall not be under the influence of alcohol, any drug or combined influence of alcohol or any drug to a degree that renders the person incapable of safely providing the Services. Further all personnel during such time that they provide Services shall not have sufficient alcohol in his body, blood or on his breath that would constitute a violation of UTAH CODE ANN. § 41-6-44 or any measurable controlled substance in his body that would constitute a violation of UTAH CODE ANN. § 41-6-44.6.

## **SOLICITATION OF EMPLOYEES.**

CITY shall not solicit, hire or employ, either directly or indirectly (by way of employment, consulting, or other agency or independent contractor relationship) any COMPANY employees or agents (including, but not limited to, technical employees) who perform Services under this Agreement at any time during the term of this Agreement or during the period ending one year after the date COMPANY last performs Services for CITY under this Agreement. If CITY's direct or indirect solicitation of a COMPANY employee results in that person providing services to CITY (other than through COMPANY, regardless of legal relationship), CITY shall pay COMPANY an amount equal to ½ of that individual's then-current annualized salary with COMPANY, which sum is intended as liquidated damages to compensate COMPANY for its actual and potential damages (i.e., recruiting and training costs, etc.). CITY stipulates and agrees that potential damages to COMPANY are not susceptible of accurate estimation at this time and that the foregoing liquidated damages amount is reasonable and not a penalty.

COMPANY shall not solicit, hire or employ, either directly or indirectly (by way of employment, consulting, or other agency or independent contractor relationship) any CITY employees or agents (including, but not limited to, technical employees) who are involved in the administration of Services under this Agreement at any time during the term of this Agreement or during the period ending one year after the date COMPANY last performs Services for CITY under this Agreement, without written approval of the CITY Administrator.

## **EXHIBITS AND RECITALS**

The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

The following are attached hereto and adopted herein by reference:

- Exhibit A: Scope of Services
- Exhibit B: Cost of Services and Service Hours
- Exhibit C: Service Procedures and Service Level Agreement
- Exhibit D: COMPANY Vendor's Proposal.
- Exhibit E: CITY Request For Proposal

## **MISCELLANEOUS CLAUSES**

### **Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

### **Titles and Captions**

All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

**Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

## **BINDING AGREEMENT**

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

## **SURVIVAL**

All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

## **WAIVER**

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

## **SEVERABILITY**

In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

**IN WITNESS WHEREOF**, Eagle Mountain Utah, authorized and approved this Agreement to be signed by its Mayor and attested by its City Recorder and the COMPANY executed this Agreement by its authorized agent on the dates set forth below.

**EAGLE MOUNTAIN CITY**

By: \_\_\_\_\_

Christopher Pengra, Mayor

**ATTEST**

\_\_\_\_\_  
Fionnuala B. Kofoed, MMC  
City Recorder

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeremy Cook, Eagle Mountain City Attorney

**COMPANY:**

**NetWize IT Service, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### SCOPE OF SERVICES

CITY agrees to engage COMPANY and COMPANY agrees to furnish the services described below related to CITY's Network but excluding those services identified as "Excluded Services" below (the "**Services**"). The COMPANY will provide professional computer hardware technical support to the CITY based on SERVICE CALLS from or by AUTHORIZED CITY EMPLOYEES, the procedure for which is more specifically set out below. Without limiting the generality of the foregoing, the COMPANY shall perform the services for the CITY at the direction of the CITY'S REPRESENTATIVE or other AUTHORIZED CITY EMPLOYEES:

1. Work closely with the CITY's Representative to coordinate Service Calls as outlined in this agreement.
2. Provide service hours for all offices and locations weekdays from 8:00a.m. – 5:00p.m.
3. Provide the CITY with a Single Point of Entry, which will allow authorized CITY representatives to initiate a service call, recorded with a Work Order number, and reported in a weekly Work Order status report.
4. Accomplish all the essential functions of the work under contract in a timely manner as stated in Exhibit C.
  - a. Be responsive to Priority Assignment of Task;
  - b. Use an effective Escalation Process;
  - c. Be subject to Escalation Penalties.
5. Respond to multiple simultaneous Service requests with pre-qualified technical service personnel within time frames set out in the written Contract entered into by the parties.
  - a. High Priority calls – 1-hour response time required.
  - b. Medium Priority calls – 4-hour response time required.
  - c. Low Priority calls – Next business day response required.
6. Provide comprehensive Help Desk Administration and Support, and a ticketing system via NetWize to assure timely support and service to EAGLE MOUNTAIN and tracking by service requestor and CITY Representative.
7. For other support and service required after regular hours, provide after-hours and weekend support on a scheduled or demand basis, one (1) after hours or weekend on-site support calls per quarter. Unused calls may accumulate for use later in the contract year but will expire at the end of the contract anniversary date.
8. Provide scheduled major system updates and upgrades, server and router reboots, and Sever Imaging after hours or on weekends as necessary.
9. Provide semi-annual desktop updates and regular, automated updates as necessary.
10. Provide complete confidentiality and security for all computers, networks, data, hard drives and other computer media, and information owned or generated by the CITY or associated with the work performed for the CITY.
11. Provide at least one technician (Desktop Support Level) to be periodically scheduled on-site during normal business hours.
12. Install, configure, and document network hardware and peripherals, computers and computer equipment and peripherals, operating systems, applications, and listed software utilized by the CITY. Installation shall include where applicable delivery, unloading, uncrating, assembling, setting in place, fastening to walls, floors, counters or other structures or fixtures where required, and the connection of all components of the system, plus all other related work including the final "burn in" of the system.
13. Install, configure, setup, network connection and network print services, print drivers, synchronization with active directory, and test new desktop hardware and peripherals.
14. Diagnose and repair network hardware and peripheral equipment, such as hubs, switches, routers, media converters, fiber optic repeaters, network connections; test and evaluate new hardware.
15. Perform general maintenance tasks necessary to keep equipment and tools in operable condition, which may include inspecting/testing equipment, lubricating equipment,

- replacing parts, cleaning equipment, and cleaning work areas; monitors equipment operations to maintain efficiency and safety; report faulty equipment.
16. Testing and implementation recommendations prior to updating network server and desktop operating systems, network, server, and desktop system utilities such as anti-virus, anti-spyware, and anti-spam, and enterprise tools such as email.
  17. Accomplish or attempt to accomplish hard drive recovery and return. However, the use of 3<sup>rd</sup> party data recovery service is not implied or included.
  18. Provide on-site and 24 hour remote and automated monitoring, administration, and diagnostics of network and network servers and provide:
    - a. Rapid alert notification of danger or failure
    - b. Uptime and performance on assessment and correction
  19. Provide Capacity and Storage Management, monitoring data sizing, data indexing and affects on system performance, through the use of open source tools provided by COMPANY.
  20. Provide on-going network and server tuning and load balancing for optimum system and application performance.
  21. Provide server migration from current servers to new servers as purchased.
  22. Provide Server and consolidation plan and services.
  23. Provide management of system data backups, including testing and verification.
  24. Provide profile management and policies through Microsoft Active Directory.
  25. Maintain documentation of services provided to each item of equipment for the CITY's evaluation; provide the CITY Representative with copies of the documentation.
  26. Maintain, after initially provided by CITY, all network, hardware and peripheral warranty information and notify CITY of expiration and renewal procedures.
  27. Provide management of uninterruptible power supplies, remote monitoring, graceful shutdown processes, and regular and recurrent testing and verification.
  28. Provide complete anti-virus monitoring and spyware management and updating.
  29. Provide critical patch deployment.
  30. Provide full IT asset documentation and reporting.
  31. Provide the CITY's Representative with Servers' and Applications' Reliability Reports.
  32. Provide through Microsoft Active Directory User Account Management, archiving, new user set-up, re-purposing.
  33. Provide desktop computer Image maintenance.
  34. Manage the Microsoft Exchange server and mail services.
  35. Provide comprehensive recovery services of network servers and desktop computers, including hard drive recovery and return. However, the use if 3<sup>rd</sup> party data recovery service is not implied or included.
  36. Provide profile management and policies, in cooperation with the CITY, implemented once the mutually agreed upon written policy is approved by the CITY.
  37. Provide policy implementation, monitoring, and maintenance (i.e. web use, passwords, etc.) in cooperation with the CITY, implemented once the mutually agreed upon written policy is approved by the CITY.
  38. Provide initial setup for new users, including desktop and network connectivity, Treo, thumb drives, portable drives and other local devices.
  39. Provide new user orientation, and support on Microsoft Outlook and Microsoft Office Applications on a scheduled basis.
  40. On employee departure, backup, clean, and reconfigure, setup, network connect and test employee's desktop on a scheduled basis.
  41. Provide first responder intermediary support to the CITY for arbitration of hardware and operating system issues related to third party application software. The list of Supported 3<sup>rd</sup> Party Applications are:
    - a. Springbrook Software
    - b. GIS/ESRI
    - c. Sportsman SQL
    - d. ITRON
    - e. SIRE

- f. SCADA
  - g. iWorqs
42. Provide pro-active assessment and recommendations regarding new technology that would contribute to the robustness and reliability of IT operations in a quarterly assessment.
  43. Provide Information Technology Project Management services to assure quality and timely service and support delivery.
  44. Establish quarterly communication meetings with CITY personnel and other individuals as needed to discuss work in progress, exchange information, and resolve problems.
  45. Maintain good interpersonal relationships with CITY staff, co-workers, managers, and citizens.

Notwithstanding anything to the contrary in this Agreement, COMPANY shall have no obligation under this Agreement to provide any of the following services to CITY ("**Excluded Services**"): (a) altering, modifying or otherwise customizing any operating system software, application software or other software or computer code; (b) electrical work that requires an electrician, mechanical or other construction repairs; (c) repair or maintenance of copiers, whether connected to CITY's Network or not; (d) services of a type or nature (or as to particular items of equipment) which are not normally performed by COMPANY in the ordinary course of its business; (e) incorporation, attachment or implementation of a feature, program or device which is not compatible with CITY's computer network or any part thereof; or (f) or which is not configured, installed or serviced in the ordinary course of COMPANY's business.

**EXHIBIT B  
COST OF SERVICES AND SERVICE HOURS**

There is no charge for travel time to CITY to perform services.

If CITY requests (including verbal requests) expedited or emergency Services and COMPANY provides Services outside its normal business hours, CITY shall pay the labor rate surcharges, subject to the minimum labor hours, specified below. Service hours will not be considered to be "Extended" if the service tasks commenced during "Normal" service hours. "Weekend" service hours will be invoiced only if they do not fall within the scope of agreed upon weekend service tasks as indicated in **Exhibit A: Scope of Services**.

Any service work outside the agreed upon monthly allotment of hours for the month will be invoiced at the rates agreed upon in the COMPANY'S Proposal.

	<b>SERVICE HOURS</b>	<b>SURCHARGES</b>
Normal	Monday through Friday, 8:00 a.m. to 5:00 p.m.	None
Extended	Monday through Friday, 5:01 p.m. to 7:59 a.m. next morning; Saturday, 8:00 a.m. to 5:00 p.m.	Proposal Rate x 1.5 (2 hr. minimum)
Weekend	Saturday, 5:01 p.m. to midnight, Sunday, Monday 12:01 a.m. to 7:59 a.m., and National Holidays	Proposal Rate x 2 (2 hr. minimum)

**EXHIBIT C**  
**SERVICE PROCEDURES AND SERVICE LEVEL AGREEMENT**

**A. GENERALLY**

**SERVICE RESPONSE LEVELS**

COMPANY's technical personnel shall respond to service requests received during normal business hours within the following incident/severity policy time periods:

Severity Level	Maximum Response Time	Severity Description
High	1 Hours	An incident affecting more than 25 users, production network is down or application providing critical business function that has a critical impact to business operations
Medium	4 Hours	Individual is out of service, production network is severely degraded
Low	Next Business Day	Intermittent outage, user able to do work, Work request, minor or cosmetic repair, product installation or configuration

**SERVICE PERFORMANCE METRICS**

COMPANY agrees to the following service level agreements. Specifically, COMPANY agrees to:

1. COMPANY will resolve or facilitate the resolution of 98% of all server hardware problems by the end of the next-business day or within 2- business days, unless service part logistics or shipping services dictate otherwise.
2. 95% of all workstation hardware problems will be resolved by the end of two business days, unless service part logistics or shipping services dictate otherwise.
3. 98% of all standard application software related issues will be resolved within 2 business hours
4. COMPANY agrees to be in compliance with the above service performance metrics a minimum of 95% of the time over the course of each month. If not, that month will be designated as a period of non-compliance by COMPANY, and COMPANY agrees to a 10% discount on each non-compliance monthly invoice.

**B. ESCALATION PROCESS**

Netwize will dispatch all calls directly to the technician that will be servicing the equipment. This process expedites services and gives Eagle Mountain City a single point of contact for a service request. NetWize has an escalation process for service calls that are not resolved within the allotted timeframe.

The escalation flow allows the technician to first resolve the issue and then if needed, allow for further escalation through NetWize management. NetWize management requires technicians to escalate service requests to vendor technical support and 2<sup>nd</sup>, and 3<sup>rd</sup> tier support on more troublesome issues. NetWize management can help

determine what course of action needs to be taken to minimize the downtime of the effected users.

The following outlines the escalation time frame and path associated with the response and resolution requirements of Eagle Mountain City account.

<b>Escalation Path</b>	<b>Response Escalation at 75% of Service Level Agreement Interval – Every 20 Minutes</b>	<b>Resolution Escalation at 75% of Service Level Agreement Interval – Every 20 Minutes</b>
Technician	30 minutes	4 hrs
Service Manager	1 hrs	8 hrs
Director of IT Services	1.5 hrs	10 hrs
President of Netwize IT Service, Inc.	2.5 hrs	14 hrs

**EXHIBIT D  
COMPANY'S PROPOSAL**

**EXHIBIT E**  
**CITY'S REQUEST FOR PROPOSAL**

## **Re: Eagle Mountain City IT Service - Request for Proposals**

Eagle Mountain City is now accepting proposals for reliable, experienced, and affordable systems network and computer administration services (IT service). Eagle Mountain City will consider companies and/or individuals who can provide the level of service necessary to meet the scope of services and qualifications found below.

### **A. IT Scope of Services**

All proposals must address the ability to provide the following minimum scope of services:

- Availability to start providing services on April 1, 2016.
- Provide both on-site and remote tech support for 4 physical servers, 10 virtual servers in a Hyper-V Cluster, with 80 desktop/laptop stations in multiple building locations within Eagle Mountain.
- Tech support may include, but is not limited to:
  - Individual user and network support for software and hardware issues (ranging from general individual PC assistance, including but not limited to virus removal, general PC troubleshooting, re-imaging a hard drive, etc. – as well as network support for things such as restoring lost files from a server back-up tape drive, etc.)
  - Manage and support network systems with multiple routers and firewalls
  - Manage and support wireless network systems
  - Monitor, respond to, and troubleshoot server and network outages
  - Coordinate with other outsourced service and software providers as needed (Springbrook (Govt. accounting software), Express Bill Pay, Directcom, Sportsman, iWorQ, SCADA, Esri/GIS system, etc.)
  - Install and set up new hardware and software as needed
  - Set up new users on the network with specific access to network files and software
  - Syncing single-user laptop and desktop machines together over the network
- Provide month-to-month service hours. Longer contract time frames may also be considered.
- Provide as-needed evening and weekend service coverage 24x7x365 (technician availability – either remote or on-site).
- Provide 24x7x365 network systems monitoring with ability to notify the City if problems occur (i.e., failed back-up tape drive, network connectivity issues, etc.).
- Recommend, order, and install new hardware, software, and network system components as needed to maintain compatibility with technological advances and City needs.

## 1. Proposal Guidelines and Requirements

- a. This is an open and competitive process.
- b. Proposals received after 4:00pm, Thursday, March 3, 2016, will not be considered.
- c. If the price excludes additional fees or charges, you must provide a detailed list of excluded fees with a complete explanation of the nature of those fees.
- d. If the execution of work to be performed by your company requires the hiring of sub-contractors you must clearly state this in your proposal. Sub-contractors must be identified with name, address, and phone number - and a list of the work they will perform must be defined.
- e. Provisions of this RFP and the contents of the successful responses are considered available for inclusion in final contractual obligations.
- f. If no suitable candidate is found as a result of this RFP advertisement, Eagle Mountain City reserves the right to re-advertise the RFP and/or not to select an IT service provider at this time.

## 2. Contract Terms

- a. Eagle Mountain City will negotiate final contract terms upon selection of a suitable candidate. All contracts are subject to review by Eagle Mountain City legal counsel. A candidate will not be officially awarded until after approval by the Eagle Mountain City Council and signing of an agreement and/or contract which outlines terms, scope, fees and other necessary items.

## 3. Bid / Proposal requirements

- a. List ability to meet requirements listed in section A above, 'IT Scope of Services';
- b. Include a breakdown of proposed bid amount for a month-to-month contract, providing the minimum services listed above. Please also include any additional billable services not included in the 'base services' proposal (i.e., hardware installation charges, etc.); Longer contract time frames may also be considered;
- c. Provide estimated response times when service calls are submitted for on-site assistance;
- d. Provide business qualifications including:
  - i. Company background
    1. Number of years in business;
    2. Number of employees;
    3. Company organizational chart.
  - ii. List of qualifications
    1. What qualifications do you and/or your technicians have that may be working on our systems?
    2. Describe your experience and length of time in providing IT services for similar sized organizations;
    3. Any hardware / software vendor partnerships;
  - iii. Location of headquarters and branch offices
  - iv. Three business referrals for similar sized organizations for which you currently provide IT service – including names and contact phone numbers of clients.
- e. Seven identical hard copies of the bid proposal must be submitted.

#### **4. Evaluation Criteria**

- a. The following criteria will form the primary basis upon which Eagle Mountain City will evaluate proposals:
  - Submittal of seven hard copies of the bid proposal received by the RFP due date.
  - Suitability of the Proposal – the proposed solution meets the needs and criteria set forth in the RFP, particularly those items found within the Scope of Services.
  - Candidate Experience and Expertise – Candidate has successfully provided similar IT services with other organizations and has the necessary qualifications to provide service to Eagle Mountain City.
  - Value/Pricing Structure – The price should be commensurate with the value offered by the proposer.
  - Depth and Breadth of IT Staff – The candidate firm has appropriate staff to provide 24x7x365 services for all ranges of possible IT network and individual user support.
  - Proposal Presentation – The information is presented in a clear, logical manner and is well organized.
  - Demonstrated commitment to high level of service as evidenced by the proposal and through provided references.