

Comprehensive IT Labor Services Agreement – Initial (Remainder) (CITLS)

1. Parties and Applicability

The terms and conditions of this Managed IT Maintenance Labor Contract Agreement (“Agreement”) apply to the services provided by: Sprocket Technologies, a Missouri Limited Liability Company, hereafter referred to as “SPROCKET”, to: City of Kirksville (hereafter referred to as “CLIENT”) with a principle place of business located at 201 S Franklin, Kirksville, MO, 63501.

2. Term / Automatic Renewal

This Agreement shall commence as of 09/01/2014 and shall become effective as of the date set forth below (“Effective Date”), and continue until December 31, 2014 (the “Initial Term”). The Contract will cover delivery and continued support and maintenance of the IT infrastructure. Installation and supplies may vary according to project.

3. Responsibilities of SPROCKET

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

4. Responsibilities of CLIENT

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

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

CLIENT is responsible for transportation, meals and expenses to/from any CLIENT site outside of the contracted CLIENT extended locations.

5. Hours of Service:

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

6. SERVICES

SPROCKET will provide IT labor and project services to CLIENT during regular (8:00 AM to 5:00 PM) business hours on an on-call, as needed basis, with remote support being preferred when possible. Additional hours beyond maintenance hours will be at the discounted rate shown in the Services Fee below.

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

Number Hours Monthly	Rate of Service Category	Normal Rate	Discounted Rate	Total
18.5	Support Services	\$96.00	\$81.00	\$1498.50
	Total Monthly Pre-Paid			

Unbilled/Unused hours will be carried or “rolled” over from one month to the next as appropriate.

8. Failure to pay

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

9. Termination of Agreement

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

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

Should either SPROCKET or CLIENT breach the terms of the Agreement, SPROCKET or CLIENT will provide the other with written notice of its failure to comply. If, after 30 days, the other has not complied with the terms of the Agreement, SPROCKET or CLIENT may terminate this Agreement. At that time, any unearned fee by SPROCKET will be refunded, or any fees owed by CLIENT will be paid, within the thirty (30) day period after termination. In the event that CLIENT

breaches the terms of this Agreement, SPROCKET shall be entitled to reimbursement from CLIENT for its reasonable attorneys' fees and costs associated with the breach. Either party may terminate this Agreement with ninety (90) days prior written notice. In the event SPROCKET terminates this Agreement under this provision, CLIENT shall be entitled to a refund of any unearned fees by SPROCKET. In the event of this Agreement is terminated, any property, including hardware and/or software, needed to deliver the Services to CLIENT which is the sole property of SPROCKET may be removed from the CLIENT'S premises, and CLIENT grants SPROCKET the right of access to the Authorized Location or any location where such property is being stored.

10. Miscellaneous

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

Limitation of Liability: SPROCKET, its directors, officers, employees, and agents shall not be liable for any damages suffered by the CLIENT other than actual damages directly and proximately resulting from the failure, delay, or nonperformance of the Services to be provided by SPROCKET under this Agreement. The liability of SPROCKET whether arising out of contract, tort, breach of warranty, infringement or otherwise, shall not include liability for loss of profits, loss or inaccuracy of data or indirect, special, incidental or consequential damages even if SPROCKET is made aware that such damages have been incurred by CLIENT. In any event, the total liability of SPROCKET to CLIENT for such direct damages will be limited and will not exceed the total fees paid to SPROCKET under this Agreement in the prior twelve month period.

Client Warranty With Regard to Software Licensing:

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

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

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

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

Relationships: SPROCKET will furnish services as an independent contractor with sole authority to control and direct the performance of the details of the services, Client being interested only in the results obtained as long as they are obtained within copyright laws and legal permission to provide services.

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

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

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

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

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

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

CLIENT:	
_____	_____
Authorized signature	Date
_____	_____
Print Name	Title

Sprocket Technologies:	
_____	_____
Authorized signature	Date
Bradley Ray	Owner
_____	_____
Print Name	Title