

MASTER SERVICE AGREEMENT



ProxIT

This Master Service Agreement ("Agreement") is made effective as of April 1, 2016, between ProxIT Technology Solutions Inc. ("ProxIT"), an Illinois corporation, 595 Hamilton Wood, Homewood, Illinois 60430, and Hanover Township ("Client"), 250 S. IL Route 59, Bartlett, Illinois 60103.

Recitals

WHEREAS, ProxIT provides custom services pertaining to the installation and maintenance of computer technology and information management and storage systems; and

WHEREAS, without solicitation by ProxIT, Client requested a proposal for services to be delivered from ProxIT at a discounted rate, which ProxIT provided and Client has agreed to retain ProxIT to provide services pursuant to the terms and conditions of this Agreement.

Promises and Covenants

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of such consideration being hereby acknowledged by the parties of this Agreement by execution of this Agreement, the parties hereby agree as follows.

Article 1: Definitions and Construction.

1.01 Incorporation of Recitals. The above recitals of this Agreement are hereby incorporated into and made a part of this Agreement.

1.02. Certain Definitions. The defined terms parenthetically set forth in this Agreement shall be associated with the phrase or name immediately preceding. As used in this Agreement, "Person" shall mean an individual natural person, corporation, partnership, limited liability company, limited liability partnership, trust, unincorporated association, joint venture, joint stock company, governmental entity or any political subdivision thereof, or any other legally recognized entity or association.

1.03. Construction. The following principles of language construction shall apply to this Agreement unless the context clearly requires otherwise. Except where the context reveals the contrary, references to the plural include the singular, and the singular includes the plural. The word "may" is permissive, and the word

"shall" is mandatory. The term "or" means the inclusive disjunction, as represented by the phrase "and/or." The words "hereof," "herein," "hereunder," and similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Headings and titles are for reference purposes only and shall not control or affect the construction of this Agreement. Paragraph and exhibit references are to this Agreement unless otherwise specified.

Article 2: Work.

2.01. Term. This Agreement is effective April 1, 2016, and shall continue on a month-to-month basis; provided, however, the Agreement may be terminated by Client or ProxIT, with or without cause, upon 30 days' written notice to the other party. ProxIT may terminate in the event of default of payment by Client as set forth below.

2.02. Scope of this Agreement. It is understood that from time-to-time, Client may hire ProxIT to implement large projects or installation work. Additionally, ProxIT shall throughout the term of this Agreement engage in regular maintenance work and upgrades. This Agreement is intended to apply to all work performed by ProxIT for Client, whether large projects or installation work or regular maintenance work and upgrades.

2.03. Services to be Provided. ProxIT will provide requested services to install and maintain computer and information technologies already existent or acquired in the future at Client's premises or for Client's use. ProxIT will be available for providing reasonable emergency services on weekends or during evening hours from remote locations. Given the nature of ProxIT services, Client is aware that a substantial portion of ProxIT services are provided to Client remotely and Client shall cooperate in ensuring ProxIT has remote access to Client's information technology equipment. ProxIT shall keep Client apprised, in writing, of all work being performed and shall not undertake work without Client's prior written consent except in emergency services situations. Emergency services shall be when Client's information systems are imminently susceptible to corruption or loss because of an identified threat or exposure of the system, in which event ProxIT has Client's authority to take any and all reasonable and necessary actions to preserve the Client's information, and to the extent possible, computer equipment. Client further acknowledges in the event of an emergency services situation, all priority should be given to preserving Client's information over preserving computer equipment. ProxIT understands and acknowledges that time is of the essence in response to emergency services situations and other service needs. Upon the completion of any emergency services situations, ProxIT shall provide Client with a written report of the emergency service situation, actions taken by ProxIT to preserve Client's data, and what measures ProxIT and/or Client can implement to prevent such corruption in the future.

2.04. Scheduled Maintenance. Client and ProxIT shall endeavor to cooperate to establish and keep a maintenance schedule to preserve Client's information and computer equipment. Upon the establishment of a maintenance schedule between Client and ProxIT, any change to the scheduled maintenance shall be agreed to by Client and ProxIT in writing. This schedule shall include periodic reviews of existent equipment with recommendations by ProxIT for replacement equipment, upkeep of equipment, and new equipment. Client may request ProxIT's professional consultation prior to the purchase of any replacement equipment, upkeep of equipment, and new equipment. ProxIT will not charge Client for obtaining simple quotes for the cost of new or replacement information technology equipment. Time spent by ProxIT assisting or performing assessments of equipment or processes or budgeting will be charged to Client at ProxIT's rates as agreed upon in this Agreement. Client shall be responsible for any and all decisions pertaining to new acquisitions and replacement of equipment. Neither party will be responsible for delays that are not due to the party's fault, act, omission, or negligence and that could not have reasonably been foreseen or provided against by the party.

2.05. Client's Confidential Information. All of Client's confidential stored information, including, but not limited to, taxpayer information and financial information of both taxpayers and the Client, made available to ProxIT or that becomes available to ProxIT by virtue of this Agreement or the relationship created by this Agreement will be held in strict confidence by ProxIT. At all times Client shall (a) maintain and store its confidential information in an encrypted manner with no less security than Advanced Encryption Standard 128 bit encryption; and (b) prohibit any and all personal digital devices of any of Client's trustees, employees, agents, customers, or other governmental entities or Persons, including, without limitation, laptop computers, smartphones, iPads and other tablets, from having access to Client's networks, wi-fi networks, or information systems where confidential information is maintained or stored. Any breach of Client's confidential stored information including, but not limited to, taxpayer information and financial information of both taxpayers and the Client, shall result in the right to terminate this Agreement at Client's sole discretion. ProxIT agrees to indemnify Client, pursuant to paragraph 4.09 of this Agreement for any breach contained under this Section 2.05, Client's Confidential Information; provided, however, Client will not be indemnified unless the conditions to indemnification as provided in paragraph 4.09 have been fully satisfied. ProxIT shall not be responsible for or indemnify Client for any unauthorized or improper access to, use of, or disclosure of any of Client's information arising from or related to any misconduct or unauthorized access to, use of, or disclosure of Client's information by any of Client's trustees, employees, agents, independent contractors, or other governmental entities or Persons.

2.06. ProxIT Confidential Information. Client shall keep confidential any specific pricing or services information of ProxIT. It is understood that Client understands and agrees that its pricing for certain services is proprietary and competitive information that ProxIT does not want disclosed to competitors, and Client shall exercise best efforts to preserve such confidences.

2.07. Excepted Information. With regard to paragraphs 2.05 and 2.06 above, no information will be considered proprietary or confidential: (a) to the extent that it is or becomes public knowledge through no fault, act, omission, or negligence of the party receiving the information; (b) which is rightfully disclosed by some third party; or (c) which is already known to the receiving party and has not been obtained in confidence from the other party to this Agreement prior to the effective date of this Agreement.

2.08. Property. All systems, computer programs, operating instructions, and other documentation developed for or specifically relating to Client's information processing, and all Client source documents, stored data, other information of any kind, and reports prepared by ProxIT will be the property of the Client. All temporary or permanent storage media containing Client's programs or other information of any kind will be available for inspection by Client's personnel or Client's designees at any time, and all information thereon shall belong to Client and shall be delivered to Client on Client's request, within a reasonable time.

Article 3: Payment.

3.01. ProxIT Billing. ProxIT will bill based on time and materials at a rate of \$75.00 per hour commencing on April 1, 2016, until May 31, 2016. Starting June 1, 2016 the hourly rate will increase to \$85.00 per hour when blocks of hours are purchased in 25-hour increments; and \$95.00 per hour for any additional hours outside of the purchased block of hours. Any hours left in the block purchased expires at the end of each month. Pricing as described in this agreement will be valid through December 31, 2016, at which time the Agreement will be reviewed based on the current terms and conditions agreed to in this Agreement. Changes to the number of hours in the required monthly block of hours cannot be made before June 1, 2016, at which time changes to the number of hours in the required monthly block of hours can be made by Client, at any time, provided that Client provides ProxIT with thirty (30) days notice of the requested change. *ProxIT has agreed not to charge for travel time to or from Client's principal offices, although it is ProxIT customary practice to charge for such.* In the event ProxIT is asked to procure any equipment or hardware for Client, Client shall provide sufficient documentation to support any claim by Client of sales or excise tax exemptions from the State of Illinois. ProxIT shall use good faith efforts to obtain requested equipment at the best prices it can find, allowing for consideration of the quality of the equipment to be obtained; provided, however, ProxIT does not guarantee that its procurement of

equipment for Client is the most cost effective available at any given moment. ProxIT represents and warrants that it does not maintain any "partnership" or other relationships with any equipment vendor to procure equipment for its clients. ProxIT will follow Client's direction in procuring equipment from specific vendors or manufacturers if such direction is provided. Client shall accept receipt of statements delivered via email to a specific person or email address provided by Client. Client shall accept receipt of statements delivered via E-Mail to a specific person or E-Mail address provided by Client under paragraph 4.01, "Notices," and ProxIT shall subsequently mail a copy of receipt of statements to the specific person listed under paragraph 4.01, "Notices."

3.02. Client's payment. Payment hereunder shall be in accordance with the Illinois Prompt Payment Act (50 ILCS 505/2 *et seq.*).

Article 4: Additional Provisions.

4.01. Notices. Any notice or communication required or permitted pursuant to this Agreement shall be deemed to have been given upon actually delivery by personal delivery, including, without limitation, delivery by overnight messenger service or email or similar means of electronic communication to an email address provided by the party receiving the communication. In the absence of other specific direction communications shall be between the following representative persons:

If to ProxIT:

Scott Stephens
ProxIT Technology Solutions Inc.
595 Hamilton Wood
Homewood, IL 60430
sstephens@proxitinc.com

If to Client:

Suzanne Powers
Hanover Township
250 S IL Route 59
Bartlett, IL 60103
spowers@hanover-township.org

Each party shall be entitled to specify a different address by giving notice as aforesaid.

4.02. Modification of Agreement. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of the Agreement shall be deemed or constitute a waiver of any other provision of the Agreement (whether or not similar), nor shall any waiver constitute a continuing waiver unless expressly provided so in writing.

4.03. Invalidity of Particular Provisions. If any clause, phrase, provision, or portion of this Agreement shall be invalid, or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision, or portion hereto to other persons or circumstances.

4.04. Governing Law and Choice of Forum. The validity, construction and interpretation of this Agreement shall be governed by the laws of the State of Illinois. Any litigation arising from or pertaining to this Agreement shall be brought, as appropriate, in the Circuit Court of Cook County, Illinois, or in the United States District Court for the Northern District of Illinois, Eastern Division, both courts being located in Chicago, Illinois.

4.05. Third Persons. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to the Agreement or to acknowledge, establish, or impose any legal duty to any third-party. Nothing herein and/or in this Agreement shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Township and/or any of Township's directors, officers, employees, volunteers, agents, licensees, successors, and assign.

4.06 Integration. This Agreement sets forth the entire understanding of ProxIT and Client. ProxIT and Client agree there shall be no change or modification to this Agreement unless any such amendment is dated, reduced to writing, execute by both parties and attached to and made a part of this Agreement.

4.07. Insurance and Limits of Liability. ProxIT shall procure and maintain at all times, at ProxIT's own expense, during the terms of this Agreement, the insurance coverage and requirements specified below, insuring all of ProxIT's operations related to the Agreement. The kinds and amounts of the insurance required are as follows:

A. Worker's Compensation and Employers Liability Insurance. Workers Compensation and Employers Liability Insurance, in accordance with the laws of the State of Illinois, covering all of ProxIT's employees with limits of not less than \$100,000.00 per accident or illness.

B. Commercial Liability Insurance. Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000.00 per occurrence, for bodily injury, personal injury, or property damage liability.

C. Automobile Liability Insurance. When any motor vehicle (owned, non-owned, or hired) is used in connection with ProxIT's business activities, ProxIT shall provide automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence, for bodily injury and property damage.

ProxIT shall maintain professional liability insurance for its services performed. ProxIT shall not be liable for any incidental or consequential damages, regardless of foreseeability, including, without limitation, loss of profits, good will, or data, interruption of work, or impairment of assets. ProxIT shall not be responsible for insuring any of Client's personal or real property. ProxIT shall be responsible for all losses or damages to personal property (including but not limited to materials, equipment, tools, and supplies), owned or rented, by ProxIT. ProxIT shall, upon Client's request, furnish to Client original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, upon the Client's request, if the coverages have an expiration or renewal date occurrence during the term of this Agreement. ProxIT shall, upon Client's request, submit evidence of insurance prior to entering into the Agreement. ProxIT may produce copies of its insurance policies to Client. In such event, if Client has any dispute whether there is sufficient or proper coverage in compliance with this Agreement, Client shall so notify ProxIT within 10 business days of its dispute that ProxIT has complied with insurance requirements. ProxIT shall have 10 business days after notice from Client to either show that the insurance carried by ProxIT complies with this Agreement or to provide new insurance coverage to comply with this Agreement. ProxIT's current insurance provider has agreed to waive its rights of subrogation against the Township as to commercial liability insurance.

4.08. Execution in Counterpart. This Agreement may be executed in counterpart, and the Agreement along with all signature pages shall be treated as the whole.

4.09. Indemnification. (a) ProxIT shall indemnify, protect, save, defend, and hold harmless the Township from and against all claims, damages, losses, costs, penalties, obligations, liabilities, causes of action, and expenses, including but not limited to legal fees in the form of costs and attorneys' fees, arising from or in any way connected with (i) any act, error, omission, wrongful act, or negligence of ProxIT or ProxIT's directors, officers, employees, or contractor retained by ProxIT; or (ii) any accident, injury or damage occurring from, incidental to, or resulting directly or indirectly from ProxIT's or ProxIT's employees use of the Township premises (unless such loss, damages, injury, or liability is contributed by a condition on the premises itself or any equipment thereon, whether latent or patent, or from other causes whatsoever) which results in bodily injury, personal injury, or property damage to any third-party other than Client or its trustees or employees. ProxIT shall not be responsible for indemnifying Client as to any third Person claims arising from or related to Client's failure to adopt, implement, maintain, or monitor employees' compliance with information security policies, practices, actions, or equipment recommended by ProxIT. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity

which would otherwise exist as to any party or person described in this paragraph. This obligation to indemnify shall survive the expiration and/or termination of this Agreement for 6 months after termination of this Agreement. Nothing herein shall be construed to represent a waiver of any privileges and immunities granted, by statute or common law, to the Township as a unit of local government.

(b) In the event a third-party asserts a claim against Client which Client believes is within the purview of ProxIT's promise to indemnify Client pursuant to this Section 4.09, Client shall promptly notify ProxIT of the existence of any claim, demand, or other matter involving potential liabilities to third-parties to which ProxIT's indemnification obligations would apply and shall give ProxIT a reasonable opportunity to defend the same at its expense and with counsel of its selection (who shall be approved by Client, which approval shall not be unreasonably withheld); provided that Client shall at all times also have the right to fully participate in the defense at its own expense. If ProxIT shall, within a reasonable time after said notice, fail to defend, Client shall have the right, but not the obligation, to undertake the defense of, and to compromise, or settle (exercising reasonable business judgment) the claim or other matter on behalf, for the account, and at the risk and expense of ProxIT. If the claim is one that cannot by its nature be defended solely by ProxIT, Client shall make available all information and assistance that ProxIT may reasonably request. Client's failure to comply with these indemnification procedures shall nullify any obligation of ProxIT to indemnify any third-party claim against the Client.

4.10. Compliance. ProxIT shall comply with all applicable federal, state, and local laws relative to any work or services furnished hereunder, including, but not limited to, all applicable ordinances, regulations, license requirements, and statutes required to be complied with by Hanover Township.

4.11. Relationship of the Parties. (a) It is understood, acknowledged, and agreed by the parties that the relationship of the ProxIT to Client arising out of this Agreement shall be that of an independent contractor. Neither ProxIT, nor any employee or agent of ProxIT, is an employee, partner, joint venture, and/or agent of Client, and, therefore, is not entitled to any benefits provided to employees of Client. ProxIT has no authority to employ/retain any person as an employee or agent for or on behalf of Client for any purpose. Neither ProxIT nor any person engaging in any work or services related to the Agreement at the request or with actual or implied consent of the ProxIT may represent himself or others as an employee of Client. Should any person indicate to ProxIT or any employee or agent of the ProxIT by written or oral communication, through course of dealing or otherwise, that such person believes ProxIT, or any employee or agent of ProxIT, to be an employee of agent of Township, ProxIT shall use its best efforts to correct such belief. In ordering or accepting delivery of or paying for any goods or services, ProxIT shall do so solely in the name of the ProxIT's own business.

(b) ProxIT shall at all times have sole control over the manner, means, and methods of performing the services required by this Agreement according to its own independent judgment. ProxIT will devote such time and resources as necessary to produce the contracted for results. ProxIT shall supervise and direct the work associated with or in connection to this Agreement efficiently with its best skill and attention; and ProxIT shall be responsible for initiating, maintain, and supervising all safety precautions and programs associated with Proxit's work pursuant to this Agreement.

4.12. Default. In the event of the failure of either party to perform all of its duties and obligations under the terms and conditions of the Agreement, the non-defaulting party shall be entitled to all remedies available at law and/or equity to enforce its rights under the Agreement, including, but not limited to, reimbursement for reasonable attorneys' fees and court costs.

4.13. Non-Discrimination. ProxIT agrees to comply fully with the Federal Equal Employment Opportunities Act, the Civil Rights Act of 1974, the State Human Rights Act, the Americans with Disabilities Act, and all applicable rules and regulations promulgated thereunder, and all amendments made thereto, and ProxIT agrees not to deny services or use of the Township project property on the basis of race, creed, color, religion, sex, national origin, ancestry, age, disability, sexual orientation, marital status, or unfavorable discharge from military service (to the extent proscribed by Illinois Department of Human Rights Regulation § 2510.20) or otherwise in violation of any applicable local, state, or federal laws, ordinances, regulations, rules, and statutes.

4.14. Binding Obligation and Non-Assignability. This Agreement shall be binding upon and inure to the benefit of Client and ProxIT and their respective successors and assigns. Notwithstanding the foregoing, ProxIT shall not assign, lease, or sub-lease this Agreement without the express written consent of Client, which Client may withhold in its sole and absolute discretion. Any such assignment shall be null and void.

4.15. Miscellaneous. (a) Nothing in this Agreement shall be construed or interpreted in any way as a waiver, express or implied, of any common law and/or statutory privilege and/or immunities of Client, its Administrator, Supervisor, members of the Board of Trustees, employees, volunteers, and agents as to any claim, cause, and/or cause of action of any kind or nature whatsoever.

(b) ProxIT warrants that ProxIT is authorized to execute and effectuate this Agreement and ProxIT does so voluntarily. Client warrants that Client is authorized to execute and effectuate this Agreement and Client does so voluntarily.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

ProxIT Technology Solutions Inc.

Hanover Township

By: 

Scott Stephens, President

By: 

Brian P. McGuire, Supervisor