

# Memo

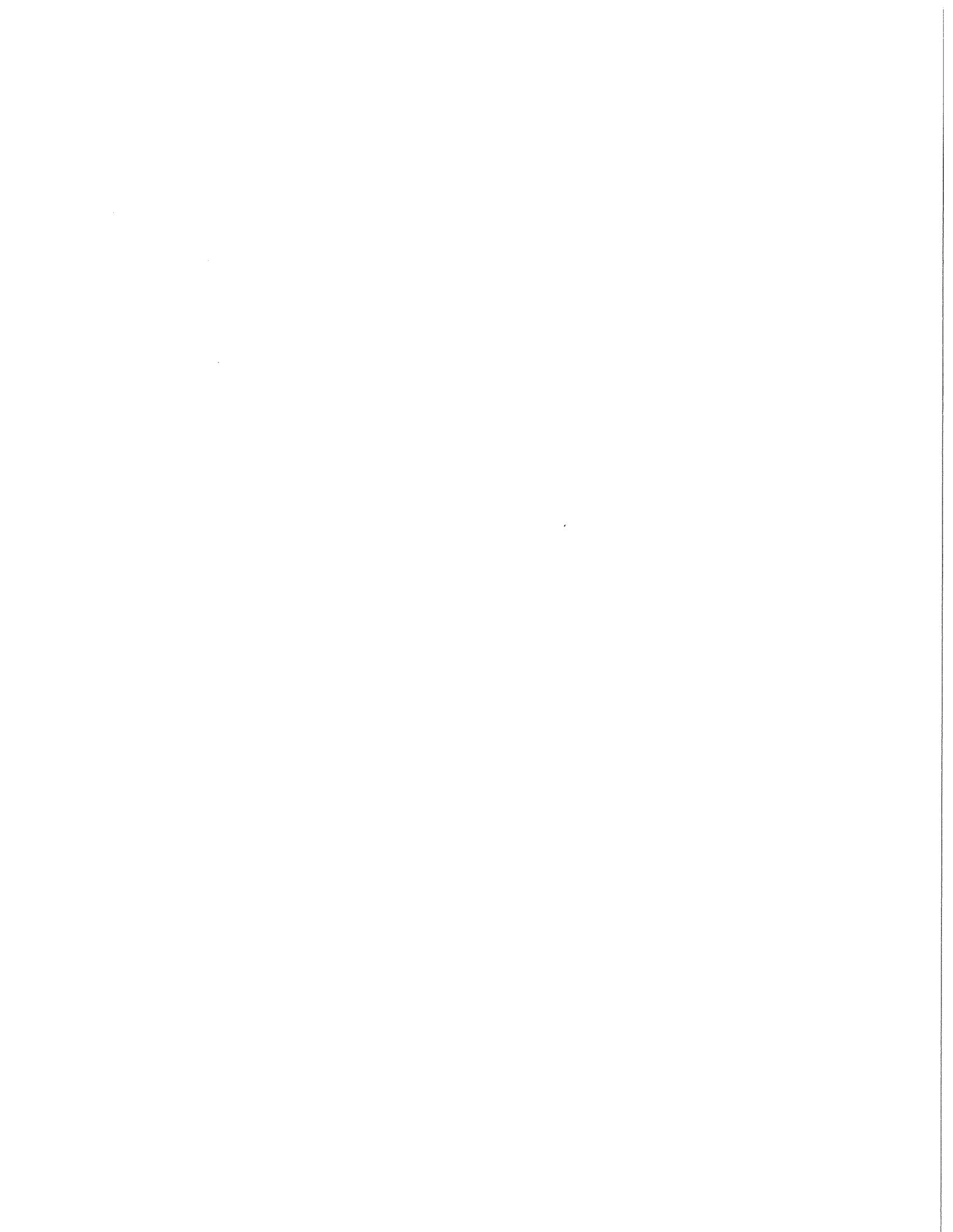
**To:** Honorable Mayor and City Council  
**From:** Joe Kohlmann, City Administrator  
**Date:** February 25, 2014  
**Re:** DTS – IT Services

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Staff has attached an updated service agreement proposed by DTS. This particular proposal has been changed to reflect a 12 month period.

**Council Action Requested:**

Motion to direct the City Administrator to enter into a 12 – month agreement with DTS for IT Services.





# Managed IT Service Agreement

9401 James Ave. So., Suite 120  
Bloomington, MN 55431  
Ph: 952-516-7900; Fax: 952-516-7901

Company Name:	<u>City of Tonka Bay</u>	Contact:	<u>Joe Kohlmann</u>
Address:	<u>4901 Manitou Bay</u>	Phone:	<u>952-474-7994</u>
City, State, Zip:	<u>Excelsior Bay, MN 55331</u>	Email/Fax:	<u>jkohlmann@cityoftonkabay.net</u>

## Included Devices

Asset ID	Make/Model No./Accessories	Serial No.	Location
	See attached Schedule "A"		

Fee Schedule Monthly

Device Type 1:	<u>Desktops / Laptops</u>	Per Device Fee 1:	<u>\$35.00 per month</u>
Device Type 2:	<u>Servers</u>	Per Device Fee 2:	<u>\$100.00 per month</u>
Device Type 3:	<u>Network</u>	Per Device Fee 3:	<u>\$50.00 per month</u>

This Managed IT Service Agreement made between Document Technology Solutions, Inc., a corporation organized and existing under the laws of the state of Minnesota, with its principal office located at 9401 James Ave. South Ste 120, Bloomington, MN 55431, referred to herein as Service Provider, and City of Tonka Bay, referred to herein as Customer. Whereas, the Customer is of the opinion that the Service Provider has the necessary qualifications, experience, and abilities to provide services in connection with the network servicing needs of the Customer; and Whereas, Service Provider is agreeable to providing such services to the Customer, under the terms and conditions as set out in this Agreement.

## Managed IT Service Plan

<input type="checkbox"/> Basic	Term of Agreement:	<u>12 months</u>
<input checked="" type="checkbox"/> Essentials	Start Date:	_____
<input type="checkbox"/> Complete	Payment Method:	<u>NET 30 Terms</u>

## Comments:

**Authorization:** I have read this Agreement and agree to its contents. My authorized signature below indicates acceptance of this document.

### CUSTOMER: City Of Tonka Bay

By (signature): \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Print Title: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

### DOCUMENT TECHNOLOGY SOLUTIONS, INC.

By (signature): \_\_\_\_\_  
 Print Name: Tom McHenry  
 Print Title: VP of Managed Services  
 Date Signed: \_\_\_\_\_

## Terms & Conditions of Managed IT Service Agreement

- A. Engagement** – Customer hereby agrees to engage the Service Provider to provide the Customer with services consisting of computer, laptop, tablet, server and/or network maintenance, upkeep, repair and other similar services as the Customer and Service Provider may agree upon from time to time (the Services), and the Service Provider hereby agrees to provide such Services to the Customer, as defined by the Managed IT Service Agreement.
- B. Term of Agreement** – The term of this Agreement will begin on the date of this Agreement and will continue in full force for the term period as specified above, and is subject to earlier termination as otherwise provided in this Agreement.
- C. Performance** – The Service Provider agrees to service and repair Customer's business computers and networking equipment at the address listed on the face of this Agreement, when called upon to do so by the Customer if and when needed, and as issues are reported from Service Providers monitoring software.
1. The Service Provider also agrees to perform maintenance services on Customer business workstations and servers proactively throughout the year of the duration of this Agreement.
  2. The compensation for computer, networking servicing and maintenance is limited to labor charges only. If parts or upgrades are needed to complete repair at any given time, Customer shall have the right to purchase the parts or upgrades needed from another source as recommended by Service Provider if desired. The Limit of Liability and warranty of said parts or upgrades will be the responsibility of Customer if purchased from an outside source and in no way put upon the Service Provider.
- D. Charges** – For the Services described under this Agreement, the Customer will pay to the Service Provider compensation as stated above for the contract duration as specified. Customer shall pay compensation of the service contract as agreed upon the signing of this Agreement to Service Provider. The device support fee is based upon the number and type of devices supported as indicated on the face of this Agreement and is subject to change. The Customer agrees that the fees may change as the number and type of devices change and such changes will become part of this entire Agreement. The devices included on the face of this Agreement and any attached Schedule A are intended as a starting list of devices. The Customer may request changes to be made to the covered devices when agreed upon by the Service Provider.
- E. Additional Compensation** – The Customer will provide additional compensation as follows: the payment for all computer hardware, parts replaced or software that is added. Customer will be invoiced for payment at the conclusion of the service call when performed.
- F. Additional Services** – From time to time, the Customer may request additional Services, and the Service Provider may issue a proposed Statement of Work for such Services. Each Statement of Work shall be subject to signed acceptance by the Customer. Any modifications of a proposed Statement of Work issued by Service Provider are a rejection of the proposed Statement of Work by the Customer. Service Provider shall not have any obligation to provide Services under a Statement of Work not accepted by the Customer in accordance with this section.
- G. Assignment** – This Agreement is a personal one, being entered into in reliance and upon consideration of personal skills and qualifications of the Service Provider. The Service Provider will not voluntarily by operation of law assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement.
- H. Capacity/Independent Contractor** – It is expressly agreed that the Service Provider is acting as an independent contractor and not as an employee in providing the Services hereunder. The Service Provider and the Customer acknowledge that this Agreement does not create a partnership or joint venture between them.
- I. Limitations** – There are no other warranties, including the implied warranties of merchantability and fitness for a particular purpose, not specified herein respecting the parts, supplies and maintenance services provided under this Agreement. Service Provider shall not be liable for non-performance caused by circumstances beyond its control including, but not limited to, work stoppages, fire, civil disobedience, riots and Acts of God. In no event will Service Provider be liable for any indirect, special or consequential damages arising out of this Agreement or services provided under this Agreement.
1. The cumulative liability of Service Provider to the Customer for all claims related to the Services and these Terms and Conditions, including any cause of action in contract, tort, or strict liability, shall not exceed the total amount of fees paid to Service Provider for the Services which are the subject of such a claim.
  2. The limitations upon damages and claims set forth in this section are intended to apply without regard to which of the provisions of these Terms and Conditions have been breached or have proven ineffective and without regard to the nature and extent of damages claimed by the Customer.
- J. Modification of Agreement** – Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.
- K. Severability** – The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- L. No Waiver** – The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- M. Governing Law** – This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Minnesota.
- N. Notices** – Unless provided herein to the contrary, any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.
- O. Mandatory Arbitration** – Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.
- P. Entire Agreement** – It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement as expressed in it. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
- Q. Counterparts** – This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- R. Early Termination** – Unless otherwise permitted, no refund or credit will be given on early termination of the Agreement by the Customer prior to the total length of time stated in the Agreement. If the Agreement has not been paid in full, the Customer agrees to immediately pay the remaining portion of the total contract price to the Service Provider. If the Customer fails to pay within thirty (30) days, Service Provider reserves the right to withhold services or to terminate the Agreement.
- S. Renewal** – At term expiration this Agreement will automatically renew for a 12 month period. The contracted cost may be adjusted to Service Provider's prevailing rates, which may reflect an increase every 12 month period or at the renewal date, whichever comes first. Any increase in the rate shall not exceed 15% in any one year period. Either party has the right to terminate the Agreement at the time of renewal. A written notice of cancellation must be received at least thirty (30) days prior to the expiration of the current Agreement or the contract will renew for a 12 month period.
- T. Personnel** – All resources are assigned based on availability. Service Providers resources may include employees, partners, subcontractors, or independent contractors, at Service Providers discretion. Additionally, the Customer agrees that if the Customer does not perform any of the Customer requirements, then the Services may be delayed.
- U. Transition Billing** – In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the "Effective Date" of this Agreement will be the twenty-second (22nd) day of the month following installation. Customer agrees to pay a prorated amount for the period between the installation date and the Effective Date. The payment for the transition period will be based on the monthly contract payment prorated on a 30 day calendar month and will be added to Customer's first invoice.
- V. Tracking Software**
1. **Permission to Install and Maintain Tracking Software** - Document Technology Solutions ("DTS") owns software ("Tracking Software") which enables DTS to monitor the status of, and receive alerts regarding, the business computers and networking equipment. Client agrees that DTS shall have the right, at any time during the term of this Agreement, to install the Tracking Software on one or more of Client's computer server. Client agrees to provide DTS, during normal business hours, access to Client's computer servers to enable DTS to upgrade, modify or maintain the Tracking Software or to install new releases or additions to the Tracking Software. Client agrees to not delete or remove the Tracking Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of DTS.
  2. **No License, other Prohibitions** - Nothing herein shall be construed as granting a license to Client for the use of the Tracking Software. Client may not, nor may Client permit or cause any other person to (a) use or copy the Tracking Software, in whole or in part, in any manner, (b) modify, translate, reverse engineer, decompile or disassemble the Tracking Software, (c) rent, lease, loan, resell, distribute, use in a client-server network to provide third parties access to, or otherwise transfer the Tracking Software, or (d) remove any proprietary notices on the Tracking Software.
  3. **Intellectual Property Rights** - All rights (including all intellectual property rights, whether recognized currently or in the future) in and to the Tracking Software (including any source code, executable code, object code, tools and/or libraries related to the Tracking Software) will at all times be owned by DTS. No modifications and/or use by client of the Tracking Software shall under any circumstances transfer any right, title or interest in or to the Tracking Software to Client or any third party.
  4. **Warranty, Liability** - Client acknowledges that the Tracking Software will be installed on Client's server(s) "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. DTS does not warrant that the Tracking Software will be error free or will operate without interruption. DTS shall in no event be liable to Client or any third party for any special, consequential, incidental or indirect damages in connection with the Tracking Software.