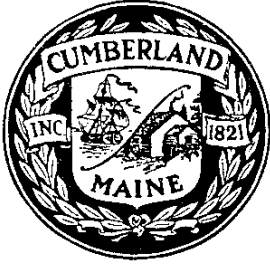


ITEM

17-026

To consider and act on authorizing the Town Manger to execute a 3-year contract with DSCI, LLC for a new telephone system for Town Hall and Prince Memorial Library



MEMORANDUM

Town of Cumberland, Maine
290 Tuttle Road
Cumberland Center, ME 04021
Telephone (207) 829-2205 • Fax (207) 829-2214

To: William Shane, Town Manager
From: Christopher Bolduc, Assistant Town Manager
Date: February 23, 2017
Re: 3-year contract for a new phone system

At your request, IT Director Mike Crosby and I have been researching the replacement of the phone system at Town Hall with a new voice over IP system. The current system is 20 years old, has had multiple failures and the technology supporting the system is becoming obsolete.

Over the past 6 months, we have met with 4 vendors and secured pricing for a new system at Town Hall and Prince Memorial Library. The new system is an internet based system with phone equipment that will be lease purchased for a period of 3 years. The cost of the system is equivalent to what we currently pay for our phone lines through BCN Telephone, so there will be no increase to the yearly budgeted cost for telephones.

The company that I have selected to provide this service is DSCI of South Portland. I am recommending the Town Council consider entering into a 3 year lease purchase agreement with DSCI for replacement of the current phone system.



Master Service Agreement

This Master Service Agreement ("MSA" or "Agreement") entered into on this 2/14/2017 is by and between DSCI, LLC ("DSCI") a Delaware limited liability company, with offices at: 303 Wyman Street, Waltham, Massachusetts 02451 and Town of Cumberland ("Customer"), a corporation with its principal office at: 290 Tuttle Rd Cumberland Center, ME 04021-4116.

I. TERMS OF AGREEMENT

1. This MSA contains the general conditions for the provision by DSCI of Services to the Customer and shall supersede any previously executed MSA between DSCI and Customer. Each Service shall be provisioned pursuant to DSCI's Tariffs and the Federal and/or State Terms and Conditions, and Service Description and Rate Schedules posted on the Company's website, as supplemented by the terms and conditions set forth in this MSA. Other Terms and Conditions specific to a Service, including Service Level Agreements (SLA) and pricing schedules (if applicable) are contained in a separate Network Service Order Form ("NSO") referencing this MSA or in Exhibits to such NSO. In the event of a conflict between the terms of documents relating to a Service, the following will be the order of priority: first, the NSO; second, this MSA, save where the specific terms of this MSA provide otherwise. Any previously executed and unexpired NSOs shall be incorporated herein as part of this MSA.

2. Term and Revenue Commitment – The terms of this MSA will remain in effect until expiration of all NSOs signed by Customer. Each month during the Term of this MSA Customer agrees to maintain a Minimum Revenue Commitment (MRC) amount defined as follows: the MRC amount is determined by adding the total amount(s) of the Minimum Monthly Recurring Charge(s) (MMRC) referenced on the initial and any subsequent NSO signed by the Customer. All Services provided by DSCI, except for taxes, regulatory fees and assessments, shall contribute toward Customer's MRC obligation. In the event that there is a change in business or economic circumstances which has a detrimental effect on the Customer requiring the Customer to downsize its business operations to the extent to which the Customer is no longer able to meet the MRC, DSCI agrees to renegotiate new Terms of this MSA provided that: 1) Customer can reasonably demonstrate that such a condition exists; 2) Customer provides sixty (60) days prior written notification.

II. OBLIGATIONS OF DSCI

DSCI agrees to supply Customer with Services as set forth herein and to make every reasonable effort to provide continuous service at the locations set forth in the attached NSO(s). The quality of service provided hereunder shall be consistent with common carrier industry standards, government regulations and per the terms and conditions set forth in the DSCI Tariff. DSCI will provide Customer with a monthly invoice(s) identifying all charges for the Services under this MSA. Invoices for all Services purchased and delivered pursuant to this MSA shall be sent to Customer contact and Billing Address as set forth in the NSO.

III. SERVICES & PRICING

During the Term of this MSA, DSCI agrees to provide the Services to Customer at the location(s) designated in the attached NSO(s). The Services shall be provisioned at the rates set forth in the NSO(s). The pricing contained in this MSA is based upon a term and volume commitment. If Customer reduces the volume commitment or length of the term of the Service(s) in part or in whole, DSCI reserves the right to adjust the rate of the Service(s) based upon the new term and /or quantity of Service installed. Notwithstanding the foregoing, the parties agree that Customer may add or delete any Services by informing DSCI with thirty (30) days written notification, provided that Customer's monthly billed revenue does not fall below the MRC as set forth in Section I, Paragraph 2 preceding, and that it has met any minimum term and or quantity commitment(s) as required per the terms of the NSO(s). Any Service(s) added during the Term of this MSA shall be bound by the terms and conditions of this MSA. Prices for the Services do not include any federal, state and local taxes, fees, charges and surcharges. Such taxes, fees, charges and surcharges shall include, but not be limited to, any universal service surcharges, public utility, state and FCC or other similar surcharges collected by DSCI from its customers. All such taxes, surcharges and fees shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides DSCI with an appropriate exemption certificate.

Customer agrees that it will NOT use the Service(s) in ways that violate laws (federal, state, or local), infringe the rights of others, or interfere with the users, services, or equipment of the network. Customer shall use Service(s) per the terms outlined in DSCI's Acceptable Use Policy located on the DSCI website, www.dscillc.com. Notwithstanding the other terms and conditions contained herein this MSA, DSCI reserves the right to immediately terminate the Service(s) for any violation of DSCI's Acceptable Use Policy and or any law or regulation through the use of the Service(s).

The parties acknowledge that any products, software, and technical information provided under this Agreement are subject to U.S. export laws and regulations and any use or transfer of such products, software, and technical information must be authorized under those laws and regulations. The parties agree that they will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations.

IV. BILLING & PAYMENT

Billing for DSCI-provided Data Services shall start on the day the Service is provisioned and available for Customer use. For DSCI-provided Voice, UCx, and iPBX Services WITHOUT porting, billing shall start three (3) days after the Service is provisioned and available for Customer use; for DSCI-provided Voice, UCx, and iPBX Services WITH porting, billing shall start on the date the associated numbers are ported to DSCI, unless the porting is delayed by Customer, in which case billing shall start three (3) days after the Service is provisioned and available for Customer use. Customer shall pay to DSCI the charges for Service(s) at the rates set forth in the NSO(s) by the Due Date, which shall be defined herein as thirty (30) days of DSCI's invoice date. In the event that payment on undisputed

amounts is not made by the Due Date, DSCI reserves the right to: i) charge a finance fee of no more than 1½% per month or the highest rate permitted by law, whichever is lower, on any unpaid amounts; ii) refuse to process any orders for new Service; iii) terminate Service if payments are not made current within thirty (30) days of written notification of intent to terminate, until such time as payments are made current; iv) charge Customer a fee, including reasonable attorney's fees, for charges incurred by DSCI in the collection of any and all unpaid amounts, including, but not limited to, past due amounts and early termination charges.

V. DISPUTED INVOICES

In the event Customer disputes any charges on a DSCI invoice, Customer shall notify DSCI in writing, providing the billing telephone number, Circuit number, or trouble ticket number, if applicable, and an explanation for the dispute. Customer must provide notice of any dispute within ninety (90) days after the date of the invoice on which the disputed charges first appear, or Customer shall be deemed to have waived the right to dispute such charges. Customer agrees to pay all charges not in dispute per the payment terms in this MSA. An amount is not in dispute until Customer has provided DSCI with written notification providing the amount in dispute along with any supporting documentation. Dispute notifications should be emailed to finance@dscicorp.com with a copy to Customer's DSCI Account Executive. The Parties will cooperate in good faith to resolve any such disputes within thirty (30) days after the dispute is submitted to DSCI. If such resolution of the dispute favors Customer, DSCI shall (a) credit Customer in the amount of the disputed amount if Customer previously paid such amount to DSCI, or (b) forgive such disputed amount if Customer did not previously pay such disputed amount to DSCI. If such resolution favors DSCI, payment is due within ten (10) business days after Customer is notified of such resolution.

VI. PAYMENT SECURITY

Provision of Service is contingent on credit approval by DSCI. Upon DSCI's request, Customer agrees to provide DSCI with financial statements or other indications of Customer's financial and business circumstances. If a Material Adverse Change (as defined below) in a customer's credit worthiness should occur, DSCI reserves the right to request a deposit not to exceed one month's recurring service charge, or if Customer has previously provided security, DSCI may request additional security, with the combined total not to exceed two (2) months recurring service charge. Customer's failure to provide the requested security within five (5) business days following DSCI's reasonable request shall be considered a default. A Material Adverse Change in Customer's creditworthiness is defined as any of the following: (a) failure of Customer to make full payment of undisputed charges due hereunder within five (5) business days of the Due Date on three (3) or more occasions during any period of twelve (12) months, excluding disputed invoices, or Customer's failure to make such payment within five (5) business days of the Due Date in any two (2) consecutive months, excluding disputed invoices; (b) acquisition of Customer (whether in whole or by majority or controlling interest) by an entity which owes undisputed past due amounts to DSCI or any entity affiliated with DSCI, or which presents a materially greater credit risk than Customer; or (c) Customer's being subject to or having filed for bankruptcy or insolvency proceedings, or the legal insolvency of Customer. All deposits will be applied as a credit to Customer's account immediately upon twelve (12) months of continuous payments within normal credit terms.

VII. LIMITATION OF LIABILITIES AND WARRANTIES

DSCI shall not be liable for interruption, delays, errors or defects in transmission or failure to transmit when caused by acts of God, fire, war, acts of Government or others, or other events beyond its control. DSCI will not be liable to Customer for acts or omissions in the performance of Service(s) under this MSA on the part of DSCI employees or affiliates or suppliers unless the acts or omissions were due to negligence or willful misconduct. Customer shall bear the risk of loss arising from any unauthorized or fraudulent usage of any Service(s), including but not limited to domestic and international calls, provided by DSCI to the Customer. DSCI warrants that the Services will be performed in a professional and workmanlike manner consistent with industry standards. Customer acknowledges and agrees that except to the extent expressly provided herein, the Service(s) are provided without any warranties, express or implied, including but not limited to warranties of merchantability or fitness for any particular purpose. In no event shall either party be liable to the other for indirect, special or consequential damages, damages to property, or lost profits arising out of or related to this MSA.

VIII. TERMINATION FOR DEFAULT

1. Events of Default of DSCI. DSCI will be in default of this MSA if it has breached any material term or condition of this MSA and such breach is not curable as defined herein, or if curable, has not been cured within thirty (30) days ("the cure period") after written notice of such breach (specifying in reasonable detail the nature of such breach) from the Customer. A breach shall be deemed not curable if DSCI has not been able to fix or provide a suitable alternative within the cure period. DSCI will not be considered to be in default if it is unable to provide the Services by reason of force majeure.

2. Termination for Default. In the event of a default or material breach by DSCI, Customer may terminate this MSA in part or in whole without incurring termination charges. Customer must send a written notice of termination to DSCI, which notice will specify the event of default and the effective date of the termination notice. The effective date of such termination notice will be a date, which is not sooner than the last day of the cure period with respect to any event or default as to which this MSA contains a cure period. A default or material breach by DSCI does not include any failure to perform that is due to a failure caused by the local exchange carrier, customer provided equipment, failure to invoice correctly, or any other failure caused by circumstances not within DSCI's sole control.

IX. EARLY TERMINATION

In the event Customer terminates this MSA or any NSO subject to this MSA in part or in whole at any time during the Initial Term or any Renewal Period, or if DSCI terminates for Customer's default, then Customer shall be liable to pay to DSCI as liquidated damages (and not as a penalty) a termination charge, which shall become due and owing as of the effective date of cancellation or termination. Said charge shall equal any previously waived non-recurring charges plus the invoiced monthly recurring charge(s) of the terminated Service(s) times the remaining number of months in the Term of said Service(s). Customer shall also be liable for any charges DSCI incurs from third parties because of Customer's early termination.

X. CONFIDENTIALITY OF THIS AGREEMENT

The parties hereto understand and agree that, except as expressly provided or permitted herein, the terms of this MSA shall be considered confidential and shall not be divulged to any third party without the prior written consent of the other party to the MSA. The parties recognize that unauthorized use, transfer or disclosure of the information in this MSA will cause irreparable harm and significant injury to the other party, which may be difficult to ascertain. Therefore, in the event of a breach of this confidentiality provision, the parties agree that the non-breaching party will be entitled to seek an injunction to restrain the breaching party from disclosing, in whole or in part, the existence and terms of this MSA, in addition to raising any other claims for loss or damages. Customer may disclose such information if required by a court or regulatory body or to parties with a need to know, such as legal and accounting professionals rendering services to Customer provided that the Customer informs those to whom the disclosure is made Customer's obligation to keep such information confidential. DSCI may terminate this Agreement immediately without liability or further obligation in the event of any disclosure prohibited hereunder and Customer agrees to pay any applicable termination charges pursuant to Section IX preceding.

XI. NOTICES

Except for notice regarding invoice disputes under paragraph V preceding, all notices required or given shall be by certified mail, postage prepaid, in any post office in the United States, or any certified overnight carrier, and shall be addressed to either Party at the respective address following:

If to DSCI: DSCI, LLC
One Sundial Ave.
Suite 414
Manchester, NH 03103

If to Customer: Town of Cumberland
290 Tuttle Rd
Cumberland Center, ME 04021-4116

Attn: Finance
Fax: 603.626.0014

Fax:
Attn:

XII. ASSIGNMENT

This MSA may not be assigned or transferred, whether by operation of law or otherwise by Customer without the prior written consent of DSCI, except that Customer may assign this MSA, and its rights and obligations including any outstanding balances owed hereunder, to any entity that agrees in writing to be bound by the terms and conditions of this MSA, and succeeds to substantially all of Customer's assets or business in connection with a merger, reorganization, sale of assets or transfer of control. Such consent shall not unreasonably be withheld.

XIII. AMENDMENT

This MSA may be modified or amended by the mutual consent of the parties hereto; provided, however, that no such modification or amendment to this MSA shall be binding unless in writing and signed by both parties. If, after the date hereof, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, including the adoption or modification of any tariff provisions governing this Service, shall make the performance of this MSA unlawful or materially change the rates, terms or conditions of Service as provided in this MSA, the parties will attempt to conform the terms of this MSA to the governing law. Absent an agreement on such revised terms, either party may terminate this MSA without incurring termination charges.

XIV. ENTIRE AGREEMENT

The parties have read this MSA and all of its attachments and agree to be bound by its terms, and further agree that this MSA along with each NSO, subject to Section XIII above, constitute the complete statement of the agreement between them which supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this MSA.

XV. GOVERNING LAW

This MSA shall be governed by and construed in accordance with the laws of the State of Maine, excluding its conflict of law provisions. The parties agree to submit to the exclusive jurisdiction of the courts of the State of Maine.

IN WITNESS WHEREOF, the parties hereto have caused this MSA to be executed by their duly authorized officers as of the day and year first above written.

CUSTOMER: Town of Cumberland

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

DSCI:

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____



Equipment Rental Terms and Conditions

This Equipment Rental Agreement (hereafter called "the rental agreement") is between Town of Cumberland (hereafter "Lessee"), and DSCI, LLC (hereafter "Lessor" or "DSCI"). The terms and conditions of this agreement apply to any and all equipment rented from DSCI as listed on Rate Schedule(s) and Network Services Order Form(s) ("NSO"). The Rate Schedule(s) and NSO(s) will specify the contract term length, equipment, rates, and quantities rented.

GENERAL TERMS AND CONDITIONS

1. The Lessee is responsible for rent for the rental equipment (hereafter called "the equipment") from the time the equipment is delivered to the Lessee until its return to DSCI. If the equipment is lost or stolen, while rented under this Agreement, the Lessee shall be responsible for new replacement cost together with the ordinary rental fees due until payment.
2. Lessee agrees to pay the charges for this rental upon receiving billing for same, under the net payment terms indicated in the Master Services Agreement.
3. Lessee agrees that the equipment will be used solely by the Lessee, only at the address designated and solely for the purpose for which the property was manufactured and intended unless DSCI consents to other use. SUB-LEASING OR SUB-LETTING IS PROHIBITED without written consent of DSCI..
4. Lessee agrees to return, on termination of this lease, the rented equipment to DSCI in the same condition as it was received, ordinary wear and tear excepted. Ordinary wear and tear includes: fading of text on buttons or keys due to use; nicks and scratches that do not affect use of the equipment; adhesive left by the removal of tape or stickers; and any damage to the handset cord or cabling.
5. Except as provided under DSCI's Warranty Service on Rented Equipment and Equipment Rental Guaranteed Replacement Warranty (as defined below), Lessee agrees to pay for any and all damages, from any cause, resulting to the equipment while rented under this Agreement.
6. In the event of a Customer breach or upon expiration of this agreement and to protect DSCI's rights under this contract, Lessee agrees that: DSCI may re-take the equipment at any time and for such purpose and DSCI or its representatives may enter upon the premises of Lessee who hereby waives any right of action against DSCI for such retaking or entry, so long as such re-taking is done in compliance with all applicable laws.
7. It is understood and agreed that said property at all times remains DSCI's. The sale of said property by the Lessee or failure to return said property to DSCI may constitute a crime and subject the Lessee to prosecution.
8. Lessee acknowledges that prior to taking the property, the Lessee has examined the property, has seen it in operation, that the equipment was in good operating condition and that the Lessee represented to the DSCI familiarity with the proper and safe manner of using said equipment.

WARRANTY SERVICE ON RENTED EQUIPMENT

DSCI will provide maintenance and/or replacement for any equipment under the rental agreement which fails due to manufacturer defect, faulty software, or ordinary wear and tear.

EQUIPMENT RENTAL GUARANTEED REPLACEMENT WARRANTY

Equipment rented from DSCI includes a Guaranteed Replacement Warranty which guarantees replacement of a damaged or defective device with the same or manufacturer's equivalent model. The DSCI Guaranteed Replacement Warranty starts when equipment is delivered to the Lessee and lasts for the duration of the rental period, and overlaps the manufacturer's warranty. It covers accidental damage, liquid damage, or any equipment defect.

SHIPPING CHARGES & TAXES

The purchaser is responsible for all delivery or shipping charges, installation charges, and applicable taxes.

EARLY TERMINATION

If, prior to the end of the initial term, the Lessee decreases the quantities of any rental equipment included on the rental agreement by returning the equipment to DSCI for any reason, then Early Termination charges will be applied. Early Termination charges will be calculated pursuant to Section IX of the Master Service Agreement.

RETURN/EXCHANGE POLICY

Should it be necessary to return an item, Customer may return it for a refund or exchange, excluding any shipping charges and subject to a \$25.00 restocking fee, within thirty (30) days after delivery of replacement phone or receipt of the DSCI shipping label. Items received after thirty (30) days will be rejected and Customer will be charged the list price for the device. Defective items may be repaired or exchanged for the same or equivalent model only at DSCI's discretion.

All returned merchandise must be unregistered, in complete original manufacturer's packaging, same condition as sold, with all accessories, literature, instructions, documentation and blank warranty cards.

No returns will be allowed on

- Phone accessories or headsets
- Network cabling
- Original manufacturer computers, computer products, or software once opened.

If you need to return a purchased equipment item to DSCI, please follow the return authorization process found on the DSCI website at www.dscicorp.com.

Signature: _____

Print Name: _____

Title: _____

Date: _____



Documentation Checklist

Town of Cumberland

Quote ID: 69056

Please return a signed copy of this agreement, including all associated exhibits and addendums, to the address below:

DSCI

Attn: Contracts

1 Sundial Ave. Ste. 414

Manchester, NH 03103

FOR DSCI INTERNAL USE ONLY:

Documents Selected for Print

☐ Equipment Rental Terms and Conditions (default)

Documents Not Selected for Print

☐ Taxes, Surcharges, Fees

☐ Master Service Agreement (default)

☐ Network Services Order Form (default)

☐ TPAC NSO/Service Agreement

☐ Rate Schedules (default)

☐ MSA - ITx Services

☐ LOA

☐ DSCI E911 Policy and Agreement for Customers with VoIP-based Services (default)

☐ Customer Provided Internet Access Waiver

☐ Primary Customer Contact Information

Other Documentation

☐ Copy of Phone Bill (new customers only)