CITY COUNCIL AGENDA REPORT

MEETING DATE: SEPTEMBER 20, 2011 **ITEM NUMBER:** _____

SUBJECT: ACTIVE NETWORK SOFTWARE PRODUCTS AND SERVICES AGREEMENT, AND IMPLEMENTATION OF A SYSTEM USE FEE

DATE: SEPTEMBER 14, 2011

FROM: ADMINISTRATIVE SERVICES/RECREATION DIVISION

PRESENTATION BY: LISA MCPHERSON, RECREATION SUPERVISOR

FOR FURTHER INFORMATION CONTACT: Lisa McPherson 714-754-5322

RECOMMENDATION

1. Staff recommends that City Council approve the three-year Products and Services Agreement with the sole source vendor, The Active Network, Inc., in the amount of $22,057.28 (Attachment 1). Staff also recommends that Council authorize the Chief Executive Officer to negotiate and execute contract extensions at the end of the initial three-year contract period for an additional contract period. Each renewal contract period will be three years in length. The Chief Executive Officer will have the option to renew the contract twice after each term. Staff further recommends that Council authorize the Mayor to sign and the City Clerk to attest;

2. Staff recommends that City Council adopt a resolution for the implementation of an on-line, recreation registration System Use Fee of five ($5) dollars per registrant to cover the on-going transaction fees charged by The Active Network, Inc.

BACKGROUND/ ANALYSIS

Since 2006, the Recreation Division has used Rec Trac Software from Vermont Systems, Inc as the registration system for Recreation contract classes, City-managed programs, park and facility reservations, model airplane fly permits, community garden parcel fees, and field permitting. The Rec Trac system uses an older database type system that is hosted on a City server and requires regular support from the City's IT staff. The Rec Trac software requires that the City pay for each workstation license which limits staff access to information. Rec Trac also greatly slows down the workstation processing speed. It can take as long as 20-30 minutes for Rec Trac to open and become useable at the City's outlying Community Centers. The Rec Trac system maintenance contract with Vermont Systems is a year-to-year contract at an annual cost of $2,160. The current contract with Vermont Systems expires June 30, 2012.

Staff receives daily inquiries from the public asking if they can register for a class or activity on-line through the internet. The Rec Trac system does not provide a quality, web-based online registration feature, so staff researched alternative providers. The Active Network's (TAN) ActiveNet Software is a full-featured, web-based, recreation management solution designed to provide on-line registration capabilities. The ActiveNet system will give the public secure, on-demand access to the Recreation Division's registration data from any computer with an internet connection. TAN hosts and manages the system through their servers using the latest technology

infrastructure. TAN provides more than 90 percent of the recreation software in the United States and Canada. ActiveNet is used by the cities of Newport Beach, Mission Viejo, San Diego and Westminster as well as City's in Los Angeles and San Bernardino Counties. The City has used Active services in the past for the registration of participants in the Costa Mesa Community Run. ActiveNet software is patented to TAN. They are the sole licensor and provider of the software. TAN is the only vendor available that provides a software system that meets the current needs of the Recreation Division and provides convenient on-line registration service to the public. As opposed to other vendors, TAN is the only vendor whose on-line systems can be expanded to include internet facility reservation, internet membership sales and renewal, marketing, kiosks, and day care or camp management enabling the City to respond to the public's request for increased service capability.

Representatives from Finance, IT, Recreation and TAN held a live web meeting to review the capabilities of ActiveNet. All participants expressed their recommendation of the software quality and support provided by TAN.

The benefits of the ActiveNet system include:

- A user friendly, online system for patrons to register for Recreation classes and programs, renew Community Garden parcels and Model Airplane Fly permits.
- Park facility and field availability calendars easily viewable by patrons.
- Software that is Payment Card Industry (PCI) compliant with major credit card providers, and software that secures credit card and customer information data.
- Outside hosting of credit card information would shift the liability from the City to TAN
- Software that is web based which allows any staff member or the public in a City Facility, in the field, or at home to access program and registration information on any computer device that has an internet connection.
- Quick implementation of updates and enhancement to software at no additional cost.
- Unlimited number of licensees. Workstations will have access to the system without any slowdown of the workstation processing speed.
- Reduction of IT and outside vendor (Vermont Systems) staff support and elimination of the yearly cost to maintain the software application and servers.
- Contract class instructors will be able to log-in to the ActiveNet system from their home or class site to print class rosters, attendance sheets and class schedules.

The active network proposal includes a $12,000 annual Hosted Minimum. The Hosted Minimum is the overall minimum amount that is paid to TAN by the City based on their annual revenues. For Costa Mesa, that annual minimum is estimated to be $12,000. However, if the City approves the Agreement by September 30, 2011, TAN will waive the Hosted Minimum.

FISCAL REVIEW

ActiveNet Software

The start-up cost to the City for the ActiveNet on-line registration system is $22,057.28 which covers system implementation, point of sale hardware and 160 hours of staff training. Funds for the ActiveNet system purchase were approved in the Fiscal Year 2011-2012 adopted General Fund Operating Budget.

The on-going use and maintenance costs for the ActiveNet system, and credit card convenience fees, are obtained through ActiveNet's transaction fees assessed on a per transaction basis as follows:

On-Line Transaction Fees
Credit Card ($0-$149) - 6.5% + $.50
Credit Card ($150-$499) – 3.5% + $5.00
Credit Card ($500+) – 2.5% + $10.00
Off-Line Transaction Fees
Credit Card – 3.75%
Cash/Check – 1.5%

The transaction fees are in addition to the class/activity fee and will be charged to the registrants when they use the on-line registration system. The transaction fees will be retained by TAN, and the class fee will be remitted to the City. When a participant registers and pays for a class or activity at a City facility (not on-line) with cash, a check or credit card, the City is charged the transaction fee, not the participant (see the example below).

Example of On-Line Transaction		Example of Off-line Transaction	
Class/Program Fee:	$100.00	Class/Program Fee:	$100.00
Transaction Fee (6.5% + .50):	$ 7.00	Transaction Fee Credit Cd (3.75%)	$ 3.75
Participant Pays:	$107.00	Participant Pays:	$100.00
City Keeps:	$100.00	City Keeps:	$96.25
The Active Network receives:	$ 7.00	The Active Network receives:	$ 3.75

System Use Fee

As seen in the "Off-line" transaction example above, the City receives reduced revenue for all off-line transactions. In order for the City to recover the reduction in revenue from the offline transactions, staff proposes implementing a "system use fee" of $5 on all class, activity, and permit fees processed through the ActiveNet system to cover the transaction fee charges (Fee Resolution, Attachment 3).

If Council approves the system use fee, the class/program fee will be increased by $5. In the ActiveNet system, all transaction fees, whether on-line or off-line, are calculated automatically based on the class/program fee. With a class/program fee of $105.00, the off-line Transaction fee will be $3.94, the participant pays $105.00, the City nets $101.06 and The Active Network keeps $3.94 (see example below). The class fee to be split with the instructors will remain at $100. Any additional system use fee amounts received by the City will be used to offset the up-front cost of the ActiveNet system.

Example of Off-line Transaction with $5 System Use Fee	
Class/Program Fee:	$105.00
Transaction Fee Credit Cd (3.75%)	$ 3.94
Participant Pays:	$105.00
City Keeps:	$101.06
The Active Network receives:	$ 3.94

Should the City Council not approve the $5 system use fee and absorb the off-line transaction fees, based on an estimate of off-line transactions, the City would lose approximately $15,000-$20,000 a year in class and program fee revenue.

LEGAL REVIEW

Liability & Indemnification
This Agreement does not contain the usual indemnification and liability provisions that are normally included in most agreements between the City and other services providers and vendors. Generally, an agreement will contain the City's standard indemnification and liability provisions that would not cap the maximum liability of a particular service provider or vendor. In this case, TAN has required a General Cap on how much aggregate liability it would be exposed to if a claim is made under this contract. The General Cap works by a calculation of the total amount of income that TAN receives two years prior to the latest date of incident.

For example, there is a 3rd party claim under this Agreement in January 1, 2009. TAN has received $30,000 under this Agreement for the time period from January 1, 2008 to December 31, 2008. TAN has also received $40,000 under this Agreement for the time period from January 1, 2007 to December 31, 2007. Based upon the previously mentioned calculation, TAN will only pay the January 1, 2009 claim up to $70,000. Any claim that is excess of $70,000 would not be covered by TAN.

Notwithstanding the previous, this Agreement also has two carve outs to the General Cap. First, for intellectual property claims, there is no cap on liability. An intellectual property claim would be a situation where a 3rd party alleges that TAN's software infringes upon the 3rd party's software and sues the City. Under this Agreement, TAN has agreed to indemnify the City's costs and liability for fighting that lawsuit and/or to have the City removed from that lawsuit without any cap.

The second carve out is for the negligent release of confidential personal information. Under this carve out, the cap is set at $500,000. This carve out would cover a situation where hackers break into TAN's network/software and steal private personal information belonging to users. In that situation, TAN would only pay up to $500,000 in the aggregate. Moreover, that $500,000 would be in the aggregate over the life of the relationship between TAN and the City. For example, if within the first term of three years of the Agreement there is a $100,000 claim for negligent release of confidential personal information and the City decides to renew the Agreement without amendment, then only $400,000 in liability would be available to the City if TAN negligently releases confidential personal information in the second term. This figure may be renegotiated at the end of the initial 3 year term. Because of this, it is advised that the City be aware of any claims that may occur and exactly when a particular term of the Agreement ends.

Cancellation Notice Endorsement
Another difference is that this Agreement's insurance section does not contain one of the City's standard endorsements. This particular endorsement requires that TAN's insurance carrier notify the City 30 days prior to termination or cancellation of TAN's insurance policy. Unfortunately, TAN is unable to provide that endorsement because their insurance company does not provide the same notice. At best, TAN is able to provide the same notice language as found in their insurance policy; which provides the following:

> "The Insurer will endeavour to mail the holder of this Certificate 30 days' written notice of cancellation (except 15 days for non-payment of premium) of the Commercial Property/Commercial General

> Liability/Errors & Omissions policy, but assumes no responsibility for failure to do so."

This essentially means that their insurer is not obligated to provide us with notice and is only required to "endeavour" to provide notice of any cancellation of the Commercial Property/Commercial General Liability/Errors & Omissions policy. The reason for this is that TAN's insurance carrier provides the same type of notice to TAN and will not provide an additional insured, i.e. the City, anything beyond what they have contracted with TAN.

Statute of Limitations
This Agreement also has a slightly different statute of limitations than what is allowed under the law. The standard Statute of Limitations for Contracts is four years while the Statute of Limitations for general tort actions is two years. This Agreement limits both tort and contract claims made under this Agreement to two years. Therefore, any claim that the City may have under this Agreement must be brought within two years of the date of incident.

Rationale
The reasoning for the above is that TAN has had no history of breaches into their software. Thus, while the limits of liability are low, the risk and probability of a potential breach or claim is also extremely low. Further, the reasoning behind the differing endorsement provision is that, given TAN's size, TAN is highly unlikely to lapse in coverage. Moreover, they are an almost exclusive provider of this sort of software to governmental agencies throughout California and, to a wider degree, the United States. The features found in their software fit exactly what is needed by the City. Because of those reasons, they are the industry-wide gold standard for this type of software.

ALTERNATIVES CONSIDERED

The City Council could choose to not approve the Agreement with TAN and continue using the Rec Trac software with no on-line registration capability.

Should City Council approve the Agreement with TAN, they could choose to absorb all off-line transaction fee charges rather than pass them through to the registrants.

Should the City Council approve the Agreement with TAN, they could choose to assess the system use fee on adult classes and activities only and exempt youth and/or senior instructional classes and program activities from the $5 system use fee.

CONCLUSION

In order to provide a convenient, on-line registration capability to the public, staff recommends that City Council authorize the Mayor to sign the sole-source, Products and Services Agreement for three (3) years in the amount of $22,057.28 with The Active Network and approve the Resolution to implement a system use fee of $5 per registrant to offset the transaction fee the City will be charged for each off-line transaction.

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Attachments:
1. The Active Network Products and Service Agreement
2. The Active Network Pricing Proposal
3. Fee Resolution