



Agenda Report

File #: 19-0086

AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: 2/6/2019

TO: Honorable Mayor and City Council Members

FROM: Library and Recreation Services Department

SUBJECT:

City Council consideration of a Third Amendment to the City's contract with the Active Network (TAN).

RECOMMENDED ACTION:

That the City Council authorize the City Manager, or his designee, to sign a Third Amendment with Active Network (TAN).

ANALYSIS:

The Library and Recreation Services Department transitioned from its registration software program from "RecWare Safari" to "The Active Network" in May 2012. TAN offers recreation registration and facility reservation software, through its online portal, that is accessible by both City staff and residents. Use of the service is paid for by transaction fees. Staff-initiated transactions are paid at a lesser rate than those charged directly to online users.

When the service began, patrons paid fees as "a Service Charge equal to 4.5% + \$.50 for all transactions \$0-\$150, \$150-\$500 = 3.5% + \$5.50 and \$500+ = 2.5% + \$10.50 with a minimum Service Charge of \$2.00." This was a promotional rate with transaction fees scheduled to increase January 2013.

In October 2012, the original service agreement was amended to extend the promotional transaction fee rate until January 2014. Due to concerns related to TAN's performance, the City amended the agreement again in March 2014 to allow for a twelve-month termination notice in lieu of the original 36-month requirement. At that time, TAN allowed the City to maintain the existing promotional transaction fee rate.

In early 2016, TAN informed City staff that transaction fees would increase "equal to 6.5% + \$1.00 for all transactions \$0-\$150, \$150-\$500 = 3.5% + \$5.50, and \$500+ = 2.5% + \$10.50 with a minimum

Service Charge of \$2.00.” The fee increase was presented to and approved by City Council on July 2016. Because of the uptick, a Kids Club parent who registers directly online, for example, has since paid \$4.25 in convenience fees to Active for a \$50 activity.

Parents soon realized that transactions fees could be avoided through in-person, call-in, or mail-in registration. Thus, staff-initiated transactions surged as most parents began to register through us. However, because the City pays, though at a lesser rate, transaction fees, our costs to Active rose dramatically.

In 2018, the City began its biennial review of fees and charges and Library and Recreation Services staff proposed passing through all transaction fees to patrons. The department included its (up to) 1.74% Active Network transaction fee (for staff-performed transactions) and the (up to) 2.6% credit/debit card transaction fee (which TAN processes on behalf of the City) to be included as a pass-through fee to patrons as part of the Citywide Schedule of Fees and Classes. The fees were approved by City Council at its regular meeting on November 20, 2018.

With Council approval of fees, the City contacted TAN to inform them of our intentions regarding transaction fees. The City Attorney’s office drafted an amendment to the agreement for review by TAN to include charging staff transaction fees to patrons. Active attorneys have reviewed and returned the proposed amendment (attached) for execution. We are asking City Council to authorize the City Manager to execute the amendment.

It is important to note the primary goal of the transition to Active Network software services was to encourage use of the online portal by residents to easily and conveniently register for activities and reserve City facilities from home. The high rate of transaction fees has had the opposite effect and increased staff activities and City costs. The amendment addresses the issue of added costs but will not increase online patronage.

Corona is not the only City experiencing these concerns with The Active Network and, consequently, many have now engaged alternative online registration vendors. Library and Recreation Services Department staff have begun to dialogue with other providers too. At the time of execution of this amendment, we will provide a notice to TAN, in accordance with our current agreement, that the City is considering alternative vendors and intends to terminate our contract effective March 2020, which is the earliest possible termination date.

COMMITTEE ACTION:

The Finance, Legislation, and Economic Development Committee reviewed the proposal to make all Active Network transaction fees pass through fees as part of its review of the Update of Citywide Schedule of Fees and Charges at its November 7, 2018 meeting and recommended the fee schedule for approval by City Council. The Parks and Recreation Commission reviewed the proposed fee changes, including Active Network transaction fees, at its October 10, 2018 meeting.

STRATEGIC PLAN:

This item supports the City’s Strategic Plan Goal 4: “Actively engaging in public and private partnerships to provide services and amenities.”

FISCAL IMPACT:

Fees for customer-initiated online registration and reservation transactions are passed on as convenience fees directly to patrons. Historically, walk-in, mail-in, and telephone registration are completed by staff through the Active Network's online portal. Active receives a lesser "per-transaction" fee for staff-completed transactions, which they subtract from the total amount of the City's registration fees. In November 2018, City Council authorized these fees be passed through to patrons effective 2019. Based on last year's figures, doing so should result in an annual savings of approximately \$30,000 in the Library and Recreation Services' General Fund operating budget. Future operating budget requests will be adjusted accordingly.

ENVIRONMENTAL ANALYSIS:

This action is exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action amends an existing contract for registration and reservation software services and support and there is no possibility that adopting this Resolution will have a significant effect on the environment.

PREPARED BY: DAVID MONTGOMERY-SCOTT, LIBRARY & RECREATION SERVICES DIRECTOR

REVIEWED BY: KIM SITTON, FINANCE MANAGER

REVIEWED BY: JAMIE RAYMOND, CHIEF DEPUTY CITY ATTORNEY

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHELLE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: DARRELL TALBERT, CITY MANAGER

Attachment: Amendment #3 to Activenet Agreement

**AMENDMENT #3
TO THE AGREEMENT**

This Amendment No. 3 (this "**Amendment 3**") is made effective as of _____ (the "**Amendment 3 Effective Date**") by and between the City of Corona ("**Client**") and Active Network, LLC, successor in interest to The Active Network, Inc. ("**Active**") and amends that certain Software as a Service Agreement, dated as of March 2, 2012, as amended by Amendment to the Agreement dated October 1, 2012 ("**Amendment 1**") and Amendment No. 2 to the Agreement dated March 1, 2014 ("**Amendment 2**") (collectively, the "**Agreement**") entered into by the Parties. Client and Active are also individually referenced herein as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW THEREFORE in consideration of the mutual covenants, recitals and promises contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto hereby agree as follows:

1. Changes to the Agreement.

- A. The Ongoing Fees Section of Schedule 1 to the Agreement will be deleted and replaced with the following:

Offline Payments. The following fees and charges apply when registration and payment is submitted in person at a City facility with Client staff entering the registration and payment information on behalf of the registrant/participant through Active Net's offline interface:

Payments entered by Client staff, on behalf of registrants, through the offline interface will be assessed a 1.5% Service Charge.

An additional credit card transaction fee of 2.25% will be applied to credit card payments entered by Client's staff, on behalf of registrants, through the offline interface. Refunds to credit cards will be assessed a \$0.10 credit card refund fee.

An additional ECP (electronic check payment) processing surcharge of 1.5% will be applied to offline ECP payments entered by Client's staff, on behalf of registrants, through the offline interface. Refunds to ECP will be assessed a \$0.10 refund fee.

All offline Service Charges, credit card transaction fees, and ECP processing surcharges will be added to the total due from the registrant, paid for by the registrant and collected by Active. Client shall not be responsible for payment of any Service Charges, credit card transaction fees, and ECP processing surcharges.

Online Payments. The following fees and charges apply when registration and payment is submitted through Active Net directly by the registrant/participant through the public access interface:

As a part of a promotional offering each online registrant will pay the event registration fee charged by Client in addition to a Service Charge equal to 4.5% + \$.50 for all transactions \$0-\$150, \$150-\$500 = 3.5% + \$.50 and \$500+ = 2.5% + \$10.50 with a minimum Service Charge of \$2.00 until December 13, 2013. After the promotional offer, starting January 1, 2014 each online registrant will pay the event registration fee charged by Client and a Service Charge equal to 6.5% + \$1.00 for all transactions \$0-\$150, \$150-\$500 = 3.5% + \$.50, and \$500+ = 2.5% + \$10.50 with a minimum Service Charge of \$2.00. There are no advertising offers - Active Rewards or Active Readers - on the public access interface.

All online Service Charges will be added to the total due from the registrant and will be paid for by the registrant and collected by Active. Client shall not be responsible for payment of any Service Charges.

Active may change the Service Charges at any time and Client agrees to such change unless Client provides Active with written objection to such change within 30 days from the date such change is first implemented.

Active will be responsible for collecting all registration fees charged by Client and all Service Charges, credit card transaction fees, and ECP processing surcharges assessed by Active. All registration

fees, except Service Charges, credit card transaction fees, and ECP processing surcharges are Client's exclusive property. Any registration fees collected by Active will be sent to Client twice a month, and Service Charges, credit card transaction fees, and ECP processing surcharges shall be retained by Active.

Active shall not be responsible for processing or making any refunds. All credit card refunds processed by Client will be assessed a \$0.10 fee charged by Active to Client. Active may reimburse itself for any credit card chargebacks and associated fees out of registration fees collected by it. In the event such funds are not available, Client agrees to reimburse Active for any chargebacks or refunds.

2. **Full Force and Effect.** Except as expressly modified herein, the Agreement remains in full force and effect. All references in the Agreement to "this Agreement," "hereto," "hereof," "hereunder" or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendment. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Amendment, the terms and conditions of this Amendment shall prevail only as to the subject matter expressly stated herein.

3. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document, binding against each of the Parties. To the maximum extent permitted by law or by any applicable governmental authority, this Amendment may be transmitted by facsimile, electronic mail (including pdf) or other transmission method with the same validity as if it were an ink-signed document and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment 3 as of the Amendment 3 Effective Date.

Active Network, LLC
by its authorized signatory

City of Corona
by its authorized signatory

By: _____
Name: _____
Title: _____
Date: _____

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Title: _____
Date: _____