



**BOND · DICKSON**  
A T T O R N E Y S A T L A W

June 30, 2016

**VIA FED-EX DELIVERY & E-MAIL TRANSMISSION**

Mr. Michael Pedone  
President  
Water Resources, Inc.  
390 Sadler  
Elgin, IL 60120

Re: City of West Chicago  
Water Resources, Inc.,  
Professional Services Contract  
Notice of Breach  
Our File No.: 01-542

Dear Mr. Pedone:

Please be advised that I represent the City of West Chicago in connection with the Professional Service Contract related to the 2011 City-wide Water Meter Replacement and Advanced Metering Infrastructure Fixed Network Program Contract between the City of West Chicago and Water Resources, Inc. (“Water Resources”), dated July 18, 2011. In connection with that representation, I have been requested by the City Council to review the Contract in light of the current status of the Project, your Company’s failure to satisfactorily answer City Staff’s inquiries and the unconscionable number of equipment failures and software issues the System is experiencing.

As you are aware, pursuant to Article 6 of the Contract, the work was to be completed by August 1, 2012. The Contract indicates that “time is an essential part of the contract” and provides for liquidated damages of \$500.00 per calendar day until the completion of the Project. I understand that Water Resources verbally requested an extension of the Contract in late 2012 via Robert Flatter, however I am neither aware of any formal written request for an extension from Water Resources nor has any request for an extension been approved by the City Council, the only entity which has the authority to grant such. Furthermore, the Contract requires that your Company install all infrastructure (“System”) associated with the Project, and there are still meters remaining to be installed and accounts known by your Company where repairs are needed, and I am not aware of any plan in place to accomplish this task.

Compounding the Project not being complete, the City has experienced an unacceptable level of failures that has resulted in the System not functioning properly, due in large part to software errors, equipment failures and poor customer support. These failures have caused a significant

breakdown in the confidence that the residents of the City have in their government, the elected officials, Water Resources and the Neptune Technology Group, Inc. ("Neptune). When the City contracted with your Company, it anticipated that the Project would be completed in a timely fashion and the System would be fully functioning and operate as it was sold/presented to the City in 2011. The City has repeatedly put Neptune and Water Resources on notice of these System failures and the equipment problems within the System. While half-hearted efforts have been initiated to address these concerns, the System is not in the condition that the City contracted for at the time the Contract was executed. The City continues to receive error messages and the equipment continues to fail at an unacceptable frequency, a rate of failure that clearly exceeds industry standard, and has been noted as much higher than normal by both Neptune personnel and representatives of your Company.

To highlight just a few of the problems, there are numerous time out errors occurring in the ARB software; letters in lieu of numbers are appearing in the readings in the ARB software; non-functioning MIUs removed from customers' homes are being reinstalled in other homes by your personnel; the software shows that there are in excess of 500 accounts with continuous leaks, many of which turned out to be false readings when field checked; and an unacceptable number of customer visits by City personnel to attempt to identify and correct the problems. In addition, the technical support provided by Neptune and your Company has been dismal. Too many times have different Neptune personnel via phone and email, as well as Water Resources Staff provided different answers to the exact same questions, or provided responses based on speculation and trial and error rather than knowledge of the System. Even you were confused and in error regarding the version of the software the City was using during the September 22, 2015 Conference Call with Neptune personnel and City Staff.

The software was never correctly installed on the City's IT infrastructure the first time (and in many instances it takes three and four attempts). Various Neptune representatives and Water Resources Staff cannot agree on how servers should be configured, leaving the City at a loss. Further, Water Resources failed to notify the City in writing (or even a courtesy verbal notice) of changes, patches and/or upgrades to the software that would ultimately be necessary; in fact, you brushed this huge oversight aside saying that it didn't matter because the City wasn't using the software for billing, even though the City is paying for maintenance and is using the Neptune software as it was designed with the interface operational.

Water Resources Staff, without notice to the City, replaced equipment and either failed to timely provide the data or simply failed to provide it at all or until pressed by City Staff, thereby further delaying the City's ability to provide service to its customers. Water Resources continues to refuse to take responsibility for the data input errors in this Project, which are clearly identified from the records.<sup>1</sup> All of these Contract breaches have impacted the City's ability to provide timely and quality services to its customers. Neptune and Water Resources personnel keep saying that they are willing to help. However, all that comes of these representations are

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<sup>1</sup> This same issue was also evident in the GPS component of the project, during which inaccurate and duplicate data regarding the locations of the b-boxes were repeatedly found by City staff and returned to Water Resources for correction, resulting in additional delays to this Project.



unannounced and unscheduled visits to City Offices without valid, helpful/useful information or proper due diligence having been done. The real issues are not addressed and the problems continue unabated.

The City contracted for a System that would retain historical readings for its useful life; this was a key selling point of your System at the time the Contract was approved by the City Council. At some point, and without notice to the City, Staff learned that a corporate decision was made to change the future operation of the System to store no more than 24 months of data. Water Resources personnel keep telling the City that pushing the data will assist with many of the issues that have been brought to your attention, yet by doing so the City will lose data in excess of two years. Also, while the City is told that so long as the City does not install the upgrades, all historical data should remain. The fact that there is a software upgrade suggests that the latest proprietary software should be the best option. The City cannot, however, forgo the maintenance of its historical records, which it must maintain in accordance with the Local Records Act; the suggestion to move the data older than 24 months from the System software to an archive of some sort so then City Staff can manually access it is unacceptable and eliminates the benefit the City wanted when it purchased the Neptune System.<sup>2</sup> City Staff has been told that the reason for the excessive number of time out errors in the ARB Software, mentioned earlier, are due to City Staff searching for data older than the two year threshold. There clearly must be another reason for such, since the time out errors occur as frequently for data that is less than two years old. Again, the System for which the City contracted is not working and the roots of the problems have not been identified and corrected.

On at least two occasions, City Staff has been completely shut out of the System and unable to provide service to its customers; these occurrences, like the rest of the System issues, are wholly unacceptable. Neptune personnel, both times, indicated that they had to defrag the database in an effort to rebuild it. The City still has received no explanation as to why this happened and what is being done to guarantee that such a situation never happens again; this is yet another testament to the unreliability of the technical support and the System.

Clearly one of the most frustrating components of this entire Project is that the City, after years of inquiring, was told that there are defective or faulty chips in the MIUs installed in West Chicago. The City was not notified of this problem in a timely manner and no one from Water Resources can identify where the faulty chips are located and how many there are. This is beyond acceptable. City Staff repeatedly have asked Neptune and Water Resources personnel to clearly, and in writing, identify the problem, accept responsibility for not immediately notifying the City of such, and convey what Water Resources will be doing about it. Water Resources Staff has not provided this information. What action, if any, has Water Resources or Neptune taken against the chip manufacturer for allowing the faulty chips to be placed in the stream of commerce and utilized in this Project. This problem, like so many aspects of this Project, was improperly managed by Water Resources since the City raised its concerns about the alarming

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<sup>2</sup> One of Water Resources' selling points at the time the City was selecting a company to do this Project was that customers would be able to look at their water consumption data online. Customers will not be able to access the archived data through Neptune's portal, thereby eliminating most of the benefit of this feature which was highly touted to and desired by the City.



rate of MIU failures. To date, nothing has been provided to the City, which suggests gross negligence.<sup>3</sup>

There are hosts of other problems of which City Staff have made you aware of over the years, most of which have not been resolved to the satisfaction of the City including, but not limited to, mis-programmed MIUs at multiple addresses, shoddy initial installations that require City Staff to repair, as well as unexplained and/or insufficiently explained meter and software malfunctions. Over 13% of the 7,000 accounts so far have had issues with your new equipment. That figure is growing. I understand that you wish to deem these as warranty repairs, but this problem extends beyond such. The evidence is that Water Resources has provided a System that is not functioning as it should. To compound matters, failing to provide the requested documentation to help the City and its customers understand the reasons for these problems has eroded confidence and trust in your Company and Neptune. In fact, this is clearly evidenced by the latest, untimely response to the City's inquiry about the broken register from 435 E. Forest Avenue. The City only received a response after nearly a dozen requests dating back to October 2015 and after hearing that the City would only receive excerpts from the engineering report on the register, as opposed to the full report which is expected. The customers are not satisfied with Neptune's response.<sup>4</sup>

Again, Water Resources keeps encouraging my Client to push the data within the N900 software, yet the City has requested documentation to show if Staff has been given all of the rights and permissions necessary to do an automated push, a written procedure of how to do an automated push, as well as a host of other information requested in an email to Neptune's District Manager dated December 1, 2015, very little of which has been provided.<sup>5</sup> The City keeps being told that Neptune and Water Resources are responsible companies, but yet what should be very basic information that is requested by Water Resources' customer is not forthcoming. I understand that Neptune and Water Resources personnel have offered, numerous times, to have face-to-face meetings; to date, the meetings that have been held have been unproductive and the equipment issues and software errors continue. Water Resources and Neptune fail to take responsibility and instead continue to blame the City when it's Neptune's equipment that is causing the problems.

Additionally, the City needs responses, in writing, due to the tremendous amount of inconsistent and contradictory information that has been provided to date; the repeated meeting requests and failure to document what is asked leads the City and its customers to believe that Water

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<sup>3</sup> Furthermore, even after learning that equipment that Water Resources sells is failing at unprecedented rates due to defective chips, Water Resources has failed to run a single report to identify the addresses with the faulty MIUs and determine their corresponding addresses.

<sup>4</sup> It is highly unusual that the meter was purportedly manufactured on January 1, 2013, and that it was installed in the customers' home thirteen (13) days later.

<sup>5</sup> Other examples include, but are not limited to, questions about the sufficiency of the licenses and the location of the "ghost" license; a written explanation to our customers of Neptune's determination with respect to why so many MIUs are needing repair, when Neptune and Water Resources learned about the problem; and an explanation of what the City gets for pre-paying maintenance, especially since there are continuing equipment failures and software timeout errors.



Resources and Neptune are hiding something or simply don't know the answers and don't know what you are doing. So, on behalf of my Client, we expect and demand written, *fully responsive* answers to all of our outstanding questions and requests for information, a request that is proper based on the terms of the Contract. Any response that includes references to the interfacing issues that surfaced in 2011 and early 2012 would be futile and will continue to show Water Resources and Neptune are trying to mask the massive problem because so much of the equipment your Company installed is failing at an astronomical rate. Also, Water Resources and Neptune are clearly not aware that the interface was resolved several years ago, and is not at all related to the problems the City shared with you since the inception of the Project.

I have read all of the correspondence from that point in time, and the finger pointing at the City is simply not true as a matter of fact or law. I would encourage Water Resources and Neptune Staff to review the totality of the correspondence which identify, among other problems, significant errors that Water Resources made at the inception of this process: Water Resources' failure to timely provide a file layout after giving misinformation to City Staff about Dubuque, Iowa's similarity to the City's situation and Water Resources providing incorrect manuals as well as the wrong version of the software.

It also remains unclear to me what services the City is receiving in return for the annual Maintenance Fees, given the current failing state of the System and since when Neptune and/or Water Resources are asked to address the problems that remain unresolved and continue. It seems to me the maintenance component of this Project should not have begun into a working System was in place, resulting in the City being shorted three (3) real years of maintenance services.

After years of asking for a Neptune software change, due to the limitation that an end read date cannot be manually input, the City was finally provided with one component of a workaround, which did very little for it because it requires the City's financial software provider to do one too. The latter cannot be done as an upgrade is required first, and the City has been on the list to have such done for an extended period of time, waiting for its turn amongst all of Pentamation's customers. The help that Water Resources and Neptune keep saying they are giving has been useless so, again, we request that the software be changed to address the limitation.

The Contract language dictated that the City had to wait until the end of the Project to formally provide Water Resources its Notice of Breach. However, we are now at that point, and these unresolved and continuing problems leave the City no other option but to demand full and complete performance by Water Resources. As a result of these failures and the fact that the System is not fully and properly functioning, pursuant to the Final Acceptance provision of the Contract, the City has not made and will not make final payment. Water Resources made certain representations to the City, consistent with Article 10 of the Contract. The System condition has plainly evidenced that those representations were not accurate.

As a result of Water Resources' breach, which consists of its failure to deliver the System for which the City contracted, the City has incurred damages, including an inordinate amount of Staff time devoted to this Project, legal fees and other related costs. Accordingly, the City will



be assessing liquidated damages for the time the System has not been completed and fully functioning, beginning one (1) year after the Completion Date set forth in the Contract (August 1, 2013). In addition to the assessment of liquidated damages, the City will also be calling the Performance Bond posted in connection with the Contract, which was designed and intended to ensure timely System completion.

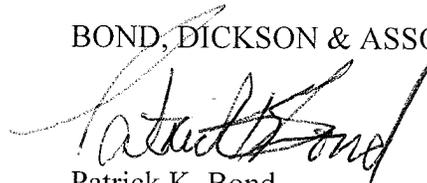
Also, kindly consider this correspondence the formal Notice of Termination, pursuant to the City of West Chicago's Request for Proposal, Section 3, General Conditions, Termination of Contract, which was incorporated, in its entirety, into the Contract. In the event the System is not fully functioning at the conclusion of the thirty (30) day cure period provided for in the Contract, consider the Contract terminated. The City expects that Water Resources will work with Neptune to have a Neptune employee familiar with the System dedicated to the West Chicago Project to address all of the problems identified in this correspondence (and all other problems of which you have been notified) and deliver on Water Resource's contractual obligations. It is the City's intention to take all necessary legal action to secure a System that fully functions in accordance with the Terms and Conditions of the Contract, the representations you and your Staff made prior to the signing of the Contract and within the price allocated in that Contract. The City will be seeking damages from Water Resources, Inc. for the additional Staff time, legal services incurred and any other additional costs (and any lost revenue due to the System-wide equipment failures) associated with bringing the System into full compliance with the Contract terms or, if not possible, then the damages' amount will also include the cost to secure a new System.

In addition to providing a System in compliance with the Contract, I await your detailed written explanations (together with engineering reports where applicable) of all the meter/register/other equipment problems and software errors that continue to occur, and written responses to all questions remaining unanswered and issues/concerns brought to your attention to date. I trust that since the City prepaid for maintenance services, there will be no issues surrounding current and future technical support as well as equipment availability in addition to the defective chips in the MIUs being replaced at no cost to the City.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

BOND, DICKSON & ASSOCIATES, P.C.



Patrick K. Bond  
City Attorney

PKB/amo

cc: Michael Guttman, City Administrator  
Linda Martin, Director of Administrative Services  
Robert Flatter, Director of Public Works

