

**CITY OF ANN ARBOR AND CITY OF CHELSEA
OPERATIONAL AGREEMENT
FOR
INFORMATION TECHNOLOGY SERVICES**

THIS AGREEMENT, is made and entered into this 1ST day of JULY, 2015 by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 E. Huron, Ann Arbor, Michigan 48104, ("ANN ARBOR"), and the City of Chelsea, a Michigan municipal corporation, with principal address at 305 South Main Street, Suite 100, Chelsea, Michigan 48118, ("CHELSEA"):

WHEREAS, Since 2011 ANN ARBOR has provided CHELSEA information technology services through an annual operational service agreement;

WHEREAS, ANN ARBOR and CHELSEA have determined that it is in the best interest of both communities to continue to provide information technology services through a shared resources and staffing agreement;

WHEREAS, ANN ARBOR and CHELSEA have further determined that it is the best interest of both communities for budgetary and operational planning to provide for renewal of this agreement on a recurring basis; and

WHEREAS, ANN ARBOR and CHELSEA need to specify how ANN ARBOR will provide CHELSEA with information technology services and how CHELSEA will provide ANN ARBOR with certain resources in support of these information technology services;

ANN ARBOR and CHELSEA agree as follows:

I. Term

The term of this Agreement shall be one year commencing on July 1, 2015 ("Effective Date") and shall remain in effect until June 30, 2016 ("Initial Term"), unless terminated by either party under this Agreement.

On expiration of the Initial Term, this Agreement shall automatically renew for additional successive one-year terms unless and until either party provides written notice of nonrenewal at least ninety (90) days before the end of the then-current term or unless and until sooner terminated as provided in Section XII. If the term is renewed for any renewal term(s) pursuant to this Section, the terms and conditions of this Agreement during each such renewal term shall be the same as the terms in effect immediately before such renewal unless amended by the parties as provided in Section XIII. If either party fails to provide timely notice of its intent to not renew this Agreement, unless otherwise terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current term.

II. Scope of Services

- A. The purpose of this Agreement is to provide information technology services to the employees and customers of CHELSEA, to enable timely, cost effective, high quality delivery of City services.
- B. ANN ARBOR shall provide competent personnel to perform, subject to the terms of this Agreement, during the Term, information technology requirements for municipal operations for CHELSEA. ("Base and Project Services") as defined by the parties to be attached to this Agreement as Exhibit A. Changes in personnel assigned to manage CHELSEA's information technology requirements during the term of the Agreement are within the discretion of the IT Director.
- C. Services provided CHELSEA shall be under the direct supervision of ANN ARBOR IT Director (hereafter "IT Director"). CHELSEA and ANN ARBOR shall jointly set work priorities for assigned personnel.
- D. During the term of the Agreement, CHELSEA shall remain responsible for any new or additional software, or the repair or replacement of hardware, that CHELSEA may require to perform the Base Services, including any and all required third-party licenses, leases, support, service, maintenance and other agreements (collectively "Ancillary Agreements"); provided, however, that ANN ARBOR shall be responsible for procuring and maintaining all Ancillary Agreements for ANN ARBOR software and hardware.

III. General Operational Conditions

- A. ANN ARBOR shall keep time and expense records tracking time administering CHELSEA information technology systems, as well as time, if any, working on joint ANN ARBOR and CHELSEA funded projects, and time assisting CHELSEA employees from other departments or service units and any expenses incurred in connection with the Services. Time and expense records must comply with timekeeping procedures of both ANN ARBOR and CHELSEA. Time records shall include travel hours (if any).
- B. ANN ARBOR, its officers and employees and CHELSEA, its officers and employees shall not disclose confidential information of the other to any third party.

- C. If either Party is given access to any equipment, computer, software, network, electronic files, or electronic data storage system owned or controlled by the other Party, the Party provided access shall limit such access and use solely to provide or receive, as applicable, information technology services under this Agreement and shall not access or attempt to access any equipment, computer, software, network, electronic files, or electronic data storage system, other than those specifically required to provide or receive, as applicable, the information technology services. Each Party shall limit such access to those individuals with a requirement to have such access in connection with this Agreement, shall advise the other Party in writing of the name of each such person who will be granted such access, and shall strictly follow all security rules and procedures of the other Party for use of that Party's electronic resources. All user identification numbers and passwords disclosed to a Party by the other Party or similar confidential or privileged information obtained or shared as a result of access to and use of any equipment, computers, software, networks, electronic files, and electronic data storage systems owned or controlled by the disclosing Party, shall be deemed to be, and shall be treated as, subject to non-disclosure to the extent allowable under law. Each Party agrees to cooperate with the other Party in the investigation of any apparent unauthorized access by the first party to any equipment, computer, software, network, electronic file, or electronic data storage systems owned or controlled by the other Party, or any apparent unauthorized release of confidential information.
- D. On matters that could involve an actual or perceived conflict of interest between ANN ARBOR and CHELSEA, the Ann Arbor employee shall disclose all pertinent facts relating to the potential conflict to the IT Director who will advise ANN ARBOR Finance and Administrative Services Area Administrator, and CHELSEA City Administrator or CHELSEA City Administrator's designee, who will advise the IT Director regarding resolution of the conflict.
- E. The general hours of operation for assigned ANN ARBOR employees shall be designated by the IT Director.
- F. ANN ARBOR and CHELSEA will meet as needed in order to review service levels, address new requirements, review outstanding issues and new issues and other items as needed.

IV. Office Facilities

- A. CHELSEA shall provide office space, business equipment and supplies for assigned ANN ARBOR employees in CHELSEA facilities at 305 South Main Street, Suite 100, Chelsea, or other mutually agreeable location provided by CHELSEA.

- B. In order to carry out the information technology functions of CHELSEA, all assigned ANN ARBOR employees shall have access to necessary equipment, systems and services provided through CHELSEA.
- C. CHELSEA policies that are or may be applicable to assigned ANN ARBOR employees working in CHELSEA facilities, including, but not limited to, CHELSEA Internet & E-mail Policy, are subject to review by the IT Director and ANN ARBOR City Attorney.

V. Written Policies

ANN ARBOR will provide CHELSEA with written copies of applicable policies and procedures regarding services under this Agreement. CHELSEA will provide ANN ARBOR with written copies of applicable policies and procedures. Such policies will comply with all federal, state and local governmental laws and regulations.

ANN ARBOR and CHELSEA employees will continue to follow their respective policies regarding the reporting of accidents and incidents involving employees.

VI. Ownership of Documents and Publication

All documents related to ANN ARBOR business developed as a result of this agreement are the property of ANN ARBOR and all documents related to CHELSEA business developed as a result of this Agreement are the property of CHELSEA. Documents will be available to the public in conformance with the Michigan Freedom of information Act.

VII. Employee Compensation/Taxes/Reimbursement

- A. ANN ARBOR employees will at all times remain exclusive employees of ANN ARBOR, and CHELSEA employees will at all times remain exclusive employees of CHELSEA.
- B. CHELSEA accepts exclusive liability for compensation and benefits for services performed by CHELSEA employees under this Agreement. CHELSEA accepts exclusive liability for all applicable payroll taxes, including social security, federal, state and any income tax withholding, federal and state unemployment taxes, and any penalties and interest on such payroll taxes resulting from amounts paid to any persons employed by CHELSEA in performing services under this Agreement. Such persons will in no event be the employees of ANN ARBOR. CHELSEA agrees to indemnify ANN ARBOR from any and all taxes under Section 4980B of the Internal Revenue Code and any penalties and interest thereon, resulting from failure of CHELSEA to satisfy the continuation coverage requirements provided in Section 4980B of the Internal Revenue Code with respect to CHELSEA's group health plans, if any, applicable to persons employed by CHELSEA in performing services under this agreement. CHELSEA must pay all income,

single business, sales, use, property, and any other taxes, assessments and fees arising out of CHELSEA's performance of services under this Agreement, and must indemnify ANN ARBOR for all such taxes, assessments and fees and any penalties and interest on such taxes, assessments and fees levied against ANN ARBOR or which ANN ARBOR may be required to pay.

C. ANN ARBOR accepts exclusive liability for compensation and benefits for services performed by ANN ARBOR employees under this Agreement. ANN ARBOR accepts exclusive liability for all applicable payroll taxes, including social security, federal, state and ANN ARBOR income tax withholding, federal and state unemployment taxes, and any penalties and interest on such payroll taxes resulting from amounts paid to any persons employed by ANN ARBOR in performing services under this Agreement. Such persons will in no event be the employees of CHELSEA. ANN ARBOR agrees to indemnify CHELSEA from any and all taxes under Section 4980B of the Internal Revenue Code and any penalties and interest thereon, resulting from failure of ANN ARBOR to satisfy the continuation coverage requirements provided in Section 4980B of the Internal Revenue Code with respect to ANN ARBOR's group health plans, if any, applicable to persons employed by ANN ARBOR in performing services under this agreement. ANN ARBOR must pay all income, single business, sales, use, property, and any other taxes, assessments and fees arising out of ANN ARBOR's performance of services under this Agreement, and must indemnify CHELSEA for all such taxes, assessments and fees and any penalties and interest on such taxes, assessments and fees levied against CHELSEA or which CHELSEA may be required to pay.

D. CHELSEA will compensate CHELSEA employees and ANN ARBOR will compensate ANN ARBOR employees. Each party will, for their respective employees, maintain all required human resources and compensation records, compute employees' compensation and withhold and pay all required employment taxes, pay all required worker's compensation, unemployment compensation, overtime and fringe benefits required by law or pursuant to each parties' respective policy. Each party will also perform such other duties and obligations for their respective employees as required to comply with any and all applicable federal, state and local statutes, ordinances, rules and regulations, including without limitation the maintenance of appropriate worker's compensation insurance, compliance with OSHA/MIOSHA requirements, and compliance with the Americans With Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act.

VIII. Compensation for Services

A. CHELSEA will reimburse ANN ARBOR for all services provided to CHELSEA under this Agreement annually in accordance with Exhibit B . Payments shall

be made quarterly following receipt of an invoice submitted by the other party. Payment shall be made within 30 days of receipt of invoice.

IX. Equal Employment Opportunity

ANN ARBOR and CHELSEA shall provide the services set forth in this Agreement without discrimination in accordance federal and state law, and all applicable local ordinances and regulations.

Each party agrees to post notices containing their policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees will state that all qualified applicants will receive consideration for employment without discrimination.

X. Indemnity; Limitations of Liability

ANN ARBOR will hold harmless CHELSEA, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including ANN ARBOR's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of CHELSEA in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this contract resulting in whole or in part from negligent acts or omissions of ANN ARBOR, any sub-contractor, or any employee, agent or representative of ANN ARBOR or any sub-contractor but only to the extent that such claims are not or would not be barred by governmental immunity if made against ANN ARBOR. This provision does not and shall not be construed to waive or limit ANN ARBOR's governmental immunity. This provisions is not and shall not be construed as a contractual agreement for ANN ARBOR to indemnify CHELSEA and does not authorize CHELSEA to seek reimbursement from ANN ARBOR either for any claims CHELSEA pays by settlement or otherwise or for any of CHELSEA's costs associated with such claims. This provision does not and shall not be construed to impose liability on ANN ARBOR either for the acts and omissions of CHELSEA, its officers or employees, or for the acts and omissions of third parties.

CHELSEA will hold harmless ANN ARBOR, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including CHELSEA's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of ANN ARBOR in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or nonperformance of work in connection with this contract resulting in whole or in part from negligent acts or omissions of CHELSEA, any subcontractor, or any employee, agent or representative of CHELSEA or any subcontractor but only to the extent that such claims are not or would not be barred by

governmental immunity if made against CHELSEA. This provision does not and shall not be construed to waive or limit CHELSEA's governmental immunity. This provision is not and shall not be construed as a contractual agreement for CHELSEA to indemnify ANN ARBOR and does not authorize ANN ARBOR to seek reimbursement from CHELSEA either for any claims ANN ARBOR pays by settlement or otherwise or for any of ANN ARBOR's costs associated with such claims. This provision does not and shall not be construed to impose liability on CHELSEA either for the acts and omissions of ANN ARBOR, its officers or employees, or for the acts and omissions of third parties.

In no event shall ANN ARBOR in provision of Base and Project Services be liable to CHELSEA for any indirect, incidental, special, punitive or consequential damages arising out of or relating to this Agreement. Base Services under this Agreement are provided by ANN ARBOR "as is" and ANN ARBOR specifically disclaims any warranty for a particular purpose.

XI. Insurance

The parties acknowledge that each party is insured or self-insured. Each party agrees to maintain insurance or self-insurance reserves or excess insurance policies at its own expense during the term of this Agreement and any future partnership agreements into which the parties enter with one another, in the type and amounts below:

- A. Workers' Compensation Insurance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.
- B. Comprehensive/Commercial General Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage. Each party shall name the other party as "additional insured" on the general liability policy with respect to the services provided under this Agreement.
- C. Automobile Liability Insurance covering all owned, hired and non-owned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan No Fault Insurance Law, including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage.

Insurance companies, named insureds and policy forms shall be subject to the approval of ANN ARBOR City Attorney and CHELSEA City Administrator. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions which reduce coverage provided to either ANN ARBOR or CHELSEA. Each party shall be responsible to the other party for insurance companies insuring each party for all costs resulting from both financially unsound insurance companies selected by either party and their inadequate insurance coverage. Each party shall

furnish the other party with a letter of self-insurance and/or satisfactory certificates of insurance or a certified copy of the policy, if requested by ANN ARBOR City Attorney or CHELSEA City Administrator.

XII. Termination, Actions Upon Termination or Expiration

Either party may terminate this Agreement with or without cause by giving ninety (90) days written notice to the other party of its intent to terminate. In the event of this Agreement's termination, any money owed by one party to the other prior to the date of termination pursuant to Section VIII must still be paid.

Upon notice of expiration of this Agreement or its termination by either party for any reason, ANN ARBOR, shall to the extent practicable, meet to prepare and agree upon a transition plan for services which shall include, at a minimum, providing for parallel services until transition of the Base Services to a new provider and reasonable technical support regarding transition and such other services as shall be reasonably necessary to facilitate, without interruption of Base Services. CHELSEA shall be responsible for procuring and maintaining, at its own expense, all third-party licenses, leases, support, service, maintenance and other agreements required transitioning Base Services to its new provider of services.

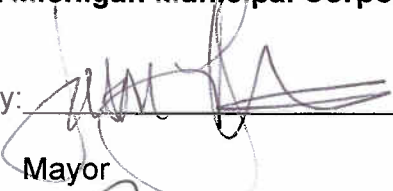
XIII. General Provisions

- A. This Agreement may not be altered or amended except by written agreement, signed by ANN ARBOR Administrator or designee and CHELSEA Administrator or designee. All amendments to this Agreement are subject to the approval of ANN ARBOR Administrator and CHELSEA Administrator.
- B. The provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns.
- C. This Agreement may be executed in several counterparts, each of which shall be deemed original. Such counterparts shall together constitute but one and the same Agreement.
- D. The headings of the paragraphs of this Agreement are inserted solely for the convenience of reference. They shall in no way define, limit, extend or aid in the construction of the scope, extent or intent of this Agreement.
- E. The recitals at the beginning of this Agreement are incorporated into the Agreement by reference.
- F. In the event that any provision contained in this Agreement is held unenforceable by a court of competent jurisdiction, the remaining provisions shall continue. In the event that a portion of any provision is

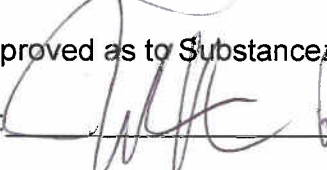
held unenforceable, the remaining portion of such provision shall nevertheless be carried into effect.

- G. The Agreement shall be construed in accordance with the laws of the State of Michigan. The parties agree that Washtenaw CHELSEA, Michigan is the proper forum for any litigation arising out of this Agreement.
- H. The failure of a party to enforce at any time the provisions of this Agreement shall not be construed as a waiver of any provision or of the right of such party thereafter to enforce each and every provision of this Agreement.
- I. Neither party shall transfer or assign the Agreement without the written consent of the other party.
- J. Any notice, request, demand, or other communication required or permitted thereunder shall be deemed properly given when received. All notices and submissions required under this agreement shall be by personal delivery, overnight delivery service, or by first-class mail, postage prepaid, to the address set forth above or such other address or method of delivery as either party may designate by prior written notice to the other.
- K. Neither Party will be liable for delays or failure to perform services under this Agreement if due to any cause or conditions beyond its reasonable control, including delays, or failures due to acts of God, natural disasters, acts of civil or military authority, fire, flood, earthquake, strikes, wars, or utility disruptions (shortage of power).
- L. This Agreement represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral between the parties.

**CITY OF CHELSEA,
A Michigan Municipal Corporation**

By:  6.5.15
(Date)
Mayor

By:  6/2/2015
(Date)
Clerk

Approved as to Substance
By:  6-5-15
(Date)
City Manager

**CITY OF ANN ARBOR,
A Michigan Municipal Corporation**

By: _____
Christopher Taylor (Date)
Mayor

By: _____
Jacqueline Beaudry (Date)
City Clerk

Approved as to Substance:

By: _____
Steven D. Powers (Date)
City Administrator

By: _____
Tom Crawford (Date)
CFO/Finance and Administrative Services
Area Administrator

Approved as to Form:

By: _____
Stephen K. Postema (Date)
City Attorney

Exhibit A

Base and Project Services

ANN ARBOR will be responsible for supporting the City of Chelsea Information Technology Services, Business Applications, and agreed upon projects. Base services include: Desktop Management, Server Management, Network Management, Security & Disaster Recovery Management, and basic Project Management. Support for services, applications, and projects apply to all locations where they are installed or utilized unless expressly excluded by mutual agreement of the Parties. Status of base IT services and projects will be documented, tracked, and reviewed on a regular and on-going basis determined by the ANN ARBOR IT Director and CHELSEA.

ANN ARBOR will be responsible for supporting the City of Chelsea Information Technology Services and Business Applications on a reasonable effort basis system-wide for all users, internal and external of ANN ARBOR IT Resources.

On expiration of the Initial Term, Services to be provided during any successive term shall be reviewed and updated by the Parties and Exhibit A will be updated annually and become a part of this Agreement enforceable under its terms. Updates to this Exhibit for successive years shall be identified by number (i.e., Exhibit A-1) and the applicable term of service (i.e., July 1-June 30 of the respective year) and initialed by City Administrator for ANN ARBOR and City Manager for CHELSEA.

City of Ann Arbor

Approved: _____

Steven D. Powers, City Administrator

Date: _____, 2015

City of Chelsea

Approved: _____

City Manager

Date: 0-6-12, 2015

EXHIBIT B

<u>Cost Category</u>	<u>Per PC Charge</u>	<u>PC Count</u>	<u>Total</u>
Project Costs:			
Network Support Charge	\$262.50	49	\$12,862.50
Network Access Pass-through	\$210		
Network Maintenance (Time)	\$52.50		
Server Support Charge	\$315	49	\$15,435.00
Data Center Management	\$52.50		
Physical Server Management	\$52.50		
Server Software Management	\$210		
Desktop Support Charge	\$691.95	49	\$33,905.55
Desktop/Laptop Support Charge	\$420		
Project Management Support	\$271.95		
Total Costs:	\$1,269.45		\$62,203.05

On expiration of the Initial Term, the Schedule of Costs for Services to be provided during any successive term shall be reviewed and updated by the Parties and Exhibit B will be updated annually and become a part of this Agreement enforceable under its terms. Updates to this Exhibit for successive years shall be identified by number (i.e., Exhibit B-1) and the applicable term of service (i.e., July 1-June 30 of the respective year) and initialed by City Administrator for ANN ARBOR and City Manager for CHELSEA.

City of Ann Arbor

Approved: _____

 Steven D. Powers, City Administrator

Date: _____, 2015

City of Chelsea

Approved: _____

 City Manager

Date: 6-5, 2015