

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CRW SYSTEMS, INC. AND THE CITY OF ANN ARBOR**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("City"), and CRW Systems, Inc. ("Contractor") a California corporation, with its principal address at 2036 Corte Del Nogal, Suite 200, Calsbad, California 92011, agrees as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The Contractor agrees to provide services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means Financial and Administrative Services Area, Information Technology Unit.

Contract Administrator means IT Director, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means eTrackit3 Upgrade and eMarkup Electronic Plan Review Acquisition, Installation, Configuration and End User Training Services.

**II. DURATION**

This Agreement shall become effective on \_\_\_\_\_, 2012, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

**III. SERVICES**

- A. The Contractor agrees to provide professional software installation and incidental services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
  
- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### **IV. COMPENSATION OF CONTRACTOR**

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed Sixty-one Thousand and no/100 dollars (\$61,000.00).
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

#### **V. INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

- C. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to have resulted from any acts or omissions by the Contractor or its employees and agents occurring in the performance of or in breach of this Agreement.

## **VI. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## **VII. WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement with any competitor for these Services, for the purpose of restricting competition as to any matter relating to such fees; and no attempt has been made or shall be made by the Contractor to induce any other perform or firm to submit or not to submit a proposal for the purpose of restricting competition.

## **VIII. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

## **IX. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## **X. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Contractor, the Contractor shall be compensated for work performed and authorized pursuant to this Agreement.

- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

## **XI. REMEDIES**

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.
- C. The following provision(s) shall survive the termination of this Agreement:  
Article V.

## **XII. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Chris Wuerz  
2036 Corte Del Nogal, Ste 200  
Carlsbad, CA 92011  
[chris@crw.com](mailto:chris@crw.com)

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
301 E. Huron St.  
P.O. Box 8647  
Ann Arbor, Michigan 48107-8647  
Attn: IT Director, Dan Rainey

### **XIII. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

### **XIV. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a

deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **XV. CONFLICTS OF INTEREST**

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

## **XVI. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XVII. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

The undersigned by execution certify their respective express authority to execute this Agreement on behalf of their respective entities and full knowledge and acceptance of this Agreement.

**FOR CONTRACTOR**

By \_\_\_\_\_  
Chris Wuerz

Its:

**FOR THE CITY OF ANN ARBOR**

By \_\_\_\_\_  
John Hieftje, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

By \_\_\_\_\_  
Steven D. Powers, City Administrator

By \_\_\_\_\_  
Tom Crawford, CFO/Financial &  
Administrative Services Area  
Administrator

**Approved as to form and content**

\_\_\_\_\_  
Stephen K. Postema, City Attorney



## **EXHIBIT A SCOPE OF SERVICES**

### **GENERAL**

This Agreement sets forth the terms and conditions governing the acquisition of software, configuration, migration, maintenance and other incidental services (including but not limited to, consulting and training).

***Proprietary Information:*** Confidential, trade secret or proprietary materials as defined by the laws of the State of Michigan must be clearly marked and identified as such upon submission by Contractor in connection with the performance of Services under this Agreement. Marking a proposal as “confidential” or “propriety” on its face or in the document header or footer shall not be considered by the City to be sufficient without specific justification as to why disclosure of particular information to the public would cause substantial injury to the competitive position of the Contractor. Should Contractor wish to seek an exemption from disclosure of any materials under the Freedom of Information Law, it must request the exemption in writing, setting forth the reasons for the claimed exemption after which a determination will be made in accordance with applicable law.

***Software License Grant Warranties:*** Contractor warrants and represents that it has the right to transfer or deliver the license rights to the City for the products specified in this Agreement. Contractor warrants that the products delivered pursuant to this Agreement conform to the specifications, performance standards and documentation and the documentation fully describes the proper procedure for using the products. Contractor represents and warrants that the Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at City’s site.

***Product Acceptance:*** Unless otherwise provided by mutual agreement, the City shall have thirty (30) days from the date of installation to accept to accept any software product.

### **STATEMENT OF WORK**

#### ***e*TRAKiT3**

##### **Installation Assistance**

CRW Systems will provide the *e*TRAKiT3 software and assist the City in installing it on a webserver.

City acknowledges and agrees to provides a webserver with Windows Server 2008 R2, running IIS7 (required for functionality).

##### **Transfer of Maintenance**

CRW Systems will transfer maintenance from the current *e*TRAKiT product to *e*TRAKiT3. Transfer shall be completed to ensure the City will receive uninterrupted maintenance coverage.

***eMarkup functionality in TRAKiT:***

The *eMarkup* license activates *eMarkup* in Permit and ProjectTRAK.

Function to be accessible from the Plan Review screen, or from the Toolbar at the top of these modules.

*eMarkup* software to provide End User at minimum with the following key features

User is taken to the viewer screen with a tree view on the left side. In the tree users can see each submission of the various documents that have been uploaded by the applicant.

Key features are:

1. Compare two documents (includes slider-bar comparison feature)
2. Annotate documents, including:
  - a. Callouts
  - b. Textual Notes
  - c. Shapes
3. Edit or Remove existing annotations
4. Publish to *eTRAKiT* (as PDF)
5. Upload additional documents

Access to this functionality is subject to the number of user licenses purchased by the City. Licenses are concurrent, with a 1-hour interval. License count is reset on the hour, allowing unused licenses to reinstate.

***eMarkup functionality in eTRAKiT:***

The *eMarkup* license allows upload of new documents and access to published documents by applicants in *eTRAKiT*.

Published documents contain all the annotations made by City staff at the time of publication, and are displayed with the file description given by City staff.

The documents are posted as PDF files, making them universally readable.

Applicants are also allowed to upload documents from the application screens, or from the details screen of a project or permit. Upon upload of a document:

1. Reviewers on that permit/project are notified of the new submission
2. The new document(s) are available for markup in the *eMarkup* screen.

Applicants do not have access to the compare feature.

***eMarkup User Training:***

End users will be trained on the use of the *eMarkup* tool.

***eMarkup Technical Assistance:***

CRW Systems will assist the City in installing and configuring the *eMarkup* solution on the City's designated server.

It is acknowledged by the parties that

- No *eTRAKiT* GIS functionality is included with the City's current TRAKiTGIS licensing level. An Advanced or Professional license of TRAKiT/GIS must be purchased to use these features.
- No visual modifications (CIS, Style, etc) to *eTRAKiT* are included
- *eMarkup* maintenance follows the same terms and conditions of the City's TRAKiT maintenance agreement. The first year's maintenance will be pro-rated to the City's next TRAKiT maintenance renewal date, which is October 1, 2013. The next year's maintenance will be at the year 2 rate, which annual renewal date shall be October 1<sup>st</sup> of each renewal year thereafter for years 2 through 5 at the rates specified in Exhibit B.
- No hardware is included in this proposal.
- No on site work is included in this proposal
- No software customizations are included

**TIMELINE**

- *eTRAKiT* Software to be installed within 30 days of authorization

**EXHIBIT B  
COMPENSATION**

Contractor shall be paid for those Services performed pursuant to this Agreement in accordance with the terms and conditions herein. The Compensation Schedule below states nature and amount of compensation the Contractor may charge the City:

A. Fee Schedule.

Cost Summary

eTRAKiT3 implementation	\$5,000.
TRAKiT eMarkup Software license	\$30,000.
Five (5) eMarkup user licenses	
1 <sup>st</sup> Year's Maintenance	\$6,000.
Installation and Training	\$20,000.
Installation and Configuration of eMarkup Server	
End User Training	
On Site	
Training will be conducted on client network	
Two (2) consecutive days, up to Eight (8) students per day	

Total compensation to be paid to Contractor for Services under this Agreement shall not exceed Sixty-one Thousand and no/100 dollars (\$61,000.00)

B. Payment Schedule.

Initial Acquisition, Installation, & Yr 1 Maintenance Schedule

Contract Signing	eMarkup Software License	\$30,000. Plus pro-rated maintenance \$6K/yr)
eTRAKiT3 Installation	eTRAKIT3	\$5,000.
eMarkup End User Training	Installation and Training	\$20,000.

Yr 2 through Yr 5 eMarkup Annual Maintenance Schedule

By execution of this Agreement, Contractor commits to provide annual maintenance services to the City at the rates specified below (based on 5 User Licenses):

Year 2	\$6,500
Year 3	\$7,000
Year 4	\$7,500
Year 5	\$8,000

C. Reimbursable Expenses. None. Total compensation set forth in the Agreement shall be deemed inclusive of travel, meals and lodging (if any).

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance shall meet the following minimum requirements.

1. Professional Liability Insurance OR Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:  
  
Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit
3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:  
  
\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury
4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for

aggregate in the amount of \$1,000,000.

- B. Insurance required under V.A.3 and V.A.4 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.