

CITY OF ANN ARBOR  
&  
COUNTY OF WASHTENAW  
Information Technology Services Unit - Service Delivery Manager  
Service Agreement

This Service Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by and between the City of Ann Arbor, a Michigan municipal corporation with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107 ("City"), and the County of Washtenaw ("County"), a Michigan municipal corporation with offices located at 220 N. Main Street, Ann Arbor, MI 48107.

In consideration of the promises below, the parties mutually agree as follows:

**I. Term**

The term of this Agreement begins on August 1, 2009, or after the period specified in Article XVI below, and shall remain in effect until June 30, 2011, unless terminated by either party under this Agreement. Termination of the Agreement shall not have an effect on the obligations of either party incurred during the Term of the Agreement.

**II. Scope of Services**

- a. The County will provide the City with competent personnel to perform the following service:

Supervision and management of the Infrastructure Team of the City of Ann Arbor Information Technology Services Unit.

- b. Personnel provided by the County to the City to provide the above-referenced service shall consist of an Information Technology Services Unit Service Delivery Manager ("Manager"). Manager's duties and responsibilities will be consistent with the City of Ann Arbor Job description entitled "ITSU Service Delivery Manager" (Job Code 403550), attached as Exhibit A, and hereby incorporated herein. Duties in the job description shall be performed for the City under this Agreement.
- c. Manager will perform the duties and responsibilities of ITSU Service Delivery Manager for and on behalf of the City of Ann Arbor for 50% of all hours worked over the term of the contract.
- d. The County will provide to the City a Manager who is capable, to the City's satisfaction, of performing the services specified under this Agreement.

- e. The County will employ and compensate Manager, maintain all required human resources and compensation records, compute Manager's 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 County policy. County will also perform such other duties and obligations 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 workers compensation insurance, compliance with OSHA/MIOSHA requirements, and compliance with all applicable federal and state employment laws..
  
- f. The City will provide County with office space for Manager in the City facility located at 100 North Fifth Avenue, or another mutually agreeable location to be provided by the City.

### **III. Compensation**

The City will pay the County for services performed under this Agreement up to \$66,000 per year, to be paid based on 50% of the Manager's salary and benefits. Payment shall be made quarterly following receipt of an invoice submitted by the County and approved by the City's Information Technology Director or the City Administrator's designee. Payment for services shall be made within 30 days of receipt of invoice.

It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the County may be entitled for services under this Agreement.

### **IV. Duties of Manager**

- a. The Manager will be responsible for the daily supervision of employees of the Infrastructure Team of the City of Ann Arbor Information Technology Services Unit.
  
- b. The Manager will perform all services under this Agreement in accordance with all applicable rules, policies and procedures of the City.
  
- c. The Manager will make decisions regarding the management of City employees, with the advice and consent of the City Information Technology Director, or other designee of the City Administrator.
  
- d. Manager shall not disclose confidential information of the City or regarding City officers and employees to any County employee or other person, and will sign a Confidentiality Agreement, consistent with this provision, satisfactory to the City Attorney. Manager shall not disclose confidential information of the County or

regarding County officers and employees to any City employee or other person.

- e. Manager shall advise the Information Technology Director, or the City Administrator's designee, of any media requests pertaining to City related business activity, generally or by FOIA request, for interviews, statements or other documents so that the most appropriate City official may provide a response to the request.

**V. Supervision of Manager**

- a. The Manager will be supervised by the City's Information Technology Director, or the City Administrator's designee, for the City, and by the County Information Technology Director or the County Administrator's designee, for the County.
- b. The Manager will report to the City's Information Technology Director, or the City Administrator's designee, for City related business activity, and to the County Information Technology Director or the County Administrator's designee, for County related business activity.
- c. The supervisors of Manager for City and County shall jointly set work priorities for Manager.
- d. The Manager will keep time records showing the hours worked under this agreement. Time records must comply with timekeeping procedures of both the City and the County and must separate time spent on City and County business activities. All time records must be submitted to the City and County biweekly for review.
- e. The supervisors of Manager for City and County will jointly write and administer performance reviews for Manager.
- f. Manager will at all times remain an exclusive employee of the County. Manager is not to be considered a regular, temporary, hourly or casual employee of the City for any purpose.
- g. City and County will each pay 50% of all training costs for Manager, except for internal training offered by the City or County which shall be paid by the City or County respectively.

## **VI. Manager's Supervision of City Information Technology Service Unit Employees**

- a. Manager will supervise, evaluate and discipline employees of the City Information Technology Services Unit under his/her direction in accordance with all rules, policies and procedures of the City.
- b. City and County employees under the supervision of Manager shall keep time records indicating any time, if any, working on joint City and County projects.

## **VII. Written Policies**

City will provide County and Manager with written copies of applicable policies and procedures regarding services under this Agreement. County will provide City with written copies of applicable policies and procedures. Such policies will comply with all federal, state and local governmental laws and regulations, and applicable collective bargaining agreements.

## **VIII. Conflict of Interest**

On matters that could involve an actual or perceived conflict of interest between the City and County, Manager shall disclose all pertinent facts relating to the potential conflict to the City Information Technology Director or City Administrator's designee, and the County Information Technology Director or the County Administrator's designee, who will advise Manager regarding resolution of the conflict.

## **IX. Ownership of Documents and Publication**

All documents related to city business developed as a result of this agreement are the property of the City of Ann Arbor and will be available to the public in conformance with the Michigan Freedom of Information Act. During the performance of the services under this agreement, the county will be responsible for any loss of or damage to the documents while they are in its possession or the possession of any county employee and must restore the loss or damage at its expense, unless the loss or damage is caused by a city employee.

## **X. Compliance with Laws and Regulations**

The City agrees to comply at its own expense with all health, safety, and work laws, regulations, directives, and rules, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act. City and County employees will continue to follow their respective policies regarding the reporting of accidents and incidents involving employees.

## **XI. Manager Compensation & Taxes**

County accepts exclusive liability for Manager compensation and benefits for services performed under this Agreement. County accepts exclusive liability for all applicable payroll taxes, including social security, federal, state and city income tax

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

## **XII. Equal Access**

The County shall provide the services set forth in this Agreement without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, height, weight, marital status, physical handicap, or age.

## **XIII. Equal Employment Opportunity**

In providing services under this Agreement the County will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief (except as it relates to a bona fide occupational qualification reasonably necessary to the normal operation of the business).

The County acknowledges that the County and the City have adopted ordinances and/or policies to eliminate discrimination based on sex, race, sexual orientation, or a handicap in the hiring of applicant and the treatment of employees.

The County 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, placed by or on the behalf of the City, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

## **XIV. Indemnification**

The County shall indemnify and hold the City harmless from and against all actions, liabilities, demands, costs, and expenses, including court costs and attorney fees, which may arise due to the County's negligent, grossly negligent and/or intentional

acts under the Agreement. The County shall also indemnify the City for acts of the Manager in her supervisory capacity.

The City shall indemnify and hold the County harmless from and against all actions, liabilities, demands, costs, and expenses, including court costs and attorney fees, which may arise due to the City's negligent, grossly negligent and/or intentional acts under the Agreement.

THIS SECTION IS NOT INTENDED, AND SHALL NOT BE CONSTRUED, TO WAIVE OR LIMIT ANY IMMUNITY DEFENSE WHICH THE RESPECTIVE GOVERNMENTAL ENTITY MAY HAVE INCLUDING BUT NOT LIMITED TO GOVERNMENTAL IMMUNITY.

#### **XV. Insurance Requirements**

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, 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. Manager shall be required to have a valid Michigan Driver's license on file with the City in addition to the above required insurance coverage prior to Manager's use/operation of any City vehicle.
- d. Insurance companies, named insureds and policy forms shall be subject to the approval of the city attorney and county administrator. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions which reduce coverage provided to either the city or the county. 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 the city attorney or county administrator.

## **XVI. Conditions**

This Agreement is conditioned upon the complete examination and review of all human resources files and records for the Manager, and all of the County's terms and conditions of compensation and employment for the Manager, by the City's Information Technology Director and Human Resources Director. County shall provide said information to the City or an opportunity to review the information (at City's election) within three business days of execution of this Agreement. City shall complete its examination and review of this information within 7 business days of receipt of said information from the County. If the City determines that Manager is not suitable to provide the services specified, this Agreement will not take effect, unless and until a suitable Manager, as determined by the City, is provided.

## **XVII. Termination**

Either party may terminate this Agreement with or without cause by giving thirty (30) days written notice to the other party of its intent to terminate.

## **XVIII. General Provisions**

- a. This Agreement may not be altered or amended except by written agreement, signed by the City Administrator or designee and the County Administrator or designee. All amendments to this Agreement are subject to the approval of the City Administrator and the County Administrator.
- b. The provisions of this Agreement shall be binding upon the Parties hereto and their respective heirs, executors, administrators, legal representatives, 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. 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.
- f. The Agreement shall be construed in accordance with the laws of the State of Michigan. The parties agree that Washtenaw County, Michigan is the proper forum for any litigation arising out of this Agreement.

- g. 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.
- h. Neither party shall transfer or assign the Agreement without the written consent of the other party.
- i. 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.
- j. This Agreement represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements, whether written or oral.

WASHTENAW COUNTY,  
 A Michigan Municipal Corporation  
 Attested to:

By: \_\_\_\_\_  
 Lawrence Kestenbaum (DATE)  
 County Clerk/Register

By: \_\_\_\_\_  
 Robert E. Guenzel (DATE)  
 County Administrator

Approved as to Form

By: \_\_\_\_\_  
 Curtis N. Hedger (DATE)  
 Office of Corporation Counsel

CITY OF ANN ARBOR,  
 A Michigan Municipal Corporation

By: \_\_\_\_\_  
 John Hieftje (DATE)  
 Mayor



By: \_\_\_\_\_  
Jacqueline Beaudry (DATE)  
City Clerk

Approved as to substance:

By: \_\_\_\_\_  
Roger W. Fraser (DATE)  
City Administrator

By: \_\_\_\_\_  
Tom Crawford (DATE)  
Financial & Administrative Services  
Administrator & CFO

Approved as to form:

By: \_\_\_\_\_  
Stephen K. Postema (DATE)  
City Attorney