

**AMENDMENT NUMBER 1 TO SCHEDULE 21 OF THE  
INTERAGENCY AGREEMENT FOR COLLABORATIVE  
TECHNOLOGY AND SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 East Huron Street, Ann Arbor, MI 48104 (“Provider”) and the Ann Arbor Downtown Development Authority, a public authority pursuant to MCL Chapter 125 *et seq.*, having its offices at 150 South Fifth Ave., Suite #301, Ann Arbor, MI 48104 (“Subscriber”) agree to amend and restate Schedule 21 of the Interagency Agreement for Collaborative Technology and Services, which was dated July 1, 2015 (“Schedule 21”), to read in its entirety as follows:

**1. General Matters**

- A. That this Amendment shall be treated as if it was issued pursuant to the Interagency Agreement for Collaborative Technology and Services, as amended (“IACTS Agreement”), which is attached hereto and incorporated as if fully set forth herein, regardless of whether Subscriber is a valid Participant under the IACTS Agreement.
- B. That the IACTS Agreement’s terms and conditions shall apply to this Amendment as if both the Provider and the Subscriber were valid Participants under the IACTS Agreement. However, in an event that any term of this Amendment conflicts with any term in the IACTS Agreement, the term of this Amendment shall prevail.
- C. Upon its valid execution, this Amendment shall supersede and replace Schedule 21.

**2. Service Title:** Network Infrastructure Services (Connectivity, Administration, and Monitoring).

**3. Service Description:** Provider shall provide Network Connectivity Services to the following parking garages, which the City owns and the DDA manages (collectively referred to as the “Parking Structures”):

- Ann and Ashley St.
- 4<sup>th</sup> and Washington St.
- 4<sup>th</sup> and William St.
- First and Maynard St.
- Liberty Square
- Underground Parking Deck

Such Network Connectivity Services are not based on dedicated, exclusive use of fiber optic strands or edge switch equipment but rely upon a combination of fiber optic connections coupled with “virtualized” networking technology to provide secure network connectivity.

Provider can provide further details (i.e., a schematic diagram of network topology) upon request.

**4. Provider:**

City of Ann Arbor

**5. Subscriber:** The Ann Arbor Downtown Development Authority (DDA)

**6. Provider Responsibilities:**

- Provider will supply Subscriber with up to, in aggregate, 40 Megabit point-to-point capable network services (equivalent to private sector internet service provider (ISP) offerings).
  
- Provider will actively administer, monitor, and maintain network services for the Parking Structures to ensure reliable network connections are provided for each Parking Structure listed (equivalent to private sector internet service provider (ISP) offerings).
  
- Provider will use commercially reasonable efforts to ensure service remains available, 24 hours/day, 7 days a week, 365 days a year, excluding published scheduled maintenance times.
  
- Provider will ensure that regular firmware code updates are applied to keep edge switches secure and reliable for high availability.

**7. Subscriber Responsibilities:**

- The Subscriber is responsible for providing a Point of Contact for all Provider Communications.
  
- Subscriber will work with Provider to ensure connectivity is maintained in a safe and reliable manner, and to test connectivity when requested.
  
- If Subscriber has advance notice that construction activities may impact network services at any of the Parking Structures, Subscriber must notify Provider at least thirty (30) days in advance of the commencement of such construction activities.

**8. Performance Expectations:**

- Provider will discuss any major planned service outages with Subscriber at a minimum of ten (10) business days prior to such outages, and a mutually agreed upon schedule will be implemented.
  
- Provider and Subscriber will communicate all relevant changes to the other party.
  
- Both the Provider and Subscriber will work equally and collaboratively to support the Network Infrastructure equipment.

**9. Maintenance Operations (Scheduled & Critical):**

- **Scheduled Maintenance:**  
Routine maintenance and repair of the Network Connectivity equipment (“Scheduled Maintenance”) shall be performed by or under the direction of Provider, at Provider’s reasonable discretion and in accordance with industry standards.
  
- **Unscheduled Maintenance:**  
- Provider’s maintenance personnel shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Provider shall endeavor to have, but shall not guarantee that it will have, its first maintenance personnel respond (physical or

virtual) for Emergency Unscheduled Maintenance activity within four (4) hours after the time Provider becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by a Force Majeure Events.

- Provider shall maintain a telephone number to contact Provider for maintenance and shall provide such number to Subscriber. That telephone number is the number for Information Technology Services Help Desk, which is (734) 794-6550. In the event the contact number changes, Provider shall notify Subscriber of the change in writing.

**10. Communications Protocol:**

- Scheduling of planned service outages will be communicated and confirmed through email addressed to Subscriber’s Point of Contact no later than ten (10) business days prior to planned service outages.

**11. Role of Contractors: [Intentionally Left Blank]**

**12. Subscriber’s Fee:**

**Network Infrastructure Services**

- Monthly Rate for 40M Connectivity (rate is significantly below comparable private sector rates) - **\$100.06 month/site**
- Annual Rate for 40M Connectivity (rate is significantly below comparable private sector rates) - **\$1,200.72 per annum/site**

**Network Administration and Monitoring Services**

- Monthly Rate for Network Administration and Monitoring Services (rate is significantly below comparable private sector rates) - **\$169.50 month/site**
- Annual Rate for 40M Connectivity (rate is significantly below comparable private sector rates) - **\$2,034.00 per annum/site**

<b>Number of Parking Structures</b>	<b>Annual Network Infrastructure Rate</b>	<b>Annual Network Admin Monitoring Rate</b>	<b>Subtotal/ Fiscal Year</b>
<b>6</b>	<b>\$1,200.72</b>	<b>\$2,034.00</b>	<b>\$3,234.72</b>
		<b>CREDIT</b>	<b>(\$383.68)</b>
<b>TOTAL ANNUAL COST</b>			<b>*\$19,024.64</b>

**\* Credit of \$1,151.04 applied to total annual cost due to billing discrepancy in 2016 and 2017.**

- **Date Due:** By March 1, 2018 and annually on March 1 until expiration date of this Amended Schedule 21.
- **Expiration Date:** June 30, 2020

**13. Reference Material:** Parking Structure Network Diagram available upon request.

Provider

Subscriber

FOR THE CITY OF ANN ARBOR

FOR THE ANN ARBOR DOWNTOWN  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Christopher Taylor, Mayor

\_\_\_\_\_  
Susan Pollay  
Director

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

Approved as to Form

Approved as to substance

\_\_\_\_\_  
Jerold Lax  
DDA Attorney

By \_\_\_\_\_  
Howard S. Lazarus, City Administrator

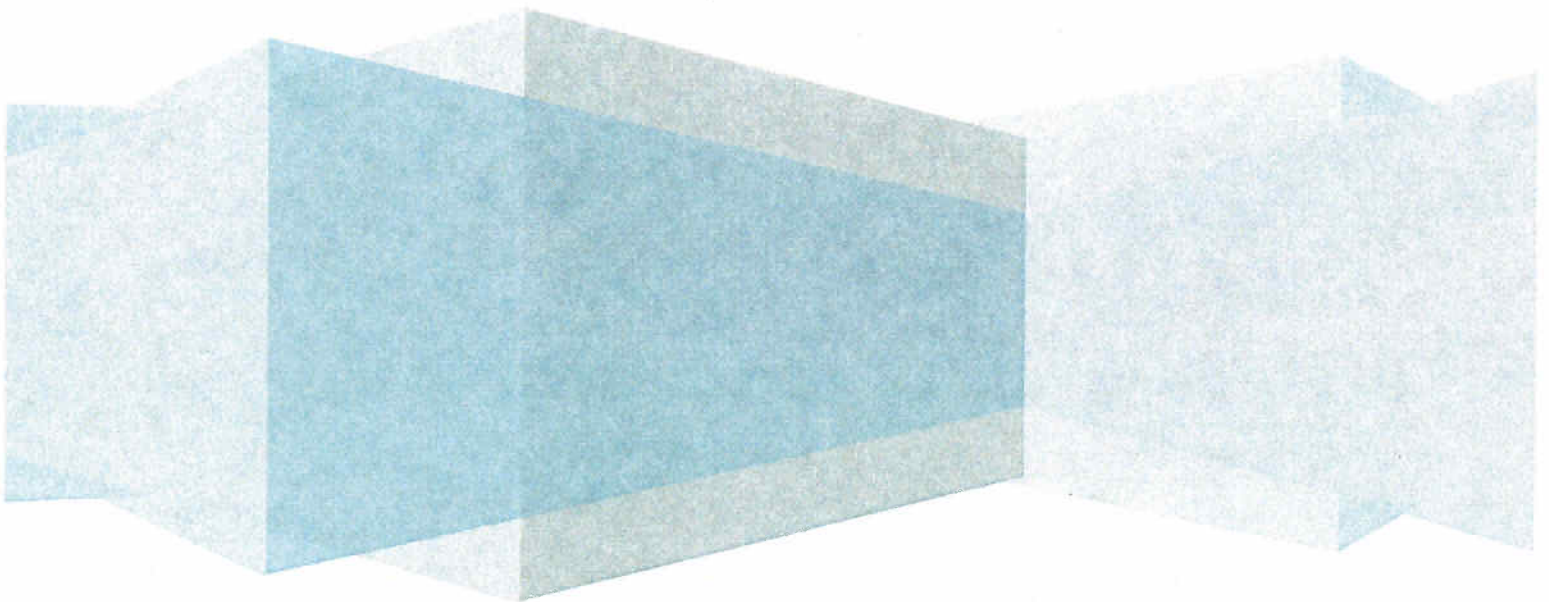
By \_\_\_\_\_  
Tom Crawford, Chief Financial Officer

Approved as to form and content

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

City of Ann Arbor - Washtenaw County - Ann Arbor Transportation  
Authority

# **INTERAGENCY AGREEMENT FOR COLLABORATIVE TECHNOLOGY and SERVICES**



Interagency Agreement for Collaborative Technology and Services

Between

City of Ann Arbor, Washtenaw County & Ann Arbor Transportation Authority

Adopted By

City of Ann Arbor

Date:

Washtenaw County

Date:

Ann Arbor Transportation Authority

Date:

**Table of Contents**

Article I - Authority..... 4  
Article II - Purpose ..... 4  
Article III – Definitions ..... 4  
Article IV - Term and Termination ..... 5  
Article V - General Obligations and Relationship of the Parties ..... 7  
Article VI - Liability ..... 8  
Article VII - General Terms..... 8  
Appendix A – Services Schedule .....12  
Appendix B – Nondisclosure Agreement .....13

## **Article I - Authority**

- 1.1 The undersigned agencies hereby enter into this Agreement as of the dates specified below in accordance with the authority granted by their respective Boards, Commissions and/or Councils and Act 35 of the Public Acts of 1951, as amended.
- 1.2 Upon approval of the respective bodies of the undersigned agencies, this agreement incorporates into and supersedes to the extent stated below the following agreements between the parties as identified below:
  - 1.2.1 Washtenaw County – City of Ann Arbor Occupancy License (Information Technology Service Area) except the insurance and indemnification obligations provided therein, which survive indefinitely.

## **Article II - Purpose**

- 2.1 The undersigned have launched an initiative called "Collaborative Technology Services" (the "Initiative"), with the goal of providing a variety of technology services to all the agencies included in the Intergovernmental Agreement (the "Services").
- 2.2 The Services to be provided in connection with the Initiative by and between the undersigned will be more fully described in work statements (the "Schedules") to be appended to and made a part of this Agreement when executed by the respective interested parties.

## **Article III – Definitions**

As used in this Agreement, the following terms shall have the following meanings:

- 3.1 Participant shall mean the undersigned entities.
- 3.2 Provider shall mean a Participant that offers a good or service for use by Participants.
- 3.3 Successor Provider means a Participant who assumes through assignment authorized in writing the provision of a good or service for use by a Participant.
- 3.4 Subscriber shall mean a Participant that receives goods or services provided by a Provider.



- 3.5 License Holder shall mean the participant that has legal right to a service for which they are named in a license agreement
- 3.6 Fiscal Year is a period used for calculating annual ("yearly") financial statements. City of Ann Arbor Fiscal Year is July 1 through June 30, Washtenaw County Fiscal Year is January 1 through December 31 and Ann Arbor Transportation Authority Fiscal Year is October 1 through September 30.
- 3.7 Technology Standards shall mean a set of agreed upon criteria or rules for the operation, documentation and management of technology. The following types of standards to be addressed are:
- Hardware, Software and Interface
  - Systems Operation standards for security, archiving and maintenance
  - Metadata Standards
- 3.8 Metadata shall mean information that describes the characteristics of the Data.
- 3.9 Third Party shall mean a person or entity other than a party to this Agreement
- 3.10 Transition Services shall mean services provided by a Provider for a specified time beyond the Termination Date of an agreement.
- 3.11 Transition Period shall mean the amount of time Transition Services are to be provided by a Provider beyond the Termination Date of an agreement.
- 3.12 Annual Payment Date shall mean February 14 of the current Calendar Year.
- 3.13 Expiration Date shall mean the last date of the Term or the Renewal Term.
- 3.14. Termination Date shall mean the date specified in any notice of termination given by a Provider to a Subscriber or a Subscriber to a Provider under Article IV.

## **Article IV - Term and Termination**

- 4.1 This Agreement is effective from the date it is accepted by all parties. The term of this Agreement shall be Five (5) years commencing on \_\_\_\_\_, 2011 (the "Term") unless otherwise terminated as provided in this Agreement.
- 4.2 The undersigned may extend the Term for one (1) additional Five (5) year period (the "Renewal Term") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for the Renewal Term unless one of the parties notifies the other of its intention not to renew prior to commencement of the succeeding Renewal Term through an advanced written notification to the other parties, to be sent no later than One Hundred and Eighty (180) days prior to the expiration of the Term.
- 4.3 In addition to the termination rights set forth elsewhere in this Agreement, this Agreement may be terminated in accordance with the following provisions: (a) each Participant may terminate this Agreement if the other Participant commits a material breach of this Agreement and fails to correct such breach within Ninety (90) days of its

receipt of written notice of the breach from the non-breaching party; (b) a Participant may, subject to the notice provisions of provision 4.7 terminate this Agreement if it decides to withdraw from the Initiative, provided that if Participant is a Provider or Subscriber of any Services and it decides to terminate provision of or receipt of any services for reasons other than breach of the Agreement, the respective terminating Participant shall be responsible to compensate the non-terminating Participant for work performed and authorized pursuant to agreement as provided in provision 4.7 together with any additional costs incurred by the non-terminating Participant in order to have provided the Services as defined in r provision 4.6; and (c) either Participant may terminate this Agreement upon written notice to the other Participant in the event the Initiative and/or the Services for the Initiative is rendered illegal by any federal and/or State of Michigan law or regulation

- 4.4 The Parties acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for the provision of Services identified in the various Schedules. If funds to enable a Subscriber to effect continued payment under this Agreement are not appropriated or otherwise made available, that Subscriber shall have the right to terminate this Agreement 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 respective Provider. A Subscriber shall give a Provider written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation. Notice of non-appropriation does not relieve a Subscriber of its obligation under provision 4.3(b) for Services performed and accepted prior to the Termination Date.
- 4.5 At the Expiration Date of the Agreement, a Provider may agree to continue existing services, or a portion thereof for a period of time and/or otherwise provide parallel services for testing as part of the Transition process to a new 3<sup>rd</sup> party provider for a Subscriber (hereafter "Transition Services") provided that termination was not the result of a Subscriber's breach of the agreement between the Provider and the Subscriber. Any Transition Services to be provided shall be by separate written agreement between the Provider and Subscriber and shall at minimum include provisions identifying the Transition services and scheduled costs for same. It is acknowledged that Transition Services for Providers and Subscribers will not be the same.
- 4.6 It is acknowledged that should service(s) be terminated prior to the Expiration Date, a Provider and/or a Subscriber may have budgeted committed scheduled costs in connection a Scheduled Service for which the Provider and/or Subscriber will continue to be contractually obligated beyond the Termination Date. In the event of termination under Article IV for other than expiration of the term of service, it is understood and agreed that terminating Participant shall make the non-terminating Participant whole up to the original Expiration Date for the Scheduled Service for the terminating parties contractual costs in connection with any lease payment, license fee, system maintenance costs or other contractual obligations identified in the Scheduled Service documentation.
- 4.7 Except when termination occurs as a result of a Subscriber's breach, if a Provider terminates a Scheduled Service, the notice of termination to a Subscriber shall provide for a 12 month Transition Period ("Transition Period"), in addition to the 180 day notice requirement specified in provision 4.2 . This twelve month Transition Period is intended to provide Subscriber with adequate time to budget, procure and establish a

replacement service for the Scheduled Service being terminated by Provider. Unless otherwise mutually agreed to in writing by the parties, Provider and Subscriber respective obligations under the Scheduled Service documentations, including but not limited to payment for service obligations, shall continue in full force and effect from the date of notice of termination until the expiration of the Transition Period.

## **Article V - General Obligations and Relationship of the Parties**

- 5.1 Each Provider acknowledges and agrees that all Services are being provided to all Participants in their "as is" physical condition without any representations or warranties of any kind or nature, express or implied, except as expressly and specifically described in provision 5.2 .
- 5.2 Each Provider agrees that it shall at all times maintain its Services in good repair so as not to unreasonably prohibit Participant's use of such Services. Except for any damage caused to the Services by the activities of a Provider or the failure of a Provider to engage in reasonable maintenance, a Provider shall not be required to maintain or make any repairs to Services.
- 5.3 Each Provider agrees that is shall not subcontract or assign any portion of any right or obligation to a Subscriber for Services under a duly executed Schedule to another Participant to this Agreement (the "Successor Provider") or a third-party without the prior written consent of Subscriber.
- 5.4 Each Subscriber agrees to provide its Provider with necessary access to Subscriber systems as required to perform Services requested in a duly executed Schedule between them.
- 5.5 Each Provider warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- 5.6 The relationship of a Provider and a Subscriber under this Agreement and any applicable Schedule is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship accrues to either Participant or either Participant's agent, subcontractor or employee as a result of this Agreement. No relationship, other than that of independent contractor will be implied between the parties, or either Participant's agent, employee, or subcontractor.
- 5.7 Any Participant may contract with other companies providing the same or similar services as could be provided under this Agreement by one Participant to another by Schedule so long as the parties obligations to one another contained in this Agreement will not be affected in any manner.
- 5.8 All Annual payments for service will be due to Participants, from Subscribers, by the Annual Payment Date.
- 5.9 Any new or additional Service subscribed to during the Calendar Year shall have an initial cost prorated to the next Annual Payment Date.

## Article VI - Liability

- 6.1 No Participant shall be liable, accountable or responsible in any way for any acts, omissions and/or breaches of this Agreement by any other Participant, including any other Participant's employees, agents, representatives and contractors, and that each Participant's sole and exclusive remedy in connection therewith will be an action or claim directly against the applicable Participant under this Agreement or any Schedule thereto. However, nothing in this Article VI shall limit Provider's rights to terminate this Agreement as to any Participant in accordance with the provisions of Article IV above. Except as otherwise provided in this Agreement, each Participant shall be responsible for its own acts and the acts of its employees, agents and representatives, the costs associated with those acts, and any defense related thereto under this Agreement or any Schedule thereto.
- 6.2 No Participant, or its officers or employees makes any warranty, express or implied, including warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, functioning, completeness or usefulness of a Schedule Service.
- 6.3 Except as expressly provided herein, in no event shall any Participant be liable to Providers in connection with this Agreement or any Schedule thereto, regardless of the form of action or theory of recovery, for any: (a) direct, indirect, special, exemplary, consequential, incidental or punitive damages, even if a Participant is aware of the possibility of such damages; and/or (b) lost profits, lost revenues, lost business expectancy, business interruption losses and/or benefit of the bargain damages. Provider's sole remedies against any Participant for breach of this Agreement shall be termination of this Agreement in accordance with their terms and/or an action for equitable remedies. Notwithstanding the foregoing, the limitations of this Article VI shall not apply to any Participant's gross negligence, recklessness and/or intentional misconduct.
- 6.4 Notwithstanding any other provisions of this Agreement, including, without limitation, the provisions of Article VI, nothing in this Agreement constitutes a limitation or waiver of any governmental immunity provided by applicable law. All applicable laws related to governmental immunity shall govern over any conflicting or inconsistent term of this Agreement and any unit of government shall be entitled to the full benefits and protections of such laws.

## Article VII - General Terms

- 7.1 Unless otherwise stated in this Agreement, any intellectual property owned by a Participant prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of that Participant even if such Preexisting

Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used in the delivery of Services. A Subscriber's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

- 7.2 No Participant shall be responsible or liable for any delay or failure in performing its obligations under this Agreement if such delay or failure is the direct result of causes outside of that Participant's reasonable control, including, without limitation, power outages, accidents, strikes, fires, war or acts of God; provided that such Participant uses best efforts to resume performance of its obligations as soon as practically possible.
- 7.3 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 and the federal laws of the United States. 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.
- 7.4 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 Participant 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.
- 7.5 Whenever a Participant's consent is required, same shall not be unreasonably withheld or delayed. Any waiver of a Participant's right or remedy related to this Agreement must be in writing, signed by that Participant to be effective. No waiver shall be implied from a failure of either Participant to exercise a right or remedy. In addition, no waiver of a Participant's right or remedy will affect the other provisions of this Agreement. Absent a written waiver, no act, failure, or delay by a Participant 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 Participant shall subsequently affect its right to require strict performance of this Agreement.
- 7.6 All notices must be in writing and sent to the individual who executed this Agreement on the other Participant's behalf, unless another individual has been identified in the specific Schedule for the Services to which the notice pertains, either by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy by regular mail) and shall 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 at the address listed herein or other address provided by prior written notice to other Participant.

- 7.7 The remedies provided in this Agreement will be cumulative, and the assertion by a Participant of any right or remedy will not preclude the assertion by such Participant of any other rights or the seeking of any other remedies.
- 7.8 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.
- 7.9 The parties agree that each shall comply with the United States Constitution and all federal and Michigan laws and regulations governing fair employment practices and equal employment opportunity and prohibition of discrimination.
- 7.10 This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the Parties 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 Participant 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 Parties. Except as expressly provided herein, the remedies accorded the parties under this Agreement are cumulative and in addition to those provided by law, in equity or elsewhere in this Agreement.
- 7.11 This Agreement and any amendments hereto may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

This Agreement has been negotiated on behalf of the Parties by their respective officers pursuant to authority delegated to them and by their respective governing bodies and is executed with the approval of the respective governing bodies.

CITY OF ANN ARBOR, a Michigan municipal corporation


By   
 John Hieftje, Mayor

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

Approved as to Substance:

  
 Tom Crawford, Interim City Administrator

Approved as to Form:

  
 Stephen K. Postema, City Attorney

ANN ARBOR TRANSPORTATION AUTHORITY

By Michael Ford  
Michael Ford, Chief Executive Officer

Approved as to Substance  
Dawn Gabay

Dawn Gabay  
Deputy CEO

COUNTY OF WASHTENAW, a Michigan municipal corporation

By Verna J. McDaniel  
Verna McDaniel, County Administrator

ATTESTED TO:  
Lawrence Kestentbaum 6/14/11  
Lawrence Kestentbaum, County Clerk/Register

Approved as to Form  
Curtis N. Hedger  
Curtis N. Hedger  
Office of Corporation Counsel

APPROVED AS TO CONTENT:

James McFarlane  
James McFarlane, Manager  
Information Technology

## Appendix A – Services Schedule

### General Terms

Schedule means a request by a Subscriber for specific services or deliverables by a Provider that meets the following requirements:

1. Includes substantially the following statement: "This is a Schedule under Interagency Agreement for Collaborative Technology and Services, effective \_\_\_\_\_, 2011 ."
2. Is signed on behalf of the Provider and the Subscriber by their authorized representatives.
3. Contains the following three mandatory items:
  - a. Description and/or specifications of the services to be performed and the Deliverables to be delivered to the Subscriber.
  - b. The amount of the subscriber fee(s) or other payment(s)
  - c. The time schedule for performance and for delivery of the Deliverables
4. The Schedule, in the format described below, may include such other terms and conditions as may be mutually agreeable between parties .

### Format

#### INTERAGENCY AGREEMENT FOR COLLABORATIVE TECHNOLOGY AND SERVICES

**SCHEDULE \_\_\_\_** This is a Schedule issued under the terms and conditions of InterAgency Agreement for Collaborative Technology and Services, effective \_\_\_\_\_, 2011. Delivery of Services under this Schedule shall be performed in accordance with the general terms and conditions of the above referenced InterAgency Agreement and more particularly as described below:

1. Service Title:
2. Service Description:
3. Provider.
4. Subscriber
5. Provider Responsibilities
6. Subscriber Responsibilities
7. Performance Expectations
8. Maintenance Schedule (Scheduled and Critical)
9. Communications Protocol
10. Role of Contractors
11. Subscriber Fees
12. Reference Material

Signature Blocks for Provider and Subscriber



## Appendix B – Nondisclosure Agreement

### NONDISCLOSURE AGREEMENT

This Agreement is entered into effective as of the < > day of < > 20 < >, between \_\_\_\_\_ with offices at \_\_\_\_\_  
"Provider" and \_\_\_\_\_ with offices at \_\_\_\_\_  
"Subscriber"

To protect certain confidential information that may be disclosed to the Subscriber, the Subscriber agrees as follows:

- I. Definitions  
Confidential Information shall mean privileged information shared with only a few people for furthering certain purposes. Confidential Information in written or tangible and digital form shall be labeled confidential prior to disclosure.
- II. Restrictions. Provider shall, in its sole discretion, disclose to Subscriber some or all of the Confidential Information, based on Subscriber's request for: (list)

It is understood the Subscriber will secure at their sole cost any and all licenses, authorizations or other intellectual property rights necessary for the transfer of Confidential Information in the format requested by Subscriber. Subscriber will be required to provide documentation that they have all necessary licenses, authorizations or rights prior to the transfer of the Confidential Information in the requested format.

Subscriber shall hold and use the Confidential Information only for the above-stated purpose of this Agreement and shall restrict disclosure of such Confidential Information to its employees with a "need to know." Each employee of Subscriber as identified "need to know" in connection with the receipt, review or evaluation of the Confidential Information shall be required to execute a Nondisclosure Agreement under the same terms as stated herein. < > shall be provided with a copy of the executed employee Nondisclosure Agreement and a master list of the employees, their respective jobs, and the reason for their classification as "need to know." A copy of the Nondisclosure Agreement forms to be used by Subscriber is attached to this Agreement.

Subscriber will hold the Confidential Information or any part thereof in strict confidence and will not permit any disclosure thereof to any person or persons outside their respective organization and not use or derive any direct or indirect benefit from the

Confidential Information or any part thereof without the prior written consent of < >. Subscriber agrees that it will not disseminate in any manner any part of the Confidential Information.

Subscriber will not make or authorize to be made any copies of any electronic data files supplied by Provider and showing or describing or embodying the Confidential Information unless authorized by Provider in writing.

Subscriber shall immediately notify Provider in writing of any misuse, misappropriation, or unauthorized disclosure of Confidential Information that may come to its attention.

The restrictions on the use or disclosure of the Confidential Information by Subscriber shall not include any information which:

- At the time of disclosure to Subscriber was known to Subscriber to be free of restriction and such previous knowledge is evidenced by documentation in the possession of Subscriber, a copy of which documentation will be provided to Provider if requested by Provider; or
- Is publicly known or later made publicly known by Provider; or
- Is evidenced by documentation in the possession of a Subscriber as being received from a 3<sup>rd</sup> party to this Agreement who: (a) has the legal right to so furnish such information to Subscriber, and (b) is not obligated to Provider to keep such information confidential; or
- Is approved for release in writing by Provider; or
- Is required to be provided pursuant to a valid court order

III. Points of contact. The designated points of contact for controlling the authorized release of the Confidential Information are:

For Provider

---

---

---

---

---

---

For Subscriber

---

---

---

---

---

---

IV. Notices. All notices must be in writing and sent to the individual who executed this Agreement on the other party's behalf either by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy by regular mail) and shall 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 at the address listed herein or other address provided by prior written notice to other party.

V. Return of Materials. At any time and for any reason, prior to the termination of the Interagency Agreement for Collaborative Technology Initiative between the City of

Ann Arbor, the County of Washtenaw and the Ann Arbor Transportation Authority, Provider may request and Subscriber agrees it will return all of said electronic data files made by Subscriber together with any materials or documents, whether or not furnished by Provider containing or describing or embodying the Confidential Information or any part thereof to Provider immediately and to destroy such items stored or archived in any form and deliver to Provider written certification that they have been destroyed. In the case of termination Subscriber shall within twenty (20) days of a written request by Provider return all Confidential Information, including all copies thereof, to Provider, or if so directed by Provider destroy all such Confidential Information and provide written certification that they have been destroyed.

- VI. Term, Termination. This Agreement shall be effective as of the date first written above and shall continue until terminated by either party upon one-hundred-eighty (180) days prior written notice and the expiration of a one-year Transition Period, which Transition Period shall commence on the one-hundred-eighty-first day after the date of the notice of termination.
- VII. No Rights Conferred. Nothing in this Agreement shall be construed as conferring to Subscriber any right of ownership in the Confidential Information or license to use any patents, industrial designs, copyrights or other intellectual property rights owned or license by Provider. Nothing in this Agreement shall be construed as restricting Provider right to restrain use or dissemination of the Confidential Information in accordance with applicable federal, state or local law or regulation or at common law.
- VIII. No Warranty. None of the Confidential Information that may be disclosed by Provider shall constitute any representation, warranty, assurance, guarantee, or inducement by Provider of any kind. Provider shall not be liable for the accuracy of the disclosed information.
- IX. Remedies. Subscriber acknowledges that its obligations to protect the Confidential Information are essential to the business interest of Provider and that the disclosure of the Confidential Information in breach or threatened breach of this Agreement would cause Provider immediate, substantial, and irreparable harm, the value of which would be extremely difficult to determine. Accordingly, Subscriber agrees that, in addition to any other remedies that may be available in law, equity, or otherwise for the disclosure or use of the Confidential Information in breach of this Agreement, Provider shall be entitled to seek and obtain a temporary restraining order, injunctive relief, or other equitable relief against the continuance of such breach, in addition to all other remedies, which it may be entitled.
- X. General Terms  
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 and the federal laws of the United States. 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.

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.

Whenever a party's consent is required, same shall not be unreasonably withheld or delayed. Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement. 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 affect its right to require strict performance of this Agreement.

This document, including its Appendices, contain the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless stated herein.

For Provider:

\_\_\_\_\_

Date: \_\_\_\_\_

Its:

For Subscriber:

\_\_\_\_\_

Date: \_\_\_\_\_

Its:

AMENDMENT NUMBER ONE  
INTERAGENCY AGREEMENT FOR COLLABORATIVE TECHNOLOGY AND  
SERVICES

The City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron St. Ann Arbor, Michigan 48107-8647 ("City"), the County of Washtenaw, a Michigan municipal corporation, with offices at 220 North Main, Ann Arbor, Michigan 48107 ("County") and the Ann Arbor Transportation Authority, with offices at 2700 South Industrial Highway, Ann Arbor, Michigan 48104 ("AATA") (collectively "Parties"), entered into an Interagency Agreement for Collaborative Technology and Services (the "Agreement"), effective \_\_\_\_\_, 2011, agree as follows this \_\_\_\_ day of \_\_\_\_\_, 2013.

Recital:

Whereas, the Parties having received a request by the City to amend the Agreement between the Parties, which sufficiency of notice of the amendment request is acknowledged by the undersigned; and

Whereas, Agreement between the Parties on the terms of the amendment having been reached;

Terms:

The terms and conditions of the Agreement are amended as follows:

- 1) Article I, Authority, is amended to add the following sub-provision:

1.3 This Agreement may be extended to allow additional participants to join this agreement contingent on such additional Participant having taken all necessary corporate acts to duly authorize the execution of and delivery of the Interagency Agreement and any other incidental documents required for participation to the original Founding Members to this Agreement. On execution of the Interagency Agreement, the new Participant shall warrant performance by it of all covenants and obligations to be performed under the Agreement and any other incidental documents required for participation and assume sole responsible for liabilities or payments due as a result of its participation. Participation by a new Participant in collaborative technology services shall be authorized effective the receipt date, as defined in Section 7.6, of the executed Interagency Agreement by the new member and the Founding Members of this Agreement. All new Participants to this agreement must follow the same process and be approved by the Founding Members. Each Founding Member may internally approve a process to enable an administrative individual to sign on behalf of that Founding Member for purposes of this article.

2) Article III, Definitions is amended to add the following sub-provisions:

3.1 Participant shall mean the founding members and any other municipal corporation to as defined in Section 1 of P.A. 35 of 1951 which is later added to this agreement pursuant to section 1.3.

3.1.1 Founding Members shall mean the original signatories which created this agreement (Washtenaw County, City of Ann Arbor, and Ann Arbor Transportation Authority).

All terms, conditions, and provisions of the original agreement between the Parties executed \_\_\_\_\_, 2011, unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the Agreement between the Parties shall be binding on the successors and assigns of the Parties.

This amendment may be executed in counterpart, all of which taken together shall constitute one and the same instrument.

**CITY OF ANN ARBOR**

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

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

Approved as to substance

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

Approved as to form

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

**COUNTY OF WASHTENAW**

By \_\_\_\_\_  
Verna McDaniel, County Administrator

ATTESTED TO:

\_\_\_\_\_  
Lawrence Kestenbaum, County  
Clerk/Register

Approved as to form

\_\_\_\_\_  
Curtis N. Hedger  
Office of Corporation Counsel

**ANN ARBOR TRANSPORTATION  
AUTHORITY**

By \_\_\_\_\_  
Michael Ford, Chief Executive Officer