

DATA/APPLICATION HOSTING AGREEMENT

This Hosting Agreement ("Agreement") is made and entered into by and between the County of Muskegon, a municipal corporation with offices located at 990 Terrace Street, Muskegon, MI 49442 (the "Host") and the City of Muskegon Heights, a municipal corporation with offices located at 2724 Peck Street, Muskegon Heights, MI 49444 ("Client").

I. RECITALS

Whereas, the Host has the capacity to offer data, application and support services relating to, among other things, hosting data/application portion of the Client, and Host is willing to provide services to Client on the terms and subject to the conditions set forth below; and

Whereas, Client desires to engage Host, and Host desires to be engaged by Client, to provide data/application services according to the terms and subject to the conditions set forth below; and

Whereas, this Agreement between Host and Client is authorized by MCL 124.501.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Host and Client hereby agree as follows:

II. TERMS

This Agreement shall be effective when signed by both Parties ("Effective Date") and thereafter shall remain in effect for one (1) year, unless earlier terminated as otherwise provided in this Agreement ("Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for an additional one (1) year term ("Renewal Term") unless earlier terminated as otherwise provided in this Agreement.

III. HOSTING SERVICES

- A. Host agrees to provide Client with 600 Gigabytes of hard drive space;
- B. Host agrees to provide Client with maintenance and support for Client's server;
- C. Host agrees to provide **licensing for Microsoft Office Suite, Windows Excel, Adobe Acrobat Pro** and Windows for all users on the Client's system. **At the time of the execution of this Agreement the Client will provide a list of licensees that will be covered by this Agreement. The Client will be provided initially with 24 licenses, with a total not to exceed 38 licenses.**
- D. Host agrees to provide Website and e-mail hosting so the website is accessible to third parties via the World Wide Web portion of the Internet as specified in this Agreement;

E. To the extent that Client wishes to receive from Host, and Host wishes to receive from Client, services other than the Hosting Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties ("Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Hosting Services and the Additional Services will thereafter be referred to collectively as the "Services").

F. Host agrees to provide Client with connectivity services through the Muskegon County Central Dispatch.

G. Host will provide for remote access to the system via laptop computes, I-Pads, I-Phones or other non-virtual client services.

IV. AVAILABILITY OF WEBSITE

Unless otherwise expressly indicated herein, the Website shall be accessible to third parties via the World Wide Web portion of the Internet twenty-four (24) hours a day seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Hosting Services due to causes beyond the control of the Host or which are not reasonably foreseeable by Host, including, but not limited to, interruptions or failure of telecommunications or digital transmission links and Internet slow-downs or failures.

V. ADDITIONAL STORAGE AND TRANSFER

In the event that the Website requires storage and transfer on the Host Server which exceeds the amount of storage included in the Hosting Services, Client may request that Host:

A. Upgrade the level of Hosting Services; or

B. Acquire additional incremental storage to be included in the Hosting Services, on a time and materials basis and in accordance with the fee and payment schedule agreed to by the Parties. Host shall review all such requests and determine, in consultation with Client, whether it can reasonably comply with such requests, and if so, and at its option, Host shall propose a procedure and budget for complying with such request.

VI. TECHNICAL SUPPORT

Technical Support is to be provided by the Host and included in the allocation formula. This technical support will include Help Desk (tier 1) and Escalated Support (tier 2) which includes on-site work. Technical support and the tier 3 level will be the responsibility of the Client. Tier 3 level support is defined as project support which will be determined by the Clients.

VII. NETWORK SECURITY

The Host subscribed to and periodically audits compliance with security best practices regarding Cisco, Microsoft, VMware and San storage technologies.

VIII. FEES AND TAXES

A. Hosting Services Fees

Client shall pay Host an annual fee in the amount of \$15,915.54. This fee shall be paid monthly in the amount of \$1,326.30, with the first payment due on the first day of the first month after the Effective Date of this Agreement and on the first of each month thereafter during the Initial Term and any Renewal Term of this Agreement.

B. Current Fee

These fees are based upon current rate of allocation. The parties acknowledge that Host is pursuing other clients which would create economics of scale and change the allocation formula and may result in a reduction in the fees charged to the Client.

C. Change in Fee

Parties acknowledge that the fees can change from year to year depending on the level of services provided and the equipment/infrastructure required, as well as any necessary maintenance. An allocation formula based upon current level of service, drive space, number of users and software is attached to this document as Exhibit A.

D. Additional Services Fee/Equipment Fee

Unless otherwise agreed to in writing, Client shall pay to Host all fees for Additional Services on a time and materials basis as invoiced by Host. Any additional services must be requested by the Client and mutually agreed to in writing by the parties.

IX. WARRANTIES

A. Host Warranties

Host represents and warrants that:

1. Host has the power and authority to enter into and perform its obligations under this Agreement; and
2. Host's services under this Agreement shall be performed in a workmanlike manner.

B. Client Warranties

Client represents and warrants that:

1. Client shall not use the Website or the services provided to Client to:
 - a. Be responsible for costs associated with setup;
 - b. Be responsible for costs associated with configuration or special projects.

X. INDEMNIFICATION

A. Client

Client agrees to indemnify, defend, and hold harmless Host, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder;
2. Arises out of gross negligence or willful misconduct of Client; or
3. Any of the Client's content to be provided by Client hereunder or other material on the Website infringes or violates any rights of third parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

B. Host

Host agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action arises out of the gross negligence or willful misconduct of Host.

XI. NOTICE

In claiming any indemnification hereunder, the indemnified party shall promptly provide the indemnifying party with written notice of any claim which the indemnified party believes falls within the scope of the foregoing paragraphs. The indemnifying party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which shall not be unreasonably withheld. **The**

indemnified party agrees to cooperate with the indemnifying party as a condition of indemnification.

XII. HOST WARRANTIES

A. Work Product Warranty.

Host warrants that any work product Host or Host made changes to the content shall not:

1. Infringe of the intellectual property rights of any third party or any rights of publicity or privacy;
2. Violate any statute, ordinance or regulation;

B. Additional Warranties.

Host warrants that:

1. Any work product or Host tools will conform to their applicable specifications or acceptance criteria when delivered and for a period one-year thereafter;
2. There is no outstanding contract, commitment or agreement which Host is a party or legal impediment of any kind known to Host which conflicts with this Agreement or might limit, restrict or impair the rights granted to Client hereunder.

XIII. CLIENT COVENANT

During the period that Host provides web hosting services pursuant to this Agreement, Client shall not distribute on the website any content that:

- A. Infringes on the intellectual property rights of any third party or any rights of publicity or privacy;
- B. Violates any laws, statutes, ordinances or regulations.

XIV. DISCLAIMER WARRANTIES

Except as set forth herein each party expressly disclaims all warranties or conditions of any kind expressly or implied, including without limitation, the implied warranty of title, non-infringement, merchant ability and fitness for a particular purpose.

XV. LIMITATION OF LIABILITY

HOST SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEBSITE OR CLIENT'S DATA

FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES. HOST SHALL HAVE NO LIABILITY WITH RESPECT TO HOST'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF HOST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO HOST BY CLIENT UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

XVI. GENERAL PROVISIONS

A. Termination

This Agreement may be terminated upon thirty (30) days written notice by either the Client or the Host.

B. Amendment

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made and duly executed by the Host and Client.

C. Enforceability

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted. **The Parties agree to replace any invalid provisions with a valid provision which most closely approximates the intent and economic effect of the invalid provision.**

D. Assurances

1. Host shall cooperate with Client both during and after the terms of this Agreement in the procurement and maintenance of Client's rights to intellectual property created hereunder and execute when requested any other documents deemed necessary or appropriate by Client to carry out the purposes of this Agreement.

2. Host shall insure that its website design and web hosting services will comply with all applicable international, national and local laws and regulations.

E. Waiver

The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver by any other or subsequent breach.

F. Headings

Headings made in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such action or in any way effect this Agreement.

G. Assignment

Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of County and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

H. Successor and Assigns

All representations, covenants and warranties set forth in the Agreement by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

I. Terms and Conditions

The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

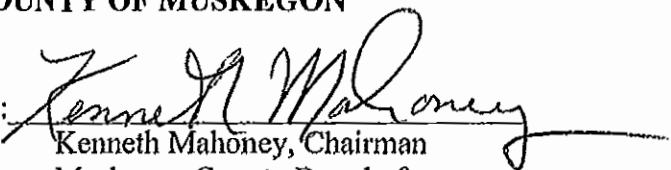
J. Execution of Counterparts

This Agreement may be executed in any number of counterparts and each such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date set forth below.

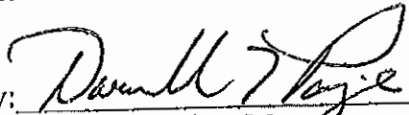
COUNTY OF MUSKEGON

Dated: Nov 27, 2012

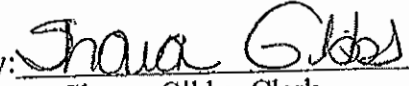
By: 
Kenneth Mahoney, Chairman
Muskegon County Board of
Commissioners

CITY OF MUSKEGON HEIGHTS

Dated: 11-13, 2012

By: 
Darrell Paige, Mayor

Dated: 11-13, 2012

By: 
Sharon Gibbs, Clerk