

## CONSULTING SERVICES AGREEMENT

By and Between

Muskegon County, Michigan

and

MGT of America, Inc.

THIS AGREEMENT is made this 28 day of January 2014, by and between the County of Muskegon, Michigan ("Client"), and MGT of America, Inc., a Florida Corporation ("MGT").

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

### 1. Description of Services

MGT shall, as an independent contractor, provide the services specified in section 1.1 below ("the Services"), on the schedule specified in section 1.2 below.

#### 1.1. Scope of Services

MGT shall provide to Client the following services:

*Develop a FY 2014 budget based Information Technology (IT) rate study, for use beginning October 1, 2013. The study will be developed utilizing the FY 2014 Adopted County Budget, the ImageSoft proposed services cost estimate, and the FY 2012 County-wide Central Services Cost Allocation Plan to identify overhead costs.*

*The IT rate study will include the follow three major components:*

- 1. Data Processing (DP)*
- 2. Imaging*
- 3. Tele-Communications*

#### Data Processing:

*Individual rates will be identified for Data Processing costs for the following areas:*

- Hardware Costs*
- Software Costs*
- Programming*

#### Imaging:

*Individual rates will be identified for Imaging cost for the following areas:*

- Common Imaging Costs*
- Hardware Costs*
- Software Costs*
- Programming/Customization Costs*

#### Tele-Communications:

*Individual rates will be identified for Tele-Communication cost for the following areas:*

- Hardware Costs*
- Landline Costs*
- Wireless Costs*
- Direct Charge / Long Distance Costs*

*MGT will review a draft plan with the County administration and will negotiate a final rate with the State of Michigan, Department of Human Services, Office of Child Support.*

## 1.2. Timetable for Services

The Services shall be performed and the product(s) of the services shall be delivered on the following schedule:

*The final IT Rate Study will be delivered to the County within 60 days from execution of this agreement. Final negotiation of the IT Rate Study with the State of Michigan will be dependent on the State's availability.*

## 2. Compensation

For its work under this Agreement MGT shall be paid a not to exceed fee of \$ 15,000.00. This fee will include one presentation to the County Administration. Additional presentations and training will be provided at our standard billing rates of \$180.00 / hour plus related travel costs.

MGT will render to Client three invoices: First invoice will be submitted upon execution of the agreement for \$5,000.00. The second invoice for \$5,000 will be submitted at the end of the first thirty days. The final invoice for \$5,000 will be presented upon delivery of the final IT Rate Study. Payment will be due thirty (30) days after each invoice is submitted.

## 3. Term, Renewal Options, and Termination

This agreement shall become effective upon its execution and delivery by the parties and shall remain in effect until completion of, and full payment for, the Services. At Client's option, and approved by MGT, the contract may be renewed for two (2) additional year, subject to review of the professional fee and written approval by both parties.

This contract may be terminated prior to completion of the Services at the option of either party, upon delivery of written notice by the terminating party to the other party. In the event of early termination by Client, MGT shall be paid, upon invoicing in accordance with this Agreement, the agreed compensation. If, due to termination, there is no agreed value for the services performed to date, MGT's standard hourly rates plus expenses incurred shall apply for Services performed prior to termination.

## 4. Independent Contractor Status

The relationship of MGT to Client is that of an independent contractor, and nothing in this Agreement shall be construed as creating any other relationship. As an independent contractor, MGT shall comply with all laws relating to federal and state income taxes, associated payroll and business taxes, licenses and fees, workers compensation insurance, and all other applicable state and federal laws and regulations. Neither MGT nor anyone employed or subcontracted by MGT shall be, represent, act, and purport to act, or be deemed to be an agent, representative, employee or servant to Client.

## 5. Project Managers

**James Olson** shall serve as Project Manager and point of contact for MGT under this Agreement.

**Heath Kaplan** shall serve as Project Manager and point of contact for the Client for the Cost Allocation Plan services under this Agreement.

By written notice to the other party, either party may change the identity of its project manager during the term of this Agreement.

## 6. Miscellaneous

### 6.1. No Continuing Waiver

The failure or forbearance by either party in exercising any remedy available to it upon a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or continuing breach by either party.

### 6.2. Entire Agreement

This written Agreement represents the entire agreement of the parties, and neither party is relying upon any negotiation, representation, warranty, promise, or covenant not set forth in this Agreement. This Agreement may not be modified or amended except by a written instrument for that purpose duly executed by both parties.

### 6.3. Subcontracting and Assignment

MGT may utilize subcontractors in performing the Services, but MGT shall remain responsible to Client for performance under this Agreement. This contract shall be binding upon and inure to the benefit of both Client and MGT and their respective successors and assigns, if any, and legal representatives.

### 6.4. Interpretation, Venue, and Severability

This agreement shall be construed, interpreted, and enforced in accordance with Michigan law without regard to conflicts of laws principles. Should any provision of this Agreement be held invalid or unenforceable by final judgment of a court of competent jurisdiction, it is the parties' intention that the remainder of this Agreement shall nevertheless be given effect as written. Any action arising out of or relating to this Agreement may be brought only in the Michigan state court having jurisdiction. If more than one party executes this Agreement as Client, then each such party shall be jointly and severally responsible for Client's performance and payment under this Agreement.

### 6.5. Standard of Performance

Contractor represents that contractor has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Contractor shall perform all services under this Agreement in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

### 6.6. Conflict of Interest

Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by contractor.

### **6.7. Ownership of Documents**

This Agreement is a written instrument, signed by County and the Contractor, for purposes of the Copyright Act of the United States and the copyright laws of any other country. County and Contractor agree that the copyright for any and all works of authorship, prepared under this Agreement, as a result of this Agreement, or in the course of performance of this Agreement, in any medium of expression, shall belong exclusively to County. County shall, for purposes of 17 U.S.C. § 201(a) and the copyright laws of any other country, be deemed the sole and exclusive author of any and all such works. If and to the extent necessary, any and all such works shall be deemed works made for hire, prepared for County and belonging exclusively to it. If necessary to secure County's exclusive ownership of any or all such copyrights, Contractor shall perform all actions and execute all documents required to transfer any and all such rights exclusively to County, including each and all of the exclusive rights identified in Section 106 of the Copyright Act.

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. 17 U.S.C. § 202. Accordingly, County shall be the exclusive owner (both of the copyright and of every embodiment) of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production. Contractor shall not release any such works, items, or embodiments thereof, to any third party, except with the prior written approval of County.

All items, works, or embodiments thereof, produced in whole or in part under this Agreement shall, if subject to the copyright laws of the United States or of any other country, belong (both the copyright and all embodiments of the work or item) exclusively to County. County shall have the unrestricted authority to publish, disclose, distribute, otherwise use in whole or in part, or to prepare derivative works based on, any reports, data, documents or other works or materials prepared under this Agreement.

### **6.8. Nondiscrimination**

The Contractor assures that in accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title IX of the Education Amendment of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Regulations issued thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 80, 84, 86 and 91), the Michigan Handicapper's Civil Rights Act (1976, P.A. 220), and the Michigan Civil Rights Act (1976, P.A. 453), no individual shall, on the ground of race, creed, age, color, national origin or ancestry, religion, sex, marital status, or handicap be excluded from participation, be denied the benefit of, or be otherwise subjected to discrimination or harassment under any program or activity provided by this Contractor.

Additionally, assurance is given to County that good-faith efforts will be made to identify and encourage the participation of minority-, women- and handicapper-owned businesses in contract solicitations. The Contractor shall incorporate language in all contracts awarded: (1) prohibiting discrimination against minority-, women- and handicapper-owned business in subcontracting; and (2) making discrimination a material breach of contract.

### 6.9. Insurance

Contractor is required to provide proof of the minimum levels of insurance coverage as indicated by the attached Exhibit A. The purpose of this coverage shall be to protect the County from claims which may arise out of or result from the Contractor's performance of services under the terms of this Agreement, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The insurance shall be written for not less than the minimum coverage specified in Exhibit A or as required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the County. BEFORE THE AGREEMENT IS SIGNED BY BOTH PARTIES, THE CONTRACTOR'S INSURANCE AGENCY MUST FURNISH TO THE COUNTY AN ORIGINAL CERTIFICATE OF INSURANCE VERIFYING LIABILITY COVERAGE. THAT COVERAGE MUST NAME THE COUNTY OF MUSKEGON AS AN ADDITIONAL INSURED. All such certificates shall contain a provision indicating that coverage for it under the policy WILL NOT BE CANCELLED, MATERIALLY CHANGED OR NOT RENEWED without THIRTY (30) DAYS prior written notice except for ten (10) days for nonpayment of premium having been given to the County.

If a motor vehicle is used to provide services or products under this Agreement, the Contractor must have vehicle liability insurance on any automobile including owned, hired, and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

### 6.10. Prior Performance

Services performed by MGT pursuant to Client's authorization, but before execution of this Agreement, shall be considered as having been performed pursuant to the terms and conditions of this Agreement.

### 6.11. Notices

All written notices, demands or requests pursuant to this Agreement may be served (as an alternate to personal service) by registered or certified mail or air freight services that provide proof of delivery, with postage and fees thereon fully prepaid, and addressed to the parties so to be served as follows:

**If to MGT:**

MGT of America, Inc.  
2343 Delta Road  
Bay City, Michigan 48706

**If to Client:**

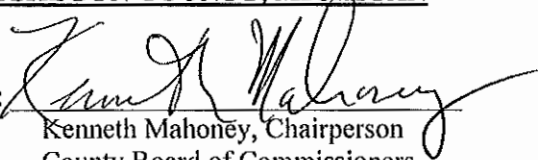
Muskegon County  
990 Terrace Street  
Muskegon, Michigan 49442

Service of any such notice or demand so made by mail shall be deemed complete on the day of actual delivery as shown by the addressee's registry or certification receipt. Either party hereto may, from time to time, by written notice served upon the other as aforesaid, designate a different mailing address, or (a) different or additional person(s) to which or to whom all such notices or demands are thereafter to be addressed. Persons named to receive copies of notices are listed for accommodation only, and are not required to be personally served to comply with service of notice on a party.

IN WITNESS WHEREOF, this agreement has been executed and delivered by Client and MGT on the date first written above.

MUSKEGON COUNTY, MICHIGAN

Dated: 1-28-14


By:   
Kenneth Mahoney, Chairperson  
County Board of Commissioners

FEID: 38-600608

Address: Muskegon County, Michigan  
990 Terrace Street  
Muskegon, Michigan 49442

MGT OF AMERICA, INC.

Dated: December 3, 2013

By:   
J. Bradley Burgess  
Vice President

FEID: 59-1576733

Address: 2343 Delta Road  
Bay City, MI 48706  
989-316-2220

**EXHIBIT A**

**COUNTY OF MUSKEGON**  
**CONTRACTOR INSURANCE REQUIREMENTS**

**A. PROOF OF INSURANCE**

The Contractor shall furnish the County with satisfactory proof of insurance (e.g. certificate of insurance, binder, copy of policy declaration page) prior to signing the County-Contractor agreements.

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this section and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on his sub-contract until the insurance required of the subcontractor has been so obtained and approved.

**B. REQUIRED COVERAGES**

Liability policies shall include the County and its subsidiaries, departments, and agencies and their respective officials, officers, directors, employees, and agents named as Additional Insureds.

**WORKERS' COMPENSATION**

Coverage for its employees with statutory limits and Employers Liability coverage with limits of:

- Coverage A - Compensation as required by Statute
- Coverage B - Employer's Liability to \$500,000

**COMMERCIAL GENERAL LIABILITY**

Coverage on the standard ISO 1993 Form, which includes contractual liability, personal injury, broad form property damage, extended liability, and, where applicable, products liability coverage, with coverage limits of:

Per occurrence \$1,000,000

**COMPREHENSIVE AUTOMOBILE LIABILITY**

Coverage on the standard ISO 1990 Form, which includes contractual liability coverage and coverage for all owned, hired, and non-owned vehicles with limits of:

Bodily Injury and Property  
Damage - Any One Accident or Loss \$1,000,000

**OWNERS AND CONTRACTORS PROTECTIVE LIABILITY**

Coverage on the Standard ISO 1992 Form, with limits of:

Per occurrence \$1,000,000

**UMBRELLA OR EXCESS LIABILITY**

Per occurrence \$1,000,000

**ENVIRONMENTAL AND POLLUTION LIABILITY**

Coverage for all pollution and environmental risks, including contractors, pollution liability coverage and pollution legal liability coverage and, where applicable, environmental umbrella coverage with coverage limits of:

Per occurrence \$1,000,000

1. The foregoing policies shall be evidenced by a certificate of insurance acceptable to the County. Such certificate shall be issued by an insurance carrier with an A.M. Best rating of "A-" or better and delivered to the County prior to the performance of any services hereunder. Such insurance certificate shall provide that the coverages evidenced thereby shall not be substantially modified or canceled without thirty (30) days' prior written notice to the County. Additional certificates, evidencing renewal of such policies during the time period they are required to be kept in effect, shall be delivered to the County no less than thirty (30) days prior to the expiration of the term of any required coverage.

2. Upon the request of the County, the Contractor shall deliver to the County copies of all policies listed in the foregoing paragraphs once a year, upon renewal, or upon procurement in the case of new or additional coverage, whichever occurs first. Claims-made policies shall not be acceptable to the County for any of the insurance coverages required herein.

3. The Contractor's indemnity obligation specified in Paragraph C of this Agreement shall not be negated or reduced by virtue of the denial of insurance coverage or refusal to defend the County for any occurrence or event which is subject to the said indemnity obligation.

4. Compliance by the Contractor with the requirements of this Article shall not relieve the Contractor from its indemnity obligation and liability pursuant to Paragraph C of this Agreement or any other liability to the County, whether specified in this Agreement or otherwise.



5. The Contractor agrees that the County shall have no responsibility to verify the Contractor's compliance with any insurance requirements contained in this Agreement or otherwise.

6. All notices, certificates, and policies referred to in this (Article, Section, Division, etc.) shall be sent to:

The County of Muskegon  
Attn: Purchasing  
141 East Apple Avenue  
Muskegon, MI 49442

**C. HOLD HARMLESS AGREEMENT**

All contracts must contain the following Hold Harmless Agreement:

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the County, its subsidiaries, departments, divisions, and agencies and their respective officials, officers, directors, employees, and agents from and against any and all liability, litigation, causes of action, and claims, by whomsoever brought or alleged, and regardless of the legal theories upon which based, and from and against all losses, costs, expenses, and fees and expenses of attorneys and expert witnesses resulting therefrom on account of, relating to, or arising out of bodily injury to or death of any person or on account of damage to property, including loss of use thereof, arising or allegedly arising out of or resulting from the work. The foregoing indemnity of the County shall include, but is not limited to, claims alleging or involving the negligence of the Contractor, its subcontractors, or the joint negligence of the Contractor, its subcontractors, and/or the County, but shall not extend to liability found by way of final judgment to have resulted from the sole negligence of the County.

**D. SUBCONTRACTOR REQUIREMENTS**

Contractor agrees to contractually obligate its subcontractors to indemnify the County in precise conformance to the terms of Contractor's obligation to indemnify the County pursuant to this Agreement.

The Contractor further agrees to contractually obligate its subcontractors to provide insurance with the insurance coverages and limits of liability required to be provided by the Contractor pursuant to the terms and conditions of this Agreement.

**E. CANCELLATION OR REDUCTION IN COVERAGE**

Notice: In the event of a lapse or reduction in the required coverages, the Contractor shall cease operations and shall not resume operations until new insurance is in force.