

## **MASTER CONSULTING AGREEMENT**

Client Name: City of Gahanna

Street: 200 S. Hamilton

City/State/Zip: Gahanna, OH 43230

This AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date") by and between Assurity River Group, Inc., a Minnesota corporation with offices at 4500 Park Glen Road, Ste. 120, Minneapolis, MN 55416 ("Consultant") and \_City of Gahanna\_ (referred to as "Client").

In consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

### **1. PURPOSE OF ENGAGEMENT.**

(a) Client agrees to retain Consultant to perform consulting services (the "Services"), and Consultant agrees to furnish the Services according to the terms and subject to the conditions set forth in this Agreement. During the term of this Agreement, Client and Consultant will execute statements of work defining the Services and work product to be provided by Consultant, Consultant's compensation and additional terms and conditions, if any, applicable to a particular engagement (each "Statement of Work"). A Statement of Work may provide a schedule for completion of the Services required thereunder (the "Schedule") and specifications for deliverables to be provided (the "Deliverables"). Statements of Work which are executed by the parties shall reference this Agreement and shall become part of this Agreement from the date of execution. In the event of a conflict between the provisions of this Agreement and the specific provisions set forth in a Statement of Work, the provisions of such Statement of Work shall prevail.

(b) Client may request changes that affect the scope or duration of the Services relating to any Statement of Work. If Client requests such a change then Consultant shall promptly notify Client if it believes that an adjustment in the fees to be paid to Consultant with respect to the applicable Statement of Work, or an adjustment to the applicable Schedule, is required. In such case, the parties shall negotiate in good faith a reasonable and equitable adjustment in the applicable fees, Schedule and Specifications. Consultant shall continue work pursuant to the existing Statement of Work, and shall not be bound by any change requested by Client, until such change has been accepted in writing by Consultant.

### **2. TERM.**

The term of this Agreement shall begin on the date hereof and shall continue until terminated by either party pursuant to Section 8 hereof.

### **3. FEES.**

(a) During the term of this Agreement, Client agrees to compensate Consultant as set forth in each Statement of Work. In addition, Client shall reimburse Consultant for actual out-of-pocket expenses as reasonably incurred by Consultant in connection with its performance of the Services.

(b) Consultant shall bill Client as set forth in the relevant Statement of Work. Client shall pay invoices within fifteen (15) days of receipt. Any invoice not paid within such period will be considered delinquent and a late payment charge of the lesser of one percent (1%) of the delinquent balance or the maximum amount permissible by law will be assessed per month on each invoice amount remaining delinquent.

(c) All fees, charges and other amounts payable to Consultant hereunder do not include any sales, use, excise, value added or other applicable taxes, tariffs or duties. Payment of such taxes, tariffs or duties shall be the sole responsibility of Client (excluding any applicable taxes based on Consultant's net income or taxes arising from the employment or independent consultant relationship between Consultant and its personnel). In the event that such taxes, tariffs or duties are assessed against Consultant, Client shall reimburse Consultant for any such amounts paid by Consultant or provide Consultant with valid tax exemption certificates.

#### **4. OWNERSHIP OF MATERIALS RELATED TO SERVICES.**

(a) The parties agree that all drawings, designs, models, computer programs, data computer documentation and other tangible materials authored or prepared by Consultant for Client as the work product required by a Statement of Work, other than Consultant's Information as defined in paragraph (b) below (collectively, the "Works"), are the sole and exclusive property of Client and shall be considered "works made for hire."

(b) Client acknowledges that Consultant provides consulting and development services to other clients, and agrees that nothing in this Agreement shall be deemed or construed to prevent Consultant from carrying on such business. In particular, Client agrees that, notwithstanding anything to the contrary set forth herein: (i) Consultant shall have the right to retain a copy of each of the Works for its records subject to the provision of Section 11; (ii) as part of Consultant's provision of the Services hereunder, Consultant may utilize proprietary works of authorship that have not been created specifically for Client which have been originated, developed or purchased by Consultant or by third parties under contract to Consultant (all of the foregoing, together with Consultant's administrative communications, records, files and working papers relating to the Services, collectively "Consultant's Information"); and (iii) Consultant's Information shall not be deemed to be Works and shall remain the sole and exclusive property of Consultant.

#### **5. CLIENT REPRESENTATIONS AND WARRANTIES.**

Client represents and warrants as follows:

(a) Client has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Client and constitutes the valid and binding agreement of Client, enforceable against Client in accordance with its terms.

- (b) Client further represents and agrees that to the extent its material failure to meet its obligations set forth in this Agreement affects the ability of Consultant to perform Consultant's obligations under this Agreement, including, but not limited to, the Services, Consultant shall be relieved of such obligations to the extent of and for the duration that Client's material failure prevents Consultant from performing its obligations. Consultant shall notify Client in writing if Client's failure to meet its obligations affects the ability of Consultant to perform its obligations. Consultant will make a reasonable effort to remedy the situation caused by Client's failure if Consultant can remedy the situation with minimal effort or expense.

#### **6. CONSULTANT WARRANTIES.**

Consultant represents and warrants that, at the time the Services are rendered, such Services shall be performed in a professional, workmanlike manner and in accordance with the specifications and description of such Services as set forth in the Statement of Work hereto. Without limitation, the warranty set forth in this Section shall expire thirty (30) days after the Services are rendered by Consultant and shall not apply to the extent the Services rendered by Consultant are affected by any of the following: (i) unauthorized actions of Client personnel; (ii) unauthorized actions of any third party; or (iii) failure of Client to perform any of the tasks, provide any of the resources, or meet any of the obligations set forth or described in Statement of Work hereto.

#### **7. DISCLAIMER OF WARRANTY.**

THE WARRANTY SET FORTH IN SECTION 6 IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY CONSULTANT. CONSULTANT EXPRESSLY DISCLAIMS, AND CLIENT HEREBY EXPRESSLY WAIVES, ALL OTHER EXPRESS WARRANTIES AND ALL DUTIES, OBLIGATIONS AND WARRANTIES IMPLIED IN LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONSULTANT DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS. CONSULTANT'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF CONSULTANT ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE SERVICES. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES IS WITH CLIENT.

#### **8. TERMINATION**

(a) At any time that there is no uncompleted Statement of Work outstanding, either party may terminate this Agreement for any or no reason upon thirty (30) days advance written notice to the other.

(b) In addition, either party may terminate this Agreement or any outstanding Statement of Work, after written notice to the other party, in the event that the other party breaches a material term of this Agreement or any Statement of Work and such breach remains unresolved at the end of thirty (30) days after receipt of such notice. Upon any such termination, Consultant will be paid all fees and expenses which have been incurred or earned in connection with the performance of the Services through the effective date of such termination.

**9. LIMITS OF LIABILITY.**

(a) CONSULTANT'S MAXIMUM LIABILITY TO CLIENT ARISING FOR ANY REASON RELATING TO CONSULTANT'S PERFORMANCE OF SERVICES UNDER A STATEMENT OF WORK SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO CONSULTANT FOR THE PERFORMANCE OF SUCH SERVICES.

(b) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CONSULTANT AND CLIENT AGREE THAT IN NO EVENT SHALL CONSULTANT OR CLIENT BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES FOR LOST PROFITS, REVENUE, USE OR SALES, INJURY TO PERSON OR PROPERTY OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS.

**10. INDEMNIFICATION.**

Client agrees to indemnify, defend and hold the Consultant harmless from and against any and all losses, suffered or paid, as a result of or arising by reason of, connected to or resulting from (i) any breach of or inaccuracy in any of Client's representations or warranties, or (ii) any breach by Client of any covenant or agreement contained in this Agreement. In the event Client undertakes to defend any such claim, Client shall promptly notify Consultant of its intention to do so, and Consultant agrees to cooperate with Client in compromising or defending against such claims. If Client shall fail to defend within 30 days after receiving notice from Consultant, then Consultant shall have the right to settle the claim. If Consultant is required to advance money to settle such claim, Client shall pay Consultant the amount of any advance within 10 days after notice of the advance. Consultant shall indemnify, defend and hold harmless Client (and its affiliates and their respective employees and agents) against any claims, actions, damages, losses or liabilities caused by or resulting from the negligent acts or omissions or willful misconduct of Consultant in its performance of the Services or arising out of any action brought against Client by a third party as a result of the actual or alleged infringement of a third party's intellectual property by the Services.

**11. CONFIDENTIAL INFORMATION.**

It may be necessary and desirable for Client to disclose confidential and proprietary information or software (the "Confidential Information") relating to past, present or future activities of Client or others with whom Client has business relationships in order for Consultant or Consultant's employees or independent contractors to perform its obligations under the terms of this Agreement. Consultant shall not use or disclose to any person, firm or entity any Confidential Information without Client's express, prior written consent. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is already known to Consultant at the time of disclosure by Client; (ii) is or becomes publicly known through no wrongful act of Consultant; (iii) is independently developed by Consultant without benefit of Client's Confidential Information; or (iv) is received by Consultant from a third party without restriction and without a breach of an obligation of confidentiality. Consultant reserves the right to use Client's name in promotional materials and may request authorization from Client to be used as a reference. The confidentiality restrictions and obligations imposed by this Section (11) shall terminate two (2) years after the expiration or termination of this Agreement. In the event that Consultant or any of its representatives receive a request or are required (by deposition,

interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of the Confidential Information, Consultant agrees to (i) immediately notify Client of the existence, terms and circumstances surrounding such a request, (ii) consult with Client on the advisability of taking legally available steps to resist or narrow such request, and (iii) assist Client at Client's sole cost and expense in seeking a protective order or other appropriate remedy.

#### **12. INDEPENDENT CONSULTANT.**

Consultant is performing the Services as an independent consultant and not as an employee of Client and none of Consultant's personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Client. Subject to Section 3(c) Consultant shall be responsible for all taxes and other expenses arising from the employment or independent consultant relationship between Consultant and its personnel and the rendition of Services hereunder by such personnel to Client. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between Client and Consultant, nor shall anything in this Agreement be deemed to constitute Consultant or Client the agent of the other. Neither Consultant nor Client shall be or become liable or bound by any representation, act or omission whatsoever of the other. Each party acknowledges and agrees that neither party shall take a position inconsistent with this contract relationship for any reason including but not limited to vicarious tort liability for injury, compensation for disability or injury, compensation for unemployment claims or causes of action against the Consultant and the liability of all contractual relationships between the Consultant and any third party.

#### **13. NONASSIGNABILITY.**

Neither Party shall assign or transfer this Agreement or any of its obligations hereunder without the other party's express, prior written consent. Notwithstanding the forgoing, either party may assign the agreement in connection with any merger, consolidation or sale of all or substantially all of its assets.

#### **14. SEVERABILITY; GOVERNING LAW.**

In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

#### **15. RETURN OF MATERIALS.**

Except as otherwise provided herein, the parties agree that upon termination of this Agreement for any reason whatsoever, each party will return to the other all papers, documents, and instruments placed in its custody or obtained during the course of its obligations under this Agreement by the other party.

## 16. DISPUTE RESOLUTION

(a) Resolution of Disputes. Any dispute among the parties hereto shall be resolved in accordance with the arbitration provisions of this Section (16).

(b) Resolution by Executives. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, the breach, termination or validity thereof promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other written notice that a dispute exists (a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position. Within twenty (20) business days of the delivery of the Notice of Dispute, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as long as they both reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within 45 days of the disputing party's Notice of Dispute, or if the parties fail to meet within 20 days, either party may initiate arbitration of the controversy or claim as provided hereinafter.

(c) Notification Regarding Attorney. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

(d) Arbitration. Any controversy or claim arising out of or relating to this Agreement, the breach, termination or validity thereof, or the transactions contemplated herein, if not settled by negotiation as provided in Section 16(a) shall be settled by arbitration in Minneapolis, Minnesota in accordance with the CPR Rules for Non-Administered Arbitration of Business Disputes, by three arbitrators. Each party shall choose one arbitrator and the two arbitrators so chosen shall choose a third arbitrator who must be a retired judge of a state or federal court of the United States. The arbitrators shall be appointed as provided by CPR Rule 5, Selection of Arbitrators by the parties. The arbitration procedure shall be governed by the United States Arbitration Act, 9 U.S.C. §1-16, and the award rendered by the arbitrators shall be final and binding on the parties and may be entered in any court having jurisdiction thereof.

(e) Discovery. Each party shall have discovery rights as provided by the Federal Rules of Civil Procedure within the limits imposed by the arbitrators; provided, however, that all such discovery shall be commenced and concluded within ninety (90) days of the selection of the third arbitrator.

(f) Schedule. It is the intent of the parties that any arbitration shall be concluded as quickly as reasonably practicable. Unless the parties otherwise agree, once commenced, the hearing on the disputed matters shall be held four days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. The arbitrator shall use all reasonable efforts to issue the final award or awards within a period of five (5) business days after closure of the proceedings. Failure of the arbitrator to meet the time limits of this Section 16(f) shall not be a basis for challenging the award.

(g) Costs and Expenses. The arbitrators shall instruct the non-prevailing parties to pay all costs of the proceedings, including the fees and expenses of the arbitrators and the reasonable attorneys' fees and expenses of the prevailing parties. If the arbitrators determine that

there is not a prevailing party, each party shall be instructed to bear its own costs and to pay one-half of the fees and expenses of the arbitrators.

**17. NOTICES.**

All notices, requests and other communications hereunder shall be in writing. Communications to the Consultant shall be addressed as follows:

Assurity River Group  
550 Main Street, Ste. 260  
New Brighton, MN 55112  
Attention: Jeff Olejnik, President

**18. INTEGRATION.**

This Agreement, including any Statements of Work entered into pursuant hereto, constitutes the entire agreement of the parties hereto with respect to subject matter and supersedes all prior and contemporaneous representations, proposals, discussions, and communications whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the parties hereto.

**19. NON-SOLICITATION.**

In the event Client employs a former employee of Consultant (a "Former Employee") within one (1) year after the Former Employee has ceased to be an employee of Consultant then Client hereby agrees to pay to Consultant a sum equal to thirty-five percent (35%) of the total annual compensation provided to the Former Employee by Client, which sum shall be due within thirty (30) days after the Former Employee accepts employment with Client.

**20. FURTHER ACTS.**

Each party agrees to perform any further acts and to execute and deliver any document which may be reasonably necessary to carry out the provisions of this Agreement.

**21. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which will constitute one and the same instrument.

**22. SURVIVAL.**

Sections 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17 and 19 shall survive any expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**City of Gahanna**

**Assurity River Group, Inc.**

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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