

## **PROFESSIONAL SERVICES CONTRACT FOR CONSULTING SERVICE**

**THIS AGREEMENT**, entered into as of this \_\_\_\_ day of \_\_\_\_, 2000, by and between the Communities of Bexley, Delaware, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, New Albany, Powell, Reynoldsburg, Upper Arlington, Westerville, Worthington (hereinafter referred to as the "Communities" or if in the singular, "Community") and Schottenstein, Zox, and Dunn (hereinafter referred to as the "Firm"), 41 South High Street, Columbus, Ohio, 43215.

### **ARTICLE I -SCOPE OF SERVICE**

The Firm agrees to provide the legal services specified in the Scope of Work defined in "Exhibit A".

### **ARTICLE II - TIME OF PERFORMANCE**

Work shall commence upon execution of this contract and be completed within ninety (90) days. This time frame may be adjusted upon mutual agreement of all parties. Such agreement shall be in written form as an amendment to this contract.

### **ARTICLE III - COMMUNITIES' RESPONSIBILITIES**

A. The Communities shall accomplish the following:

1. Assist the Firm by placing at its disposal all available information pertinent to the Scope of Services for the project.
2. Use their best efforts to secure release of data held by others that is applicable to the project.
3. Give prompt written notice to the Firm whenever the Communities observe, or otherwise become aware of any fault or defect in the project or non-conformance with this Agreement.
4. The City will provide initial interface and assist the Consultant in getting acquainted with the primary points of contact for other agencies, businesses, governmental agencies and City employees as necessary.

### **ARTICLE IV - FIRM'S RESPONSIBILITIES**

B. The Firm shall accomplish the following:

1. Give prompt notice to the Communities whenever the Firm observes, or otherwise becomes aware of any fault or deficit in the project or any non-conformance with the Agreement.

2. Remit, upon request, to the Communities after the termination or completion of the Firm's services all files and documents pertaining to the project that have been obtained or produced including, but not limited to permits, licenses, applications, codes, drawings, site plans, photographs and similar materials.

3. Submit all required documentation within the required time frames.

4. Observe strict confidentiality in relations with all other parties regarding all of the Communities' proprietary information and any other information obtained in connection with representation of the Communities.

## **ARTICLE V - COMPENSATION**

The Firm shall be compensated by a payment for services based upon hourly costs and reimbursable expenses in accordance with the fee schedule in Exhibit "A." Reasonable and customary out-of-pocket expenses will be billed, as they are incurred. However, the total cost to perform the Scope of Services defined in Exhibit "A" shall not exceed \$23,000 divided equally among the participating Communities. It is further agreed that costs in excess of this amount will not be incurred unless specific written authorization is obtained from each Community, in accordance with the amendment procedure defined in Article VIII.

## **ARTICLE VI - METHOD AND SCHEDULE OF PAYMENT**

The Firm will invoice each Community no less than monthly for its pro rata share of services rendered through the previous month. The Communities agree to pay within 30 days of receipt of valid invoice. A valid invoice shall consist of a fully itemized, daily account of which personnel worked on the project with a description of work performed, as well as an itemization of all reimbursable expenses which must be documented with copies of receipts. Invoices must also include an estimated percentage of each phase of work which has been completed, and a summary of billings and payments made to date.

## **ARTICLE VII - TERMINATION**

It is agreed each Community may individually cancel or terminate its participation in this Agreement at any time by written notice to the Firm. In the event such termination occurs prior to completion of the Scope of Work provided for herein, the Communities agree to pay the Firm for work actually performed in accordance with the terms of the Agreement through the

cancellation date. The remainder of the contract price shall then be reduced pro rata for each remaining Community.

### **ARTICLE VIII - CHANGES**

The Communities may, from time to time, require changes in the Scope of Services by the Firm to be performed hereunder. Such changes which are mutually agreed upon by and between the Communities and the Firm shall be incorporated by written amendment to the Agreement. Written amendments may be made by submitting the proposed changes to the City of Dublin, which will circulate the proposed changes. Individual Communities may add amendments for their own additional services at their own expense. Said amendments will be handled separately from this Agreement. No payment shall be made by the Communities to the Firm for any work which does not have such an amendment incorporated into this Contract by mutually signed agreement.

### **ARTICLE - IX - LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Ohio.

Any controversy or claim, whether based on contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or either of the parties' employees, agents, or affiliated businesses, will be resolved in the appropriate courts in Franklin County, Ohio.

### **ARTICLE X - ERRORS AND OMISSIONS INSURANCE**

The Firm shall maintain legal malpractice insurance in the amount of One Million Dollars (\$1,000,000.00) to protect the Communities from any claim arising out of the performance of legal services and caused by any errors, omissions, or negligent acts for which the Firm may be legally liable.

In addition to errors and omissions insurance, the Firm shall maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property and any other insurance prescribed by laws, rules, regulations, ordinances, codes, or orders. Public liability and automobile insurance in an amount not less than One Million Dollars (\$1,000,000.00) for injuries, including those resulting in death, to any one person, and in an amount not less than One Million dollars (\$1,000,000.00) on account of any one accident or occurrence. Property damage insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) from damages on account of any one accident or occurrence.

Said insurance shall be maintained in full force and effect during the life of this contract. Certificates showing that the Firm is carrying the above described insurance in at least the above specified minimum amounts shall be furnished to a Community upon request.

#### **ARTICLE XI - INDEMNIFICATION**

The Firm shall indemnify, keep and save harmless the Communities and their respective officers, agents, and employees against all suits or claims that may be based upon any direct personal injury or damage to property that may arise out of any negligent act of the Firm.

The Firm shall maintain, at a minimum, the levels of liability insurance noted in Article X. The Communities shall be notified if said liability insurance is cancelled, not renewed, reduced, or otherwise materially altered during the period of performance.

#### **ARTICLE XII - THIRD PARTY CONTRACTS**

The Firm shall have no authority to bind the Communities in any way with third parties without the prior written consent of the Communities.

#### **ARTICLE XIII - GENERAL**

As you know, the Firm represents many other companies and individuals. It is also possible that during the time that the Firm is representing the Communities, some of the Firm's present or future clients may have disputes or transactions with the Communities. Therefore, the Communities agree that the Firm may continue to represent existing clients in connection with existing work, or may undertake in the future to represent existing or new clients in any matter that is not substantially related to the Firm's work for the Communities even if the interests of such clients in those other matters are directly adverse to the Communities' interest. The Firm agrees, however, that the Communities prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of the Firm's representation of the Communities, the Firm determines that it has obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to the Communities material disadvantage.

Neither the Firm nor the Communities shall be responsible for failure to fulfill their obligations under this Agreement due to fire, flood, war or other such cause beyond its control and without its fault or negligence.

No delay or failure by a party to act in the event of a breach or default hereunder shall be construed as a waiver of that or any subsequent breach or default of any provision of this Agreement.

If any party, term, or provision of this Agreement is declared unlawful or unenforceable, by judicial determination or performance, the remainder of this Agreement shall remain in full force and in effect.

Any terms of this Agreement which by their nature extend beyond their expiration or termination shall remain in effect until fulfilled and shall bind the parties and their legal representatives, successors, heirs, and assigns.

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Except as specifically provided herein, this Agreement may not be amended or modified except by a formal written amendment signed by the appropriate parties.

Notices given by a party to another under this Agreement shall be in writing and shall be delivered personally, sent by express delivery service, certified mail or first class U.S. mail, postage prepaid and addressed to the parties at the respective addresses listed below, or to such other address as a party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, or (iii) three (3) days after mailing in the case of first class or certified U.S. mail. Such notices shall be sent to:

If to the Communities: SEE EXHIBIT "B"

If to Customer: Gregory J. Dunn, Esq.  
Schottenstein, Zox & Dunn  
41 S. High Street, Suite 2600  
Columbus, Ohio 43215

#### **ARTICLE XIV – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

The foregoing terms and conditions, together with the referenced Scope of Services, are the complete and exclusive expressions of the Agreement between the parties, superseding any prior agreements, written or oral, relating to the subject matter of this Agreement.

In the event of any inconsistency or conflict in the provisions of these documents, the order of precedence shall be:

1. The foregoing terms and conditions.
2. The Scope of Services referenced herein. (Exhibit "A")

**[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS THEREOF, the parties hereto have executed this Agreement in duplicate originals on the day and year here above written.

Schottenstein, Zox, and Dunn

By: \_\_\_\_\_

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

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

City of Dublin

By: \_\_\_\_\_

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

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

City of Grandview Heights

By: \_\_\_\_\_

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

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

City of Hilliard

By: \_\_\_\_\_

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

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

Village of Powell

By: \_\_\_\_\_

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

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

City of Upper Arlington

By: \_\_\_\_\_

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

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

City of Worthington

By: \_\_\_\_\_

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

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

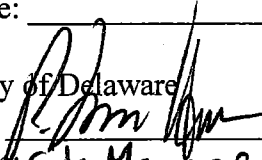
City of Bexley

By: \_\_\_\_\_

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

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

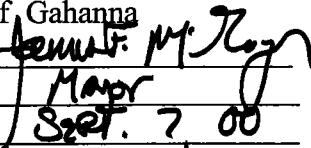
City of Delaware

By: 

Title: City Manager

Date: 8/11/00

City of Gahanna

By: 

Title: Mayor

Date: Sept. 7, 00

City of Grove City

By: \_\_\_\_\_

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

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

Village of New Albany

By: \_\_\_\_\_

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

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

City of Reynoldsburg

By: \_\_\_\_\_

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

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

City of Westerville

By: \_\_\_\_\_

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

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

APPROVED AS TO FORM

  
DANIEL B. BENNINGTON  
DELAWARE CITY ATTORNEY

## **EXHIBIT "A"**

### **Scope of Services**

The Firm shall execute the Scope of Services as set forth below:

- A. Research and draft a uniform master Agreement for municipalities to utilize. The Agreement will have input from both the Communities and Metricom, Inc.
- B. Attend meetings and present drafts as necessary.
- C. The Firm will represent the Communities as a group and will not act as Counsel for individual Communities unless an individual Community otherwise engages individual additional services in accordance with Article VIII of this Agreement.

### **Fee Schedule**

Greg Dunn – \$195.00 per hour  
Chris Miller – \$135.00 per hour  
Paralegals – \$85.00 per hour

Reasonable and customary out of pocket expenses as incurred

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## **EXHIBIT "B"**

### **CONTACT LIST FOR NOTICES**

Dorothy Pritchard  
Service Director  
City of Bexley  
2242 E. Main Street  
Bexley, Ohio 43209

Toby Rittner  
City of Gahanna  
200 S. Hamilton Road  
Columbus, Ohio 43230

Greg Evans  
City of Hilliard  
3800 Municipal Way  
Hilliard, Ohio 43026

Gene Hollins  
City of Westerville  
33 E. Schrock Road  
Westerville, Ohio 43081

Alex Maksimovic  
Development Officer  
City of Grandview Heights  
1016 Grandview Avenue  
Grandview Heights, Ohio 43212

George Mussi  
City of Reynoldsburg  
7232 E. Main Street  
Reynoldsburg, Ohio 43068

Paul Feldman  
Assistant City Manager  
City of Worthington  
6550 N. High Street  
Worthington, Ohio 43085

Mark Nemer  
Village of New Albany  
6208 Dublin-Granville Road, E.  
New Albany, Ohio 43054

Daniel B. Bennington  
Delaware City Attorney  
City of Delaware  
One S. Sandusky Street  
Delaware, Ohio 43015

Jim Blackburn  
City of Grove City  
P.O. Box 427  
4035 S. Broadway  
Grove City, Ohio 43123

Larry Hescel  
Service Director  
City of Upper Arlington  
4100 Roberts Road  
Upper Arlington, Ohio 43228

David Betz  
Village of Powell  
47 Hall Street  
Powell, Ohio 43065