

BIDDERS COMPANY NAME

REQUEST FOR PROPOSAL

#6148

SOFTWARE CONSULTING

SERVICES

FOR

WASHTENAW COUNTY

Prepared By:

Washtenaw County Purchasing
Administration Building
P.O. Box 8645
220 N. Main B-35
Ann Arbor, MI 48107

Robert G. Devault, C.P.M.
Purchasing Manager
(734) 222-6760





WASHTENAW COUNTY

Finance Department

Purchasing Division

P.O. Box 8645, 220 N. Main, Ann Arbor, MI 48107-8645
Phone (734) 222-6760, Fax (734) 222-6764

REQUEST FOR PROPOSAL # 6148

June 21, 2004

Washtenaw County Purchasing Division on behalf of Washtenaw County Information and Technology Services Development is issuing a sealed RFP #6148 for Software Consulting Services.

Sealed Proposals: Vendor will deliver one (1) original and three (3) copies – one copy must be unbound - which are clearly marked as such and must contain one original signature to the following address:

**Washtenaw County
Administration Building
Purchasing Division
220 N. Main St. Room B-35
P.O. Box 8645
Ann Arbor, MI. 48107**

by 2:00 p.m. on MONDAY AUGUST 16, 2004

This submission shall include the entire Request For Proposal document, requested attachments, and any amendments if issued.

Proposals received after the above cited time will be considered a late bid and are not acceptable unless waived by the Purchasing Manager.

- Please use the attached self-addressed label or the envelope must be clearly marked "**SEALED RFP # 6148**".
- Please direct purchasing and procedural questions regarding this RFP to Robert Devault at **734-222-6760** or devaultb@ewashtenaw.org
- Please direct technical questions regarding this RFP to Cathy Freeman at **734-222-6544** or freemanc@ewashtenaw.org

Thank you for your interest.

PURPOSE OF PROPOSAL

Washtenaw County, Michigan intends to secure a contract for consulting services on their existing Peoplesoft EnterpriseOne software. These services may or may not include implementation of version EnterpriseOne 8.9 or higher.

The purpose of this Request for Proposal (RFP) is to define the County's minimum requirements, solicit proposals and to gain adequate information from which the County may evaluate such services.

PROPOSAL TERMS

- A. Bidder(s) may bid on any or all of the services which are the subject of this RFP. The County reserves the right to award the bid to a single contractor or a combination of contractors whichever is in the County's best interest.
- B. Washtenaw County reserves the right to reject any and all proposals received as a result of this RFP. If a proposal is selected, it will be the most advantageous regarding price, quality of service, the Vendor's qualifications and capabilities to provide the specified service, and other factors which Washtenaw County may consider. The County does not intend to award a Bid fully on the basis of any response made to the proposal. The County reserves the right to consider proposals for modifications at any time before a Bid would be awarded, and negotiations would be undertaken with that provider whose proposal is deemed to best meet the County's specifications and needs.
- C. The County reserves the right to reject any or all bids, to waive or not waive informalities or irregularities in bids or bidding procedures, and to accept or further negotiate cost, terms, or conditions of any bid determined by the County to be in the best interests of the County even though not the lowest bid.
- D. Proposals must be signed by an official authorized to bind the provider to its provisions for at least a period of 90 days. Failure of the successful bidder to accept the obligation of the Bid may result in the cancellation of any award.
- E. In the event it becomes necessary to revise any part of the RFP, the entire proposal document with any amendments should be returned with addenda provided. Deadlines for submission of the RFP's maybe adjusted to allow for revisions. To be considered, the **original proposal and three copies – one copy must be unbound** - must be at the Washtenaw County Purchasing Office on or before the date and time specified.
- F. Proposals should be prepared simply and economically providing a straightforward, concise description of the vendor's ability to meet the requirements of the RFP.
- G. Proposals must be structured in the following framework on computer type (8.5 x 11) pages, double-spaced, 12 point or larger. If proposals do not adhere to all specifications established, they may not be reviewed and may not be eligible for consideration for funding.

1 OVERVIEW

- 1.1 Washtenaw County intends to secure a contract for consulting services on their existing Peoplesoft EnterpriseOne software. These services may or may not include implementation of version EnterpriseOne 8.9 or higher.

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The purpose of this Request for Proposal (RFP) is to define the County's minimum requirements, solicit proposals and to gain adequate information from which the County may evaluate such services.

1.2 Technical Environment

Washtenaw County currently supports the following environment and modules for the Peoplesoft EnterpriseOne system:

Enterprise One, version 7, service pack 22
Hewlett Packard L3000
HP/UX 11.0
Oracle 9i (scheduled update to this version in July 2004)

Deployment Server: 1 Dell (2 CPU) 2.8 GHz server running Windows 2000
Application Server: 1 Compaq DL580 (4 CPU) 700 GHz running Windows 2000
Edge Server: 1 Dell (2 CPU) 2.8 GHz server running Windows 2000
Web Servers: 3 Dell (2 CPU) 2.8 GHz servers running Windows 2000
Terminal Servers: 4 Compaq DL580 (4 CPU) 700 GHz running Windows NT 4.0

Sales Order Management
Advanced Pricing
Advanced Inventory Management
Agreement Management
Quality Management
Requirements Planning
Technology Foundation
Enterprise Asset Management
Employee Self-Service
Self-Service Unlimited Internal Access
Human Resources Management
US Payroll Processing
Procurement and Subcontract Management

1.3 Staffing

Washtenaw County currently has the following technical and user support for the Peoplesoft EnterpriseOne system:

- One dedicated Peoplesoft Systems Administrator
- Two Oracle DBA's who support the Peoplesoft databases as well as other Oracle and SQL databases
- One Unix Administrator who supports three HP/UX systems, including the one that runs the Peoplesoft system
- Two Network Administrators who support the web, deployment, and application servers along with their other duties as Network Administrators
- One Java Programmer who supports various portions of the Peoplesoft system as well as other Java programs
- One staff person in each of the functional areas of the County who serves as support to the rest of the organization on the functions of the Peoplesoft system: Payroll, Accounting, Cash Receipting, Purchasing, Accounts Payable, Accounts Receivable, Budget, Human Resources
- One full-time Project Manager who manages Peoplesoft and other projects

2 SCOPE OF SERVICES

The chosen contractor will provide technical, systems administration, application, development and project management services on an as-needed basis. For each identified project, requirements will be communicated to the contractor and a specific scope of services, project plan and cost will be negotiated between the County and the contractor.

Contractual services for consulting will include, but not be limited, to the following:

2.1. CNC Services

Assist the County in upgrades and other technical activities requiring CNC Certification and Skills.

2.2 Systems Administrator Services

Assist the County with Systems Administration.

2.3 Application Set-Up, Configuration and Training Services

Assist the County in configuring and set up of applications and application modules. Assist with the development and implementation of training materials and classes on applications and application modules.

2.4 Developer Services

Develop custom programs and customization to existing or new applications as needed. Configure work flow and develop custom work flow to new or existing applications.

2.5 Project Management Services

Assist with or provide project management services as requested for specific projects.

2.6 General Consulting Services

Assist the County in reviewing future direction and technical needs for the continuous improvement of the Peoplesoft Enterprise One system.

2.7 Services specific to the upgrade of the Enterprise One system to version 8.9 or higher.

The County must upgrade their existing software to version 8.9 or higher by mid-February 2005. The chosen contractor may be asked to assist in this upgrade project.

3 PROPOSAL GUIDELINES

3.1 Modifications in Scope

The County reserves the right to modify the scope of the services in the Master Service Contract (see Section 5) throughout the procurement process.

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3.2 Negotiations

This procurement involves negotiated professional services. This procurement will not be determined by the lowest responsible bidder. As such, the County will negotiate with proposers throughout the procurement to get the best business terms for its citizens. It is anticipated that, once the County identifies viable firms after oral presentations and other evaluation processes, negotiations will take place with elevated firms on costs of services as well as other items that mitigate the County's risks. The County will consider all costs and business terms as negotiable and not artificially constrained by internal corporate policies. In short, firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item may face a significant disadvantage and may not be elevated to the final negotiation phase.

3.3 Pricing

All proposers submitting proposals agree that their pricing is valid for a minimum of one year after proposal submission to the County.

3.4 Presentations

Proposers short-listed for oral presentations agree to be available on dates specified by the County. Failure to be available on specified dates will lead the County to elevate another proposal for further consideration.

3.5 Site Visits

Washtenaw County may ask the proposer to arrange site visits to customers with similar application setups and upgrade plans.

3.6 Familiarity with this RFP

All proposers certify that they have carefully and thoroughly reviewed this RFP, understand the nature and scope of the work to be done, and that this proposal is based on the terms, specifications, requirements and conditions of this RFP.

3.7 Alternate Proposals

Alternate proposals are defined as those that do not meet the requirements of this RFP. Alternate proposals will not be considered.

3.8 County Contract Requirements

The chosen contractor will be required to agree to the contract provisions or similar provisions to those in Section 5. Any exceptions to these contract terms must be noted as part of the response to this RFP.

4 PROPOSAL

4.1 Vendor Information

The proposer shall provide the following information about their company. The County, at its option, may require a proposer to provide additional support and/or clarify requested information.

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- 4.1.1 Date since the company has been in business.
 - 4.1.2 A brief description of the company size and organization. Include total number of staff in your company.
 - 4.1.3 Provide the number of staff in each category of services that are requested in this RFP. These numbers should include only those staff who have experience with the Peoplesoft Enterprise One or One World products. Include the versions of the software that staff has experience with.
 - 4.1.4 Provide the number of staff who have experience with IBM Websphere Application Server, IBM WebSphere Portal Server, IBM WebSphere Edge Server, PeopleSoft® EnterpriseOne Collaborative Portal, and any other web related skills. Include the versions of each that the staff has experience with.
 - 4.1.5 Date since the company has been providing the requested services to public sector clients
 - 4.1.6 The number of active public sector clients and the size of each (number of users on network)
 - 4.1.7 Most recently audited financial statements as contained in relevant annual reports. The statements should include information on annual sales, profitability, etc.
 - 4.1.8 Listing of active public sector clients by name and state. Michigan and mid-west local government clients should be listed first.
 - 4.1.9 Any material (including letters of support or endorsement from clients) indicative of proposer's capabilities.
- 4.2 Client References

The County will consider references to be important in its decision to award a contract. The County will not call proposers to tell them that their references will be contacted because all references provided will be contacted by the County during the selection process. The County will not work through a proposer's Reference Manager to complete a reference. The names and phone number of the internal project manager for each reference must be listed. Any proposer who does not provide client names and phone numbers may be eliminated for non-responsiveness.

Provide three (3) references for which your company is currently providing the services requested in this proposal, including up-to-date company name, contact name, contact phone number and a description of the services provided. References are preferred from local government clients and/or clients you worked with to upgrade to EnterpriseOne version 8.9 or higher.

Provide two (2) references for the two most recently terminated contracts with your company including up-to-date company name, contact name, contact phone number and a description of the services provided. References are preferred from local government clients and/or clients you worked with to upgrade to EnterpriseOne version 8.9 or higher.

Please confirm that each reference is willing to participate in a 30-45 minute reference check call and inform reference they may be contacted by a County representative.

4.3 Acceptance and Exceptions to This RFP

All requested information in this RFP must be supplied and the proposer must provide a statement affirming proposer's acceptance of all conditions and requirements contained in this RFP. Proposers may take exception to certain requirements in this RFP. All exceptions must be clearly identified in this section and a written explanation shall include the scope of the exceptions, the ramifications of the exceptions for the County, and the description of the advantages or disadvantages to the County as a result of the exceptions. The County, at its sole discretion, may reject any exceptions or specifications within the proposal; such rejections may cause the rejection of the entire proposal. Proposers may also provide supplemental information, if necessary, to assist the County in analyzing responses to this RFP.

4.4 Cost Sheet

The Cost Sheet at the end of this RFP must be completed and submitted as part of the proposal.

Proposer must describe their procedures for incurring and charging travel or any other expenses that would be charged as part of this contract. See COST SHEETS in Section 6.

4.5 Project Plan and Other Information for an Upgrade to EnterpriseOne 8.9 or higher

As part of the proposal, the proposer must include the following information with regard to a specific project – an Upgrade to EnterpriseOne, version 8.9 or higher from the existing environment described in Section 1 – Overview.

4.5.1 Implementation Plan

The implementation plan must include:

Project Organization Chart (show County and proposer staff)

Overview of project management methodology

Summary Workplan including estimated time frame for implementation and estimate of work effort for both County and proposer staff

4.5.2. Training Plan

Proposed training schedule for County technical staff

Minimum knowledge and abilities required of County project personnel (functional and technical)

Proposed training schedule for County users

Overview of proposed training plan and the methodology for providing training including options for on-site, off-site and on-line training for project team, end-users and technical personnel.

4.5.3 Change Management Plan

Proposer must provide a detailed plan for identifying and communicating the business process redesign strategy and its impacts to County end-users, management and elected officials. The propose should also describe their overall change management plan (e.g. analysis and communication of process change, help desk support strategy, etc.) Proposer must fully describe what aspects of change management are included in the proposal.

4.5.4 Risk Mitigation Strategy

The County is aware of the risk inherent in a major upgrade to its ERP system. The proposer must detail its plan for mitigating or minimizing risks associated with this upgrade project.

4.5.5 Data Conversion

If any data conversion is required to support this upgrade, proposer must describe the process for completing this conversion, ensuring the integrity and accuracy of the data.

4.5.6 Knowledge Transfer Strategy

Proposer must describe the method by which your firm will prepare the County to maintain the system after it is put into production. Describe specific new positions, if any, they County may need and the associated skills sets after the system is in production. If additional training, not already described in the training plan is required, this must also be described.

4.5.7 Acceptance Testing

Specific mutually agreeable criteria for successful system operation will be established during the contract negotiation process. The selected Contractor will be required to participate with appropriate County personnel in testing the functionality of the proposed system before the County will accept the upgraded system. Proposers must detail their approach to acceptance testing and what criteria were generally used to signify acceptance for previous upgrade projects.

4.6 If your company offers other services that might be used by Washtenaw County (system hosting, year end process, payroll processing, turn-key upgrade services, etc.) please provide details of the services and pricing.

5 CONTRACT PROVISIONS

All Services and other deliverables will be provided by vendor pursuant to the terms of the County's standard Master Service Contract, a copy of which is attached to this RFP. Vendor must acknowledge its agreement to the terms of the Master Service Contract in its proposal, or otherwise identify the provisions of the Master Service Contract with which it does not agree, including in each case the basis for the disagreement.

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6 COST SHEETS

Proposer must complete the following Cost Information

6.1 Hourly Rate for CNC Services _____

6.2 Hourly Rate for System Administrator Services _____

6.3 Hourly rate for Application Set Up, Configuration and Training Services _____

6.4 Hourly Rate for Developer Services _____

6.5 Hourly Rate for Project Management Services _____

6.6 Hourly Rate for General Consulting Services _____

6.7 If any of the above services have different hourly rates, please describe and provide the hourly rate.

6.8 Describe any other services that would be required for the Upgrade Project and provide the hourly rate.

6.9 Describe your company's policy regarding travel and other chargeable expenses which would affect this contract. If possible, provide specific pricing.

SIGNATURE PAGE

Signature _____	Company Name _____
Print Name _____	Company Address _____
Title _____	City _____ State _____ Zip _____
Telephone # _____	Fax # _____
Email Address _____	
Federal Tax ID # _____	<u>CHECK ONE</u> Partnership _____ Non Profit Corp. _____ Profit Corp. _____ Other _____

The above individual is authorized to sign on behalf of company submitting proposal.

Proposals must be signed by an official authorized to bind the provider to its provisions for at least a period of 90 days.

MASTER SERVICE CONTRACT

(NAME OF CONTRACTOR)

THIS MASTER SERVICE CONTRACT (the "AGREEMENT") is made this _____ day of _____, 2004, by the COUNTY OF WASHTENAW, a municipal corporation, with offices located in the County Administration Building, 220 North Main Street, Ann Arbor, Michigan 48107("County") and ***(NAME OF CONTRACTOR)*** located at ***(CONTRACTOR'S ADDRESS)*** ("Contractor").

In consideration of the promises below, the parties mutually agree as follows:

ARTICLE I - SCOPE OF SERVICES

A. County desires to retain Contractor as an independent contractor to provide certain services and/or to develop products under the conditions set forth in this Agreement, and Contractor desires to provide those services and/or products.

B. For each project under this Agreement ("Project"), County and the Contractor will collaborate on a written statement of work ("SOW") which shall be attached to this Agreement and shall contain a description of one or more of the following, as applicable:

(1) the functional specifications ("Specifications") for the computer software or any other product(s) to be created and delivered by Contractor ("Products");

(2) the services to be provided by Contractor ("Services");

(3) any and all documents, summaries, reports, analysis, studies or other written materials to be created and/or delivered by Contractor ("Written Materials");

(4) a Project Plan, which shall include milestone and completion dates for each Product and/or Service;

(5) the amount and timing of fees and expenses to be paid by County to Contractor for each Product, Service and/or Written Materials; and

(6) data, information, and materials to be provided by County to Contractor as necessary for Contractor to complete each Product, Service and/or Written Materials.

As applicable, Products, Services and Written Materials shall be collectively referred to as "Deliverables."

C. During any Project, County may revise the Deliverables, or the time frames associated with them. If County elects to make revisions, the parties will either reach agreement on the new fees, time frames and Deliverables, or continue under the original applicable SOW. All changes to the SOW and/or the Deliverables must be done in writing and signed by both the County and the Contractor.

D. After Contractor has provided County with notice that a Deliverable has been completed, County shall have a reasonable agreed-to time to review and/or test such Deliverable to ensure that it conforms to its applicable Specifications or descriptions of the SOW (the "Testing Period"). The Deliverable shall be deemed accepted at the expiration of the Testing Period unless County provides Contractor with written notice that the Deliverable fails to conform to its

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applicable Specifications or description. In which case, Contractor shall be given a reasonable time, but in no event longer than ten (10) days, to correct such non-conformance and re-submit the Deliverable to County for re-testing. If after re-testing County determines in its sole, reasonable, discretion that the Deliverable still does not conform to its applicable Specifications or description, then County may either: (1) allow Contractor an additional ten (10) days to correct the non-conformance(s), in which case the same re-testing activities and County remedies will apply; (2) accept the Deliverable with the non-conformances and receive an agreed upon equitable adjustment to the fees charged County under the SOW; or (3) reject the Deliverable and receive a full refund of all fees paid for the Deliverable.

ARTICLE II - COMPENSATION

Contractor shall invoice County for Deliverables, and be paid by County, in accordance with the terms of the applicable SOW. County shall be responsible for paying all sales, use, excise and other taxes relating to its purchase and use of Deliverables, except for those taxes based on Contractor's income, or which are Contractor's responsibility as an employer.

ARTICLE III - REPORTING OF CONTRACTOR

Unless otherwise set forth in a SOW:

A. The Contractor is to report to (**DEPARTMENT HEAD TITLE**) and will cooperate and confer with him/her as necessary to insure satisfactory work progress.

B. All reports, estimates, memoranda and Written Materials submitted by the Contractor must be dated, refer to this Agreement by title and date, and bear the Contractor's name.

C. All reports made in connection with any Deliverables are subject to review and final approval by the County Administrator.

D. The County may review and inspect the Contractor's activities during the term of this Agreement.

E. Upon completion of each Project and otherwise when applicable, the Contractor will submit a final, written report to the County Administrator.

F. After reasonable notice to the Contractor, the County may review any of the Contractor's internal records, reports, or insurance policies.

ARTICLE IV - TERM

This Agreement shall become effective on the date set forth above and shall continue for a period of one (1) year, unless terminated in accordance with the provisions of this Agreement. Notwithstanding the foregoing, this Agreement shall remain in effect for so long as Contractor is providing Deliverables under a SOW.

ARTICLE V - PERSONNEL

A. Unless expressly permitted in a SOW, Contractor may not use subcontractors to provide Deliverables to County.

B. Contractor acknowledges that the relationships between County and its employees are valuable assets of County. During the term of the parties' business relationship

and for a period of one (1) year thereafter, Contractor agrees not to (1) hire, use, or contract with (or to solicit for hire, use or to contract with) any individual(s) employed by County, or former employees of County who left their employment at County within ninety (90) days after the termination or expiration of this Agreement (collectively, "Staff"); and/or (2) contact Staff (or have someone else contact Staff) for the purpose of terminating their relationship with County or offering employment opportunities outside of County.

C. The relationship between County and Contractor is that of independent contract. Nothing in this Agreement shall be construed as creating a relationship between County and Contractor of joint venturers, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document.

D. Contractor will be responsible for any personnel it may assign to provide Deliverables to County. Personnel furnished by Contractor shall be and will remain Contractor's employees, and under no circumstances are they to be considered County's employees or agents.

ARTICLE VI - INDEMNIFICATION AGREEMENT

The Contractor will protect, defend and indemnify County, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the Contractor's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of County in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of Deliverables in connection with this Agreement resulting in whole or in part from negligent acts or omissions of Contractor, any sub-contractor, or any employee, agent or representative of the Contractor or any sub-contractor.

ARTICLE VII - INSURANCE REQUIREMENTS

A. The Contractor will maintain at its own expense during the term of this Agreement, the following insurance:

(1) Workers' Compensation Insurance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.

(2) Comprehensive/Commercial General Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage. The County shall be added as "additional insured" on general liability policy with respect to the services provided under this Agreement.

(3) Automobile Liability Insurance covering all owned, hired and nonowned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan No Fault Insurance Law, including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage.

B. Insurance companies, named insureds and policy forms shall be subject to the approval of the County Administrator. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions which reduce coverage provided to the County. Contractor shall be responsible to the County or insurance companies

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insuring County for all costs resulting from both financially unsound insurance companies selected by Contractor and their inadequate insurance coverage. Contractor shall furnish the County Administrator with satisfactory certificates of insurance or a certified copy of the policy, if requested by the County Administrator.

C. No payments will be made to the Contractor until the current certificates of insurance have been received and approved by the County Administrator. If the insurance as evidenced by the certificates furnished by the Contractor expires or is canceled during the term of this Agreement, provision of Deliverables and related payments will be suspended. Contractor shall furnish the County Administrator's Office with certification of insurance evidencing such coverage and endorsements at least ten (10) working days prior to commencement of provision of Deliverables under this Agreement. Certificates shall be addressed to the County Administrator, P. O. Box 8645, Ann Arbor, MI, 48107, and shall provide for thirty (30) day written notice to the Certificate holder of cancellation of coverage.

ARTICLE VIII - COMPLIANCE WITH LAWS AND POLICIES

The Contractor will comply with all federal, state and local regulations, laws, statutes and ordinances, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act. In addition, Contractor shall comply with all reasonable policies and procedures of County.

ARTICLE IX - INTEREST OF CONTRACTOR AND COUNTY

The Contractor promises that it has no interest which would conflict with the performance of its obligations under this Agreement. The Contractor also promises that, in the performance of its obligations under this Agreement, no officer, agent, employee of the County of Washtenaw, or member of its governing bodies, may participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested or has any personal or pecuniary interest. However, this paragraph does not apply if there has been compliance with the provisions of Section 3 of Act No. 317 of the Public Acts of 1968 and/or Section 30 of Act No. 156 of Public Acts of 1851, as amended by Act No. 51 of the Public Acts of 1978, whichever is applicable.

ARTICLE X - CONTINGENT FEES

The Contractor promises that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this promise, the County may cancel this Agreement without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due the Contractor.

ARTICLE XI - EQUAL EMPLOYMENT OPPORTUNITY

A. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief (except as it relates to a bona fide occupational qualification reasonably necessary to the normal operation of the business).

B. The Contractor will take affirmative action to eliminate discrimination based on sex, race, or a handicap in the hiring of applicant and the treatment of employees. Affirmative action will include, but not be limited to: employment; upgrading, demotion or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship.

C. The Contractor agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Contractor, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

ARTICLE XII - LIVING WAGE

The parties understand that the County has enacted a Living Wage Ordinance that requires covered vendors who execute a Services Contract or Professional Services Contract with the County to pay their employees under that contract, a minimum of either \$9.42 per hour with benefits or \$11.06 per hour without benefits. Contractor agrees to comply with this Ordinance in paying its employees. Contractor understands and agrees that an adjustment of the living wage amounts, based upon the Health and Human Services poverty guidelines, will be made on or before May 1, 2004 and annually thereafter which amount shall be automatically incorporated into this Agreement. County agrees to give Contractor thirty (30) days written notice of such change. Contractor agrees to post a notice containing the County's Living Wage requirements at a location at its place of business accessed by its employees.

ARTICLE XIII - EQUAL ACCESS

The Contractor shall provide the Deliverables set forth in Article I and each SOW without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

ARTICLE XIV - OWNERSHIP OF DOCUMENTS AND PUBLICATION

A. The County shall have and retain all rights, title and interests in and to all Deliverables and other materials created by Contractor in connection with, or pursuant to, this Agreement. This includes, but is not limited to, copyrightable works of original authorship (including computer programs, technical specifications and manuals), ideas, inventions (whether patentable or not), "know-how," processes, compilations of information, trademarks and other intellectual property ("Proprietary Materials"). All Proprietary Materials created by Contractor in connection with, or pursuant to, this Agreement are, and will be considered, "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Contractor owns any intellectual property rights in such Proprietary Materials, Contractor hereby assigns to County all rights, title and interest in such Proprietary Materials.

B. All Written Materials developed as a result of and/or in association with this Agreement will be freely available to the public. During the performance of its obligations under this Agreement, the Contractor will be responsible for any loss of or damage to the Written Materials while they are in its possession and Contractor must restore the loss or damage at its expense. Any use of any information and results of this Agreement by the Contractor must be approved in writing by the County prior to such use and must reference the Project sponsorship by the County. Any publication of such information or results must be co-authored by the County and approved in writing by the County prior to such publication.

C. To the extent that any Deliverables contain third party tools, software, documents or other materials ("Third Party Materials"), Contractor represents and warrants that it has all rights needed for County to access, use and distribute such Third Party Materials in accordance with the terms of this Agreement and the applicable SOW without any additional fees, charges, expenses or agreements.

ARTICLE XV - ASSIGNS AND SUCCESSORS

This Agreement is binding on the County and the Contractor, their successors and permitted assigns. Neither the County nor the Contractor may assign or transfer this Agreement, in whole or in part, or any of its interest in this Agreement, without the prior express written consent of the other party, which shall not be unreasonably withheld or delayed. Any attempted assignment or transfer without such consent shall be void.

ARTICLE XVI – CONTRACTOR WARRANTIES AND PENALTIES

A. Contractor warrants that all Deliverables provided to County shall be Contractor's original work, or that Contractor will have acquired all rights necessary to fulfill its obligations, and to grant County the rights, under this Agreement and each SOW.

B. Contractor warrants that all Services shall be carried out in a diligent, prompt, and professional manner by individuals with the necessary knowledge, skills, expertise and training to provide the Services.

C. Contractor acknowledges that it is responsible for the accuracy, reliability, completeness, validity and timeliness of all Deliverables provided to County. Contractor warrants that for each Project, Contractor shall have reviewed the SOW and shall have the expertise and resources necessary to undertake and complete the Project in accordance with the SOW. Contractor warrants that all Deliverables shall be provided in the time frames set forth in the applicable SOW. If Contractor or the County believes that Contractor will not complete the Project in the time frames set forth in the applicable SOW, then Contractor shall, at its own expense, commit all additional personnel, technological, and/or financial resources required to cure the nonconformance. If Contractor fails to timely complete the Project in the time frames set forth in the applicable SOW, then the County may, without prejudice to any other remedy it may have in law or in equity, either (1) terminate the SOW and receive a full refund of all fees paid to Contractor under the SOW; (2) receive an agreed-upon equitable adjustment in the fees to be paid to Contractor under the SOW or this Agreement; or (3) reduce the fee for the Project by the amount of \$**[Insert Amount]** per day for each day the Project is late.

D. Contractor warrants that all Deliverables will comply with and/or operate in conformance with the Specifications and/or descriptions set forth in the applicable SOW for a period of twenty-four (24) months from the date of acceptance by County. If during the warranty period County notifies Contractor that a Deliverable fails to meet this warranty, Contractor shall, at no additional charge to County, use commercially reasonable efforts to remedy the nonconformance within a reasonable time period. However, if after ten (10) days from Contractor's receipt of County's written notice the Deliverable still fails to comply with this warranty, then the County may, either (1) accept the Deliverable with the non-conformances and receive an agreed upon equitable adjustment to the fees charged the County under the applicable SOW; or (2) terminate the applicable SOW by written notice to Contractor and receive a full refund of all fees paid for the Deliverables.

ARTICLE XVII – CONFIDENTIALITY

A. During this Agreement, each party may have access to information that is considered confidential by the other. This information may include technical know how, technical specifications, software object code and source code, protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data (“Confidential Information”).

B. Each party shall use the other party’s Confidential Information only for the purposes of, and in performance of its obligations under, this Agreement or a SOW. Each party shall maintain the confidentiality of the other party’s Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party’s Confidential Information.

C. Each party is permitted to disclose the other party’s Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and subcontractors have written confidentiality obligations to that party no less stringent than those contained in this Agreement.

D. The confidentiality provisions of this Agreement do not apply to information that is or becomes entirely in the public domain; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party’s Confidential Information.

E. Upon termination of this Agreement, each party shall return the other party’s Confidential Information and shall not use the other party’s Confidential Information for its own, or any third party’s, benefit. Each party’s confidentiality obligations shall survive termination of this Agreement, and any SOW, for so long as the Confidential Information remains confidential.

ARTICLE XVIII – LIMITATION OF LIABILITY

Regardless of the form of action or theory of recovery, in no event shall County be liable to Contractor in connection with this Agreement and/or the Deliverables for: (A) any indirect, special, exemplary, consequential, incidental or punitive damages, even if County has been advised of the possibility of such damages; (B) any lost profits, lost revenues, lost business expectancy or benefit of the bargain damages; and/or (C) any direct damages in an amount in excess of the fees paid to Contractor under the SOW under which the claim arose. Any claim arising out of or related to this Agreement must be initiated within one (1) year of the date the party knew, or reasonably should have known, of the existence of such claim against the other party.

ARTICLE XIX - TERMINATION OF CONTRACT

A. Each SOW and/or this Agreement, may be terminated by either party if the other party commits a material breach of this Agreement or the SOW and fails to correct such breach within thirty (30) days of its receipt of written notice from the non-breaching party. In addition, County may terminate each SOW and/or this Agreement without cause or reason upon forty-five (45) days prior written notice to Contractor.

B. In the event of termination for any reason, each party shall return the other party’s Confidential Information; County shall pay Contractor all fees owed for all Deliverables provided by Contractor as of the effective date of termination; Contractor shall provide all notes, data, memoranda, software and other materials which constitute work in progress for all

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Deliverables; and Contractor shall return any County equipment and property of any nature which are in Contractor's possession or control.

ARTICLE XX - TAXES AND BENEFITS

Neither federal, state nor local income or payroll tax of any kind shall be withheld or paid by County on behalf of Contractor or its employees. No Contractor employees shall participate in any benefit of County, including health insurance, paid vacation or other benefit provided by County to its employees. The Contractor is responsible for payment of all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the County against such liability.

ARTICLE XXI - PRACTICE AND ETHICS

The parties will conform to the code of ethics of their respective national professional associations.

ARTICLE XXII- AMENDMENTS

This Agreement may not be modified except by a writing signed by both parties. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. The remedies accorded County under this Agreement are cumulative and in addition to those provided by law, in equity and/or elsewhere in this Agreement.

ARTICLE XXIII - CHOICE OF LAW AND FORUM

This Agreement shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules), and the federal laws of the U.S. The parties agree that any litigation in relation to this Agreement shall be exclusively initiated and maintained in the Circuit Court of the County of Washtenaw, Michigan, or the U.S. District Court for the Eastern District of Michigan, Southern Division. The parties hereby irrevocably submit to the exclusive personal jurisdiction and venue in such courts. The parties agree that these courts are convenient forums for any such litigation.

ARTICLE XXIV - ENTIRE AGREEMENT

This Agreement, all SOW, and any addenda thereto, represents the entire agreement and understanding between the parties with respect to the subject matter addressed herein, and supersedes, replaces and merges all prior representations, negotiations, promises, understandings or agreements whether written or oral, relating thereto. The terms and conditions of each SOW shall govern any conflict or inconsistency with the terms of this Agreement.

ARTICLE XXV – WAIVER

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 effect the other provisions of this Agreement.

ARTICLE XXVI - SEVERABILITY

If any provision of this Agreement and/or SOW is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is valid

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and enforceable under applicable law, and all other provisions of this Agreement shall remain in full force and effect.

ARTICLE XXVII - NOTICES

All notices must be in writing and sent either by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy) and shall be effective when received by such party at the address listed below or other address provided in writing.

(INSERT ADDRESSES AND CONTACT PERSONNEL)

AGREED AND ACCEPTED:

WASHTENAW COUNTY

CONTRACTOR

By: _____
Robert E. Guenzel (DATE)
County Administrator

By: _____
(CONTRACTOR'S NAME) (DATE)

APPROVED AS TO CONTENT::

By: _____
(DEPARTMENT HEAD) (DATE)

ATTESTED TO:

By: _____
Peggy M. Haines (DATE)
County Clerk/Register

APPROVED AS TO FORM:

By: _____
Curtis N. Hedger (DATE)
Office of Corporation Counsel