

**AGREEMENT
FOR
LIVINGSTON COUNTY
ECONOMIC DEVELOPMENT SERVICES**

THIS AGREEMENT, effective January 1, 2022, is made and entered into, by and between the **COUNTY OF LIVINGSTON**, a municipal corporation and political subdivision of the State of Michigan, having offices at 304 E. Grand River, Suite 201, Howell, Michigan 48843 (hereinafter referred to as the "County") and the **ECONOMIC DEVELOPMENT COUNCIL OF LIVINGSTON COUNTY**, a Michigan non-profit corporation, having its registered office at 218 E. Grand River, Brighton, Michigan 48116 (hereinafter referred to as the "EDC").

RECITALS:

WHEREAS, to encourage business retention/attraction and expansion in Livingston County, the County desires to continue to partner with the EDC to obtain economic development services with a focus on global competition and the attraction/retention of high-value knowledge-intensive, diverse workers; and

WHEREAS, the EDC has proposed its continuing to provide the County with the economic development services it is seeking through a contract to be entered into between EDC and Ann Arbor SPARK; and

WHEREAS, the County accepts EDC's proposal subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED**, as follows:

1. Agreement Period and Termination. This Agreement shall commence upon the **1st day of January, 2022**, and, unless prematurely terminated as authorized in this Agreement, shall continue until the **31st day of December, 2024**, at which time this Agreement shall terminate. Either party may terminate this Agreement at the end of a calendar year by giving written notice to the other party not less than thirty (30) calendar days prior to the end of the current calendar year.

Notwithstanding any other provision in this Agreement to the contrary, the County, with or without cause, may terminate this Agreement, at any time, upon sixty (60) days prior written notification to the EDC. In the event this Agreement is prematurely terminated, the EDC shall be paid as set forth in Section 3 for all services performed under this Agreement up to the effective date of termination.

2. Services. The EDC shall act as the County's agent with respect to economic expansion of local business and industry currently located within the County as well as establishing new business and industries within the County. The services to be provided by EDC shall include, but shall not be limited to, the following:

- A. The EDC shall contract with Ann Arbor SPARK to provide business retention, expansion and attraction services in Livingston County for a three (3) year period commencing January 1, 2019, with premature termination provisions that are similar to those set forth in Section 1 of this Agreement.
- B. The EDC and Ann Arbor SPARK shall hold joint annual status meetings with the County's representatives and the representatives of all the other participating governmental partners to present the economic development and expansion programs' progress and seek input from the County and all other participating governmental partners.
- C. The EDC and Ann Arbor SPARK shall issue quarterly program activity summaries to the County and all other participating governmental partners. Such summary reports shall list the companies contacted for the purpose of marketing the County and the other participating governmental partners.

3. Payment. The County shall pay the EDC for the services required by this Agreement a sum that annually shall not exceed ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00) during each calendar year that this Agreement is in effect.

If this Agreement is prematurely terminated the County shall pay only for work performed up to the effective date of termination. The sum due for the year in which termination occurs shall be prorated, with the sum due EDC for that year being only the percentage of the annual sum set for that year which equals the percentage of the year that has passed as of the effective date of termination (e.g. if six (6) months/50% of the year has passed as of the effective date of termination only 50% of the total sum set for that year shall be due EDC). In the event the sum the County has paid EDC exceeds the sum due as a result of the premature termination, the EDC shall pay the County the amount of the excess payment within thirty (30) days of receipt from the County of an invoice stating the sum due.

4. Records. The EDC shall keep adequate books, records and accounts which will accurately reflect and account for the disposition of all funds the County pays to the EDC under this Agreement. All such books, records and accounts shall be available for inspection by the County during the County's normal business hours. The EDC shall annually furnish to the County a complete financial report and a copy of a completed IRS form 990 with respect to the EDC's and its contractors' operations by no later than sixty (60) days following the end of each calendar year covered by this Agreement. All records shall be maintained for six (6) years after termination of this Agreement or such longer period of time as may be required by the federal government or State of Michigan.

5. Meetings. Representatives of the EDC and EDC contractor(s) providing services under this Agreement shall attend meetings and/or conferences of the County when requested by the County. The County will attempt to schedule these meetings and/or conferences at mutually agreeable times.

6. Reports and Title to Data and Work Product. Within ninety (90) days after the end of each calendar year covered by this Agreement, the EDC shall submit to the County a final written report on all work and services performed and expenditures made under this Agreement during the previous year. The EDC shall also submit any other reports and/or information that the federal government, the State of Michigan, or the County may require, regarding the services and activities required under this Agreement. All data and work product related to activities of the EDC and its contractor(s) that are utilized or developed in performance of work in and for the County shall be provided to the County

during and upon termination of this Agreement. The County shall have an irrevocable license to use such data and information and to publish and/or authorize others to use and/or publish such data and information.

7. Nondiscrimination. The EDC and the EDC's contractors shall adhere to all Federal, State and local laws, ordinances and regulations prohibiting discrimination with regard to persons seeking and/or receiving services or employment. The EDC and its contractors, as required by law, shall not discriminate against a person to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, or marital status. Breach of this section shall be regarded as a material breach of this Agreement.

8. Independent Contractor. It is expressly understood and agreed that the EDC is an independent contractor. The employees, servants and agents of the EDC or those of EDC's contractors shall in no way be deemed to be and shall not hold themselves out as the employees, servants, or agents of the County. The EDC's employees, servants and agents and those of EDC's contractors shall not be entitled to any fringe benefits of the County such as, but not limited to, health and accident insurance, life insurance, paid vacation leave, paid sick leave, or longevity.

The EDC and EDC's contractors shall be responsible for paying all salaries, wages or other compensation due its employees, servants and agents for performance of work required by this Agreement and for the withholding and payment of all applicable taxes, including, but not limited to, income and Social Security taxes to the proper Federal, State and local governments. The EDC and EDC's contractors shall carry workers' compensation insurance and unemployment compensation coverage for their employees, as required by law and shall provide the County with proof of said coverage.

9. EDC Not Covered by County's Insurance. The EDC, and EDC's contractors, while performing services pursuant to this Agreement, shall not be protected or covered by any insurance coverage held by the County, including, but not limited to, workers' compensation coverage.

10. Indemnification and Hold Harmless. The EDC shall, at its own expense, protect, defend, indemnify, save and hold harmless the County, its elected and/or appointed officers, employees, and agents from all claims, damages, lawsuits, costs and expenses, including but not limited to, all costs from administrative proceedings, court costs and attorney fees, that the County may incur as a result of any violations of federal or State of Michigan laws, rules or regulations, intentional torts or negligent acts or omissions of the EDC or the EDC's officers, employees, agents or contractors that may arise out of this Agreement.

The EDC's indemnification responsibilities shall include the sum of damages, costs and expenses which are paid out on behalf of, or reimbursed to, the County, its officers, employees and agents by the insurance coverage obtained and/or maintained by the EDC.

11. Insurance. The EDC shall procure, keep and maintain during the term of this Agreement Comprehensive General Liability Insurance, covering personal and bodily injuries, death and property damage arising out of the activities required by this Agreement with limits of not less than \$1,000,000.00 per occurrence and aggregate, covering personal injury, bodily injury, and property

damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included; and (E) Deletion of all Explosion, Collapse, and Underground (XCU) exclusion, if applicable. All deductibles and SIR's are the responsibility of the EDC. The EDC shall require its contractors to also meet these insurance requirements. Insurance policies covering the services required by this Agreement shall include an endorsement stating the following shall be "Additional Insureds": Livingston County, all elected and appointed officials, all employees and volunteers, all boards, commissioners, and/or authorities and board members, including employees and volunteers thereof. Said insurance shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing or excess. The insurance requirements herein are not a limitation on the indemnity requirements of this Agreement, which are complete and full unto themselves.

The EDC and its contractors shall also maintain Workers' Compensation Insurance including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

The EDC's Comprehensive General Liability Insurance and Workers' Compensation Insurance shall include an endorsement stating the following: **"It is understood and agreed that thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to: Livingston County Fiscal Services, 304 East Grand River, Suite 204, Howell, MI 48843."** If EDC's insurers refuses to provide such an endorsement the EDC shall be responsible for providing the notice required.

The EDC shall provide the Livingston County Purchasing Department at the time this Agreement is returned by it to the County, with the certificates of insurance and policies as listed below as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice will be acceptable. The Insurance Certificate(s) and endorsements may be faxed or e-mailed to (517) 546-7266 or purchasing@livgov.com.

- A. One (1) copy of the Certificate of Insurance for Workers' Compensation Insurance; and,
- B. One (1) copy of the Certificate of Insurance for Comprehensive General Liability Insurance.
- C. If requested by the County the EDC shall provide the County with certified copies of its insurance policies that are required by this Agreement.

All insurance coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan, who are acceptable to the County and who have an A.M. Best Company's Insurance Reports rating of A or A- (Excellent).

If any insurance coverages required by this Agreement expire during the term of this Agreement, the EDC shall deliver renewal certificates and/or policies to the Livingston County Purchasing Department at least ten (10) days prior to the expiration date.

12. Compliance with the Law. The EDC and its contractors shall render the services to be provided pursuant to this Agreement in compliance with all applicable Federal, State and local laws, ordinances, rules and regulations.

13. Applicable Law and Venue. This Agreement shall be subject to and construed according to the laws of the State of Michigan. In the event any actions in law or in equity arising under this Agreement are brought by or against either of the parties to this Agreement, the venue for such actions shall be in a Michigan Court established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules. In the event that any action is brought under this Agreement in or is moved to a Federal Court, the venue for such action shall be the Federal Judicial District of Michigan, Eastern District, Southern Division.

14. Waivers.

- A. No failure or delay on the part of either of the parties to this Agreement in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.
- B. In no event shall the making by the County of any payment due to the EDC constitute or be construed as a waiver by the County of any breach of a provision of this Agreement, or any default which may then exist, on the part of the EDC or any of the EDC's contractors. The making of any such payment by the County while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the County in respect to such breach or default.

15. Modification of Agreement. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties hereto.

16. Assignment or Subcontracting. With the exception of Ann Arbor SPARK, the EDC shall not assign, subcontract or otherwise transfer its duties and/or obligations under this Agreement, without the prior written consent of the County.

17. Complete Agreement. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

18. Binding Effect of the Agreement. The covenants and conditions of this Agreement shall be binding upon and for the benefit of the heirs, administrators, executors, successors and assigns of the parties hereto.

19. Invalid/Unenforceable Provisions. If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Where the deletion of the invalid or unenforceable clause or provision would result in the illegality

and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the clause or provision was rendered invalid or unenforceable.

20. Survival. Sections 3, 4, 6, 7, 13, 14 and 18 shall survive the termination of this Agreement.

21. Certification of Authority to Sign Agreement. The people signing this Agreement on behalf of the parties hereto certify by their signatures that they are duly authorized to sign on behalf of said parties and that this Agreement has been authorized by said parties.

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY EXECUTED THIS AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES IN THE SPACES AND ON THE DATES SET FORTH BELOW.

COUNTY OF LIVINGSTON

**ECONOMIC DEVELOPMENT COUNCIL
OF LIVINGSTON COUNTY**

By:

WES NAKAGIRI - CHAIRMAN
COUNTY BOARD OF COMMISSIONERS

Date: _____

By:

MIKE ARCHINAL - CHAIRMAN

Date: _____

By:

- VICE CHAIRMAN

Date: _____