

**AGREEMENT FOR SHARED INFORMATION TECHNOLOGY SERVICES  
BETWEEN THE CITY OF ALBANY AND THE MANAGEMENT OF  
EMERYVILLE SERVICES AUTHORITY**

This Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2012, by and between the City of Albany, a municipal corporation ("Albany"), and the Management of Emeryville Services Authority, a joint powers authority (hereinafter referred to as "Emeryville"), collectively the "Participating Agencies."

**RECITALS**

WHEREAS, the Participating Agencies have a desire to provide high quality and responsive Information Technology (IT) core services to help execute business strategy, business process automation, providing information, and connecting with residents; and

WHEREAS, the Participating Agencies agree that sharing of some personnel services between them will save money for both communities and provide the potential for other advantages in the delivery of services; and

WHEREAS, the Participating Agencies desire to formalize the shared delivery of IT personnel services pursuant to this Agreement.

Now therefore, the Participating Agencies agree as follows:

**1. Information Technology Services**

(a) Emeryville agrees to provide to Albany an employee of Emeryville ("Designated IT Manager") to perform shared IT management services, on a basis of eight (8) hours per week, to be devoted to providing oversight and technical guidance for new and ongoing projects which may include but not limited to technical infrastructure, IT service delivery, applications, and IT governance. The eight (8) hours per week may be divided as necessary between on-site and remote access.

(b) The Designated IT Manager is authorized to provide general oversight of Albany's Information Systems Specialist. Oversight includes weekly meetings either in person or by phone to discuss and decide on the division of projects and workload as well as tasks to be completed with a timeline for completion. Oversight does not include monitoring attendance and/or disciplinary issues, but will include assisting with the evaluation of Albany's Information Systems Specialist.

(c) Albany's Assistant City Manager will supervise the Designated IT Manager on Albany matters; will provide direction to the Designated IT Manager regarding any desired special projects or services to be performed for Albany.

(d) Albany will provide Emeryville and its Designated IT Manager with all necessary regulations, policies, procedures, manuals, standard plans and specifications, project information, and other information, as well as incidental materials and supplies, work area, computer access, telephone, and other standard provisions as required to perform the IT services desired by Albany. All such documents, notes, photographs, supplies, and reports will remain the property of Albany.

(e) Emeryville initially designates its current Information Systems Manager, Michael Parenti, as the Designated IT Manager to provide the shared IT management services under this Agreement. Emeryville shall not assign any other person to provide those services without the written consent of Albany's City Manager. It is expressly understood and agreed by the Participating Agencies that the Designated IT Manager may elect to terminate employment with Emeryville at any time, or Emeryville may terminate the Designated IT Manager's employment with Emeryville at any time. In the event the Designated IT Manager is separated from his employment with Emeryville, this Agreement shall automatically terminate effective on the date of the Designated IT Manager's date of separation from Emeryville.

(f) If the Designated IT Manager is unavailable to work under this Agreement for a period of more than three (3) consecutive weeks for reasons other than approved leave (including, but not limited to vacation, administrative, jury duty, and/or sick leave), this Agreement will automatically terminate.

## **2. Payment.**

Emeryville shall be compensated for providing to Albany the shared IT Management services as follows:

(a) Albany shall pay Emeryville an amount equal to 23% of the costs of the Designated IT Manager's salary and benefit package (23% represents 8 hours of the Emeryville employee's 35 hour work week.) Accordingly, Albany's financial obligation to Emeryville for services actually rendered by the Designated IT Manager pursuant to this Agreement equates to \$42,535 annually for calendar year 2012, prorated to \$39,132, based on an effective start date of February 1, 2012.

(b) Albany's financial obligation to Emeryville for services rendered by the Designated IT Manager will be adjusted annually, to cover negotiated salary and benefit increases for this position. Any proposed adjustment by Emeryville to this financial obligation during the term of the agreement, shall be submitted to Albany for prior approval at least 60 days prior to the effective date of said adjustment. The new costs will take effect on January 1 of each year during the term on this agreement and shall be payable in arrears in monthly installments in response to invoices from Emeryville.

(c) Emeryville shall submit billing statements to Albany no more than monthly. Payment shall be due within thirty (30) days from the invoice date.

(d) In event of Termination of this Agreement, Emeryville shall bill Albany for the work performed up to the effective date of such termination.

### **3. Term of Agreement**

The services provided under this Agreement shall commence on February 1, 2012.

### **4. Termination**

(a) At any time and without cause, a Participating Agency may terminate its participation in this Agreement by giving thirty (30) days written notice to the other Participating Agency prior to the termination date. Each Participating Agency shall make a reasonable effort to resolve any issues of concern or dispute prior to notice of termination.

(b) Notwithstanding the provisions of Paragraph 4(a), in the case of termination based on the Designated IT Manager's separation from Emeryville, as described in Paragraph 1(e), Emeryville shall provide prompt notice to Albany of the separation.

(c) Notwithstanding the provisions of Paragraph 4(a), in the case of termination described in Paragraph 1(f), Emeryville shall provide prompt notice to Albany of the Designated IT Manager's unavailability.

### **5. Indemnification.**

(a) When the Designated IT Manager is directing Albany IT activities, Albany is responsible for the costs of defense and any liability arising out of the Designated IT Manager services to the extent required by applicable law. In the event of a dispute as to whether applicable law requires Albany to provide indemnity and a defense to the Designated IT Manager, such dispute shall be resolved between Albany and Emeryville, and Albany shall indemnify and defend Emeryville from and against any obligation to defend and indemnify the Designated IT Manager that may otherwise be required of Emeryville as the employer of the Designated IT Manager or by virtue of this Agreement.

When the Designated IT Manager staff is directing Emeryville IT activities, Emeryville is responsible for the costs of defense and any liability arising out of the Designated IT Manager services to the extent required by applicable law. In the event of a dispute as to whether applicable law requires Emeryville to provide indemnity and a defense to the Designated IT staff, such dispute shall be resolved between Emeryville and the Designated IT staff and Emeryville shall indemnify and defend Albany from and against any obligation to defend and indemnify the Designated IT staff that may otherwise be required of Albany by virtue of this Agreement.

(b) Other than expressly provided for in Paragraph 5(a), no Participating Agency shall be responsible for the acts or omissions of the other Participating Agency's officers or employees, nor shall any Participating Agency incur any liability arising out of the services of any other Participating Agency's officers or employees. Accordingly, the Participating Agencies hereby expressly agree to waive the pro rata risk allocation contained in Government Code section 895.6.

(c) This Paragraph 5 shall survive termination of this Agreement.

## **6. No Warranty.**

No warranties whether express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, are made by Emeryville for work performed by the Designated IT Manager pursuant to this Agreement. Emeryville makes no warranties with respect to hardware equipment or software or for the installation and use thereof. In no event will Emeryville be liable to Albany or any other party for any loss, including time, money, goodwill, or any form of special, incidental, or consequential damages, which may arise from the use, operation, or modification of the work performed or product(s) produced under this Agreement by the Designated IT Manager. This Paragraph 6 shall survive termination of this Agreement.

## **7. Confidentiality.**

(a) The Participating Agencies acknowledge that in the course of and as a consequence of this Agreement, they each may be exposed to or acquire information that is proprietary to or confidential to the other party or its contractors ("Confidential Information"). The Participating Agencies agree that they will each notify the other of any Confidential Information, and shall hold such information in strict confidence and shall not copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such Confidential Information to third parties or use such Confidential Information for any purposes whatsoever, without the express written permission of the other party, other than for the provision of services under this Agreement. The Participating Agencies agree to advise each of their employees, agents, and representatives of their obligation to keep such information confidential. The Participating Agencies shall use their reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the Participating Agencies shall use reasonable efforts to advise each other immediately in the event that either learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement, and will reasonably cooperate in seeking relief against any such person.

(b) Notwithstanding the obligations set forth in Paragraph 7(a), the confidentiality obligations of the Participating Agencies shall not extend to information that: is, at the time of its disclosure or thereafter, becomes part of the public domain through a source other than receiving party; is independently developed by the receiving party; or is



Albany: City Manager  
City of Albany  
1000 San Pablo Avenue  
Albany, California 94706

With copy to: City Attorney  
City of Albany  
1000 San Pablo Avenue  
Albany, California 94706

**12. Waiver.**

No failure on the part of any Participating Agency to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that any Participating Agency may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

**13. Amendment.**

No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by all of the Participating Agencies.

**14. Disputes.**

In any action brought to enforce any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**15. Governing Law.**

This Agreement, regardless of where executed, shall be governed by and construed in accordance with the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Alameda.

**16. Severability.**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement shall remain in effect.

**17. Entire Agreement.**

This Agreement constitutes the complete and exclusive statement of the Agreement between the Participating Agencies. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by each Participating Agency to be bound, shall be binding on any of the Participating Agencies.

**18. Execution in Counterparts**

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

*[Signatures follow]*

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement as of the date indicated on page one (1).

MANAGEMENT OF EMERYVILLE  
SERVICES AUTHORITY,  
A Joint Powers Authority

City of Albany,  
A Municipal Corporation of the State of  
California

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
City Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

By: \_\_\_\_\_  
Legal Counsel

By: \_\_\_\_\_  
City Attorney