A-10 10

**SHARED SERVICES AGREEEMENT BETWEEN THE ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY AND THE CITY OF ATLANTIC CITY FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES.**

**THIS SHARED SERVICES AGREEMENT** (hereinafter referred to as "Agreement") is made on this 7th day of MARCH, 2023 by and between the Atlantic City Municipal Utilities Authority, with principal offices at 401 Virginia Avenue, Atlantic City, NJ 08401 (hereinafter referred to as the "ACMUA") and the City of Atlantic City, a municipal corporation of the State of New Jersey, with offices at 1301 Bacharach Boulevard, Atlantic City, NJ 08401 (hereinafter referred to as the "City").

**WHEREAS,** the ACMUA has requested that the City provide information technology services and the City has in place an effective program to provide these services; and

**WHEREAS,** the City and the ACMUA have considered this subject and agree that it makes financial and geographical sense for the parties hereto to enter into a Shared Services Agreement whereby the City shall provide certain information technology services to the ACMUA and the ACMUA shall compensate the City for the services provided; and

**WHEREAS,** the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq., permits and provides a mechanism for contracting between local units by entry into a Shared Services Agreement; and

**WHEREAS,** the City and the ACMUA agree that their mutual public purposes and best interest will be promoted by the execution and delivery of this Shared Services Agreement pursuant to the powers conferred by the Uniform Shared Services and Consolidation Act; and

**WHEREAS,** this Agreement was authorized by the City of Atlantic City on June 22, 2022 pursuant to Resolution No. 257, wherein the City agreed to provide services in an amount not to exceed FIFTY THOUSAND DOLLARS ($50,000) with two (2) one (1) year options to carry out certain information technology services for the ACMUA, and shall be billed at an hourly rate range between $30.00 and $65.00 per hour.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants of each to the other, and for good consideration, the parties do hereby agree as follows:

I. SCOPE OF SERVICES: The City shall provide information technology services to the ACMUA on an as needed basis, and on a schedule to be prior approved by the City.

II. CONSIDERATION: In full consideration of all services to be performed under this agreement, the City shall be compensated in an amount not to exceed FIFTY THOUSAND DOLLARS ($50,000) and shall be billed at an hourly rate range between $30.00 and $65.00 per hour.

III. TERM: This agreement shall be effective upon the date of execution and shall be effective until June 30, 2023, with two (2) one (1) year options to carry out certain information technology services for the ACMUA.

IV. INSURANCE AND INDEMNIFICATION: Each party agrees to indemnify the other and their officers, agents and servants from any and all losses, claims, actions, costs, expenses, judgments, subrogation, attorney fees or other expenses which may arise by reason of any real or alleged injury or damage to the

person or property of others arising out of or incidental to its responsibilities under the terms of this Agreement, to the extent caused by the negligent acts or omissions of its officers, employees, agents or contractors. Each party will maintain proper insurance covering all risks associated with the operation thereof, which may include a duly authorized self-insurance program. Nothing arising from or related to this Agreement shall be deemed to confer upon any third person any right against the City or the ACMUA, nor waive any defense or prerequisite to liability that may be available to the City or the ACMUA pursuant to the New Jersey Tort Claims Act.

V. UNIFORM SHARED SERVICES AND CONSOLIDATION ACT: The governing bodies of the ACMUA of Atlantic and the City of Atlantic City are authorized to enter into this Agreement with each other pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq. In accordance with the terms of that Act.

VI. ATLANTIC CITY EMPLOYEE RECONSILIATION PLAN: Atlantic City's Employee Reconciliation Plan, pursuant to N.J.S.A. 40A:65-11(a) is attached and incorporated herein as Exhibit "A".

VII. CHOICE OF LAW AND DISPUTE RESOLUTION

A. Mediation. The City and the ACMUA shall endeavor to settle all disputes by mediation. Either party may initiate the mediation process by making a written demand for mediation upon the other party and by providing the names of three (3) acceptable mediators. Within twenty (20) days of the date of a demand for mediation, the other party must either accept one of the mediators recommended or submit its own list of three (3) mediators. If no mediator is mutually agreed upon within thirty (30) days of the initial request for mediation, then the party initiating the mediation request shall make application to the Vicinage Assignment Judge for the appointment of the mediator. Each party shall be equally responsible for the mediator's fees. Any mediation shall be completed within sixty (60) days of the date of the appointment of the mediator, unless the parties mutually agree to extend the time. Nothing herein shall be construed to prevent the ACMUA or the City from mutually agreeing to utilize any other alternative dispute resolution procedure in lieu of or in addition to mediation.

B. Arbitration. In the event that mediation is unsuccessful, the parties agree to submit any dispute to binding arbitration. No later than twenty (20) days after the conclusion of the mediation process, either party may initiate the arbitration process by making a written demand for arbitration upon the other party and by providing the names of three (3) acceptable arbitrators. Within twenty (20) days of the date of a demand for arbitration, the other party must either accept one (1) of the arbitrators recommended or submit its own list of three (3) arbitrators. If no arbitrator is mutually agreed upon within thirty (30) days of the initial request for arbitration, then either party may make application to the Vicinage Assignment Judge for the appointment of an arbitrator. Each party shall be equally responsible for the arbitrator's fees. Any arbitration shall be completed within ninety (90) days of the date of the appointment of the arbitrator, unless the parties mutually agree to extend the time. The arbitrator and the parties shall meet within twenty (20) days of the arbitrator's appointment to discuss whether any discovery is necessary and the procedures to be followed for that discovery process. If the parties cannot mutually agree as to either the need for, the timing or the scope of discovery, the arbitrator shall resolve all such disputes. An arbitrator's decision may be challenged pursuant to the time lines and provisions set forth in N.J.S.A. 2A:23B-23. Nothing herein shall be construed to prevent the ACMUA or City from mutually agreeing to utilize any alternative dispute resolution procedures in lieu of the arbitration procedures described herein.

VIII. TERMINATION: This Agreement may be terminated, upon ninety (90) days written notice to the other party, as appropriate, as follows:

A. If, through any cause, a party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if a party shall violate any of the covenants, agreements, or stipulations of this Agreement, the aggrieved party shall thereupon have the right to terminate this Agreement upon giving written notice of such termination to the violating party.

B. A party may terminate this Agreement for public convenience at any time by a notice in writing to the other party or parties, as appropriate.

C. If the Local Finances Board in the Division of Local Government Services in the Department of Community Affairs renders a determination that the statutory basis for this Agreement is not the Uniform Shared Services and Consolidation Act, this Agreement shall be considered null and void.

D. Termination shall not operate to affect the validity of the indemnification provisions of this Agreement, or to prevent either party from pursuing any other relief.

IX. MODIFICATION: This Agreement may not be altered, modified, or rescinded orally, but any written changes agreed upon and executed by both parties may be incorporated into this Agreement.

X. SEVERABILITY: Should any provision to this Agreement be held invalid or unenforceable by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation of validity of any other provision of the Agreement.

XI. WAIVER: The failure to enforce any of the terms and conditions of this Agreement by either of the parties hereto shall not be deemed a waiver of any other right or privilege under this Agreement or a waiver of the right to thereafter claim damages for any deficiencies resulting from any misrepresentation, breach of warranty, or non-fulfillment of any obligation of any other party hereto. In order for there to be a waiver or any term or condition of this Agreement, such waiver must be in writing and signed by the party making the waiver.

XII. CAPTIONS: The captions herein are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement or affect any of the terms or provisions hereof.

XIII. FORCE MAJEURE: Neither party shall be liable for any failure to comply with the provisions of this Agreement and such a failure shall not constitute an event of default or breach of this Agreement to the extent: (i) such failure arises out of a cause that is beyond the reasonable control of such party; including without limitation: flood, war, riots, act of terrorism, act of military, civil or regulatory authority, earthquake, act of God or natural disaster; and (ii) the party claiming that its performance is affected by any such event, had taken reasonable action to avoid the event, promptly notifies the other party of the event and the anticipated effects of the event or the impact of the event, as applicable, on

such party's performance, and continues to take reasonable means to expeditiously remedy the problem causing such nonperformance.

XIV. NOTICE: Any notice or consent required or permitted hereunder shall be in writing and shall be delivered to the other party by registered and certified mail, return receipt requested, and addressed to the party as set out below or to such other address as the party may specify by notice given in writing to the other party.

ACMUA
401 Virginia Avenue
Atlantic City, NJ 08401
Attn: Michael A. Armstrong, Executive Director

CITY OF ATLANTIC CITY
1301 Bacharach Blvd.
Atlantic City, NJ 08401
Attn: Marty Small Sr., Mayor

IN WITNESS WHEREOF, the parties hereto have duly signed and sealed this contract on the date first written above.

ATTEST:

BY: Paula Geletei
Paula Geletei, City Clerk

CITY OF ATLANTIC CITY

BY:
Marty Small, Sr., Mayor

DATE: 3-7-23

Reviewed and Approved as to form
on behalf of City of Atlantic City

BY:
Karl Timbers, Esq.
Assistant City Solicitor

ATTEST:

BY:

ACMUA

BY:

DATE: 2/9/23

Reviewed and Approved as to form
on behalf of the ACMUA

BY:
Michael A. Armstrong, ED

ADDENDUM

FEE STRUCTURE FOR SHARED SERVICES IT AGREEMENT

| Years of actual IT Experience | Rate Per Hour |
|---|---|
| 0 - 10 | $30 - $40 |
| 11 - 20 | $40 - $60 |
| Over 20 Years | $60 - $75 |

# Resolution of the City of Atlantic City

## No. 257

Approved as to Form and Legality on Basis of Facts Set Forth

Assistant City Solicitor /s/ Karl Timbers

Factual contents certified to by

Adetoro Abodurin /s/ Chief Financial Officer

Revised 4/20/2022

Prepared by City Solicitor's Office

Council Member KURTZ presents the following Resolution:

**RESOLUTION APPROVING A SHARED SERVICES AGREEMENT BETWEEN THE CITY OF ATLANTIC CITY AND THE ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY FOR INFORMATION TECHNOLOGY SERVICES FOR ONE YEAR COMMENCING JULY 1, 2022 TO JUNE 30, 2023 WITH TWO (2) ONE YEAR OPTIONS TO EXTEND THE AGREEMENT**

**WHEREAS,** the City of Atlantic City is desirous of sharing certain **INFORMATION TECHNOLOGY SERVICES** with other public entities; and

**WHEREAS,** pursuant to N.J.S.A. 40A:65-1, et seq., the City may enter into an agreement with any other local unit or units to provide or receive any service that each local unit participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of any of the participating local units; and

**WHEREAS,** the **ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY (ACMUA)** is in need of **INFORMATION TECHNOLOGY SERVICES** which the City has agreed to provide for an amount not to exceed **FIFTY THOUSAND DOLLARS ($50,000.00)** for one year commence **JULY 1, 2022 to JUNE 30, 2023** with two (2) one (1) year options to carry out certain information technology services for the ACMUA; and

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor is duly authorized to negotiate and execute and the City Clerk to attest a shared services agreement for **INFORMATION TECHNOLOGY SERVICES** between the City and the ACMUA to be approved as to form and execution by the City Solicitor, pursuant to State approval.

POSTPONED 4/20/2022

kc October 21, 2022 11:21 AM

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | MOT. | SEC. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | MOT. | SEC. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DUNSTON | X | | | | | | RANDOLPH | X | | | | | X |
| KURTZ | X | | | | | | SHABAZZ | X | | | | | |
| MARSHALL | X | | | | | | WEEKES | X | | | | | |
| MORSHED | X | | | | X | | ZIA | X | | | | | |
| | | | | | | | TIBBITT, PRESIDENT | | | | X | | |

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: JUNE 22, 2022

Paula Geletei

/s/ Paula Geletei, City Clerk